

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water : Docket No. A-2021-3024681
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, to Pennsylvania-American :
Water Company, of substantially all of the assets, :
properties and rights related to the wastewater collection :
and treatment system owned by the York City Sewer :
Authority and operated by the City of York, (2) the rights :
of Pennsylvania-American Water Company to begin to :
offer or furnish wastewater service to the public in the :
City of York, Pennsylvania, and to three bulk service :
interconnection points located in North York Borough, :
Manchester Township and York Township, York :
County, Pennsylvania, and (3) the rights of :
Pennsylvania-American Water Company to begin to :
offer and furnish Industrial Pretreatment Program to :
qualifying industrial customers in Manchester Township, :
Spring Garden Township and West Manchester :
Township, York County, Pennsylvania. :

In re: Application of Pennsylvania-American Water : Docket No. A-2021-_____
Company under Section 1329 of the Pennsylvania Public :
Utility Code, 66 Pa C.S. § 1329, for approval of the use :
for ratemaking purposes of the lesser of the fair market :
value or the negotiated purchase price of the assets :
related to the wastewater collection and treatment system :
owned by the York City Sewer Authority and operated :
by the City of York. :

In re: Petition of Pennsylvania-American Water : Docket No. P-2021-_____
Company, related to is acquisition of the wastewater :
collection and treatment system owned by the York City :
Sewer Authority and operated by the City of York, for :
approval under Section 1329 of the Pennsylvania Public :
Utility Code, 66 Pa. C.S. § 1329, to (i) for book and :
ratemaking purposes, accrue Allowance for Funds Used :
During Construction for post-acquisition improvements :
not recovered through the distribution system :
improvement charge, (ii) for book and ratemaking :
purposes, defer depreciation related to post-acquisition :
improvements not recovered through the distribution :
system improvement charge, and (iii) include, in its next :
base rate case, a claim for transaction and closing costs. :

In re: Filing by Pennsylvania-American Water Company : Docket Nos. U-2021-_____, *et al.*
under Section 507 of the Pennsylvania Public Utility :
Code, 66 Pa. C.S. § 507, of (i) the Asset Purchase :
Agreement By and Among York City Sewer Authority, :
the City of York, and Pennsylvania-American Water :
Company, and (ii) Six agreements with municipal :
corporations to be assumed by Pennsylvania-American :
Water Company upon closing of its acquisition of :
substantially all of the assets related to the wastewater :
collection and treatment system owned by the York City :
Sewer Authority and operated by the City of York. :

In re: Petition of Pennsylvania-American Water : Docket No. P-2021-_____
Company under Section 508 of the Pennsylvania Public :
Utility Code, 66 Pa C.S. § 508, to modify seven :
agreements with a corporation and municipal :
corporations to be assumed by Pennsylvania-American :
Water Company upon closing of its acquisition of :
substantially all of the assets related to the wastewater :
collection and treatment system owned by the York City :
Sewer Authority and operated by the City of York. :

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

1. Pennsylvania-American Water Company (“PAWC” or “Applicant”) hereby respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) issue such Certificates of Public Convenience as necessary to evidence its approval under Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), of: (a) the transfer, by sale of substantially all of the assets, properties and rights related to the wastewater collection and treatment system (the “System”) owned by the York City Sewer Authority (“Authority”) and operated by the City of York (the “City”) (collectively referred to as “York”) to PAWC; (b) PAWC’s right to begin to offer, render, furnish and supply wastewater service in the areas served by the York System in the City, and to three bulk service interconnection points located in North York Borough, Manchester Township and York Township, York County, Pennsylvania (the “Service Area”); and (c) PAWC’s right to begin to offer and furnish Industrial Pretreatment Program (“IPP”) to qualifying industrial customers in Manchester Township, Spring Garden Township and West Manchester Township,

York County, Pennsylvania, in an IPP service area. PAWC further requests approval to make effective upon closing the *pro forma* tariff supplement attached hereto as **Appendix A-12**.

2. PAWC also respectfully requests that the Commission approve, pursuant to Code Section 1329, 66 Pa. C.S. § 1329: (a) the use for ratemaking purposes of the lesser of the fair market value or the negotiated purchase price of York's assets related to the System;¹ (b) to record the acquisition at the net value of the assets, (c) the accrual of Allowance for Funds Used During Construction ("AFUDC") for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes; (d) the deferral of depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes; and (e) the inclusion, in its next base rate case, of a claim for transaction and closing costs related to the acquisition. Attached here to as **Appendix A** is the Commission's current "66 Pa. C.S. § 1329 Application Filing Checklist - Water/Wastewater (Revised February 28, 2019)" ("Section 1329 Checklist"), Appendix A to the Commission's Final Supplemental Implementation Order in *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Order entered February 28, 2019) ("*Final Supplemental Implementation Order*"). For the ease of reference and review, the sub-appendices to **Appendix A** (such as **Appendix A-1**, **Appendix A-2**, etc.) correspond directly with the filing requirements listed in the Commission's Section 1329 Checklist. Certain appendices contain proprietary information and are, accordingly, labeled as **CONFIDENTIAL** and filed with the Commission's Secretary under seal.

