



February 1, 2022

**VIA E-FILING**

**David P. Zambito**

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

**Re: 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 Petition for Approval of Unanimous Settlement of All Issues**

Dear Secretary Chiavetta:

Enclosed please find the fully-executed Joint Petition for Approval of Unanimous Settlement of All Issues, including Statements in Support from all Parties, 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 1<sup>st</sup> day of February, 2022 served a true copy of the foregoing **Joint Petition for Approval of Unanimous Settlement of All Issues**, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Via E-mail and First Class Mail**

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Manchester Township, York Water  
Company, Spring Garden Township and  
North York Borough (aka "Municipalities")



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David P. Zambito, Esq.  
Counsel for *Pennsylvania-American Water Company*

**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

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

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**I. INTRODUCTION**

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”<sup>1</sup>); and The York Water Company (“York Water”<sup>2</sup>) (singularly, a

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<sup>1</sup> The Municipalities only join Paragraphs 22, 30, 31(b), 33, and 41-46 of this Settlement and take no position as to the remainder of the Settlement.

<sup>2</sup> York Water only joins Paragraphs 22, 32-33 and 41-46 of this Settlement and takes no position as to the remainder of the Settlement.

“Petitioner” and collectively, the “Joint Petitioners”) hereby join in this “Joint Petition for Approval of Unanimous Settlement of All Issues” (“Settlement”), and respectfully request that the Honorable Administrative Law Judge Steven K. Haas (the “ALJ”) recommend approval of, and the Commission approve, this Settlement without modification. The Settlement resolves all issues in this proceeding.

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

## **II. BACKGROUND**

1. PAWC, the City and the Authority entered into an Asset Purchase Agreement (“the APA”) dated as of April 6, 2021, by which PAWC will purchase the wastewater system (the “System”) presently owned by the Authority and operated by the City (together, “York”).

2. On July 1, 2021, PAWC filed an application (as amended on August 8, 2021, the “Application”) at Docket No. A-2021-3024681 *et al.*, asking the Commission to approve its acquisition of the System (the “Transaction”) pursuant to 66 Pa. C.S. §§ 507, 1102 and 1329.

3. On July 12, 2021, the OSBA filed its Notice of Intervention.

4. On July 21, 2021, Counsel for I&E filed her Notice of Appearance.

5. On July 23, 2021, staff from the Commission’s Bureau of Technical Utility Services (“TUS”) notified PAWC that they had performed a completeness review of the Application and determined that certain information was missing. On August 6, 2021, PAWC filed the information requested by TUS following its completeness review.

6. On July 26, 2021, the OCA filed its Protest.

7. On August 3, 2021, the Authority filed its Petition to Intervene.

8. On August 12, 2021, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Application until PAWC complied with certain service and notice requirements.

9. An amendment to the Application was filed on October 22, 2021 to comply with the August 12, 2021 Secretarial Letter. On October 27, 2021, PAWC filed a verification stating that it had complied with all service and notice requirements of the Secretarial Letter of August 12, 2021.

10. On October 29, 2021, the Commission notified PAWC that it had finally accepted the Application. The Commission further notified PAWC that notice of the Application would be published in the *Pennsylvania Bulletin* on November 27, 2021<sup>3</sup> with a protest deadline of December 13, 2021.

11. The Commission issued a Call-in Telephonic Pre-Hearing Conference Notice scheduling a Pre-Hearing Conference for December 14, 2021. The ALJ issued his Prehearing Conference Order on November 22, 2021. The Pre-Hearing Conference was held as scheduled on December 14, 2021.

12. On November 8, 2021, the City filed a Petition to Intervene.

13. On December 9, 2021, York Water filed a Protest.

14. On December 10, 2021, each of the Municipalities filed a Protest.

15. A telephonic public input hearing was held on January 5, 2022.

16. On January 14, 2022, PAWC filed revised Appendices 25.7 and 25.8 to the Application

17. On February 1, 2022, PAWC filed Appendix A-25.9 to the Application.

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<sup>3</sup> The notice was published at 51 *Pa. Bull.* 7390 (November 27, 2021).

18. An evidentiary hearing was held on January 19, 2022.

### **III. SETTLEMENT TERMS**

The Joint Petitioners Agree as follows:

#### **Approval of Application**

19. The Joint Petitioners agree that the Commission should approve PAWC's acquisition of the System, and PAWC's right to begin to offer, render, furnish, or supply wastewater services in the areas served by York, as well as any other necessary approvals or certificates for the Transaction, subject to approval of all of the following conditions and without modification.

#### **Approval of PAWC's Adoption of Existing Industrial Pretreatment Program ("IPP")**

20. The Joint Petitioners agree that the Commission should 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.

21. In its first rate case filed after closing on the Transaction ("Closing"), 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 Closing date, PAWC also agrees to 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 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.

## **Tariff**

22. The *pro forma* tariff submitted as **Amended Appendix A-12**, including all rates, rules and regulations regarding conditions of PAWC's wastewater service, shall be permitted to become effective immediately upon Closing.

## **Rates**

23. 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 in a future PAWC proceeding.

24. In the first base rate case that includes System assets:

a. 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.

b. 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.

c. PAWC may agree to rates other than those proposed for System 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. The Parties expressly recognize 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.

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



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

25. The Joint Petitioners agree 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.

26. The Joint Petitioners agree that PAWC may record the acquisition at the net value of the assets (\$231,500,000) , consistent with generally accepted accounting principles.

**Distribution System Improvement Charge**

27. PAWC will not include System-related investments in its distribution system improvement charge (“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 LTIIP”) including the System 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 the System into PAWC’s DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the Amended LTIIP. Nothing in this Paragraph shall be construed to modify the terms of Section 6.04(a) of the APA establishing that the DSIC shall not be charged to System customers until PAWC’s next Commission-approved base rate case.

**Claims for Allowance for Funds Used During Construction and Deferred Depreciation**

28. The Joint Petitioners acknowledge that the Application includes a request that (i) PAWC be permitted to accrue Allowance for Funds Used During Construction (“AFUDC”) for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes and (ii) PAWC be permitted to defer depreciation related to post acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claims for AFUDC and

deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes System assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when these issues are ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's requests.

### **Transaction and Closing Costs**

29. The Joint Petitioners acknowledge that the Application includes a request that PAWC be permitted to claim transaction and closing costs associated with the acquisition of the System. 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.

30. 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. The OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

### **Approval of Section 507 Agreements**

31. Pursuant to 66 Pa. C.S. § 507:<sup>4</sup>
- a. the Commission shall issue Certificates of Filing or approval for the APA;
  - b. the Commission shall issue Certificates of Filing or approval for the *pro*

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<sup>4</sup> The OCA does not join in this Paragraph but does not oppose PAWC's request.

*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; and

c. 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.

#### **Approval of York Water Bulk Agreement**

32. The Commission approves 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.

#### **Closing Conditions Related to Bulk Agreements**

33. Closing on the transaction shall be conditioned on (a) filing of an executed bulk agreement, substantially similar to the Municipalities Bulk Agreement, by PAWC separately with each of the Municipalities and York Water, (b) 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 (c) 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.

34. Closing on the Transaction shall be conditioned on filing of an executed bulk agreement, substantially similar to the Springettsbury Bulk Agreement, by PAWC with Springettsbury Township.

#### **Cost of Service Studies**

35. 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.

36. 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.

#### **Low Income Program Outreach**

37. 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.

#### **Other Necessary Approvals**

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

39. Except as set forth in the next 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.

40. Approval of PAWC's Application is conditioned as follows: 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, 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.

#### **Standard Settlement Conditions**

41. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of an Order modifying the Settlement. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

42. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceedings. If the Commission does not approve the Settlement and the proceedings continue,

the Joint Petitioners reserve their respective procedural rights, including the right to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is made without any admission against, or prejudice to, any position which any Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

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

44. To the extent possible, the Joint Petitioners shall jointly prepare and submit a Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs. The Joint Petitioners further agree that the facts agreed to in the Joint Stipulation are sufficient to find that the Settlement is in the public interest.

45. Each Petitioner will prepare a Statement in Support of Settlement setting forth the bases upon which the Petitioner believes the Settlement to be in the public interest.

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

#### **IV. REQUEST FOR RELIEF**

**WHEREFORE**, Pennsylvania-American Water Company, the City of York, the York City Sewer Authority, the Office of Consumer Advocate, the Bureau of Investigation and Enforcement, the Office of Small Business Advocate, Manchester Township, North York



Borough, Spring Garden Township, West Manchester Township, York Township and The York Water Company, by their respective counsel, respectfully request that:

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

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

(2) 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) 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) 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) 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) In the first base rate case that includes the York System:

(i) PAWC will propose to move the York 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) 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) Pursuant to 66 Pa. C.S. § 1702, PAWC shall be permitted to record the acquisition at the net value of the assets (\$231,500,000), consistent with generally accepted accounting principles.

(9) 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 Amended LTIP including the System which does not re-prioritize other existing commitments in other service areas, (ii) the Commission's approval of the Amended LTIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement which incorporates the System into PAWC's DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the Amended LTIP. Nothing in this Paragraph shall be construed to modify the terms of Section 6.04(a) of the APA establishing that the DSIC shall not be charged to System customers until PAWC's next Commission-approved base rate case.

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

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

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

(13) 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) Pursuant to 66 Pa. C.S. § 507<sup>5</sup>:

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

(ii) 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, subject to review by the Commission in PAWC's first base rate case

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<sup>5</sup> The OCA does not join in this Paragraph but does not oppose PAWC's request.

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, subject to review by the Commission in PAWC's first base rate case following Closing.

(15) 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) 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) 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) 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) 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) 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) 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.

Respectfully submitted,



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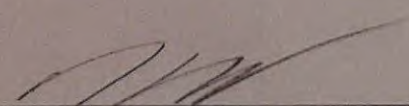
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Attachments:

- A. Statement in Support of PAWC
- B. Statement in Support of the City
- C. Statement in Support of the Authority
- D. Statement in Support of I&E
- E. Statement in Support of OCA
- F. Statement in Support of OSBA
- G. Statement in Support of the Municipalities
- H. Statement in Support of The York Water Company

**ATTACHMENT A**  
**STATEMENT IN SUPPORT OF PAWC**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**ADMINISTRATIVE LAW JUDGE  
STEVEN K. HAAS**

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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 : :

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

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Pennsylvania-American Water Company (“PAWC”) files this Statement in Support of the “Joint Petition for Approval of Unanimous Settlement of All Issues” (“Settlement”) entered into by 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”) (singularly, a “Petitioner” and collectively, the “Joint Petitioners”) in the above-captioned proceeding. PAWC respectfully requests that the Honorable Administrative Law Judge Steven K. Haas (the “ALJ”) recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

## **I. INTRODUCTION**

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

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

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

As an initial matter, the fact that the Settlement resolves all of the issues raised by the Joint Petitioners is, in and of itself, strong evidence that the Settlement is reasonable and in the public interest, particularly given the diverse interests of the Joint Petitioners and the active roles that each has taken in this proceeding. The Settlement was achieved through the hard work and perseverance of the Joint Petitioners. They have repeatedly demonstrated their good faith and willingness to cooperate to resolve this case within the six-month deadline mandated by the General Assembly in Section 1329 of the Code, 66 Pa. C.S. § 1329.

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

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

## **II. THE SETTLEMENT IS IN THE PUBLIC INTEREST**

### **A. Approval of the Application**

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

With respect to technical fitness, PAWC is the Commonwealth's largest water and wastewater provider. It furnishes service to more than 409 communities in 37 counties, serving a combined population in excess of 2,400,000. PAWC St. No. 1 p. 18. PAWC employs about 1,100 professionals with expertise in all areas of water and wastewater utility operations. In addition, as a subsidiary of American Water Works Company, Inc., PAWC has available to it additional highly-trained professionals with expertise in specialized areas. These operations and process experts have deep experience in the operation and maintenance of different types of wastewater technologies. PAWC St. No. 2 pp. 13-14. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes and infrastructure. PAWC has funded more than \$1 billion in infrastructure investment in the past five years. *Id.* p. 14.

With respect to legal fitness, PAWC has had no material issues in complying with the Code, the Clean Streams Law, or other regulatory requirements. PAWC St. 2 p. 15. There are no pending

legal proceedings that would suggest that PAWC is not legally fit to provide service to System customers. PAWC St. 1 p. 22.

With respect to financial fitness, PAWC had total assets of approximately \$5.6 billion as of December 31, 2020. In addition, it had a net income of approximately \$197 million for the 12 months ending December 31, 2020. PAWC St. No. 3 p. 4. In addition to positive operating cash flows, PAWC may obtain financing through a \$400 million line of credit, long term debt financing, and equity investments. PAWC St. No. 3 p. 5.

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

The Transaction, with the conditions described in the Settlement, benefits all of the stakeholder groups impacted by the Transaction: the public-at large; the City; the existing customers of the System; and, the existing customers of PAWC. The Transaction benefits members of the public-at-large in that the Transaction promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721(a); PAWC St. 1-R. In part, it accomplishes this objective by preventing municipal bulk customers from pursuing alternate wastewater treatment options. PAWC St. 1-Supp.(2) pp. 6-7. In addition,

the Transaction benefits members of the public-at-large by promoting the Legislature's policy goals when it enacted Section 1329. PAWC St. No. 1 p. 22.

