



June 25, 2021

VIA E-FILING

David P. Zambito

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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 Petition for Approval of Non-Unanimous Settlement of All Issues

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Joint Petition for Approval of Non-Unanimous Settlement of All Issues 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,

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 Petition for Approval of Non-Unanimous Settlement of All Issues** 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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Respectfully submitted,



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Attorneys for *Pennsylvania-American Water Company*

**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.*
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 :

**JOINT PETITION FOR APPROVAL OF
NON-UNANIMOUS SETTLEMENT OF ALL ISSUES**

I. INTRODUCTION

Pennsylvania-American Water Company (“PAWC”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), Upper Pottsgrove Township (“Upper Pottsgrove”) and Shadeland Development Corporation (“Shadeland”) (singularly, a “Petitioner” and, collectively, the “Joint Petitioners”) hereby join in this “Joint Petition for Approval of Non-Unanimous Settlement of All Issues” (“Settlement”) and

respectfully request that the Honorable Administrative Law Judge Jeffrey A. Watson (the “ALJ”) recommend approval of, and the Commission approve, this Settlement without modification.

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

II. BACKGROUND

1. The Settlement pertains to the application (as amended, the “Application”) filed by PAWC on November 24, 2020, pursuant to Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), and Section 1329 of the Code, 66 Pa. C.S. § 1329, requesting (among other things) that the Commission issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights of Upper Pottsgrove (the “Transaction”), related to Upper Pottsgrove’s wastewater collection system (the “System”), and to set the fair market value of the acquisition for rate-base ratemaking purposes.

2. On December 10, 2020, staff from the Commission’s Bureau of Technical Utility Services (“TUS”) notified PAWC that they had performed a completeness review of the Application and determined that certain information was missing. TUS staff requested that the information be provided within ten business days (*i.e.*, by December 24, 2020). By Secretarial Letter dated December 24, 2020, the time for PAWC to respond was extended to January 15, 2021. On January 15, 2021, PAWC filed the information requested by TUS.

3. On December 30, 2020, Gina L. Miller, Esq., entered her appearance on behalf of I&E.

4. On January 13, 2021, the OSBA filed its Notice of Intervention, Public Statement and Verification, and Erin K. Fure, Esq. entered her appearance on behalf of the OSBA.

5. On February 2, 2021, TUS staff notified PAWC that they had determined that certain information remained missing from the Application. TUS staff requested that the information be provided within ten business days (*i.e.*, by February 17, 2021). On February 17, 2021, PAWC filed the information requested by TUS.

6. On February 3, 2021, the OCA filed a Protest and Public Statement, together with the Notices of Appearance of Christine Maloni Hoover, Esq., Erin L. Gannon, Esq., Santo G. Spataro, Esq.,¹ and Harrison W. Breitman, Esq.

7. On February 23, 2021, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Section 1329 Application until PAWC complied with certain service and notice requirements.

8. On April 12, 2021, PAWC notified the Commission that it had complied with the service and notice requirements of the February 23, 2021 Secretarial Letter. PAWC filed proof of publication in local newspapers together with a verification confirming satisfaction of the conditions stated in the February 23, 2021 Secretarial Letter.

9. By Secretarial Letter dated April 14, 2021, the Commission notified PAWC that it had finally accepted the Application for filing. The Commission further notified PAWC that notice of the Application would be published in the *Pennsylvania Bulletin* with a protest deadline of May 17, 2020. The notice was published on May 1, 2021. 51 *Pa. B.* 2476.

10. On April 15, 2021, the Commission notified the parties that a prehearing conference would be held on May 19, 2021. The ALJ issued his Prehearing Conference Order on April 15, 2021.

¹ Mr. Spataro filed a Withdrawal of Appearance on April 12, 2021.

11. On April 27, 2021, Upper Pottsgrove filed a Petition to Intervene.
12. On May 13, Pottstown Borough Authority (“PBA”) and the Borough of Pottstown (“BP”) filed a joint Protest.
13. On May 14, 2021, Shadeland Development Corporation (“Shadeland”) filed a Petition to Intervene.
14. On May 18, 2021, PAWC and Upper Pottsgrove filed Joint Preliminary Objections to the Protest of PBA and BP.
15. Also on May 18, 2021, PAWC and Upper Pottsgrove filed Joint Preliminary Objections, together with an Answer, to Shadeland’s Petition to Intervene.
16. The Prehearing Conference was held as scheduled on May 19, 2021.
17. On May 21, 2021, the ALJ issued his Prehearing Order. Also on May 21, 2021, PBA and BP filed an Answer to the Joint Preliminary Objections of PAWC and Upper Pottsgrove. Further on May 21, 2021, Shadeland filed an Answer to the Joint Preliminary Objections of PAWC and Upper Pottsgrove.
18. On May 24, 2021, PAWC and Upper Pottsgrove filed a Joint Reply to PBA and BP’s Answer to the Joint Preliminary Objections of PAWC and Upper Pottsgrove. Also on May 24, 2021, PAWC and Upper Pottsgrove filed a Joint Reply to Shadeland’s Answer to the Joint Preliminary Objections of PAWC and Upper Pottsgrove.
19. On May 27, 2021, the ALJ issued the Interim Order Denying the Preliminary Objections of Pennsylvania-American Water Company and Upper Pottsgrove Township to the Petition to Intervene of Shadeland Development Corporation.
20. Also on May 27, 2021, the ALJ issued the Interim Order Granting in Part and Denying in Part Preliminary Objections of Pennsylvania-American Water Company and Upper

Pottsgrove Township to the Joint Protest of Pottstown Borough Authority and the Borough of Pottstown.

21. A telephonic public input hearing was held at 6:00 p.m. on June 2, 2021.

22. On June 8, 2021, the parties notified the ALJ that all parties had waived cross examination and the hearing scheduled for June 10-11, 2021 was cancelled.

23. On June 9, 2021, the parties filed the Joint Stipulation for the Admission of Evidence.

24. On June 10, 2021, the ALJ approved the Joint Stipulation for the Admission of Evidence. On June 17, 2021, the ALJ issued the Interim Order Revising Litigation Schedule and on June 22, 2021, the ALJ issued the Second Interim Order Revising Litigation Schedule.

III. SETTLEMENT TERMS

The Joint Petitioners² agree as follows:

A. Approval of Application

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

² Shadeland does not join in Paragraphs 25-30 and 32-45, but does not object to those portions of the Settlement.

B. Tariff

26. The *pro forma* tariff submitted with the Application as **Appendix A-12**, including all rates, rules and regulations regarding conditions of PAWC’s wastewater service, shall be permitted to become effective immediately upon closing of the Transaction (“Closing”).

C. Fair Market Value for Ratemaking Rate Base Purposes

27. Pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$13,750,000 for ratemaking rate base purposes for the acquired assets effective as of the Closing Date.

D. Fair Market Value Appraisals

28. 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).

E. Engineering Assessment

29. PAWC will act 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.

F. Easements, Rights of Way, and Liens

30. PAWC and Upper Pottsgrove will continue to work to achieve the transfer of all real property rights, including all real estate, easement rights, access to public rights-of-way, and liens that must be transferred to PAWC in the Asset Purchase Agreement (“APA”) by Closing (collectively, 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.

31. As a condition of Closing and subject to 66 Pa. C.S. § 703(g), PAWC will require 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.

G. Inflow and Infiltration Study

32. PAWC shall complete an Inflow and Infiltration (“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.

H. Rates

33. 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 regarding Upper Pottsgrove’s rates in a future PAWC proceeding.

34. 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.

I. Distribution System Improvement Charge

35. Pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to collect a distribution system improvement charge ("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 Long-Term Infrastructure Improvement Plan ("Amended LTIIIP") which does not re-prioritize other existing commitments in other services areas, (ii) the Commission's approval of the Amended LTIIIP, 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 LTIIIP.

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

36. 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 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.

K. Transaction and Closing Costs

37. 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.

38. 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.

39. 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.

L. Low Income Program Outreach

40. 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 also agrees to ongoing, targeted outreach to its Upper Pottsgrove-area customers regarding its low income program.

41. 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.

M. Approval of Section 507 Agreements

42. 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: (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 Pottstown and Pottstown Borough Authority; and, (3) the Joint Sewage Transportation Agreement between Upper Pottsgrove Township and Lower Pottsgrove Township.³

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

43. The contracts listed in Schedule 4.13 of the APA including but not limited to the Sewage Treatment Service Agreement referenced in Paragraph 42, 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.

N. Other Necessary Approvals

44. 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.

O. Public Input Hearing

45. The Parties cooperated in good faith with Commission staff to promptly schedule one telephonic public input hearing in this matter. The Parties agreed that, for purposes of this proceeding, the public input hearing did not require newspaper notice and that notice (1) by joint PAWC and Upper Pottsgrove press release, (2) by PAWC’s and Upper Pottsgrove’s social media, and (3) by notice on PAWC’s and Upper Pottsgrove’s websites, was adequate.

P. Standard Settlement Conditions

46. The Settlement is conditioned upon the Commission’s approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of an Order modifying the

Settlement. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

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

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

49. The Joint Petitioners have jointly prepared, and are separately filing, a Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs. The Joint Petitioners further agree that the facts agreed to in that Joint Stipulation are sufficient to find that the Settlement is in the public interest.

50. Each Petitioner has prepared a Statement in Support of Settlement setting forth the bases upon which the Petitioner believes the Settlement to be in the public interest. **Attachments A-F.**

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

IV. REQUEST FOR RELIEF

WHEREFORE, Pennsylvania-American Water Company, the Office of Consumer Advocate, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, the Office of Small Business Advocate, Upper Pottsgrove Township and Shadeland Development Corporation, by their respective counsel, respectfully request that:

(a) 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.

(b) The Application filed by PAWC on November 24, 2020, be approved.

(c) The Commission issue Certificates of Public Convenience under 66 Pa. C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of: (i) the transfer, by sale, of 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.

(d) 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.

(e) 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.

(f) 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).

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) In the first base rate case that includes Upper Pottsgrove's wastewater system assets:

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

2. PAWC will provide a separate cost of service study for the Upper Pottsgrove system.

3. 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.

(l) 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 a 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.

(m) 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.

(n) 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.

(o) 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.

(p) 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.

(q) 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.

(r) 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.

(s) 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.⁴

(t) The contracts listed in Schedule 4.13 of the APA including but not limited to the Sewage Treatment Service Agreement referenced in Paragraph 42, 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.

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

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

[Signatures appear on next page.]

Respectfully submitted,



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List of Attachments:

- A. Statement in Support of Pennsylvania-American Water Company
- B. Statement in Support of Upper Pottsgrove Township
- C. Statement in Support of the Office of Consumer Advocate
- D. Statement in Support of the Office of Small Business Advocate
- E. Statement in Support of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement
- F. Statement in Support of Shadeland Development Corporation

Attachment A
Statement in Support of
Pennsylvania-American Water Company

**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 : Docket No. A-2020-3021460, *et al.*
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 :

**STATEMENT OF PENNSYLVANIA-AMERICAN WATER
COMPANY IN SUPPORT OF JOINT PETITION FOR APPROVAL
OF NON-UNANIMOUS SETTLEMENT**

Pennsylvania-American Water Company (“PAWC”) files this Statement in Support of the “Joint Petition for Approval of Non-Unanimous Settlement of All Issues” (“Settlement”) entered into by PAWC, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Upper Pottsgrove Township (“Upper Pottsgrove”) and Shadeland Development Corporation (“Shadeland”) (individually, a “Joint Petitioner” and

collectively, the “Joint Petitioners”) in the above-captioned proceeding.¹ PAWC respectfully requests that the Honorable Administrative Law Judge Jeffrey A. Watson (the “ALJ”) recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

I. INTRODUCTION

The instant Settlement pertains to the application (the “Application”) filed by PAWC pursuant to Sections 507, 1102(a), 1103, and 1329 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. §§ 507, 1102(a), 1103 and 1329, requesting (among other things) that the Commission issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights of Upper Pottsgrove (the “Transaction”), related to Upper Pottsgrove’s wastewater collection and conveyance system (the “System”), and to set the fair market value of the acquisition for rate-base ratemaking purposes.

The Joint Petitioners have agreed to a settlement of all of the issues in this proceeding, other than the issues raised by the Non-Settling Parties, including issues arising under Sections 1102, 1103, 1329 and 507 of the Code. 66 Pa. C.S. §§ 1102, 1103, 1329, and 507. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must determine that the proposed terms

¹ The other Parties to this proceeding, the Pottstown Borough Authority (“PBA”) and the Borough of Pottstown (“BP”) (collectively, the “Non-Settling Parties”), will have an opportunity to comment on the Settlement after it is filed by the Joint Petitioners.

and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

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

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

The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners and satisfies the various requirements of the Code. The Settlement is in the best interest of Upper Pottsgrove and its existing customers, PAWC and its existing customers, and the public-at-large. It is in the public interest and, accordingly, should be approved.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. Approval of the Application

The Settlement asks that the Commission approve the Application. Pursuant to Section 1103 of the Code, 66 Pa. C.S. § 1103, PAWC must demonstrate that it is technically, financially, and legally fit to own and operate the System. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). As a certificated public utility, PAWC enjoys a rebuttable presumption that it possesses the requisite fitness.² *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). Although no party challenged PAWC's fitness, PAWC introduced extensive evidence demonstrating its technical, legal and financial fitness.

With respect to technical fitness, PAWC is the Commonwealth's largest water and wastewater provider. It furnishes service to more than 400 communities in 36 counties, serving a combined population in excess of 2,400,000. PAWC St. No. 1 p. 12. PAWC employs approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations. PAWC St. No. 2 p. 8. In addition, as a subsidiary of American Water Works Company, Inc., PAWC has available to it additional highly-trained professionals with expertise in specialized areas. These operations and process experts have deep experience in the operation and maintenance of different types of wastewater technologies. PAWC St. No. 2 p. 8. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes

² Similarly, PAWC enjoys a presumption of a continuing public need for service because public utility service is already being provided in the service territory. *Re Glenn Yeager et al.*, 49 Pa. P.U.C. 138 (1975). No party has contested the continued need for wastewater collection and treatment service in the Upper Pottsgrove service territory.

and infrastructure. PAWC has funded more than \$1 billion in infrastructure investment in the past five years. *Id.* p. 9.

With respect to legal fitness, PAWC has a record of environmental compliance, a commitment to invest in necessary capital improvements and resources, and the experienced managerial and operating personnel necessary to provide safe and reliable wastewater service to the existing customers of Upper Pottsgrove. PAWC has a good compliance history with the Commission and there are currently no legal proceedings that would suggest that PAWC is not legally fit to provide service in Upper Pottsgrove. PAWC St. No. 1 pp. 12, 15.

