



February 1, 2022

VIA E-FILING

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

Re: In re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, to Pennsylvania-American Water Company, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the York City Sewer Authority and operated by the City of York, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of York, Pennsylvania, and to three bulk service interconnection points located in North York Borough, Manchester Township and York Township, York County, Pennsylvania, and (3) the rights of Pennsylvania-American Water Company to begin to offer and furnish Industrial Pretreatment Program to qualifying industrial customers in Manchester Township, Spring Garden Township and West Manchester Township, York County, Pennsylvania; Docket Nos. A-2021-3024681, et al

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

Dear Secretary Chiavetta:

Enclosed please find the fully-executed Joint Stipulation of Proposed Finds of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs, in the above-referenced matter. Copies have been served as shown on the attached Certificate of Service.

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

Sincerely,

COZEN O'CONNOR

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

DPZ/kmg
Enclosure

cc: Honorable Steven K. Haas
Per Certificate of Service
Susan Simms Marsh, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water Company :
under Section 1102(a) of the Pennsylvania Public Utility Code, 66 :
Pa C.S. § 1102(a), for approval of (1) the transfer, by sale, to :
Pennsylvania-American Water Company, of substantially all of the :
assets, properties and rights related to the wastewater collection and :
treatment system owned by the York City Sewer Authority and :
operated by the City of York, (2) the rights of Pennsylvania- :
American Water Company to begin to offer or furnish wastewater :
service to the public in the City of York, Pennsylvania, and to three :
bulk service interconnection points located in North York Borough, :
Manchester Township and York Township, York County, :
Pennsylvania, and (3) the rights of Pennsylvania-American Water :
Company to begin to offer and furnish Industrial Pretreatment :
Program to qualifying industrial customers in Manchester :
Township, Spring Garden Township and West Manchester :
Township, York County, Pennsylvania :
Docket No. A-2021-3024681, *et al.*

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of February, 2022 served a true copy of the foregoing **Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs**, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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North York Borough (aka "Municipalities")



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water Company :
under Section 1102(a) of the Pennsylvania Public Utility :
Code, 66 Pa C.S. § 1102(a), for approval of (1) the transfer, :
by sale, to Pennsylvania-American Water Company, of : Docket No. A-2021-3024681, *et*
substantially all of the assets, properties and rights related to : *al.*
the wastewater collection and treatment system owned by the :
York City Sewer Authority and operated by the City of York, :
(2) the rights of Pennsylvania-American Water Company to :
begin to offer or furnish wastewater service to the public in :
the City of York, Pennsylvania, and to three bulk service :
interconnection points located in North York Borough, :
Manchester Township and York Township, York County, :
Pennsylvania, and (3) the rights of Pennsylvania-American :
Water Company to begin to offer and furnish Industrial :
Pretreatment Program to qualifying industrial customers in :
Manchester Township, Spring Garden Township and West :
Manchester Township, York County, Pennsylvania

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

Pennsylvania-American Water Company (“PAWC”); the City of York (“City”); the York City Sewer Authority (“Authority”); the Office of Consumer Advocate (“OCA”); the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”); the Office of Small Business Advocate (“OSBA”); Manchester Township, North York Borough, Spring Garden Township, West Manchester Township and York Township (together, the “Municipalities”); and The York Water Company (“York Water”) active parties to the above-captioned proceeding (collectively, the “Stipulating Parties”), file this Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs (“Stipulation”) in the above-captioned proceeding, pursuant to Paragraph 44 of the Joint Petition

for Approval of Unanimous Settlement of All Issues (the “Settlement”). In support of the Stipulation, the Stipulating Parties represent as follows:

1. Paragraphs 1 through 18 (regarding “Background”) of the Settlement are hereby incorporated by reference.

2. Consistent with Paragraph 44 of the Settlement, the Stipulating Parties have jointly prepared **Appendix A - Proposed Findings of Fact, Appendix B - Proposed Conclusions of Law** and **Appendix C - Proposed Ordering Paragraphs**. The Stipulating Parties agree that the facts agreed-to in this Joint Stipulation are sufficient to find that the Settlement is in the public interest.

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

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

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

WHEREFORE, the Stipulating Parties, by their respective counsel, respectfully request that the Honorable Administrative Law Judge Steven K. Haas approve this Stipulation and incorporate the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs into his Recommended Decision in this proceeding.

