PENNSYLVANIA

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

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| Public Meeting held October 28, 2021 | |
| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  John F. Coleman, Jr., Vice Chairman  Ralph V. Yanora  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, and in a portion of West Caln and East Fallowfield Townships, Chester County, Pennsylvania  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 | A-2020-3019859  A-2020-3020178 |
| **OPINION AND ORDER** | |

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Exception of Pennsylvania-American Water Company (PAWC or Company) filed on September 10, 2021, in the above-captioned proceeding. The Exception was filed in response to the Recommended Decision of Administrative Law Judges (ALJs) Conrad A. Johnson and Emily I. DeVoe issued on August 31, 2021. On September 14, 2021, the Bureau of Investigation and Enforcement (I&E) filed a letter in support of PAWC’s Exception.[[1]](#footnote-2) Also, before the Commission is the Joint Petition for Approval of Unanimous Settlement of All Issues (Joint Petition or Settlement) filed by PAWC, the OCA, I&E, the OSBA, and Valley Township (Valley or Township) (collectively, Joint Petitioners) on August 3, 2021. For the reasons below, we shall grant the Exception, adopt the Recommended Decision, as modified, and approve the Joint Petition, without modification, as being in the public interest.

# History of the Proceeding

This matter concerns two Applications of PAWC filed on October 9, 2020, pursuant to Sections 507, 1102, and 1329 of the Public Utility Code (Code), 66 Pa. C.S. §§ 507, 1102, and 1329. In its Application at Docket No. A-2020-3019859 (Water Application), PAWC requested Commission approval of the acquisition of Valley’s water treatment and distribution system and the right of the Company to provide water service in the areas served by the Township. The Water Application also requested, pursuant to Section 1329(c)(2), the Commission’s approval of a ratemaking rate base value of the assets to be acquired by the Company in the amount of $7,325,000. 66 Pa. C.S. § 1329(c)(2).

In its Application at Docket No. A-2020-3020178 (Wastewater Application), PAWC requested Commission approval of the acquisition of Valley’s wastewater collection and conveyance system and the right of the Company to provide wastewater service in the areas served by the Township. The Wastewater Application also requested, pursuant to Section 1329(c)(2), the Commission’s approval of a ratemaking rate base value of the assets to be acquired by the Company in the amount of $13,950,000. 66 Pa. C.S. § 1329(c)(2).

On November 5, 2020, I&E filed a Notice of Appearance. The OCA filed a Protest, a Public Statement, and a Notice of Appearance on December 23, 2020.

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

On May 18, 2021, the Commission issued a Secretarial Letter accepting the Applications as complete. Notices of the Applications were published in the *Pennsylvania Bulletin* on May 29, 2021, which advised that any protests and petitions to intervene must be filed by June 21, 2021. 51 *Pa. B.* 3078 (Water Application) and 51 *Pa. B.* 3079 (Wastewater Application).

On May 19, 2021, PAWC filed a Motion to Consolidate the Applications. Also, on May 21, 2021, Valley filed a Petition to Intervene in each of these proceedings. No other petitions to intervene or protests were filed.[[2]](#footnote-3)

On June 23, 2021, the ALJs convened a prehearing conference at which the Motion to Consolidate the Applications and the Petition to Intervene were granted.

By letter dated July 1, 2021 (Directed Questions), Commissioner Ralph V. Yanora directed the Parties to address certain issues, including questions pertaining to customer-owned lead service lines, testing of commercial meters and valves and backflow prevention devices.

On July 20, 2021, a public input hearing was held telephonically. One person presented an on-the-record statement in support of the Applications.[[3]](#footnote-4)

On July 21, 2021, PAWC submitted supplemental direct testimony of Michael J. Guntrum, P.E., and Valley submitted supplemental direct testimony of Patrice Proctor, addressing the Directed Questions.

The evidentiary hearing convened as scheduled on July 23, 2021. Testimony was provided by Mr. Guntrum and Ms. Proctor concerning the Directed Questions, and the written testimony and exhibits of all the Parties were admitted into evidence. During the hearing the Parties advised the presiding officers that they had reached an agreement in principle to resolve all issues involved in these proceedings.

On August 3, 2021, the Joint Petitioners filed the Joint Petition seeking Commission approval of the Settlement. Attached to the Joint Petition were the Statements in Support of the Settlement of PAWC, Valley, the OCA, the OSBA and I&E. By Interim Order dated August 25, 2021, the ALJs admitted into the record the Joint Petition and the Statements in Support of the Settlement and closed the record.

In the Recommended Decision issued on August 31, 2021, the ALJs recommended that the Commission approve the Settlement with modification because the Settlement as modified is supported by substantial evidence and is in the public interest. R.D. at 1.[[4]](#footnote-5)

On September 10, 2021, PAWC filed its Exception objecting to the modification made by the ALJs. As indicated above, I&E filed a letter in support of the Exception on September 14, 2021. No Replies to the Exception have been filed.

# II. Discussion

## A. Legal Standards

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

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

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

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

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

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

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

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

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

The Supreme Court further held:

In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

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

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

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

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

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

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

To obtain a Certificate, the acquiring public utility has the burden, by a preponderance of the evidence, to establish that it is technically, legally, and financially fit to provide the proposed service. *McCloskey*, 195 A.3d at 1058. An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the certificate holder has a propensity to operate legally. *Lehigh Valley Transp. Servs., Inc. v. Pa. PUC*, 56 A.3d 49, 58 (Pa. Cmwlth. 2012) (*Lehigh Valley Transp.*); *South Hills Movers, Inc. v. Pa. PUC*,601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). It is the protestant’s burden to rebut that presumption. *Lehigh Valley Transp.* Where an Applicant is both presumed fit and sets forth affirmative evidence demonstrating fitness, this burden is particularly heavy. *Id.*

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

Section 1329 of the Code establishes a process for ratemaking purposes to value the plant of municipal-owned water and wastewater systems to be acquired by certificated public utilities. 66 Pa. C.S. § 1329.[[5]](#footnote-6) Under Section 1329, the value of water and wastewater system assets to be included in the acquiring utility’s rate base for ratemaking purposes will be the lesser of the purchase price negotiated by the acquiring utility and seller or the “fair market value” of the selling utility’s system. 66 Pa. C.S. § 1329(c)(2).

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

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

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

### 4. Utility-Municipal Contracts, 66 Pa. C.S. § 507

Section 507 of the Code provides as follows regarding a utility’s contract with a municipal corporation:

Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date. Upon notice to the municipal authorities, and the public utility concerned, the Commission may, prior to the effective date of such contract or agreement institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the Commission grants its approval thereof.

66 Pa. C.S. § 507. Thus, pursuant to Section 507, the Commission has discretionary power to institute proceedings to determine the reasonableness, legality and validity of the contracts between a municipality and a public utility. *Id*.; *see also County of Allegheny v. Pa. PUC*,159 A.2d 227, 233 (Pa. Super. 1960).

### 5. Settlements in the Public Interest

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case. *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R‑2015‑2468056, *et al.* (Order entered December 3, 2015) at 6-7. Despite this policy, the Commission does not simply rubber stamp settlements without determining whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M‑00031768 (Order entered January 7, 2004); *Pa. PUC v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

### 6. General Standards

In the Recommended Decision, the ALJs made sixty Findings of Fact and reached twenty-four Conclusions of Law. *See* R.D. at 17-29, 84-87. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

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

## B. Transaction Overview

PAWC, a subsidiary of American Water Works Company, Inc. (American Water), is the largest regulated water and wastewater public utility duly organized and existing under the laws of the Commonwealth of Pennsylvania. PAWC furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in thirty-six counties and serves a combined population of over 2,400,000 residents across the Commonwealth. As of August 31, 2020, PAWC furnished water services to approximately 671,431 customers, and wastewater services to approximately 75,253 customers, in Pennsylvania. PAWC St. 1W at 13, 14; PAWC St. 1WW at 15.

Valley is a Second Class Township in Chester County, Pennsylvania with approximately 7,600 residents. Its water system is supplied by Township-owned wells and bulk water purchased from PAWC. Valley has a water treatment plant, a 150,000-gallon elevated tank, and approximately twenty-two miles of water mains. The water sources and the water system customers are metered. As of March 31, 2020, the Township’s water system provided service to approximately 1,670 customers, including Valley residents and twenty-two residents of West Caln and East Fallowfield Townships. Valley St. 1W at 5; PAWC St. 1W at 15.

On December 17, 2019, PAWC and Valley entered into an Asset Purchase Agreement (APA) for the sale of substantially all of the assets, properties, and rights of the Valley’s water system at an agreed-upon price of $7,325,000. PAWC St. 1W at 12. As required by Section 1329, PAWC and Valley jointly retained the services of Pennoni Associates, Inc., (Pennoni) to complete the engineering assessment and original cost of the water system. PAWC Exh. KEG-2W, App. A-15-1. PAWC selected AUS Consultants, Inc. (AUS), and Valley selected Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming), as their respective UVEs to prepare fair market value appraisals of the water system. AUS’ fair market value report concluded that the value of the water system was $11,570,369; Gannett Fleming’s fair market value was approximately $10,532,000. Both appraisals were prepared in compliance with the USPAP standards. PAWC St. 4W at 3; Valley St. 2W at 26.

In its Water Application, PAWC proposed a ratemaking rate base of $7,325,000 based on the agreed-to purchase price of $7,325,000. This amount is less than the average of the two UVE appraisals for the water system (($11,570,369 + $10,532,000)/2 = $11,051,185). PAWC St. 3W at 6.

Valley’s wastewater system is a collection system that discharges all sewage into PAWC’s Coatesville wastewater system for final treatment. It is not a combined sewer system, nor is it a municipal separate storm sewer system. As of December 31, 2020, Valley’s wastewater system provided service to approximately 3,125 customers. PAWC St. 2WW at 3-4, 14.

