

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American	:	A-2021-3024681
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	:	

**RECOMMENDED DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

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## I. INTRODUCTION

This decision recommends that a Joint Petition for Approval of Unanimous Settlement of All Issues be approved in its entirety without modification because it is in the public interest and supported by substantial evidence. This decision finds that the settlement complies with the relevant sections of the Public Utility Code regarding acquisitions of water and wastewater assets, properties and rights and is consistent with Commission regulations promoting settlements. The Commission must act on this application no later than its Public Meeting on April 28, 2022.

## II. HISTORY OF THE PROCEEDING

Pennsylvania American Water Company (“PAWC”), the City of York (“City”) and the York City Sewer Authority (“Authority”) entered into an Asset Purchase Agreement (“APA”) dated April 6, 2021, pursuant to which PAWC will purchase the wastewater system assets presently owned by the Authority and operated by the City (System).

On July 1, 2021, PAWC filed an application (as amended on August 8, 2021, the “Application”) at Docket No. A-2021-3024681, by which it is seeking Pennsylvania Public Utility Commission (“Commission”) approval of (1) the transfer, by sale, to PAWC, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the Authority and operated by the City, (2) the rights of PAWC 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 PAWC 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, pursuant to 66 Pa.C.S. §§ 507, 1102 and 1329.

On July 12, 2021, the Pennsylvania Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention, and on July 21, 2021, counsel for the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance.

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.

On July 26, 2021, the Pennsylvania Office of Consumer Advocate (“OCA”) filed a Protest to PAWC’s application, and on August 3, 2021, the Authority filed a Petition to Intervene.

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

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.

On October 29, 2021, the Commission notified PAWC that it had fully 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>1</sup> with a protest deadline of December 13, 2021.

On November 8, 2021, the City filed a Petition to Intervene. On December 9, 2021, the York Water Company (“York Water”) filed a Protest. On December 10, 2021, Protests

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<sup>1</sup> The notice was published at 51 Pa.B. 7390 (November 27, 2021).

to the application were filed by Manchester Township, North York Borough, York Township, West Manchester Township and Spring Garden Township (together, the “Municipalities”).

By Call-in Telephonic Pre-Hearing Conference Notice, the Commission scheduled a Pre-Hearing Conference for December 14, 2021. I issued a Prehearing Conference Order on November 22, 2021. The Pre-Hearing Conference was held as scheduled on December 14, 2021. During the Prehearing Conference, the Parties established a litigation schedule pursuant to which, *inter alia*, a Public Input Hearing was scheduled for January 5, 2022, at 6:00 p.m., and evidentiary hearings were scheduled for January 18-19, 2022.

The Public Input Hearing was held as scheduled on January 5, 2022. Eight witnesses provided testimony during the hearing.<sup>2</sup>

Prior to the evidentiary hearings, I was informed by the Parties that several issues in the proceeding had been settled and that the Parties were continuing to negotiate a resolution of the remaining issues. Accordingly, by agreement of all Parties, the evidentiary hearing scheduled for January 18, 2022, was canceled.

On January 18, 2022, the parties submitted Parties’ Joint Exhibit No. 1, which identified all of the testimony and exhibits that had been submitted by the Parties during the course of the proceeding. During the January 19, 2022, hearing, I was informed that a full settlement of all issues in the proceeding had been agreed upon by all Parties (“Settlement”). Accordingly, during the hearing, the Parties stipulated to the admission of the various statements and exhibits identified in Parties’ Joint Exhibit No. 1.

As identified in Joint Parties’ Exhibit No. 1, the following statements and exhibits were admitted, without objection, into the record during the January 19, 2022, hearing:

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<sup>2</sup> The Public Input Hearing testimony will be summarized and addressed below.

A. Pennsylvania-American Water Company Statements and Exhibits

1. Direct Testimony

- a. Direct Testimony of Bernard J. Grundusky, Jr., PAWC Statement No. 1, with Exhibits BJG-1 through BJG-4 (NOTE: BJG-1 is the application with all its appendices, which was previously filed with the Commission).<sup>3</sup>
- b. Direct Testimony of Michael J. Guntrum, P.E., PAWC Statement No. 2, with Exhibits MJG-1 through MJG-2.
- c. Direct Testimony of Ashley E. Everette, PAWC Statement No. 3, with Exhibit AEE-1.
- d. Direct Testimony of Jerome C. Weinert, PE, ASA, CDP, PAWC Statement No. 4, with Exhibit JCW-1.

2. Supplemental Direct Testimony

- a. Supplemental Direct Testimony of Bernard J. Grundusky, Jr, PAWC Statement No. 1-S.
- b. Supplemental Direct Testimony of Ashley E. Everette, PAWC Statement No. 3-S.

3. Rebuttal Testimony

- a. Rebuttal Testimony of Bernard J. Grundusky, Jr., PAWC Statement No. 1-R (Proprietary and Non-Proprietary Versions) with Exhibits BJG-5 through BJG-12. (BJG-10 is confidential).
- b. Rebuttal Testimony of Michael J. Guntrum, P.C., PWAC Statement No. 2-R.
- c. Rebuttal Testimony of Ashley E. Everette, PAWC Statement No. 3-R.
- d. Rebuttal Testimony of Jerome C. Weinert, PE, ASA, CDP, PAWC Statement No. 4-R, with Exhibits JCW-2, JCW-3, 3A, 3B, 3C, 3D, 3E, JCW-4, JCW-5, JCW-6.

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<sup>3</sup> Official notice of Exhibit BJG-1 was taken due to the very large size of the application filing.

4. Supplemental Rebuttal Testimony
  - a. Supplemental Rebuttal Testimony of Bernard J. Grundusky, Jr., PAWC Statement No. 1-R(Supp.) with PAWC Exhibit BJG-13.
5. Supplemental Testimony
  - a. Supplemental Testimony of Bernard J. Grundusky, Jr., PAWC Statement No. 1-Supp.(2) with Exhibits BJG-14 (Confidential), BJG-15 (Confidential Attachment A), BJG-16 and BJG-17
6. Rejoinder Testimony
  - a. Rejoinder Testimony of Bernard J. Grundusky, Jr., PAWC St. 1-Rej.
  - b. Rejoinder Testimony of Michael J. Guntrum, PAWC St. 2-Rej.
  - c. Rejoinder Testimony of Ashley E. Everette, PWAC St. 3-Rej. (Proprietary and Non-Proprietary Versions).
  - d. Rejoinder Testimony of Jerome C. Weinert, PE, ASA, CDP, PAWC Statement No. 4-Rej.