With respect to financial fitness, PAWC had total assets of approximately \$5.3 billion as of December 31, 2019. In addition, it had a net income of approximately \$187 million for the 12 months ending December 31, 2019. PAWC St. No. 3 p. 5. In addition to positive operating cash flows, PAWC may obtain financing through a \$400 million line of credit, long term debt financing, and equity investments. PAWC St. No. 3 p. 6.

In addition to demonstrating fitness, PAWC must demonstrate that the Transaction and PAWC's ownership/operation of the Upper Pottsgrove System will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950. When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. *Middletown Township v. Pa. Pub. Util. Comm'n*, 85 Pa. Cmwlth. 191, 482 A.2d 674 (1984).

The Transaction, with the conditions described in the Settlement, benefits all of the stakeholder groups impacted by the Transaction: the public-at large; the Township of Upper Pottsgrove (as seller of the System); the existing customers of Upper Pottsgrove's System; and, the existing customers of PAWC. The Transaction benefits members of the public-at-large in that the Transaction promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721(a); PAWC St. No. 1 p. 13. In addition, the Transaction benefits members of the public-at-large by promoting the Legislature's policy goals when it enacted Section 1329. PAWC St. No. 1 p. 15.

The Transaction also benefits the public-at-large due to its environmental benefits. PAWC is in a better position than Upper Pottsgrove to maintain environmental compliance for the System. PAWC can draw upon a much broader range of engineering and operational experience, as well as deeper financial resources, to address the environmental compliance challenges of the System. PAWC has plans for making capital improvements during the five years after Closing on the Transaction. PAWC St. No. 2 p. 7.

In addition to benefiting the public-at-large, the Transaction benefits Upper Pottsgrove Township (as seller of the System). Among other things, the Transaction will improve Upper Pottsgrove's financial condition and outlook. In addition, the Transaction will benefit Upper Pottsgrove by enabling it to reallocate its administrative time to focus on other key initiatives. Furthermore, the Transaction will increase Upper Pottsgrove's tax base through increased development opportunities. Upper Pottsgrove St. No. 1 p. 8-9.

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

- 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.
- The System will become a Commission-regulated utility, and its customers will gain the protection of the Code, the Commission, I&E, OCA, and the OSBA. PAWC St. No. 1 p. 14; PAWC St. No. 2 p. 16.
- Customers will have access to PAWC's proven and enhanced customer service, including its customer assistance program. 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. 1 pp. 13-15.
- PAWC plans to invest millions of dollars to improve the wastewater system. PAWC St. No. 2 p. 7 and PAWC Exhibit MJG-1.

The Settlement contains additional public benefits for Upper Pottsgrove's existing customers. It requires PAWC to provide information to Upper Pottsgrove's customers regarding PAWC's low-income programs within the first billing cycle following Closing and in a welcome letter to Upper Pottsgrove's customers. Settlement ¶¶ 40-41.

The Transaction benefits PAWC's existing wastewater customers in the same way that it benefits all other members of the public-at-large. In addition, the Transaction has specific benefits for PAWC's existing wastewater customers, including but not limited to the addition of 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. The Transaction will have no immediate rate impact on PAWC's existing wastewater customers. Any impacts on the rates of PAWC's existing customers would occur only upon Commission approval as part of a base rate proceeding. PAWC St. No. 3 p. 10.

Finally, the Transaction benefits PAWC's existing water customers in the same way that it benefits all other members of the public-at-large. In addition, it will only result in an increase in rates for these customers, pursuant to 66 Pa. C.S. § 1311(c), if in a future rate case the Commission

determines that an allocation of PAWC’s wastewater requirement to water customers is “in the public interest.”

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

B. Tariff

Please see **Section II.H** (“Rates”), below.

C. Fair Market Value for Ratemaking Rate Base Purposes

PAWC and Upper Pottsgrove agreed to use the procedure set forth in Section 1329 for the Transaction. Section 1329 created a voluntary procedure for valuing a water or wastewater system being sold by a municipality or municipal authority to a public utility or other entity. In that procedure, the buyer and the seller each obtain an appraisal of the system by a Commission-approved UVE. The ratemaking rate base of the selling utility is the lesser of: (1) the purchase price agreed-to by the parties, or (2) the fair market value of the selling utility (defined as the average of the two UVEs’ appraisals). The ratemaking rate base of the selling utility is then incorporated into the rate base of the acquiring public utility during the acquiring public utility’s next base rate case.

In the Settlement, the Joint Petitioners agreed that \$13,750,000 (the purchase price) will go into PAWC’s rate base in its next rate case due to the acquisition of the System. Settlement ¶ 27. The Joint Petitioners fully evaluated whether the UVEs abused their discretion under USPAP, relied on inaccurate facts, or committed errors of law. The agreed-upon ratemaking rate base of \$13,750,000 is supported by substantial record evidence.

In reaching this agreement on the ratemaking rate base, the Joint Petitioners fully took into account the rate impact of the Transaction as required by *McCloskey v. Pa. Pub. Util. Comm'n*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *pet. for alloc. denied*, 207 A.3d 290 (Pa. 2019) (“*New Garden*”). The evidence of record supports a conclusion that the Commission, using the various ratemaking tools available to it, can set rates for PAWC’s customers prospectively that are “just and reasonable” under Section 1301 of the Code. The Transaction has numerous other affirmative public benefits of a substantial nature. *See, e.g.*, PAWC St. No. 1 pp. 13-15; PAWC St. No. 1-R pp. 13-14; PAWC St. No. 2 pp. 7-17; Upper Pottsgrove St. No. 1 pp. 3-4, 7-9. The Transaction should not be disapproved based on speculation about future impacts on rates, as the rate impacts of the Transaction were thoroughly evaluated by the Joint Petitioners.

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

D. Fair Market Value Appraisals

Section 1329(a)(5) of the Code, 66 Pa. C.S. § 1329(a)(5), requires each UVE to provide the completed appraisal to its client within ninety days of executing the service contract. PAWC’s standard operating procedure is to execute an Agreement for Valuation Consulting Services

(“Agreement”) before the Engineer’s Assessment is completed (and therefore before the UVE can begin its appraisal). The Agreement therefore provides that the UVE will not begin performing services until the issuance of a notice to proceed.

The Settlement requires PAWC to clearly document the date on which it authorized its UVE to perform the fair market value appraisal of the system being appraised, so as to demonstrate compliance with 66 Pa. C.S. § 1329(a)(5).

E. Engineering Assessment

The engineer’s assessment completed in this case provides extensive information about the assets to be acquired by PAWC. It does not, however, indicate the condition of those assets. In the Settlement, the Joint Petitioners agreed that, in future Section 1329 acquisitions, the engineering assessment will designate the condition of the inventory and assets appraised, but all categories of system assets will be appraised in poor, fair, good or very good condition. This provision will assist the UVEs in completing their appraisal of the system being acquired. It is therefore in the public interest and should be approved.

F. Easements, Rights of Ways and Liens

The Settlement requires PAWC and Upper Pottsgrove Township to continue to work to achieve the transfer of all real property rights, including all real estate, easement rights, access to public rights-of-way, and liens that the APA requires Upper Pottsgrove to transfer to PAWC by Closing (collectively, the “Real Property Rights”). However, subject to the commitments and Settlement provisions discussed below, the Settlement gives PAWC 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. Settlement ¶ 30.

In the Rebuttal Testimony of Scott Fogelsanger, PAWC made a commitment that is incorporated almost verbatim in the Settlement. The Settlement provides that, as a condition of Closing and subject to 66 Pa. C.S. § 703(g), PAWC will require that Upper Pottsgrove obtain clear title to the sewer line, of which Shadeland Development Corporation claims ownership in its Petition to Intervene, by (i) dedication to Upper Pottsgrove Township, (ii) determination of a court of competent jurisdiction that dedication is not necessary, or (iii) other evidence reasonably satisfactory to PAWC.³ Settlement ¶ 31. These provisions ensure that Upper Pottsgrove will not transfer a sewer line that it does not own. They also ensure that, after Closing, PAWC will be able to use the sewer line to provide service to customers in the service territory.

These Settlement provisions address the primary issue that Shadeland raised in this proceeding. Although these provisions restate commitments that PAWC made in its rebuttal testimony, including them in the Settlement (which the Commission must approve by an enforceable order) gives the Commission greater power to enforce those provisions in the future. They are in the public interest and should be approved.

G. Inflow and Infiltration Study

To provide more information about the condition of the assets being acquired by PAWC in the Transaction, the Settlement requires PAWC to complete an inflow and infiltration study and provide the results to I&E, OCA and OSBA. The costs of the study will be subject to prudence review when they are claimed for recovery in base rates. This provision is a reasonable compromise among the Joint Petitioners, is in the public interest and should be approved.

³ This provision re-states the commitment made in PAWC St. No. 1-R pp. 4-5.

H. Rates

In the interest of resolving this case and based on the unique circumstances of this case, PAWC will submit two cost of service studies in the first base rate case that includes the Upper Pottsgrove System: (a) a cost of service study that removes all costs and revenues associated with the operation of the Upper Pottsgrove System; and (b) a cost of service study for the Upper Pottsgrove System. Settlement ¶¶ 34a. and 34b. Under the Settlement, PAWC's obligation to prepare cost of service studies extends only to the first base rate case in which Upper Pottsgrove is included. In this way, unnecessary cost of service studies can be avoided in subsequent rate cases.

In terms of the rates to be charged to Upper Pottsgrove customers, the Settlement is consistent with 66 Pa. C.S. § 1329(d)(1)(v) in that it requires PAWC to charge rates after Closing that are equal to Upper Pottsgrove's existing rates. The Settlement requires PAWC, in the first base rate case that includes Upper Pottsgrove, to propose moving Upper Pottsgrove's customers' rates to the cost of service, provided, however, that PAWC will not propose Upper Pottsgrove wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates, Settlement ¶ 34c. This provision is in the public interest because it limits any potential subsidization of Upper Pottsgrove's customers by PAWC's existing water and wastewater customers.

The Settlement permits PAWC to agree to rates other than those proposed for Upper Pottsgrove customers in the context of a settlement of a base rate case. *Id.* However, the Settlement does not preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC base rate proceeding. Settlement ¶ 34c. Further, the Settlement contains no provision purporting to restrict the Commission's ultimate ratemaking authority to set "just and reasonable" rates.

These provisions are consistent with the Code and represent a reasonable compromise among the Joint Petitioners. They are in the public interest and should be approved by the Commission.

I. Distribution System Improvement Charge

Section 1329(d)(4) of the Code, 66 Pa. C.S. § 1329(d)(4), 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. In order to qualify for DSIC recovery, a utility must submit a Long-Term Infrastructure Improvement Plan (“LTIIIP”) to, and receive approval from, the Commission.

PAWC has previously received Commission approval of a wastewater LTIIIP, 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 Upper Pottsgrove service territory. Application ¶¶ 2, 44; PAWC St. No. 1 p. 4. Pursuant to the Settlement, PAWC may file an amended LTIIIP for the Upper Pottsgrove 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 LTIIIP, PAWC could make a tariff supplement compliance filing, which would include the Upper Pottsgrove service territory in PAWC’s existing DSIC tariff. Settlement ¶ 35.

The Settlement recognizes the Commission’s authority to modify PAWC’s LTIIIP submission. Finally, the Settlement is consistent with the Code and *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Final Implementation Order entered August 2, 2012). The Settlement is in the public interest and should be approved.

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

Section 1329(f)(1) of the Code, 66 Pa. C.S. § 1329(f)(1), permits an acquiring public utility to accrue 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. In the Application ¶¶ 2, 44, PAWC requested permission to accrue AFUDC on post-acquisition improvements that are not included in a DSIC. PAWC St. No. 1 p. 4. The Settlement makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 36.

Similarly, Section 1329(f)(2) of the Code, 66 Pa. C.S. § 1329(f)(2), permits an acquiring public utility to defer depreciation on its post-acquisition improvements that are not included in a DSIC. In the Application ¶¶ 2, 44, PAWC requested permission to defer depreciation on post-acquisition improvements that are not included in a DSIC. PAWC St. No. 1 p. 4. The Settlement makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 36. These provisions are reasonable and in the public interest, and should be approved.

K. Transaction and Closing Costs

Section 1329(d)(1)(iv) of the Code, 66 Pa. C.S. § 1329(d)(1)(iv), permits an acquiring public utility to include, in its next base rate case, a claim for the transaction and closing costs incurred for the acquisition. In the *Final Implementation Order* p. 14, the Commission stated that there will be no Commission preapproval of the reasonableness of recovery of these costs in a Section 1329 proceeding. Out of an abundance of caution, the Settlement acknowledges that

PAWC may, in the first base rate case that includes the Upper Pottsgrove System, include the transaction and closing costs incurred in this proceeding. The Commission will adjudicate the ratemaking treatment of PAWC's claimed transaction and closing costs at that time. The Settlement makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 37. These provisions are reasonable and in the public interest, and should be approved.

The Settlement should also be approved because it includes provisions to protect ratepayers. 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 (the "APA"), Section 3.01, required PAWC to pay a \$90,000 deposit on April 28, 2000 toward Upper Pottsgrove's engineering and legal fees related to the Transaction. That amount will be deducted from the amount to be paid at Closing, but if Closing does not occur, Upper Pottsgrove will only refund the amount (if any) that it has not spent on engineering and legal fees. The Settlement, ¶ 38, provides that, if the Transaction does not close, and PAWC does not recoup of the \$90,000 deposit, PAWC will not seek to recover any unrecouped portion of the deposit from ratepayers.

The Settlement also protects ratepayers because it requires PAWC to separately identify, in its next base rate case, the amount of outside legal fees included in PAWC's transaction and closing costs on the Transaction. The amounts expended by PAWC on behalf of Upper Pottsgrove must also be separately identified. The OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence and basis for these fees. These provisions are reasonable, in the public interest and should be approved.

L. Low Income Program Outreach

The Settlement requires PAWC to notify Upper Pottsgrove customers of its low income programs. The notice is to include a description of the available low income programs, participation eligibility requirements, and PAWC's contact information. This notice must be provided within the first billing cycle following Closing and in a welcome letter to Upper Pottsgrove's customers. The welcome packet must also inform Upper Pottsgrove customers that they are being converted to monthly billing. It is in the public interest for PAWC to provide information to Upper Pottsgrove's customers about its low income programs and about significant changes in their bills resulting from the Transaction. Consequently, these provisions of the Settlement are reasonable and in the public interest.

M. Approval of Section 507 Agreements

Section 507 of the Code, 66 Pa. C.S. § 507, requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariffed rates) be filed with the Commission at least thirty days before the effective date of the contract. The Commission approves the contract by issuing a certificate of filing, unless it decides to institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract.