Respectfully submitted,



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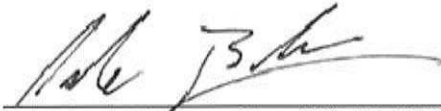
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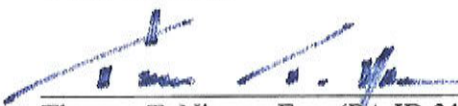
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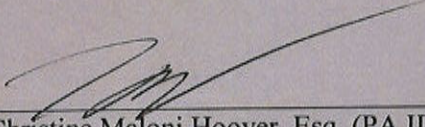
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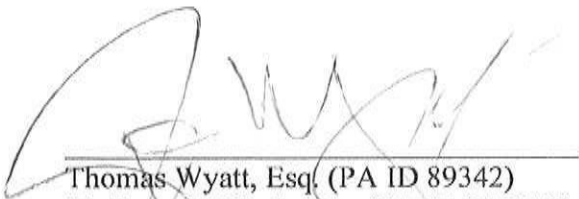
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APPENDIX A
PROPOSED FINDINGS OF FACT

Parties

1. Pennsylvania-American Water Company (“PAWC”), a subsidiary of American Water Works Company, Inc. (“American Water”), is the largest regulated water and wastewater public utility duly organized and existing under the laws of the Commonwealth of Pennsylvania. It furnishes water and wastewater service to the public in a service territory encompassing more than 409 communities in 37 counties. Overall, PAWC serves a combined population of over 2,400,000 across the Commonwealth. PAWC St. 1 p. 18. As of May 31, 2021, PAWC furnished wastewater service to approximately 79,028 residential, commercial, industrial, municipal and bulk customers in Pennsylvania. As of May 31, 2021, PAWC furnished water service to approximately 674,783 customers in Pennsylvania. PAWC St. 1 p. 19.

2. York City (the “City”) is a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, 11 Pa. C.S. §§ 10101 *et seq.* PAWC Exhibit BJJ-1, Attachment A-24-a.

3. The York City Sewer Authority (the “Authority”) is a body corporate and politic, duly organized under the Pennsylvania Municipality Authorities Act, 53 Pa. C.S. §§ 5601 *et seq.* PAWC Exhibit BJJ-1, Attachment A-24-a.

4. The Bureau of Investigation and Enforcement (“I&E”) serves as the prosecutory bureau for the Pennsylvania Public Utility Commission (“Commission”) for purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code (“Code”) and Commission Regulations and Orders. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered Aug. 11, 2011).

5. The Office of Consumer Advocate (“OCA”) is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

6. The Office of Small Business Advocate (“OSBA”) is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

7. York Township, West Manchester Township, Spring Garden Township, North York Township, and Manchester Township (collectively, the “Municipalities”) are political subdivisions of the Commonwealth of Pennsylvania.

8. The York Water Company (“York Water”) is a public utility engaged in the business of supplying water and wastewater service in Pennsylvania subject to the regulatory jurisdiction of the Commission. York Water St. 1 p. 4.

The Wastewater System

9. The York wastewater system (the “York System”) was originally constructed by the City, transferred to the Authority by deed in 1952 and is currently operated by the City pursuant to a long-term lease entered into with the Authority in 1987. City St. 1 p. 3.

10. The York System provides treatment, conveyance and collection service to the City of York, and treatment and conveyance service to several surrounding municipalities. The municipalities receiving treatment and conveyance services through intermunicipal agreements are: Manchester Township, West Manchester Township, York Township, North York Borough, West York Borough and Spring Garden Township. The intermunicipal agreement with West York Borough was assigned to York Water in 2016. The City also has a more limited intermunicipal agreement with Springettsbury Township for emergency flows. City St. 1 p. 3.

11. The York System is comprised of a 26 million gallons per day (“MGD”) treatment plant, approximately 65,000 linear feet of interceptors, and approximately 489,000 linear feet of collection pipelines and other system assets serving the City. The collection systems serving the connected municipalities are not part of the York System and are not being transferred to PAWC as part of the transaction. City St. 1 p. 3.

12. As of April 30, 2021, the York System furnished wastewater services to approximately 13,747 direct customers. This number does not include the approximately 30,000 customers served by surrounding municipalities with whom York has bulk service agreements. PAWC St. 1 p. 19.

The Service Territory

13. PAWC has created an applied-for certificated service territory map that encompasses the City of York. The service territory encompasses three parcels where the wastewater treatment plant is located in Manchester Township. The bulk sewer service connections for North York Borough, Manchester Township and York Township are located outside the service areas. PAWC included in its applied-for service territory areas the three bulk service interconnection points located in the aforementioned municipalities. In addition, PAWC included in its applied-for service territory areas served in the surrounding municipalities where PAWC will be providing Industrial Pretreatment Program (“IPP”) service to industrial customers. This applied-for certificated service territory map will be part of PAWC's Act 537 Plan update, which will be municipally adopted by all effected municipalities and approved by the Department of Environmental Protection (“DEP”) prior to Closing. This way, the service area map in the latest Act 537 Plan update will match PAWC's certificated territory at Closing. PAWC St. 2 p. 7.