B. City Statements and Exhibits

1. Direct Testimony
  - a. Direct Testimony of Michael R. Helfrich, City St. 1, with Exhibits MRH-1 through MRH-4.
  - b. Direct Testimony of Dylan W. D'Ascendis, City St. 2, with Attachment A.
2. Rebuttal Testimony
  - a. Rebuttal Testimony of Michael R. Helfrich, City St. 1-R with Exhibits MRH-1R through MRH-3R (with errata and corrected errata).
  - b. Rebuttal Testimony of Dylan W. D'Ascendis, City St. No. 2-R.
  - c. Rebuttal Testimony of Daniel Hevner, City St. No. 3-R, with Exhibits DH-1R through DH-3R.
3. Rejoinder Testimony
  - a. Rejoinder Testimony of Michael R. Helfrich, City St. 1-RJ.

b. Rejoinder Testimony of Dylan W. D'Ascendis, City St. 2-RJ with Exhibits DWD-1RJ through DWD-2RJ.

C. I&E Statements and Exhibits

1. Direct Testimony

a. Direct Testimony of D.C. Patel, I&E St. 1, with Appendix A and Exhibit 1.

b. Direct Testimony of Ethan H. Cline, I&E St. 2, with Appendix A.

2. Surrebuttal Testimony

a. Surrebuttal Testimony of D.C. Patel, I&E St. 1-SR

b. Surrebuttal Testimony of Ethan H. Cline, I&E St. 2-SR

D. OCA Statements and Exhibits

1. Direct Testimony

a. Direct Testimony of Ralph C. Smith, OCA St. 1, with Appendix A, Exhibit RCS-1 through RCS-10.

2. Surrebuttal Testimony

a. Surrebuttal Testimony of Ralph C. Smith, OCA St. 1SR, with Exhibits RCS-11 through RCS-16 (Exhibit RCS 14 is confidential).

E. OSBA Statements and Exhibits

1. Direct Testimony

a. Direct Testimony of Brian Kalcic, OSBA St. 1 with Exhibit BK-1 and Appendix.

2. Surrebuttal Testimony

a. Surrebuttal Testimony of Brian Kalcic, OSBA St. 1-S.



F. Municipalities Statements and Exhibits

1. Direct Testimony

- a. Direct Testimony of Gary Milbrand, York Township St. 1.
- b. Direct Testimony of Kelly Kelch, West Manchester St. No. 1.
- c. Direct Testimony of Daniel Rooney, Spring Garden St. No. 1.
- d. Direct Testimony of Richard Shank, North York St. No. 1.
- e. Direct Testimony of Timothy R. James, Manchester St. 1.

2. Rebuttal Testimony

- a. Rebuttal Testimony of Gary Milbrand, York St. 1-R.
- b. Rebuttal Testimony of Kelly Kelch, West Manchester St. 1-R.
- c. Rebuttal Testimony of Daniel Rooney, Spring Garden St. 1-R.
- d. Rebuttal Testimony of Richard Shank, North York. St. No. 1-R.
- e. Rebuttal Testimony of Timothy R. James, Manchester St. 1-R.

3. Surrebuttal Testimony

- a. Surrebuttal Testimony of Gary Milbrand, York St. 1-SR.
- b. Surrebuttal Testimony of Kelly Kelch, West Manchester St. 1-SR.
- c. Surrebuttal Testimony of Daniel Rooney, Spring Garden St. 1-SR.
- d. Surrebuttal Testimony of Richard R. Shank, North York St. No. 1-SR
- e. Surrebuttal Testimony of Timothy R. James, Manchester St. 1-SR.

G. York Water Statements and Exhibits

1. Direct Testimony

- a. Direct Testimony of JT Hand, York Water St. No. 1 with Exhibits 1 through 4.

- b. Errata to York St. No. 1.
2. Surrebuttal Testimony
- a. Surrebuttal Testimony of JT Hand, York Water St. No. 1-SR, with Exhibits 1-SR through 5-SR

On February 1, 2022, the Parties filed with the Commission a Joint Petition for Approval of Unanimous Settlement of all Issues with Statements in Support (“Joint Petition”), as well as Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs. The record in this case closed on February 1, 2022, upon the filing of the Joint Petition. For the reasons discussed below, the settlement will be recommended for approval in its entirety without modification because it is in the public interest and is supported by substantial evidence.

### III. FINDINGS OF FACT

The following findings of fact were proposed by the Parties as Appendix A to the Joint Petition. The proposed findings of fact are supported by the record evidence as indicated and are adopted verbatim herein:

#### **Parties**

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

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

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

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

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

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

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

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

### **The Wastewater System**

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

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

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

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

### **The Service Territory**

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

### **The Transaction and the Asset Purchase Agreement**

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

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

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

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

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

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

20. The consideration for the purchase of the System is (i) the negotiated purchase price of \$235,000,000 and (ii) the Average Daily AR Payment. The Average Daily AR Payment is the average daily System revenue for the period from Seller's final meter reading through the Closing Date. PAWC St. 1 p. 11.

### **The UVE Appraisals**

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

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

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

24. The City retained the services of ScottMadden to complete an appraisal of the System. ScottMadden is a UVE registered with the Commission. City St. 2 p. 1. ScottMadden issued a fair market valuation of the System entitled “Valuation Report City of York June 15, 2021.” ScottMadden’s fair market value report utilized the cost approach, the income approach, and the market approach. PAWC Exhibit BJK-1, Appendix 5.2. ScottMadden filed a verification that states the fair market value report was prepared in compliance with USPAP. PAWC Exhibit BJK-1, Appendix A-9.2. ScottMadden’s fair market value report concluded that the value of the York System was \$269,376,640. City St. 2 p. 22.

### **Fair Market Value**

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

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

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

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

### **PAWC’s Financial Fitness**

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

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

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

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

### **PAWC’s Technical Fitness**

33. PAWC currently employs approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, materials management, risk management, human resources, legal, accounting, and customer service. As a subsidiary of American Water, PAWC has available to it additional resources of highly trained professionals who have expertise in various specialized areas. These operations and process experts have deep experience in the operation and maintenance of various types of wastewater treatment technology, as well as the experience available to support PAWC’s operations staff and facilities. PAWC St. 2 pp. 13-14.

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

### **PAWC’s Legal Fitness**

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

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

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

### **Ratemaking Rate Base**

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

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

### **Distribution System Improvement Charge**

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

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

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

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

43. PAWC calculates post-in service AFUDC consistent with the methodology approved by the Commission in its Final Order at Docket No. R-00922428 (Order entered April 21, 1993). This methodology for calculating AFUDC applies the short term debt rate for the portion of construction work in progress supported by short term debt, and long term financing rates apply only for amounts not supported by short term debt. PAWC St. 3-R p. 7.