In this proceeding, PAWC seeks Commission approval, pursuant to Section 507, of: (i) the APA; (ii) the Sewage Treatment Service Agreement ("STSA") between Upper Pottsgrove Township, Pottstown Borough Authority ("PBA") and Borough of Pottstown ("BP"); and, (iii) the Joint Sewage Transportation Agreement between Upper Pottsgrove Township and Lower Pottsgrove Township. Approval of these agreements is necessary to allow PAWC to provide

service to the service territory currently served by Upper Pottsgrove. Approval of these agreements, pursuant to Section 507, is therefore reasonable and in the public interest.

In the Rebuttal Testimony of Scott Fogelsanger, PAWC made a significant commitment to address PBA/BP's sole issue in this proceeding. PAWC St. No. 1-R p. 11. . The Settlement goes even further in this regard. It provides that the STSA (and the other contracts listed in Schedule 4.13 of the APA) are material to the Commission's approval of the Transaction. As a condition of Closing and subject to 66 Pa. C.S. § 703(g), PAWC will require Upper Pottsgrove to obtain the assignment of these material contracts. Settlement ¶ 43. This provision ensures that the STSA is assigned prior to Closing.

These Settlement provisions effectively address the only issue that PBA/BP raised in this proceeding – ensuring that the STSA is assigned to PAWC prior to Closing. Moreover, by including these provisions in the Settlement (which the Commission must approve by an enforceable order), the Commission will have considerable power to enforce those provisions in the future. They are in the public interest and should be approved.

N. Other Necessary Approvals

The Settlement includes a standard provision asking that the Commission issue any other approvals or certificates that might be necessary to carry out PAWC's acquisition of the Upper Pottsgrove System. Although the Joint Petitioners do not believe any other approvals or certificates are in fact necessary, this provision is included out of an abundance of caution in case the Joint Petitioners inadvertently overlooked a necessary approval.

O. Miscellaneous

The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any

Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

This provision is standard in settlements in Commission proceedings. It protects all of the Joint Petitioners by allowing them to withdraw from the Settlement if the Commission modifies the Settlement in a way they find unacceptable. This provision makes parties to a Commission proceeding more willing to settle than they otherwise might be. It is therefore in the public interest and should be approved.

III. PUBLIC INPUT HEARING TESTIMONY HAS BEEN ADDRESSED

Joan E. London, Esq., appeared at the public input hearing on behalf of Artisan Construction, LLC to raise issues that the Commission should consider in this matter. The Settlement should be approved as being in the public interest because it addresses issues that need to be addressed, but does not address issues that do not.

Ms. London expressed concern about the condition of the Township's System because some owners of utility systems decrease their maintenance activities after signing an agreement to sell the system. Ms. London did not allege that Upper Pottsgrove had in fact decreased its maintenance activities after signing the APA, but simply asked the Commission to consider the issue when deciding whether to approve the Application.

PAWC introduced rebuttal testimony indicating that it has no reason to believe that Upper Pottsgrove ceased to maintain the System after executing the APA. PAWC St. No. 1-R. Nevertheless, the Settlement addresses the condition of the System by requiring PAWC to

complete an inflow and infiltration study after Closing. Settlement ¶ 32. This is in addition to the other investments (totaling more than \$4 million) that PAWC proposed making in the first five years following Closing. PAWC St. No. 2 p. 7 and PAWC Exhibit MJG-1.

Ms. London also expressed concern that the sale of the System will cause project delays and future rate increases. PAWC introduced rebuttal testimony denying that the sale will cause delays in projects. PAWC St. No. 1-R p. 14. For example, there are five remaining line extension projects under Upper Pottsgrove's latest Act 537 Plan, and Upper Pottsgrove and PAWC are committed to completing them. *Id.*

The Settlement contains provisions concerning future rate increases. The Settlement requires PAWC to submit a cost of service study for the Upper Pottsgrove system as part of the first base rate case that includes the Upper Pottsgrove System and to propose moving Upper Pottsgrove's rates to its cost of service, provided that PAWC will not propose rates in excess of PAWC's proposed Rate Zone 1 system-average rates. All parties to this proceeding reserve their rights to assert any position in that future rate case and PAWC reserves the right to settle that case using different rates than it proposed for Upper Pottsgrove's customers. Settlement ¶ 34. As stated above, in **Section II C. and Section II.H.**, the Transaction should not be disapproved based on speculation about future impacts on rates, as the rate impacts of the Transaction were thoroughly evaluated by the Joint Petitioners. 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, 66 Pa. C.S. § 1301. The Settlement provisions are consistent with the Code and represent a reasonable compromise among the Joint Petitioners. They are in the public interest and should be approved by the Commission.

In addition, Ms. London was concerned about PAWC's knowledge of and ability to honor a Corrective Action Plan ("CAP") that Upper Pottsgrove Township had entered into with BP. This topic is not addressed in the Settlement because the CAP is essentially complete. PAWC St. No. 1-R p. 15; Upper Pottsgrove Township St. 1-R p. 11.

Finally, Ms. London expressed concern about the status of a pending Act 537 Plan Amendment and the need for its completion prior to Closing on the Transaction. Again, the Settlement does not address this topic because it is unnecessary. PAWC introduced testimony from Scott Fogelsanger that the APA requires DEP approval of the updated Act 537 Plan prior to Closing. He also testified that DEP approval is expected in August, 2021. PAWC St. No. 1-R p. 15. Additionally, Upper Pottsgrove introduced rebuttal testimony correctly stating that the status of the Act 537 Plan is beyond the scope of this PUC proceeding. Upper Pottsgrove St. No. 1-R p. 12.

The Settlement is reasonable and in the public interest because it helps address the only testimony that was offered at the public input hearing, without addressing issues that need not be addressed in this proceeding.

IV. CONCLUSION

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a settlement that resolves all of the issues in this proceeding (other than those raised by the Non-Settling Parties) in a fair and equitable manner. The Settlement is the result of detailed examination of the Transaction, discovery responses, evidence that was entered into the record, and extensive settlement negotiations. A fair and reasonable compromise has been achieved in

this case. PAWC fully supports the Settlement and urges the ALJ and the Commission to approve it without modification.

WHEREFORE, Pennsylvania-American Water Company respectfully requests that the Honorable Administrative Law Judge Jeffrey A. Watson recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification, and enter an order consistent with the Settlement and the specific paragraphs set forth in its "Request for Relief."

Respectfully submitted,



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Dated: June 25, 2021

Attachment B
Statement in Support of
Upper Pottsgrove Township

Commission approve, the Settlement, including all terms and conditions thereof, without modification.

I. Introduction

This proceeding concerns PAWC's Application, filed with the Commission on November 24, 2020, pursuant to Section 1102(a) of the Pennsylvania Public Utility Code ("Code"), 66 Pa. C.S. § 1102(a), and Section 1329 of the Code, 66 Pa. C.S. § 1329, requesting (among other things) that the Commission issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights of Upper Pottsgrove (the "Transaction"), related to Upper Pottsgrove's wastewater collection system (the "System"), and to set the fair market value of the acquisition for rate-base ratemaking purposes.

The Joint Petitioners have agreed to a Settlement of all issues in the proceeding. Upper Pottsgrove supports the proposed Settlement and submits that it should be approved without modification because the Settlement will further the public interest.

Approval of the proposed Settlement is consistent with the Commission's policy to promote settlements over costly litigation. 52 Pa. Code § 5.231(a). The Commission has explicitly stated that "the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding." 52 Pa. Code § 69.401.

Throughout the full exploration of all the issues in this case, the Joint Petitioners have consistently exhibited a willingness to work together to find a resolution to this case within the six-month deadline mandated by the General Assembly in Section 1329 of the Code, 66 Pa. C.S. § 1329.

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

II. The Proposed Settlement is in the Public Interest

A. Approval of the Application

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

To show legal fitness, PAWC must demonstrate that it has obeyed the Code, and Commission Regulations and Orders. *Re Perry Hassman*, 55 PA PUC 661 (1982). Here, PAWC is a public utility operating under certificates of public convenience granted by the Commission with a good compliance history and there are currently no pending legal proceedings that would suggest that PAWC is not legally fit to provide safe and adequate service in Upper Pottsgrove. PAWC Statement No. 1 pp.12, 15. PAWC thus satisfies the criteria for legal fitness.

To show financial fitness, PAWC must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra*. Here, PAWC—a subsidiary of American Water Works Company, Inc.—is the largest water and wastewater provider in

Pennsylvania, with total assets of \$5.3 billion as of December 31, 2019. *See* PAWC Statement No. 3, p. 5. PAWC also has a \$400 million line of credit, long-term debt financing at favorable interest rates and payment terms, and may obtain additional equity investments all through American Water Capital Corp. PAWC Statement No. 3, p. 6. Thus, PAWC satisfies the criterion of sufficient financial resources as well.

Finally, to show technical/managerial fitness, PAWC must have sufficient staff, facilities and operating skills to provide the proposed service. *Hassman, supra*. Again, PAWC easily satisfies this standard here. As the largest investor-owned water and wastewater provider in the Commonwealth, PAWC furnishes more than 400 communities in 36 counties and serves a combined population in excess of 2,400,000. PAWC Statement No. 1 p. 11-12. PAWC can seamlessly integrate the operation of the Upper Pottsgrove System into its current operations.

In addition to demonstrating fitness, PAWC must demonstrate that the Transaction and PAWC's ownership/operation of the Upper Pottsgrove System will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950.

The Transaction, with the conditions described in the Settlement, benefits all of the stakeholder groups impacted by the Transaction: the public-at large; the Township of Upper Pottsgrove (as seller of the System); the existing customers of Upper Pottsgrove's System; and, the existing customers of PAWC. For purposes of this statement, Upper Pottsgrove will focus primarily on the considerable benefits that will directly impact its residents and customers and the Township.

First, PAWC will not just be able to take over operations of the Township's System, but has the managerial, technical and financial resources to continue to operate, maintain and improve the Upper Pottsgrove System in a safe, reliable and efficient manner now and in the future. PAWC Statement No.1, p.14.

Second, Upper Pottsgrove customers will benefit greatly from PAWC's technical experience and fitness in deploying resources towards capital improvements. PAWC has plans to make many capital improvements during the five years after Closing and committed to contribute millions of dollars to improve the System. PAWC Statement No. 2, p. 7. PAWC is in a better position than Upper Pottsgrove to maintain environmental compliance for the System. PAWC can draw upon a much broader range of engineering and operational experience, as well as deeper financial resources, to address the environmental compliance challenges of the System. PAWC Statement No. 1, p. 14. Customers will certainly benefit from PAWC's administration of these improvements.

Third, the Township's customers will benefit from PAWC'S proven and enhanced customer service including its customer assistance program. PAWC Statement No. 1, p. 15. Access to PAWC's customer assistance programs is particularly important during the on-going COVID-19 Pandemic. In addition to providing access to PAWC's customer assistance programs, PAWC will offer Upper Pottsgrove customers expanded customer service center hours, additional payment options (including by online or phone), enhanced customer information and education programs, and access to PAWC's team of experienced water and wastewater professionals. PAWC Statement No. 2, p. 8. Upper Pottsgrove Statement No. 1, p. 4 and 9.

Fourth, the Transaction will greatly improve the Township's financial condition and outlook by providing the Township with funds to pay down debt and fund unfunded pension liabilities which will in turn provide the Township with budgetary relief. Upper Pottsgrove Statement No. 1, p 3. Additionally, the funds received from the Transaction will allow for the flexibility to undertake necessary future non-System related capital projects that will benefit the residents of the Township. *Id.*

Lastly, given the time and economic impact on the Township from dealing with the wastewater system, the Transaction will permit the Township administration to reallocate administration time to focus on other key initiatives in Upper Pottsgrove. And it will increase Upper Pottsgrove tax base through increased development opportunities. Upper Pottsgrove Statement No. 1, pp. 4 and 8-9.

Other considerable benefits of the proposed transaction exist as well, particularly for PAWC's existing customers. Most notably, there will be no immediate rate impact on PAWC's existing customers. PAWC Statement No. 1, pp. 15-16. Additionally, with PAWC's increased customer base, there are more customers to share future infrastructure investment costs that promote stable rates across the entire PAWC system in the long-term. *Id.* In a time with increased environmental requirements, the ability to spread the costs of maintaining a public wastewater system over a growing customer base is primary. *Id.* Further, the Transaction fosters the Commission's stated goal of regionalizing wastewater systems within the Commonwealth and providing both greater environmental and economic benefits to all customers.

In short, as modified by the terms and conditions of the Settlement, the Transaction has affirmative public benefits of a substantial nature for every impacted group. These benefits

clearly outweigh any alleged detriments. Accordingly, the ALJ and the Commission should find that the Settlement is in the public interest.

B. Tariff

Please see Section II.H (“Rates”), below.

C. Fair Market Value for Ratemaking Rate Base Purposes

Section 1329 addresses the valuation of assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. It is a voluntary process to determine the fair market value of an acquired water or wastewater system at the time of acquisition, and provides that the ratemaking rate base will be the lesser of the fair market value (i.e., the average of the buyer’s and seller’s independently conducted appraisals) or the negotiated purchase price. The ratemaking rate base of the selling utility is then incorporated into the rate base of the acquiring public utility during the acquiring public utility’s next base rate case.

PAWC and Upper Pottsgrove agreed to use the procedure set forth in Section 1329 for the Transaction.

In the Settlement, the Joint Petitioners agreed that after the acquisition of the System, \$13,750,000 (the purchase price) will go into PAWC’s rate base in its next rate case. Settlement ¶ 27. The Joint Petitioners fully evaluated whether the UVEs abused their discretion under USPAP, relied on inaccurate facts, or committed errors of law. The agreed-upon ratemaking rate base of \$13,750,000 is supported by substantial record evidence.

In reaching this agreement on the ratemaking rate base, the Joint Petitioners fully took into account the rate impact of the Transaction as required by *McCloskey v. Pa. Pub. Util. Comm’n*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *pet. for alloc. denied*, 207 A.3d 290 (Pa. 2019)

(“*New Garden*”). The evidence of record supports a conclusion that the Commission, using the various ratemaking tools available to it, can set rates for PAWC’s customers prospectively that are “just and reasonable” under Section 1301 of the Code. The Transaction has numerous other affirmative public benefits of a substantial nature. *See, e.g.*, PAWC St. No. 1 pp. 13-15; PAWC St. No. 1-R pp. 13-14; PAWC St. No. 2 pp. 7-17; Upper Pottsgrove St. No. 1 pp. 3-4, 7-9. The Transaction should not be disapproved based on speculation about future impacts on rates, as the rate impacts of the Transaction were thoroughly evaluated by the Joint Petitioners.

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

D. Fair Market Value Appraisals

This section is properly addressed by PAWC.

E. Engineering Assessment

This section is properly addressed by PAWC.