On December 17, 2019, PAWC and Valley entered into an APA for the sale of substantially all of the assets, properties, and rights of the Valley’s wastewater system at an agreed-upon price of $13,950,000. PAWC St. 1WW at 12. Similar to the Water Application, PAWC and Valley jointly retained the services of Pennoni to complete the engineering assessment and original cost of the Township’s wastewater facilities. PAWC Exh. KEG-2WW, App. A-15-a. Additionally, PAWC selected AUS, and Valley selected Gannett Fleming, as their respective UVEs to prepare fair market value appraisals of the wastewater system. AUS’ fair market value report concluded that the value of the wastewater system was $19,081,059; Gannett Fleming’s fair market value was approximately $19,846,000. Both appraisals were prepared in compliance with USPAP standards. PAWC St. 4WW at 3; Valley St. 2WW at 26.

In its Wastewater Application, PAWC proposed a ratemaking rate base for the wastewater system of $13,950,000, based on the agreed-to purchase price of $13,950,000. This amount was less than the average of the two UVE appraisals for the wastewater system ($19,081,059 + $19,846,000 = $38,927,059/2 = $19,463,530). PAWC St. 3WW at 6.

## C. Settlement

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

### 1. Terms of the Settlement

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

**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 LTIIP”) which does not re-prioritize other existing commitments in other service areas, (ii) the Commission’s approval of the Amended LTIIP, 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 LTIIP.

**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, prudency, 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

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

**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.

Joint Petition at ¶¶ 28-46.

## D. Recommended Decision

The ALJs began by emphasizing that the Joint Petitioners submitted a unanimous Settlement of all issues and that Commission policy promotes settlements. The ALJs explained that settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. Additionally, the ALJs noted that the focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Rather, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Additionally, the ALJs highlighted that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. R.D. at 69.[[6]](#footnote-7)

### 1. Fitness

Before addressing the whether the Settlement is in the public interest, the ALJs analyzed whether PAWC is technically, financially, and legally fit to own and operate Valley’s water and wastewater systems, pursuant to 66 Pa. C.S. § 1103. Here, the ALJs noted that PAWC, as a certified public utility, enjoys a rebuttable presumption that it possesses the requisite fitness. Although no Party challenged the Company’s fitness, the ALJs determined that PAWC introduced substantial evidence demonstrating its technical, legal, and financial fitness. R.D. at 70.

Regardingtechnical fitness, the ALJs stated that PAWC is the Commonwealth’s largest water and wastewater provider, furnishing service to more than 400 communities in thirty-six counties, serving a combined population in excess of 2,400,000. Noting the Company’s employment of approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations, the ALJs also highlighted PAWC’s status as a subsidiary of American Water Works with availability to additional highly-trained professionals with expertise in specialized areas. According to the ALJs, these operations and process experts have deep experience in the operation and maintenance of different types of wastewater technologies. Further, the ALJs noted PAWC’s ongoing program of capital investment focused on systematically replacing and adding new pipes and infrastructure and its funding of over $1 billion in infrastructure investment in the past five years.R.D. at 70 (citing PAWC St 1W at 13; PAWC St. 2W at 6-7; and PAWC St. 2WW at 7-8).

As to legal fitness, the ALJs proffered that 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. The ALJs noted PAWC’s good compliance history with the Commission and that there are currently no legal proceedings that would suggest that PAWC is not legally fit to provide service in Valley.R.D. at 70-71 (citing PAWC St. 1W at 14, 17; PAWC St. 1WW at 14, 17).

Regarding financial fitness, the ALJs stated that PAWC had total assets of approximately $5.3 billion as of December 31, 2019, and a net income of approximately $187 million for the twelve months ending December 31, 2019. In addition to the Company’s positive operating cash flows, the ALJs highlighted that PAWC may obtain financing through a $400 million line of credit, long term debt financing, and equity investments. R.D. at 71 (citing PAWC St. 3W at 4-5; PAWC St. 3WW at 4-5).

### 2. Public Interest Analysis

After establishing the Company’s fitness pursuant to Section 1103 of the Code, the ALJs addressed each of the major aspects of the Settlement to determine if the overall transaction is in the public interest. The ALJs’ public interest disposition corresponds with the outline of terms set forth in the Settlement.

#### Approval of the Applications

The ALJs considered whether the transaction and PAWC’s ownership and operation of Valley’s water and wastewater systems will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. Here, the ALJs noted the Parties’ agreement in their Statements in Support that the transaction benefits all of the stakeholder groups including the public-at large, Valley as seller of the systems, the existing customers of Valley’s water and wastewater systems, and the existing customers of PAWC. R.D. at 71-72.

The ALJs reasoned that the transaction benefits members of the public-at-large by promoting the Commission’s policy favoring regionalization and consolidation of water and wastewater systems. Additionally, the transaction benefits members of the public-at-large by promoting the General Assembly’s policy goals when it enacted Section 1329. R.D. at 72 (citing 52 Pa. Code § 69.721(a); PAWC St. 1W at 15; and PAWC St. 1WW at 15).

The ALJs also highlighted the environmental benefits for the public-at-large and noted that PAWC is in a better position than Valley to maintain environmental compliance for the water and wastewater systems. The ALJs cited the Company’s ability to 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 systems. The ALJs further noted PAWC’s plans for making capital improvements during the five years after closing of the transaction. R.D. at 72 (citing PAWC St. 2W at 5-6, PAWC Exh. MJG-1W; PAWC St. 2WW at 6-7; and PAWC Exh. MJG-1WW).

In addition to benefiting the public-at-large, the ALJs referenced the benefits to Valley as seller of the systems. These include the improvement of Valley’s financial condition and outlook by increasing its reserve fund and eliminating debt. The ALJs determined that the enhancement of the Township’s financial stability will help it eliminate debt, mitigate against the risk of any future revenue shortfalls, and allow for allocation of resources to other redevelopment opportunities in the Township that would otherwise be unattainable. Additionally, the ALJs noted that the transaction will increase Valley’s tax base through increased development opportunities. R.D. at 72 (citing Valley St. 1W at 3-4, 10; Valley St. 1WW at 3-4, 9–10).

Regarding Valley’s existing customers, the ALJs stated that they will receive benefits similar to the benefits received by members of the public-at-large. In addition, the ALJs explained that because PAWC is a Commission-regulated utility, Valley customers will gain the protection of the Code, the Commission, and the public advocacy of I&E, the OCA, and the OSBA. Moreover, the ALJs noted that Valley customers will gain access to PAWC’s customer assistance programs and benefit from the Company’s plan to invest millions of dollars to improve the water and wastewater systems. R.D. at 73 (citing PAWC St. 1W at 16; PAWC St. 1WW at 15-16; PAWC St. 2W at 5-6, 11-13; PAWC Exh. MJG-1W; PAWC St. 2WW at 6-7, 13-14; PAWC Exh. MJG-1WW).

The ALJs further reasoned that the transaction benefits PAWC’s existing wastewater customers in the same way that it benefits all other members of the public-at-large. The ALJs also noted the specific benefits for PAWC’s existing wastewater customers of adding 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%). Moreover, the ALJs stated that the transaction will have no immediate rate impact on PAWC’s existing wastewater customers; any impacts on the rates of the Company’s existing customers would occur only upon Commission approval as part of a base rate proceeding. R.D. at 73 (citing PAWC St. 1WW at 14. PAWC St. 3WW at 9).

As to the benefits for PAWC’s existing water customers, the ALJs again referenced the similarity to the benefits received by other members of the public at large. The ALJs further noted the addition of 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%). The ALJs reasoned that 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. Additionally, the ALJs explained that PAWC’s acquisition of the wastewater system will only impact the rates of the Company’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.” R.D. at 73-74 (citing PAWC St. 1W at 15; PAWC St. 1WW at 15-16; and PAWC St. 3W at 9).

In summary, the ALJs determined that the Settlement term pertaining to approval of the Applications was in the public interest. R.D. at 74.

#### Tariff

Addressing the tariff provision of the Settlement, the ALJs noted that PAWC submitted *pro forma* tariffs with the Applications, which include all rates, rules, and regulations regarding conditions of the Company’s water and wastewater service and requested that the tariffs become immediately effective upon closing of the transaction. Here, the ALJs acknowledged that all the Parties agree that the *pro forma* tariffs submitted by PAWC should become effective immediately upon closing of the transaction. Thus, the ALJs implicitly determined that the tariff provision of the Settlement satisfies the public interest standard. R.D. at 74.

#### Fair Market Value for Ratemaking Rate Base Purposes

The ALJ acknowledged the agreement of PAWC and Valley to use the voluntary procedure for valuing the systems set forth in Section 1329 of the Code. Additionally, the ALJs noted the submitted appraisal values of the respective UVEs and that PAWC sought a ratemaking rate base of $13,950,000 for Valley’s wastewater system and $7,325,000 for Valley’s water system, based on the price the Company agreed to pay for the Township’s systems. R.D. at 75.

The ALJ explained that in the Settlement, the Joint Petitioners agree that $13,950,000 (the purchase price) will be included in 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 be included in PAWC’s rate base in its next rate case due to the acquisition of the water system. The ALJ emphasized that the requested ratemaking rate bases are less than the average of the UVE appraisals. *Id.*

Regarding the agreed ratemaking rate base, the ALJs determined that the Joint Petitioners fully considered the rate impact of the transaction as required by *McCloskey*. The ALJs credited the testimony of the sole witness at the public input hearing. Further, the ALJs reasoned that the evidence of record supports a conclusion that the Commission, using the various ratemaking tools available to it, can set rates for PAWC’s customers prospectively that are “just and reasonable” under Section 1301 of the Code. Moreover, the ALJs cited to numerous other affirmative public benefits of a substantial nature. R.D. at 75 (citing PAWC St. 1W at15-75; PAWC St. 1WW at 15-16; PAWC St. 2W at 5-15; PAWC St. 2 WW at 6-16; Valley St. 1W at 3-4, 9-12; Valley St. 1WW at 3-4, 9-11). According to the ALJs, 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. Specifically, the ALJs concluded that the agreed-upon ratemaking rate base of $13,950,000 for Valley’s wastewater system and $7,325,000 for Valley’s water system is supported by substantial record evidence. R.D. at 75-76.