The Transaction also benefits the public-at-large due to its environmental benefits. The York System has environmental challenges. It has received a draft Administrative Order for Compliance on Consent ("AOCC") from the EPA regarding a possible violation of the Clean Water Act and its regulations. In addition, it has received a Notice of Violation from DEP of a potential violation of the Clean Streams Law. PAWC St. 2 p. 12. After closing on the Transaction ("Closing"), PAWC will be responsible for implementing any negotiated agreements with these agencies. PAWC St. 2 p. 12; PAWC St. 2-R p. 2.

PAWC is in a better position than the City to maintain environmental compliance for the System. PAWC can draw upon a much broader range of engineering and operational experience, as well as deeper financial resources, to address the environmental compliance challenges of the System. PAWC St. 2 p. 13. PAWC has plans for making capital improvements during the five years after Closing on the Transaction. PAWC St. No. 2-R p. 2; PAWC Exhibit MJG-1.

While these environmental deficiencies are present in the System, the resulting impact of the contamination and pollution obviously will not be limited to the York area. In this regard, PAWC notes that Article I, Section 27 of the Pennsylvania Constitution states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

PA. CONST. Art. I, § 27 ("Environmental Rights Amendment"). The record evidence in this proceeding unquestionably demonstrates that PAWC is better capable of making the necessary improvements to the System to protect Pennsylvania's "pure water" and the "natural, scenic,



historic and esthetic values of the environment.” As such, there is an over-arching public interest (*i.e.*, “for the benefit of all the people”) in correcting the System’s environmental deficiencies as promptly and efficiently as possible and approval of the Transaction would be consistent with the Commission’s obligation under the Environmental Rights Amendment.<sup>1</sup>

In addition to benefiting the public-at-large, the Transaction benefits the City (as seller of the System). In developing the 2021 budget, the City identified a \$13.5 million budget shortfall. Absent a sale, such shortfalls would continue as the City's financial condition deteriorates. City St. 1 p. 4. Sale proceeds realized by the Authority will be applied to repay or defease sewer debt and the remaining proceeds will be transferred to the City upon Closing of the Transaction and dissolution of the Authority. These remaining proceeds would be available to address critical public service needs in the community, including additional municipal bond debt, municipal pension obligations, social programs, infrastructure improvements, and other key initiatives. The City has not determined a specific use for all of the proceeds but has retained the Pennsylvania Economy League to advise on best uses of proceeds to provide long-term benefits to City residents and other stakeholders in the community. City St. 1 p. 5.

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

- PAWC is a large, financially-sound company that has the capacity to finance necessary capital additions and improvements that will benefit System customers. PAWC is well-positioned to ensure that high quality wastewater service meeting all applicable state and federal regulatory requirements is provided to System customers. PAWC St. No. 1 p. 20.

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<sup>1</sup> “[T]he Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties.” *Pa. Environmental Defense Foundation v. Cmwlth. of Pa.*, No. 10 MAP 2015 (Pa., Slip Op. issued Jun. 20, 2017), p. 32 (*citing Robinson Twp. v. Cmwlth. of Pa.*, 83 A.3d 901, 957 (Pa. 2013)).

- The System will become a Commission-regulated utility, requiring PAWC to provide adequate, efficient, safe and reliable service at just and reasonable rates. Currently, the City has no such regulatory oversight. PAWC St. No. 1 p. 14; PAWC St. No. 2 p. 16.
- Customers will have access to PAWC's proven and enhanced customer service, including its customer assistance program. PAWC St. No. 2 p. 19.
- PAWC committed to maintain an in-person customer service center within the City of York, ensuring that the sale will preserve access to local representatives for customers. PAWC also agreed to offer employment to each of the employees assigned to the York System, thus providing job protection for the sewer system employees. PAWC St. 1 p. 17.
- PAWC committed, subject to Commission approval, to a moratorium on any base rate increases for a period of three years following Closing of the Transaction. City St. 1 p. 5. 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; PAWC St. 1-R p. 11.

The Settlement contains additional public benefits for the System's existing customers. For example, it requires PAWC to provide information to System customers regarding PAWC's low-income programs within the first billing cycle following Closing and in a welcome letter to System customers. Settlement ¶¶ 36-37.

The Transaction benefits PAWC's existing wastewater customers in the same way that it benefits all other members of the public-at-large. In addition, the Transaction has specific benefits for PAWC's existing wastewater customers, including but not limited to the addition of approximately 13,747 new customers<sup>2</sup> to PAWC's existing wastewater customer base of approximately 79,028 customers. PAWC St. No. 1 p. 19. The Transaction will have no immediate rate impact on PAWC's existing wastewater customers. PAWC St. 1 p. 20. Additionally, in the Settlement, PAWC agreed that it will not include System-related investments in its DSIC until PAWC collects a DSIC from System customers. Settlement ¶ 26.

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<sup>2</sup> This figure does not include the approximately 30,000 customers served by surrounding municipalities with whom York has bulk service agreements. PAWC St. No. 1 p. 19.

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

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

**B. Approval of PAWC's Adoption of Existing Industrial Pretreatment Program ("IPP")**

York has an IPP that serves 22 industrial customers, including eleven located outside the City. PAWC St. 1 p. 26. 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.

In the Settlement, the Joint Petitioners agree that the Commission should 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. Settlement ¶ 19. This provision is in the public interest because it permits PAWC to provide service to IPP customers that have historically been served by the System.

In addition, the Settlement requires that, in PAWC's 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 also agrees to provide cost of service information for 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, PAWC will provide the cost of service calculation and comparison to existing IPP rates to the statutory advocates as part of its subsequent rate filing. Settlement ¶ 20. This paragraph of the Settlement is in the public interest because it ensures Commission oversight of the rates for IPP service.

### **C. Tariff and Rates**

In terms of the rates to be charged to System customers, the Application, as modified by 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 the City's existing rates. PAWC St. 1 p. 12. Subject to PUC approval in a future base rate proceeding, PAWC will maintain base rates for System customers for at least three years from the Closing Date. The parties recognize that ratemaking authority is vested with the Commission. PAWC St. 1 p. 12. 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, **Amended Appendix A-12**. PAWC St. 1 p. 12.

The Settlement requires PAWC, in the first base rate case that includes the System, to propose moving System customers' rates to 1.47x the current System rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower. Settlement ¶ 23a. This provision is in the public interest because it limits any potential subsidization of System customers by PAWC's existing water and wastewater customers.

The Settlement permits PAWC to agree to rates other than those proposed for System customers in the context of a settlement of a base rate case. Settlement ¶ 23c. However, the Settlement does not preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC base rate proceeding. Settlement ¶ 22. Further, the Settlement contains no provision purporting to restrict the Commission's ultimate ratemaking authority to set "just and reasonable" rates.

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

#### **D. Fair Market Value for Ratemaking Rate Base Purposes**

PAWC, the City and the Authority agreed to use the procedure set forth in Section 1329 for the Transaction. Section 1329 created a voluntary procedure for valuing a water or wastewater system being sold by a municipality or municipal authority to a public utility or other entity. In that procedure, the buyer and the seller each obtain an appraisal of the system by a Commission-

approved utility valuation expert (“UVE”). The ratemaking rate base of the selling utility is the lesser of: (1) the purchase price agreed-to by the parties, or (2) the fair market value of the selling utility (defined as the average of the two UVEs’ appraisals). The ratemaking rate base of the selling utility is then incorporated into the rate base of the acquiring public utility during the acquiring public utility’s next base rate case.

In this case, the purchase price (\$235,000,000) is lower than the average of the two UVE appraisals ( $\$240,336,741 + \$269,376,640/2 = \$254,856,690$ ). Nevertheless, the Settlement provides that PAWC can use \$231,500,000 for ratemaking rate base purposes for the acquired system. Settlement ¶ 26. The Joint Petitioners fully and thoroughly evaluated the UVEs’ appraisals through discovery, testimony, and exhibits.. The agreed-upon ratemaking rate base of \$231,500,000 is a compromise that is supported by substantial record evidence.

In reaching this agreement on the ratemaking rate base, the Joint Petitioners fully took into account the rate impact of the Transaction as required by *McCloskey v. Pa. Pub. Util. Comm’n*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *pet. for alloc. denied*, 207 A.3d 290 (Pa. 2019) (“*New Garden*”). The Transaction has numerous affirmative public benefits of a substantial nature. *See*, Section II.A., *supra*. The Transaction should not be disapproved based on speculation about future impacts on rates, as the rate impacts of the Transaction were thoroughly evaluated by the Joint Petitioners.

Furthermore, approving the Settlement is in the public interest because the Settlement furthers the legislative intent behind Section 1329. First, the Settlement allows a municipality desiring to monetize an asset for fair market value to do so. Second, by establishing a rate base for the System that is greater than what would have been allowed using traditional ratemaking principles, PAWC is willing to enter into the Transaction. Section 1329 would be ineffective if a

willing seller would be unable to find a willing buyer. Finally, the Settlement allows the parties to the Transaction to obtain the necessary Commission approval in a timely manner – while protecting the existing customers of the acquiring public utility. The Joint Petitioners’ negotiated result is in the public interest and should be approved by the ALJ and the Commission.

**E. DSIC**

The APA provides that PAWC will not charge York customers a DSIC prior to the effective date of PAWC’s next Commission-approved base rate increase. PAWC St. 3 p. 9; PAWC St. 1-R p. 11. In the Settlement, PAWC agreed that it will not include System-related investments in its DSIC until PAWC collects a DSIC from System customers. The Joint Petitioners further agreed that PAWC will be permitted to collect a DSIC from System customers upon (i) PAWC’s filing of an amended wastewater Long-Term Infrastructure Improvement Plan (“Amended LTIIP”) including the System 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 the System into PAWC’s DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the Amended LTIIP. Settlement ¶ 26.

**F. Claims for Allowance for Funds Used During Construction (“AFUDC”) and Deferred Depreciation**

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. In the Application, PAWC requested permission to accrue AFUDC on post-acquisition improvements that are not included in a DSIC. PAWC St. 1 p. 4. The Settlement makes clear that the other Joint

Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 27.

Similarly, Section 1329(f)(2) of the Code, 66 Pa. C.S. § 1329(f)(2), permits an acquiring public utility to defer depreciation on its post-acquisition improvements that are not included in a DSIC. In the Application ¶ 2, PAWC requested permission to defer depreciation on post-acquisition improvements that are not included in a DSIC. The Settlement makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 27. These provisions are reasonable and in the public interest, and should be approved.

**G. Transaction and Closing Costs**

Section 1329(d)(1)(iv) of the Code, 66 Pa. C.S. § 1329(d)(1)(iv), permits an acquiring public utility to include, in its next base rate case, a claim for the transaction and closing costs incurred for the acquisition. In *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016) p. 14, the Commission stated that there will be no Commission preapproval of the reasonableness of recovery of these costs in a Section 1329 proceeding. Out of an abundance of caution, the Settlement acknowledges that PAWC may, in the first base rate case that includes the System, include the transaction and closing costs incurred in this proceeding. The Commission will adjudicate the ratemaking treatment of PAWC's claimed transaction and closing costs at that time. The Settlement makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 28. These provisions are reasonable and in the public interest, and should be approved.



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

**H. Section 507 Approvals, Approvals of Bulk Agreements and Conditions of Closing Related to Bulk Agreements**

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

In this proceeding, PAWC seeks Commission approval, pursuant to Section 507, of: (i) the APA; (ii) the *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"); and (iii) 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"). The Settlement provides that the Municipalities Bulk Agreement and the Springettsbury Bulk Agreement will be subject to review by the Commission in PAWC's first base rate case following Closing. Settlement ¶ 30b. and c.

In addition, the Settlement asks the Commission to approve the *pro forma* Wastewater Treatment and Conveyance Agreement, filed on January [REDACTED], 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. York Water owns and operates the wastewater collection and conveyance system formerly owned by West York Borough. City St. 1 p. 3.

Pursuant to the Settlement, Closing on the Transaction is conditioned on (a) filing of an executed bulk agreement, substantially similar to the Municipalities Bulk Agreement, by PAWC separately with each of the Municipalities; (b) 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 January [REDACTED], 2022; and (c) filing of an executed bulk agreement, substantially similar to the Springettsbury Bulk Agreement, by PAWC with Springettsbury Township. Settlement ¶¶ 32-33.

These agreements are necessary to allow PAWC to provide service to the service territory currently served by the System. Consequently, these conditions, and the approval of these agreements, is reasonable and in the public interest.

#### **I. Other Closing Conditions**

The Settlement is in the public interest because it ensures that PAWC's ratepayers will not pay twice to acquire property rights necessary to operate the System. It generally prohibits Closing 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. An

exception is provided 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. In that circumstance, 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 is 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. Settlement ¶¶ 38-39.

**J. Cost of Service Studies**

In the interest of resolving this case, and based on the unique circumstances of this proceeding, PAWC will submit two cost of service studies in the first base rate case that includes the System: (a) a cost of service study that removes all costs and revenues associated with the operation of the System; and (b) a cost of service study for the System. Settlement ¶¶ 34 and 35. Under the Settlement, PAWC's obligation to prepare cost of service studies extends only to the first base rate case in which the System is included. In this way, unnecessary cost of service studies can be avoided in subsequent rate cases.

**K. Other Necessary Approvals**

The Settlement includes a standard provision asking that the Commission issue any other approvals or certificates that might be necessary to carry out PAWC's acquisition of the System. Settlement ¶ 37. Although the Joint Petitioners do not believe any other approvals or certificates are in fact necessary, this provision is included out of an abundance of caution in case the Joint Petitioners inadvertently overlooked a necessary approval.