F. Easements, Rights of Way and Liens

The Settlement requires PAWC and Upper Pottsgrove Township continue to work to achieve the transfer of all real property rights, including all real estate, easement rights, access to

public rights-of-way, and liens required under the APA (defined below) to be transferred to PAWC from Upper Pottsgrove by Closing (collectively, the “Real Property Rights”). However, subject to the commitments and Settlement provisions discussed below, the Settlement gives PAWC 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. Settlement ¶ 30.

The Settlement provides that, as a condition of Closing, PAWC will require that Upper Pottsgrove obtain clear title to the sewer line, of which Shadeland Development Corporation claims ownership (the “Shadeland Line”) in its Petition to Intervene, by (i) dedication to Upper Pottsgrove Township, (ii) determination of a court of competent jurisdiction that dedication is not necessary, or (iii) other evidence reasonably satisfactory to PAWC. Settlement ¶ 31. This provision ensures that, after Closing, PAWC will be able to use the Shadeland line to provide continuity of service to customers in the service territory.

This Settlement provision addresses the primary issue that Shadeland raised in this proceeding. Although this provision restates a commitment that PAWC made in its rebuttal testimony, including the provision in the Settlement (which the Commission must approve by an enforceable order) gives the Commission greater power to enforce the provision in the future. The provision is in the public interest and should be approved.

G. Inflow and Infiltration.

This section is properly addressed by PAWC.

H. Rates

As part of PAWC’s first base rate case including Upper Pottsgrove’s wastewater system assets, PAWC will submit the following two costs of service studies: (1) a study that removes all

costs and revenues associated with the operation of Upper Pottsgrove's System, and (2) a separate cost of service study for the Upper Pottsgrove System. Settlement ¶ 34(a)—(b).

The Settlement requires PAWC to charge rates after Closing that are equal to Upper Pottsgrove's existing rates until the PAWC's first base rate case during which PAWC has agreed to propose moving Upper Pottsgrove's customers' rates to the cost of service, provided however that such proposed rates will not be in excess of PAWC's proposed Rate Zone 1 system-average rates. Settlement ¶ 34(c). This protects PAWC's existing water and wastewater clients from potentially subsidizing Upper Pottsgrove's customers.

Under the Settlement, PAWC may agree to rates other than those proposed for Upper Pottsgrove customers in the context of a settlement of a base rate case. Additionally, the statutory advocates are not precluded from addressing PAWC's rate proposals fully, and from making other rate proposals. Settlement ¶ 34(c).

The provisions regarding rates in the Settlement are consistent with the Code and are in the public interest and, therefore, should be approved by the Commission.

I. Distribution System Improvement Charge

This section is properly addressed by PAWC.

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

This section is properly addressed by PAWC.

K. Transaction and Closing Costs

This section is properly addressed by PAWC.

L. Low Income Program Outreach

PAWC has agreed in the Settlement to send a welcome letter to Upper Pottsgrove’s wastewater customers within the first billing cycle following the Closing, which will include—at a minimum—a description of the available low income programs, eligibility requirements for participation in the programs, and PAWC’s contact information. Settlement ¶ 40. The welcome packet must also inform Upper Pottsgrove customers that they are being converted to monthly billing. *Id.* ¶ 41. These provisions to provide Upper Pottsgrove’s customers with the information detailed above are within the public interest and should be approved by the Commission.

M. Approval of Section 507 Agreements

Section 507 of the Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date. The Settlement asks that the Commission issue Certificates of Filing, pursuant to Section 507, for: (1) the Asset Purchase Agreement By and Between Upper Pottsgrove Township, Montgomery County, as Seller, and Pennsylvania-American Water Company, as Buyer, dated as April 28, 2020 (“APA”), (2) the Sewage Treatment Service Agreement (“STSA”) between Upper Pottsgrove Township, Pottstown Borough Authority (“PBA”) and Borough of Pottstown (“BP”); and, (iii) the Joint Sewage Transportation Agreement between Upper Pottsgrove Township and Lower Pottsgrove Township. Settlement ¶ 42.

The Settlement provides that the contracts listed in Section 4.13 of the APA (the “Material Contracts”), including but not limited to the STSA, are material to the approval of the Transaction by the Commission; 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.

Settlement ¶ 43. This Settlement provision addresses the primary issue raised by PBA/BP in this proceeding. Including this provision in the Settlement (which the Commission must approve by an enforceable order) provides the Commission with greater power to enforce the provision in the future. This provision is in the public interest and should be approved.

N. Other Necessary Approvals

As a final matter, Upper Pottsgrove respectfully requests that the Commission issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to PAWC's acquisition of the Upper Pottsgrove wastewater system assets. *Id.* ¶ 44. Although the Joint Petitioners do not believe any other approvals are necessary, this standard provision is included in the Settlement in case the Joint Petitioners inadvertently overlooked a required approval.

O. Miscellaneous

The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

This provision is standard in settlements in Commission proceedings. It protects all of the Joint Petitioners by allowing them to withdraw from the Settlement if the Commission modifies the Settlement in a way they find unacceptable. This provision makes parties to a Commission proceeding more willing to settle than they otherwise might be. It is therefore in the public interest and should be approved.

III. PUBLIC INPUT HEARING TESTIMONY HAS BEEN ADDRESSED

Joan E. London, Esq., appeared at the public input hearing on behalf of Artisan Construction, LLC to raise issues she asserted that the Commission should consider in this matter. The Settlement should be approved as being in the public interest because it addresses issues that need to be addressed, but does not address issues that do not.

Ms. London expressed concern about the condition of the Township's System because some owners of utility systems decrease their maintenance activities after signing an agreement to sell the system. Ms. London did not allege that Upper Pottsgrove had in fact decreased its maintenance activities after signing the APA, but simply asked the Commission to consider the issue when deciding whether to approve the Application.

Upper Pottsgrove introduced rebuttal testimony affirming that Ms. London's concerns about the maintenance of the system are unfounded and are also not relevant to the consideration of the Application. Upper Pottsgrove Statement No. R-1, p. 11. The Township continues to properly maintain the System. Upon Closing of the Transaction, future maintenance will be handled in the ordinary course of business by PAWC. The Settlement addresses the condition of the System by requiring PAWC to complete an inflow and infiltration study after Closing. Settlement ¶ 32. This is in addition to the other investments (totaling more than \$4 million) that PAWC proposed making in the first five years following Closing. PAWC Statement No. 2, p. 7 and PAWC Exhibit MJG-1.

Ms. London also expressed concern that the sale of the System will cause project delays and future rate increases. PAWC introduced rebuttal testimony denying that the sale will cause delays in projects. PAWC Statement No. 1-R, p. 14. For example, there are five remaining line

extension projects under Upper Pottsgrove's latest Act 537 Plan, and Upper Pottsgrove and PAWC are committed to completing them. *Id.*

The Settlement contains provisions concerning future rate increases. The Settlement requires PAWC to submit a cost of service study for the Upper Pottsgrove System as part of the first base rate case that includes the Upper Pottsgrove System and to propose moving Upper Pottsgrove's rates to its cost of service, provided that PAWC will not propose rates in excess of PAWC's proposed Rate Zone 1 system-average rates. All parties to this proceeding reserve their rights to assert any position in that future rate case and PAWC reserves the right to settle that case using different rates than it proposed for Upper Pottsgrove's customers. Settlement ¶ 34. The Transaction should not be disapproved based on speculation about future impacts on rates, as the rate impacts of the Transaction were thoroughly evaluated by the Joint Petitioners. 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, 66 Pa. C.S. § 1301. The Settlement provisions are consistent with the Code and represent a reasonable compromise among the Joint Petitioners. They are in the public interest and should be approved by the Commission.

In addition, Ms. London expressed concern about PAWC's knowledge of and ability to honor a Corrective Action Plan ("CAP") that Upper Pottsgrove Township had entered into with BP. This topic is not addressed in the Settlement because the CAP is essentially complete. PAWC Statement No 1-R, p. 15; Upper Pottsgrove Township Statement 1-R, p. 11.

Finally, Ms. London expressed concern about the status of a pending Act 537 Plan Amendment and the need for its completion prior to Closing on the Transaction. Again, the Settlement does not address this topic because it is unnecessary. Upper Pottsgrove introduced

rebuttal testimony correctly stating that the status of the Act 537 Plan is beyond the scope of this PUC proceeding. Upper Pottsgrove Statement No. 1-R, p. 12.

IV. CONCLUSION

Upper Pottsgrove respectfully requests that the Honorable Administrative Law Judge Jeffrey Watson recommend approval of, and the Public Utility Commission approve, the Joint Petition for Approval of Non-Unanimous Settlement without modification.

[Signature appears on next page.]

Respectfully submitted,



James J. Rodgers, Esq. (PA ID 21635)

Marc A. Feller, Esq. (PA ID 19545)

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Counsel for *Upper Pottsgrove Township*

Attachment C
Statement in Support of
Office of Consumer Advocate

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania-American Water :
Company Pursuant to Sections 507, 1102, and 1329 of :
the Public Utility Code for Approval of its Acquisition : Docket No. A-2020-3021460
of the Wastewater System Assets of Upper Pottsgrove :
Township :

OCA STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF
NON-UNANIMOUS SETTLEMENT OF ALL ISSUES

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

I. INTRODUCTION

On November 24, 2020, Pennsylvania-American Water Company (PAWC) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission (Commission) approval of the acquisition of the Upper Pottsgrove Township's (Township or Upper Pottsgrove) wastewater collection and treatment system, the right of PAWC to provide wastewater service in the areas served by the Township, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. By Secretarial Letter dated February 23, 2021, the Commission conditionally accepted the

Application. The Commission required individual notice to be provided to PAWC's existing water and wastewater customers, that PAWC ensure concurrent notice is provided to all current Township wastewater customers, and that newspaper notice is provided in the Township's area. Upon completion, PAWC was directed to file a verification that the notice has been provided.

On December 30, 2020, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. The Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement on January 13, 2021. The OCA filed a Protest and Public Statement on February, 3 2021. On April 12, 2021, PAWC filed a letter, with an attached verification, stating that it had complied with the notice requirements contained in the February 23, 2021 Secretarial Letter. By Secretarial Letter dated April 14, 2021, the Commission informed PAWC that it had accepted the Application for filing. On April 27, 2021, the Township of Upper Pottsgrove filed a Petition to Intervene.

On May 13, 2021, Pottstown Borough Authority (PBA) and the Borough of Pottstown (BP) filed a Joint Protest. On May 14, 2021, Shadeland Development Corporation (Shadeland) filed a Petition to Intervene.

A telephonic prehearing conference was held on May 19, 2021 before Administrative Law Judge (ALJ) Jeffrey A. Watson, at which time a litigation schedule and discovery modifications were adopted. In addition, the ALJ discussed the challenges presented by the pandemic in regard to holding public input hearings. On May 21, 2021, the ALJ issued a Prehearing Conference Order, adopting the parties' proposed litigation schedule and determining to schedule one telephonic public input hearing. The public input hearing was held on June 2, 2021.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. Approval of the Application ¶ 25.

The OCA submits that the terms and conditions of the proposed Settlement provide a reasonable resolution of the issues of concern following the OCA's review of the Application, including the ratemaking rate base to be incorporated into the acquiring utility's revenue requirement, the rate impact for existing PAWC customers and the acquired customers, the application of the Distribution System Improvement Charge (DSIC), outreach to low income customers, and post-acquisition improvement, transaction and closing costs, as discussed below.

B. Tariff ¶ 26.

PAWC submitted a *pro forma* tariff with the application, which includes all rates, rules, and regulations regarding conditions of PAWC's wastewater service and requested that the tariff become immediately effective upon closing of the transaction. See Application at App. A-12. In furtherance of settlement, and for the reasons stated below, the OCA agreed that the *pro forma* tariff submitted by PAWC should become immediately effective upon closing of the transaction.

C. Fair Market Value for Ratemaking Rate Base Purposes ¶ 27.

As part of this proceeding, PAWC sought to establish the ratemaking rate base for this acquisition pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329. The Settlement adopts a \$13,750,000 ratemaking rate base for the Township's system. As the requested ratemaking rate base is less than the average of the UVE appraisals¹, in furtherance of settlement, the OCA does not oppose PAWC's request.

¹ PAWC St. 3 at 7.

D. Fair Market Value Appraisals ¶ 28.

Based on appraisals presented by PAWC and the Township (\$17,023,691 and \$17,617,000, respectively), PAWC sought a ratemaking rate base of \$13,750,000, which was the price PAWC agreed to pay for the Township's system.² As discussed in Paragraph C above, the ratemaking rate base proposed by PAWC and adopted in this settlement is less than the average of the UVE fair market value appraisals.

Moreover, in Paragraph 28, PAWC agreed that in future acquisitions by PAWC under 66 Pa. C.S. § 1329, PAWC will 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. The OCA submits that this provision will help to ensure that PAWC is in compliance with the requirements of 66 Pa. C.S. § 1329(a)(5) and is in the public interest.

E. Engineering Assessment ¶ 29.

As part of the settlement, in Paragraph 29 PAWC agreed 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. PAWC further agreed that such designation of condition shall be limited to whether the categories of system assets appraised are in poor, fair, good, or very good condition. This settlement provision helps to ensure that the engineering assessment required under the Public Utility Code contains sufficiently detailed information regarding the acquired plant and is in the public interest.

F. Easements, Rights of Ways and Liens ¶¶ 30-31.

As part of the Settlement, PAWC and Upper Pottsgrove agreed to continue working to achieve transfer of all real estate, easement rights, access to public rights-of-way, and liens that

² Application, App. A-11.

must be transferred to PAWC in the Asset Purchase Agreement by Closing. Additionally, as a condition of Closing, PAWC will require 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. These provisions help to ensure that that closing will not occur until all conditions that would materially alter PAWC's Application are met.

G. Inflow and Infiltration Study ¶ 32.

Under the terms of the Settlement, PAWC is required to complete an Inflow and Infiltration (I&I) study of the Upper Pottsgrove System following Closing and provide the results of that study to the parties upon completion. Additionally, the costs of the I&I study will be subject to prudence review when they are claimed for recovery in base rates, which protects ratepayers from excessive costs. As such, the OCA submits that this provision is in the public interest.

H. Rates ¶¶ 33-34.

Under the Settlement, PAWC will provide – in the first base rate case in which it includes the Township's assets in rate base – a cost of service study that removes all costs and revenues associated with the operations of Upper Pottsgrove wastewater system, as well as a separate cost of service study for the Upper Pottsgrove system. Paragraphs 34(a) and (b). These studies will provide information to establish rates that reflect the costs for the Upper Pottsgrove system.