#### Fair Market Value Appraisals

The ALJs referenced Section 1329(a)(5) of the Code, 66 Pa. C.S. § 1329(a)(5), which requires each UVE to provide the completed appraisal to its client within ninety days of executing the service contract. The ALJs also noted PAWC’s assertion that its standard operating procedure is to execute an Agreement for Valuation Consulting Services before the engineer’s assessment is completed (and therefore before the UVE can begin its appraisal). The ALJs asserted that the Settlement provides that the UVE will not begin performing services until the issuance of a notice to proceed. R.D. at 76.

The ALJs emphasized that the Settlement requires PAWC to clearly document the date on which it authorized its UVE to perform the fair market value appraisal of the system being appraised, to demonstrate compliance with Section 1329(a)(5) of the Code. Therefore, the ALJs concluded that this Settlement term is in the public interest. *Id*.

#### Engineering Assessment

The ALJs stated that the engineer’s assessment completed in this case provides information about the assets to be acquired by PAWC but does not indicate the condition of those assets. In response, the Joint Petitioners have agreed that, in future Section 1329 acquisitions, the engineering assessment under 66 Pa. C.S. § 1329(a)(4) will designate the condition of the inventory and assets appraised, and all categories of system assets will be appraised in poor, fair, good, or very good condition. The ALJs acknowledged that this will assist the UVEs in completing their appraisal of the system being acquired. R.D. at 76.

However, the ALJs recommended the modification of this Settlement term in two ways. First, the ALJs indicated that an engineer does not complete an appraisal, but rather completes an inventory of assets and identifies the condition of those assets. Second, the ALJs asserted that the Settlement should not limit the professional opinion of the engineer who is completing the inventory to “poor, fair, good, or very good,” as there is no set scale to identify the condition of an asset. *Id*.

Therefore, the ALJs recommended that the Settlement be modified such that PAWC will act to ensure that, in any future Section 1329 applications it submits, the engineering assessment under 66 Pa. C.S. § 1329(a)(4) “will designate the condition of the inventory and assets *to be* appraised, and the condition of all categories of system assets *to be* appraisedwill be designated according to the professional opinion of the engineer completing the assessment, which may include, but shall not be limited to, categories of ‘poor, fair, good, or very good.’” R.D. at 77 (emphasis in original). Additionally, the ALJs recommended that the engineer’s designation of the condition of inventoried assets “shall include descriptive terms such as rust, dents, visible leaks, cracking, bulging, chipping, refurbished, reconditioned and so forth for the utility valuation expert to complete an appraisal.” *Id*.

#### Easements, Rights of Way and Liens

The ALJs stated that the Settlement requires PAWC and Valley to continue to work to achieve the transfer of all the real property rights. However, the ALJs noted that, subject to the commitments and Settlement provisions, 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. According to the ALJs, these provisions are in the public interest because they ensure the transfer of all the Real Property Rights that PAWC will need to own and operate the System. R.D. at 77 (citing Settlement at ¶ 33).

Additionally, the ALJs referenced PAWC’s commitment to providing I&E, the OCA, and the OSBA with an update on the status of the transfer of the real property rights related to the system within thirty days in advance of the anticipated closing date and, thus, providing the Parties with a mechanism to gauge Valley’s progress in meeting its property transfer obligations. The ALJs found that this reporting mechanism further protects the public interest. Specifically, the ALJs determined that PAWC’s commitment to inform I&E of the status of any missing property rights will empower I&E to take any action that may be warranted and available to ensure that the Company’s ratepayers are not paying for property rights that are not obtained or paying any costs associated with obtaining those rights. The ALJs further acknowledged PAWC’s ability to monitor any missing easements to either ensure that it does not encounter access issues, or, if such issues are identified, that it can immediately address such issues. R.D. at 77-78.

#### Inflow and Infiltration Study

The ALJs referenced I&E’s Statement in Support that there is no way of knowing the existence and extent of any inflow and infiltration issue unless a study is performed. PAWC’s commitment to performing the study, according to the ALJs, is important because depending on the results, it could trigger the need for remediation work that has not yet been identified. R.D. at 78.

The ALJs determined that the Settlement protects the public interest by ensuring that PAWC will complete an inflow and infiltration study of Valley’s 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, pursuant to 66 Pa. C.S. § 1501. Additionally, the ALJs found the public interest to be further protected in that I&E, the OCA, the OSBA, and the Commission will be able to address the reasonableness and prudency 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. Thus, the ALJs concluded that this term is in the public interest and recommended its approval without modification. *Id*.

#### Rates

Regarding the terms of the rates to be charged to Valley customers, the ALJs determined that 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 ALJs also cited to Paragraph 36 of the Settlement, which 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. Similarly, Paragraph 37 of the Settlement, 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. According to the ALJs, 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. R.D. at 78-79.

The ALJs further reasoned that 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 ALJs indicated that the Settlement does not preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC base rate proceeding. Furthermore, the ALJs noted that the Settlement contains no provision purporting to restrict the Commission’s ultimate ratemaking authority to set “just and reasonable” rates. *Id.* at 79.

The ALJs concluded that these provisions are consistent with the Code, represent a reasonable compromise among the Joint Petitioners, and are, thus, in the public interest. *Id*.

#### Distribution System Improvement Charge (DSIC)

The ALJs explained that Section 1329(d)(4) of the Code, 66 Pa. C.S. § 1329(d)(4), permits an acquiring public utility to collect a DSIC from the date of closing on the transaction until new rates are approved in the utility’s next base rate case. To qualify for DSIC recovery, the ALJs added, a utility must submit a Long-Term Infrastructure Improvement Plan (LTIIP) and receive approval of the LTIIP from the Commission. R.D. at 79.

The ALJs noted that PAWC has previously received Commission approval for both a wastewater and a water LTIIP, as well as Commission approval of both a wastewater DSIC tariff and a water DSIC tariff, for other portions of its wastewater and water systems. In its Applications, PAWC requested conditional approval to implement DSICs for the Valley water and wastewater service territories. The ALJs summarized that pursuant to the Settlement, PAWC may file amended water and wastewater LTIIPs for the Valley water and wastewater service territories that do not reprioritize other existing capital improvements that the Company has already committed to undertake in other service areas. Following Commission approval of those amended LTIIPs, PAWC could make a tariff supplement compliance filing, which would include the Valley water and wastewater service territories in PAWC’s existing DSIC tariff. R.D. at 79-80 (citing Settlement at ¶ 38).

The ALJs found this Settlement term to be in the public interest because it recognizes the Commission’s authority to modify PAWC’s LTIIP submissions and that it is consistent with the Code and *Implementation of Act 11 of 2012,* Docket No. M‑2012‑2293611 (Final Implementation Order entered August 2, 2012). R.D. at 79.

#### Claims for Allowance for Funds Used During Construction (AFUDC) and Deferred Depreciation

In their examination of the AFUDC term of the Settlement, the ALJs noted that Section 1329(f)(1) of the Code, 66 Pa. C.S. § 1329(f)(1), permits an acquiring public utility to accrue 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. The ALJs stated that in the Water Application, PAWC requested permission to accrue AFUDC on post-acquisition water improvements that are not included in a DSIC. Similarly, in the Wastewater Application, PAWC requested permission to accrue AFUDC on post-acquisition wastewater improvements that are not included in a DSIC. The ALJs acknowledged that 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. R.D. at 80 (citing Settlement at ¶ 39).

Regarding the deferral of the depreciation term, the ALJs cited to Section 1329(f)(2) of the Code, 66 Pa. C.S. § 1329(f)(2), which permits an acquiring public utility to defer depreciation on its post-acquisition improvements that are not included in a DSIC. The ALJs explained that in the Water Application, PAWC requested permission to defer depreciation on post-acquisition water improvements that are not included in a DSIC. Similarly, in the Wastewater Application, PAWC requested permission to defer depreciation on post-acquisition wastewater improvements that are not included in a DSIC.  Again, the ALJs highlighted the Settlement which 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. R.D. at 80-81.

The ALJs concluded that the Settlement terms pertaining to AFUDC and deferred depreciation were in the public interest. *Id.* at 81.

#### Transaction and Closing Costs

Moving to the transaction and closing costs provision at Paragraph 40 of the Settlement, the ALJs cited Section 1329(d)(1)(iv) of the Code, 66 Pa. C.S. § 1329(d)(1)(iv), which 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. The ALJs explained that the Settlement acknowledges that PAWC may, in the first base rate case that includes the Valley systems, include the transaction and closing costs incurred in this proceeding. Here, the ALJs recognized that the Commission may adjudicate the ratemaking treatment of PAWC’s claimed Transaction and closing costs at that time. Moreover, the ALJs noted that the Settlement notes that the Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Accordingly, the ALJs found these provisions to be reasonable and in the public interest and should be approved. R.D. at 81.

Furthermore, the ALJs referenced the Settlement’s requirement at Paragraph 41 that the inclusion of outside legal fees, if any, in PAWC’s transaction and closing costs 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 ALJs acknowledged the reservation of rights by the OCA, I&E and the OSBA to challenge the reasonableness, prudency, and basis for such fees. In conclusion, the ALJs found this provision to be in the public interest because it will allow the statutory parties to consider whether these fees should be considered prudent closing costs in the next base rate case. *Id*.

#### Low Income Program Outreach

Addressing the Low Income Program Outreach provisions, the ALJs explained that the Settlement requires PAWC, at a minimum, to notify Valley’s customers of its low income programs, including a description of the available low income programs, participation eligibility requirements, and PAWC’s contact information, which 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’s customers that they are being converted to monthly billing. The ALJs concluded that these provisions of the Settlement are reasonable and in the public interest. R.D. at 81-82.