3. PAWC further requests, pursuant to Code Section 507, 66 Pa. C.S. § 507, the issuance of Certificates of Filing or approvals for the following agreements between PAWC and a municipal corporation:

¹ PAWC reserves its right in future proceedings to make rate base claims related to the acquisition as may otherwise be permitted under the Code.

a. Asset Purchase Agreement By and Among York City Sewer Authority, as Seller, The City of York and Pennsylvania-American Water Company, as Buyer, Dated as of April 6, 2021 (attached hereto as **Appendix A-24-a**) (the “APA”);

b. Articles of Agreement, as amended, By and Among City of York and Spring Garden Township Dated as of December 8, 1976 (attached hereto as **Appendix A-25.1**);

c. Articles of Agreement, as amended, By and Among City of York and Manchester Township Dated as of December 9, 1976 (attached hereto as **Appendix A-25.2**);

d. Articles of Agreement, as amended, By and Among City of York and North York Borough Dated as of December 10, 1976 (attached hereto as **Appendix A-25.3**);

e. Articles of Agreement, as amended, By and Among City of York and West Manchester Township Dated as of December 10, 1976 (attached hereto as **Appendix A-25.4**);

f. Articles of Agreement By and Among City of York and York Township Dated as of December 10, 1976 (attached hereto as **Appendix A-25.5**); and,

g. Articles of Agreement By and Among City of York and Springettsbury Township Dated as of March 19, 2002² (attached hereto as **Appendix A-25.6**).

The aforementioned agreements are referred collectively herein as the “Section 507 Agreements.”

4. PAWC further requests, pursuant to Code Section 508, 66 Pa C.S. § 508, the Commission to modify certain agreements with a corporation and municipal corporations to be assumed by PAWC as a result of the Transaction (the “Section 508 Agreements”). The Section 508 Agreements are agreements for bulk service with municipalities surrounding York (the Borough of North York, the Townships of Manchester, West Manchester, Spring Garden and York), and the

² APA Schedule 4.15 System Contract No. 39 listed as Springettsbury Pump Station dated March 19, 2002; however, the actual name on the contract is Articles of Agreement.

agreement for bulk service with The York Water Company (to whom the Borough of West York agreement has been assigned).

5. The name and address of the Applicant is:

Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055

6. The names and addresses of PAWC's attorneys are:

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7. PAWC is a regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, and is engaged in the business of collecting, treating, storing, supplying, distributing and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. Water and wastewater service are furnished by PAWC to the public in a service territory encompassing more than 409 communities in 37 counties across the Commonwealth, including York County and the nearby counties of Adams, Cumberland and Dauphin. PAWC serves a combined population of over 2,400,000. A description of PAWC's existing certificated water and wastewater service territory is found in **Appendix B**, along with a detailed corporate history, outlining all of the mergers, acquisitions and consolidations, which have created PAWC as it exists on the date of this Application.

8. The Authority is a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania. The City is categorized as Third Class, organized and existing under the laws of the Commonwealth of Pennsylvania, with its offices located at 101 South George Street, York, PA 17401. The Authority owns the System, and the City leases and operates the System to provide wastewater service to the Service Area, in York County, Pennsylvania.

9. As of April 30, 2021, York furnishes wastewater service to approximately 13,747 residential and nonresidential customers but excluding consumers who are served by surrounding municipal entities and The York Water Company through the use of York's bulk wastewater service.

10. As of May 31, 2021, PAWC furnished wastewater service to approximately 79,028 residential, commercial, industrial, municipal and bulk customers in Pennsylvania. As of May 31, 2021, PAWC furnished water service to approximately 674,783 residential, commercial, industrial, municipal and bulk customers in Pennsylvania.

11. The completion of the below-defined Transaction will confer benefits upon the long-term financial health of the City, while ensuring that York's existing customers receive safe, adequate, and reliable wastewater service at just and reasonable rates.

A. TRANSFER, BY SALE, OF ALL OF THE AUTHORITY'S ASSETS, PROPERTIES AND RIGHTS RELATED TO THE SYSTEM TO PAWC (OTHER THAN THE EXCLUDED ASSETS)

Summary of the Transaction

12. On April 6, 2021, York entered into the APA, along with detailed schedules, with PAWC to sell all of the Authority's assets, properties and rights relating to the System (other than the Excluded Assets, as defined by the APA) (the "Transaction").