Paragraph 34(c) of the Joint Petition provides that, in the first rate case in which PAWC includes the Township's assets in rate base, PAWC will propose to move the Township's system to its cost of service (based on the separate cost of service study) based on a separate cost of service study for Upper Pottsgrove's system; provided, however, that PAWC will not be obligated to

propose Upper Pottsgrove wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates.³ This provision should serve to reduce the length of time that existing PAWC wastewater and water customers will subsidize the shortfall in revenues generated by the Upper Pottsgrove system.

Taken together, these Settlement terms will provide a means for the parties to use the cost of service data to set rates for the Township's customers that reflect the cost of service, or movement towards the cost of service for the Township's customers and that may differ, as appropriate, from rates established for other wastewater customers. The terms will also apply the ratemaking principle of gradualism to rates set for customers in the Upper Pottsgrove's service area.

I. Distribution System Improvement Charge, Settlement ¶ 35.

The parties to the proposed Settlement agreed that PAWC may apply the DSIC to customers in the Township's service area prior to the first base rate case in which the system's plant in service is incorporated into rate base pursuant to Section 1329(d)(4) if certain conditions are met. In particular, Paragraph 35 states that PAWC will revise its Long Term Infrastructure Improvement Plan (LTIIP) to include the Township of Upper Pottsgrove and related projects before it begins charging the DSIC to those customers. Further, Paragraph 35 provides PAWC's commitment that it will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. This provision helps to ensure that projects for the Township's customers should be in addition to, and not reprioritize, any capital improvements that PAWC was already committed to undertake for existing customers. This

³ The current average Upper Pottsgrove rate is \$65.00 per month based on 3,630 gallons of monthly usage. App. A-18-d. The current average PAWC rate for a residential wastewater customer using 3,360 gallons per month in Zone 1 is \$64.93. Application, App. A-18-d.

settlement term also allows for Township of Upper Pottsgrove customers to begin contributing, up to 5% of their total wastewater bill, toward DSIC-eligible capital projects.

J. Allowance for Funds Used During Construction (AFUDC) ¶ 36.

Under the terms of the settlement, any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes Upper Pottsgrove's wastewater system assets, rather than an unspecified future case as proposed by PAWC. Further, the Joint Petitioners reserve their rights to litigate future claims for AFUDC and deferral of depreciation on post-acquisition projects pursuant to Section 1329(f) and transaction costs in future rate cases. The OCA's assent to Paragraph 36 should not be construed to operate as preapproval of PAWC's future requests. Paragraph 36 preserve all parties' positions in future rate cases, including the ability to challenge the reasonableness and prudence of the Company's claims.

K. Transaction and Closing Costs ¶¶ 37-39.

Paragraph 37 reflects the agreement between the Joint Petitioners that PAWC be permitted to claim transaction and closing costs associated with the Transaction, but reserves the parties' rights to litigate their positions fully in future rate cases when this issue is ripe for review. Moreover, the Settlement explicitly states that the Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's request. As such, the OCA submits that this provision is in the public interest as it provides for a full review of the transaction and closing costs in future rate cases.

Paragraph 38 reflects PAWC's agreement 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. The OCA submits that this provision is in the public interest as it prevents PAWC from recovering any unrecouped portion of the engineering fee/legal deposit fee from ratepayers.

Paragraph 39 reflects PAWC's agreement to separately identify any outside legal fees included in its transaction and closing costs pursuant to the Asset Purchase Agreement between PAWC and Upper Pottsgrove and specify amounts expended by PAWC on behalf of the Township. The OCA submits that this provision is in the public interest as it provides for a full review of any outside legal fees included in transaction and closing costs pursuant to the Asset Purchase Agreement in future rate cases.

L. Low Income Program Outreach, Settlement ¶¶ 40-41.

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

M. Approval of Section 507 Agreements ¶¶ 42-43.

Under Paragraph 42 of the Settlement, PAWC's request for approval of Section 507 agreements is permitted. The OCA does not join in this provision but, in furtherance of settlement, does not oppose PAWC's request.

Under Paragraph 43 of the Settlement, PAWC will require Upper Pottsgrove to obtain assignments of the contracts listed in Schedule 4.13 of the APA including but not limited to the

Sewage Treatment Service Agreement between Upper Pottsgrove, BP and PBA, as a condition of Closing. These provisions help to ensure that that closing will not occur until all conditions that would materially alter PAWC's Application are met.

N. Other Necessary Approvals ¶ 44.

The Settlement acknowledges that 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.

O. Miscellaneous

III. PUBLIC INPUT HEARING TESTIMONY HAS BEEN ADDRESSED

The OCA is not taking a position on this matter.

IV. CONCLUSION

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

Respectfully Submitted,

/s/ Erin L. Gannon
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Dated: June 25, 2021

Attachment D
Statement in Support of
Office of Small Business Advocate

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania-American Water Company :
: **Docket No. A-2020-3021460**
Upper Pottsgrove Township Wastewater :
System :
:
:
Section 1329 Application :
:
:
:
:
:

**STATEMENT OF THE OFFICE OF SMALL BUSINESS ADVOCATE
IN SUPPORT OF THE JOINT PETITION FOR APPROVAL OF NON-UNANIMOUS
SETTLEMENT OF ALL ISSUES**

I. INTRODUCTION

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

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

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. Approval of the Application

As a term of the *Settlement*, the OSBA agrees that the Commission should approve PAWC's acquisition of the Upper Pottsgrove Township ("Upper Pottsgrove") wastewater system. Following investigation, the OSBA is satisfied that PAWC has demonstrated compliance with 66 Pa. C.S. §§ 1102(a), 1103(a), and 1329 in its Application filed on November 24, 2020 ("*Application*"), as modified by the *Settlement*.

B. Tariff

As the OSBA supports the approval of PAWC's acquisition of Upper Pottsgrove's wastewater system, it also agrees as part of the *Settlement* that the *pro forma* tariff submitted with the *Application* as Appendix A-12, shall be permitted to become effective immediately upon closing of the acquisition. Throughout this proceeding the OSBA has had the opportunity to review, question, and comment on the *pro forma* tariff and is satisfied that the tariff submitted with the *Application* is proper.

C. Fair Market Value for Ratemaking Rate Base Purposes

The *Settlement* includes a provision that permits PAWC to use \$13,750,000 for ratemaking rate base purposes for the acquired assets effective as of the Closing Date. The OSBA determined that the ratemaking rate base figure was appropriate pursuant to 66 Pa. C.S. § 1329(c)(2) as this figure, which is the purchase price, is less than the fair market value appraisal of the Upper Pottsgrove wastewater system.

D. Fair Market Value Appraisals

The *Settlement* requires PAWC, in future acquisitions under 66 Pa. C.S. § 1329, to 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). The OSBA believes this provision benefits ratepayers as it is a forward-looking requirement that will simplify issues in future acquisitions by the Company under 66 Pa. C.S. 1329.

E. Engineering Assessment

Similarly, the OSBA determined that PAWC's commitment in the *Settlement* to ensure that, in its future Section 1329 applications, the engineering assessment required will designate the condition of the appraised inventory and assets will benefit ratepayers by simplifying issues in future cases.

F. Easements, Rights of Ways and Liens

The OSBA supports the provisions pertaining to Easements, Rights of Ways and Liens. These provisions require PAWC to achieve transfer of all real property rights as required under the Asset Purchase Agreement (“APA”) while simultaneously providing flexibility to PAWC to close without the transfer of all real property rights so long as an escrow is created to obtain post-closing real property transfers. PAWC must also provide updates at certain times to the Commission's Bureau's Commission of Bureau of Investigation and Enforcement (“I&E”) , the Office of Consumer Advocate (“OCA”) and the OSBA (collectively, the “Statutory Advocates”) regarding the status of the transfer of real property rights. With the requirement to update the Statutory Advocates, the OSBA has the means to monitor these transfers, and take corrective action if necessary. These provisions also provide an outline of how the Company and Upper Pottsgrove Township will proceed to resolve the issues contained in the Petition to Intervene filed by Shadeland Development Corporation.

G. Inflow and Infiltration Study

The OSBA believes that PAWC's commitment in the *Settlement* to complete an Inflow and Infiltration ("I&I") study of the Upper Pottsgrove wastewater system following closing will provide the Statutory Advocates with greater information regarding the operation of the Upper Pottsgrove wastewater system, and will assist these offices in discharging their duties to the public.

H. Rates

With regard to the Rates section of the *Settlement*, the OSBA accepts the terms enumerated thereunder because it preserves the OSBA's right to "assert[] any position or rais[e] any issue regarding Upper Pottsgrove's rates in a future PAWC proceeding." Furthermore, this section requires PAWC to submit a separate cost of service study for Upper Pottsgrove's wastewater system in its next base rate proceeding, and to propose to move the Upper Pottsgrove wastewater system customers to cost of service or PAWC's proposed Zone 1 system-average rates, whichever is lower. The OSBA is satisfied that these provisions protect PAWC's current customers from subsidizing the newly acquired customers on the Upper Pottsgrove wastewater system.

I. Distribution System Improvement Charge

The OSBA does not oppose the provisions in the *Settlement* related to PAWC's ability to collect a distribution system improvement charge ("DSIC") prior to the first base rate case in which the Upper Pottsgrove service area plant-in-service is incorporated into rate base. These conditions are consistent with 66 Pa. C.S. § 1329, and contain caveats that ensure existing customers will not be prejudiced.

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

The OSBA believes that the conditions in the *Settlement* related to Allowance for Funds Used During Construction (“AFUDC”) and Deferred Depreciation are reasonable as it creates a process to address claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC in PAWC’s first base rate case that includes Upper Pottsgrove’s wastewater system assets. Furthermore, under this section, the OSBA reserves its right to litigate its positions fully in future rate cases when these issues are ripe for review.

K. Transaction and Closing Costs

The OSBA supports the provisions in the *Settlement* under this section as these provisions preserve important rights for the OSBA and the customers it is charged with protecting. Namely, this section provides that the OSBA (1) reserves its rights to litigate its position fully in future rate cases when the issue of transaction and closing costs associated with this transaction is ripe for review; and (2) reserves the right to challenge the reasonableness, prudence, and basis for the inclusion of outside legal fees, if any, in PAWC's transaction and closing costs.

L. Low Income Program Outreach

The OSBA does not oppose these provisions. These provisions relate to residential customers, and therefore do not address the class of customers that the OSBA is charged with representing.

M. Approval of Section 507 Agreements

As the OSBA has determined that the relief requested in the *Application*, as modified by the *Settlement*, is in the public interest, the OSBA supports this provision that the Commission shall issue Certificates of Filing or approvals for the enumerated agreements in the *Settlement* pursuant to 66 Pa. C.S. § 507.

N. Other Necessary Approvals

As the OSBA has determined that the relief requested in the *Application*, as modified by the *Settlement*, is in the public interest, the OSBA supports this provision that the Commission shall issue any other necessary approvals to complete the acquisition of the Upper Pottsgrove wastewater system by PAWC.

O. Miscellaneous

There are no remaining provisions or miscellaneous issues that the OSBA wishes to address in support of the *Settlement*.

III. PUBLIC INPUT HEARING TESTIMONY HAS BEEN ADDRESSED

The *Settlement* contained provisions related to the scheduling of a public input hearing. The public input hearing in this matter was held telephonically on June 2, 2021 at 6:00 p.m. The OSBA attended this hearing and is satisfied that the customers impacted by this proceeding were afforded an adequate opportunity to appear and be heard. Additionally, the OSBA is satisfied that those customers who attended and provided testimony were provided a full and fair opportunity to voice their questions and concerns about this transaction, and that the parties to the proceeding were provided with an adequate opportunity to cross-examine these individuals.

IV. CONCLUSION

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

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

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

Respectfully submitted,

Erin K. Fure

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

For:

Office of Small Business Advocate

Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101

Dated: June 25, 2021

Attachment E
Statement in Support of
Pennsylvania Public Utility Commission's
Bureau of Investigation and Enforcement

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American :
Water Company for Approval of its :
Acquisition of Upper Pottsgrove : Docket No.: A-2020-3021460
Township’s Wastewater Assets, inter alia, :
Pursuant to Sections 507, 1102 and 1329 :
of the Public Utility Code :

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

TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor Gina L. Miller, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Approval of Non-Unanimous Settlement (“Joint Petition” or “Settlement”) are in the public interest and represent a fair and just balance of the interests of Pennsylvania-American Water Company (“PAWC”), the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Upper Pottsgrove Township (“Upper Pottsgrove”), and Shadeland Development Corporation (“Shadeland”), parties to the above-captioned proceeding (collectively, the “Joint Petitioners”).¹

¹ Shadeland does not join Paragraphs 25-30 and 32-45, but it does not object to those portions of the Settlement. Although Pottstown Borough Authority/Borough of Pottstown purports to oppose the Settlement, I&E’s position is that the Settlement addresses resolution of its alleged claim as a condition precedent to any closing of the transaction.

I. INTRODUCTION

A. Procedural History

1. On November 24, 2020, PAWC filed with the Commission its Application pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”), for, *inter alia*, (1) approval of its acquisition of the wastewater system assets of Upper Pottsgrove Township’s (“Upper Pottsgrove”); (2) approval of PAWC’s right to begin to offer, render, furnish and supply wastewater service to the public in portions of Montgomery County and Berks County, Pennsylvania; (3) an order approving the acquisition that includes the ratemaking rate base of the Upper Pottsgrove wastewater system assets pursuant to Section 1329 of the Code; and (4) assignments of certain contracts, between pursuant to Section 507 of the Code.

2. On December 23, 2020, PAWC filed a letter requesting the extension of the review period of its Application until January 15, 2021. PAWC’s extension request was granted by Secretarial Letter dated December 24, 2020. Afterward, PAWC provided additional information regarding its Application in accordance with the completeness review performed by the Commission’s Bureau of Technical Utility Services.

3. By Secretarial Letter dated February 23, 2021 the Commission acknowledged receipt of PAWC’s Application, but it indicated that the Application would be accepted for filing only on a conditional basis. The conditions included, *inter alia*, satisfying the Commission’s requirements that PAWC (1) certify service of its Application to designated entities; (2) provide individualized notice of the proposed acquisition to all potentially affected water and wastewater customers in accordance with the Commission’s Final Supplemental Implementation Order entered February 28, 2019, at Docket No. M-2016-2543193; (3) publish notice of the Application once a week for two consecutive weeks in a

newspaper of general circulation in the impacted area; and (4) notify the Commission after such publication occurred.

4. The following entities made filings regarding participation in this case: on December 30, 2020, I&E filed its Notice of Appearance in this case. On January 13, 2021, OSBA filed a Notice of Intervention and Public Statement, and on February 3, 2021, OCA filed a Protest and Public Statement in this case. On April 26, 2021, Upper Pottsgrove Township filed a Petition to Intervene. On May 14, 2021, Pottstown Borough Authority and Borough of Pottstown (collectively “PBA/BP”) filed a protest in this case, and on that same date, Shadeland filed a Petition to Intervene.