#### Approval of Section 507 Agreements

The ALJs explained that 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 to be valid. Pursuant to this provision, the Commission may allow the contract to become valid and issue a certificate of filing, unless prior to the effective date of the contract, 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. R.D. at 82.

Referencing Paragraph 44 of the Settlement, the ALJs stated that the Joint Petitioners request the issuance of Certificates of Filing, pursuant to Section 507, for the following agreements: (a)the Sanitary Sewer Asset Purchase Agreement By and Between Valley as Seller and PAWC as Buyer, dated 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 5, 2011, Agreement between Valley and Sadsbury Township. R.D. at 82.

According to the Settlement, the ALJs continued, the issuance of certificates of filing or approvals of these agreements is necessary to allow PAWC to provide service to the service territory currently served by Valley Township. Additionally, the ALJs noted that Commission approval of a contract under Section 507 is only required when the Commission institutes proceedings to determine the reasonableness, legality or any other matter affecting the validity of the contract. Here, the ALJs reasoned, that the Commission has not initiated an investigation of the subject agreements and that, absent an investigation, the Commission should issue the requested Certificates of Filing. Accordingly, the ALJs recommended the issuance of the Certificates of Filings for the referenced agreements as being in the public interest. R.D. at 82.

#### Other Necessary Approvals

The ALJs explained that the Settlement includes a provision requesting that the Commission issue any other approvals or certificates that might be necessary to carry out PAWC’s acquisition of Valley’s water and wastewater systems. Noting the Joint Petitioners belief that other approvals or certificates are not necessary, the ALJs stated that this provision is included out of an abundance of caution in case the Joint Petitioners inadvertently overlooked a necessary approval. Because the ALJs determined that the transaction is in the public interest, the ALJs concluded that this Settlement term, to the extent it permits the transaction to be completed, is also the public interest. R.D. at 83.

#### Commissioner Yanora’s Directed Questions

The ALJs referenced the Directed Questions pertaining in part to lead service lines, cross-connections and backflow prevention devices. Citing to the Supplemental Direct testimony in response to the Directed Questions and the subsequent questioning of the witnesses during the evidentiary hearing, the ALJs stated generally that the contingent nature of the responses to the directed questions was concerning. However, the ALJs concluded that when viewing the Settlement in its totality its approval is recommended with modification as being in the public interest. R.D. at 83.[[7]](#footnote-8)

### Conclusion

In conclusion, the ALJs recommended that the Settlement be approved by the Commission with modification, because it is in the public interest. According to the ALJs, the Settlement will ensure that the Township residents will receive high quality water and wastewater service from PAWC, a certificated public utility with the necessary financial, technical and legal resources to provide that service into the foreseeable future. Bringing the Township’s existing customers into PAWC’s customer base, the ALJs continued, will also ensure that Township residents will have access to the Commission’s procedures for investigating and enforcing any complaints that the residents may have regarding the Township’s water and wastewater services. R.D. at 84.

Additionally, the ALJs reasoned that, although the Joint Petitioners in this proceeding acknowledge that PAWC may apply for a rate increase in the near future, any such rate increase application will be subject to the Commission’s jurisdiction. The Company would be required to apply for any increase and interested parties, including existing customers, will be able to intervene in any such proceeding. The ALJs asserted that any requested increase would ultimately be subject to approval by the Commission, and the Commission would have the authority to approve, deny or modify any such requested increase. *Id*.

## E. Commissioner Yanora’s Directed Questions

On July 1, 2021, Commissioner Yanora requested that the Parties address certain issues, including questions pertaining to lead service lines, cross-connections and backflow prevention devices. The specific inquiries are as follows:

1. The estimated number of company-owned lead service lines and the number of customer-owned lead service lines in the Valley Township water distribution system (VTWDS);
2. PAWC’s efforts to include VTWDS in its Act 120 of 2018, 66 Pa. C.S. § 1311(b)(2), customer-owned lead service line replacements;
3. PAWC’s efforts to include VTWDS in its tariff cross-connection control requirements regarding 25 Pa. Code §§ 109.709, 109.609 and any applicable provisions of the International Plumbing Code;
4. Compliance materials of PAWC’s efforts to include VTWDS in its operation and maintenance plans required by 25 Pa. Code §109.702 as they relate to adequate, safe, and reasonable service for utility customers and employees;
5. The number of VTWDS commercial meters in the system, the number tested, and the number passed or failed for year 2020;
6. The number of VTWDS valves exercised in calendar year 2020 and the frequency of valve maintenance;
7. The number of VTWDS commercial and industrial customers that have testable backflow prevention devices and the number of devices that were tested for calendar year 2020;
8. The integration of VTWDS into PAWC tariff backflow prevention requirements regarding residential fire protection and irrigation and whether PAWC has a plan for inspection and testing of fire hydrants;
9. Whether PAWC has surveyed the number of VTWDS fire hydrants that do not provide a minimum flow of 500 [gallons per minute (gpm)] at 20 [pounds per square inch gauge (psig)];
10. Whether PAWC has determined if VTWDS residential customers have American Society of Sanitary Engineers 1024 backflow assemblies installed at meter locations; and
11. Whether PAWC has evaluated the VTWDS lost and unaccounted water performance since 2018 and any relevant results.

Directed Questions at 1-2; PAWC Exh. MJG-4W.

Supplemental direct testimony in response to the directed questions was submitted by PAWC and Valley. *See*, Supplemental Direct Testimony of Patrice Proctor, Valley Township St. No. 1W-S and 1WW‑S; Supplemental Direct Testimony of Michael J. Guntrum, PAWC Statement 2W-S and 2WW-S, together with PAWC Exhibit MJG‑4.

During the evidentiary hearing, ALJ Johnson questioned Valley witness Proctor (Tr. at 97 – 99) and PAWC’s witness Guntrum (Tr. at 99 – 102; 104 – 115)[[8]](#footnote-9) to provide additional information regarding the Directed Questions. Upon the ALJ’s completion of questioning the witnesses, PAWC solicited additional testimony from witness Guntrum (Tr. at 116 – 119) and PAWC witness Ashley Everette (Tr. at 120 – 129) regarding the Directed Questions. In addition, after providing supporting testimony on behalf of PAWC on his fair market valuation report, PAWC’s UVE, Mr. Jerome C. Weinert, requested to offer some observations from the other witnesses’ previous testimony regarding Commissioner Yanora’s inquiries. Tr. at 136. The following provides a summary of the testimony provided by the various witnesses in addressing the Directed Questions.

Regarding the first inquiry about the estimated number of company-owned lead service lines in the Township, Valley witness Proctor testified that Valley is unaware of any Township-owned or customer-owned lead service lines in its distribution system. Valley St. 1W-S at 1-2. She noted that lead service lines ceased in 1986, and the oldest part of the distribution system was constructed two years later in 1988. *Id.* During the hearing, Ms. Proctor testified that based on records that were reviewed, she is not aware that any lead pipes exist; however, she indicated that does not necessarily mean that there are not any customer-owned lead service lines. Tr. at 98‑99.

Regarding the second inquiry about PAWC’s efforts to include VTWDS in its Act 120 of 2018, 66 Pa. C.S. § 1311(b)(2), customer-owned lead service line replacements, PAWC’s witness Guntrum testified that once the Commission takes action on PAWC’s Applications and closing on the acquisition takes place, PAWC will incorporate the Township’s customer-owned service lines (if any) into the Company’s inventory process as part of its compliance with the Environmental Protection Agency’s (EPA) Lead and Copper rules and also incorporate customer-owned lead service lines (if any) into the Company’s lead service line replacement plan. PAWC St. 2W-S at 2. During the hearing, Mr. Guntrum added that PAWC will incorporate the lead service lines into its program and address them per the rules, regulations and its tariff. Tr. at 100‑101. PAWC’s Attorney, Susan Simms Marsh also clarified during the hearing that PAWC will use the same Commission-approved process that it uses relative to its residential customers who currently have lead service lines and that PAWC will bear the cost of replacement for any acquired Valley Township customers consistent with its tariff. Tr. at 102-103.

PAWC’s witness, Ashley Everette, provided testimony during the hearing regarding an explanation about PAWC’s customer lead service line replacement plan that was approved by the Commission in the proceeding at Docket No. P-2017-2606100. Tr. at 123. Ms. Everette testified as follows:

That proceeding addressed the Company’s ability to replace customer-owned or customer-side lead service lines. And the ultimate results of that proceeding was a change to the Company's tariff which allows Pennsylvania-American Water to replace customer-owned lead service lines and have that cost be borne by Pennsylvania-American Water and ultimately becomes part of Pennsylvania-American's rate base. That plan is laid out in our tariff [Tariff Water-PA P.U.C. No. 5], under Tariff Rule 4.9.1, which begins on page 47.1 of the Company’s currently existing, Commission-approved water tariff. And that plan includes two parts. One of which is that the Company will replace lead service pipes that it encounters during main replacements. And the other part is that the Company will replace lead service pipes at the customers’ request under the criteria of the tariff. And this tariff provision allows the Company to make these replacements. There are limits in place in terms of the number of lead service pipes per year [up to 1,800 lead service pipe replacements per year][[9]](#footnote-10) that the Company can replace, as well as a dollar amount [a budgeted allotment of $6.0 million per year][[10]](#footnote-11) that limits the Company's replacements. And so under this tariff rule, then, if there are lead service lines within an area or a system, the Company has this tariff provision that allows us to replace those lead service pipes at the cost of the Company rather than having that customer pay their full cost of the replacement that is needed at their residence.

Tr. at 123 -124.

Ms. Everette also noted that once the Valley customers become PAWC customers, the lead pipe replacement program will also apply to the Valley customers as well. Tr. at 125. She estimated that the approximate cost that may be incurred when Valley customers are incorporated into PAWC’s service territory would be minimal because based on the previous testimony from the Township witness, there is an expectation that there currently are no lead service lines in Valley’s water distribution system. Tr. at 125-126.