The Transaction and the Asset Purchase Agreement

14. The City issued a public Request for Proposals (“RFP”) on July 10, 2020, seeking proposals for purchase of the entire York System from any and all interested bidders. Among four proposals received in response to the RFP, PAWC's proposal to purchase the York System for \$235 million was selected as the successful proposal on December 22, 2020. The City conducted two public input hearings on January 14, 2021, to review PAWC's proposal and discuss the potential sale with interested members of the public. City St. 1 p. 4; PAWC St. 1 pp.8-9.

15. City Council approved the Asset Purchase Agreement (“APA”) on March 2, 2021. City Exhibit MRH-1.

16. The Authority's Board similarly authorized execution of the APA on April 6, 2021. See City Exhibit MRH-2.

17. On April 6, 2021, the City, the Authority and PAWC entered into the APA for the sale of substantially all of the assets, properties, and rights of the System. PAWC St. 1 p. 9.

18. Under the APA, the closing of the transaction (“Closing”) will occur after the receipt of all applicable governmental approvals, including approvals from this Commission, and after all applicable conditions have been met (or waived) by the parties. PAWC St. 1 p. 9.

19. Upon Closing, PAWC will take ownership of the System and begin rendering wastewater services to York's current customers and York will permanently discontinue providing or furnishing wastewater service to the public. The City also will cease providing bulk service. Additionally, upon Closing, York's obligation to implement the IPP will cease. PAWC St. 1 p. 9.

20. The consideration for the purchase of the System is (i) the negotiated purchase price of \$235,000,000 and (ii) the Average Daily AR Payment. The Average Daily AR Payment is the

average daily System revenue for the period from Seller's final meter reading through the Closing Date. PAWC St. 1 p. 11.

The UVE Appraisals

21. The Application seeks to utilize the process set forth in 66 Pa. C.S. § 1329 to determine the fair market value of the System assets and the ratemaking rate base of those assets. PAWC St. No. 1 p. 4. As required by Section 1329, PAWC and the City jointly retained the services of Buchart Horn to complete the Engineering Assessment Study of the City of York Wastewater System Assets. PAWC Exhibit BJK-1 Appendix A-15-a.

22. As also required by Section 1329, the Application included the appraisals of PAWC's utility valuation expert ("UVE"), AUS Consultants, Inc. ("AUS") and the City's UVE, ScottMadden, Inc. ("ScottMadden"). PAWC Exhibit BJK-1, Appendices A-5.1 and A-5.2.

23. AUS is registered as a UVE with the Commission. PAWC St. No. 4 p. 1. AUS prepared a fair market valuation report dated as of April 6, 2021. AUS's fair market value report utilized the cost approach, the income approach, and the market approach. PAWC Exhibit BJK-1, Appendix 5.1. AUS filed a verification that states the fair market value report was prepared in compliance with the Uniform Standards of Profession Appraisal Practice ("USPAP"). PAWC Exhibit BJK-1, Appendix A-9.1. AUS's fair market value report concluded that the value of the York System was \$240,336,741. PAWC St. 4 p. 3.

24. The City retained the services of ScottMadden to complete an appraisal of the System. ScottMadden is a UVE registered with the Commission. City St. 2 p. 1. ScottMadden issued a fair market valuation of the System entitled "Valuation Report City of York June 15, 2021." ScottMadden's fair market value report utilized the cost approach, the income approach,

and the market approach. PAWC Exhibit BJG-1, Appendix 5.2. ScottMadden filed a verification that states the fair market value report was prepared in compliance with USPAP. PAWC Exhibit BJG-1, Appendix A-9.2. ScottMadden's fair market value report concluded that the value of the York System was \$269,376,640. City St. 2 p. 22.

Fair Market Value

25. The purchase price (\$235,000,000) is lower than the average of the two UVE appraisals ($\$240,336,741 + 269,376,640/2 = \$254,856,690$).

26. The Settlement proposes to use \$231,500,000 for ratemaking rate base purposes for the acquired system. Settlement ¶ 25.

27. The OCA recommended that \$175,629,000 be used for ratemaking rate base based on its recommended adjustments to the UVE valuation results. OCA St. 1SR p. 53; OCA Exh. RCS-11 p. 2.

28. I&E recommended that \$229,598,406 be used for ratemaking rate base based on its recommended adjustments to the UVE valuation results. I&E St. 1 at 26; I&E Exh. 1, Sch. 4.

PAWC's Financial Fitness

29. PAWC is a large, financially-sound company that can financially support the acquisition of the System as well as the ongoing operating and investment commitments that will be required to operate, maintain and improve those assets. In addition, given its size, its access to capital, and its recognized strengths in system planning, capital budgeting, and construction management, PAWC is well-positioned to ensure that high quality wastewater service meeting all applicable state and federal regulatory requirements is provided to York's customers. PAWC St. 1 p. 20.