5. On April 12, 2021, PAWC served the Commission’s Secretary with notice certifying that it fulfilled the conditions outlined in the Secretarial Letter of February 23, 2021; therefore, PAWC requested that its Application be accepted for filing. By way of a Secretarial Letter of April 14, 2021, the Commission informed PAWC that its Application was accepted for filing.

6. On May 1, 2021, the Commission published notice of PAWC’s Application in the Pennsylvania Bulletin, and it established a protest deadline of May 17, 2021. Thereafter, PAWC’s Application was assigned to the Office of Administrative Law Judge, with Administrative Law Judge Jeffrey A. Watson (“ALJ Watson”) presiding.

7. As a result of PAWC’s willingness to begin the discovery process far earlier than the April 14 date for its Application’s full acceptance, the Joint Petitioners² had the opportunity to investigate PAWC’s Application in full and at length early in this proceeding.

² I&E notes that the Joint Petitioners were the only participants in this case until May 14, 2021 when PBA/BP filed a Protest and Shadeland filed a Petition to Intervene.

I&E used this opportunity to conduct an extensive investigation into the Application very early in the process, and I&E notes that PAWC was willing to share information and to discuss I&E's questions and concerns regarding the Application as early as January of 2021. I&E avers that PAWC's proactive and cooperative approach saved significant litigation costs and resources, which will ultimately benefit not only the Joint Petitioners and the Commission, but also PAWC's ratepayers.

8. PAWC's cooperative approach, combined with the investigative efforts of all other Joint Petitioners, and the Joint Petitioners' commitment to participate in continued settlement discussions, culminated in a global settlement of all identified issues in early May of 2021.

9. On May 12, 2021, counsel for PAWC contacted ALJ Watson via email to indicate that the Joint Petitioners had reached a settlement in principle on all issues.³ In his message, PAWC's counsel recognized that the settlement was achieved by all case participants as of May 12, but he recognized the potential for additional parties to become active in this case. As indicated above, two days later, on May 14, 2021, PBA/BP filed a Protest and Shadeland filed a Petition to Intervene.

10. On May 18, 2021, PAWC and Upper Pottsgrove jointly made the following filings: (1) Preliminary Objections to PBA/BP's Protest, and (2) Preliminary Objections to Shadeland's Petition to Intervene.

11. A telephonic Prehearing Conference was held on Wednesday, May 19, 2021, at 10:00 a.m., before ALJ Watson. During the hearing, the parties and ALJ Watson

³ Notwithstanding the settlement, the Joint Petitioners reserved the right to address public input testimony and to address any other parties' positions in this case.

established a litigation schedules and the procedures that would apply to this case.

Additionally, ALJ Watson set a timeline and process for the disposition of PAWC and Upper Pottsgrove's Joint Preliminary Objections that established May 21, 2021 as a response deadline for PBA/BP and Shadeland, respectively, and May 24, 2021 as a deadline for PAWC and Upper Pottsgrove to make any final responsive filings. The determinations made at the Prehearing Conference were memorialized in ALJ Watson's Prehearing Order dated May 21, 2021.

12. On May 21, 2021, PBA/BP and Shadeland each answered PAWC and Upper Pottsgrove's respective Joint Preliminary Objections. On May 24, 2021, PAWC and Upper Pottsgrove jointly filed a reply to both PBA/BP's and Shadeland's respective answers.

13. On May 27, 2021, ALJ Watson issued an Interim Order denying PAWC and Upper Pottsgrove's requested dismissal of PBA/BP's Protest, but dismissing any claim for money damages sought by PBA/BP. On the same date, ALJ Watson issued another Interim Order which denied PAWC and Upper Pottsgrove's preliminary objections pertaining to Shadeland, and which granted Shadeland's Petition to Intervene.

14. On June 2, 2021, a telephonic public input hearing was held in this case at 6 p.m. One witness, Joan E. London, Esq., testified at this hearing.

15. The parties served testimony in accordance with the following litigation schedule:

Direct Testimony of Non-Settling Parties	May 26, 2021 by 12 pm
Rebuttal Testimony	June 3, 2021
Surrebuttal Testimony of Non-Settling Parties/Direct Testimony of Settling Parties	June 8, 2021
Evidentiary Hearing	June 10-11, 2021
Main Briefs	June 24, 2021
Reply Briefs	July 1, 2021

16. Although a global settlement among all parties could not be reached, all parties agreed to waive cross-examination of witnesses in this case. Therefore, on June 8, 2021, as authorized by all parties, PAWC's counsel contacted ALJ Watson to request that the evidentiary hearings be cancelled. On June 9, ALJ Watson agreed to cancel the hearing date of June 10, 2021, and pending the parties' submission of a joint stipulation for admission of evidence, ALJ Watson indicated that he would cancel the hearing set for June 11, 2021.

17. On June 9, 2021, on behalf of all parties, PAWC's counsel filed a Joint Stipulation for the Admission of Evidence in this case, and on June 10, 2021, ALJ Watson issued an Order approving the Stipulation and cancelling the hearing set for June 11, 2021. On June 21, 2021, after a unanimous request from all parties, ALJ Watson agreed to modify the litigation schedule to allow for continued settlement discussions. The modifications were adopted in ALJ Watson's Second Interim Order Revising Litigation Schedule dated June 22, 2021.

18. Consistent with the revised deadline set forth in ALJ Watson's Second Interim Order Revising Litigation Schedule, on June 25, 2021, the Joint Petitioners submitted the Settlement. I&E submits this Statement in Support of Settlement and avers that the Settlement meets the requisite standards for approval and that it is in the public interest for the reasons explained below.

B. Legal Standards

(i) Section 1102 Approval

The Code requires that the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service and certain property transfers by public

utilities or their affiliated interests.⁴ The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103⁵ of the Code. A Certificate of Public Convenience shall be granted “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”⁶ These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.⁷ Additionally, pursuant to Section 1103, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Upper Pottsgrove Township.⁸ In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”⁹ including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.¹⁰

(ii) Legal Standard for Section 1329 Approval

Section 1329 of the Public Utility Code is a newly enacted statute which prescribes the process used to determine the fair market value of a municipal utility that is the subject of

⁴ 66 Pa. C.S. § 1102(a).

⁵ 66 Pa. C.S. § 1103.

⁶ 66 Pa. C.S. § 1103(a).

⁷ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

⁸ *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmmw. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

⁹ *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984).

¹⁰ 66 Pa. C.S. § 1103(a).

an acquisition. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission's jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. Notably, a Commission Order approving a transaction under Section 1329 is permitted to include "[a]dditional conditions of approval."¹¹

(iii) Legal Standard for Section 507 Approval

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

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

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

It is the policy of the Commission to encourage settlements.¹² For the reasons discussed herein, I&E maintains that the Settlement meets all the standards necessary to warrant the requisite approvals under Sections 507, 1102, 1103, and 1329 of the Code. The signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the settlement process. As such, the issues raised by the Joint Applicants have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. I&E represents that subject to all of the Settlement's terms and conditions, PAWC's Application satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, for the reasons articulated below, I&E maintains that the proposed Settlement is in the public interest and requests that the following terms be approved by the ALJ and the Commission without modification:

A. APPROVAL OF THE APPLICATION

Subject to all of terms and conditions of the Settlement, I&E opines that the Application should be approved and recommends that the Commission should issue PAWC a Certificate of Public Convenience pursuant to 66 Pa. C.S. §1102(a). PAWC's Application requests permission for it to acquire substantially all Upper Pottsgrove's assets, properties and rights related to Upper Pottsgrove's wastewater collection system and to obtain the Certificates of Public Convenience necessary for it to begin to offer wastewater service to the public in the Service Area. The Upper Pottsgrove assets consist of a sanitary sewer

¹² 52 Pa. Code § 5.231.

collection only system that discharges all collection to the Pottstown Borough Authority collection system for final treatment.¹³ In total, through this acquisition, PAWC is seeking to provide service to Upper Pottsgrove's approximately 1,447 wastewater customers.¹⁴ The record supports the findings that PAWC is technically, legally, and financially fit to acquire the Upper Pottsgrove's wastewater services,¹⁵ and no party has refuted those claims in the record.¹⁶

Additionally, PAWC's Application will provide affirmative public benefits. The affirmative public benefits are fully set forth in PAWC's direct testimony, and include, *inter alia*, further the goal of regionalizing water systems, employing PAWC's resources and engineering expertise to address operational challenges and to provide environmental benefits to customers, and providing acquired customers with enhanced service.¹⁷ Importantly, through the Settlement, the value of the public benefits will be better realized because the Settlement contains numerous terms to protect PAWC's ratepayers, both existing and those who will become PAWC's ratepayers through this transaction. The Settlement will also ensure that PAWC's ratepayers receive the benefit of the bargain that PAWC negotiated without being subject to protracted and expensive litigation. Accordingly, through this Settlement, I&E's identified concerns have been addressed and I&E opines that PAWC's Application, as modified by the Joint Petition, now meets the requisite standards for approval.

¹³ PAWC Application, Appendix A-14, St. No. 2, p. 2.

¹⁴ PAWC Application, ¶ 8.

¹⁵ PAWC Application, Appendix A-14, St. No. 1, pp. 17-18.

¹⁶ Although neither PBA/BP nor Shadeland contested fitness, to the extent that their claims could be construed as a fitness challenge, I&E avers that this Settlement operates to address them as a condition precedent to closing.

¹⁷ PAWC, St. No. 1, pp. 13-15.

B. TARIFF

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

C. FAIR MARKET VALUE FOR RATEMAKING RATE BASE PURPOSES

Although I&E did not submit testimony in this case, it nevertheless investigated the UVEs' fair market value appraisals and the assumptions and determinations that those valuations were based upon. Ultimately, through use of both the formal and informal discovery process and its extensive investigation, I&E was able to determine that the proposed value \$13.75 million, which was predicated upon PAWC and Upper Pottsgrove's negotiated purchase price, comported with the valuation standards and requirements of Section 1329. Accordingly, I&E did not propose any adjustments to the UVE fair market value appraisals offered in this proceeding, and I&E did not propose any adjustments to the recommended rate base value of \$13.75 million. Because it is I&E's position that PAWC's proposed rate making ratebase of \$13.75 million was arrived at in a manner consistent with the standards that Section 1329 prescribes, I&E avers that approval is both warranted and in the public interest.

D. FAIR MARKET VALUE APPRAISALS

I&E submits that PAWC's commitment to 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 is essential to ensuring PAWC's compliance with 66 Pa. C.S. § 1329 (a)(5) in a manner that is clearly demonstrable to parties and to the Commission. Specifically, 66 Pa. C.S. § 1329 (a)(5) requires that each utility valuation expert provide the completed appraisal to the acquiring public utility or entity and selling utility within 90 days of execution of the service contract. In this case, I&E's investigation was initially unable to confirm that PAWC's UVE, AUS Consultants, complied with the required timeline. Initial confirmation was not possible through PAWC's Application because it contained an Agreement for Valuation Consulting Services entered on April 1, 2020 between AUS and PAWC,¹⁸ but the AUS fair market value appraisal report it contained did not appear to be provided to PAWC until October 23, 2020.¹⁹ Accordingly, I&E was initially concerned that the apparent 205 days between AUS's engagement and the provision of its appraisal placed it outside the scope of Section 1329's clear statutory requirement that the appraisal not be provided more than 90 days from the service contract date.

However, during the course of its investigation, I&E was able to confirm that AUS Consultants had, in fact, submitted its appraisal to PAWC within the prescribed 90-day timeline. In this case, while I&E was able to confirm compliance, PAWC's Application did not initially demonstrate compliance with the statutorily prescribed timeline. In order to prevent similar confusion, to remove uncertainty, and for ease of reference in the future,

¹⁸ PAWC Application, Appendix A-5.1 (pdf pages. 592-600).

¹⁹ PAWC Application, Appendix A-5.1 (pdf page 4).

PAWC has agreed to begin clearly document the date on which it engages its UVEs to perform fair market value appraisals in Section 1329 cases. I&E avers that this term is in the public interest because it ensures PAWC's compliance with Section 1329's statutory requirements and, at the same time, it will preserve the resources of the parties and the Commission in future proceedings when confirmation of compliance is more readily available.

E. ENGINEERING ASSESSMENT

I&E supported the need for this settlement term after its investigation revealed that the engineering assessment study in this case, submitted by LTL Consultants and AUS Consultants,²⁰ did not provide a designation of the condition of the inventory and assets appraised. While there is no statutory requirement for the engineering report to provide a condition designation, the designation has been available in other Section 1329 cases and it has been relied upon by UVEs, and by I&E in its investigation. I&E avers that absent such designation, questions are raised about what assumptions each UVE made about asset conditions in his/her corresponding fair market value appraisal. Additionally, I&E envisions the possibility that absent the engineering report designating assets' condition, each UVE may make independent and conflicting determinations about the condition that would result in incongruent valuation assumptions and results. In this case, I&E was able to resolve such concerns through its investigation; however, ensuring that incongruent valuations are not produced in the future as a result of the engineering report's lack of condition designation is necessary to protect the integrity of the fair market valuations and the Section 1329 process.

²⁰ PAWC's Application, Appendix A-15(a).

For this reason, I&E avers that this provision will benefit PAWC, its ratepayers, parties, and the Commission; therefore, it is in the public interest.

F. EASEMENTS, RIGHTS OF WAYS AND LIENS

(i) General Terms

I&E supports these terms as necessary to protect the public interest in two ways. First, it is important to note that the public interest would be harmed if PAWC paid a purchase price that assumed that all rights necessary to operate Upper Pottsgrove would be transferred, and at Upper Pottsgrove's cost, and such action did not occur. To protect against this possibility, I&E fully supports the protection measure of the escrow account that would be imposed upon Upper Pottsgrove to ensure that any right not transferred at closing must be financially accounted for via payment to the escrow account. Additionally, the public interest is protected because this term provides an additional layer of accountability that would not exist if PAWC and Upper Pottsgrove would ever mutually decide to waive the applicable sections of the Asset Purchase Agreement that bind it to deliver good and marketable title to all property necessary to use and access the acquired assets.²¹

Additionally, because PAWC has committed to providing I&E, OCA, and OSBA with an update on the status of the transfer of real property rights related to the system within 30 days of advance of the anticipated Closing Date, I&E will have a mechanism in place to gauge Upper Pottsgrove's progress in meeting its property transfer obligations. Through this reporting mechanisms, the public interest is further protected because by being informed of the status of any missing property rights, I&E will be empowered to take any action that may

²¹ PAWC's Application (Appendix A-24-a), Section 4.16, pp. 25-26.

be warranted and available to ensure that PAWC's ratepayers are not paying for property rights that are not obtained or paying any costs associated with obtaining those rights. At the same time, PAWC will be able to monitor any missing easements to either ensure that it does not encounter access issues, or, if such issues are identified, that it can develop a plan to address access. Accordingly, this term of the Joint Petition is in the public interest and it should be approved without modification.