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

### **Rates**

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

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

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

### **Industrial Pretreatment Program**

48. The York System operates an IPP, which currently serves 22 industrial customers. Eleven of these customers are located in the City, five are located in West Manchester Township, four are located in Manchester Township, and two are located in Spring Garden Township. The IPP is codified in the City Code, and the surrounding municipalities have likewise enacted ordinances requiring their industrial customers to comply with the York IPP. PAWC St. 1 p. 26.

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

receives IPP service, PAWC will file an application for a certificate of public convenience to abandon IPP service to such customer. PAWC St. 2 p. 6.

### **Customer Notice**

50. PAWC provided a non-binding estimate of possible rate impacts for existing customers and York System customers. PAWC Exhibit BJG-1, Appendix A-18-d. These estimates were prepared pursuant to the Commission's Order in *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered October 3, 2019) ("Steelton Order"). PAWC St. No. 3 p. 14. Ultimately, any rate impacts of the acquisition will be determined by the Commission in future base rate proceedings. PAWC St. No. 3 p. 18.

### **Municipal Agreements**

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

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

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

### **Agreement with York Water**

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

#### IV. DISCUSSION

##### A. Settlement Terms

In the Joint Petition, the parties unanimously agreed to resolve all outstanding issues. The relevant terms of the settlement are as follows, with the original paragraph numbering provided in the settlement:

##### 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 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.

#### 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 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

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

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.

Joint Petition, pp. 4-13.

## B. Legal Standards

Section 1102(a) of the Public Utility Code, 66 Pa.C.S. § 1102(a), permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. Among the activities that require Commission approval is the following:

(3) For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service....

66 Pa.C.S. § 1102(a)(3). The acquisition in this proceeding falls under Section 1102(a)(3).

When a certificate of public convenience is required under Section 1102, pursuant to Section 1103(a) of the Public Utility Code, 66 Pa.C.S. § 1103(a), the Commission may issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.”

According to the Pennsylvania Supreme Court, satisfying this standard requires the Commission to find that a proposed transaction would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” City of York v. Pa. Pub. Util. Comm’n, 295 A.2d 825, 828 (Pa. 1972); *see also*, Popowsky v. Pa. Pub. Util. Comm’n, 937 A.2d 1040, 1057 (Pa. 2007) (when addressing the issue of affirmative public benefits “the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way”). In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of

public convenience “such conditions as it may deem to be just and reasonable.” 66 Pa.C.S. § 1103(a).

Additionally, pursuant to Section 1103 of the Code, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from the Authority. Seaboard Tank Lines v. Pa. Pub. Util. Comm’n, 502 A. 2d 762 (Pa. Cmwlth. 1985); Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n, 138 A.2d 240 (Pa. Super. 1958). As a certificated public utility, there is a rebuttable presumption that PAWC possesses the requisite fitness. South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n, 601 A.2d 1308 (Pa. Cmwlth. 1992); *see also*, 66 Pa.C.S. § 1329.

With regard to Section 1329 of the Public Utility Code, this section sets forth a procedure which permits a public utility to utilize fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation. 66 Pa.C.S. § 1329. Section 1329 of the Public Utility Code addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. *Id.* The acquiring utility is authorized to collect a distribution system improvement charge (DSIC). Section 1329 also enables a public utility or other acquiring entity’s post-acquisition improvement costs not recovered through a DSIC to be deferred for book and ratemaking purposes. *Id.* In sum, Section 1329 helps mitigate the risk that a utility will not be able to fully recover its investment when water or wastewater assets are acquired from a municipality or authority. *Id.*

If the parties agree to the Section 1329 process, an “acquiring public utility” and the seller of the municipal system each select a utility valuation expert (UVE) from a list of such experts established and maintained by the Commission. The selected UVEs perform independent appraisals of the system to establish its fair market value. Also, the acquiring public utility and the seller select one licensed engineer to conduct an assessment of the tangible assets of the seller which is incorporated into the valuations of the UVEs.

After receiving the valuations, the acquiring public utility must apply for a certificate of public convenience under Section 1102 of the Code and include the following as an attachment to the Section 1102 application: copies of the UVE appraisals; the agreed purchase price; the ratemaking rate base; the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base; and a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable. 66 Pa.C.S. § 1329(d)(1). For applications involving an acquiring public entity under Section 1329(d)(1), the Commission has a six-month deadline for issuing a determination. *Id.*

Of note, the Commonwealth Court recently addressed Section 1329 in McCloskey v. Pa. Pub. Util. Comm'n, 195 A.3d 1055 (Pa. Cmwlth. 2018), *alloc. denied*, 207 A.3d 290 (Pa. 2019) (“McCloskey”), wherein the Court vacated and remanded a decision of the Commission granting an application for approval of a jurisdictional water company to acquire the wastewater system assets of New Garden Township and the New Garden Sewer Authority. The Court vacated the Commission’s decision and directed the Commission to provide notice to all ratepayers pursuant to Section 53.45 of the Commission’s regulations pertaining to notice of new tariffs and tariff changes. 52 Pa. Code § 53.45. The Court directed the Commission to receive additional evidence from ratepayers regarding the acquisition and then enter a new order. McCloskey. The Commission has not yet acted in response to the Court’s directives.

In its application filed in this case, PAWC also seeks approval of an asset purchase agreement and other connected agreements pursuant to Section 507 of the Public Utility Code, 66 Pa.C.S. § 507. Section 507 requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariff rates) be filed with the Commission at least 30 days before the effective date of the contract. *Id.* 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. Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission grants its approval. Section 507 is a filing requirement and does not require service of the filing on any potentially interested parties. *Id.*

Finally, with regard to the legal standard applied in this case, the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the 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. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (“Lancaster”). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id., (citing, Warner v. GTE N., Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (“Warner”)); Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs., 74 Pa. PUC 767 (1991). In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc., Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

### C. Fitness of PAWC

I will first briefly address PAWC’s fitness to provide the proposed service. As noted, pursuant to Section 1103 of the Code, PAWC must show that it is technically, legally, and financially fit to own and operate the acquired assets. Seaboard Tank Lines v. Pa. Pub. Util. Comm’n, 502 A. 2d 762 (Pa. Cmwlth. 1985); Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n, 138 A.2d 240 (Pa. Super. 1958). As a certificated public utility, however, there is a rebuttable presumption that PAWC possesses the requisite fitness. South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n, 601 A.2d 1308 (Pa. Cmwlth. 1992)(“South Hills Movers, Inc.”); *see also*, 66 Pa.C.S. § 1329.