After providing testimony in support of his appraisal of the assets of Valley, Mr. Jerome Weinert, Principal and Director of AUS, the UVE selected by PAWC to perform the appraisal, requested permission from ALJ Johnson to offer an observation on the number of lead and copper service lines in the Valley Township service territory. Tr. at 136. Mr. Weinert stated that the engineer’s assessment, as provided by Pennoni, indicate that the vast majority of the services are copper services, with only several of them not being identified as whether they are copper or not.[[11]](#footnote-12) *Id.*

As to the third inquiry concerning PAWC’s efforts to include the Township system in its tariff cross-connection[[12]](#footnote-13) control requirements regarding 25 Pa. Code §§ 109.709, 109.609 and any applicable provisions of the International Plumbing Code, PAWC responded that if the Applications are approved, Valley customers will be subject to PAWC’s prevailing Commission-approved water tariff including all non-rate related terms and conditions of service, including cross connection requirements. PAWC St. 2W-S at 2-3. ALJ Johnson then asked Mr. Guntrum if PAWC knew how many Valley customers might be affected by backflow and backsiphonage.[[13]](#footnote-14) Tr. at 105. Mr. Guntrum was unable to provide the number of Valley Township customers that might be affected but responded that PAWC has a backflow prevention and cross-connection prevention program and that after the acquisition is completed, PAWC will conduct a survey and inspection of industrial and commercial customers for purposes of determining who will be incorporated into PAWC’s program. Tr. at 108. If a backflow-prevention device is found, PAWC will issue annual letters requiring testing of those devices and if PAWC determines that a device is needed, the Company will send a letter requiring the installation of such a device. *Id.* Although PAWC was unable to provide a timeline, how long it would take for including Valley Township customers in its backflow prevention and cross-connection prevention program, and the cost to the residential or commercial customer, Mr. Guntrum stated that PAWC’s program is ongoing and that the Valley Township distribution system will be incorporated in Greater Coatesville. Tr. at 109-110.

PAWC’s witness, Ms. Everette added that the Company’s cross-connection requirements are included as Rule 22 of PAWC’s Water Tariff – Pa. P.U.C. No. 5. Tr. at 126. She described the requirements of the plan as follows:

Tariff Rule 22 provides that no cross connection shall be installed or continued, and that the cost of the installation, material and maintenance of the backflow-prevention device shall be paid by the customer. And then the tariff outlines the responsibilities of the customer regarding annual tests or repairs of that device.

And then the following rule, which is 22.2, provides for the Company’s rights of termination if a customer does not comply with the cross-connection rules.

Tr. at 126. Ms. Everette further noted that upon completion of a Section 1329 acquisition, the purchasing utility is required to adopt the rates of the selling utility, but that the rules and regulations of the purchasing utility become the prevailing rules and regulations of the selling utility. As such, Valley customers will be required to abide by the backflow and cross-connection requirements in Rule 22 after the acquisition transaction is completed. Tr. at 128, 129.

During questioning concerning the remediation of backflow, Mr. Guntrum expressed his opinion that PAWC would be in a better position to address backflow-prevention issues in the Valley’s water distribution system for the following reasons:

We have databases that we would use to track backflow-prevention devices and cross-connection devices. We have existing personnel who are specialists in the area, who will manage this process. And we have systems to automatically generate letters requiring either inspection annually or if we discover that one is needed and not present, a letter that will require the installation of such. And we have personnel that handle – manage that program.

\* \* \*

[In addition, PAWC has a] PUC-regulated tariff and a PUC program in place for backflow prevention and cross-connection program.

\* \* \*

And therefore, because of all these reasons and our size and our economies of scale and our PUC tariff, we are able to provide better service related to backflow prevention, cross connection than is existing today.

Tr. at 116-117.

As noted, although PAWC was unable to provide any information regarding the additional costs associated with incorporating Valley customers into PAWC’s backflow prevention and cross-connection prevention program at this time, Mr. Guntrum explained in his written testimony that the PA DEP regulations do not impose a requirement on public water suppliers to install backflow prevention devices. PAWC St. 2W-S at 4. The regulations in Section 109.608 only require that “a public water system may not be designed or constructed in a manner which creates a cross-connection.” *Id.* However, Section 109.709 of the PA DEP regulations places the obligation for eliminating cross-connections on the customers of public water suppliers.[[14]](#footnote-15) *Id.*

Mr. Guntrum also cited Section 109.709(b) of the PA DEP regulations which list the obligations of a public water supplier to enforce its customers’ obligations:

At the direction of the Department, the public water supplier shall develop and implement a comprehensive control program for the elimination of existing cross-connections or the effective containment of sources of contaminations, and prevention of future cross-connections. A description of the program, including the following information, shall be submitted to the Department for approval:

(1) A description of the methods and procedures to be used.

(2) An implementation schedule for the program.

(3) Legal authority for implementation of the program, such as, by ordinance or rules.

(4) A time schedule for inspection of nonresidential customers’ premises for cross-connections with appropriate recordkeeping.

(5) A public education program for residential customers.

(6) A description of the methods and devices which will be used to protect the water system.

(7) A program for the review of plans for new users to assure that no new cross-connections are developed.

(8) Provisions for discontinuance of water service, after reasonable notice, to premises where cross-connections exist.

PAWC St. 2W-S at 5 (citing 25 Pa. Code § 109.709(b)). PAWC confirmed that it has developed and implemented a cross-connection control program consistent with Section 109.709(b). PAWC St. 2W-S at 6; Tr. at 110. PAWC explained that it has implemented this Commission-approved program under their tariff for all previously acquired systems and uses the tariff as the source of the Company’s authority to require its customers to comply with its cross-connection program. PAWC St. 2W-S at 6.

Regarding the fourth inquiry concerning compliance materials of PAWC’s efforts to include Valley in its operation and maintenance plans as they relate to adequate, safe, and reasonable service for utility customers and employees, PAWC explained that the Company has Operation and Maintenance Plans meeting the regulatory requirements in 25 Pa. Code § 109.702 for each of its water systems. PAWC St. 2W-S at 6. Once the Commission acts on PAWC’s Applications and closing on the acquisition takes place, the Company explained that it will update its Operation and Maintenance Plans to include the Valley Township water system. *Id*.

Regarding the fifth inquiry concerning the number of Township commercial meters in the system, the number tested, and the number passed or failed for year 2020, Valley witness Proctor responded that in calendar year 2020, there were thirty-three commercial meters in the Township’s system. Valley St. 1W-S at 2. However, none of the Valley commercial meters were tested in 2020. *Id.*

The sixth inquiry concerned the number of Township valves exercised in calendar year 2020 and the frequency of valve maintenance.[[15]](#footnote-16) Valley responded that approximately five valves were exercised in calendar year 2020. Valley St. 1W-S at 2. Additionally, Valley noted that it does not have a routine valve exercising or maintenance program. *Id.*

Regarding the seventh inquiry requesting the number of Township commercial and industrial customers that have testable backflow prevention devices and the number of devices that were tested for calendar year 2020, Valley witness Proctor reported that the number of commercial and industrial customers with testable backflow prevention devices is not known to Valley. Valley St. 1W-S at 2. Additionally, no backflow prevention devices were tested in calendar year 2020. *Id.*

The eighth inquiry asks how PAWC will integrate the Township’s system into PAWC’s tariff backflow prevention requirements regarding residential fire protection and irrigation and whether PAWC has a plan for inspection and testing of fire hydrants. PAWC’s witness Guntrum responded that the Company plans to integrate the Township water system into the Company’s standard practices based on the Tariff requirements. PAWC St. 2W-S at 7. PAWC explained that it has developed calibrated hydraulic models for its previously acquired water systems and that its plan for the Township water system will be consistent with this practice. *Id.* Accordingly, PAWC will develop and calibrate a hydraulic model, testing hydrants as part of the calibration process. PAWC also replied that it regularly inspects and exercises valves and hydrants. *Id.*

In response to the ninth inquiry – whether PAWC has surveyed the number of Township fire hydrants that do not provide a minimum flow of 500 gpm at 20 psig – PAWC replied that because the Commission has not yet acted on its Applications, it has not surveyed the Township’s fire hydrants to determine the minimum flow. PAWC St. 2W-S at 7*.* However, the Company explained that in the systems it previously acquired, it has developed calibrated hydraulic models and that it plans to do the same for Valley. *Id.* Thus, PAWC will develop and calibrate a hydraulic model, testing hydrants as part of the calibration process. *Id.* PAWC also noted that it regularly inspects and exercises valves and hydrants and that the Township’s system will be integrated into PAWC’s standard practices based on its tariff requirements. *Id.* Thus, for the reasons described above and because of its economy of scale, PAWC believes it is better capable than Valley in testing and ensuring that fire hydrants are functional and operated in the public interest. Tr. at 118.

During the hearing, PAWC witness Guntrum provided some additional details in response to questioning by ALJ Johnson:

PA-American will incorporate the Valley system into the Greater Coatesville system. PA-American has a process for evaluating fire hydrants, both as it relates to an annual process of flushing and exercising of valves and evaluating fire hydrant flow. And then also as part of our acquisition, we will incorporate the Valley Township into hydraulic computer models, so we can use them to monitor water quality relative to dispatched byproducts and chlorine residual, *et cetera*.

And so as part of that, the calibration of that model, PA-American will also go out and do special fire hydrant testing to test flow and pressure, to provide data points for the calibration of that model. And that process will be ongoing and will begin immediately after closing.

Tr. at 112-113.

The tenth inquiry concerns whether PAWC has determined if Valley’s residential customers have American Society of Sanitary Engineers 1024 backflow assemblies installed at meter locations. PAWC replied that since the Commission has not yet acted on its Applications, PAWC has not undertaken an assessment of the customer-owned backflow assemblies. PAWC St. 2W-S at 8. Although ALJ Johnson asked some follow-up questions on this inquiry during the hearing, no additional information of significance was provided. Tr. at 113-115.