## **L. Miscellaneous**

The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding. Settlement ¶ 40.

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

## **III. PUBLIC INPUT HEARING**

The Settlement addresses the comments offered at the public input hearing. Several commenters expressed concern about the Transaction's potential impacts on the Municipalities and, in particular, the rates to be paid by the Municipalities and their customers. Tr. 39-40, 45 and 50. Since the public input hearing was held, PAWC introduced the Municipalities Bulk Agreement, which will replace the existing bulk agreements between the City and the Municipalities. It provides that services to the Municipalities will be provided at a uniform rate based upon a weighted average of the current rates under the existing IMAs. Rates will be adjusted periodically, based on the Consumer Price Index for Urban Wage Earners and Clerical Workers in

order to ensure that rates increase in a reasonable and predictable manner consistent with rising costs. PAWC St. 1-Supp.(2) p. 5.

Several other commenters expressed concern about the Transaction's potential rate impacts for current System customers. Tr. 60, 77 and 79. As discussed above, the Settlement provides that, subject to PUC approval in a future base rate proceeding, PAWC will maintain base rates for System customers for at least three years from the Closing Date. In addition, the Settlement requires PAWC, in the first base rate case that includes the System, to propose moving System customers' rates to the lower of: 1.47x the current System rate or PAWC's proposed Rate Zone 1 system-average wastewater rates. Settlement ¶ 23a. Of course, if the Transaction is approved, ratemaking authority will be vested with the Commission, which is to set just and reasonable rates. The System is not presently subject to Commission jurisdiction.

One other commenter argued that the Transaction doesn't benefit anyone except those making money off of it. Tr. 46. As discussed above, the Transaction, with the conditions described in the Settlement, benefits all of the stakeholder groups impacted by the Transaction: the public-at large; the City; the existing customers of the System; and, the existing customers of PAWC. It is worth noting that the Transaction benefits low-income customers, who will benefit from the customer assistance programs offered by PAWC. PAWC St. 2 p. 20; Settlement ¶ 37.

#### **IV. CONCLUSION**

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a settlement that resolves all of the issues in this proceeding in a fair and equitable manner. The Settlement is the result of detailed examination of the Transaction, discovery responses, evidence that was entered into the record, and extensive settlement negotiations. A fair

and reasonable compromise has been achieved in this case. PAWC fully supports the Settlement and urges the ALJ and the Commission to approve it without modification.

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

Respectfully submitted,



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Dated: February 1, 2022

**ATTACHMENT B**  
**STATEMENT IN SUPPORT OF**  
**THE CITY**

**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. (3) the rights of Pennsylvania-American Water Company to begin to offer or furnish Industrial Pretreatment Program wastewater service to qualifying industrial customers in the City of York, Manchester Township, Spring Garden Township and West Manchester Township, York County, Pennsylvania.

Docket No. A-2021-3024681

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**STATEMENT IN SUPPORT OF THE CITY OF YORK OF  
THE JOINT PETITION  
FOR APPROVAL OF UNANIMOUS SETTLEMENT OF ALL ISSUES**

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The City of York (the "City"), by and through its counsel, submits that the terms of the Joint Petition for Approval of Settlement of All Issues ("Joint Petition" or "Settlement") concurrently filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") in the above-captioned proceeding, reflect a full settlement of all issues as set forth below.

As a result of settlement discussions, the Office of Consumer Advocate ("OCA"); the Commission's Bureau of Investigation and Enforcement ("I&E"); the Office of Small Business Advocate ("OSBA"); Pennsylvania-American Water Company ("PAWC"); the City; Manchester



Township, North York Borough, Spring Garden Township, West Manchester Township and York Township (together, the “Municipalities”<sup>1</sup>), and The York Water Company (“York Water”)<sup>2</sup> (collectively, “Parties” or “Joint Petitioners”) have agreed upon the terms embodied in the foregoing Joint Petition. The City offers this Statement in Support to further demonstrate that the Settlement is in the public interest. Accordingly, the Joint Petitioners request that the Commission approve PAWC’s acquisition of the wastewater system assets currently owned by the York City Sewer Authority (“Authority”) and operated by the City (“System”), and PAWC’s right to begin to offer, render, furnish, or supply wastewater services in the areas served by the City, as well as any other necessary approvals or certificates for the transactions, subject to approval of all of the following conditions should be approved without modification.

#### **I. BACKGROUND**

1. This Settlement applies to the application initially filed by PAWC on July 1, 2021, and amended on August 6, 2021 (“Application”), pursuant to Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), and Section 1329 of the Code, 66 Pa. C.S. § 1329, requesting (among other things) that the Commission issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale,<sup>3</sup> of substantially all of the assets, properties and rights related to the City’s System (the “Transaction”), and to set the fair market value of the acquisition for rate-base ratemaking purposes.<sup>4</sup>

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<sup>1</sup> The Municipalities only join Paragraphs 22, 30, 32, and 41-46 of the Settlement and take no position as to the remainder of the Settlement.

<sup>2</sup> York Water only joins Paragraphs 22, 30-32 and 41-46 of the Settlement and takes no position as to the remainder of the Settlement.

<sup>3</sup> On April 6, 2021, PAWC, the City, and the Authority entered into an Asset Purchase Agreement by which PAWC will acquire the System owned by the Authority and operated by the City.

<sup>4</sup> Joint Petition, Paragraph 1.

2. On August 12, 2021, the Commission issued a letter indicating conditional acceptance of PAWC's Application.

3. On October 29, 2021, the Commission issued a letter informing counsel for PAWC that it has accepted PAWC's Application.

4. The City supports the Application filed by PAWC at this docket.

5. On November 8, 2021, the City filed a Petition to Intervene in this proceeding. At the December 14, 2021 Prehearing Conference, the City's Petition to Intervene was granted.

6. On January 5, 2022, the Presiding Administrative Law Judge ("ALJ") convened a telephonic public input hearing.

7. The City fully participated in litigated proceedings and submitted the following written testimony in support of PAWC's Application: City Statement No. 1, the Direct Testimony and Exhibits of Michael R. Helfrich; City Statement No. 2, the Direct Testimony of Dylan W. D'Ascendis; City Statement No. 1-R, the Rebuttal Testimony and Exhibits of Michael R. Helfrich; City Statement No. 2-R, the Rebuttal Testimony and Exhibits of Dylan W. D'Ascendis; City Statement No. 3-R, the Rebuttal Testimony and Exhibits of Daniel Hevner; City Statement No. 1-RJ, the Rejoinder Testimony of Michael R. Helfrich; and City Statement No. 2-RJ, the Rejoinder Testimony of Dylan W. D'Ascendis.

8. After several rounds of testimony and discovery, the Parties engaged in thorough and continued settlement discussions in advance of evidentiary hearings scheduled for January 18-19, 2022. On January 18, 2022, the Joint Petitioners communicated to ALJ Steven K. Haas that the Joint Petitioners were working toward a settlement of all issues and therefore had agreed to a mutual waiver of cross of all witnesses and entry of evidence into the record by stipulation.

9. On January 19, 2022, the Joint Petitioners notified ALJ Haas that a settlement resolving all issues in this matter had been reached and proposed that a Joint Petition for Settlement and Statements in Support be filed on or before February 1, 2022. Accordingly, the City hereby submits this Statement in Support of the Joint Petition for the Commission's consideration.

## **II. STATEMENT IN SUPPORT**

5. The Commission has a strong policy favoring settlements. As set forth in the Commission's regulations, "[t]he Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation." 52 Pa. Code § 69.391; *see also* 52 Pa. Code § 5.231. Consistent with the Commission's Policy, the Joint Petitioners engaged in extensive negotiations to settle the issues raised in this proceeding. These ongoing discussions produced the foregoing Settlement.

6. The Joint Petitioners agree that approval of the proposed Settlement is in the best interest of the Parties involved. The Settlement reflects a reasonable balance and appropriate compromise of the Joint Petitioners' litigation positions.

7. The Joint Petition is in the public interest and is supported by affirmative public benefits for the following reasons:

- a. As a result of the Joint Petition, expenses incurred by the Joint Petitioners and the Commission for completing this proceeding will be substantially less than they would have been if the proceeding had been fully litigated.
- b. Uncertainties regarding further expenses associated with possible appeals from the final order of the Commission are avoided as a result of the Joint Petition.
- c. The Joint Petition reflects compromises on all sides presented without prejudice to any position any Joint Petitioner may have advanced so far in this proceeding.

- d. The Joint Petition is presented without prejudice to any position any party may advance in future proceedings involving PAWC.
8. Further, the Joint Petition specifically satisfies the concerns of the City as set forth below:

- a. Authorized Acquisition – The Joint Petition authorizes PAWC to acquire the System assets owned by the Authority and operated by the City, as proposed in the Asset Purchase Agreement appended to PAWC’s Application, and as modified by the Joint Petition.<sup>5</sup> As stated in the Direct Testimony of Mayor Michael R. Helfrich, 70% of the City’s collection system consists of clay or brick pipes installed before 1950 and the “City believes PAWC will be better positioned to meet these [capital upgrade] costs through its more extensive customer base and industry expertise.”<sup>6</sup> The City also recognized PAWC’s commitments to: (1) maintain an in-person customer service center within the City of York, (2) implement, subject to Commission approval, a moratorium on any base rate increases for a period of three years following Closing on the Transaction; (3) offer payment assistance through its low income program; and (4) offer employment to each of the employees assigned to the System.<sup>7</sup> These affirmative public benefits, among others, support approval of the proposed transfer of the System assets to PAWC.
- b. Purchase Price – the Joint Petition seeks approval of the Asset Purchase Agreement as reasonable, legal, and valid such that the Commission should grant a Certificate of Filing in accordance with Section 507 of the Code and any other necessary approvals.<sup>8</sup> The Asset Purchase Agreement establishes a purchase price of \$235,000,000 for the System assets.<sup>9</sup> Proceeds from the sale first will be applied to repay or defease the sewer system debt and the remaining proceeds then will be transferred to the City upon Closing on the Transaction and dissolution of the Authority.<sup>10</sup> These remaining proceeds will be available to address critical public service needs in the community, including additional municipal bond debt, municipal pension obligations, social programs, infrastructural improvements, and other key initiatives.<sup>11</sup> Importantly, the City has retained the Pennsylvania Economy League to

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<sup>5</sup> Joint Petition, at Paragraph 19.

<sup>6</sup> See City St. No. 1, at 5-6; see also City St. No. 2-RJ, at 11.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> Joint Petition, Paragraphs 25-26; Asset Purchase Agreement (Appendix A-24-a), Section 3.01.

<sup>9</sup> *Id.* at Appendix A, Finding of Facts 14, 20, and 25, at 4-6. PAWC, through the Joint Petition, has agreed to accept \$231,500,000 for ratemaking rate base purposes for the acquired System. Joint Petition, Paragraphs 25-26.

<sup>10</sup> City St. No. 1, at 6.

<sup>11</sup> *Id.*

advise on the best use of proceeds to provide long-term benefits to City residents and other stakeholders in the community.<sup>12</sup>

- c. Rates – The Joint Petition authorizes PAWC to 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.<sup>13</sup> As set forth in the City’s Direct Testimony, PAWC agreed to a three-year moratorium on proposed base rate increases for System customers.<sup>14</sup> This provision accounts for the possibility that PAWC would file a base rate increase request during the pendency of the moratorium and authorizes PAWC to propose a mechanism allowing for System rates to be adjusted with an effective date falling outside the three-year moratorium.
- d. Commission Rate Authority – The Joint Petition explicitly recognizes the Commission’s ultimate ratemaking authority to set just and reasonable rates.<sup>15</sup>
- e. Distribution System Improvement Charge (“DSIC”) – The Joint Petition ensures that: (1) PAWC will not charge a DSIC to System customers until PAWC’s next Commission-approved base rate case; and (2) PAWC will not include System-related investments in its DSIC until PAWC collects a DSIC from System customers.<sup>16</sup> The parties to the Asset Purchase Agreement agreed PAWC would not charge the DSIC to System customers until the conclusion of PAWC’s next base rate case. The Joint Petition adds additional assurances affirming that PAWC’s other customers will also not be charged for costs of DSIC improvements to the System until the System customers begin paying into the DSIC.<sup>17</sup>
- f. Low Income Program Outreach – 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.<sup>18</sup> The City supports these measures to facilitate access to PAWC’s low-income programs.<sup>19</sup>

9. The City supports the foregoing Joint Petition for the reasons set forth above and because it is in the public interest; however, in the event that the Joint Petition is rejected as

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<sup>12</sup> *Id.*

<sup>13</sup> Joint Petition, Paragraph 24(b).

<sup>14</sup> City St. No. 1, at 5.

<sup>15</sup> Joint Petition, Paragraph 24(d).

<sup>16</sup> *Id.* at Paragraph 27.

<sup>17</sup> PAWC St. No. 3-R, at 5.

<sup>18</sup> Joint Petition, Paragraph 37.

<sup>19</sup> *See* City St. No. 1, at 5.

proposed by the ALJ or the Commission, the City will resume its litigation position, which may differ from the terms of the Joint Petition.