13. The Transaction will be completed in accordance with the APA.

14. Among other things, the APA: (i) requires PAWC and York to complete the Transaction after receipt of all governmental approvals (including from this Commission) and the satisfaction of all conditions precedent; (ii) requires PAWC to assume certain contracts; (iii) requires PAWC initially to adopt the rates in effect at the time of closing of the Transaction (see pro forma tariff supplement attached hereto as **Appendix A-12**); and, (iv) sets forth rates for the Service Area that will be fair to both York's current customers and PAWC's current customers.³

Applicable Legal Standards

15. Under Code Section 1103, the Joint Applicants must demonstrate that PAWC is legally, technically, and financially fit. *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). As a currently certificated public utility, PAWC's fitness is presumed by law to be continuing. *See e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

16. The Commission may issue a certificate of public convenience upon a finding that "the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a). Ownership and operation of the System by PAWC 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). The "substantial public interest" standard is satisfied by a simple preponderance of the evidence of benefits. *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007).

17. Code Section 1329 establishes a voluntary process whereby the acquiring public utility and the selling municipality may choose to have the fair market value of the assets established through

³ The rate commitments set forth in the APA do not fall within the definition of a "rate stabilization plan" as defined by 66 Pa. C.S. § 1329. *See* Direct Testimony of Ashley E. Everette, **Appendix A-14-a**, PAWC St. No. 3.

independent appraisals conducted by Utility Valuation Experts (“UVEs”). For ratemaking purposes, the valuation will be the lesser of the average of the two appraisals or the negotiated purchase price. 66 Pa. C.S. § 1329.

18. Section 1329 also allows, as a matter of law, the acquiring public utility, *inter alia*, (i) to accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, (ii) to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, and (iii) to include, in its next base rate case, a claim for transaction and closing costs associated with the acquisition. In order to obtain this ratemaking treatment, the acquiring public utility must produce certain documents and information as required by the Commission in the context of a future base rate proceeding. 66 Pa. C.S. § 1329; *see Final Supplemental Implementation Order*.

19. Code Section 507, 66 Pa. C.S. § 507, requires that contracts between a public utility and a municipal corporation, except for contracts to furnish service at a regular tariffed rate, be filed with the Commission at least 30 days before the effective date of the contract. The Commission acknowledges the contract by issuing a certificate of filing unless it decides to institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission grants its approval. 66 Pa. C.S. § 507.

20. Code Section 508, 66 Pa. C. S. §508, permits the Commission to modify any contract between a public utility and a person, corporation or municipal corporation that concerns the public interest. If, after reasonable notice and hearing, the Commission finds that the terms or conditions of the contract are unreasonable, inequitable, or otherwise contrary to the public interest and general well-being of the Commonwealth, the Commission may determine and prescribe the reasonable and equitable terms and conditions of the contract.

Background Financial Information

21. Attached hereto is the City's balance sheet as of December 31, 2018 (**Appendix C**),⁴ and PAWC's audited balance sheet as of December 31, 2020 (**Appendix D**)

22. Attached hereto is the City's audited income statement for the 12 months ended December 31, 2018 (**Appendix E**), and PAWC's audited income statement for the 12 months ended December 31, 2020 (**Appendix F**).

23. All the annual reports, tariffs, certificates of public convenience, applications, securities certificates and similar documents filed with this Commission by PAWC, and its predecessors are made a part hereof by reference.

Terms and Impact of the Transaction

24. As noted above, this Application seeks, among other things, approval of the transfer to PAWC of all of the assets, properties and rights of the Authority related to the System (other than the Excluded Assets, as defined by the APA) (**Appendix A-24-a**).

25. PAWC and York are not affiliated with each other.

26. The Transaction is, and was negotiated, at arm's length.

27. Attached hereto as **Appendix G** is a *pro forma* balance sheet of PAWC as of December 31, 2019, giving effect to the transfer.⁵

28. Attached hereto as **Appendix H** is a *pro forma* consolidated income statement of PAWC and the City for the 12 months as of December 31, 2020.⁶

⁴ The financial statements as of December 31, 2018 are the most recent audited financial statements for the City.

⁵ Because financial statements for the year ended December 31, 2020 are not available for York, the combined *pro forma* does not include balance sheet data for York.

⁶ Because the 2020 audited financial statements are not available for York, the combined *pro forma* does not include data for York.

29. Attached hereto as **Appendix I** is a certified copy of the resolutions adopted by the Board of Directors of PAWC authorizing the execution of the APA and the consummation of the proposed transfer.

30. Attached hereto as **Appendix J** is a copy of the Council of the City of York, Pennsylvania, Session 2021 Resolution No. 38 approving the execution of an asset purchase agreement for the sale of the wastewater system assets and the Authority's Board also authorized execution of the APA. See **City Exhibit __MRH-2**.

