



August 3, 2021

VIA E-FILE

David P. Zambito

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

Re: In 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 Valley Township's assets, properties and rights related to its water treatment and distribution system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish water service to the public in Valley Township, a portion of West Caln and East Fallowfield Townships, Chester County, Pennsylvania; Docket Nos. A-2020-3019859 *et al.*

In 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 Valley 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 Valley Township, and limited portions of East Fallowfield Township, Sadsbury Township, and West Caln Township, Chester County, Pennsylvania; Docket No. A-2020-3020178 *et al.*

Joint Petition for Approval of Unanimous Settlement of All Issues

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Joint Petition for Approval of Settlement of All Issues in the above-referenced matters. Please note that the transcript from the evidentiary hearing of July 23, 2021 has not yet been issued. Consequently, references to specific transcript pages have been left blank. Specific page references will be provided by a separate filing when the transcript has been issued.

Rosemary Chiavetta, Secretary
August 3, 2021
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A copy of the enclosed filing is being served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

COZEN O'CONNOR



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

DPZ:kmg
Enclosure

cc: Administrative Law Judge Conrad A. Johnson
Administrative Law Judge Emily I. DeVoe
Per Certificate of Service
Susan Simms Marsh, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In 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 Valley Township’s assets, :
properties and rights related to its water treatment : Docket No. A-2020-3019859, *et*
and distribution system to Pennsylvania-American : *al.*
Water Company, and (2) the rights of :
Pennsylvania-American Water Company to begin :
to offer or furnish water service to the public in :
Valley Township, a portion of West Caln and East :
Fallowfield Townships, Chester County, :
Pennsylvania :

and

In 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 Valley Township’s assets, :
properties and rights related to its wastewater : Docket No. A-2020-3020178, *et*
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 Valley Township, and limited :
portions of East Fallowfield Township, Sadsbury :
Township and West Caln Township, Chester :
County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of August, 2021 served a true copy of the foregoing ***Joint Petition for Approval of Unanimous Settlement of All Issues*** upon 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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Counsel for *Pennsylvania-American Water Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judges
Conrad A. Johnson and
Emily I. DeVoe**

In 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 Valley Township’s assets, properties and rights :
related to its water treatment and distribution system to : Docket Nos.
Pennsylvania-American Water Company, and (2) the rights of : A-2020-3019859, *et al.*
Pennsylvania-American Water Company to begin to offer or :
furnish water service to the public in Valley Township, a portion of :
West Caln and East Fallowfield Townships, Chester County, :
Pennsylvania. :

And

In 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 Valley Township’s assets, properties and rights : Docket Nos.
Pennsylvania-American Water Company, and (2) the rights of : A-2020-3020178, *et al.*
Pennsylvania-American Water Company to begin to offer or furnish :
wastewater service to the public in Valley Township, and limited :
portions of East Fallowfield Township, Sadsbury Township, and :
West Caln Township, Chester County, Pennsylvania. :

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

I. INTRODUCTION

Pennsylvania-American Water Company (“PAWC”), Valley Township (“Valley”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) (singularly, a “Petitioner” and, collectively, the “Joint Petitioners”) hereby join in this “Joint Petition for

Approval of Unanimous Settlement of All Issues” (the “Settlement”) and respectfully request that the Honorable Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe (the “ALJs”) recommend approval of, and the Commission approve, this Settlement without modification.

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

II. BACKGROUND

A. The Water Application

1. PAWC and Valley Township (“Valley”) entered into an Asset Purchase Agreement (“the Water APA”) dated as of December 17, 2019, by which PAWC will purchase the water system (the “Water System”) presently owned by Valley. On April 14, 2020, Valley filed a Petition for Declaratory Order with the Commission at Docket No. P-2020-3019476, asking the Commission to find that Valley’s provision of water service to 22 residents of West Caln and East Fallowfield Townships, Chester County, Pennsylvania, is not subject to regulation by the Commission. On August 6, 2020, the Commission found that Valley’s service to these customers is not jurisdictional because it is not public utility service within the meaning of Section 102 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 102 (“Definitions”). *Petition of Valley Township for a Declaratory Order Regarding the Provision of Water Service to 22 Residents of West Caln Township and East Fallowfield Township*, Docket Nos. P-2020-3019476 and P-2020-3019477 (Opinion and Order entered August 6, 2020) (“*Petition of Valley Township*”).

2. On October 9, 2020, PAWC filed an application at Docket No. A-2020-3019859 asking the Commission to approve its acquisition of the Water System pursuant to 66 Pa. C.S. §§ 507, 1102 and 1329 (the “Water Application”).

3. Erika L. McLain, Esq. and John M. Coogan, Esq., entered their appearances on behalf of I&E on November 5, 2020.¹

¹ Mr. Coogan withdrew his appearance on April 1, 2021.

4. On October 27, 2020, staff from the Commission's Bureau of Technical Utility Services ("TUS") notified PAWC that they had performed a completeness review of the Water Application and determined that certain information was missing. TUS staff requested that the information be provided within ten business days (*i.e.*, by November 10, 2020). On November 10, 2020, PAWC filed the information requested by TUS following its completeness review. On November 19, 2020, TUS staff notified PAWC that certain information remained missing. PAWC filed the requested information on November 23, 2020. On December 2, 2020, PAWC amended the Water Application by modifying its answers to certain Standard Data Requests, its testimony, and its customer notice.

5. On December 23, 2020, OCA filed its Protest and Public Statement in this proceeding. Appearing for the OCA were Santo G. Spataro, Esq.,² Christine Maloni Hoover, Esq., Erin Gannon, Esq., and Harrison W. Breitman, Esq.

6. Erin K. Fure, Esq., entered her appearance on behalf of the OSBA on January 5, 2021.

7. On March 19, 2021, the Commission notified PAWC that the Water Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Water Application until PAWC complied with certain service and notice requirements. On May 11, 2021, PAWC filed a verification stating that it had complied with all service and notice requirements of the Secretarial Letter of March 19, 2021.

8. On May 18, 2021, the Commission notified PAWC that it had finally accepted the Water Application. The Commission further notified PAWC that notice of the Application would be published in the *Pennsylvania Bulletin* with a protest deadline of June 21, 2021. The notice was published on Saturday, May 29, 2021. 51 Pa. B. 3079. The Commission also issued a Call-in Telephonic Pre-Hearing Conference Notice in Docket Nos. A-2020-3019859 and A-2020-3020178. The Pre-Hearing Conference was scheduled for June 23, 2021. The ALJs issued their Prehearing Conference Order for Telephonic Conference on May 18, 2021.

² Mr. Spataro withdrew his appearance on April 12, 2021.

9. On May 19, 2021, PAWC filed a Motion to Consolidate the Water Application and the Wastewater Application (defined below) (together, the “Applications”). On May 21, 2021, Valley filed a Petition to Intervene.

10. The Prehearing Conference was held as scheduled on June 23, 2021. PAWC’s Motion to Consolidate the Applications and Valley’s Petition to Intervene were granted at the Prehearing Conference. The ALJs issued their Prehearing Order on June 28, 2021. The ALJs also scheduled a telephonic public input hearing for 6:00 p.m. on July 20, 2021 and scheduled evidentiary hearings for July 23, 2021.

11. On July 1, 2021, Commissioner Ralph V. Yanora directed the parties to address certain issues, including questions pertaining to company-owned lead service lines, testing of commercial meters and valves and backflow prevention devices.

12. The telephonic public input hearing was held as scheduled on July 20, 2021, at which one witness testified.

13. On July 21, 2021, PAWC submitted the supplemental direct testimony of Michael J. Guntrum, P.E., and Valley submitted the supplemental direct testimony of Patrice Proctor, addressing Commissioner Yanora’s directed questions.

14. The evidentiary hearing was held as scheduled on July 23, 2021.

B. The Wastewater Application

15. PAWC and Valley entered into an APA (the “Wastewater APA”) dated as of December 17, 2019, by which PAWC will purchase the wastewater system (the “Wastewater System”) presently owned by Valley.

16. On April 14, 2020, Valley filed a Petition for Declaratory Order with the Commission at Docket No. P-2020-3019477 asking the Commission to find that Valley’s provision of wastewater collection and conveyance service to 30 residents of West Caln, Sadsbury, and East Fallowfield Townships, Chester County, Pennsylvania is not subject to regulation by the Commission. On August 6, 2020, the Commission found that Valley’s service to these customers is not jurisdictional because it is not public

utility service within the meaning of Section 102 of the Code, 66 Pa. C.S. § 102 (“Definitions”). *Petition of Valley Township*.

17. On October 9, 2020, PAWC filed an application at Docket No. A-2020-3020178 asking the Commission to approve its acquisition of the Wastewater System pursuant to 66 Pa. C.S. §§ 507, 1102 and 1329 (the “Wastewater Application”). On October 22, 2020, staff from TUS notified PAWC that they had performed a completeness review of the Wastewater Application and determined that certain information was missing. TUS staff requested that the information be provided within ten business days (*i.e.*, by November 5, 2020). On November 5, 2020, PAWC filed the information requested by TUS following its completeness review.