As a certificated public utility, PAWC enjoys a presumption that it does, in fact, possess the necessary fitness to provide the proposed service. South Hills Movers, Inc. There is

no dispute in this proceeding about PAWC's fitness. There is, nonetheless, substantial evidence in the record demonstrating PAWC's fitness to provide the proposed service.

Appendix A to the Joint Petition contains Findings of Fact that have been stipulated as true by the parties and adopted in this proceeding. Facts regarding PAWC's financial fitness are set forth in ¶¶ 29-32. Facts regarding PAWC's technical fitness are set forth in ¶¶ 33-34. Facts regarding PAWC's legal fitness are set forth in ¶¶ 35-37. These paragraphs of the Proposed Findings of Fact contain citations to the record evidence supporting the findings. Since PAWC is presumed fit to provide the proposed service, and its fitness has not been challenged or questioned in this proceeding, I will not restate here the relevant record evidence about PAWC's fitness. I have, however, thoroughly reviewed this record evidence and find that PAWC does, in fact, possess the requisite financial, technical and legal fitness to provide the proposed service.

#### D. Review of Settlement Terms

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

The City has an Industrial Pretreatment Program that serves 22 industrial customers. Of these 22 IPP customers, 11 are located outside of the City. PAWC St. 1, p.26. Following the closing of this transaction, the 11 customers located outside of the City will continue to receive wastewater service from their respective municipalities, and PAWC will assume the City's responsibility to provide IPP service to all 22 of the City's IPP customers.

In order to provide IPP service to the 11 customers located outside of PAWC's certificated service territory, PAWC included in its applied-for service territory an IPP service territory that includes each of the IPP customers that are located outside of the City. The rights sought by PAWC for these customers would be limited to administering the IPP, with the municipalities otherwise continuing to provide wastewater service. Going forward, PAWC will file applications for certificates of public convenience for the addition of a new service territory to provide IPP service to any additional future IPP customers and, likewise, if an IPP customer no

longer takes IPP service, PAWC will file an application to abandon IPP service for such customers. PAWC St. 2, p. 6. The fees for the proposed IPP service are included in the *pro forma* tariff attached to PAWC's application as Amended appendix A-12.

The settlement provides that, in PAWC's first base rate case filed after the Transaction's closing date, it will provide a report identifying which York IPP customers have remained with PAWC and which are no longer receiving IPP service. PAWC will also, in its first base rate case after closing on the Transaction, provide cost of service information for its IPP service as it is developed at that point.

The Joint Petitioners all agree and request that the Commission approve an IPP service territory for PAWC that includes each current IPP customer located outside of the City's municipal boundaries. Joint Petition, p. 4. These boundaries are shown on the Application's Appendix A-16-a through e – IPP. PAWC notes, “[t]his provision is in the public interest because it permits PAWC to provide service to IPP customers that have historically been served by the System.” PAWC Stmt. in Support, p. 10. OCA notes that the settlement's requirement that PAWC provide IPP cost of service information in future base rate cases “insures 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 the second base rate case. As such, the OCA submits that these provisions are in the public interest.” OCA Stmt. in Support, p. 3.

I agree that this settlement provision is in the public interest and recommend that it be approved. As noted by PAWC, this provision is necessary to enable the City's current IPP customers to continue to receive uninterrupted IPP service from PAWC following the Transaction closing. The added territory and service rights will be limited to the provision of IPP service. Further, the requirement that PAWC provide IPP cost of service information in future base rate cases will ensure the ability of the Commission to analyze and determine the reasonableness of PAWC's IPP service rates.

## 2. Rates

Consistent with 66 Pa.C.S. § 1329(d)(1)(v), the Settlement requires that PAWC charge rates after closing that are equal to the City's existing rates. PAWC St. 1, p. 12. Further, subject to Commission approval in a future base rate case, PAWC will maintain rates for the City's existing customers for at least three years from the date of closing. All parties recognize and acknowledge, however, that ultimate ratemaking authority resides with the Commission. The current monthly rates are shown in PAWC's *pro forma* tariff, submitted as Amended Appendix A-12.

The Settlement further requires PAWC, in its first base rate case that includes the York system, to propose moving York system customers' rates to 1.47 times the current York system rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower. Settlement, ¶ 23a.

Under the Settlement, OCA, OSBA and I&E all reserve their rights to fully address PAWC's rate proposals in future base rate proceedings, and all parties expressly recognize that the Commission has ultimate authority to establish just and reasonable rates. PAWC states, "[t]his provision is in the public interest because it limits any potential subsidization of current York system customers by PAWC's existing water and wastewater customers." PAWC Stmt. in Support, p. 11.

I&E notes:

[t]his 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' rate 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.

I&E Stmt. in Support, p. 8.

I agree that this settlement provision is in the public interest and recommend that it be approved. As noted by the parties, the rate provisions will ultimately move York system



customer rates toward their actual cost of service, thereby limiting potential subsidization by existing PAWC customers, while imposing limitations that will help minimize rate shock to customers. In addition, all parties emphasize in the settlement the Commission's ultimate rate making authority.

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

As required by Section 1329, PAWC submitted two appraisals with its application. 66 Pa.C.S. § 1329. An appraisal performed on behalf of PAWC by Jerome C. Weinart, Principal and Director of AUS Consultants, established a fair market value for the York system of \$240,336,741. PAWC St. 4, pp. 3, 22. An appraisal performed on behalf of the City by Dylan D'Ascendis, Partner, ScottMadden, established a fair market value of the York system of \$269,376,640. City St. 2, p. 22. The average of the two appraisals is approximately \$255 million. In its application, PAWC requested that the ratemaking rate base value of the York system be set at the negotiated purchase price of approximately \$235 million. Application, p. 15. The proposed rate base value was the lower of (1) the average of the two appraisals, and (2) the negotiated purchase price of the York system, as required under 66 Pa.C.S. § 1329(c)(2).

I&E originally recommended a rate base value for the York system of \$229,598,406.00. I&E Stmt. 1, p. 26. OCA originally recommended a rate base value for the York system of \$175,629,000.00. OCA Stmt. 1SR, p. 53; OCA Ex. RCS-11, p. 2. After extensive negotiations among the parties, a rate base value of \$231,500,000.00 was agreed upon. Settlement, ¶ 25.

In agreeing with this value, I&E noted:

[u]ltimately, through the 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.

I&E Stmt. in Support, p. 10.

In its support of this settlement term, OCA states:

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.

OCA Stmt. in Support, pp. 5-6.

PAWC notes in support of the agreed upon rate base value, "[t]he 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 evidence." PAWC Stmt. in Support, p. 12. The OSBA concluded, "the ratemaking rate base figure was appropriate pursuant to 66 Pa.C.S. § 1329(c)(2)." OSBA Stmt. in Support, p. 6.