30. PAWC is the Commonwealth's largest water and wastewater provider, with total assets of \$5.6 billion and annual revenues of \$733 million for 2020. For 2020, PAWC had operating income of approximately \$338 million and net income of approximately \$197 million. These operating results produced cash flows from operations of approximately \$389 million. PAWC St. 3 p. 4.

31. PAWC has liquidity through a \$400 million line of credit through American Water Capital Corp. ("AWCC"), a wholly-owned subsidiary of American Water. PAWC has long term debt financing through AWCC at favorable interest rates and payment terms. PAWC can also obtain additional equity investments through American Water. PAWC St. 3 p. 5.

32. PAWC will initially fund the transaction with short-term debt and later replace it with a combination of long-term debt and equity capital. PAWC St. 3 p. 5. PAWC does not anticipate that the acquisition of the York System will have a negative impact on PAWC's cash flows, credit ratings or access to capital. Therefore, the transaction will not deteriorate in any manner PAWC's ability to continue to provide safe, adequate and reasonable service to its existing customers at just and reasonable rates. PAWC St. 3 p. 6.

PAWC's Technical Fitness

33. PAWC currently employs approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, materials management, risk management, human resources, legal, accounting, and customer service. As a subsidiary of American Water, PAWC has available to it additional resources of highly trained professionals who have expertise in various specialized areas. These operations and process experts have deep experience in the operation and

maintenance of various types of wastewater treatment technology, as well as the experience available to support PAWC's operations staff and facilities. PAWC St. 2 pp. 13-14.

34. Current PAWC Southcentral Area operation employees and York employees will be under the same management and support teams, and employees of both departments will support each other when appropriate and necessary, particularly in emergency situations. The York wastewater treatment plant is located within 20 miles of PAWC's Fairview Township wastewater system and 24 miles of PAWC's Mechanicsburg regional operations facility. PAWC St. 1 p. 20; PAWC St. 2 p. 9.

PAWC's Legal Fitness

35. PAWC is a Commission-regulated public utility with a good compliance history. There are no pending legal proceedings that would suggest that PAWC is not legally fit to provide service to customers on York's System. PAWC St. 1 p. 22.

36. PAWC has had no material issues in complying with the Code, the Clean Streams Law, or other regulatory requirements. PAWC St. 2 p. 15.

37. PAWC has the expertise, the record of environmental compliance, the commitment to invest in necessary capital improvements and resources, and the experienced managerial and operating personnel necessary to provide safe and reliable wastewater services to the residents of the City and surrounding areas. PAWC St. 1 p. 18.

Ratemaking Rate Base

38. The negotiated purchase price for the System is \$235,000,000. PAWC St. 3 p. 6. The average of the two UVE appraisals is \$254,856,690. PAWC St. 3 p. 6.

39. PAWC seeks Commission approval to record the net value of the assets on its books, consistent with generally accepted accounting principles. PAWC St. 3 p. 8. As proposed by the Settlement, the net value of the assets is \$231,500,000.

Distribution System Improvement Charge

40. The APA provides that PAWC will not charge York customers a Distribution System Improvement Charge (“DSIC”) prior to the effective date of PAWC’s next Commission-approved base rate increase. PAWC St. 3 p. 9; PWC St. 1-R p. 11.

Allowance for Funds Used During Construction, Deferred Depreciation and Transaction Closing Costs

41. PAWC is not able, as a practical matter, to determine the exact extent of transaction and closing costs until after Closing. In its Application, PAWC estimated the anticipated range of transaction and closing costs as approximately \$1,150,000 to \$1,300,000. PAWC St. 3 p. 19.

42. PAWC anticipates that it will make post-acquisition improvements in the System. As such, PAWC has requested to accrue Allowance for Funds Used During Construction (“AFUDC”) for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes consistent with what is permitted under Section 1329. PAWC will address any claims for AFUDC in the first base rate proceeding in which York’s assets are included. PAWC St. 3 p. 20.

43. PAWC calculates post-in service AFUDC consistent with the methodology approved by the Commission in its Final Order at Docket No. R-00922428 (Order entered April 21, 1993). This methodology for calculating AFUDC applies the short term debt rate for the

portion of construction work in progress supported by short term debt, and long term financing rates apply only for amounts not supported by short term debt. PAWC St. 3-R p. 7.

44. PAWC intends to defer depreciation on non-DSIC-eligible post-acquisition improvements for book and ratemaking purposes. PAWC St. 3 p. 20.