10. As set forth above, the City submits that the Joint Petition is in the public interest and adheres to Commission policies promoting negotiated settlements. The Joint Petition was achieved after numerous negotiations and settlement conferences. Although the Joint Petitioners have invested time and resources in the negotiation of the Joint Petition, this process has allowed the Parties, as well as the Commission, to avoid expending the substantial resources that would have been required to fully litigate this proceeding while still reaching a just, reasonable, and non-discriminatory result. The Joint Petitioners have thus reached an amicable resolution to this dispute as embodied in the Joint Petition. Approval of the Joint Petition will permit the Commission and Joint Petitioners to avoid incurring the additional time, expense, and uncertainty of further current litigation in this proceeding. *See* 52 Pa. Code § 69.391.

**WHEREFORE**, the City of York respectfully requests that the Administrative Law Judge and the Pennsylvania Public Utility Commission approve the foregoing Joint Petition for Approval of Unanimous Settlement of All Issues without modification.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: February 1, 2022

*Counsel to the City of York*

**ATTACHMENT C**  
**STATEMENT IN SUPPORT OF**  
**THE AUTHORITY**



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Administrative Law Judge  
Stephen K. Haas, Presiding**

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**Application of Pennsylvania American Water Company – Wastewater Division (PAWC-WD), under Sections 1102(a) 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 related to the wastewater collection and treatment system owned by York City Sewer Authority and operated by the City of York; (2) the right of PAWC-WD 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 right of PAWC-WD 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**

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**STATEMENT IN SUPPORT OF  
YORK CITY SEWER AUTHORITY**

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**TO ADMINISTRATIVE LAW JUDGE STEPHEN K. HAAS:**

AND NOW, comes York City Sewer Authority (“YCSA”), by its attorneys, and submits this statement in support of the Joint Petition for Approval of Unanimous Settlement of All Issues (“Joint Petition” or “Unanimous Settlement”) submitted to the Public Utility Commission (“Commission”) by Pennsylvania American Water Company (“PAWC”), the City of York

(“City”), YCSA, the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), York Township, Manchester Township, West Manchester Township, North York Borough, and Spring Garden Township (collectively, “the Municipalities”) and York Water Company (“YWC”).<sup>1</sup>

## I. INTRODUCTION

This proceeding concerns the Application of PAWC, filed with the Commission on July 1, 2021, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (“Code”). On February 1, 2022, PAWC, City, YCSA, I&E, OCA, OSBA, the Municipalities and YWC filed their Joint Petition proposing a resolution of all issues.

YCSA supports the Joint Petition and submits that it should be approved, without modification. The settlement will further the public interest.

## II. SETTLEMENT

### A. **The Settlement Is Consistent with Established Commission Policy and Will Further the Public Interest**

It is the stated policy of the Commission to encourage parties in contested proceedings to enter into settlements.<sup>2</sup> Settlements eliminate the time, evidence gathering, witness preparation, witness examination and expenses of litigating a matter to its resolution, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. A settlement benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.<sup>3</sup> It is for these reasons, that settlements are encouraged by long-standing Commission

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<sup>1</sup> PAWC, City, YCSA, I&E, OCA, OSBA, the Municipalities and YWC are, hereinafter, referred to, collectively, as “Joint Petitioners.”

<sup>2</sup> 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

<sup>3</sup> *Application of Aqua Pennsylvania Wastewater, Inc. – Lower Makefield Township*, Docket No. A-2021-3024267, Opinion and Order entered January 13, 2022, mimeo at 28, and *Application of Aqua Pennsylvania*

policy.<sup>4</sup>

Despite the policy favoring settlements, it is well understood that the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest.<sup>5</sup>

YCSA submits that the Joint Petition is in the public interest. The Joint Petition, notably, resolves all issues. The benefits of approving the Joint Petition and settled resolution of all issues will result in savings of time and expense for all parties involved. It has already shortened the hearing process and eliminated briefing. It also removes the possibility of appellate court review and provides regulatory certainty with respect to the resolved issues, which benefits all parties.

#### **B. The Settlement Is Supported by the Evidence of Record**

The Settlement is further supported by the evidence of record. The Joint Petitioners, including YCSA, have submitted a Joint Stipulation of Proposed Findings of Fact, Proposed

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*Wastewater, Inc. – East Norriton Township*, Docket No. A-2019-3009052, Opinion and Order entered May 21, 2020, mimeo at 35-36; *See also Pa. P.U.C. v. Pennsylvania-American Water Company*, Docket Nos. R-2020-3019369 and R-2020-3019371, Recommended Decision of Administrative Law Judge Conrad Johnson dated December 22, 2020, mimeo at 122; *Pa. P.U.C. v. Buck Hill Water Company*, Docket No. R-2019-3007103, Recommended Decision of Administrative Law Judge F. Joseph Brady dated May 29, 2019, mimeo at 9-10; *Pa. P.U.C. v. Timberlee Valley Sanitation Company*, Docket No. R-2018-3003104, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated October 16, 2018, mimeo at 10; *Pa. P.U.C. v. Reynolds Water Company*, Docket No. R-2017-2631441, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated May 16, 2018, mimeo at 23; *Pa. P.U.C. v. Imperial Point Water Service Company*, Docket No. R-2012-2315536, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated June 25, 2013, mimeo at 11; *Pa. P.U.C. v. The Newtown Artesian Water Company*, Docket No. R-2011-2230259, Recommended Decision of Administrative Law Judge Elizabeth H. Barnes dated September 20, 2011, mimeo at 9; *Pa. P.U.C. v. Reynolds Disposal Company*, Docket No. R-2010-2171339, Recommended Decision of Administrative Law Judge Conrad A. Johnson dated January 11, 2011, mimeo at 12; *Pa. P.U.C. v. Lake Spangenberg Water Company*, Docket No. R-2009-2115743, Recommended Decision of Administrative Law Judge Ember S. Jandebour dated March 2, 2010, mimeo at 11; *Pa. P.U.C. v. Reynolds Water Company*, Docket No. R-2009-2102464, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated February 16, 2010, mimeo at 5.

<sup>4</sup> *Pa. P.U.C., et al. v. Philadelphia Gas Works*, Docket No. R-2020-3017206, Opinion and Order entered November 19, 2020, mimeo at 13-14.

<sup>5</sup> *Application of Aqua Pennsylvania Wastewater, Inc. – East Norriton Township*, *supra*, mimeo at 36, citing *Pa. P.U.C. v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004) and *Pa. P.U.C. v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *See also Application of Aqua Pennsylvania Wastewater, Inc. – Lower Makefield Township*, *supra*, Recommended Decision of Administrative Law Judge Jeffrey A. Watson dated November 26, 2021, mimeo at 51-53.

Conclusions of Law and Proposed Ordering Paragraphs in support of the Settlement. The Proposed Findings of Fact as presented in the Joint Stipulation are supported by citation to testimony and exhibits of record. YCSA incorporates those proposed Findings of Fact herein and submits that they provide ample evidentiary support for the Settlement.

**C. The Negotiated Conditions for Commission Approval Further Support the Settlement**

The Public Utility Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. The Commission, in granting certificates of public convenience, “may impose such conditions as it may deem just and reasonable.” 66 Pa.C.S. § 1103(a).

The Joint Petition presents several conditions for Commission approval. The conditions reflect the input of all parties and are the result of lengthy negotiation. YCSA supports the negotiated conditions, the imposition of which would be consistent with the Public Utility Code, and submits that the negotiated conditions provide further support for the Settlement.

**D. The Settlement Furthers the Objectives of Section 1329**

Approval of the Joint Petition will also benefit members of the public-at-large by promoting the General Assembly’s policy goals when it enacted Section 1329.<sup>6</sup> The Settlement, in sum, furthers the legislative objectives of Section 1329.

**III. CONCLUSION**

York City Sewer Authority respectfully requests that Administrative Law Judge Stephen K. Haas accept the foregoing in support of the Joint Petition for Approval of Unanimous Settlement of All Issues and further that Administrative Law Judge Haas recommend approval of and the

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<sup>6</sup> See *Application of Aqua Pennsylvania Wastewater, Inc. – Lower Makefield Township, supra*, Recommended Decision of Administrative Law Judge Watson, mimeo at 52.

Public Utility Commission approve the Joint Petition for Approval of Unanimous Settlement of All Issues without modification.

Respectfully submitted,

**YORK CITY SEWER AUTHORITY**

By



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Date: February 1, 2022

**ATTACHMENT D**  
**STATEMENT IN SUPPORT OF**  
**I&E**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American :  
Water Company Pursuant to Sections :  
1102, 1329 and 507 of the Public Utility : Docket No.: A-2021-3024681  
Code for Approval of its Acquisition of :  
the York Sewer Authority :  
:

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

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**TO ADMINISTRATIVE LAW JUDGE STEVE HAAS:**

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), by and through its Prosecutor Carrie B. Wright, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Approval of Unanimous Settlement (Joint Petition or Settlement) are in the public interest and represent a fair and just balance of the interests of Pennsylvania-American Water Company (PAWC), the City of York (City), the York City Sewer Authority (Sewer Authority), the Office of Consumer Advocate (OCA), I&E, the Office of Small Business Advocate (OSBA), Manchester Township, North York Borough, Spring Garden Township, West Manchester Township and York Township (the Municipalities), and The York Water Company (York Water) (the Joint Petitioners).

## **I. INTRODUCTION**

### **A. Procedural History**

On July 1, 2021, PAWC filed with the Commission its Applications pursuant to Sections 1102 and 1329 of the Public Utility Code (Code), for, *inter alia*, (1) approval of its acquisition of the wastewater system assets of York City Sewer Authority; (2) approval of PAWC's right to begin to offer, render, furnish and supply water and wastewater service to the public in the City of York, Pennsylvania, and to three bulk service interconnections in North York Borough, Manchester Township, and York Township, York County, Pennsylvania; (3) approval of PAWC's right 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; (4) an order approving the acquisition that includes the ratemaking rate base of the York Sewer Authority system assets pursuant to Section 1329 of the Code; and (4) assignments of certain contracts, between pursuant to Section 507 of the Code.

The following entities made filings regarding participation in this case: on July 21, 2021, I&E filed its Notice of Appearance in this case. On July 26, 2021, the OCA filed a Protest and Public Statement in this case, and on July 21, 2021, the OSBA filed a Notice of Intervention and Public Statement. On August 3, 2021, the Authority filed a Petition to Intervene. On November 8, 2021, the City of York filed a Petition to Intervene. On December 9, 2021, York Water filed a Protest. In addition, on December 10, 2021, each Municipality filed a Protest.



By Secretarial Letter dated August 12, 2021, the Commission acknowledged receipt of PAWC's Applications, but it indicated that the Applications would be accepted for filing only on a conditional basis. On October 27, 2021, PAWC served the Commission's Secretary with notice certifying that it fulfilled the conditions outlined in the Secretarial Letter of August 12, 2021; therefore, PAWC requested that its Application be accepted for filing. By way of a Secretarial Letter of October 29, 2021, the Commission informed PAWC that its Application was accepted for filing.

On November 27, 2021, the Commission published notice of PAWC's Application in the Pennsylvania Bulletin, and it established a protest deadline of December 13, 2021. Thereafter, PAWC's Application was assigned to the Office of Administrative Law Judge, with Administrative Law Judge Steve Haas (the ALJ) presiding. A telephonic Prehearing Conference was held on December 14, 2021, at 10:00 a.m., before ALJ Haas. On January 5, 2022, a telephonic public input hearing was held in this case. During the hearing, the parties and the ALJ established a litigation schedule and the procedures that would apply to this case.

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

As a result of the global settlement among all parties, all parties agreed to waive cross-examination of witnesses in this case. Therefore, on January 19, 2022, counsel for PAWC contacted the ALJ to indicate that the Joint Petitioners had reached a settlement in

principle on all issues. The evidentiary hearing was also held as scheduled on January 19, 2022.

Consistent with the deadline set forth in the ALJs' Prehearing Order for the filing of Reply Briefs, the Joint Petitioners submit the Settlement. I&E submits this Statement in Support of Settlement and avers that the Settlement meets the requisite standards for approval and that it is in the public interest for the reasons explained below.

**B. Legal Standards**

**(i) Section 1102 Approval**

The Code requires that the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests.<sup>1</sup> The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103<sup>2</sup> of the Code. A Certificate of Public Convenience shall be granted "only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public."<sup>3</sup> These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.<sup>4</sup>

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<sup>1</sup> 66 Pa. C.S. § 1102(a).

<sup>2</sup> 66 Pa. C.S. § 1103.

<sup>3</sup> 66 Pa. C.S. § 1103(a).

<sup>4</sup> *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

Additionally, pursuant to Section 1103, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from the York Sewer Authority.<sup>5</sup> In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”<sup>6</sup> including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.<sup>7</sup>

**(ii) Legal Standard for Section 1329 Approval**

Section 1329 of the Public Utility Code is a newly enacted statute which prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission’s jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. Notably, a Commission Order approving a transaction under Section 1329 is permitted to include “[a]dditional conditions of approval.”<sup>8</sup>

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<sup>5</sup> *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmmw. 1985);

*Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

<sup>6</sup> *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984).

<sup>7</sup> 66 Pa. C.S. § 1103(a).

<sup>8</sup> 66 Pa. C.S. § 1329 (d)(3)(ii); Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, p. 69 (Order entered June 29, 2017).