I agree that this settlement provision is in the public interest and recommend that it be approved. As noted, the negotiated rate base value of \$231,500,000 was fully analyzed and vetted by the parties and determined to be reasonable. It was reached as a compromise of competing positions that was ultimately established after extensive analysis by the parties' respective experts and extensive negotiation by experienced legal counsel. The agreed upon rate base value falls between the original positions of the parties and, as noted by OCA, falls within the range of likely outcomes in the event of full litigation of the case. The value is approximately \$23.5 million less than the average of the two appraisals (\$255 million) submitted by PAWC with its application. I find that the settlement rate base value represents a reasonable compromise by the parties and recommend that it be approved.

#### 4. Distribution System Improvement Charge

The APA provides that PAWC will not charge York system customers a DSIC before the effective date of the company's next Commission-approved base rate increase. PAWC

St. 3, p. 9; PAWC St. 1-R, p.11. Under the settlement, PAWC further agrees that it will not include York system-related investments in its DSIC until it collects a DSIC from York system customers. Further, the Joint Petitioners agree that PAWC will be permitted to collect a DSIC from York system customers upon (1) PAWC's filing of an amended wastewater Long-Term Infrastructure Improvement Plan ("Amended LTIP") including the York system which does not re-prioritize other existing commitments in other service areas, (2) the Commission's approval of the Amended LTIP, as it may be modified at the discretion of the Commission, and (3) PAWC's filing of a compliance tariff supplement that incorporates the York system into PAWC's DSIC tariff after Commission approval of the Amended LTIP. Settlement, ¶ 26.

This provision addressed a concern that had been raised by OCA in its testimony that existing PAWC customers should not have to fund DSIC-eligible improvements in the York system before to DSIC would apply to York City customers. OCA St. 1, pp 25-26. In addition, this provision assures that currently-planned projects and expenditures for existing PAWC wastewater customers will not be given less priority as a result of the acquisition.

I agree that this settlement provision is in the public interest and recommend that it be approved. As noted by OCA, this provision protects existing PAWC customers from being financially burdened by York system expenditures prior to the time when a DSIC would become applicable to York system customers. The provision also assures that current DSIC commitments to existing PAWC customers will be maintained.

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

Section 1329 permits acquiring utilities to accrue Allowance for Funds Used During Construction 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: (1) 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. 66 Pa.C.S. § 1329(f)(1). In addition, Section 1329 permits an acquiring utility to defer depreciation on its post-acquisition improvements that are not included in a DSIC. 66 Pa.C.S. § 1329(f)(2).

In its application, PAWC requested authorization to accrue AFUDC on post-acquisition improvements that are not included in a DSIC. PAWC St. 1, p. 4. PAWC also requested in its application authorization to defer depreciation on post-acquisition improvements that are not included in a DSIC. Application, ¶ 2.

In this settlement provision, the Joint Petitioners merely acknowledge these requests made by PAWC and indicate that they do not oppose the requests in this proceeding. This settlement term retains, however, the right of the parties to fully litigate their respective positions in future rate cases when these issues are ripe for review.

I agree that these settlement provisions are in the public interest and recommend that they be approved. By these provisions, the parties are merely acknowledging claims being made by PAWC in this proceeding under Section 1329 while, as noted above, retaining their rights to litigate in future base rate cases the reasonableness of these claims when they are ripe for review.

#### 6. Transaction and Closing Costs

Section 1329 permits an acquiring utility to include, in its next base rate case, a claim for transaction and closing costs incurred in connection with the acquisition. 66 Pa.C.S. § 1329(d)(1)(iv). By this settlement provision, 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 and agree they will not contest these requests in this proceeding. Further, under this provision, the Joint Petitioners retain their rights to litigate their positions fully in future base rate cases when this issue is ripe for review.

The settlement further provides that the inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the APA between PAWC, the City and the Authority shall be separately identified in PAWC's next base rate case as well as the amounts expended by PAWC on behalf of the City or the Authority. The OCA, I&E and OSBA reserve the right to challenge the reasonableness and basis for any such claims.

I agree that this settlement provision is in the public interest and recommend that it be approved. By this provision, the parties are merely acknowledging requests being made by PAWC in this proceeding permitted under Section 1329 while, as noted above, retaining their rights to litigate in future rate cases the reasonableness of these claims when they are ripe for review.

#### 7. Approval of Section 507 Agreements

66 Pa.C.S. § 507 requires that contracts between public utilities and municipal corporations (except for contracts to furnish service at regularly tariffed rates) be filed with the Commission at least 30 days before the effective date of the contract. If the Commission approves the contract, it issues a Certificate of Filing. Here, PAWC is seeking Commission approval of: (1) the APA; (2) the *pro forma* Wastewater Treatment and Conveyance Agreement, filed on January 12, 2022, which will be entered into, in substantially-similar form, by PAWC and each of the five municipalities separately (Municipalities Bulk Agreement); and (3) the *pro forma* Articles of Agreement, filed on January 12, 2022, which will be entered into, in substantially-similar form, by PAWC and Springettsbury Township (Springettsbury Bulk Agreement). Under the settlement, the Municipalities Bulk Agreement and the Springettsbury Bulk Agreement will be subject to review in PAWC's first base rate case after closing.

PAWC also requests Commission approval of the *pro forma* Wastewater Treatment and Conveyance Agreement which will be entered into, in substantially-similar form, by PAWC and York Water. York Water owns and operates the wastewater collection and conveyance system previously owned by West York Borough. City St. 1, p. 3.

The settlement provides that the Municipalities Bulk Agreement and the Springettsbury Bulk Agreement will be subject to Commission review in PAWC's first base rate case after closing. The settlement also provides that the Wastewater Treatment and Conveyance Agreement between PAWC and York Water will be subject to review in PAWC's first base rate case after closing and in York Water's base rate cases after closing. Closing on the acquisition is

conditioned on the filing of final, executed bulk service agreements between PAWC and (1) the five municipalities, (2) York Water, and (3) Springettsbury Township.

Finally, ¶ 33 of the settlement includes other conditions that address and resolve past errors in the City’s billing of debt service charges to York Water and the Municipalities and ensure accurate and complete final reconciliation and refund of the City’s transportation fund balances that are owed to York Water and the Municipalities.

York Water states:

[t]hese settlement positions, 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.

City Stmt. in Support, p. 9.

PAWC notes, “[t]hese 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.” PAWC Stmt. in Support, p. 16.