The eleventh and final inquiry relates to whether PAWC has evaluated the Township’s lost and unaccounted water performance since 2018 and any relevant results. No information was provided by PAWC or Valley Township on this inquiry.

In their Recommended Decision, the ALJs made seven Findings of Facts regarding the Directed Questions as follows:

54. Valley is unaware of any Valley-owned or customer-owned lead service lines in the Water System. Valley St. No. 1W-S and 1WW-S p. 3. The engineer’s assessment, PAWC Exhibit KEG-2W, Appendix A-15-a, “Master Asset List,” indicates that many (but not all) service lines are copper. The engineer’s assessment does not indicate that the Water System has any lead service lines.

55. 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. 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.

56. After closing on the Transaction, PAWC will incorporate the Water System’s customer-owned service lines into PAWC’s inventory process and will incorporate customer-owned lead service lines (if any) into PAWC’s lead service line replacement plan. PAWC St. No. 2W-S and 2WW-S p. 2

57. PAWC’s Commission-approved tariff 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. PAWC already has the personnel and systems in place to implement these provisions in Valley.

58. The number of commercial and industrial customers in the Water System with testable backflow prevention devices is not known to Valley. No backflow prevention devices were tested in calendar year 2020. Valley St. No. 1W-S and

1WW-S p. 3.

59. 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 rules will apply to Valley’s customers after closing on the Transaction. PAWC already has the personnel and systems in place to implement these provisions in Valley.

60. PAWC has a plan in place for the inspection and testing of fire hydrants in the Water System after closing on the Transaction. After acquiring a system, PAWC develops a calibrated hydraulic model for the system, including hydrants. Additionally, PAWC regularly inspects and exercises valves and hydrants. PAWC plans to integrate the Water System into PAWC’s standard practices after closing. PAWC St. No.

2W-S and 2WW-S, p.7. PAWC already has the personnel and systems in place to perform these tasks.

R.D. at 28-29. The ALJs opined that although “[t]he contingency nature of the responses to the directed questions is concerning,” when the Settlement is viewed in its totality, “the undersigned ALJs will recommend approval of the Settlement with modification.” R.D. at 83.

Based on our review of the responses in the record, it appears that there are little to no lead water service lines in the Township service area and the testimony leans toward there being none since the oldest part of the distribution system was built in 1988, two years after 1986 when lead service lines ceased being installed. Also, because PAWC already has a Commission-approved lead service line replacement program in Rule 4.9.1 (Replacement of Lead Service Pipes) of its tariff, all current Valley customers will automatically be subject to Rule 4.9.1. in which the Company will replace lead service lines without charge to the customers consistent with the terms and conditions set forth in the tariff. After a lead service pipe is replaced by the Company, the customer shall own the service pipe and have full responsibility for its repair in the future. Regardless of the number of current lead lines in the Valley service area, the Company’s costs with regard to its company-wide replacement of lead pipes is limited to a cap of $6 million annually and an annual cap of 1,800 lead service pipes, based on PAWC’s current tariff. However, Rule 4.9.1 does permit PAWC to petition the Commission for approval to modify its annual budget allotment of $6 million if the Company, in its sole discretion, determines that its annual budget allotment no longer meets the future needs of the lead service replacement plan.

With regard to cross-connection control requirements, it is not known at this time how many Valley Township customers may have backflow and or backsiphonage issues. Nevertheless, if the acquisition were approved, it appears that PAWC is prepared to address any cross-connection issues consistent with PAWC’s Rule 22 in its Tariff No. 5 relating to Cross-Connections. Rule 22 is stated as follows:

**22. Prohibition of Cross-Connection**

No cross-connection shall be installed or continued. A cross-connection shall be considered to be eliminated if the method of backflow prevention is approved in writing by the Company. The cost of installation, material, and maintenance of the backflow prevention device shall be paid for by the Customer. Thereafter, it is the responsibility of the Customer to have an annual test and/or repairs of the device performed by an inspector who is a certified backflow prevention device tester. A backflow prevention device tester must be certified by an entity that performs training to test and repair Check valves and backflow prevention devices which meet or exceed American Society of Sanitary Engineering (ASSE), American Backflow Prevention Association (ABPA) or equivalent standards and provides certification that such training has been completed in accordance with these requirements.

**22.2 Right of Company to Terminate Water Service**

The Company shall have the right to terminate water service under any of the following circumstances:

(A) Violation by a Customer or by a property owner or occupant of these Rules and Regulations regarding Cross-Connections;

(B) Failure to have the annual test and /or repairs of the backflow prevention device performed.

(C) Receipt by the Company of an order from DER, health authorities, plumbing inspectors or another similar agency to discontinue service to premises on the grounds of violation of any federal, state or local law, ordinance, rule or regulation or of these Rules and Regulations regarding Cross-Connections, or because of danger to health because of the existence of Cross-Connections, or upon notice to the Company from any such agency that it has ordered a Cross-Connection existing on the premises to be discontinued and that such order has not been complied with.

PAWC Tariff No. 5, Rule 22 at 76.

Furthermore, PAWC indicated that it will conduct a survey and inspection of its customers after completion of the acquisition transaction. Accordingly, former customers of Valley will be subject to PAWC’s cross-connection terms and conditions contained in Rule 22.

Based on our review of the responses, we agree with PAWC that the Company is better able than Valley to prevent backflow and backsiphonage occurrences due to its size, economies of scale and existing Commission-approved cross-connection tariff. In addition, since PAWC already collects and monitors data on cross-connections, and PA DEP regulations place the cost of eliminating cross-connections on the customers, we expect that any additional costs to PAWC to incorporate Valley Township customers under Rule 22 will be minimal.

We also note, based on our review of the responses in the record, that PAWC has committed, as required by law, to update its Operation and Maintenance Plan, on file with the PA DEP, to include the required operation/maintenance information from the Valley Township water distribution system, after the acquisition is approved by the Commission.

Regarding residential fire protection and irrigation, and inspections and testing of fire hydrants, PAWC indicated that it regularly inspects and exercises valves and hydrants and that it will also integrate Valley’s system into the Company’s standard practices in accordance with its tariff requirements such as it has done in prior acquisitions. Although PAWC has not surveyed the number of fire hydrants in the Township service area to determine the minimum flow, we note that PAWC has committed, immediately after closing, to develop calibrated hydraulic models for Valley after it is acquired and that testing fire hydrants will be included as part of the calibration process.

Also, although PAWC and Valley were not able to provide immediate answers to some of Commissioner Yanora’s inquiries (*i.e.*, whether Valley Township residential customers have American Society of Sanitary Engineers 1023 backflow assemblies installed at meter locations and an evaluation of Valley’s lost and accounted water performance since 2018), and some responses will not be known until after the acquisition is completed, based on the information that was provided in this proceeding, we find, based on our thorough review of the record involving the Directed Questions inquiries and the ALJ’s Findings of Fact Nos. 54-60, that the absence of some of the requested information does not warrant our rejection of the Applications. In fact, based on the responses provided, we believe that the Township customers will be better served by PAWC based on the Company’s experience involving similar issues for prior acquisitions and the advanced operations and economies of scale of PAWC compared to Valley.

In summary, it appears that the Parties have provided sufficient responses to the Directed Questions. As to the issues raised in the Directed Questions and the responses thereto, nothing in the record prevents us from making a determination that the overall Settlement is in the public interest.

## F. Exception

In its Exception, PAWC objects to the ALJs’ modification of Paragraph 32 of the Settlement pertaining to the engineering assessment. The Joint Petitioners had agreed to the following provision regarding the engineer’s assessment of tangible assets of the selling utility as required by 66 Pa C.S. § 1329(a)(3):

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.

Settlement at ¶ 32.

However, PAWC argues, the ALJs improperly modified Paragraph 32 of the Settlement, without record evidence, by imposing additional requirements on engineering assessments in future PAWC Section 1329 application filings. Specifically, the Company objects to the following language recommended by the ALJs:

That PAWC be directed to ensure that, in any future Section 1329 application it submits, that PAWC, as the acquiring public utility, and the selling utility shall engage the services of the same licensed engineer to inventory and assess the tangible assets of the selling utility, as required under 66 Pa. C.S. § 1329(a)(4), and to designate the condition of the assets inventoried. Such designation of condition shall not be restricted to whether the categories of system assets assessed are in poor, fair, good, or very good condition. Instead, the engineer’s designation of the condition of inventoried assets shall include descriptive terms such as rust, dents, visible leaks, cracking, bulging, chipping, refurbished, reconditioned and so forth for the utility valuation expert to complete an appraisal.

Exc. at 2 (quoting R.D. at 89; Ordering ¶ 6).

In support of its Exception, PAWC raises five arguments. First, the Company contends that the adoption of the ALJs’ recommendation could result in inconsistent decisions. PAWC cites to a recent filing of a Joint Petition for Approval of Non-Unanimous Settlement of All Issues (Non-Unanimous Settlement) in another Section 1329 proceeding involving a provision identical to Paragraph 32 in this Settlement.[[16]](#footnote-17) PAWC asserts that in *Upper Pottsgrove*, ALJ Jeffrey A. Watson recommended Commission approval of the Non-Unanimous Settlement, including the paragraph regarding the engineering assessment, with modifications. Additionally, the Company states that no party filed exceptions to the Recommended Decision in *Upper Pottsgrove*. Exc. at 3-4.

PAWC contends that there is no reason for the Commission to accept a settlement provision in one proceeding and modify the same provision in another case. The Company submits that doing so would place PAWC in the untenable position of having to comply with two inconsistent Commission Orders. *Id*. at 4.