18. Also on November 5, 2020, Erika L. McLain, Esq. and John M. Coogan, Esq., entered their appearances on behalf of I&E.³

19. On December 23, 2020, TUS staff notified PAWC that certain information remained missing. After receiving an extension of time, PAWC filed the requested information on February 8, 2021 and filed updated information on March 15, 2021.

20. On December 23, 2020, the OCA filed its Protest and Public Statement in this proceeding. Appearing for the OCA were Santo G. Spataro, Esq.,⁴ Christine Maloni Hoover, Esq., Erin Gannon, Esq., and Harrison W. Breitman, Esq.

21. Erin K. Fure, Esq., entered her appearance on behalf of OSBA on January 5, 2021.

22. On March 19, 2021, the Commission notified PAWC that the Wastewater Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Wastewater Application until PAWC complied with certain service and notice requirements. On May 11, 2021, PAWC filed a verification stating that it had complied with all service and notice requirements of the Secretarial Letter of March 19, 2021.

³ Mr. Coogan withdrew his appearance on April 1, 2021.

⁴ Mr. Spataro withdrew his appearance on April 12, 2021.

23. On May 18, 2021, the Commission notified PAWC that it had finally accepted the Wastewater Application. The Commission further notified PAWC that notice of the Wastewater Application would be published in the *Pennsylvania Bulletin* with a protest deadline of June 21, 2021. The notice was published on Saturday, May 29, 2021. 51 *Pa. B.* 3078. The Commission also issued a Call-in Telephonic Pre-Hearing Conference Notice in Docket Nos. A-2020-3019859 and A-2020-3020178. The Pre-Hearing Conference was scheduled for June 23, 2021. The ALJs issued their Prehearing Conference Order for Telephonic Conference on May 18, 2021.

24. On May 19, 2021, PAWC filed a Motion to Consolidate the Applications. On May 21, 2021, Valley filed a Petition to Intervene.

25. The Prehearing Conference was held as scheduled on June 23, 2021. PAWC's Motion to Consolidate the Applications and Valley's Petition to Intervene were granted at the Prehearing Conference. The ALJs issued their Prehearing Order on June 28, 2021. The ALJs also scheduled a telephonic public input hearing for 6:00 p.m. on July 20, 2021 and scheduled evidentiary hearings for July 23, 2021.

26. The telephonic public input hearing was held as scheduled on July 20, 2021, at which one witness testified.

27. The evidentiary hearing was held as scheduled on July 23, 2021.

III. SETTLEMENT TERMS

In order to resolve these consolidated cases, the Joint Petitioners agree as follows:

A. Approval of Applications

28. The Commission should approve PAWC's acquisition of Valley's Water and Wastewater Systems (the "Transaction") and PAWC's right to begin to offer, render, furnish, or supply Water and Wastewater service in the areas served by Valley, as well as any other necessary approvals or certificates for the Transaction, subject to approval of all of the following conditions and without modification.

B. Tariff

29. The *pro forma* tariff submitted as **Amended Appendix A-12** for Valley’s Water System, and the *pro forma* tariff submitted as **Second Amended Appendix A-12** for Valley’s Wastewater System, including all rates, rules and regulations regarding conditions of PAWC’s water and wastewater service, shall be permitted to become effective immediately upon closing of the Transaction (“Closing”).

C. Fair Market Value for Ratemaking Rate Base Purposes

30. Pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$13,950,000 for ratemaking rate base purposes for the acquired Wastewater System, and \$7,325,000 for the acquired Water System, effective as of the day of Closing.

D. Fair Market Value Appraisals

31. 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.

E. Engineering Assessment

32. 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

33. PAWC and Valley 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 Water APA and the Wastewater 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 day of Closing and a final update before Closing regarding the status of the transfer of the Real Property Rights.

G. Inflow and Infiltration Study

34. PAWC shall complete an Inflow and Infiltration (“I&I”) study of the Valley Wastewater 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

35. 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 Valley’s water or wastewater rates in a future PAWC proceeding.

36. In the first base rate case that includes Valley’s Wastewater System:

A. PAWC will propose to move Valley’s Wastewater System to 1.25x the current Valley wastewater rate or PAWC’s proposed Rate Zone 1 system-average wastewater rates, whichever is lower.

B. PAWC may propose an effective date for new rates for Valley wastewater customers that is different from the effective date of new rates for other customers.

C. PAWC may agree to rates other than those proposed for Valley wastewater customers in the context of a settlement of the base rate case.

D. OCA, I&E and OSBA reserve their rights to address PAWC’s rate proposals fully, and to make other rate proposals.

E. The current rate for Valley’s residential wastewater customers with an average usage of 3,630 gallons per month is approximately \$62.25.

37. In the first base rate case that includes Valley’s Water System:

A. PAWC will propose to move Valley’s Water System to 2.0x the current Valley water rate or PAWC’s proposed Rate Zone 1 system-average water rates, whichever is lower.

B. PAWC may propose an effective date for new rates for Valley water customers that is different from the effective date of new rates for other customers.

C. PAWC may agree to rates other than those proposed for Valley water customers in the context of a settlement of the base rate case.

D. OCA, I&E and OSBA reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals.

E. The current rate for Valley's residential water customers with an average usage of 3,630 gallons per month is approximately \$30.05.

I. Distribution System Improvement Charge

38. 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 Valley water or wastewater 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 water or wastewater Long-Term Infrastructure Improvement Plan ("Amended LTIP") which does not re-prioritize other existing commitments in other service 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 Valley's Water or Wastewater System into its existing DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the Amended LTIP.

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

39. The Joint Petitioners acknowledge that the Applications include requests that (i) PAWC be permitted to accrue Allowance for Funds Used During Construction ("AFUDC") for post-acquisition water and wastewater improvements not recovered through the DSIC for book and ratemaking purposes, and (ii) PAWC be permitted to defer depreciation related to post-acquisition water and wastewater improvements not recovered through the DSIC for book and ratemaking purposes. Any claims for AFUDC and deferred depreciation related to post-acquisition water and wastewater improvements not recovered through the

DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes Valley's Water System and Wastewater System. 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

40. The Joint Petitioners acknowledge that the Applications include requests that PAWC be permitted to claim transaction and closing costs associated with the acquisition of Valley's Water and Wastewater Systems. The Joint Petitioners agree that they will not contest these requests 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.

41. The inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the Water APA and the Wastewater APA shall be separately identified in PAWC's next base rate case and amounts expended by PAWC on behalf of Valley 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

42. Within the first billing cycle following Closing on the Water System and the Wastewater System, PAWC shall include a bill insert to Valley's water and wastewater customers regarding PAWC's low income programs and shall include such information in a welcome letter to Valley's water and wastewater 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 PAWC's Valley-area water and wastewater customers regarding its low income program.

43. 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

44. Pursuant to 66 Pa. C.S. § 507, the Commission shall issue Certificates of Filing or approvals for the following agreements between PAWC and a municipal corporation:

A. The Sanitary Sewer Asset Purchase Agreement By and Between Valley as Seller and PAWC as Buyer, dated as of December 17, 2019;

B. The November 16, 1988 Sewer and Water Service Agreement Between West Caln Township, Valley, Valley Township Authority and Highlands Corporate Center;

C. The Water Asset Purchase Agreement By and Between Valley as Seller and PAWC as Buyer, dated as of December 17, 2019; and

D. The November 15, 2011 Agreement between Valley and Sadsbury Township.⁵

N. Other Necessary Approvals

45. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Code to carry out the Transaction contemplated in the Applications in a lawful manner.

O. Public Input Hearing

46. 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 Valley press release, (2) by PAWC's and Valley's social media, and (3) by notice on PAWC's and Valley's websites, was adequate.

P. Standard Settlement Conditions

47. 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

⁵ The OCA does not join in this paragraph but does not oppose PAWC's request.

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.

48. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceedings. 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.

49. 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 these proceedings. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

50. 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.

51. 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-E.**

52. 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, Valley Township, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by their respective counsel, respectfully request that:

(a) The Honorable Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe recommend approval of, and the Commission approve, this Settlement as submitted, including all terms and conditions thereof, without modification.

(b) The Water Application and the Wastewater Application filed by PAWC on October 9, 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 Valley Township's assets, properties and rights related to its Water System and its Wastewater System to PAWC as provided in the Applications, and (ii) PAWC's right to begin to offer, render, furnish and supply water and wastewater service in the areas served by Valley as indicated in the Applications.

(d) Upon the day of Closing of the Transaction, PAWC be permitted to issue compliance tariff supplements, consistent with the *pro forma* tariff supplement submitted as **Amended Appendix A-12** for Valley's Water System, and the *pro forma* tariff supplement submitted as **Second Amended Appendix A-12** for Valley's Wastewater System, 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 \$13,950,000 associated with the acquisition of the Wastewater System, and \$7,325,000 for the acquired Water System, effective as of the day of Closing.

(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.

(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 Valley 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 day of Closing and a final update before Closing regarding the status of the transfer of the Real Property Rights.

(i) PAWC be directed to complete an infiltration and inflow study of the Valley Wastewater 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.

(j) In the first base rate case that includes Valley's Wastewater System:

1. PAWC will propose to move Valley's Wastewater System to 1.25x the current Valley wastewater rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower.