Although the OCA did not join in the settlement of these provisions (Settlement, ¶ 31), it does not oppose their approval, stating:

[p]aragraphs 31 and 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 ensure that the 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.

OCA Stmt. in Support, pp. 7-8.

I agree that these settlement provisions are in the public interest and recommend that they be approved. Approval of the bulk service agreements will allow for the continuous and seamless provision of bulk service to the Municipalities, York Water and Springettsbury Township by PAWC while addressing and clarifying, to the satisfaction of all parties, certain discrepancies that existed under the previous agreements with York City. Under the settlement, closing may not occur until final, executed bulk agreements are filed with the Commission and the conditions resolving the previous discrepancies have been completed. These settlement terms also reserve the rights of all parties to review and address bulk service rates in future PAWC and York Water base rate cases.

#### 8. Cost of Service Studies

The Settlement provides that, in its first base rate case that includes the York system's assets, PAWC will (1) submit a cost of service study that removes all costs and revenues associated with the operation of the System, and (2) provide a separate cost of service study for the System.

In supporting this provision, I&E states:

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 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. . . . 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.

I&E Stmt. in Support, pp. 11-12.

I agree that these settlement provisions are in the public interest and recommend that they be approved. By requiring cost of service studies in PAWC's next base rate case, the Commission will be better able to evaluate and establish rates for the company's various customer classes based on cost causation considerations, thereby more accurately moving the

rates charged to current York customers toward the true cost of service. This will help promote fairness to all of PAWC's customer classes.

#### 9. Low Income Program Outreach

The Settlement provides, that, within the first billing cycle following closing on the Transaction, PAWC will include a bill insert to York system customers regarding the Company's low income programs and will include such information in a welcome letter to these customers. The bill insert and welcome letter must 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.

I agree that these settlement provisions are in the public interest and recommend that they be approved. PAWC will take steps to ensure that all York system customers are fully aware of all available low income programs offered by the company and how to access and enroll in the programs for which they are eligible. This information will be disseminated in welcome letters and bill inserts.

#### 10. Easements

Under the Settlement, the Transaction may not occur unless and until the City 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 whereby if, for circumstances beyond the City's control, it is unable to transfer all missing easements, including public rights-of-way and other property rights before or at closing on the Transaction, PAWC and the City 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.

In addressing the benefits of these settlement terms, I&E states:

I&E supports this term as necessary to protect the public 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 off the Asset Purchase Agreement that bind it to deliver good and marketable title to all property necessary to use and access the acquired assets. . . . Accordingly, these terms of the Joint Petition are in the public interest and should be approved without modification.

I&E Stmt. in Support, pp. 10-11.

I agree that these settlement provisions are in the public interest and recommend that they be approved. As noted, the Settlement requires that all necessary easements and property rights be identified and conveyed to PAWC as a condition of closing. In the event that circumstances beyond the City's control prevent the transfer of any missing easements, PAWC and the City may nonetheless close on the transaction, so long as they set up an escrow account with an appropriate dollar amount from the purchase price that will be used to obtain post-closing transfer of any such missing easements. These provisions provide a mechanism to ensure that the necessary property rights are ultimately transferred to PAWC at no additional financial cost or risk to the customers of either PAWC or the City.

#### E. Affirmative Public Benefits

As noted above, satisfying the "public interest" standard requires the Commission to find that a proposed transaction would "affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way." City of York v. Pa. Pub. Util.

Comm'n, 295 A.2d 825, 828 (Pa. 1972); *see also*, Popowsky v. Pa. Pub. Util. Comm'n, 937 A.2d 1040, 1057 (Pa. 2007) (when addressing the issue of affirmative public benefits “the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way”). In making this determination, the focus of the analysis must be on all parties, not just a particular group or a particular geographic region. Middletown Twp. v. Pa. Pub. Util. Comm'n, 482 A.2d 674 (Pa. Cmwlth. 1984).

I note initially that, as with other settlements of cases involving Section 1329 of the Public Utility Code, the settlement is in the public interest and should be approved without modification because it satisfies the various goals of the General Assembly in enacting Section 1329. 66 Pa.C.S. § 1329. As the Commission noted in the Tentative Implementation Order entered July 21, 2016, at Docket Number M-2016-2543193, there are a number of water and wastewater systems owned by municipal corporations or authorities throughout the Commonwealth where sale to an investor-owned public utility can facilitate necessary infrastructure improvements and ensure the continued provision of safe, reliable service to customers at reasonable rates. As the Commission further noted in the subsequent Tentative Supplemental Implementation Order entered September 20, 2018, at the same docket:

[t]he development of water and wastewater service throughout the Commonwealth over the years has led to the creation of large numbers of geographically dispersed water and wastewater systems owned by municipal corporations or authorities. For these systems, sale to a larger, well-capitalized and well-run regulated public utility or entity can be prudent because it can facilitate necessary infrastructure improvements and access to capital markets, and, ultimately, it can ensure the long-term provision of safe reliable service to customers at reasonable rates.

Id. at 4.

Prior to the enactment of Section 1329, the valuation of utility property discouraged such acquisitions because the value of the property was defined as the original cost of construction less accumulated depreciation rather than the acquisition cost. As a result, systems that are greatly depreciated or constructed using grants or contributions in aid of

construction could have valuations so low that sales of the systems would be less advantageous or could cause financial hardships to the municipal corporations and authorities. Section 1329 mitigates the risk that a utility will not be able to fully recover its investment when water and wastewater assets are acquired from a municipality or authority. The settlement filed in this docket is consistent with that goal by helping to ensure the provision of safe and reliable utility service at just and reasonable rates.

The record evidence demonstrates other affirmative public benefits that support approval of PAWC's application. In particular, PAWC identifies and addresses in its Statement in Support various aspects of the Transaction that will benefit existing PAWC customers, York system customers, the City and the public at large. A complete discussion is found at pages 5-9 of the Statement in Support, including supporting citations to relevant record evidence. I will summarize a few of these benefits below.

The Settlement benefits the public at large by promoting the Commission's policy of favoring and encouraging the regionalization and consolidation of water and wastewater systems in the Commonwealth. 52 Pa. Code § 69.721(a); PAWC St. 1-R. In this particular case, the Settlement also allows municipal bulk service customers to seamlessly continue to receive bulk wastewater treatment service without having to pursue alternate treatment options. PAWC St. 1-Supp. (2), pp. 6-7.

The public at large also realizes environmental benefits as a result of the Transaction. Generally, PAWC is able to draw upon an extensive range of engineering and operational experience, as well as deep financial resources, to address environmental issues and challenges. PAWC St. 2, p. 13.

Here, PAWC describes specific challenges faced by the City:

[i]t 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. 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.