31. Attached hereto as **Appendix K** is an estimate of PAWC's revenues and expenses in the new service area during the first year after closing.

Transaction's Effect on Service and Rates and Other Affirmative Benefits

32. The Transaction will have no detrimental effect on the service provided to PAWC's existing customers or the wastewater customers transferred to PAWC by York.

33. The Transaction will have a beneficial effect on service to York's wastewater customers. They will receive the benefit of PAWC's experience in managing and operating water and wastewater systems, which will result in efficiencies and improvements to the service to the customers to be transferred.

34. The Transaction is in the public interest, will provide affirmative public benefits of a substantial nature, and satisfies the applicable standard of Code Section 1103, 66 Pa. C.S. § 1103, for, among others, the following reasons:

a. PAWC has the managerial, technical and financial capabilities and fitness to safely and adequately operate the System in compliance with the Code, the Pennsylvania Clean Streams Law (35 P.S. §§ 691.1-691.801), and other requisite regulatory requirements, and to make improvements, as needed, on a short- and long-term basis;

b. The acquisition will further the Commission's goal of regionalization. *See* 52 Pa. Code § 69.721(a). The System will become part of a larger organization that is committed to providing improved service in the future;

c. The transferred wastewater customers will be served by a large, financially-sound company that has the capability to finance necessary capital additions. Given its size, access to capital and its recognized strengths in system planning, capital budgeting and construction management, PAWC is well-positioned to ensure that high quality wastewater service meeting federal and state requirements is provided to York's customers and maintained for PAWC's existing customers;

d. The transferred wastewater customers will benefit from enhanced customer service in a number of areas, such as, but not limited to, additional bill payment options, extended customer service and call center hours, customer information and education programs, and PAWC's customer assistance program;

e. The geographic proximity of the System and PAWC's existing wastewater and water certificated service territory creates opportunities for functional and operational consolidation, and associated efficiencies and cost savings. Further opportunities for functional and operational consolidation will be presented in the future. The System will be operated and managed in conjunction with PAWC's existing "Southcentral Area Operations"; and

f. The Transaction will yield environmental benefits to PAWC's existing customers, the transferred wastewater customers and the general public because PAWC can better address any environmental deficiencies and operate the System going forward in a more environmentally-friendly way.

35. The Transaction will have no immediate effect on the rates for service to be charged to PAWC's existing customers. With regard to the wastewater customers to be transferred by York,

PAWC will -- as shown in the *pro forma* tariff submitted with this Application as **Appendix A-12** -- adopt the current rates, shown on **Schedule 6.03(a)** of **Appendix A-24-a**. Additionally, immediately following closing of the Transaction, the customers in the Service Area will be subject to PAWC's prevailing wastewater tariff on file with, and as approved by, the Commission with respect to all rates other than the customer charge (known under PAWC's current tariff as "monthly service charge") and consumption charge, including but not limited to capacity reservation fees, service line inspection fees and the like, as well as non-rate related terms and conditions of service, including but not limited to, billing frequency, termination procedures, and the like. PAWC respectfully requests approval from the Commission to make effective upon closing of the Transaction its existing rules and regulations regarding conditions of service as revised with the proposed changes shown on the *pro forma* tariff supplement attached hereto as **Appendix A-12**.

36. The public and, more specifically, York's current customers (who will be wastewater customers of PAWC post-closing) will benefit from the Transaction because the purchase price will provide funds which can potentially be used by the City for public purposes, such as, reducing pension liabilities and debt, funding public works, mitigating tax increases, promoting economic development, providing police and fire protection, maintaining and upgrading parks, etc. By York's sale of the System, the York will no longer have the burden of maintaining and operating a wastewater business and is enabled to focus more on its core governmental functions. Finally, transferring the System to an investor-owned utility subjects it to taxation and provides the affirmative public benefit of creating tax revenues.

B. THE RIGHTS OF PAWC TO OFFER OR FURNISH WASTEWATER SERVICE TO THE PUBLIC IN THE CITY OF YORK, PENNSYLVANIA

37. York provides wastewater service to approximately 13,747 customers in the Service Area. York also provides bulk wastewater service to seven surrounding communities, including the

Townships of Spring Garden, Manchester, West Manchester, York and Springettsbury, and the Boroughs of North York and West York⁷ through points of interconnection.⁸ Wastewater from Springettsbury Township flows via a pump station that is owned by Springettsbury Township.

38. The System's Service Area is the same as PAWC's applied-for service territory and is shown on the maps in **Appendix A-16-a through A-16-f (Appendix A-16-f CONFIDENTIAL)** and is further described in that appendix. The applied-for service area will be consistent with the Act 537 Service Area for York and the surrounding municipalities when the Act 537 Plan is updated to reflect the change in ownership of the System. This Act 537 Plan Update, including the service area map, will be adopted by all the effected municipalities and approved by DEP prior to closing.