2. PAWC may propose an effective date for new rates for Valley wastewater customers that is different from the effective date of new rates for other customers, and PAWC may agree to rates other than those proposed for Valley wastewater customers in the context of a settlement of the base rate case.

(k) In the first base rate case that includes Valley's Water System:

1. PAWC will propose to move Valley's Water System to 2.0x the current Valley water rate or PAWC's proposed Rate Zone 1 system-average water rates, whichever is lower.

2. PAWC may propose an effective date for new rates for Valley water customers that is different from the effective date of new rates for other customers, and PAWC may agree to rates other than those proposed for Valley water customers in the context of a settlement of 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 Valley water or wastewater 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 water or wastewater Amended LTIP which does not re-prioritize other existing commitments in other service 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 Valley's Water or Wastewater System 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 water and wastewater improvements not recovered through the DSIC for book and ratemaking purposes and (ii) defer depreciation related to post acquisition water and wastewater improvements not recovered through the DSIC for book and ratemaking purposes. Any claims for AFUDC and deferred depreciation related to post-acquisition water and wastewater improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes Valley's Water System and Wastewater System. 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 acquisition of Valley's Water System and Wastewater System. 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) The inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the Water APA and the Wastewater APA shall be separately identified in PAWC's next base rate case and

amounts expended by PAWC on behalf of Valley will be separately identified. The OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

(p) Within the first billing cycle following Closing on the Water System and the Wastewater System, PAWC shall include a bill insert to Valley's water and wastewater customers regarding PAWC's low income programs and shall include such information in a welcome letter to Valley's water and wastewater 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 PAWC's Valley-area water and wastewater customers regarding PAWC's low income programs.

(q) 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.

(r) 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 Valley as Seller and PAWC as Buyer, dated as of December 17, 2019;
2. The November 16, 1988 Sewer and Water Service Agreement Between West Caln Township, Valley, Valley Township Authority and Highlands Corporate Center;
3. The Water Asset Purchase Agreement By and Between Valley as Seller and PAWC as Buyer, dated as of December 17, 2019; and
4. The November 15, 2011 Agreement between Valley and Sadsbury Township.⁶

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

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

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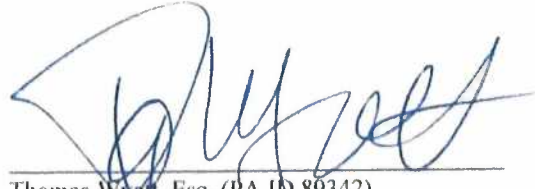
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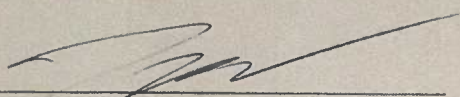
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List of Attachments:

- A. Statement in Support of Pennsylvania-American Water Company
- B. Statement in Support of Valley 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

Attachment A
Statement in Support of
Pennsylvania-American Water Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judges
Conrad A. Johnson and
Emily I. DeVoe**

In 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 Valley Township’s assets, properties and rights :
related to its water treatment and distribution system to : Docket Nos.
Pennsylvania-American Water Company, and (2) the rights of : A-2020-3019859, *et al.*
Pennsylvania-American Water Company to begin to offer or :
furnish water service to the public in Valley Township, a portion of :
West Caln and East Fallowfield Townships, Chester County, :
Pennsylvania. :

And

In 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 Valley Township’s assets, properties and rights : Docket Nos.
related to its wastewater collection and conveyance system to : A-2020-3020178, *et 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 Valley Township, and limited :
portions of East Fallowfield Township, Sadsbury Township, and :
West Caln Township, Chester County, Pennsylvania. :

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

Pennsylvania-American Water Company (“PAWC”) files this Statement in Support of the “Joint Petition for Approval of Unanimous Settlement of All Issues” (“Settlement”) entered into by PAWC, Valley Township (“Valley”) the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), the Office of Consumer Advocate

(“OCA”), and the Office of Small Business Advocate (“OSBA”) (individually, a “Joint Petitioner” and collectively, the “Joint Petitioners”) in the above-captioned proceedings. PAWC respectfully requests that the Honorable Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe (the “ALJs”) 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 (a) the application filed at Docket No. A-2020-3019859 (the “Water Application”) asking the Commission to approve PAWC’s acquisition of the water system (the “Water System”) presently owned by Valley; and (b) the application filed at Docket No. A-2020-3020178 (the “Wastewater Application”) asking the Commission to approve PAWC’s acquisition of the wastewater system (the “Wastewater System”) presently owned by Valley (together, the “Applications”). The Applications were 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 Valley related to Valley’s Water and Wastewater Systems (the “Transaction”), and to set the fair market value of the acquisitions for rate-base ratemaking purposes.

The Joint Petitioners have agreed to a settlement of all of the issues in this proceeding, including issues arising under Sections 507, 1102, 1103 and 1329 of the Code. 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 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 these proceedings. 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 Valley 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

The following paragraphs discuss most of the provisions in the Settlement. For ease of reference, the discussion below discusses the Settlement sections in order.

A. Approval of the Application

The Settlement asks that the Commission approve the Applications. 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 Water System and the Wastewater 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.¹ *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. 1W p. 13. PAWC employs approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations. PAWC St. No. 2W p. 6; PAWC St. No. 2WW p. 7. 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

¹ 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 Valley service territory.

experience in the operation and maintenance of different types of wastewater technologies. PAWC St. No. 2W p. 6; PAWC St. No. 2WW p. 8. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes and infrastructure. PAWC has funded more than \$1 billion in infrastructure investment in the past five years. PAWC St. No. 2W p. 7.

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 Valley. 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 Valley. PAWC St. No. 1W pp. 14, 17; PAWC St. No. 1WW pp. 14, 17.

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. 3W p. 4; PAWC St. No. 3WW p. 4. 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. 3W pp. 4-5; PAWC St. No. 3WW pp. 4-5.

In addition to demonstrating fitness, PAWC must demonstrate that the Transaction and PAWC's ownership/operation of the Valley 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 Valley (as seller of the System); the existing customers of Valley's Water System and Wastewater 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. 1W p. 15. 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. 1W p. 15; PAWC St. No. 1WW p. 15.

The Transaction also benefits the public-at-large due to its environmental benefits. PAWC is in a better position than Valley to maintain environmental compliance for the Water System and the Wastewater 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. 2W pp. 5-6, PAWC Exhibit MJG-1W; PAWC St. No. 2WW pp. 6-7, PAWC Exhibit MJG-1WW.

In addition to benefiting the public-at-large, the Transaction benefits Valley Township (as seller of the System). Among other things, the Transaction will improve Valley's financial condition and outlook. In addition, the Transaction will benefit Valley by enabling it to reallocate its administrative time to focus on other key initiatives. Furthermore, the Transaction will increase Valley's tax base through increased development opportunities. Valley St. No. 1W pp. 3-4; Valley St. No. 1WW pp. 3-4.

The Transaction benefits Valley'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 Valley'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 Valley's customers. PAWC is well-positioned to ensure that high quality wastewater service meeting all applicable state and federal regulatory requirements is provided to Valley's customers. PAWC St. No. 1W pp. 15-16; PAWC St. No. 1WW p. 15.
- 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. 1W p. 16; PAWC St. No. 1WW p. 15.
- Customers will have access to PAWC's proven and enhanced customer service, including its customer assistance programs. PAWC St. No. 1W p. 16; PAWC St. No. 1WW p. 16; PAWC St. No. 2W pp. 11-13; PAWC St. No. 2WW pp. 13-14.
- PAWC plans to invest millions of dollars to improve the Water System and the Wastewater System. PAWC St. No. 2W pp. 5-6, PAWC Exhibit MJG-1W; PAWC St. No. 2WW pp. 6-7, PAWC Exhibit MJG-1WW.

The Settlement contains additional public benefits for Valley's existing customers. It requires PAWC to provide information to Valley's customers regarding PAWC's low-income programs within the first billing cycle following Closing and in a welcome letter to Valley's customers. Settlement ¶¶ 42-43.

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. The Transaction will add approximately 3,125 wastewater customers to PAWC's existing wastewater customer base of approximately 75,253 customers (or an increase of more than 4.1%). PAWC St. No. 1 WW p. 14. 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 WW p. 9.

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, the Transaction has specific benefits for PAWC's existing water customers. The Transaction will add approximately 1,670 new water customers to PAWC's existing water customer base of approximately 671,431 customers (or an increase of about 0.2%). PAWC St. No. 1W p. 15. The Transaction will have no immediate rate impact on PAWC's existing water 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. 3W p. 9. In addition, PAWC's acquisition of the Wastewater System will only impact the rates of PAWC's existing water 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 Valley 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 \$13,950,000 (the purchase price) will go into PAWC's rate base in its next rate case due to the acquisition of the Wastewater System, and \$7,325,000 (the purchase price) will go into PAWC's rate base in its next rate case due to the acquisition of the Water System. Settlement ¶ 30. 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 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. 1W pp. 15-75; PAWC St. No. 1WW pp. 15-16; PAWC St. No. 2W pp. 5-15; PAWC St. No. 2 WW pp. 6-16; Valley St. No. 1W pp. 3-4, 9-12; Valley St. No. 1WW pp. 3-4, 9-11. 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, ¶ 31, 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 some categories of assets. In the Settlement, ¶ 32, 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, ¶ 33, requires PAWC and Valley 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 Valley to transfer to PAWC by Closing (collectively, the “Real Property Rights”). However, 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. These provisions are in the public interest because they ensure the transfer of all Real Property Rights that PAWC will need to own and operate the System.