The Settlement benefits the City in that it will allow the City to address a \$13.5 million dollar budget shortfall identified by the City as it developed its 2021 budget. Without the sale of the System, the City anticipated a continuously-deteriorating financial condition. City St. 1, p. 4. With the proceeds from the sale of the System to PAWC, however, the City notes:

[s]ale 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. See also, City Stmt. in Support, pp. 4-5; City St. 1, pp. 5-6; City St. 2-RJ, p. 11.

With respect to benefits that will be realized by current York system customers, PAWC identifies 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. 1, p. 20.

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. 1, p. 14; PAWC St. 2, p. 16.

Customers will have access to PAWC’s proven and enhanced customer service, including its customer assistance program. PAWC St. 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 also benefits PAWC’s existing customers. In addition to the benefits identified above that impact the public at large, the Transaction will result in the addition of approximately 13,747 new customers to PAWC’s wastewater system current base of approximately 79,028 customers. PAWC St. 1, p. 19. This will enable the company to spread the cost of future plant additions and system improvements over a much larger customer base, thereby minimizing the cost impacts on any individual customer groups.

Upon review of the record evidence and the Statements in Support of the parties, I conclude that the Transaction as modified by the Settlement will result in substantial affirmative public benefits for all impacted groups which fully supports approval of the Application.

#### F. Public Input Hearing Testimony

A Public Input Hearing was held in this proceeding on January 5, 2022, beginning at 6:00 p.m. Eight witnesses provided testimony. The witnesses raised three primary issues in opposition to the Transaction.

First, many of the witnesses testified that they would not be able to afford to pay the potential rate increase of approximately 47% that PAWC estimated may occur following the three-year rate freeze. By way of examples, Stephen McCauley testified, “. . . the 47 and a half percent possible increase is a substantial amount of money. . . . which for me would be a, you know, increase of like \$240 a year at that point – once it is sold.” Tr. 40. Adrienne Avillion

stated, “. . . it is a matter of personal concern about the increase, which according to my data could be as much as nearly 48% or nearly \$300. I would have a lot of trouble affording that, and I’m sure I am not alone.” Tr. 45-46. Susan Bachant testified, “I live on a fixed income. Things are tough enough now. With a raise like that I’d have to sell my house and move into an apartment. And I just think that’s very unfair.” Tr. 60-61. Jay Lewis stated, “So I pay \$130 a quarter right now, which is \$520 a year. A 47 and a half percent rate hike would jump that to \$760 a year. That’s – that’s over \$200 increase in one year. Now, I work now, but next year I’m going to be retired. I’m going to be on a fixed income.” Tr, 78.

Second, several witnesses expressed concern about ownership of the York system changing from local control and oversight to ownership by an outside, for-profit company. For example, Adrienne Avillion argued, “I am also concerned about the idea of moving the responsibility from local people who have a vested interest in the services provided to a for-profit company that is obviously by the nature of being for-profit, anxious to increase monetary gain in order to get – pass that along to their shareholders.” Tr. 45.

William Stockwell testified:

[o]ne of the things that really struck me at the very beginning, and is something that I oppose, is the sale of the treatment plant running this vital public service away from the local elected officials, who are responsible and responsive to the residents of this township and places it with directors and officials of a private for-profit company who are basically responsible to the shareholders of that company and whose duty it is to make as much of a profit for the shareholders as possible.

Tr. 50.

Joseph Rudd stated, “I object to the sale of this. I wish to know how this benefits the local residents. I believe that American Water will have a reduced fiduciary discretion as they are a nonlocal private company that has to make profits whereas the public utility can simply have – deplete their reserves, keep their reserves.” Tr. 57.

Finally, several witnesses expressed concern about the potential impact that the three-year rate freeze for York customers would have on the rates of PAWC's existing customers. Stephen McCauley testified, "I know they're saying that they can freeze the people in the – in the actually [sic] city, get a, get a three year [sic] frozen rate on this, then the rest of us would have to pay for that. I don't think that's fair also." Tr. 39-40. Susan Bachant stated, "I don't understand why the city had – has the – where they would not get the – the raise for three years for their sewer bills, however, everybody else would. That didn't make any sense to me." Tr. 60. Jay Lewis testified, "PA Water has agreed to freeze the rates for residents and businesses in York City for three years, but I see nothing in writing that assures me that they will do the same for the other areas served, the other townships like my township." Tr. 77.

I have considered the comments presented by the public input hearing witnesses and conclude that the Transaction, as modified by the Settlement, is reasonable and in the public interest and should be approved.

With respect to the potential rate increase for York system customers following the proposed three-year rate freeze, PAWC estimated as part of its Application that rates may increase by as much as 47% following the rate freeze. This information is required as part of the application process in Section 1329 acquisition proceedings. McCloskey.

I note first that this is merely an estimate. Any actual future rate increases for current York customers will ultimately be determined by the Commission in future PAWC base rate proceedings. All parties recognize and acknowledge that ultimate ratemaking authority resides with the Commission.

Further, the Settlement requires PAWC, in its first base rate case that includes the York system, to propose moving York system customers' rates to 1.47 times the current York system rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower. Settlement, ¶ 23a. This settlement term provides some level of protection against an excessive rate increase and excessive rate shock. OCA, OSBA and I&E all reserve their rights to fully address PAWC's rate proposals in future base rate proceedings and, as noted, all parties

expressly recognize that the Commission has ultimate authority to establish rates which must be just and reasonable rates.

With respect to the concern expressed by some witnesses that ownership of the York system will change from local control and oversight to ownership by an outside, for-profit company, I note that upon approval of its Application and closing of the Transaction, the rates and service quality provided by PAWC to current York customers will be subject to the full regulatory oversight of the Commission. Under the Public Utility Code, the rates charged by public utilities must be just and reasonable. 66 Pa.C.S. § 1301, *et seq.* In addition, public utilities are required to furnish and maintain adequate, efficient, safe and reasonable service and facilities to their customers. 66 Pa.C.S. § 1501, *et seq.* Comprehensive regulatory oversight of the rates and quality of service offered by PAWC to the newly acquired York customers, as well as the Commission's complaint procedures, will provide them with significant assurances and protections relative to the service they will receive from PAWC.

With respect to witness concerns about the potential impact that the three-year rate freeze for York customers will have on the rates of PAWC's existing customers, I note again that the Commission has ultimate authority to establish rates for all customers which must be just and reasonable. Any future rate increases for either the newly acquired York customers or existing PAWC customers must ultimately be approved by the Commission, with a full opportunity for OCA, OSBA and I&E and all other interested parties to fully address and challenge PAWC's rate proposals.