Rates

45. PAWC has committed to implement, upon closing of the transaction, York's wastewater rates then in effect at closing. Subject to PUC approval in a future base rate proceeding, PAWC agreed in the APA to maintain base rates for York's customers for at least three years from the Closing Date. The parties to the APA recognize that ratemaking authority is vested with the Commission. PAWC St. 1 p. 12.

46. Immediately upon Closing, York's customers will be subject to PAWC's prevailing wastewater tariff on file with the Commission with respect to miscellaneous fees and charges, rules and regulations for wastewater service. All of York's direct customers will be billed on a monthly basis. The monthly rates are shown in PAWC's *pro forma* tariff. PAWC St. 1 p. 12.

47. The transaction will have no immediate impact on the rates of PAWC's existing water or wastewater customers. Any impacts on the rates of PAWC's current water and wastewater customers would occur only upon Commission approval as part of a base rate proceeding. PAWC St. 3 p. 13.

Industrial Pretreatment Program

48. The York System operates an IPP, which currently serves 22 industrial customers. Eleven of these customers are located in the City, five are located in West Manchester Township, four are located in Manchester Township, and two are located in Spring Garden

Township. The IPP is codified in the City Code, and the surrounding municipalities have likewise enacted ordinances requiring their industrial customers to comply with the York IPP. PAWC St. 1 p. 26.

49. After the Closing, IPP customers outside the City will continue to receive wastewater service from their respective municipalities. PAWC will assume York's responsibility to provide IPP service to all 22 of York's current IPP customers. In order to provide IPP service to IPP customers located outside PAWC's certificated wastewater service territory in the City, PAWC included in its applied-for service territory an IPP service territory that includes each current IPP customer location outside the City's boundaries. PAWC's certificated public utility rights for those identified IPP service territories would be limited to administering the IPP; the municipalities would otherwise continue to provide wastewater service. PAWC will, in the future, file applications for certificates of public convenience for the addition of service territory to provide IPP service to additional IPP customers. Likewise, if an IPP customer no longer receives IPP service, PAWC will file an application for a certificate of public convenience to abandon IPP service to such customer. PAWC St. 2 p. 6.

Customer Notice

50. PAWC provided a non-binding estimate of possible rate impacts for existing customers and York System customers. PAWC Exhibit BJK-1, Appendix A-18-d. These estimates were prepared pursuant to the Commission's Order in *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered October 3, 2019) ("Steelton Order"). PAWC

St. No. 3 p. 14. Ultimately, any rate impacts of the acquisition will be determined by the Commission in future base rate proceedings. PAWC St. No. 3 p. 18.

Municipal Agreements

51. In the Application, PAWC requested that the Commission approve the APA pursuant to Section 507 of the Code. BJG-1, Application ¶¶ 3, 46.

52. PAWC has filed a *pro forma* Wastewater Treatment and Conveyance Agreement with the Municipalities. Fully-executed copies of the agreements with the Municipalities cannot be filed at this time because of the time needed for municipal approval and public meeting requirements. The executed agreements will replace the current agreements between the City and each of the Municipalities. PAWC St. 1-Supp.(2) p. 4.

53. PAWC has filed a *pro forma* Agreement with Springettsbury Township. A fully-executed copy of this agreement cannot be filed at this time because of the time needed for municipal approval and public meeting requirements. This agreement is substantially similar to the current agreement between the City and Springettsbury, which it will replace upon Closing. PAWC St. 1-Supp.(2) p. 2.

Agreement with York Water

54. On February 1, 2022, PAWC filed a *pro forma* Wastewater Treatment and Conveyance Agreement with York Water (which owns and operates the wastewater system formerly owned by West York Borough). The executed agreement will replace the current agreement between the City and York Water, as successor to West York Borough.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, these application proceedings. 66 Pa. C.S. §§ 1102, 1103 and 1329.

2. PAWC has the burden of proof in these proceedings. 66 Pa. C.S. § 332(a).

3. Commission policy promotes settlements. 52 Pa. Code § 5.231.

4. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. 52 Pa. Code § 69.401.

5. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991). The instant settlement is in the public interest.

6. The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a) (“Procedure to obtain certificates of public convenience”).

7. A certificate of public convenience is required for “any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized” 66 Pa. C.S. § 1102(a)(1).

8. A certificate of public convenience is required for “any public utility . . . to acquire from . . . any person or corporation, including a municipal corporation, by any method or

device whatsoever . . . the title to, or possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(3).

9. An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958). PAWC has demonstrated that it is technically, financially and legally fit.

10. The fitness of a currently certificated public utility is presumed. *See e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

11. An applicant for a certificate of public convenience must demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

12. In granting a certificate of public convenience, the Commission may impose such conditions as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).