G. Inflow and Infiltration Study

To provide more information about the condition of the wastewater assets being acquired by PAWC in the Transaction, the Settlement, ¶ 34, 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.

H. Rates

In terms of the rates to be charged to Valley 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 Valley’s existing rates. The Settlement, ¶ 36, requires PAWC, in the first base rate case that includes Valley, to propose moving Valley’s wastewater customers’ rates to 1.25x the current

Valley wastewater rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower. The Settlement, ¶ 37, requires PAWC, in the first base rate case that includes Valley, to propose moving Valley's water customers' rates to 2.0x the current Valley water rate or PAWC's proposed Rate Zone 1 system-average water rates, whichever is lower. These provisions are in the public interest because they limit the potential subsidization of Valley's customers by PAWC's existing water and wastewater customers.

The Settlement permits PAWC to agree to rates other than those proposed for Valley customers in the context of a settlement of a base rate case. 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 ¶¶ 36, 37. 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.

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 wastewater DSIC tariff, for other portions of its wastewater system. Similarly, PAWC has previously received Commission approval of a water LTIIIP, and received

Commission approval of a water DSIC tariff, for other portions of its water system. In its Applications, PAWC requested conditional approval to implement a DSIC for the Valley water and wastewater service territories. Water Application ¶¶ 2, 17, 43; Wastewater Application ¶¶ 2, 17, 44. Pursuant to the Settlement, PAWC may file amended water and wastewater LTIPs for the Valley water and wastewater service territories that do not reprioritize other existing capital improvements that PAWC has already committed to undertake in other service areas. Following Commission approval of those amended LTIPs, PAWC could make a tariff supplement compliance filing, which would include the Valley water and wastewater service territories in PAWC's existing DSIC tariff. Settlement ¶ 38.

The Settlement recognizes the Commission's authority to modify PAWC's LTIP submissions. 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 Water Application ¶¶ 2, 17, 43, PAWC requested permission to accrue AFUDC on post-acquisition water improvements that are not included in a DSIC. Similarly, in the Wastewater Application, ¶¶ 2, 17, 44, PAWC requested permission to accrue AFUDC on post-acquisition wastewater improvements that are not included

in a DSIC. 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 ¶ 39.

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 Water Application ¶¶ 2, 17, 43, PAWC requested permission to defer depreciation on post-acquisition water improvements that are not included in a DSIC. Similarly, in the Wastewater Application, ¶¶ 2, 44, PAWC requested permission to defer depreciation on post-acquisition wastewater improvements that are not included in a DSIC. 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 ¶ 39. 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 Valley System, include the transaction and closing costs incurred in these proceedings. 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 ¶ 40. 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 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 under the Water APA and the Wastewater APA. The amounts expended by PAWC on behalf of Valley must also be separately identified. The OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence and basis for these fees. Settlement ¶ 41. These provisions are reasonable, in the public interest and should be approved.

L. Low Income Program Outreach

The Settlement requires PAWC to notify Valley 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 Valley's customers. The welcome packet must also inform Valley customers that they are being converted to monthly billing. Settlement ¶¶ 42-43. It is in the public interest for PAWC to provide this information to Valley's customers. Consequently, these provisions of the Settlement are reasonable and in the public interest, and should be approved.

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 the Settlement, ¶ 44, the Joint Petitioners agreed that the Commission should issue Certificates of Filing, or otherwise approve pursuant to Section 507: (i) the Water APA; (ii) the Wastewater APA; (iii) the November 16, 1988 Sewer and Water Service Agreement between West Caln Township, Valley, Valley Township Authority and Highlands Corporate Center; and (iv) the November 15, 2011 Agreement between Valley and Sadsbury Township. Approval of these agreements is necessary to allow PAWC to provide service to the water and wastewater service territories currently served by Valley. Approval of these agreements, pursuant to Section 507, is therefore reasonable and in the public interest.

N. Other Necessary Approvals

The Settlement, ¶ 45, 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 Valley Water System and Wastewater System. Although the Joint Petitioners do not believe any other approvals or certificates are 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. Settlement, ¶ 47.

These provisions are standard in settlements in Commission proceedings. They protect 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. These provisions make parties to a Commission proceeding more willing to settle than they otherwise might be. These provisions are therefore in the public interest and should be approved.

III. COMMISSIONER YANORA'S DIRECTED QUESTIONS HAVE BEEN ANSWERED

On July 1, 2021, Commissioner Ralph V. Yanora directed the parties to address certain issues, including questions pertaining to lead service lines, cross-connections and backflow prevention devices. PAWC and Valley introduced supplemental direct testimony addressing each of these questions. PAWC St. No. 2W-S and No. 2WW-S; Valley St. No. 1W-S and No. 1WW-S. At the evidentiary hearing, the ALJs questioned PAWC's and Valley's witnesses to obtain additional information responding to these questions.

Valley is unaware of any lead service lines in the Water System. Valley St. No. 1W-S and No. 1WW-S p. 3. The Engineer's Assessment does not indicate that any lead service lines are present in the Water System. Instead, it indicates that many of the service lines are made of copper. PAWC Exhibit KEG-2W, Appendix A-15-a "Master Asset List."

PAWC has a Commission-approved plan for addressing lead service lines. *Petition of Pennsylvania-American Water Company for Approval of Tariff Changes and Accounting and Rate Treatment Related to Replacement of Lead Customer-owned Service Pipes*, Docket No. P-2017-2606100 (Final Order entered October 3, 2019). This plan is reflected in PAWC's tariff, *see, e.g.*, Tariff Pa. P.U.C. No. 5, Rule 4.9.1 ("Replacement of Lead Service Pipes"), which will apply to Valley's customers after closing on the Transaction. Tr. ___. Since no customer-owned lead service lines are known to exist in the Water System, the cost of implementing this plan in Valley after closing is expected to be minimal. Tr. ____.

During calendar year 2020, there were 33 commercial meters in the Water System, but none of them were tested. Valley does not have a routine valve exercising or maintenance program, but approximately five valves were exercised during calendar year 2020. Valley St. No. 1W-S and No. 1WW-S p. 3.

The number of commercial and industrial customers with testable backflow prevention devices is unknown to Valley, and no backflow prevention devices were tested during calendar year 2020. Valley St. No. 1W-S and 1WW-S p. 3. PAWC's Commission-approved tariff includes rules requiring that residential customers have a check valve and that commercial and industrial customers have an approved backflow prevention device. *See, e.g.*, Tariff Pa. P.U.C. No. 5, Rule 4.6 ("Check Valve, Backflow Prevention Device and Service Pipe Strainers"). These tariff rules will apply to Valley's customers after closing on the Transaction. Tr. _____. Of course, public utility tariffs have the force and effect of law and are binding on the customer as well as the utility. *Penn. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281, 284 (Pa. Cmwlth.1995).

PAWC's Commission-approved tariff also includes rules prohibiting cross-connections. *See, e.g.*, Tariff Pa. P.U.C. No. 5, Rule 22 ("Prohibition of Cross-Connection"). These rules will apply to Valley's customers after closing on the Transaction. Tr. _____. PAWC already has the personnel and systems in place to implement these provisions in Valley. Tr. _____.

After closing on the Transaction, PAWC will update its Operation and Maintenance Plans (which are required by 25 Pa. Code § 109.702) to include the Water System. PAWC St. No. 2W-S and No. 2WW-S p. 6. In addition, PAWC will develop a calibrated hydraulic model for the Water System, including fire hydrants. PAWC regularly inspects and exercises valves and hydrants, and expects to integrate the Water System into PAWC's standard practices after closing.

PAWC St. No. 2W-S and 2WW-S, p.7; Tr. _____. PAWC already has the personnel and systems in place to perform these tasks. Tr. _____.

PAWC is in a better position than Valley to address lead service lines, cross-connections, backflow prevention, and fire hydrant testing due to its greater size, financial resources, and number of professionals experienced in water system operation and management. Tr. ____; PAWC St. 2W pp. 6-7. The Transaction, as described in the Application and the Settlement, has affirmative benefits of a substantial nature, is in the public interest, and should be approved.

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 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.

WHEREFORE, Pennsylvania-American Water Company respectfully requests that the ALJs 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.”

[Signature appears on next page.]