**(iii) Legal Standard for Section 507 Approval**

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

**II. THE SETTLEMENT IS IN THE PUBLIC INTEREST**

It is the policy of the Commission to encourage settlements.<sup>9</sup> For the reasons discussed herein, I&E maintains that the Settlement meets all the standards necessary to warrant the requisite approvals under Sections 507, 1102, 1103, and 1329 of the Code. The signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the settlement process. As such, the issues raised by the Joint Petitioners have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. I&E represents that subject to all of the Settlement's terms and conditions, PAWC's Application satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, for the reasons articulated below,

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<sup>9</sup> 52 Pa. Code § 5.231.

I&E maintains that the proposed Settlement is in the public interest and requests that the following terms be approved by the ALJs and the Commission without modification:

**A. APPROVAL OF THE APPLICATION**

Subject to all of terms and conditions of the Settlement, I&E opines that the Application should be approved and recommends that the Commission should issue PAWC a Certificate of Public Convenience pursuant to 66 Pa. C.S. §1102(a). PAWC's Application requests permission for it to acquire substantially all York Sewer's assets, properties and rights related to its wastewater system and to obtain the Certificates of Public Convenience necessary for it to begin to offer water and wastewater service to the public in the Service Area. The record supports the findings that PAWC is technically, legally, and financially fit to acquire York Sewer's wastewater services.

Additionally, PAWC's Application will provide affirmative public benefits. The affirmative public benefits are fully set forth in PAWC's direct testimony, and include, *inter alia*, further the goal of regionalizing water systems, employing PAWC's resources and engineering expertise to address operational challenges and to provide environmental benefits to customers, enhanced customer service and providing acquired customers with enhanced service quality.<sup>10</sup> Importantly, through the Settlement, the value of the public benefits will be better realized because the Settlement contains numerous terms to protect PAWC's ratepayers, both existing and those who will become PAWC's ratepayers through this transaction. The Settlement will also ensure that PAWC's ratepayers receive the benefit of the bargain that PAWC negotiated without being subject to protracted and

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<sup>10</sup> PAWC, St. No. 1, pp. 19-21.

expensive litigation. Accordingly, through this Settlement, I&E's identified concerns have been addressed and I&E opines that PAWC's Application, as modified by the Joint Petition, now meets the requisite standards for approval.

## **B. TARIFF**

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

## **C. RATES**

The Settlement also provides that PAWC will propose to move the Authority's rates to the Authority's cost of service in the first base rate case that includes the Authority assets unless such increase is more than 1.47 times current rates and provided that PAWC will not be obligated to propose Authority rates in excess of PAWC's proposed Rate Zone 1 system-average rates. This term is in the public interest because a goal of ratemaking is to charge customers rates equal to the cost to serve those customers. Here, PAWC is proposing to move Authority customers' rates to its cost of service but will not increase the Authority's rates more than 1.47 times the current rates which insulates those customers from rate shock. Furthermore, it preserves the rights of I&E,

OCA and OSBA to address PAWC's rate proposals fully, and to make other rate proposals.

**D. FAIR MARKET VALUE FOR RATEMAKING RATE BASE PURPOSES**

At the outset of this case, PAWC requested that the ratemaking rate base value of York Sewer's assets be established at \$235 million.<sup>11</sup> The figure represents the purchase price between PAWC and York.<sup>12</sup> In compliance with Section 1329, PAWC's Application was accompanied by two UVE appraisals presented as follows: (1) an appraisal performed on behalf of PAWC by Jerome C. Weinert, Principal and Director of AUS Consultants (AUS appraisal) that valued the York Sewer assets at \$240,336,741 as of May 24, 2021<sup>13</sup> and (2) an appraisal performed on behalf of the City of York by Dylan D'Ascendis, Partner, ScottMadden, (ScottMadden appraisal) valuing the York Sewer assets at \$269,376,640 as of June 15, 2021.<sup>14</sup>

In his review of the UVEs' fair market value appraisals, I&E witness Patel identified errors and issues that warranted downward adjustments to both appraisals.<sup>15</sup> This ultimately culminated in an I&E recommended rate base value for the York Sewer assets of \$229,598,406.<sup>16</sup> Nonetheless, the Settlement, which represents a compromise of all Joint Petitioners' positions on the issue of ratemaking rate base, does recognize a downward adjustment from PAWC's as-filed proposal to establish the ratemaking rate

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<sup>11</sup> Application, p. 15.

<sup>12</sup> PAWC St. No. 3, p. 6.

<sup>13</sup> PAWC St. No. 4, pp. 3 and 22.

<sup>14</sup> City St. No. 2, p. 22.

<sup>15</sup> I&E St. No. 1, pp. 7-25.

<sup>16</sup> I&E St. No. 1, p. 26.

base of the East Norriton assets at \$234 million to \$231.5 million. Importantly, I&E also notes that the Settlement does not prejudice its ability to recommend any adjustments to UVE appraisals in the future, including but not limited to the adjustments identified in this case.

Ultimately, through use of both the formal and informal discovery process and its extensive investigation, I&E was able to determine that the proposed value of \$231.5 million for York Sewer's wastewater system, comported with the valuation standards and requirements of Section 1329. As a result, I&E avers that approval of \$231.5 million for the ratemaking rate base is both warranted and in the public interest.

**E. OTHER NECESSARY APPROVALS (EASEMENTS AND RIGHTS OF WAYS)**

Per the settlement, PAWC the Transaction will not be permitted to occur until York has identified all missing easements including public rights of way, taken all necessary actions to obtain any missing easements and other rights so they can be conveyed to PAWC, and, further, York will bear the cost and expense for obtaining and conveying the missing easements and property rights. However, should there be circumstances beyond York's control where it would be unable to transfer these easements and/or property rights, the Transaction may be closed provided that an escrow account be established for the appropriate dollar amount from the purchase price to be used to obtain the transfers post-closing.

I&E supports this term as necessary to protect the public interest in two ways. First, it is important to note that the public interest would be harmed if PAWC paid a



purchase price that assumed that all rights necessary to operate the system would be transferred, and such action did not occur. To protect against this possibility, I&E fully supports the protection measure of the escrow account that would be imposed to ensure that any right not transferred at closing must be financially accounted for via payment to the escrow account. Additionally, the public interest is protected because this term provides an additional layer of accountability that would not exist if PAWC and York would ever mutually decide to waive the applicable sections of the Asset Purchase Agreement that bind it to deliver good and marketable title to all property necessary to use and access the acquired assets.<sup>17</sup>

Accordingly, these terms of the Joint Petition are in the public interest and should be approved without modification.

#### **F. COST OF SERVICE STUDIES**

Pursuant to the Settlement, at the time of its next base rate case, PAWC has agreed to submit a cost of service study that removes all costs and revenues associated with the operation of the Authority system. PAWC also agrees to provide a separate cost of service study for the Authority at the time of the filing of PAWC's next base rate case. I&E fully supports this term which is consistent with its recommendation in this proceeding.

I&E avers that PAWC's commitment to providing the requested cost of service study is in the public interest. The cost of service study will protect PAWC, its customers, the parties to this proceeding, and the Commission. Specifically, the results

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<sup>17</sup> PAWC's Application (Amended Appendix A-24-a), Section 4.18.

of the cost of service study PAWC committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. The cost of service study will benefit PAWC's ratepayers as well, because if PAWC's Application is approved, PAWC's existing customers will bear the rate impact. In this case, the cost of service study for the Authority would help the Commission determine the Authority's revenue requirement to provide service to its different customer classes, and extend rate making options that may not exist without such a study. Absent the cost of service study, the Commission's ability to evaluate any cost spreading from the perspective of cost causation would be compromised, but pursuant to the Settlement, the study will be available to preserve future ratemaking options.

#### **G. APPROVAL OF SECTION 507 AGREEMENTS**

The Settlement terms addressing assignment of contracts under Section 4.13 of the APA are critical to ensuring that PAWC's ratepayers are protected and that acquired customers will receive safe, adequate, and reliable service and thus within the public interest.

### **III. CONCLUSION**

Based upon I&E's analysis of the filing, acceptance of this proposed Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense. I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation if the Settlement is rejected by the Commission or

otherwise properly withdrawn by any other parties to the instant proceeding. If the ALJs recommend that the Commission adopt the Settlement as proposed, I&E agrees to waive the filing of Exceptions. However, I&E has not waived its right to file Exceptions with respect to any modifications to the terms and conditions of the Settlement, or any additional matters, that may be proposed by the ALJs in their Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed.

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

Respectfully submitted,



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Dated: February 1, 2022

**ATTACHMENT E**  
**STATEMENT IN SUPPORT OF**  
**OCA**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Pennsylvania-American Water :  
Company Pursuant to Sections 507, 1102, and 1329 of :  
the Public Utility Code for Approval of its Acquisition : Docket Nos. A-2021-3024681  
of the Wastewater Collection and Treatment System :  
Assets owned by the York City Sewer Authority and :  
Operated by the City of York :

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

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

I. INTRODUCTION

On July 1, 2021, Pennsylvania-American Water Company (PAWC) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission (Commission) approval of the acquisition of the wastewater collection and conveyance system presently owned by the York City Sewer Authority (Authority) and operated by the City of York (City) (together, York City), the right of PAWC to provide wastewater service in the areas served

by York City, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code.

On July 12, 2021, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention and Public Statement. On July 21, 2021, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. Also on July 21, York Township, West Manchester Township, North York Borough, and Spring Garden Township filed Protests. The OCA filed a Notice of Appearance, Protest, and Public Statement on July 23, 2021. The Authority and the City filed Petitions to Intervene on August 3, 2021 and November 8, 2021, respectively. On December 10, 2021, Manchester Township, North York Borough, Spring Garden Township, West Manchester Township and York Township (Municipalities) filed Protests. The York Water Company (York Water) filed a Protest on December 9, 2021.

By Secretarial Letter dated August 12, 2021, the Commission conditionally accepted the Application. On October 29, 2021, the Commission accepted the Application by Secretarial Letter. A telephonic prehearing conference was held on December 14, 2021 before Administrative Law Judge (ALJ) Steven K. Haas, at which time a litigation schedule and discovery modifications were adopted. A public input hearing was held on January 5, 2022, at which several customers of York City and residents of the Municipalities testified. Tr. 39-86. All parties to the case joined in the Settlement filed on February 1, 2022.

## II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

### A. Approval of the Application ¶ 19

The OCA submits that the terms and conditions of the proposed Settlement provide a reasonable resolution of the issues raised by the OCA in its testimony, including the ratemaking rate base to be incorporated into the acquiring utility's revenue requirement, the rate impact for

existing PAWC customers and the acquired customers, the application of the Distribution System Improvement Charge (DSIC), post-acquisition improvement, transaction and closing costs, and outreach to low income customers, as discussed below.

B. Approval of PAWC's Adoption of Existing Industrial Pretreatment Program (IPP)  
¶¶ 20-21

Under the terms of the settlement, the Joint Petitioners agree that the Commission should approve an IPP service territory that includes each current IPP customer located outside the City's municipal boundaries. Moreover, the Joint Petitioners agreed that, in its first rate case filed after closing on the Transaction, PAWC will provide a report on York City IPP customers that have remained with PAWC and those no longer receiving IPP service and provide cost of service information for the IPP service as it is developed at that point in time. Settlement ¶¶ 19-20.

It is important that the Commission and parties know what is the cost of the IPP program under PAWC ownership to determine whether PAWC's charges for IPP service are recovering the cost of service for the program. OCA St. 1SR at 45-55. If PAWC does not have sufficient data to provide complete cost of information in its next rate case, those calculations will be provided with its subsequent rate filing. Settlement ¶ 20. This ensures that there will be opportunity to address the reasonableness of IPP rates and any subsidization of IPP revenue requirement by other PAWC wastewater or water customers no later than that second base rate case. As such, the OCA submits that these provisions are in the public interest.

C. Tariff ¶ 22

PAWC submitted a *pro forma* tariff with the application, which includes all rates, rules, and regulations regarding conditions of PAWC's wastewater service and requested that the tariffs become immediately effective upon closing of the transaction. See Application at App. A-12. In

furtherance of settlement, and for the reasons stated below, the OCA agreed that the *pro forma* tariff submitted by PAWC should become immediately effective upon closing of the transaction.

D. Cost of Service Studies and Rates ¶¶ 23-24, 35-36

In this proceeding, the OCA identified the need for PAWC to provide – in the first base rate case in which it includes York City’s assets in rate base – a cost of service study that removes all costs and revenues associated with the operations of the York City wastewater system, as well as a separate cost of service study for the York City system. OCA St. 1 at 12; OCA St. 1SR at 41-42. These studies will provide information to establish rates that reflect the costs for the York City system. The Settlement adopts the OCA’s recommendation. Paragraph 34 provides that, in its first base rate case in which PAWC includes the City of York’s assets in rate base, PAWC will submit a wastewater cost of service study that removes all costs and revenues associated with York City’s system. Paragraph 35 provides that the Company will also provide a separate cost of service study for the System.

Paragraph 23 provides that, in the first rate case in which PAWC includes York City’s wastewater system assets in rate base, PAWC will propose to move York City’s wastewater system assets to 1.47x the current York City wastewater rate or PAWC’s proposed Rate Zone 1 system-average wastewater rates, whichever is lower.<sup>1</sup> Settlement ¶ 23.a. At existing rates, revenues generated by the York City system are not sufficient to offset the cost of PAWC ownership. PAWC Exh. AEE-1 at 3-4. Thus, the length of time that existing PAWC wastewater and water customers subsidize the shortfall is a concern. Paragraph 23.d of the Joint Petition addresses this concern by reserving the rights of the OCA and other statutory advocates to challenge any proposal

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<sup>1</sup> The current rate for System residential wastewater customers with an average usage of 3,458 gallons per month is approximately \$32.60. PAWC St. 3 at 16. The current average PAWC rate for a residential wastewater customer using 3,360 gallons per month in Zone 1 is \$78.41. *Id.* at 17.



by PAWC to set a different effective date for new rates for York City wastewater customers than for other customers.