13. For an acquisition in which a municipal corporation and the acquiring public utility agree to use the valuation procedure delineated in 66 Pa. C.S. § 1329, the ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the parties or the fair market value of the selling utility. 66 Pa. C.S. § 1329(c)(2). For purposes of Settlement, the parties have agreed that \$231,500,000 is the amount to be utilized for the ratemaking rate base.

14. “Fair market value” is defined as “the average of the two utility valuation expert appraisals conducted under subsection (a)(2).” 66 Pa. C.S. § 1329(g).

15. For an acquisition in which a municipal corporation and the acquiring public utility agree to use the valuation procedure delineated in 66 Pa. C.S. § 1329, the application is to contain a tariff equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition. 66 Pa. C.S. § 1329(d)(1)(v).

16. During the period that the *pro forma* tariff supplement is in effect, an acquiring public utility may collect a DSIC, as approved by the Commission. 66 Pa. C.S. § 1329(d)(4).

17. A wastewater utility must submit a long-term infrastructure improvement plan to, and receive approval from, the Commission prior to collecting a DSIC. Implementation of Act 11 of 2012, Docket No. M-2012-2293611 (*Final Implementation Order* entered August 2, 2012).

18. Section 1329 permits an acquiring public utility's post-acquisition improvements, which are not included in a DSIC, to accrue allowance for funds used during construction after the date the cost was incurred until the asset has been in service for a period of four years or until the asset is included in the acquiring public utility's next base rate case, whichever is earlier. 66 Pa. C.S. § 1329(f)(1).

19. Section 1329 permits an acquiring public utility to defer depreciation on post-acquisition improvements, which are not included in a DSIC. 66 Pa. C.S. § 1329(f)(2).

20. Section 1329 permits an acquiring public utility to include transaction and closing costs in its rate base, during its next base rate proceeding. 66 Pa. C.S. § 1329(d)(2). The Commission will not approve these costs during the 1329 proceeding. *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016).

21. A contract between a municipality and a public utility (other than a contract to furnish service at regular tariff rates) must be filed with the Commission at least 30 days before

the effective date of the contract. The Commission may approve it by issuing a certificate of filing or institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. 66 Pa. C.S. § 507.

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

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

(a) That the Honorable Steven K. Haas recommend approval of, and the Commission approve, this Joint Petition for Approval of Unanimous Settlement of All Issues as submitted, including all terms and conditions thereof, without modification.

(b) That the Application filed by PAWC on July 1, 2021, as amended, be approved, subject to the following conditions:

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

(2) That the Commission approve an IPP service territory that includes each current IPP customer located outside the City's municipal boundaries, as shown on the Application's **Appendix A-16-a through e – IPP**. The pro forma tariff attached to the Application as **Amended Appendix A-12** includes fees for IPP service.

(3) That, in its first rate case filed after the transaction Closing date, PAWC will provide a report on which York IPP customers have remained with PAWC and which are no longer

receiving IPP service. In the first rate case filed after the transaction Closing date, PAWC will provide cost of service information for the IPP service as it is developed at that point in time. If PAWC has not completed its cost of service information for the IPP service rates prior to the first rate case filed after the transaction Closing date, it agrees to provide the cost of service calculation and comparison to existing IPP rates to the statutory advocates as part of its subsequent rate filing.

(4) That the Commission permit PAWC to issue a compliance tariff supplement, consistent with the pro forma tariff supplement attached to the Application as **Amended Appendix A-12**, to be effective immediately upon closing of the transaction.

(5) That, except as explicitly agreed upon in the Settlement, nothing contained in the Settlement or the Commission's approval of the Application shall preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC proceeding.

(6) That, in the first base rate case that includes the System:

(i) PAWC will propose to move the System to 1.47x the current System rate or PAWC's proposed Rate Zone 1 system average wastewater rates, whichever is lower.

(ii) PAWC may propose an effective date for new rates for the System that is different from the effective date of new rates for other customers, provided that such effective date is at least three years after the Closing.

(iii) PAWC may agree to rates other than those proposed for System customers in the context of a settlement of the base rate case.

(iv) OCA, I&E and OSBA reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals. The Parties expressly recognize that the Commission's ultimate ratemaking authority to set just and reasonable rates and, notwithstanding anything to the contrary contained in this Paragraph, may enter into a settlement of the base rate

case, whether full or partial and whether unanimous or non-unanimous, on reasonable terms and conditions.

(v) The current rate for System residential wastewater customers with an average usage of 3,458 gallons per month is approximately \$32.60.

(7) That, pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$231,500,000 for ratemaking rate base purposes for the acquired System.

(8) That, pursuant to 66 Pa. C.S. § 1702, PAWC be permitted to record the acquisition at the net value of the assets (\$231,500,000), consistent with generally accepted accounting principles.