Respectfully submitted,



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Company*

Dated: August 3, 2021

Attachment B
Statement in Support of
Valley Township

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judges
Conrad A. Johnson and Emily I. DeVoe**

In 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 Valley Township’s : Docket No. A-2020-3019859, *et*
assets, properties and rights related to its : *al.*
water treatment and distribution system to Pennsylvania- :
American Water Company, and (2) the rights of :
Pennsylvania-American Water Company to begin to offer or :
Furnish water service to the public in Valley Township, a :
portion of West Caln and East Fallowfield Townships, :
Chester County, Pennsylvania. :

and

In 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 : Docket No. A-2020-3020178,
transfer, by sale, of substantially all of Valley Township’s : *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 Valley Township, and :
limited portions of East Fallowfield Township, Sadsbury :
Township, and West Caln Township, Chester County, :
Pennsylvania. :

STATEMENT OF VALLEY TOWNSHIP IN SUPPORT OF SETTLEMENT

TO ADMINISTRATIVE LAW JUDGES JOHNSON AND DEVOE:

Valley Township (“Valley” or the “Township”), by its attorneys, submits this statement in support of the Joint Petition for Approval of Unanimous Settlement of All Issues (“Settlement”) submitted to the Public Utility Commission (“Commission”) by Pennsylvania-American Water Company (“PAWC” or “Company”), the Bureau of Investigation and Enforcement (“I&E”), the

Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and Valley.¹ Valley respectfully requests that the Honorable Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

I. Introduction

These proceedings concern the October 9, 2020 applications of Pennsylvania-American Water Company (“PAWC”) for approval to acquire the water and wastewater system assets of Valley respectively pursuant to Sections 507, 1101 and 1329 of the Pennsylvania Public Utility Code (the “Code”). Although each application was docketed separately, the Commission has apparently consolidated them on its own motion. Consequently, these applications will be referred to collectively herein.

On August 3, 2021, the Joint Petitioners filed the Settlement proposing a resolution of all issues in the proceeding. Valley supports the Settlement and submits that it should be approved without modification because the settlement will further the public interest.

II. The Proposed Settlement is in the Public Interest

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

In *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825 (Pa. 1972) (“*City of York*”), the Pennsylvania Supreme Court explained that in the context of a utility merger, the

¹ PAWC, I&E, OCA, OSBA and Valley are, hereinafter, referred to, collectively, as “Joint Petitioners.”

issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger. Here, this is indeed the case, as the terms of the Settlement are in the public interest. Thus, the Settlement should be approved without modification.

A. The Proposed Settlement Minimizes Litigation and Administrative Burden

As a threshold matter, the proposed settlement should be approved because it is consistent with the Commission's policy to promote settlements over costly litigation. 52 Pa. Code § 5.231(a). Indeed, 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.

This would unequivocally be the case here. The Settlement allows the transactions at issue to proceed without further litigation or administrative review. It is thus consistent with well-established Commission policy.

B. PAWC is Undoubtedly Fit to Own and Operate Valley's Water and Wastewater Systems

When considering a transaction such as the two 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 Valley Water and Wastewater systems. 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. PAWC St. No. 1W, p. 17; PAWC St. No. 1WW, p. 17. Additionally, there are no pending legal proceedings that would suggest that PAWC is not legally fit to provide safe and adequate service. PAWC St. No. 1W, p. 17; PAWC St. No. 1WW, p. 17. 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 and annual revenues of \$689 million in 2019. PAWC St. No. 3W, p. 4; PAWC St. No. 3WW, p. 4. PAWC may also obtain additional financing through the \$400 million line of credit available through American Water Capital Corp. (“AWCC”), may additional equity investments through AWCC, and long-term debt financing at favorable interest rates and payment terms from AWCC, the Pennsylvania Infrastructure Investment Authority (“PENNVEST”), and Pennsylvania Economic Development Financing Authority (“PEDFA”). PAWC St. No. 3W, p. 4–5; PAWC St. No. 3WW, p. 4–5. As such, PAWC thus satisfies this criterion 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 a subsidiary of American Water Works Company, Inc., PAWC professionals have in-depth expertise in the operation of water systems and wastewater treatment technology, as well the experience available to support PAWC’s operations, staff, and facilities. PAWC St. No. 2W, p. 6; PAWC St. No. 2WW, p. 8. Further, the Valley Water and Wastewater systems will be managed as part of PAWC’s Coatesville water and wastewater departments respectively within PAWC’s Southeast Area operations—allowing for the seamless integration of

the Valley Water and Wastewater system into PAWC's current operations. PAWC St. No. 2W, p. 4; PAWC St. No. 2WW, p. 5.

C. The Public Will Benefit as a Result of the Settlement.

There is substantial evidence in support of the Settlement and the public benefits that will result from PAWC's acquisition of Valley's Water and Wastewater systems.

1. The Transaction Provides Considerable Public Benefit for Valley and its Customers.

For purposes of this Statement, Valley will focus primarily on the considerable benefits that will directly impact its residents and customers.

First, these Transactions will greatly improve the Township's financial condition by providing the Township with a significantly increased reserve fund balance. For example, the Township's current reserve fund is approximately \$1,166,367.43. Valley St. No. 1W, p. 10; Valley St. No. 1WW, p. 9. The sale of Valley's Water System will increase the current reserve fund by \$7,325,000—an amount that is more than 1.5 times the Township's typical yearly revenue. Valley St. No. 1W, p. 10. Additionally, the sale of Valley's Wastewater System will increase the current reserve fund by \$13,950,000—an amount that is more than 2.9 times the Township's typical yearly revenue. Valley St. No. 1WW, p. 9. This enhanced financial stability will help the Township eliminate debt, mitigate against the risk of any future revenue shortfalls, and can also be allocated to other redevelopment opportunities in the Township that would otherwise be unattainable. Valley St. No. 1W, p. 10; Valley St. No. 1WW, p. 9–10.

Additionally, the Township's customers will benefit from enhanced customer service and operational functions through PAWC's extended call center hours, additional bill payment options, and access to PAWC's customer assistance programs. PAWC St. No. 1W, p. 16; PAWC St. No. 1WW, p. 16. For example, PAWC provides customer service through a toll-free number that

customers can call from 7:00AM-7:00PM, Monday through Friday, as well as emergency support 24 hours a day, seven days a week. PAWC St. No. 2W, p. 12; PAWC St. No. 2WW, p. 13. With respect to Valley, customers will have the option to receive bills through the mail or review their bills electronically via PAWC's "My H2O" on-line portal. PAWC St. No. 2W, p. 12; PAWC St. No. 2WW, p. 13. No matter which option customers choose, they can pay their bill by mail, online, or over the phone with a debit or credit card. PAWC also has customer compliance teams and customer advocacy teams located in its Mechanicsburg office that are responsible for addressing customer disputes/escalated concerns and ensuring that any customer dispute and/or complaint is resolved in compliance with the Commission's regulations. PAWC St. No. 2W, p. 14; PAWC St. No. 2WW, p. 15. Lastly, as new PAWC customers, Valley's customers will have access to its customer assistance program "H2O Help to Others Program," which offers grants up to \$500 per year and a fifteen percent (15%) discount on total wastewater and water charges. PAWC St. No. 2W, p. 13; PAWC St. No. 2WW, p. 14. Customers that qualify for this program may also receive a water saving kit that includes a low-flow shower head and low-flow faucet aerators. PAWC St. No. 2W, p. 13; PAWC St. No. 2WW, p. 14.

Lastly, given the time and economic impact on the Township from dealing with its water and wastewater systems, the Transaction will permit the Township administration to reallocate administration time and expense to focus on other key initiatives in Valley. Valley St. No. 1W, p. 10; Valley St. No. 1WW, p. 10.

2. The Transaction Provides Other Benefits As Well

Other considerable benefits of the 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 St. No. 3W, p. 9; PAWC St. No. 3WW, p. 9. 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. Lastly, PAWC has committed to preserving all jobs related to Valley's system. *See* Valley St. No. 1W, p. 11; Valley St. No. 1WW, p. 10.

D. The Conditions Agreed-to by PAWC Further Ensure that the Transaction Provides Considerable Public Benefit

PAWC has agreed, in the settlement, to several conditions to be imposed by the Commission on approval of the transaction. The imposition of conditions is consistent with Section 1103(a) of the Code. The conditions include:

- PAWC will complete an Inflow and Infiltration study of the Valley Wastewater System following closing, and provide the results of that study to I&E, OCA, and OSBA upon completion. Settlement ¶ 34.
- In the first base rate case that includes Valley's Water system assets, PAWC will propose to move the Valley system to 2.0x the current Valley water rate or PAWC's proposed Rate Zone 1 system-average, whichever is lower. *Id.* ¶ 37(A). The current average Valley rate is \$30.05 per month based on 3,630 gallons of monthly usage. *Id.* ¶ 37(E).
- In the first base rate case that includes Valley's Wastewater system assets, PAWC will propose to move the Valley system to 1.25x the current Valley water rate or PAWC's proposed Rate Zone 1 system-average, whichever is lower. *Id.* ¶ 36(A). The current average Valley rate is \$62.25 per month based on 3,630 gallons of monthly usage. *Id.* ¶ 36(E).
- PAWC may agree to rates other than those proposed for Valley customers in the context of a settlement of both base rate cases, and the statutory advocates reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals. *Id.* ¶ 36(C)–(D); *id.* ¶ 37(C)–(D).

- PAWC will send a welcome letter to the acquired water and wastewater customers within the first billing cycle following the transaction 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. PAWC also committed to ongoing targeted outreach to Valley-area customers regarding its low income programs. Lastly, PAWC will inform the acquired customers that they are being converted to monthly billing. *Id.* ¶¶ 42, 43.