Taken together, these Settlement terms will provide a means for the parties to use the cost of service data to set rates for York City customers that reflect the cost of service under PAWC ownership, or movement towards the cost of service, and that may differ, as appropriate, from rates established for other water and wastewater customers. This will help to mitigate the potential level of subsidy by PAWC's other water and wastewater customers and applies the ratemaking principle of gradualism to rates set for customers in York City's service area.

E. Ratemaking Rate Base ¶ 25-26

Based on appraisals presented by PAWC and York City (\$240,336,741 and 269,376,640, respectively), PAWC sought a ratemaking rate base of \$235,000,000 for the York City System, which was the price PAWC agreed to pay for the System. As such, the ratemaking rate base proposed by PAWC was less than the average of the UVE fair market value appraisals. PAWC St. 3 at 6. 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. 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.

In settlement, the parties agreed that for ratemaking purposes, the ratemaking rate base pursuant to Section 1329 will be \$231,500,000. The proposed ratemaking rate base pursuant to Section 1329 is \$3.5 million less than requested in the Company's filing and represents an amount which, in the OCA's view, would be within the range of likely outcomes in the event of full

litigation of the case. This provides some mitigation of the rate impact of the transaction for existing PAWC customers and the acquired York City customers by reducing overall costs.

F. Distribution System Improvement Charge ¶ 27

The parties to the proposed Settlement agreed that PAWC will not include System-related investments in its distribution system improvement charge (DSIC) until PAWC collects a DSIC from System customers. Settlement ¶ 26. Under the terms of the settlement, PAWC will 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.

The OCA raised a concern that existing PAWC customers should not fund DSIC-eligible improvements in the York City system prior to the DSIC applying to the York City customers. OCA St. 1 at 25-26. Paragraph 26 of the Settlement addresses this concern. Also, this provision helps to ensure that projects and expenditures already planned for existing PAWC wastewater customers will not be given less priority as a result of the York City acquisition.

G. Allowance for Funds Used During Construction (AFUDC) and Deferred Depreciation ¶ 28

Under the terms of the settlement, any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case which includes York City's water and wastewater system assets, rather than an unspecified future case as proposed by PAWC. Further,

the Joint Petitioners reserve their rights to litigate future claims for AFUDC and deferral of depreciation on post-acquisition projects pursuant to Section 1329(f) and transaction costs in future rate cases. The OCA's assent to Paragraph 28 should not be construed to operate as preapproval of PAWC's future requests. Paragraph 28 preserve all parties' positions in future rate cases, including the ability to challenge the reasonableness and prudence of the Company's claims.

H. Transaction and Closing Costs ¶¶ 29-30

Paragraph 28 reflects the agreement between the Joint Petitioners that PAWC be permitted to claim transaction and closing costs associated with the Transaction, but reserves the parties' rights to litigate their positions fully in future rate cases when this issue is ripe for review. Paragraph 29 notes that the inclusion of outside legal fees in PAWC's transaction and closing costs under the APA between PAWC, that the City and the Authority shall be separately identified in PAWC's next base rate case, and that amounts expended by PAWC on behalf of the City or the Authority, will be separately identified. Moreover, the Settlement explicitly states that the Joint Petitioners' assent to these terms should not be construed to operate as their preapproval of PAWC's request. As such, the OCA submits that this provision is in the public interest as it provides for a full review of the transaction and closing costs in future rate cases.

I. Approval of Section 507 and Bulk Service Agreements ¶ 31-34

Under Paragraph 30 of the Settlement, PAWC's request for approval of Section 507 agreements is permitted. The OCA does not join in this provision but, in furtherance of settlement, does not oppose PAWC's request. Paragraphs 31 through 33 of the Settlement address agreements by which PAWC will provide bulk service to the Municipalities and York Water going forward and address any outstanding obligations between the Municipalities, York Water and York City, as a condition of Closing. Together, these provisions help to ensure that that closing will not occur

until all conditions that would impact the provision of bulk service by PAWC are met and preserves all parties rights to review rates for bulk service in future PAWC and York Water base rate cases.

J. Low Income Program Outreach, Settlement ¶ 37

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

K. Other Necessary Approvals ¶¶ 38-40

The Settlement acknowledges that the Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the transaction contemplated in the Application in a lawful manner.

IV. CONCLUSION

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

Respectfully Submitted,



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Dated: February 1, 2022  
00323567

**ATTACHMENT F**  
**STATEMENT IN SUPPORT OF**  
**OSBA**

**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

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

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**I. INTRODUCTION**

The Small Business Advocate is authorized and directed to represent the interests of small business consumers in proceedings before the Pennsylvania Public Utility Commission (“Commission”) under the provisions of the Small Business Advocate Act,

Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. In order to discharge this statutory duty, the Office of Small Business Advocate (“OSBA”) participated as a party to this proceeding to ensure that the interests of small business customers of Pennsylvania-American Water Company (“PAWC” or the “Company”) were adequately represented and protected.

## II. PROCEDURAL BACKGROUND

On July 1, 2021, PAWC filed an Application for approval of the transfer, by sale, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the York City Sewer Authority (“Authority”) and operated by the City of York (“City”) (collectively, “York”) to PAWC (“*Application*”).

On July 12, 2021, the OSBA filed a Notice of Appearance, Notice of Intervention, and Public Statement.

The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed its Notice of Appearance on July 21, 2021.

On July 23, 2021, the Office of Consumer Advocate (“OCA”) filed a Notice of Appearance, Protest and Public Statement.

On July 30, 2021, the Authority filed a Petition to Intervene.

On August 6, 2021, PAWC filed Responses to the Bureau of Technical Utility Services’ (“TUS”) Application Completeness Review.

By Secretarial Letter dated August 12, 2021, the *Application* was conditionally accepted by the Commission.

On August 23, 2021, PAWC filed a letter requesting a Secretarial Letter to be issued setting a deadline for protests or petitions to intervene.

On August 30, 2021, a Secretarial Letter was issued in response to PAWC’s letter and December 13, 2021 was set as the deadline for protests or petitions to intervene.



On October 22, 2021, PAWC filed a letter containing a copy of the customer notice that PAWC intended to distribute regarding the *Application*.

On October 22, 2021, PAWC filed an Amendment to the *Application*.

On October 27, 2021, PAWC filed a letter certifying compliance with service and notification requirements, and requesting that the Commission accept the *Application* and publish notice in the Pennsylvania Bulletin.

On October 29, 2021, the Commission issued a Secretarial Letter accepting PAWC's *Application* and indicating that notice of the *Application* would be published in the November 27, 2021 edition of the *Pennsylvania Bulletin*.

On November 8, 2021, the City filed a Petition to Intervene.

On November 12, 2021, a Notice was issued that a telephonic Pre-Hearing Conference was scheduled for December 14, 2021 before Administrative Law Judge ("ALJ") Steven Haas.

ALJ Haas issued a Prehearing Conference Order on November 22, 2021.

On December 9, 2021, The York Water Company filed a Protest to the *Application*.

On December 10, 2021, Manchester Township, West Manchester Township, North York Borough, York Township, and Spring Garden Township (collectively, the "Municipalities") filed Protests to the *Application*.

The Pre-Hearing Conference was held on December 14, 2021, at which time a litigation schedule was formalized.

On December 17, 2021, the OSBA submitted the Direct Testimony and Exhibit of Brian Kalcic, labeled OSBA Statement No. 1.

On December 20, 2021, a Telephonic Public Input Hearing Notice was issued, which scheduled a public input hearing for January 5, 2022.

On December 27, 2021, PAWC filed a Petition for Protective Order.

On December 28, 2021, an Order was issued granting the Petition for Protective Order.

The January 5, 2022 telephonic public input hearing was held as scheduled.

On January 14, 2022, the OSBA submitted the Surrebuttal Testimony of Brian Kalcic, labeled OSBA Statement No. 1-S.

The parties engaged in settlement discussions, which led the parties to request that ALJ Haas cancel the evidentiary hearing scheduled for January 18, 2022. On January 14, 2022, a Cancellation Notice was issued cancelling the evidentiary hearing scheduled for January 18, 2022.

The evidentiary hearing was held on January 19, 2022, at which time the Direct and Surrebuttal Testimony of Brian Kalcic was admitted into the record via a joint exhibit.

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

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

### **III. STATEMENT IN SUPPORT OF SETTLEMENT**

#### **Approval of the Application**

As a term of the *Settlement*, the OSBA agrees that the Commission should approve PAWC’s acquisition of York’s wastewater system. (*Settlement*, ¶ 19, at p. 4). Following investigation, the OSBA is satisfied that PAWC has demonstrated compliance with 66 Pa. C.S. §§ 1102 and 1329 in its *Application*, as modified by the *Settlement*.

#### **Approval of PAWC’s Adoption of Existing Industrial Pretreatment Program (“IPP”)**

The OSBA does not oppose Paragraph 20 of the *Settlement*, as it did not take a position on the issue in testimony. (*Settlement*, ¶ 20, at p. 4). The OSBA believes that

PAWC's commitment in the *Settlement* to provide a report on which York IPP customers have remained with PAWC and which are no longer receiving IPP Service, as well as its commitment to provide cost of service information for the IPP service, will provide the OSBA with greater information regarding the operation of the York wastewater system, and will assist the OSBA in discharging its duty to the public in future PAWC rate proceedings. (*Settlement*, ¶ 21 at p. 4).

### **Tariff**

As the OSBA supports the approval of PAWC's acquisition of York's wastewater system, it also agrees as part of the *Settlement* that the *pro forma* tariff submitted as Amended Appendix A-12, 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 acquisition. (*Settlement*, ¶ 22, at p. 5). Throughout this proceeding the OSBA has had the opportunity to review, question, and comment on the *pro forma* tariff and is satisfied that the tariff submitted with the *Application* is proper.

### **Rates**

With regard to the Rates section of the *Settlement*, the OSBA accepts the terms enumerated thereunder because it preserves the OSBA's right to "to address PAWC's rate proposals fully, and to make other rate proposals" in the Company's next rate case, particularly with respect to the rate provisions contained in Section 6.04(c) of the Asset Purchase Agreement. (*Settlement*, ¶ 24(d), at p. 5). Furthermore, the OSBA's rights are additionally preserved in Paragraph 23, which states that "nothing contained herein or in the Commission's approval of the *Application* shall preclude any Joint Petitioner from asserting any position or raising any issue regarding in a future PAWC proceeding." (*Settlement*, ¶ 23, at p. 5).

This section additionally requires PAWC to propose to move the York wastewater system customers to 1.47x the current York wastewater rate or PAWC's proposed Rate Zone 1 system-average for wastewater rates, whichever is lower, in the Company's first base rate case that includes York assets. (*Settlement*, ¶¶ 24(a), p. 5). The OSBA is satisfied that these provisions protect PAWC's current customers from unduly subsidizing the newly acquired customers on the York wastewater systems.

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

The *Settlement* includes a provision that permits PAWC to use \$231,500,000 for ratemaking rate base purposes for the acquired wastewater system. (*Settlement*, ¶ 25, at p. 6). The OSBA determined that the ratemaking rate base figure was appropriate pursuant to 66 Pa. C.S. § 1329(c)(2).

#### **Distribution System Improvement Charge**

The OSBA supports the provisions in the *Settlement* in which PAWC is prohibited from collecting York wastewater system-related investments in its distribution system improvement charge ("DSIC") until PAWC collects a DSIC from York wastewater system customers. (*Settlement*, ¶ 27 at p. 6). In OSBA Statement No. 1, Mr. Kalcic raised the concern that if PAWC were to include York wastewater system DSIC-eligible investments in its DSIC filings without collecting a DSIC from York wastewater system customers, "not only would York customers avoid contributing towards the Company's overall DSIC-related revenue requirement, general ratepayer would now be responsible for the *additional* costs associated with PAWC's York-related DSIC-eligible investments." (OSBA St. 1, pp. 8-9). The commitments in Paragraph 27 of the *Settlement* ensure existing ratepayers will not be prejudiced.

### **Claims for Allowance for Funds Used During Construction and Deferred Depreciation**

The OSBA believes that the conditions in the *Settlement* related to Allowance for Funds Used During Construction (“AFUDC”) and Deferred Depreciation are reasonable as it creates a process to address claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC in PAWC’s first base rate case that includes York’s wastewater system assets. (*Settlement*, ¶ 28, at pp. 6- 7).

Furthermore, under this section, the OSBA reserves its right to litigate its positions fully in future rate cases when these issues are ripe for review. (*Settlement*, ¶ 28, at p. 7).

### **Transaction and Closing Costs**

The OSBA supports the provisions in the *Settlement* under this section as these provisions preserve important rights for the OSBA and the customers it is charged with protecting. Namely, these paragraphs provide that the OSBA (1) reserves its rights to litigate its position fully in future rate cases when the issue of transaction and closing costs associated with this transaction is ripe for review; and (2) reserves the right to challenge the reasonableness, prudence, and basis for the inclusion of outside legal fees, if any, in PAWC's transaction and closing costs. (*Settlement*, ¶¶ 29, 30, at p. 7).