(ii) Shadeland Development's Sewer Line Dispute

With respect to Paragraphs 7(a)-(b) of the Settlement, which memorializes PAWC's position regarding Upper Pottsgrove's need to obtain clear title to the sewer line that Shadeland purports to own, I&E submits that these terms are imperative for protection of the public interest and necessary to ensuring the integrity of the Section 1329 process that underlies PAWC's Application. Specifically, these terms of the Settlement indicate that PAWC will require, as a condition of closing, that Upper Pottsgrove obtain clear title to the sewer line at issue, by dedication to Upper Pottsgrove, determination of a court of competent jurisdiction that dedication is not necessary, or other evidence reasonably satisfactory to PAWC. I&E notes that Upper Pottsgrove's obligation to convey all acquired assets, as defined in Section 2.01 of the Asset Purchase Agreement ("APA"),²² appears to include the sewer line that Shadeland purports to now own because it includes all assets developed for use in the system, including collection system mains. Therefore, from I&E's perspective, ensuring that Upper Pottsgrove obtains clear title to line at issue as a condition precedent to closing is necessary and appropriate.

²² PAWC's Application, Appendix-A-24-a, pp. 15-16, Section 2.01.

At the outset, I&E notes that according to the Shadeland, it owns approximately 30 acres of land known as Sprogel's Run, and in conjunction with its ownership, it constructed sanitary sewer lines at its own expense. Shadeland alleges that the costs for constructing the sewer lines, which it claims have never been dedicated to Upper Pottsgrove Township, are \$1,059,700. Shadeland claims that approximately 91 customers are currently connected to the private sanitary sewer pipe which is used to serve them as Upper Pottsgrove customers.²³ Although I&E's position is that any of Shadeland's monetary claims against Upper Pottsgrove are not jurisdictional, I&E notes that it is axiomatic that Upper Pottsgrove cannot sell to PAWC that which it does not own.

I&E avers that as the seller, Upper Pottsgrove has the obligation to convey all system property that PAWC bargained to purchase so that ratepayers are not deprived of the benefit of PAWC's bargain. Here, PAWC admits that the UVEs' appraisals included the sewer line at issue,²⁴ but it alleges that the original cost of the sewer line, claimed to be \$283,000, even if excluded, would not impact the \$13.75 million ratemaking ratebase value proposed in this case.²⁵ Because I&E has not had an adequate opportunity to investigate PAWC's claim within the time available for this case, I&E takes no position on the valuation claim; however, in I&E's view, it is not determinative here. Instead, what I&E views as determinative, is that without obtaining clear title and ownership to the sewer line, PAWC may become obligated to serve customers in the Sprogel's Run development without having sufficient facilities or access to providing such service. Not only is such an outcome contrary to the public interest, but it may also compromise PAWC's ability to meet its obligation to

²³ Shadeland St. No. 1, pp. 1-4.

²⁴ PAWC St. No. 1-R, p. 6.

²⁵ Id.

provide safe, adequate, and reliable service.²⁶ This is an outcome that I&E could not support, and therefore, the Settlement terms that address this issue and prevent that outcome were critical terms for I&E.

Fortunately, through the Settlement, and as established in its testimony,²⁷ PAWC has committed to conditioning any closing of its transaction upon Upper Pottsgrove having clear title to the sewer line at issue. I&E submits that this commitment will place the onus of obtaining any missing property right where it ought to be: upon the seller, Upper Pottsgrove. It is not in the public interest for PAWC's ratepayers to assume any risk of missing property rights, nor is it in their interest to fund litigation to obtain property rights that the seller purported to convey as part of the APA. By conditioning the closing upon Upper Pottsgrove's obligation to convey the sewer line, the Joint Petitioners can avoid these outcomes; accordingly, the term is in the public interest.

Because these Settlement terms will both protect captive ratepayers from getting less than they are paying for and prevent them from being subject to the monetary dispute of two non-jurisdictional entities, Shadeland and Upper Pottsgrove, I&E views them as comprehensively resolving Shadeland's dispute to the extent possible in this acquisition case. As ALJ Watson explained, no claim for monetary damages alleged by Shadeland against Upper Pottsgrove are appropriately considered here,²⁸ and the remaining crux of Shadeland's position (at least in its "of-record position") appears to be that PAWC should not be permitted to acquire the sewer line at issue from Upper Pottsgrove because Upper Pottsgrove

²⁶ 66 Pa. C.S. § 1501.

²⁷ PAWC St. No. 1-R, p. 6.

²⁸ Interim Order Denying the Preliminary Objections of PAWC and Upper Pottsgrove to the Petition to Intervene of Shadeland Development Corporation, p. 9 (entered on May 27, 2021).

does not own it.²⁹ Without taking a position on Shadeland's alleged ownership, I&E agrees with Shadeland's apparent position that Upper Pottsgrove cannot sell property it does not own. However, because the Settlement addresses that concern by ensuring that PAWC will not close without Upper Pottsgrove providing title to the disputed sewer line, it is I&E's position that the only portion of Shadeland's opposition that survives the Settlement are those for monetary claims that are outside of the Commission's jurisdiction. Accordingly, I&E submits that the Settlement addressed and resolves Shadeland's opposition to the extent available in this proceeding, and by way of this Settlement, Shadeland apparently agrees.

G. INFLOW AND INFILTRATION STUDY

I&E fully supports the above term because the need for it was born out of the investigation that I&E conducted in this case. Generally speaking, infiltration is groundwater entering sanitary sewers through defective pipe joints and broken pipes. Additionally, inflow is generally comprised of water entering sanitary sewers from inappropriate connections. Together, inflow and infiltration ("I&I") may directly impact both public health and the cost to serve. In this case, I&E's investigation revealed that a recent I&I study was not available for the Upper Pottsgrove system, and that PAWC had already identified a need to perform one after the acquisition closed. I&E fully supports PAWC's willingness to perform the I&I study, because, unfortunately, there is no way of knowing the existence and extent of any I&I issue unless a study is performed. While ideally, the I&I study would have been performed prior to the acquisition, so that its results could inform the valuations in this case, there was no requirement that Upper Pottsgrove provide one as part of the Section 1329 process.

²⁹ Answer of Shadeland to the Joint Preliminary Objections of PAWC and Upper Pottsgrove, pp. 5-6, ¶21, May 21, 2021.

Additionally, it would have been impracticable for PAWC to attempt to undertake the study without owning the assets. Regardless, PAWC's commitment to performing the study is important because depending on the results, it could trigger the need for remediation work that has not yet been identified.

I&E asserts that the above term protects the public interest by ensuring that PAWC will complete I&I study of the Upper Pottsgrove system after closing, which is necessary to ensure that the system's condition is known and addressed in a manner consistent with PAWC's obligation to provide safe and effective service.³⁰ Additionally, the public interest is further protected in that I&E, the OCA, the OSBA, and the Commission will be able to address the reasonableness and prudence of the cost of the necessary studies in a future PAWC base rate proceeding when these costs are known and identified, thereby protecting ratepayers from paying unwarranted or unreasonable costs. Accordingly, this term is in the public interest and it should be approved without modification.

H. RATES

I&E took no position regarding the rates of Upper Pottsgrove's customers as, for purposes of the acquisition, PAWC proposes to adopt the rates of Upper Pottsgrove at the time of closing, and this is consistent with Section 1329 provisions.³¹ However, I&E reserves the right to address Upper Pottsgrove's rates in future rate proceedings. From I&E's perspective, it is important not to make any assumptions about what rates may be appropriate for acquired Upper Pottsgrove customer in the future because doing so may rely upon assumptions that may prove to be inaccurate and may not account for information and

³⁰ 66 Pa. C.S. § 1501.

³¹ 66 Pa. C.S. § 1329(d)(v).

circumstances that emerge in the interim. This term is within the public interest because it complies with Section 1329, but it also preserves I&E's ability to address rates in the future while correctly recognizing the Commission's ultimate authority to set rates.

Additionally, pursuant to the Settlement, at the time of its next base rate case that includes Upper Pottsgrove's wastewater system assets, PAWC has agreed to provide a cost-of-service study that removes all costs and revenues associated with the operations of the Upper Pottsgrove. At the same time, PAWC also agrees to provide a separate cost of service study for the Upper Pottsgrove system. I&E fully supports this term which is consistent with protecting the public interest.

At the outset of this case, the information that Upper Pottsgrove provided about its rates triggered concerns from I&E about whether those rates were at all tied to the actual cost of serving customers. Specifically, Upper Pottsgrove's Chairman of the Board of Commissioners, Trace Slinkerd, testified that "rates have only been increased when necessary" and he also explained that rates have only been increased four times over the last twenty years.³² The rates, which are approved through a township ordinance, were billed using a flat dollar amount.³³ I&E's investigation could not conclude with any determination that the Upper Pottsgrove rates were based on cost of service; accordingly, I&E's position was that the uncertainty triggered a need for PAWC to perform a cost of service study to inform future ratemaking.

I&E submits that the cost-of-service study will protect PAWC, its customers, the parties to this proceeding and the Commission. Specifically, because the record here cannot

³² Upper Pottsgrove St. No. 1, pp. 9-10.

³³ Id. at 9.

establish the basis for Upper Pottsgrove’s existing rates, the results of the cost-of-service study that PAWC has committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. The cost-of-service study will benefit PAWC’s ratepayers as well, because if PAWC’s Application is approved, PAWC’s existing customers will bear the rate impact. However, without a cost-of-service study, the Commission’s ability to evaluate the rate impact of the acquisition upon existing PAWC customers and its options of addressing that impact to provide any appropriate relief to existing customers, could be compromised. Finally, PAWC’s cost of service study commitment will serve the public interest because a cost-of-service study can establish the existence and extent of subsidization (inter and intra-class) and assist in determining the appropriate amount of revenue requirement that is reasonable to be shifted from the wastewater customers to the water customers. I&E notes that PAWC has utilized such subsidization in past base rate cases, as exemplified in its most recent base rate case.³⁴

I. DISTRUBUTION SYSTEM IMPROVEMENT CHARGE (“DSIC”)

I&E’s investigation yielded no concerns regarding PAWC’s request for approval to collect a DSIC as permitted under Section 1329, as this request appeared to simply memorialize PAWC's intention to employ certain provisions of Section 1329. Nonetheless, I&E reserves the right to address these issues in future proceedings, including base rate, LTIP, and distribution system improvement charge proceedings, when additional information and facts are available and when these issues are ripe for review. While I&E still reserves its rights, I&E nevertheless opines that this term serves the public interest

³⁴ Pa. PUC v. Pennsylvania American Water Company, Docket No. R-2020-3019369 et al, pp. 71-83, Opinion and Order (entered on February 25, 2021).

because PAWC has agreed that existing commitments will not be re-prioritized as a result of this term. With this in mind, acquired Upper Pottsgrove customers will benefit from improved wastewater infrastructure, promoting safer and more reliable service. Therefore, I&E opines that this term is in the public interest.

J. CLAIMS FOR ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION AND DEFERRED DEPRECIATION

Through the Settlement, the Joint Petitioners acknowledge that any claims that PAWC may make to accrue allowance for funds used during construction (“AFUDC”) and deferred depreciation for 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. Importantly, the Joint Petitioners agree that they reserve their rights to litigate their positions fully in future rate cases. I&E endorses this term because while it recognizes the potential for PAWC to invoke portions of Section 1329 related to post-acquisition projects,³⁵ it also empowers parties to review PAWC’s proposed treatment of those projects in a future base rate case. Preserving the ability to litigate any of PAWC’s proposed AFUDC and deferred depreciation treatment protects the public interest by ensuring that interested parties are not hindered in developing a full and complete record for the Commission on this issue when additional information is available and ratemaking issues are ripe for determination.

K. TRANSACTION AND CLOSING COSTS

I&E submits that the transaction and closing cost terms are consistent with ensuring that PAWC will only be permitted to recover prudently incurred costs from ratepayers.

³⁵ 66 Pa. C.S. §1329(f).

These terms are in the public interest because they protect ratepayers from paying unwarranted costs and promote rate affordability. Additionally, these terms also ensures that I&E will be able to challenge the basis of any claimed Upper Pottsgrove legal fees, meaning that I&E has not forfeited its position that Section 1329 does not permit the acquiring utility to recover the seller's transaction and closing costs. Through this term, the public interest is protected because although PAWC does not appear to now be incurring any legal fees on behalf of Upper Pottsgrove, I&E has preserved its ability to challenge the permissibility of any claims that PAWC may make for Upper Pottsgrove's legal fees in its next base rate case, which is consistent with I&E's obligation to enforce the Code.

Importantly, this portion of the settlement also addresses a concern that arose during I&E's investigation in this case. Specifically, upon review of PAWC's direct testimony, I&E recognized that PAWC agreed to pay a deposit of \$90,000 to Upper Pottsgrove Township as a deposit to be used for its legal and engineering fees.³⁶ Because I&E's position is that Section 1329 does not permit PAWC to assume and pass along Upper Pottsgrove's legal fees, it was essential to ensure that if the transaction is not consummated, as would be necessary for PAWC to recoup its deposit in the form of a purchase price reduction,³⁷ that PAWC would never seek to recover any unrecouped portion of the deposit from its ratepayers. By way of the above term, PAWC has provided such assurance, and I&E avers that it is necessary and proper to protect ratepayers from unwarranted and imprudent costs, and that avoidance of such costs is in the public interest.

³⁶ PAWC St. No. 3, p. 16.

³⁷ PAWC's Application, Appendix A-24(a), Section 30.1(c).

Furthermore, as a condition of this portion of the Settlement, PAWC agreed that if it ever does make a claim for any Upper Pottsgrove legal fees in a future base rate case, it will separately identify those fees. From I&E's perspective, the separate identification of any such fees is important in that it ensures that I&E, other interested parties, and the Commission will easily be able to identify any portion of claimed fees. It is imperative that any claimed fees are readily identified to ease the administrative burden of uncovering this information when PAWC files its next rate case, which may be several years from now and be complicated by the complexity of the resulting rate investigation. Accordingly, these combined commitments will protect PAWC's ratepayers from bearing the burden of Upper Pottsgrove's legal fees.

L. LOW INCOME PROGRAM OUTREACH

Pursuant to the Settlement, PAWC has agreed that as part of its Welcome Letter to newly acquired Upper Pottsgrove customers, it will include information regarding its low-income programming. At a minimum, this information will include a description of programming, eligibility guidelines, and PAWC's contact information. I&E submits that ensuring that low-income customers are aware of available opportunities for financial assistance is in the public interest because it will better facilitate these customers' access to wastewater service. Increasing access to wastewater service is consistent with the Code's policy of ensure that service remains available to all customers on reasonable terms and conditions.³⁸

³⁸ 66 Pa. C.S. § 1402(3).