39. No corporation, partnership or individual other than York is now furnishing or has corporate or franchise rights to furnish service similar to that to be rendered by PAWC in the territory covered by this Application, and no competitive condition will be created. As part of this Application, PAWC has requested approval to acquire, by purchase, all of the assets, properties and rights of the System (other than the Excluded Assets, as set forth in the APA). Upon closing of the Transaction, York will permanently discontinue all wastewater service to the public.

40. The estimated annual revenues and expenses of PAWC in the Service Area are set forth in **Appendix K**.

⁷ The York Water Company owns the West York Borough collection system. *Application of The York Water Company - Wastewater (York) for approval of: (1) York to acquire certain wastewater facilities from West York Borough; and (2) the right of York to furnish wastewater service to the public in West York Borough, York County, Pennsylvania, Docket No. A-2016-2552403 (Order entered Dec. 22, 2016).*

⁸ Three of these bulk service interconnection points are located in North York Borough, Manchester Township and York Township, York County, Pennsylvania, *i.e.* outside PAWC's otherwise-applied-for-service territory. See **Appendix A-16-a-f (Appendix A-16-f CONFIDENTIAL)**. Through this Application, PAWC is specifically requesting limited Commission approval to provide bulk service at these points of interconnection and to continue the bulk service currently being provided to surrounding municipalities by York. Consumers served by the surrounding municipalities are not included in the 13,747 customer count for York.

C. FAIR MARKET VALUATION UNDER CODE SECTION 1329

41. **Appendix A** and related Section 1329 Checklist appendices satisfy the filing requirements of Code Section 1329, the *Final Supplemental Implementation Order*, and the Section 1329 Checklist. The Section 1329 appendices correspond directly with the numbered requirements of the Section 1329 Checklist (e.g., **Appendix A-1** (Requirement No. 1), **Appendix A-2** (Requirement No. 2), etc.).

42. The fair market valuation reports of the seller's and buyer's UVEs are contained in **Appendix A-5** (with electronic working documents included at **Appendix A-4** as **Appendix A-4.2 (AUS)** and **Appendix A-4.3 (ScottMadden)**). Buyer's UVE's written direct testimony in support of its report is set forth in **Appendix A-14-b**.⁹

43. PAWC's other written direct testimony in support of this Application can be found in **Appendix A-14-a**.

44. As PAWC has strictly followed the requirements of Code Section 1329, the *Final Supplemental Implementation Order*, and the Section 1329 Checklist, PAWC should be permitted to: (a) use for ratemaking purposes the lesser of the fair market value or the negotiated purchase price of the assets related to the System; (b) accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes; (c) defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes; and, (d) include, in its next base rate case, a claim for transaction and closing costs related to the acquisition.

⁹ PAWC is submitting direct testimony of York's UVE and the Mayor of the City of York as directed by the *Final Supplemental Implementation Order*. PAWC's submission of this testimony should not be considered support for or sponsorship of such testimony. PAWC anticipates that the City of York will intervene in this matter and will sponsor its direct testimony and exhibits. PAWC reserves its right to submit rebuttal testimony regarding York's testimony as appropriate.

45. PAWC seeks approval to record the \$235,000,000 net value of the assets on its books. Specifically, PAWC requests to record the acquisition on a net basis consistent with generally accepted accounting principles, which advise that property, plant and equipment acquired in a business combination intended to be held and used should be recognized and measured at fair value, and that the accumulated depreciation of the acquiree is not carried forward in a business combination (*i.e.*, net presentation). Recording the acquisition at the net value of the assets is consistent with Section 1329.

D. FILING OF CONTRACTS PURSUANT TO CODE SECTION 507

46. The APA, because it is between PAWC and a municipal corporation, is required to be filed with the Commission under 66 Pa. C.S. § 507. The APA is attached hereto as **Appendix A-24-a**. In addition, contracts between the City and certain municipal corporations will be assumed by PAWC upon closing of the Transaction. The Section 507 Agreements are listed on **Appendix A-25** and attached hereto as **Appendices A-25.1 through A-25.6**.¹⁰ The municipal agreements are reasonable and otherwise lawful. Assumption of the agreements by PAWC is necessary for PAWC to abide by the existing contractual arrangements of York and in order for PAWC to provide safe, adequate, and reasonable service to the Service Area customers at just and reasonable rates. Assumption of the agreements will also allow PAWC to provide the same bulk services to surrounding municipalities that York historically provided. The surrounding municipalities are dependent upon such bulk services for the convenience of their consumers. Accordingly, the Commission should issue Certificates of Filing or otherwise approve the Section 507 Agreements under 66 Pa. C.S. § 507.