### **Approval of Section 507 Agreements**

In OSBA Statement No. 1, Mr. Kalcic recommended, “As a condition for approval of the Proposed Transaction, the Commission should require that all renegotiated [Intermunicipal Agreements] be subject to review, and potential amendment, in the context of the Company’s next base rate proceeding.” (OSBA St. 1, at p. 11). Paragraph 31 of the *Settlement* ensures that the *pro forma* Wastewater Treatment and Conveyance Agreement as well as the Spingettsbury Township Bulk Agreement will be subject to review in PAWC’s next base rate proceeding. (*Settlement*,

¶ 31, at pp. 7-8). This commitment will ensure general ratepayers that the *pro forma* Wastewater Treatment and Conveyance Agreement and the Spingettsbury Township Bulk Agreement are cost based, and contain just and reasonable terms. (See, OSBA St. 1, at p. 11).

#### **Approval of York Water Bulk Agreement**

Similar to Paragraph 31, Paragraph 32 of the *Settlement* follows Mr. Kalcic's recommendation and provides that the *pro forma* Wastewater Treatment and Conveyance Agreement which will be entered into by PAWC and York Water will be subject to review in PAWC's next base rate proceeding. (*Settlement*, ¶ 32, at p. 8). Again, the OSBA supports this commitment as it will ensure general ratepayers that the York Water *pro forma* Wastewater Treatment and Conveyance Agreement is cost based, and contain just and reasonable terms. (See, OSBA St. 1, at p. 11).

#### **Closing Conditions Related to Bulk Agreements**

The OSBA does not oppose the commitments in these paragraphs as the OSBA did not take a position on these issues in its testimony. (*Settlement*, ¶¶ 33, 34 at pp. 8-11).

#### **Cost of Service Studies**

The OSBA believes that PAWC's commitment in the *Settlement* to provide, in its next base rate case, a cost of service study that removes all costs and revenues associated with the operation of the York wastewater system, as well as a separate cost of service study for the York wastewater system, will provide the OSBA with greater information regarding the operation of the York wastewater system, and will assist the OSBA in discharging its duty to the public. (*Settlement*, ¶¶ 35, 36 at p. 11).

#### **Low Income Program Outreach**

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

with representing. (*Settlement*, ¶ 42, at p. 11).

**Other Necessary Approvals**

As the OSBA has determined that the relief requested in the *Application*, as modified by the *Settlement*, is in the public interest, the OSBA supports the provisions that the Commission shall issue any other necessary approvals to complete the acquisition of the York wastewater systems by PAWC, subject to the conditions set forth in Paragraphs 39 and 40 of the *Settlement*. (*Settlement*, ¶¶ 38-40, at pp. 11-12).

#### IV. CONCLUSION

Settlement of this proceeding avoids the litigation of complex, competing proposals and saves the possibly significant costs of further administrative proceedings. Such costs are borne not only by the Company, but ultimately by the Company's customers as well. Avoiding further litigation of this matter will serve judicial efficiency, and will allow the OSBA to more efficiently employ its resources in other areas.

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

Respectfully submitted,

*Erin K. Fure*

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Erin K. Fure  
Assistant Small Business Advocate  
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For:

Small Business Advocate

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Dated: February 1, 2022



**ATTACHMENT G**  
**STATEMENT IN SUPPORT OF**  
**MUNICIPALITIES**

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge Steven K. Haas, Presiding**

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.*

**JOINT STATEMENT OF MANCHESTER TOWNSHIP, NORTH YORK BOROUGH,  
WEST MANCHESTER TOWNSHIP, SPRING GARDEN TOWNSHIP, AND YORK  
TOWNSHIP IN SUPPORT OF SETTLEMENT**

**TO ADMINISTRATIVE LAW JUDGE HAAS:**

Manchester Township, North York Borough, Spring Garden Township, West Manchester Township and York Township (collectively the “Municipalities”), by and through their attorneys, jointly submit this statement in support of the Joint Petition for Approval of Unanimous Settlement of All Issues (“Settlement”) submitted to the Public Utility Commission (“Commission”) by Pennsylvania-American Water Company (“PAWC”) on behalf of the Municipalities, the City of York (“City”), the York City Sewer Authority (“Authority”), The York Water Company (“York

Water”), the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”).<sup>1</sup>

## **I. Introduction**

This proceeding concerns the Application of PAWC, filed with the Commission on July 1, 2021, for approval to acquire the wastewater system (the “System”), currently owned by the Authority and operated by the City, pursuant to Sections 507, 1102 and 1329 of the Pennsylvania Public Utility Code (the “Proposed Transaction”). On February 1, 2022, the Joint Petitioners filed the Settlement proposing a resolution of all issues in this proceeding.

The Municipalities only join paragraphs 23, 30, 31(b), 33, and 41-46 of the Settlement; however, they take no position as to the remainder of the Settlement. As such, the Municipalities support the Settlement as it applies to the Municipalities and respectfully request that the Honorable Administrative Law Judge Steven K. Haas recommend approval of, and that the Commission approve, paragraphs 23, 30, 31(b), 33, and 41-46 of the Settlement without modification.

## **II. Settlement – Legal Principles**

Pursuant to 52 Pa. Code § 5.231(a), it is the stated policy of the Commission to encourage parties to resolve contested proceedings through settlement. The Commission has further stated that “the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.” 52 Pa. Code § 69.401. For example, settlements lessen the time and expense of litigating a case and, therefore, directly benefit all interested parties.

As such, where all active parties in a proceeding have reached a settlement, the principal

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<sup>1</sup> PAWC, the Municipalities, York Water, the City, the Authority, OCA, OSBA, and I&E are collectively referred to herein as the “Joint Petitioners.”

issue for Commission consideration is whether the agreement is in the public interest. *See, e.g., Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) and *Pa. Pub. Util. Comm'n v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

Further, the Pennsylvania Supreme Court has explained that in the context of a utility merger, the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger. *See City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825 (Pa. 1972).

Here, the Settlement proposes the resolution of all issues in the proceeding, and the Joint Petitioners all agree is in the public interest. As stated above, Commission approval of the Joint Petition will not only minimize litigation and administrative burden of all parties, but will also further the public interest by allowing the transaction to move forward thereby fostering the Commission's stated goal of regionalizing wastewater systems within the Commonwealth.

Thus, the Municipalities support the Settlement as it applies to the Municipalities and respectfully request that the Honorable Administrative Law Judge Steven K. Haas recommend approval of, and that the Commission approve, paragraphs 23, 30, 31(b), 33, and 41-46 of the Settlement without modification.

### **III. Section 1102 Standards – Fitness and Affirmative Public Benefits**

When considering a transaction such as the one presently at issue before the Commission, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Co. LLC, Peoples TWP LLC, and Equitable Gas Co., LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). Here, it is undisputed that PAWC has the requisite technical, financial and legal fitness to own and operate the System.

To show legal fitness, PAWC must demonstrate that it has obeyed the Code, and Commission Regulations and Orders. *Re Perry Hassman*, 55 PA PUC 661 (1982). Here, PAWC

is a public utility operating under certificates of public convenience granted by the Commission with a good compliance history. PAWC Statement No. 1, p. 22. Additionally, there are no pending legal proceedings that would suggest that PAWC is not legally fit to provide safe and adequate service. PAWC thus satisfies the criteria for legal fitness. *Id.*

To show financial fitness, PAWC must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra.* Here, PAWC—a subsidiary of American Water Works Company, Inc.—is the largest water and wastewater provider in Pennsylvania with a demonstrated history of financial stability. PAWC Statement No. 1, p. 22; *see also* PAWC Statement No. 3, p. 4. PAWC has total assets of \$5.6 billion and annual revenues of \$773 million in 2020. PAWC Statement No. 3, p. 4. Due to its strong operating and financial performances, PAWC has access to capital to support its acquisition of the System – including the ongoing operating and investment commitments required to operate the System and serve the public. *Id.* For example, PAWC has a \$400 million line of credit, long-term debt financing at favorable interest rates and payment terms, and may obtain additional equity investments all through American Water Capital Corp. *Id.* p. 4–5. As such, PAWC thus satisfies this criterion as well.

Finally, to show technical/managerial fitness, PAWC must have sufficient staff, facilities and operating skills to provide the proposed service. *Hassman, supra.* Again, PAWC easily satisfies this standard here. As the largest investor-owned water and wastewater utility in the Commonwealth, PAWC will seamlessly integrate the operation of the System into its current operations. *See* PAWC Statement No. 1, p. 23.

Thus, there is no dispute that PAWC has the requisite technical, legal, and financial fitness to own and operate the System.

As for affirmative public benefits, PAWC offers its customers various enhanced services including, but not limited to, extended call center hours, additional bill payment options, enhanced

customer information and education programs. *See* PAWC Statement No. 2, p. 19-20 (providing a detailed explanation of all customer programs and customer service hours).

#### **IV. Terms and Conditions of Joint Petition for Settlement**

The Joint Petitioners have agreed, in the Settlement, to several conditions to be imposed by the Commission on approval of the proposed transaction. As stated above, the Municipalities only join paragraphs 23, 30, 31(b), 33, and 41-46 of the Settlement; therefore, the Municipalities will solely focus on those paragraphs in this Statement. The Municipalities believe that the terms of Settlement that apply to the Municipalities, as explained in more detail below, are consistent with section 1103(a) of the Public Utility Code.

##### **A. Transaction and Closing Costs – Outside Legal Fees**

Joint Petitioners agree that the inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the Asset Purchase Agreement 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.. *Id.* ¶ 30.

##### **B. Section 507 Approval**

Section 507 of the Public Utility Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least thirty (30) days prior to its effective date. *See* 66 Pa C.S. § 507.

The Municipalities respectfully request that the Commission issue Certificates of Filing, pursuant to Section 507, for approval of 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”). *See* Joint Petition ¶ 31(b).

**C. Closing Conditions related to the Municipalities Bulk Agreement**

Joint Petitioners agreed that the closing of the Proposed Transaction will be conditioned on, *inter alia*, (a) filing of an executed bulk agreement, substantially similar to the Municipalities Bulk Agreement, by PAWC separately with each of the Municipalities and York Water, (b) 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 (c) 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. *Id.* ¶ 33.

Additionally, the Municipalities, York Water, and the City have agreed to an audit and reconciliation process to ensure all obligations under the intermunicipal agreements currently in place between each of the Municipalities and York Water and the City are fulfilled. Each of the Municipalities and York Water agree 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.

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.

Prior to entering the Bulk Agreement, the Municipalities and York Water filed claims against the City for breach of the intermunicipal agreements currently in place. However, in recognition to the resolution of the Municipalities and York Water Bulk Agreements, the Municipalities, York Water, and the City agreed to request a stay in the proceedings docketed before the American Arbitration Association at AAA Case Nos. 01-21-0016-2228 and 01-21-0016-2942 pending Commission approval of the Settlement. However, in the event that the Commission modifies or does not approve the 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 shall 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.

**V. CONCLUSION**

Accordingly, Manchester Township, West Manchester Township, York Township, Spring Garden Township, and North York Borough respectfully request that the Honorable Administrative Law Judge Steven K. Haas recommend approval of, and the Commission approve, paragraphs 23, 30, 31(b), 33, and 41-46 of the Settlement without modification.

Respectfully submitted,

/s/ Thomas Wyatt



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Date: February 1, 2022

**ATTACHMENT H**  
**STATEMENT IN SUPPORT OF**  
**THE YORK WATER COMPANY**

**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

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**STATEMENT IN SUPPORT OF THE YORK WATER COMPANY**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

**I. INTRODUCTION**

The York Water Company (“York Water” or the “Company”) hereby submits this Statement in Support of the Joint Petition for Approval of Unanimous Settlement of All Issues (“Settlement) entered into by 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 York Water.

As stated in the Settlement, York Water joins Paragraphs 22, 32-33, and 41-46 of the Settlement and takes no position on the remainder of the Settlement. Accordingly, as outlined in this Statement in Support, York Water respectfully requests that the Commission approve those identified provisions of the Settlement without modification. Those provisions in the Settlement reflect a carefully balanced compromise of the interests of the Joint Petitioners regarding the issues raised by York Water. Thus, York Water submits that Paragraphs 22, 32-33, and 41-46 of the Settlement should be approved without modification because they are in the public interest, reasonable, and supported by substantial evidence.

## **II. COMMISSION POLICY FAVORS SETTLEMENT**

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements reduce the time and expense that parties must expend litigating a case and, at the same time, conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code § 69.401. The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. PUC v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861, 2013 Pa. PUC LEXIS 789, 310 P.U.R.4th 58 (Order entered Dec. 5, 2013). In order to approve a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. Windstream Pa., LLC*, Docket No. M-2012-2227108, 2012 Pa. PUC LEXIS 1535 (Order entered Sept. 27, 2012); *Pa. PUC v. C.S. Water and Sewer Assoc.*, Docket No. R-881147, 74 Pa. PUC 767 (Order entered July 22, 1991). As explained in the next section of this Statement in Support, York Water believes that Paragraphs 22, 32-33, and 41-46 of the Settlement should be approved without

modification because they are in the public interest, reasonable, and supported by substantial evidence.