Via these conditions, Joint Petitioners have reached resolution on all outstanding issues in order to ensure that the transaction provides public benefit.

III. Fair Market Valuation

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.

For the Transaction at issue, PAWC and Valley negotiated a purchase price of \$13,950,000 for Valley’s Wastewater System, and \$7,325,000 for Valley’s Water System, which was the result of voluntary arm’s length negotiations. Valley engaged the services of Gannett Fleming Valuation and Rate Consultants, LLC (“Gannett”) to provide a fair market value appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”), utilizing the cost, market and income approaches for both systems. Valley St. No. 1W, p. 9; Valley St. 1WW, p. 10. PAWC engaged AUS Consultants, Inc. (“AUS”) for the same purpose. PAWC St. No. 1W, p. 9; PAWC St. No. 1WW, p. 9.

Gannett's fair market value appraisal for Valley's Water System is \$10,532,000. Valley St. No. 2W, p. 13. AUS's fair market value appraisal Valley's Water System is \$11,570,369. PAWC St. No. 4W, p. 3. The average of the two appraisals is \$11,051,185. PAWC Statement No. 3W, p. 6. As a result, the ratemaking rate base for Water determined pursuant to Section 1329(c)(2) of the Code is \$7,325,000, the lesser of the negotiated purchase price and the average of the appraisals. Settlement ¶ 30.

Gannett's fair market value appraisal for Valley's Wastewater System is \$19,846,000. Valley St. No. 2WW, p. 13. AUS's fair market value appraisal Valley's Wastewater System is \$19,081,059. PAWC St. No. 4WW, p. 3. The average of the two is \$19,463,530. PAWC Statement No. 3WW, p. 6. As a result, the ratemaking rate base for the Wastewater System determined pursuant to Section 1329(c)(2) of the Code is \$13,950,000, the lesser of the negotiated purchase price and the average of the appraisals. Settlement ¶ 30.

IV. Section 507 Approval and Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code

A. Section 507 Approval Should Be Given

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, the following agreements: the Sanitary Sewer Asset Purchase Agreement By and Between Valley as Seller and PAWC as Buyer, dated December 17, 2019; The November 16, 1988 Sewer and Water Service Agreement Between West Caln Township, Valley, Valley Township Authority, and Highlands Corporate Center; the Water Asset Purchase Agreement By and Between Valley as Seller and PAWC as Buyer, dated as of December 17, 2019; and The

November 5, 2011 Agreement between Valley and Sadsbury Township. *Id.* ¶ 44.

B. Other Approvals, Certificates, Registrations and Relief

As a final matter, Valley 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 Valley water and wastewater system assets. *Id.* ¶ 45.

V. CONCLUSION

Valley respectfully requests that the Honorable Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe recommend approval of, and the Public Utility Commission approve, the Joint Petition for Approval of Settlement without modification.

Respectfully submitted,

/s/ Thomas Wyatt

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Date: August 3, 2021

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 Nos. A-2020-3019859
of the Water and Wastewater System Assets of Valley : A-2020-3020178
Township :

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

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of 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 October 9, 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 Valley Township's (Township or Valley) water treatment and distribution system (Valley Water) and Valley Township's wastewater collection and conveyance system (Valley Wastewater) (collectively, Systems), the right of PAWC to provide water and 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.

On November 5, 2020, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. The OCA filed a Protest, Public Statement, and Notice of Appearance on December 23, 2020. The Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement on January 5, 2021.

By Secretarial Letter dated March 19, 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 water and 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 April 5, 2021, PAWC filed a letter, with an attached verification, stating that it had complied with the notice requirements contained in the March 19, 2021 Secretarial Letter. By Secretarial Letter dated May 18, 2021, the Commission informed PAWC that it had accepted the Application for filing. On May 21, 2021, Valley Township filed a Petition to Intervene.

A telephonic prehearing conference was held on June 21, 2021 before Administrative Law Judges (ALJs) Emily I. DeVoe and Conrad A. Johnson, at which time a litigation schedule and discovery modifications were adopted. On June 28, 2021, the ALJs 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 July 20, 2021. On July 1, 2021, Commissioner Ralph V. Yanora directed the parties to address certain issues, including questions pertaining to Company-owned lead service lines, fire hydrants, and backflow prevention devices. On July 21, 2021, the Company submitted Supplemental Direct Testimony addressing

Commissioner Yanora's directed questions and during the evidentiary hearing on July 23, 2021, the Presiding Officers asked PAWC's witnesses additional, related questions. All parties to the case joined in the Settlement filed on August 3, 2021.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

A. Approval of the Application ¶ 28.

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 ¶ 29.

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

C. Fair Market Value for Ratemaking Rate Base Purposes ¶ 30.

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 \$13,950,000 ratemaking rate base for the Valley Wastewater System and \$7,325,000 for

the Valley Water System. As the requested ratemaking rate bases are less than the average of the UVE appraisals, in furtherance of settlement, the OCA does not oppose PAWC's request.

D. Fair Market Value Appraisals ¶ 31.

Based on appraisals presented by PAWC and the Township (\$19,081,000 and \$19,846,000 for the Valley Wastewater System, and \$11,051,185 and \$10,532,000 for the Valley Water System, respectively), PAWC sought a ratemaking rate base of \$13,950,000 for the Valley Wastewater System and \$7,325,000 for the Valley Water System, which was the price PAWC agreed to pay for the Township's Systems, respectively.¹ 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 31, 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 ¶ 32.

As part of the settlement, in Paragraph 32 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

¹ Application, App. A-11.

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 ¶¶ 33.

As part of the Settlement, PAWC and Valley agreed to continue working to achieve transfer of all real estate, easement rights, access to public rights-of-way, and liens that must be transferred to PAWC by Closing. This provision helps to ensure that PAWC will obtain all transfers necessary to provide service consistent with its Applications.

G. Inflow and Infiltration Study ¶ 34.

Under the terms of the Settlement, PAWC is required to complete an Inflow and Infiltration (I&I) study of the Valley Wastewater 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 ¶¶ 35-37.

Valley is currently a bulk wastewater and water customer of PAWC and, upon acquisition will continue to be served by PAWC's Coatesville wastewater and water treatment plants. PAWC St. 3WW at 21-22; PAWC St. 3W at 19-20. As such, for purposes of submitting Cost of Service Studies (COSSs) for the acquired Systems in its next base rate case, PAWC proposed that the Valley Systems be included in the COSSs that include the Coatesville water and wastewater

treatment plants rather than in separate COSSs.² Id. The information from those studies will be available for the purpose of establishing rates that reflect the costs for the Valley systems.

The Joint Petition provides that, in the first rate case in which PAWC includes the Township's wastewater system assets in rate base, PAWC will propose to move the Township's wastewater system assets to 1.25x the current Valley wastewater rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower.³ Additionally, the Joint Petition provides that, in the first rate case in which PAWC includes the Township's water system assets in rate base, PAWC will propose to move the Township's water system assets to 2.0x the current Valley water rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower. These 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 Valley systems.

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

I. Distribution System Improvement Charge, Settlement ¶ 38.

The parties to the proposed Settlement agreed that PAWC may apply its water and wastewater DSICs to customers in the Township's service area prior to the first base rate case in

² This is a departure from prior Section 1329 settlements where PAWC has agreed to submit a cost of service study removing the revenues, expenses and rate base associated with the acquired system and a separate cost of service study for the acquired system. PAWC St. 3WW at 21; PAWC St. 3W at 19. The difference is due to the Valley Township customers already being physically connected to the Coatesville system and served by PAWC-owned facilities. Id.

³ The current average Valley 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.

which the water and/or wastewater system's plant in service is incorporated into rate base pursuant to Section 1329(d)(4) if certain conditions are met. In particular, Paragraph 38 states that PAWC will revise its water and wastewater Long Term Infrastructure Improvement Plans (LTIP) to include Valley Township and related projects before it begins charging DSICs to those customers. Further, Paragraph 38 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 settlement term also allows for Valley Township customers to begin contributing, up to 5% of their total water and wastewater bill, toward DSIC-eligible capital projects.

J. Allowance for Funds Used During Construction (AFUDC) ¶ 39.

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 Valley's water and 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 39 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 ¶¶ 40-41.

Paragraph 40 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 41 reflects PAWC's agreement to separately identify any outside legal fees included in its transaction and closing costs pursuant to the Asset Purchase Agreements between PAWC and Valley 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 Agreements in future rate cases.

L. Low Income Program Outreach, Settlement ¶¶ 42-43.

PAWC has agreed to provide information about PAWC's low income programs in a welcome letter to the Valley Township water and wastewater 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 Valley-area water and wastewater customers regarding its low income program. Additionally, as noted in Paragraph 43, in the same welcome letter referenced above, PAWC will explicitly inform acquired customers that they are being converted to monthly billing.

The OCA submits that this provision is reasonable and will provide timely information that may be helpful to some of the Valley customers.

M. Approval of Section 507 Agreements ¶¶ 44.

Under Paragraph 44 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.

N. Other Necessary Approvals ¶ 45.

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.