(9) That PAWC will not include System-related investments in its DSIC until PAWC collects a DSIC from System customers. PAWC shall be permitted to collect a DSIC from System customers upon (i) PAWC's filing of an amended wastewater Long-Term Infrastructure Improvement Plan ("Amended LTIIIP") including the System which does not re-prioritize other existing commitments in other service areas, (ii) the Commission's approval of the Amended LTIIIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement which incorporates the System into PAWC's DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the Amended LTIIIP. Nothing in this paragraph shall be construed to modify the terms of Section 6.04(a) of the Asset Purchase Agreement establishing that the DSIC shall not be charged to System customers until PAWC's next Commission-approved base rate case.

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

(11) That, pursuant to 66 Pa. C.S. § 1329, PAWC be permitted to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes.

(12) That, pursuant to 66 Pa. C.S. § 1329, PAWC be permitted to include, in its next base rate case, a claim for transaction and closing costs associated with the acquisition of the System.

(13) That the inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the APA between PAWC, the City and the Authority shall be separately identified in PAWC's next base rate case and amounts expended by PAWC on behalf of the City or the Authority will be separately identified.

(14) That, pursuant to 66 Pa. C.S. § 507:

(i) The Commission shall issue a Certificate of Filing or approval for the Asset Purchase Agreement By and Among the Authority, as Seller, the City and PAWC, as Buyer, Dated as of April 6, 2021.

(ii) The Commission shall issue Certificates of Filing or approval for the *pro forma* Wastewater Treatment and Conveyance Agreement, filed on January 12, 2022, which will be entered into, in a substantially-similar form, by PAWC and each of the Municipalities separately (“Municipalities Bulk Agreement”), subject to review by the Commission in PAWC’s first base rate case following Closing.

(iii) The Commission shall issue Certificates of Filing or approval for the *pro forma* Articles of Agreement, filed on January 12, 2022, which will be entered into, in a substantially-similar form, by PAWC and Springettsbury Township (“Springettsbury Bulk

Agreement”), subject to review by the Commission in PAWC’s first base rate case following Closing.

(15) That the Commission approve the *pro forma* Wastewater Treatment and Conveyance Agreement, filed on February 1, 2022, which will be entered into, in a substantially-similar form, by PAWC and York Water, subject to review by the Commission in PAWC’s first base rate case following Closing and in York Water’s base rate cases following Closing.

(16) That Closing on the transaction shall be conditioned on:

(i) Filing of an executed bulk agreement, substantially similar to the Municipalities Bulk Agreement, by PAWC separately with each of the Municipalities.

(ii) Filing of an executed version of the Wastewater Treatment and Conveyance Agreement by PAWC and York Water, which is substantially similar to the version filed with the Commission on February 1, 2022.

(iii) Each Municipality and York Water receiving the transportation funds owed to each of them from the City at the time of Closing on the transaction and the City, York Water, and the Municipalities executing an Intermunicipal Agreement whereby each of Municipalities and York Water will pay any amount owed by or at Closing and the City will pay, at the time of Closing, an amount equal to the total of the underpayment of West York Borough minus the net amount due to the City to reconcile a City of York Wastewater Treatment Plant debt service billing error. The City reserves all rights to collect the debt service underpayment from West York Borough. Additionally, the Intermunicipal Agreement for the debt service billing reconciliation must state the amount of West York Borough’s debt service underpayment that arose before York Water’s closing on the West York Borough wastewater system. Further, the Intermunicipal Agreement must provide that: (1) the City agrees West York Borough is solely

responsible for any claims arising from West York Borough's obligations prior to York Water's ownership of the West York Borough wastewater system; (2) the City waives any claims for payment from York Water for any West York Borough underpayment amount that accrued prior to York Water's ownership of the West York Borough wastewater system; and (3) the City does not waive any claims for payment from York Water for any York Water underpayment amount that accrued following York Water's ownership of the West York Borough wastewater system. Each of the Municipalities and York Water agrees to pay in full the final estimated sewer service invoice for services rendered through Closing as required by the intermunicipal agreements currently in place between each of the Municipalities and York Water and the City. Additionally, the City shall establish an account at Closing of \$2,000,000 to be held in escrow for City obligations to the Municipalities and York Water pending completion of the final audit and reconciliation of the sewer charges for 2019, 2020, 2021 and any relevant future period prior to Closing as required by the intermunicipal agreements currently in place between each of the Municipalities and York Water and the City. As part of that final audit and reconciliation process, the City shall provide all documentation and audited statements that the City used to calculate the balances of the transportation funds for each of the Municipalities and York Water as well as sewer charges for 2019 to the present. Such documentation and audited statements shall be in sufficient detail to enable the Municipalities and York Water to confirm that: (1) the transportation fund balances were correctly calculated by the City; (2) no portion(s) of the transportation fund balances were omitted by the City; and (3) the reconciliation of sewer charges for the years 2019 to present are true and correct. If the Municipalities or York Water contest the City's reconciliation calculations, any proposed adjustments must be supported by documentation in sufficient detail to enable the City to confirm the correctness of the proposed adjusted calculations. Through this