### **III. THE SETTLEMENT IS IN THE PUBLIC INTEREST**

#### **A. BULK WASTEWATER TREATMENT AGREEMENT**

York Water's interest in this proceeding concerns the wastewater treatment service that the City currently provides to York Water's wastewater collection system in West York Borough ("West York"). (York Water St. No. 1, p. 4.) The City provides this wastewater treatment service to York Water's West York system pursuant to a contract setting forth the rates, terms, and conditions of such service. (York Water St. No. 1, p. 4.) York Water's wastewater treatment service agreement with the City was originally entered into by the City and West York on December 13, 1976 ("West York Agreement"). (York Water St. No. 1, p. 4; York Water Exhibit 1.)

Under the West York Agreement, West York connected to City's wastewater treatment system, and the City receives, treats, and disposes of West York's sewage in exchange, subject to the rates, terms, and conditions for the service set forth in the West York Agreement. (York Water St. No. 1, pp. 4-5; York Water Exhibit 1.) Paragraphs 8 and 8-A of the West York Agreement set forth the rates and charges that West York must pay the City. (See York Water Exhibit 1 ¶¶ 8, 8-A.) Paragraph 21 of the West York Agreement provides that if West York or the City "should at any future time transfer its sewerage system to any other agency or municipality by deed, lease or otherwise," then West York "shall assign this Agreement to such agency or municipality, and upon such assignment, the assignee shall be subject to all of the obligations and shall be entitled to receive all of the rights and benefits of this Agreement." (See York Water Exhibit 1 ¶ 21.)

As part of York Water's Commission-approved acquisition of the West York wastewater collection system, and as authorized by the City, West York assigned the West York Agreement

to York Water. (York Water St. No. 1, pp. 5-7.) Therefore, since February 27, 2017, York Water has possessed all rights and obligations previously held by West York under the West York Agreement. (York Water St. No. 1, p. 7.)

York Water filed a Protest to PAWC's Application, which was limited to two issues related to the West York Agreement. (York Water St. No. 1-SR, p. 2.) First, York Water challenged PAWC's proposed rate for bulk wastewater treatment service, on the grounds that the proposed rate did not "equal" the current "rate" under the West York Agreement, as required by 66 Pa. C.S. § 1329(d)(1)(v). (York Water St. No. 1, pp. 12-17; York Water St. No. 1-SR, pp. 2-11.) Second, York Water observed that it has an ongoing arbitration with the City concerning, among other issues, whether the City can assign the bulk wastewater treatment agreement between York Water and the City to PAWC without York Water's express consent. (York Water St. No. 1, pp. 10-12; York Water St. No. 1-SR, pp. 2, 11-21.) York Water observed that the resolution of issues would ultimately affect the rates paid by York Water's ratepayers, as the costs for wastewater treatment are passed along to them in York Water's base rate cases. (York Water St. No. 1-SR, p. 2.)

On the first issue, York Water argued in its direct testimony that PAWC's proposed rate for bulk wastewater treatment service would be different and higher than the current rate charged under the West York Agreement. (York Water St. No. 1, pp. 12-17.) Specifically, York Water averred that it paid a wastewater treatment rate of \$2.4927 per 1,000 gallons in 2021, while PAWC's proposed rate for York Water was \$3.118 per 1,000 gallons. (York Water St. No. 1, p. 13.)

As to the second issue, York Water noted that it filed a Statement of Claim against the City with the American Arbitration Association ("AAA") at Case No. 01-21-0016-2942. (York Water St. No. 1, p. 10.) In its Statement of Claim, York Water asserted that the City materially breached

the West York Agreement by: (1) enacting Ordinance No. 15, which set forth new bulk wastewater treatment rates that would apply if the bulk customer did not have an agreement in effect, in violation of the West York Agreement's terms; and (2) assigning the West York Agreement to PAWC, which is not a "municipality" or "agency," without the express consent of York Water, which renders the purported assignment null and void. (York Water St. No. 1, pp. 9-10.) York Water also requested declaratory judgment that to the extent an assignment to PAWC has occurred, the City has materially breached the Agreement by such assignment and that York Water is entitled to all damages resulting from the breach. (York Water St. No. 1, p. 10.) If the arbitrator were to rule in York Water's favor on the assignability issue, the City would be unable to assign the West York Agreement to PAWC at closing absent York Water's express consent. (York Water St. No. 1, p. 11.) Critically, as noted by PAWC witness Bernard J. Grundusky, Jr., "[t]he City is obligated to obtain assignment of the IMAs," including the West York Agreement, "as a condition precedent to Closing." (PAWC St. No. 1, p. 13.)

PAWC and the City submitted rebuttal testimony addressing York Water's claims. On the rate issue, PAWC and the City argued that York Water's rate calculation should have included the usage and debt service charges under the West York Agreement. (PAWC St. No. 1-R, pp. 30-33; PAWC St. No. 1-R (Supp), pp. 2-3; City St. No. 3-R, pp. 2-4.) When including those charges, PAWC and the City contended that York Water's bulk wastewater treatment rate paid in 2021 was \$3.118 per 1,000 gallons. (PAWC St. No. 1-R, pp. 30-33; PAWC St. No. 1-R (Supp), pp. 2-3; City St. No. 3-R, pp. 2-4.) Next, PAWC and the City alleged that the City should prevail in the arbitration because: (1) the City can assign the West York Agreement to a "municipality" or "agency" without York Water's express consent; and (2) PAWC qualifies as an "agency." (PAWC St. No. 1-R, pp. 18-23, 26; City St. No. 1-R, pp. 2-3.)

In its surrebuttal testimony, York Water responded to PAWC's and the City's arguments. First, although York Water agreed that the usage charges should be included in the rate calculation, York Water continued to dispute that the debt service charges should be reflected in that rate calculation. (York Water St. No. 1-SR, pp. 3-5.) York Water explained that Section 1329(d)(1)(v) of the Public Utility Code requires PAWC's proposed "rate," which includes any "contracts affecting any such compensation, charge, fare, toll, or rental,"<sup>1</sup> to "equal" to the rates in the West York Agreement, as determined in accordance with the formulas set forth therein. (York Water St. No. 1-SR, p. 4.) Under the rate formula set forth in the West York Agreement's, no debt service charges would be charged to York Water after the retirement of YCSA's bonds. (York Water St. No. 1-SR, pp. 4-5.) Thus, York Water maintained that PAWC's proposed "rate" did not "equal" the current rates under the West York Agreement. (York Water St. No. 1-Sr, p. 5.)

Nevertheless, assuming *arguendo* that the debt service charges should be included in the rate calculation, the total charges paid by York Water vary from year to year quite substantially. (York Water St. No. 1-SR, pp. 5-9.) Specifically, there was a 20.61% increase in the total wastewater treatment rate paid by York Water from 2017 to 2018, an 9.79% decrease from 2018 to 2019, an 8.21% decrease from 2019 to 2020, and a 13.81% increase from 2020 to 2021. (York Water St. No. 1-SR, p. 7.) On average over that five-year period of 2017-2021, York Water paid a total rate of \$2.9694 per 1,000 gallons, *i.e.*, \$0.1486 per 1,000 gallons lower than PAWC's proposed rate. (York Water St. No. 1-Sr, p. 7.) Therefore, York Water argued that if PAWC wanted to set a "reasonably revenue-neutral bulk rate" inclusive of all wastewater treatment costs, debt service charges, and usage charges paid under the West York Agreement, then PAWC would

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<sup>1</sup> 66 Pa. C.S. § 102 (defining "rate").



have looked to past years' charges and tried to normalize those costs before calculating the proposed fixed rate. (York Water St. No. 1-SR, pp. 5-6.)

In addition, York Water stated that the assignability issue is not before the Commission because the Commission lacks jurisdiction to interpret the assignment clause in the West York Agreement. (York Water St. No. 1-SR, p. 11.) Indeed, under Paragraph 23 of the West York Agreement, AAA has jurisdiction over that issue. (York Water St. No. 1-SR, p. 11.) Moreover, York Water responded to PAWC's and the City's claims about the assignability of the West York Agreement, arguing that PAWC does not qualify as a "municipality" or an "agency" under the West York Agreement. (York Water St. No. 1-SR, pp. 12-21.) For example, York Water explained that PAWC and the City continue to confuse the word "agent" with "agency" and misinterpret the West York Agreement (York Water St. No. 1-SR, pp. 13-16.) As such, York Water maintained that it was likely to prevail in the arbitration proceeding against the City. (York Water St. No. 1-SR, p. 18.)

Lastly, York Water noted that PAWC submitted supplemental testimony on January 12, 2022, summarizing and providing a copy of the *pro forma* bulk wastewater treatment agreement agreed to by PAWC and the Municipalities. (York Water St. No. 1-SR, p. 22.) Based on its review of that agreement, York Water asserted that the key terms of the bulk agreement were acceptable to York Water and would provide several benefits to York Water and its ratepayers, such as rate stability and much needed clarity around the parties' duties and obligations. (York Water St. No. 1-SR, pp. 22-23.) However, certain provisions would need to be adjusted to reflect that the bulk agreement is being entered into by York Water instead of one of the municipalities. (York Water St. No. 1-SR, p. 23.) For example, York Water provides wastewater service to customers outside of the municipal borders of West York Borough and will continue to do so (Article III, Section 6),

York Water cannot adopt and enforce resolutions or ordinances (Article III, Section 7), and York Water has no authority to grant public rights-of-way (Article IV, Section 3). (York Water St. No. 1-SR, p. 23.) Assuming those provisions and others could be adjusted to reflect that York Water, and not a municipality, is entering into the agreement, York Water stated that it would be willing to execute the bulk wastewater treatment agreement with PAWC. (York Water St. No. 1-SR, p. 23.) And, if such agreement were filed with and approved by the Commission, York Water would no longer oppose PAWC's Application and would terminate its ongoing arbitration with the City, given that the issues of the West York Agreement's rate and assignment provisions would be rendered moot. (York Water St. No. 1-SR, p. 23.)

Ultimately, the Joint Petitioners were able to resolve York Water's issues. Specifically, York Water and PAWC have agreed to a *pro forma* bulk wastewater treatment agreement that is substantially similar to PAWC's *pro forma* bulk wastewater treatment agreement with the Municipalities. (Compare PAWC Application, Appx. A-25.7 and Appx. A-25.8, with PAWC Application, Appx. A-25.9.) Consistent with York Water's surrebuttal testimony, the key terms of the agreement were not changed; however, certain provisions were modified to reflect that York Water (a public utility) is entering into the contract instead of a municipal corporation. (York Water St. No. 1-SR, pp. 22-23.) If the Commission approves the Settlement and, by extension, the *pro forma* bulk wastewater treatment agreement, York Water and PAWC will formally execute the bulk wastewater treatment agreement. (Settlement ¶ 32.) Going forward, this bulk wastewater treatment agreement will be 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.<sup>2</sup> (Settlement ¶ 32.) Additionally, the Settlement sets forth important conditions for Closing related to the bulk

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<sup>2</sup> Paragraph 32 of the Settlement was written this way in case York Water's next base rate case following Closing precedes or follows PAWC's next base rate case following Closing.

wastewater treatment agreements, which are designed to: (1) resolve past errors in the City's billing of debt service charges to York Water and the Municipalities; and (2) ensure an accurate and complete final reconciliation and refund of the City's transportation fund balances that are owed York Water and the Municipalities. (Settlement ¶ 33.)

These Settlement provisions, including the *pro forma* bulk wastewater treatment agreement agreed to by York Water and PAWC, are reasonable and in the public interest and should be approved by the Commission. The new bulk wastewater treatment agreement agreed to by York Water and PAWC will provide several benefits to York Water and its ratepayers, including rate stability and much needed clarity around the parties' duties and obligations. (York Water St. No. 1-SR, pp. 22-23.) Indeed, as explained in York Water's surrebuttal testimony, the total rate currently paid by York Water under the current West York Agreement is volatile and changes substantially from year to year. (York Water St. No. 1-SR, p. 7.) Also, the West York Agreement was entered into several decades ago and lacks some basic contractual provisions, such as a defined term of the contract. (*See* York Water Exhibit 1.) In contrast, the new bulk wastewater agreement generally sets forth a rate of \$3.75 per 1,000 gallons (subject to future adjustments based on the Consumer Price Index) for an initial contract term of 40 years.<sup>3</sup> The new bulk wastewater agreement also provides substantial more details on the parties' rights and obligations regarding the wastewater treatment service. (*See* PAWC Application, Appx. A-25.9, .) Such details are generally lacking in the West York Agreement, which was originally executed in 1976. (*See* York Water Exhibit 1.) Additionally, the Settlement sets forth procedures for a final and accurate true-

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<sup>3</sup> *See* PAWC Application, Appx. A-25.9, Article I (defining "Sewer Use Charge"); PAWC Application, Appx. A-25.9, Article IV (setting for the terms and conditions for "Sewer Use Charge and Payments"); PAWC Application, Appx. A-25.9, Article III § 1 (setting forth an initial contract term of 40 years).

up of the debt service charges and transportation fund, thereby helping ensure that York Water and the Municipalities receive any funds owed to them by the City. (Settlement ¶ 33.)

For these reasons, York Water respectfully submits that Paragraphs 22, 32-33, and 41-46 of the Settlement are just and reasonable and should be approved without modification.

**IV. CONCLUSION**

WHEREFORE, The York Water Company respectfully requests that the Pennsylvania Public Utility Commission approve Paragraphs 22, 32-33, and 41-46 of the Joint Petition for Unanimous Settlement of All Issues without modification.

Respectfully submitted,



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