¹⁰ The bulk treatment agreement with The York Water Company (relating to West York Borough) does not require Section 507 approval because The York Water Company is not a municipal corporation.

E. REQUEST TO MODIFY CERTAIN MUNICIPAL AGREEMENTS TO PROVIDE RATE CERTAINTY

47. Pursuant to Section 508 of the Code, 66 Pa. C.S. § 508, PAWC petitions the Commission to modify certain municipal agreements to be assumed by PAWC as a result of the Transaction. The Commission is permitted under Section 508 to modify contracts between a public utility and a corporation or municipal corporation that concerns the public interest. If, after reasonable notice and hearing, the Commission finds that the terms or conditions of the contract are unreasonable, inequitable, or otherwise contrary to the public interest and general well-being of the Commonwealth, the Commission may determine and prescribe the reasonable and equitable terms and conditions of the contract.

48. The agreements to be modified are the municipal agreements for bulk service with municipalities surrounding the City of York (the Borough of North York, the Townships of Manchester, West Manchester, Spring Garden, York and Springettsbury) and the agreement with The York Water Company to provide bulk service to West York Borough.

49. A modification is necessary because the agreements contain a rate formula that includes an Authority debt component, but this component will no longer be applicable after Closing on the Transaction due to York's intent to retire its debt upon, or shortly after, Closing. Even though PAWC will be assuming the municipal agreements and the agreement with The York Water Company (if they are not previously renegotiated), PAWC has its own debt and will not be assuming the Authority debt. It is not in the public interest for a contract to contain an incomplete rate formula. Modification will provide rate certainty for all parties involved and not otherwise affect the contractual obligations of PAWC and the municipalities.

50. The modification would be limited to setting rates to be charged by PAWC, and preserving capacity allocations a pre-Closing levels, during a possible short transition period between Closing and the earlier of (i) termination of the assumed agreements or (ii) renegotiation of the assumed agreements (which the agreements require upon retirement of the Authority's bonds). All other provisions of the contracts would remain unchanged.

51. Rates will be set on a revenue-neutral basis at pre-Closing rates for the transition period. Specifically, service will be provided at the default bulk service rates set forth in PAWC's *Pro Forma* Tariff, Supplement No. XX to Tariff Wastewater PA P.U.C. No. 16, Page 11.13, (**Appendix A-12**). The default bulk service rates were adopted from a City Ordinance enacted on June 1, 2021 (attached as **Appendix A-18-b.4**) which was intended to set bulk service rates for the municipalities at current levels in the event that the municipal agreements were terminated for whatever reason.

52. Attached as **Appendix L** is the specific language of the limited modification that PAWC petitions the Commission under 66 Pa. C.S. § 508 to make to the rate provisions of the assumed municipal agreements with Borough of North York, the Townships of Manchester, West Manchester, Spring Garden, York and Springettsbury as well as the assumed agreement with The York Water Company in order to provide rate and capacity allocation certainty during a possible transition period following Closing.

53. After the transition period (*i.e.*, when renegotiated agreements become effective or the existing, assigned agreements are lawfully terminated), the municipalities and The York Water Company will be served by PAWC either pursuant to renegotiated bulk service agreements or pursuant to PAWC's tariffed default bulk service rates (as adopted from the City's default bulk service rate ordinance). See **Appendix A-12** (PAWC's *Pro Forma* Tariff, Supplement No. XX to Tariff Wastewater PA P.U.C. No. 16, Page 11.13). In the event that service is provided pursuant to default

tariffed bulk service rates, future “just and reasonable” rates will be set by the Commission in the context of PAWC base rate proceedings (*see* 66 Pa. C.S. § 1301) – unless PAWC, the municipalities and The York Water Company are able to negotiate new bulk service agreements.

54. The requested limited modification to the rate provision of the agreements would be equitable and in the public interest because (a) the City will have lawfully assigned the contracts to PAWC upon Closing,¹¹ (b) continued bulk service is necessary to the municipalities and The York Water Company because they have no immediate, alternative bulk treatment options available, (c) the proposed contract rates are revenue-neutral in comparison to rates that the municipalities and The York Water Company are currently paying to the City under the agreements to be assumed by PAWC; and (d) capacity allocations are preserved at pre-Closing levels. In addition, the modification promotes the public interest and the general well-being of the Commonwealth because it will ensure that there is no gap in service to bulk wastewater customers and will remove any uncertainty as to the rates to be charged to, and the treatment capacity to be allocated to, bulk wastewater customers who do not negotiate a new agreement with PAWC to be effective at Closing. Moreover, Section 508 is a statutory tool that the Pennsylvania Legislature afforded to the Commission that allows the Commission to ensure that regionalization and consolidation of wastewater systems in the Commonwealth -- along with all of the attendant public benefits -- is not unreasonably hindered due to the unwillingness of a limited group of customers to cooperate on the reasonable modification of service contracts that have been lawfully assumed (pursuant to the express terms of the contracts) by the public utility. It is entirely reasonable and lawful for the Commission to modify contractual rates

¹¹ York provided written notice of the assignment to each municipality and to The York Water Company on or about May 17, 2021.