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: August 3, 2021
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Attachment D
Statement in Support of
Office of Small Business Advocate

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In 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 Valley Township’s assets, properties and rights related to its water treatment and distribution system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish water service to the public in Valley Township, a portion of West Caln and East Fallowfield Townships, Chester County, Pennsylvania.

Docket Nos.
A-2020-3019859, *et al.*

And

In 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 Valley 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 Valley Township, and limited portions of East Fallowfield Township, Sadsbury Township, and West Caln Township, Chester County, Pennsylvania.

Docket Nos.
A-2020-3020178, *et al.*

**STATEMENT OF THE OFFICE OF SMALL BUSINESS ADVOCATE
IN SUPPORT OF THE JOINT PETITION FOR APPROVAL OF 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.

II. PROCEDURAL BACKGROUND

On October 9, 2020, Pennsylvania-American Water Company (“PAWC” or the “Company”) filed an Application for approval of the transfer, by sale, of substantially all of Valley Township’s (“Valley”) assets, properties and rights related to its water treatment and distribution system to PAWC (“*Water Application*”). Also on October 9, 2020, PAWC filed an Application for approval of the transfer, by sale, of substantially all of Valley’s asset, properties and rights related to its wastewater collection and conveyance system (“*Wastewater Application*”). The *Water Application* was docketed to No. A-2020-3019859. The *Wastewater Application* was docketed to No. A-2020-3020178.

The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed its Notice of Appearance at both dockets on November 5, 2020.

On November 5, 2020, PAWC filed responses to the Bureau of Technical Utility Services’ (“TUS”) Application Completeness Review of the *Wastewater Application*.

On November 6, 2020, PAWC filed amended responses to TUS’s Application Completeness Review of the *Wastewater Application*.

On November 10, 2020, PAWC filed responses to TUS’s Application Completeness Review of the *Water Application*.

On November 23, 2020, PAWC filed additional responses to TUS's Application Completeness Review of the *Water Application*.

On December 1, 2020, PAWC filed amendments to the *Water Application*.

On December 23, 2020, the Office of Consumer Advocate ("OCA") filed a Notice of Appearance, Protest and Public Statement at both dockets.

On January 5, 2021, the OSBA filed a Notice of Appearance, Notice of Intervention, and Public Statement at both dockets.

On January 11, 2021, a Secretarial Letter was issued which extended the initial review period of the *Wastewater Application*.

On February 8, 2021, PAWC filed additional responses to TUS's Application Completeness Review of the *Wastewater Application*.

On March 5, 2021, PAWC filed an update to its responses to TUS's Application Completeness Review of the *Wastewater Application*.

On March 15, 2021, PAWC filed another update to its responses to TUS's Application Completeness Review of the *Wastewater Application*.

By Secretarial Letter dated March 19, 2021, the *Water Application* and the *Wastewater Application* were conditionally accepted by the Commission.

On March 22, 2021, PAWC filed letters at both dockets requesting a Secretarial Letter to be issued setting a deadline for protests or petitions to intervene.

On March 25, 2021, a Secretarial Letter was issued at each docket in response to PAWC's letters and June 21, 2021 was set as the deadline for protests or petitions to intervene for both dockets.

On April 5, 2021, PAWC filed letters at both dockets containing a copy of the customer notice that PAWC intended to distribute regarding the Applications.

On April 9, 2021, PAWC filed letters at both dockets to request that Appendix A-24-a to the Applications no longer be designated as confidential.

On May 11, 2021, PAWC filed letters at both dockets certifying compliance with service and notification requirements, and requesting that the Commission accept the Applications and publish notice in the Pennsylvania Bulletin.

On May 18, 2021, the Commission issued a Secretarial Letter at each docket accepting PAWC's *Water Application* and *Wastewater Application* for filing.

On May 18, 2021, a Notice was issued at both dockets a telephonic Pre-Hearing Conference for June 23, 2021 before Administrative Law Judge ("ALJ") Conrad A. Johnson and ALJ Emily DeVoe. ALJ Johnson and ALJ DeVoe issued a Prehearing Conference Order on May 18, 2021.

On May 19, 2021, PAWC filed a Motion to Consolidate the proceedings at Docket Nos. A-2020-3019859 and A-2020-3020178

Valley Township filed a Petition to Intervene at both dockets on May 21, 2021.

The telephonic Prehearing Conference was held as on June 23, 2021 at which time PAWC's Motion to Consolidate and Valley's Petition to Intervene were granted.

The ALJs issued their Prehearing Order on June 28, 2021.

On July 1, 2021, Commissioner Ralph V. Yanora directed the parties to address certain issues, including questions pertaining to company-owned lead service lines, testing of commercial meters and valves and backflow prevention devices.

A telephonic public input hearing was held at 6:00 p.m. on July 20, 2021 at which one witness testified.

On July 21, 2021, PAWC and Valley submitted the supplemental direct testimony.

The parties engaged in settlement discussions. An evidentiary hearing was held on July 23, 2021.

Through negotiations, the parties reached a settlement of all issues.

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

III. STATEMENT IN SUPPORT OF SETTLEMENT

A. Approval of the Applications

As a term of the *Settlement*, the OSBA agrees that the Commission should approve PAWC’s acquisition of Valley’s water and wastewater systems. (*Settlement*, ¶ 28, at p. 6). Following investigation, the OSBA is satisfied that PAWC has demonstrated compliance with 66 Pa. C.S. §§ 1102 and 1329 in its *Water Application* and *Wastewater Application*, as modified by the *Settlement*.

B. Tariffs

As the OSBA supports the approval of PAWC’s acquisition of Valley’s water and wastewater systems, it also agrees as part of the *Settlement* that the *pro forma* tariff submitted as Amended Appendix A-12 for Valley’s Water System, and the *pro forma* tariff submitted as Second Amended Appendix A-12 for Valley’s Wastewater System, including all rates, rules and regulations regarding conditions of PAWC’s water and wastewater service, shall be permitted to become effective immediately upon closing of

the acquisitions. (*Settlement*, ¶ 29, at p. 7). Throughout this proceeding the OSBA has had the opportunity to review, question, and comment on the *pro forma* tariffs and is satisfied that the tariffs submitted with the *Water Application* and *Wastewater Application* are proper.

C. Fair Market Value for Ratemaking Rate Base Purposes

The *Settlement* includes a provision that permits PAWC to use \$13,950,000 for ratemaking rate base purposes for the acquired Wastewater System, and \$7,325,000 for the acquired Water System, effective as of the Closing Date. (*Settlement*, ¶ 30, at p. 7). The OSBA determined that the ratemaking rate base figures were appropriate pursuant to 66 Pa. C.S. § 1329(c)(2).

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). (*Settlement*, ¶ 31, at p. 7). 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. (*Settlement*, ¶ 32, at p. 7).

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 Agreements (“APAs”) 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. (*Settlement*, ¶ 33 at pp. 7-8). PAWC must also provide updates at certain times to I&E, OCA and the OSBA (collectively, the “Statutory Advocates”) regarding the status of the transfer of real property rights. (*Settlement*, ¶ 33 at pp. 7-8). With the requirement to update the Statutory Advocates, the OSBA has the means to monitor these transfers, and take corrective action if necessary.

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 Valley wastewater system following closing will provide the Statutory Advocates with greater information regarding the operation of the Valley wastewater system, and will assist these offices in discharging their duties to the public. (*Settlement*, ¶ 34, at p. 8).

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 “to address PAWC’s rate proposals fully, and to make other rate proposals.” (*Settlement*, ¶¶ 36d, 37d, at pp. 8-9). Furthermore, the OSBA’s rights are additionally preserved in Paragraph 35, which states that “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 Valley’s water or wastewater rates in a future PAWC proceeding.”

(*Settlement*, ¶ 35, at p. 8).

This section additionally requires PAWC to propose to move the Valley water system customers to 2.0x the current Valley water rate or PAWC’s proposed Rate Zone 1 system-average water rates (whichever is lower) and to propose to move the Valley wastewater system customers to 1.25x the current Valley wastewater rate or PAWC’s proposed Rate Zone 1 system-average for wastewater rates, whichever is lower.

(*Settlement*, ¶¶ 36a, 37a, at p. 8). The OSBA is satisfied that these provisions protect PAWC’s current customers from subsidizing the newly acquired customers on the Valley water and wastewater systems.

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 Valley water or wastewater service area plant-in-service is incorporated into rate base. (*Settlement*, ¶ 38, at p. 9). 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 Valley's water or wastewater system assets. (*Settlement*, ¶ 39, at pp. 9-10). 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. (*Settlement*, ¶ 39, at p. 10).

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. (*Settlement*, ¶¶ 40, 41, at p. 10).

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. (*Settlement*, ¶¶ 42, 43, at pp. 10-11).

M. Approval of Section 507 Agreements

As the OSBA has determined that the relief requested in the *Water Application* and *Wastewater 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. (*Settlement*, ¶ 44, at p. 11).

N. Other Necessary Approvals

As the OSBA has determined that the relief requested in the *Water Application* and *Wastewater 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 Valley water and wastewater systems by PAWC. (*Settlement*, ¶ 45, at p. 11).