Additionally, the Settlement requires that, in its first base rate case that includes the York system's assets, PAWC must (1) submit a cost of service study that removes all costs and revenues associated with the operation of the System, and (2) provide a separate cost of service study for the System. This term will enable the Commission to evaluate and establish rates for the company's various customer classes based on cost causation considerations, thereby more accurately moving rates toward the true cost of service. This will help promote fairness to all of PAWC's customer classes.



## V. CONCLUSION

For all of the above reasons, I recommend that the settlement be approved without modification because it is in the public interest, consistent with the Public Utility Code and supported by substantial evidence. The parties are commended for their significant efforts negotiating and reaching a complete resolution of these issues in this case.

## VI. CONCLUSIONS OF LAW

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

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

3. A certificate of public convenience is required for “any public utility . . . to acquire from . . . any person or corporation, including a municipal corporation, by any method or device whatsoever . . . the title to, or possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa.C.S. § 1102(a)(3).

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

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

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

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

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

9. Section 1329 of the Public Utility Code sets forth a procedure which permits a public utility to utilize fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation. 66 Pa.C.S. § 1329.

10. For an acquisition in which a municipal corporation and the acquiring public utility agree to use the valuation procedure delineated in 66 Pa.C.S. § 1329, the ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the parties or the fair market value of the selling utility. 66 Pa.C.S. § 1329(c)(2).

11. A contract between a municipality and a public utility (other than a contract to furnish service at regular tariff rates) must be filed with the Commission at least 30 days before the effective date of the contract. The Commission may approve it by issuing a certificate of filing or institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. 66 Pa C.S. § 507.

12. Commission policy promotes settlement. *See* 52 Pa. Code § 5.231.

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

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

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

## VII. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Approval of Unanimous Settlement of All Issues submitted on February 1, 2022 by Pennsylvania-American Water Company, the Pennsylvania Office of Consumer Advocate, the Pennsylvania Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement, the City of York, the York City Sewer Authority, the York Water Company, Manchester Township, West Manchester Township, North York Borough, York Township and Spring Garden Township, at Docket No. A-2021-3024681, including all terms and conditions thereof, be approved without modification.

2. That Joint Parties Exhibit No. 1, identifying and evidencing the stipulation for the admission of evidence of all statements and exhibits contained therein agreed to by all the parties and submitted on January 18, 2022, is hereby admitted.

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

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

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

(c) That, in its first base 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 base 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 base 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.

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

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

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

(i) PAWC will propose to move the System to 1.47 times 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.

(g) 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.

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

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

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

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

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

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

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

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

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

(iii) The Commission shall issue Certificates of Filing or approval for the *pro forma* Articles of Agreement, filed on January 12, 2022, which will be entered into, in a substantially-similar form, by PAWC and Springettsbury Township, subject to review by the Commission in PAWC's first base rate case following Closing.

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

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

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

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

(iii) Each Municipality and York Water receiving the transportation funds owed to each of them from the City at the time of Closing on the transaction and the City, York Water, and the Municipalities executing an Intermunicipal Agreement whereby each of Municipalities and York Water will pay any amount owed by or at Closing and the City will pay, at the time of Closing, an amount equal to the total of

the underpayment of West York Borough minus the net amount due to the City to reconcile a City of York Wastewater Treatment Plant debt service billing error. The City reserves all rights to collect the debt service underpayment from West York Borough. Additionally, the Intermunicipal Agreement for the debt service billing reconciliation must state the amount of West York Borough's debt service underpayment that arose before York Water's closing on the West York Borough wastewater system. Further, the Intermunicipal Agreement must provide that: (1) the City agrees West York Borough is solely responsible for any claims arising from West York Borough's obligations prior to York Water's ownership of the West York Borough wastewater system; (2) the City waives any claims for payment from York Water for any West York Borough underpayment amount that accrued prior to York Water's ownership of the West York Borough wastewater system; and (3) the City does not waive any claims for payment from York Water for any York Water underpayment amount that accrued following York Water's ownership of the West York Borough wastewater system. Each of the Municipalities and York Water agrees to pay in full the final estimated sewer service invoice for services rendered through Closing as required by the intermunicipal agreements currently in place between each of the Municipalities and York Water and the City. Additionally, the City shall establish an account at Closing of \$2,000,000 to be held in escrow for City obligations to the Municipalities and York Water pending completion of the final audit and reconciliation of the sewer charges for 2019, 2020, 2021 and any relevant future period prior to Closing as required by the intermunicipal agreements currently in place between each of the Municipalities and York Water and the City. As part of that final audit and reconciliation process, the City shall provide all documentation and audited statements that the City used to calculate the balances of the transportation funds for each of the Municipalities and York Water as well as sewer charges for 2019 to the present. Such documentation and audited statements shall be in sufficient detail to enable the Municipalities and York Water to confirm that: (1) the transportation fund balances were correctly calculated by the City; (2) no portion(s) of the transportation fund balances were omitted by the City; and (3) the reconciliation of sewer charges for the years 2019 to present are true and correct. If the Municipalities or York Water contest the City's reconciliation calculations, any proposed adjustments must be supported by documentation in sufficient detail to enable the City to confirm the correctness of the proposed adjusted calculations. Through this Settlement, the City agrees that York Water and the Municipalities have the legal right to pursue payment from the City of the remaining portion(s) of any such transportation fund balances that the City failed to refund, including any amounts in excess of the \$2 million to be held in escrow for the City's obligations to the Municipalities and York Water. Additionally, in recognition of the resolution on the Municipalities' and York Water's Bulk Agreements, the Municipalities, York Water, and the City shall jointly request by February 2, 2022, that the arbitrator issue an Order staying the consolidated proceedings docketed before the American Arbitration Association at AAA Case Nos. 01-21-0016-2228 and 01-21-0016-2942 and postponing all pending deadlines relating to discovery, motions, expert reports, and hearing dates in those proceedings pending issuance of a Final PUC Order approving the settlement. The Municipalities, York Water, and the City agree not to commence litigation in any court, forum, or tribunal raising the claims asserted by each of them, if any, in the consolidated arbitration proceedings while such stay remains in effect. In the event that the PUC modifies or does not approve the parties' settlement, any party shall have the

right to request that the arbitrator lift the stay, in which case the Municipalities, York Water, and the City agree that they will then jointly request a case management conference with the arbitrator to set new dates for completion of discovery, motions, expert reports, and hearing in those consolidated proceedings.

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

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

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

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

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

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

(v) 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.

4. That the Commission's Secretary's Bureau shall issue Certificates of Public Convenience under 66 Pa.C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of: (i) the transfer, by sale, of the Authority's assets, properties and rights related to its