-- a subject matter under the primary and exclusive jurisdiction of the Commission -- upon assumption of a contract by a public utility. *See* 66 Pa. C.S. § 508.

F. PAWC Adoption of Existing Industrial Pretreatment Program

55. York has an IPP that currently serves 22 industrial customers. Eleven of these customers are located in the City of York, five are located in West Manchester Township, four are located in Manchester Township, and two are located in Spring Garden Township. The IPP is codified in the City Article 931 (attached hereto as **Appendix A-18-b.1**) and the City Amended Bill No. 18, Ordinance No. 17, Session 2020 (attached hereto as **Appendix A-18-b.3**). The IPP is also contained in provisions of or amendments to the City's bulk service agreements with the surrounding municipalities (see **Appendix A-25.1 (Spring Garden Township)**, **Appendix A-25.2 (Manchester Township)**, **Appendix A-25.4 (West Manchester)**).¹² The surrounding municipalities with industrial customers have likewise enacted ordinances (attached hereto as **Appendix M**) requiring their industrial customers to comply with York's IPP.

56. Pursuant to the IPP, each municipality provides York with the legal authority for performance of technical and administrative activities necessary for implementation of the IPP. These activities include, among others: (a) issuing industrial waste discharge permits; (b) providing technical services, such as sampling, processing of chemical analyses and enforcement; and (c) imposing fees upon IPP participants where permitted under the IPP. York prepares the customer's invoice for IPP-related charges and provides it to the municipality, who sends the customer two invoices – one for wastewater usage and one for IPP-related charges. York provides a detailed accounting of such assessed costs to the municipality.

¹² See the following provisions/amendments of the municipal agreements: Manchester Township (Amendment No. 2); North York Borough (Amendment No. 1); Spring Garden Township (Amendment No. 2); Springettsbury Township (Paragraph 7.02); West Manchester Township (Amendment No. 3); and York Township (Amendment No. 1).

57. After Closing, IPP customers outside the City of York will continue to receive wastewater service from their respective municipalities. PAWC, however, will assume York's responsibility to provide IPP service to all 22 of York's current IPP customers -- including the 11 located outside the municipal boundaries of the City.¹³ In order to provide IPP service to IPP customers located outside PAWC's certificated wastewater service territory in the City, PAWC requests an IPP service territory that includes each current IPP customer location outside the City of York's municipal boundaries.¹⁴ PAWC's certificated public utility rights for those identified IPP service territories would be limited to administering the IPP; the municipalities would otherwise continue to provide wastewater service. The requested IPP service territories are specifically identified in the maps and descriptions attached as **Appendix A-16-a through e - IPP**. Bearings and distances of this area are attached as **Appendix A-16-c – IPP**.

58. The *pro forma* tariff attached hereto as **Appendix A-12** (pages 73-75) includes fees for IPP service and requires compliance by IPP customers with the IPP. The fees for IPP service are consistent with the current York fees. Existing IPP customers are identified in this Application and its appendices. PAWC will, in the future, file applications for certificates of public convenience under 66 Pa. C.S. §§ 1102(a) and 1103 for the addition of service territory to provide IPP service to additional IPP customers. Likewise, if an IPP customer no longer receives IPP service, PAWC will file an application for a certificate of public convenience to abandon IPP service to such customer.

¹³ The IPP for York-area customers will be submitted to the Pennsylvania Department of Environmental Protection and may be amended from time to time. The effective IPP will be published on PAWC's website. However, because IPP fees are "rates" as defined by the Code, IPP fees will be set only through a tariff supplement submitted to the Commission for approval. *See* 66 Pa. C.S. § 102 (regarding definition of "Rate"). This approach is consistent with prior Commission approvals of IPPs for other service territories. *See, e.g.*, PAWC Supplement No. 23 to Tariff Wastewater PA P.U.C. No. 16, Fourth Rev. pp. 60-62 (regarding IPP-S).

¹⁴ Administration of an IPP is a form of wastewater treatment service "for the public for compensation"; accordingly, it is properly considered a "public utility" service for which a certificate of public convenience is required. 66 Pa. C.S. § 102 (regarding definitions of "Public Utility" and "Rate").