O. Public Input Hearing

The OSBA agrees that all parties cooperated in good faith to schedule a public input hearing in this matter. (*Settlement*, ¶ 46, at p. 11). The OSBA additionally agrees that the notification measures described in the *Settlement* were adequate to inform customers of their opportunity to attend and testify at the public input hearing. (*Settlement*, ¶ 46, at p. 11).

IV. CONCLUSION

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 ALJs Johnson and DeVoe and the Commission approve the *Settlement* in its entirety without modification.

Respectfully submitted,

Erin K. Fure

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For:

Small Business Advocate

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Dated: August 3, 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 Valley Township’s Water : Docket No.: A-2020-3019859 (Water)
Assets, inter alia, Pursuant to Sections :
507, 1102 and 1329 of the Public Utility :
Code :

Application of Pennsylvania-American :
Water Company for Approval of its :
Acquisition of Valley Township’s : Docket No.: A-2020-3020178 (Wastewater)
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 UNANIMOUS SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGES CONRAD A. JOHNSON AND EMILY DEVOE:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor Erika L. McLain, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Approval of 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”), and Valley Township (“Valley”), parties to the above-captioned proceeding (collectively, the “Joint Petitioners”).

I. INTRODUCTION

A. Procedural History

1. On October 9, 2020, PAWC filed with the Commission its Applications pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”), for, *inter alia*, (1) approval of its acquisition of the water and wastewater system assets of Valley Township (“Valley”); (2) approval of PAWC’s right to begin to offer, render, furnish and supply water and wastewater service to the public in portions of Chester County, Pennsylvania; (3) an order approving the acquisition that includes the ratemaking rate base of the Valley water and 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. By Secretarial Letter dated March 19, 2021 the Commission acknowledged receipt of PAWC’s Applications, but it indicated that the Applications 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.

3. The following entities made filings regarding participation in this case: on November 5, 2020, I&E filed its Notice of Appearance in this case. On December 23, 2020, the OCA filed a Protest and Public Statement in this case, and on January 5, 2021, the OSBA

filed a Notice of Intervention and Public Statement. On May 21, 2021, Valley Township filed a Petition to Intervene.

4. On May 11, 2021, PAWC served the Commission's Secretary with notice certifying that it fulfilled the conditions outlined in the Secretarial Letter of March 19, 2021; therefore, PAWC requested that its Applications be accepted for filing. By way of a Secretarial Letter of May 18, 2021, the Commission informed PAWC that its Applications were accepted for filing.

5. On May 19, 2021, PAWC filed a Motion to Consolidate the Water Application and the Wastewater Application.

6. On May 29, 2021, the Commission published notice of PAWC's Application in the Pennsylvania Bulletin, and it established a protest deadline of June 21, 2021. Thereafter, PAWC's Application was assigned to the Office of Administrative Law Judge, with Administrative Law Judges Conrad A. Johnson and Emily Devoe ("ALJs") presiding.

7. As a result of PAWC's willingness to begin the discovery process far earlier than the May 18 date for its Application's full acceptance, the Joint Petitioners had the opportunity to investigate PAWC's Application in full and at length early in this proceeding. 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. 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 June of 2021.

9. On June 16, 2021, counsel for PAWC contacted the ALJs via email to indicate that the Joint Petitioners had reached a settlement in principle on all issues.¹

10. A telephonic Prehearing Conference was held on Wednesday, June 23, 2021, at 10:00 a.m., before the ALJs. During the hearing, the parties and ALJs established a litigation schedule and the procedures that would apply to this case and granted PAWC's Motion to Consolidate the Water and Wastewater Applications. The determinations made at the Prehearing Conference were memorialized in the ALJs' Prehearing Order dated June 28, 2021.

11. On June 20, 2021, a telephonic public input hearing was held in this case at 6 p.m. One witness testified at this hearing.

12. On July 1, 2021, Commissioner Ralph V. Yanora issued directed questions to address certain issues.

13. On July 21, 2021, PAWC and Valley submitted supplemental direct testimony addressing Commissioner Yanora's directed questions.

14. As a global settlement among all parties was reached, all parties agreed to waive cross-examination of witnesses in this case.

15. The evidentiary hearing was held as scheduled on July 23, 2021.

¹ Notwithstanding the settlement, the Joint Petitioners reserved the right to address public input testimony and to address any other parties' positions in this case.

16. Consistent with the deadline set forth in the ALJs' Prehearing Order, on August 3, 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.² The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103³ 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.”⁴ 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.⁵ 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 Valley Township.⁶ In addition to assessing fitness, the Commission should consider

² 66 Pa. C.S. § 1102(a).

³ 66 Pa. C.S. § 1103.

⁴ 66 Pa. C.S. § 1103(a).

⁵ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

⁶ *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).

the benefits and detriments of the transaction “with respect to the impact on all affected parties”⁷ 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.⁸

(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 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.”⁹

(iii) Legal Standard for Section 507 Approval

PAWC’s request to assume enumerated municipal contracts currently held by Valley Township 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

⁷ *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984).

⁸ 66 Pa. C.S. § 1103(a).

⁹ 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).

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.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

It is the policy of the Commission to encourage settlements.¹⁰ 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 ALJs 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

¹⁰ 52 Pa. Code § 5.231.

Certificate of Public Convenience pursuant to 66 Pa. C.S. §1102(a). PAWC's Application requests permission for it to acquire substantially all Valley Township's assets, properties and rights related to its water and wastewater system and to obtain the Certificates of Public Convenience necessary for it to begin to offer water and wastewater service to the public in the Service Area. In total, through this acquisition, PAWC is seeking to provide service to Valley's approximately 1,670 water customers¹¹ and 3,125 wastewater customers.¹² The record supports the findings that PAWC is technically, legally, and financially fit to acquire the Valley's water and wastewater services,¹³ and no party has refuted those claims in the record.

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.¹⁴ 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

¹¹ PAWC Application at Docket No. A-2020-3019859, ¶ 8.

¹² PAWC Application at Docket No. A-2020-3020178, ¶ 8.

¹³ PAWC Application, Appendix A-14, St. No. 1W and 1WW, pp. 17-18.

¹⁴ PAWC, St. No. 1W, pp. 13-17 and PAWC, St. No. 1WW, pp 13-16..

PAWC's Application, as modified by the Joint Petition, now meets the requisite standards for approval.

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 Valley'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 water and 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 \$13.95 million for Valley's wastewater system and \$7.325 million for Valley's water system, predicated upon PAWC and Valley's negotiated purchase prices, 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 values of \$13.95 and \$7.325 million. Because it is I&E's position that PAWC's proposed rate

making rate base for both the water and wastewater systems 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 order to prevent confusion, to remove uncertainty, and for ease of reference in the future, 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

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. 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. 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&E supports this term 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 Valley would be transferred, and at Valley'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 Valley 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 Valley 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.¹⁵

¹⁵ PAWC's Application (Appendix A-24-a), Section 4.16, p. 20.

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 Valley's progress in meeting its property transfer obligations. Through this reporting mechanism, 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 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.

G. INFLOW AND INFILTRATION STUDY

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. 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 Valley Township provide one as part of the Section 1329 process. 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 Valley wastewater 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.¹⁶ 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 Valley's customers as, for purposes of the acquisition, PAWC proposes to adopt the rates of Valley at the time of closing, and this is consistent with Section 1329 provisions.¹⁷ However, I&E reserves the right to address Valley'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 Valley customers in the future because doing so may rely upon assumptions that may prove to be inaccurate and may not account for information and 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

¹⁶ 66 Pa. C.S. § 1501.

¹⁷ 66 Pa. C.S. §1329(d)(v).

ability to address rates in the future while correctly recognizing the Commission’s ultimate authority to set rates.

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 because PAWC has agreed that existing commitments will not be re-prioritized as a result of this term. With this in mind, acquired Valley customers will benefit from improved water and 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 Valley’s water and 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,¹⁸ 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. 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 Valley 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 Valley, I&E has preserved its ability to challenge the permissibility of any claims that PAWC may make for Valley's legal fees in its next base rate case, which is consistent with I&E's obligation to enforce the Code.

Furthermore, as a condition of this portion of the Settlement, PAWC agreed that if it ever does make a claim for any Valley 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

¹⁸ 66 Pa. C.S. §1329(f).

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 Valley'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 Valley 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.¹⁹

Additionally, as part of the Joint Petition for Settlement, PAWC agreed to send a welcome letter to Valley customers within the first billing cycle following closing which will include information regarding the conversion from quarterly billing²⁰ to monthly billing for their service. I&E fully supports this term, as its investigation identified a concern regarding whether Valley's customers were explicitly informed of the timing change so that they

¹⁹ 66 Pa. C.S. § 1402(3).

²⁰ PAWC St. No. 2W, p. 12 and PAWC St. No. 2WW, p.14..

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 water and 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 and thus within the public interest.

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 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 July 20, 2021 at 6 p.m. At the hearing, one witness testified in support of PAWC's proposed acquisition of Valley Township's water and wastewater assets.

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 ALJs recommend 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 ALJs in their 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 Judges Conrad A. Johnson and Emily Devoe and, thereafter, the Commission, approve the terms and conditions contained in the foregoing Joint Petition for Approval of Unanimous Settlement of All Issues without modification.

Respectfully submitted,



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Dated: August 3, 2021