Second, PAWC argues that in negotiating Paragraph 32, it believed the engineer’s assessment should designate the condition of the inventoried assets by category, rather than designating the condition of each individual asset. According to the Company, requiring the engineer to designate the condition of each individual asset would delay the completion of the assessment and make the assessment unduly expensive. PAWC submits that the benefits of the additional information in the assessment for the UVEs’ appraisal would be far outweighed by the costs resulting from Paragraph 32, especially considering that PAWC’s UVE testified that his firm conducts an on-site inspection of the system being acquired when preparing an appraisal. Citing to its witness testimony, PAWC proffers that this on-site inspection is mainly used to provide an overview of the system and to verify its condition. Exc. at 4 (citing PAWC St. 4W at 5; and PAWC St. 4-WW at 5).

PAWC further objects to the ALJs’ modification at a practical level, contending it would be difficult to describe a category of assets using the types of descriptive terms mentioned in the Recommended Decision. As an example, the Company questions how an engineer could describe a category of mains in a system if some of them have cracks, others have visible leaks, and still others have no apparent defect. In that scenario, the engineer could be forced to describe the condition of individual assets. PAWC submits that it is better to rely on the engineer’s professional judgment to rate categories of assets as being in poor, fair, good or very good condition. *Id*. at 5.

PAWC also addresses the ALJs’ objection to the use of the word “appraised” in connection with the engineer’s assessment. The Company submits that when considering that the engineer’s assessment is an inventory of the system’s assets, which is subsequently used by the buyer’s and seller’s UVEs in their appraisals of the system, Paragraph 32’s phrasing is technically accurate. *Id*.

In its third argument, PAWC objects to the ALJs’ modification of the Settlement because it would impose an obligation upon PAWC but not upon other public utilities engaged in acquisitions under Section 1329. The Company asserts that to the extent that the Commission decides to impose additional requirements upon the engineering assessment, the Commission should do so through an order of general applicability after affording due process to all interested persons similar to the Commission’s Implementation Orders following enactment of Act 12. Exc. at 5 (citing *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Supplemental Implementation Order entered February 28, 2019)).

In its fourth argument, PAWC submits that the ALJs’ modification of Paragraph 32 of the Settlement was not based upon record evidence of a substantial nature and the Parties were not afforded an opportunity to rebut the proposal through the submission of record evidence. The Company objects to the proposed requirement for detailed descriptions by the engineer of the assets in future PAWC Section 1329 proceedings, which was raised for the first time in the Recommended Decision after the evidentiary record was closed. Exc. at 6.

In its final argument, PAWC emphasizes that the Settlement represents a carefully balanced compromise of the interests of the Joint Petitioners. Moreover, the Settlement offers the customary provision of allowing each signatory to withdraw from the Settlement if the Commission modifies the Settlement in any manner. PAWC argues that the proposed modifications are unnecessary and impose a prospective obligation on the Company that has not been imposed on other public utilities in Section 1329 acquisition. The Company concludes that the Commission should not jeopardize this Settlement by modifying it unnecessarily. Exc. at 6.

On September 14, 2021, I&E filed a letter agreeing with PAWC that the ALJs’ modifications should be rejected for the reasons articulated in the Company’s Exception. I&E requests that the Commission approve the Settlement without modifications.

No Parties filed Replies to the Exception.

## G. Disposition

Upon review, we shall grant PAWC’s Exception because the proposed modifications to Paragraph 32 of the Settlement raise several concerns.

Adopting the proposed language in this proceeding would result in an apparent conflict with the engineering assessment provision recently approved by the Commission in *Upper Pottsgrove*. Plainly, the language approved in *Upper Pottsgrove* applies to all future Section 1329 proceedings by PAWC. Likewise, Paragraph 32 in the Settlement herein would apply to the Company’s future Section 1329 proceedings. Thus, PAWC would be presented with the potential dilemma of adhering to inconsistent applications of the engineering assessment requirements in all future Section 1329 proceedings.

Additionally, the proposed modifications were presented in the Recommended Decision after the close of the evidentiary record. Here, the Company did not have the opportunity to address the proposed language at the hearing or to present evidence pertaining to it. Thus, the evidentiary record does not appear to support the proposed modifications. Moreover, we agree with the Company that the ALJs’ modification of the Settlement would impose an obligation upon PAWC but not upon other public utilities engaged in acquisitions under Section 1329. We also recognize that I&E supports the Company’s position and none of the Parties have filed Replies to the Exception. As a further matter and as discussed below, we find that the Settlement as proposed without the modification is in the public interest. Accordingly, we shall modify Ordering Paragraph No. 6 of the Recommended Decision so that it corresponds with Paragraph 32 of the Settlement.

With respect to the remaining terms of the Settlement, the ALJs recommend approval, without modification, as being in the public interest. We concur.

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

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

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

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

We agree and adopt the ALJs’ analysis and conclusion that the provisions of the Joint Petition are in the public interest. Additionally, as discussed above, we acknowledge that the Parties have provided satisfactory responses to the Directed Questions sufficient to support a determination that the Settlement is in the public interest.

Moreover, we highlight additional public interest benefits that were not specifically addressed in the disposition section of the Recommended Decision. For example, we agree that the Township’s customers will benefit from enhanced customer service and operational functions through PAWC’s extended call center hours, additional payment options, and access to PAWC’s customer assistance programs. PAWC St. 1W at 16; PAWC St. 1WW at 16. Furthermore, we recognize PAWC’s commitment to preserve all jobs related to Valley’s systems as an important public interest benefit. Valley St. 1 W at 11; Valley St. 1WW at 10.

Accordingly, we shall adopt the ALJs’ Recommended Decision, as modified, and approve the Settlement, without modification.

# III. Conclusion

Upon review, we shall grant the Joint Petition and approve the terms and conditions of PAWC’s Applications set forth in the Settlement, without modification. Further, we shall grant the Exception of PAWC and adopt the Recommended Decision as modified, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exception of Pennsylvania-American Water Company filed on September 10, 2021, is granted, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judges Conrad A. Johnson and Emily I. DeVoe issued on August 31, 2021, is adopted as modified, consistent with this Opinion and Order.

3. That the Joint Petition for Approval of Unanimous Settlement of All Issues filed by Pennsylvania-American Water Company, the Office of Consumer Advocate, the Bureau of Investigation and Enforcement, the Office of Small Business Advocate, and Valley Township filed on August 3, 2021, at Docket Nos. A‑2020‑3019859 and A-2020-3020178, including all terms and conditions thereof, is approved without modification.

4. That the Secretary’s Bureau shall issue Certificates of Public Convenience under Sections 1102(a)(1) and 1102(a)(3) authorizing: (a) the transfer, by sale, of Valley Township’s assets, properties and rights related to its Water System and Wastewater System to Pennsylvania-American Water Company as provided in the Applications; and (b) Pennsylvania-American Water Company’s right to begin to offer, render, furnish and supply water and wastewater service in the areas served by Valley Township as indicated in the Applications.

5. That upon closing of Pennsylvania-American Water Company’s acquisition of Valley Township’s Water and Wastewater Systems, Pennsylvania-American Water Company shall be permitted to file 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.

6. That, pursuant to 66 Pa. C.S. § 1329(c), a rate base addition of $13,950,000 associated with Pennsylvania-American Water Company’s acquisition of the Wastewater System, and $7,325,000 associated with the acquisition of the Water System, effective upon the day of closing of Pennsylvania-American Water Company’s acquisition of Valley Township’s Water and Wastewater Systems is approved.

7. That the Water Application at A-2020-3019859 and the Wastewater Application at Docket No. A-2020-3020178 filed by Pennsylvania-American Water Company on October 9, 2020, are approved, subject to the following conditions, which are consistent with the Joint Petition for Approval of Unanimous Settlement of All Issues:

1. That, in the first base rate case that includes Valley’s Wastewater System:

(i) Pennsylvania-American Water Company shall propose to move Valley’s Wastewater System to 1.25x the current Valley wastewater rate or Pennsylvania-American Water Company’s proposed Rate Zone 1 system-average wastewater rates, whichever is lower.

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

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

b. That, in the first base rate case that includes Valley’s Water System:

(i) Pennsylvania-American Water Company shall propose to move Valley’s Water System to 2.0x the current Valley water rate or Pennsylvania-American Water Company’s proposed Rate Zone 1 system-average water rates, whichever is lower.

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

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

c. Within the first billing cycle following Closing on the Water System and the Wastewater System, Pennsylvania-American Water Company shall include a bill insert to Valley’s water and wastewater customers regarding its 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 Pennsylvania-American Water Company’s contact information. Pennsylvania-American Water Company shall further provide ongoing, targeted outreach to its Valley-area water and wastewater customers regarding its low-income program.

d. In the same welcome packet referenced above, Pennsylvania-American Water Company shall explicitly inform acquired customers that they are being converted to monthly billing. Pennsylvania-American Water Company’s letter shall also direct acquired customers to contact Pennsylvania-American Water Company with any questions about the conversion and/or to discuss low-income programming options that may be available.

e. In future acquisitions by Pennsylvania-American Water Company under 66 Pa. C.S. § 1329, filed subsequent to the entry date of this Opinion and Order, Pennsylvania-American Water Company 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.

f. Pennsylvania-American Water Company shall 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 shall be limited to whether the categories of system assets appraised are in poor, fair, good, or very good condition.

g. That Pennsylvania-American Water Company and Valley Township shall continue to work to achieve the transfer of the Real Property Rights. However, Pennsylvania-American Water Company shall be permitted, in its discretion, to close without the transfer of all 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. Pennsylvania-American Water Company shall provide an update to the Office of Consumer Advocate, the Office of Small Business Advocate and the Bureau of Investigation and Enforcement approximately thirty (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.

h. That Pennsylvania-American Water Company complete an infiltration and inflow study of the Valley Wastewater System following Closing and provide the results of that study to the Office of Consumer Advocate, the Office of Small Business Advocate and the Bureau of Investigation and Enforcement upon completion. The costs of the infiltration and inflow study shall be subject to prudence review when they are claimed for recovery in base rates.

i. That Pennsylvania-American Water Company is permitted to collect a distribution system improvement charge prior to the first base rate case in which the Valley water or wastewater service area plant-in-service is incorporated into Pennsylvania-American Water Company’s rate base, subject to the following conditions:

(i) Pennsylvania-American Water Company shall file an amended water or wastewater long term infrastructure improvement plan which does not re-prioritize other existing commitments in other service areas.