G. NOTICE

59. As evidenced by the Certificate of Service accompanying this Application, PAWC is serving copies of this filing by certified mail on the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission's Bureau of Investigation and Enforcement. Once the Application is reviewed and conditionally accepted by Commission Staff, PAWC will serve copies of the Application upon the municipal entities required to be provided with copies by the Commission's regulations at 52 Pa. Code § 3.501(f) and by the Section 1329 Checklist and upon the Pennsylvania Department of Environmental Protection ("DEP") Central Office and Southeast Regional Office. Similarly, notice will be published in local newspapers of general circulation.

60. Upon receiving conditional acceptance of this filing by the Commission, PAWC will provide individual notice to its customers by bill insert or bill onsert and to York's customers by direct mail, in substantial compliance with the settlement in *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006889 (Order entered October 3, 2019).¹⁵ PAWC will verify to the Commission when individual notice to affected customers has been completed and ask that the filing be finally accepted.

61. Upon final acceptance of this filing, PAWC respectfully requests that the Commission publish notice of this filing in the Pennsylvania Bulletin as soon as possible, with a reasonable deadline for the filing of protests, interventions, etc. in this proceeding.

H. CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, Pennsylvania-American Water Company respectfully requests that the Pennsylvania Public Utility Commission approve the Application and order that:

¹⁵ See Direct Testimony of Ashley E. Everette, **Appendix A-14-a**, PAWC Statement No. 3. at pp. 14-15.

(a) such Certificates of Public Convenience be issued as necessary to evidence its approval under 66 Pa. C.S. § 1102(a) of (i) the transfer, by sale, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the York City Sewer Authority and operated by the City of York to Pennsylvania-American Water Company, (ii) the right of Pennsylvania-American Water Company to begin to offer, render, furnish and supply wastewater service in the areas served by the wastewater collection and treatment system owned by the York City Sewer Authority and operated by the City of York in the City of York, and to three bulk service interconnection points located in North York Borough, Manchester Township, and York Township, York County, Pennsylvania, and (iii) the right of Pennsylvania-American Water Company to offer and furnish Industrial Pretreatment Program to qualifying industrial customers in Manchester Township, Spring Garden Township, and West Manchester Township, York County, Pennsylvania;

(b) the *pro forma* tariff supplement attached hereto as **Appendix A-12**, including all rates, rules and regulations regarding conditions of Pennsylvania-American Water Company's wastewater service as revised herein, be permitted to become effective immediately upon closing of the Transaction;

(c) pursuant to 66 Pa. C.S. § 1329, Pennsylvania-American Water Company be permitted to use for ratemaking purposes the lesser of the fair market value or the negotiated purchase price of the assets purchased pursuant to the Transaction;

(d) pursuant to 66 Pa. C.S. § 1702, Pennsylvania-American Water Company be permitted to record the acquisition at the net value of the assets;

(e) pursuant to 66 Pa. C.S. § 1329, Pennsylvania-American Water Company be permitted to accrue Allowance for Funds Used During Construction for post-acquisition improvements not recovered through the distribution system improvement charge for book and ratemaking purposes;

(f) pursuant to 66 Pa. C.S. § 1329, Pennsylvania-American Water Company be permitted to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes;

(g) pursuant to 66 Pa. C.S. § 1329, Pennsylvania-American Water Company be permitted to include, in its next base rate case, a claim for transaction and closing costs associated with the acquisition of the System;

(h) pursuant to 66 Pa. C.S. § 507, a Certificate of Filing or approvals be issued for the following agreements between Pennsylvania-American Water Company and a municipal corporation:

i. Asset Purchase Agreement By and Among York City Sewer Authority, as Seller, The City of York and Pennsylvania-American Water Company, as Buyer, Dated as of April 6, 2021;

ii. Articles of Agreement, as amended, By and Among City of York and Spring Garden Township Dated as of December 8, 1976

iii. Articles of Agreement, as amended, By and Among City of York and Manchester Township Dated as of December 9, 1976;

iv. Articles of Agreement, as amended, By and Among City of York and North York Borough Dated as of December 10, 1976;

v. Articles of Agreement, as amended, By and Among City of York and West Manchester Township Dated as of December 10, 1976;

vi. Articles of Agreement By and Among City of York and York Township Dated as of December 10, 1976; and

vii. Articles of Agreement By and Among City of York and Springettsbury Township Dated as of March 19, 2002

(i) pursuant to 66 Pa. C.S. § 508, the Commission modify certain agreements for bulk service to be assumed by PAWC at closing (the agreements with the Borough of North York, the

Townships of Manchester, West Manchester, Spring Garden, York and Springettsbury, and the agreement with The York Water Company (to whom the agreement with the Borough of North York was assigned)) in order to provide rate and capacity allocation certainty during a potential interim period after Closing; and,

(j) the issuance of any other approvals or certificates appropriate, customary, or necessary under the Code to carry out the Transaction contemplated in this Application in a lawful manner.

Respectfully Submitted,



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Dated: July 1, 2021

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