Settlement, the City agrees that York Water and the Municipalities have the legal right to pursue payment from the City of the remaining portion(s) of any such transportation fund balances that the City failed to refund, including any amounts in excess of the \$2 million to be held in escrow for the City's obligations to the Municipalities and York Water. Additionally, in recognition of the resolution on the Municipalities' and York Water's Bulk Agreements, the Municipalities, York Water, and the City shall jointly request by February 2, 2022, that the arbitrator issue an Order staying the consolidated proceedings docketed before the American Arbitration Association at AAA Case Nos. 01-21-0016-2228 and 01-21-0016-2942 and postponing all pending deadlines relating to discovery, motions, expert reports, and hearing dates in those proceedings pending issuance of a Final PUC Order approving the settlement. The Municipalities, York Water, and the City agree not to commence litigation in any court, forum, or tribunal raising the claims asserted by each of them, if any, in the consolidated arbitration proceedings while such stay remains in effect. In the event that the PUC modifies or does not approve the parties' settlement, any party shall have the right to request that the arbitrator lift the stay, in which case the Municipalities, York Water, and the City agree that they will then jointly request a case management conference with the arbitrator to set new dates for completion of discovery, motions, expert reports, and hearing in those consolidated proceedings.

(iv) Filing of an executed bulk agreement, substantially similar to the Springettsbury Bulk Agreement, by PAWC with Springettsbury Township.

(17) That, in the first base rate case that includes the System's assets, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of the System.

(18) That, in the first base rate case that includes the System's assets, PAWC will also provide a separate cost of service study for the System.

(19) That, within the first billing cycle following closing on the System, PAWC shall include a bill insert to System customers regarding its low income programs and shall include such information in a welcome letter to System customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low income programs, eligibility requirements for participation in the programs, and PAWC's contact information. PAWC also agrees to ongoing, targeted outreach to its York-area wastewater customers regarding its low income programs.

(20) That, except as set forth in the following paragraph, the transaction shall not be permitted to occur unless and until York has: (1) identified all missing easements including public rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at closing; and (3) borne all costs and expenses for obtaining and conveying the missing easements and other property rights.

(21) That, for circumstances beyond York's control where it is unable to transfer all missing easements including public rights-of-way and other property rights before or at the closing of the transaction, PAWC and York may at their discretion close the transaction without the transfer of missing easements and other property rights, provided that an escrow account be established of an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the easements and other real property rights.

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

(c) The Commission's proceeding at Docket No. A-2021-3024681 be terminated and marked closed.

APPENDIX D
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania-American Water Company :
under Section 1102(a) of the Pennsylvania Public Utility :
Code, 66 Pa C.S. § 1102(a), for approval of (1) the transfer, :
by sale, to Pennsylvania-American Water Company, of : Docket No. A-2021-3024681, *et*
substantially all of the assets, properties and rights related to : *al.*
the wastewater collection and treatment system owned by the :
York City Sewer Authority and operated by the City of York, :
(2) the rights of Pennsylvania-American Water Company to :
begin to offer or furnish wastewater service to the public in :
the City of York, Pennsylvania, and to three bulk service :
interconnection points located in North York Borough, :
Manchester Township and York Township, York County, :
Pennsylvania, and (3) the rights of Pennsylvania-American :
Water Company to begin to offer and furnish Industrial :
Pretreatment Program to qualifying industrial customers in :
Manchester Township, Spring Garden Township and West :
Manchester Township, York County, Pennsylvania

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

In connection with the Joint Petition for Approval of Unanimous Settlement of All Issues (the “Settlement”), filed on February 1, 2022, by the Pennsylvania-American Water Company, the City of York, the York City Sewer Authority, the Office of Consumer Advocate, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, the Office of Small Business Advocate, Manchester Township, North York Borough, Spring Garden Township, West Manchester Township, York Township; and The York Water Company (collectively, the “Stipulating Parties”) also filed a Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs (“Stipulation”) in the above-captioned

proceeding. Each of the Stipulating Parties agreed that the facts agreed-to in the Stipulation are sufficient to find that the Settlement is in the public interest. The Stipulation is attached to this Order.

As this request is reasonable, it will be granted.

THEREFORE, IT IS ORDERED:

That the Stipulation, filed on February 1, 2022, is APPROVED.

Date: _____

Steven K. Haas
Administrative Law Judge