(ii) The Commission’s approval of Pennsylvania-American Water Company’s amended water or wastewater long term infrastructure improvement plan, as may be modified in the discretion of the Commission.

(iii) Pennsylvania-American Water Company shall file a compliance tariff supplement incorporating Valley’s Water or Wastewater System into its existing distribution system improvement charge tariff provisions, including all customer safeguards applicable thereto, after Commission approval of the amended long term infrastructure improvement plan.

j. That pursuant to 66 Pa. C.S. § 1329(f), Pennsylvania-American Water Company is permitted to accrue allowance for funds used during construction for post-acquisition water and wastewater improvements not recovered through the distribution system improvement charge for book and ratemaking purposes; provided, however, that any such claims for allowance for funds used during construction for post-acquisition water and wastewater improvements shall be addressed in Pennsylvania-American Water Company’s first base rate case which includes Valley’s Water System and Wastewater System; and provided further that the Joint Petitioners to the Joint Petition for Unanimous Approval of Settlement of All Issues reserve their rights to fully litigate their positions in future rate cases when this issue is ripe for review and that this term shall not be construed to operate as their preapproval of Pennsylvania-American Water Company’s requests.

k. That pursuant to 66 Pa. C.S. § 1329(f), Pennsylvania-American Water Company is permitted to defer depreciation related to post-acquisition water and wastewater improvements not recovered through the distribution system improvement charge for book and ratemaking purposes; provided, however, that any such claims for deferred depreciation related to post-acquisition water and wastewater improvements shall be addressed in Pennsylvania-American Water Company’s first base rate case which includes Valley’s Water System and Wastewater System; and provided further that the Joint Petitioners to the Joint Petition for Unanimous Approval of Settlement of All Issues reserve their rights to fully litigate their positions in future rate cases when this issue is ripe for review and that this term shall not be construed to operate as their preapproval of Pennsylvania-American Water Company’s requests.

l. That Pennsylvania-American Water Company is permitted to claim transaction and closing costs associated with the acquisition of Valley’s Water System and Wastewater System. The Joint Petitioners to the Joint Petition for Unanimous Approval of Settlement of All Issues 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 shall not be construed to operate as their preapproval of Pennsylvania-American Water Company’s request.

m. That the inclusion of outside legal fees, if any, in Pennsylvania-American Water Company’s transaction and closing costs under the Water Asset Purchase Agreement and the Wastewater Asset Purchase Agreement shall be separately identified in Pennsylvania-American Water Company’s next base rate case and amounts expended by Pennsylvania-American Water Company on behalf of Valley shall be separately identified. The Office of Consumer Advocate, the Office of Small Business Advocate and the Bureau of Investigation and Enforcement reserve the right to challenge the reasonableness, prudency, and basis for such fees.

8. That the Secretary’s Bureau shall issue certificates of filing pursuant to 66 Pa. C.S. § 507 for the following agreements between Pennsylvania-American Water Company and a municipal corporation: (a) The Sanitary Sewer Asset Purchase Agreement By and Between Valley Township as Seller and Pennsylvania-American Water Company 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 Township as Seller and Pennsylvania-American Water Company as Buyer, dated as of December 17, 2019; and (d) The November 15, 2011 Agreement between Valley Township and Sadsbury Township.

9. That the proceedings at Docket Nos. A-2020-3019859 and A‑2020‑3020178 be marked closed.

**A picture containing letter

Description automatically generatedBY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 28, 2021

ORDER ENTERED: October 28, 2021

1. Additionally, on September 17, 2021, I&E, the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA) each filed letters stating that they would not be filing Replies to PAWC’s Exception. [↑](#footnote-ref-2)
2. However, a number of individuals filed public comments in opposition. [↑](#footnote-ref-3)
3. Michael Hartman, Chief of Staff for Pennsylvania State Senator Carolyn T. Comitta, was the only witness to testify. On behalf of the senator, Mr. Hartman explained that providing safe, reliable, and affordable drinking water and wastewater systems is a matter of public health. He expressed support for Valley’s efforts in planning for the future concerning water and wastewater infrastructure, and he noted the acquisitions should be effected with the least possible impact on ratepayers. Tr. at 64. [↑](#footnote-ref-4)
4. As discussed below, the ALJs recommended that Paragraph 32 of the Settlement be modified to provide more descriptive terms in the designation of the condition of tangible assets in any future engineering assessment required under 66 Pa. C.S. § 1329(a)(4). R.D. at 1. [↑](#footnote-ref-5)
5. Governor Wolf signed into law Act 12 of 2016 (Act 12) on April 14, 2016. This Act amended Chapter 13 of the Code by adding a new section, Section 1329, which became effective on June 13, 2019. 66 Pa. C.S. § 1329. [↑](#footnote-ref-6)
6. The ALJs summarized the Statements in Support of the Settlement setting forth the bases upon which each of the Joint Petitioners believe the Settlement to be in the public interest. *See* R.D. at 37-69. [↑](#footnote-ref-7)
7. The Directed Questions will be addressed in detail below in Section II.E. of this Opinion and Order. [↑](#footnote-ref-8)
8. During the questioning of Mr. Guntrum, PAWC’s counsel also responded to ALJ Johnson’s directed questions regarding PAWC’s current policy for those customers who have lead service lines. Tr. at 102 – 104. [↑](#footnote-ref-9)
9. See Pennsylvania-American Water Company Tariff Water-PA P.U.C. No. 5, Original Page 47.1. [↑](#footnote-ref-10)
10. *Id.* In addition, the Company “may, but shall not be required, to petition the Commission for approval to modify its annual budget allotment of $6.0 million if the Company, in its sole discretion, determines that its annual budget allotment no longer meets the future needs of administering both Parts of the Replacement Plan.” [↑](#footnote-ref-11)
11. *See* PAWC Exhibit KEG-2W, Appendix A-15-a. [↑](#footnote-ref-12)
12. Cross connections are defined in the Pennsylvania Department of Environmental Protection’s (PA DEP’s) regulations (25 Pa. Code § 109.1) as follows:

    Cross-connection—An arrangement allowing either a direct or indirect connection through which backflow, including backsiphonage, can occur between the drinking water in a public water system and a system containing a source or potential source of contamination, or allowing treated water to be removed from any public water system, used for any purpose or routed through any device or pipes outside the public water system, and returned to the public water system. The term does not include connections to devices totally within the control of one or more public water systems and connections between water mains.

    PAWC St. 2W-S at 3. [↑](#footnote-ref-13)
13. Backflow refers to the flow of water back into a public water system from a customer’s home or business due to a higher pressure in the customer’s plumbing versus in the public water supply. Backsiphonage occurs when there is a substantial drop in water pressure within the public water supplier’s system. Backsiphonage can occur when there is a main break in the public water supplier’s system that may cause water to be siphoned from the customer’s home or business back into the water distribution grid. If the backflow or backsiphonage contains contaminants or pathogens, they can be distributed to the water supplied to other customers on the system who may unknowingly consume or use it for potable purposes. The installation of backflow prevention devices between the customer’s internal plumbing and a public water supplier’s service line will prevent backflow and backsiphonage from occurring. PAWC St. 2W-S at 3-4; Tr. at 106-108. [↑](#footnote-ref-14)
14. Section 109.709(a) of the PA DEP regulations provides:

    (a) No person may introduce contaminants into a public water supply through a service connection of a public water system.

    (1) It shall be the responsibility of the customer to eliminate cross-connections or provide backflow devices to prevent contamination of the distribution system from both backsiphonage and backpressure. Individual backflow preventors shall be acceptable to the public water supplier.

    (2) If the customer fails to comply with paragraph (1) within a reasonable period of time, the water supplier shall discontinue service after reasonable notice has been made to the customer.

    25 Pa. Code § 109.709(a). [↑](#footnote-ref-15)
15. Generally, the exercising of a water main valve means that each valve connected to the water main of the distribution system is tested to ensure it is working properly by operating the valve through a full cycle and returning it to its normal position (*i.e.*, turning the valve completely off, then gradually opening it and closing it, before returning it to its normal open position). *See e.g.*, Zane Satterfield, P. E., *Tech Brief* *– Valve Exercising*, Summer 2007, Vol. 7, Issue 2, National Environmental Services Center; <https://www.nesc.wvu.edu/files/d/1f62b334-8497-403e-bceb-f5116ac2c142/valve-exercising.pdf>. [↑](#footnote-ref-16)
16. Exc. at 3 (citing *Application of Pennsylvania-American Water Company – Wastewater Division (PAWC-WD), under Sections 1102 and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a) and 1329 (relating to enumeration of acts requiring certificate and valuation of acquired water and wastewater systems), for approval of: (1) the transfer, by sale, of substantially all of the wastewater system assets, properties and rights of Upper Pottsgrove Township related to its wastewater collection and conveyance system; (2) the right of PAWC-WD to begin to offer or furnish wastewater service to the public in Upper Pottsgrove Township, Montgomery County, and a portion of Douglass Township, Berks County, Pennsylvania; and (3) the use for ratemaking purposes of the lesser of fair market value or the negotiated purchase price of the Upper Pottsgrove Township assets related to its wastewater collection and treatment system*, Docket No. A-2020-3021460 (Recommended Decision issued August 3, 2021) (*Upper Pottsgrove*)). At the time of the filing of the Exception, the Commission had not yet issued a final determination in *Upper Pottsgrove*. Subsequently, a Final Order was issued on September 15, 2021, approving the Recommended Decision in *Upper Pottsgrove* without modification. [↑](#footnote-ref-17)