Additionally, as part of the Joint Petition for Settlement, PAWC agreed to send a welcome letter to Upper Pottsgrove customers within the first billing cycle following closing which will include information regarding the conversion from quarterly billing³⁹ to monthly billing for their sewer service. I&E fully supports this term, as its investigation identified a concern regarding whether Upper Pottsgrove's customers were explicitly informed of the timing change so that they understood and could anticipate the change to monthly billing. Ensuring that acquired customers fully understand the billing cycle of their new provider is prudent and in the public interest. Accordingly, I&E supports PAWC's settlement commitment to ensure that acquired customers will have a clear understanding of their new billing period for wastewater service.

M. APPROVAL OF SECTION 507 AGREEMENTS

The Settlement terms addressing assignment of contracts under Section 4.13 of the APA are critical to ensuring that PAWC's ratepayers are protected and that acquired customers will receive safe, adequate, and reliable service. By way of additional context, at the outset of this case, PAWC's Application clearly and openly acknowledged that Upper Pottsgrove had not yet attained approval to assign its sewerage treatment contract with PBA/BP.⁴⁰ Because PAWC expressly disclosed that the assignment had not been granted, I&E's investigation in this case examined that failure of assignment and determined that it was a defect that would need to be cured before any closing of this transaction should occur. To be sure, PBA owns a wastewater treatment facility and BP leases and operates that facility which Upper Pottsgrove depends upon for treatment of its wastewater.⁴¹ There can

³⁹ PAWC St. No. 3, p. 16.

⁴⁰ PAWC Application, Appendix A-24-a, Schedule 4.13.

⁴¹ PBA/BP St. No. 1, p. 2.

be no credible dispute that wastewater treatment is essential for the operation of the Upper Pottsgrove system, and PAWC concedes that if the acquisition proceeds to closing, it will need treatment services from PBA/BP.⁴² However, PBA/BP is unwilling to consent to assignment of its Upper Pottsgrove contract to PAWC unless and until it receives payment of an outstanding obligation that Upper Pottsgrove has allegedly incurred, estimated to be \$470,184.22.⁴³

For its part, Upper Pottsgrove disputes that it owes PBA/BP the amount alleged, and it initiated an action in the Court of Common Pleas of Montgomery County asking the Court to order PBA/BP to consent to the assignment.⁴⁴ To date, the dispute is not resolved. PBA/BP will not agree to assign Upper Pottsgrove's treatment contract to PAWC absent PAWC's agreement to assume the alleged debt of Upper Pottsgrove and to address other undefined "outstanding items."⁴⁵

I&E fundamentally rejects the notion that PAWC's ratepayers should be compelled to pay Upper Pottsgrove's alleged debt PBA/BP in order to close this transaction. To that end, I&E agrees with PAWC's position that it is improper for PBA/BP to use the Commission process to get monetary concessions from a public utility.⁴⁶ However, I&E also avers that as the seller, Upper Pottsgrove has the obligation to convey all contracts necessary for PAWC's operation of the system, and all parties agree that treatment services are an essential component of sewer service. In this case, Upper Pottsgrove committed to transferring to

⁴² PAWC St. No. 1-R, p. 11.

⁴³ PBA/BP St. No. 1, p. 6.

⁴⁴ Upper Pottsgrove St. No. 1, pp. 8-9.

⁴⁵ PBA/BP St. No. 1, p. 7.

⁴⁶ PAWC St. No. 1-R, p. 9.

PAWC all contracts necessary to operate the system;⁴⁷ accordingly, it is clear that this transaction was predicated, and negotiated, with the expectation that Upper Pottsgrove's treatment contract with PBA/BP would be assigned to PAWC. I&E recognizes that Upper Pottsgrove is attempting to facilitate the assignment at this time. However, the transaction should not close without the assignment, because PAWC will not be able to meet its obligation to provide safe, adequate and reliable service to acquired customers absent use of PBA/BP's treatment services.⁴⁸ This is an outcome that I&E could not support, and therefore, the Settlement terms that address this issue and prevent that outcome were critical terms for I&E.

Fortunately, through the Settlement,⁴⁹ and as established in its testimony,⁵⁰ PAWC has committed to conditioning any closing of its transaction upon obtaining the assignment of the contract with PBA/BP. I&E submits that this commitment will place the onus of obtaining the assignment right where it ought to be: upon the seller, Upper Pottsgrove. It is not in the public interest for PAWC's ratepayers to assume any risk of obtaining the assignment that Upper Pottsgrove is obligated to convey, nor is it in their interest to fund litigation to obtain contract rights that the seller purported to convey as part of the APA. By conditioning the closing upon Upper Pottsgrove's obligation to obtain the assignment, the Joint Petitioners can avoid these outcomes; accordingly, the term is in the public interest.

Because these Settlement terms will protect captive ratepayers from getting less than they are paying for, ensure PAWC's ability to provide safe service to acquired customers,

⁴⁷ PAWC Application, Appendix A-24(a), pp. 15-16, Section 2.01.

⁴⁸ 66 Pa. C. S. § 1501.

⁴⁹ Joint Petition, ¶ M.

⁵⁰ PAWC St. No. 1-R, p. 11.

and prevent ratepayers from being subject to the monetary dispute of two non-jurisdictional entities, PBA/BP and Upper Pottsgrove, I&E views them as comprehensively resolving PBA/BP's dispute to the extent possible in this acquisition case. As ALJ Watson explained, no claim for monetary damages alleged by PBA/BP against Upper Pottsgrove are appropriately considered here,⁵¹ and the remaining crux of Shadeland's position (at least in its "of-record position") appears to be that PAWC should not be permitted to close its transaction with Upper Pottsgrove without PBA/BP's consent to assignment of the treatment contract because absent the treatment, PAWC will be unable to provide adequate wastewater collection, treatment, and disposal services.⁵²

Without taking a position on PBA/BP's alleged monetary dispute, I&E agrees with PBA/BP's position that Upper Pottsgrove cannot assign its treatment contract to PAWC without PBA/BP's assent and that adequate service requires wastewater collection, treatment, and disposal services. However, because the Settlement addresses these concerns by ensuring that PAWC will not close without Upper Pottsgrove obtaining the ability to assign the PBA/BP contract to PAWC, it is I&E's position that the only portion of PBA/BP's opposition that survives the Settlement are those for monetary claims that are outside of the Commission's jurisdiction. Accordingly, I&E submits that the Settlement addressed and resolves PBA/BP's position to the extent available in this proceeding.

N. OTHER NECESSARY APPROVALS

Consistent with I&E's position that, subject to the terms and conditions of the Settlement, PAWC's Application meets the requisite standards necessary for approval, I&E

⁵¹ Interim Order Denying the Preliminary Objections of PAWC and Upper Pottsgrove to the PBA/BP Protest, p. 12 (entered on May 27, 2021).

⁵² PBA/BP St. No. 1, p. 6.

supports the Settlement's provision that issuance of any necessary approvals or certificates necessary to carry out the transaction is appropriate and warranted.

III. PUBLIC INPUT HEARING TESTIMONY HAS BEEN ADDRESSED

As noted above, I&E participated in the telephonic public input hearing held on June 2, 2021 at 6 p.m. At the hearing, one witness, Attorney Joan E. London, testified regarding concerns regarding the condition of the Upper Pottsgrove system, potential rate increases after the transaction, and project timelines.⁵³ I&E heard Attorney London's concerns, and believes that the Settlement addresses them to the extent possible.

First, Attorney London expressed concerns regarding the condition of Upper Pottsgrove's collection system and she alleged that the system "is not in good condition."⁵⁴ To that end, I&E avers that the I&I study that PAWC has committed to perform under this Settlement will produce a more informed picture of the condition of the Upper Pottsgrove's collection system. Additionally, I&E agrees with PAWC's position that considering PAWC's record of environmental compliance and engineering and operational experience, PAWC is well-equipped to address system existing system issues.⁵⁵ Finally, PAWC's commitment to invest over \$4,000,000 in the Upper Pottsgrove system in the first five years after closing demonstrates its commitment to address system infrastructure.

Attorney London's second concern related to possible rate increases that will occur under PAWC's ownership. Attorney London testified that it "has been common experience that when a system is sold to a private entity, that there are rate increases over and above what they have been when the system has been run by a municipality or a municipal

⁵³ Public Input Hearing Tr. at 21-32.

⁵⁴ Id. at p. 24, lines 8-12.

⁵⁵ PAWC St. No. 1-R, p. 12-13.

authority.”⁵⁶ From I&E’s perspective, Attorney London’s testimony highlights the importance of the “Rates” terms referenced above because parties, including Upper Pottsgrove, reserve the right to investigate the basis for whatever future rate proposals PAWC may make for acquired customers. Therefore, the Settlement ensures that any rate proposals that PAWC may make will be scrutinized and must meet the “just and reasonable” rate requirement of the Code.

Finally, Attorney London testified regarding concerns she had about whether Corrective Action Plan (“CAP”) obligations would be met under PAWC’s ownership of the Upper Pottsgrove system.⁵⁷ PAWC has responded to indicate that it understood the CAP to be complete.⁵⁸ For its part, Upper Pottsgrove responded to indicate that parts of the CAP-related projects at issue are outside of the sewage treatment service area, and that the CAP has been essentially completed.⁵⁹ I&E notes that if PAWC’s Application is granted, PAWC’s obligation to provide safe, adequate, and reasonable service in the acquired Upper Pottsgrove service territory will attach.⁶⁰ To that end, it is I&E’s position that if CAP-related projects within the acquired service territory remain outstanding after closing, PAWC will have an obligation to ensure that they are addressed to the extent that they, in fact, impact the provision of service. Additionally, as referenced above, PAWC has considerable experience in addressing necessary remediation; accordingly, I&E avers that the record in this case, as well as the terms of the Settlement, address Attorney London’s concerns.

⁵⁶ Public Input Hearing Tr. at pp. 24-25, lines 21-2.

⁵⁷ Id at 26.

⁵⁸ PAWC St. No. 1-R, p. 15.

⁵⁹ Upper Pottsgrove St. No. 1-R, p. 11.

⁶⁰ 66 Pa. C.S. §1501.

IV. CONCLUSION

Based upon I&E's analysis of the filing, acceptance of this proposed Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense. I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation if the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the instant proceeding. If the ALJ recommends that the Commission adopt the Settlement as proposed, I&E agrees to waive the filing of Exceptions. However, I&E has not waived its right to file Exceptions with respect to any modifications to the terms and conditions of the Settlement, or any additional matters, that may be proposed by the ALJ in his Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the Settlement as being in the public interest and respectfully requests that Administrative Law Judge Jeffrey A. Watson and, thereafter, the Commission, approve the terms and conditions contained in the foregoing Joint Petition for Approval of Non-Unanimous Settlement of All Issues without modification.

Respectfully submitted,



Gina L. Miller

Prosecutor

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Dated: June 25, 2021

Attachment F
Statement in Support of
Shadeland Development Corporation

**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 wastewater collection and conveyance :
system to Pennsylvania-American Water Company, : Docket No. A-2020-3021460
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 :

**SHADELAND DEVELOPMENT CORPORATION’S
STATEMENT IN SUPPORT OF THE SETTLEMENT**

Shadeland Development Corporation (“**Shadeland**”), through its undersigned counsel, hereby submits this Statement in Support of the Settlement. Shadeland offers this Statement in Support to further demonstrate the Settlement is in the public interest and should be approved without modification.

I. STATEMENT IN SUPPORT.

1. On June 25, 2021, Pennsylvania-American Water Company (“**PAWC**”), the Office of Consumer Advocate (“**OCA**”), the Office of Small Business Advocate (“**OSBA**”), the Bureau of Investigation and Enforcement (“**I&E**”) of the Pennsylvania Public Utility Commission (“**Commission**”), Shadeland, and Upper Pottsgrove Township (“**Township**”) filed a Joint Petition for Approval of Non-Unanimous Settlement of All Issues (“**Settlement**” or “**Settlement Agreement**”).

II. PROCEDURAL HISTORY

2. Shadeland adopts Section II, Background, ¶¶ 1-24 of the Settlement Agreement.

III. REASONS FOR SHADELAND'S INTERVENTION

3. Shadeland is the current owner of a sanitary sewer line and related improvements (collectively, the "**Sewer Line**") traversing through the property located on West Moyer Road, Tax Parcel No. 600002254008 ("**Property**"). *See* Richard Mingey Testimony, Exhibit B.

4. Shadeland constructed the Sewer Line pursuant to a certain Construction and Access Agreement with the Township dated August 5, 2016 to serve Shadeland's Sprogel's Run residential development. *See* Richard Mingey Testimony, Exhibit A.

5. While the August 5, 2016 Agreement provides that Shadeland shall offer, and the Township shall accept, the Sewer Line for dedication, the conditions precedent to the conveyance of ownership have not yet occurred. *See* N.T. Richard Mingey, at p. 3:2-9.

6. Shadeland's avers the Township has refused to honor its obligation under the Pennsylvania Municipalities Planning Code to provide Shadeland reimbursement for the Sewer Line. *See*, 53 P.S. § 10507-A (incorporating the Pennsylvania Municipal Authorities Act).

IV. REASONS WHY SHADELAND SUPPORTS THE SETTLEMENT.

7. The Commission encourages negotiated settlements. 52 Pa. Code § 69.391.

8. Shadeland agrees approval of the Settlement Agreement is in the best interest of the public and parties involved.

9. Shadeland agrees to the condition described in Paragraph 31 of the Settlement Agreement and believes it is in the public interest since the condition will require the resolution of the Sewer Line ownership prior to PAWC's acquisition of Upper Pottsgrove Township's public sewer system.

10. Shadeland has no objection to the remaining portions of the Settlement Agreement.

11. Shadeland also agrees to the standard Settlement conditions set forth in paragraphs 46-51 of the Joint Petition for Approval of Non-Unanimous Settlement of All Issues.

12. Accordingly, Shadeland requests the Settlement Agreement be recommended by the Administrative Law Judge and approved by the Commission in its entirety, without modification, including the condition set forth in Paragraph 31 of the Settlement Agreement.

WHEREFORE, Shadeland is in support of the Settlement Agreement and respectfully requests that the Administrative Law Judge and the Commission approve the Settlement Agreement.

Respectfully submitted,

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

Dated: June 25, 2021

By: /s/ Gregg I. Adelman
Gregg I. Adelman, Esquire
Robert M. Tucker, Esquire

Attorneys for Intervenor
Shadeland Development Corporation