

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17120**

Public Meeting held July 14, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Application of Pennsylvania-American
Water Company – Wastewater Division for
approval of the right to: (1) acquire certain
wastewater system assets from Foster
Township; and (2) begin to offer, render,
furnish or supply wastewater service to the
public in portions of Foster Township,
Luzerne County, Pennsylvania

A-2021-3028676

ORDER

BY THE COMMISSION:

By the application (Application) filed on September 22, 2021, Pennsylvania-American Water Company – Wastewater Division (PAWC-WD), Utility Code 230073, 852 Wesley Drive, Mechanicsburg, Pennsylvania 17055, seeks certificates of public convenience pursuant to Sections 1102(a)(1)(i) and 1102(a)(3) of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 1102(a)(1)(i) and 1102(a)(3), evidencing Pennsylvania Public Utility Commission (Commission) approval of PAWC-WD’s right to: (1) acquire certain wastewater system assets from Foster Township; and (2) begin to offer, render, furnish or supply wastewater service to the public in portions of Foster Township, Luzerne County, Pennsylvania. In addition, PAWC-WD seeks certificates of filing pursuant to Section 507 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 507, for the Assets Purchase Agreement By and Among the Township of Foster and Pennsylvania-American Water Company (APA), and the four agreements (and their respective modifying agreements)

with municipal corporations to be assumed by PAWC-WD at the closing of the Foster Township acquisition.

I. AFFECTED ENTITIES AND BACKGROUND

PAWC-WD is a regulated public utility company, duly organized and existing under the laws of the Commonwealth. As of May 31, 2021, PAWC-WD provided wastewater service to approximately 79,028 customers throughout Pennsylvania including Luzerne County. Additionally, PAWC-WD is a division of Pennsylvania-American Water Company (PAWC), Utility Code 212285. PAWC provides water service in many counties throughout Pennsylvania and is a subsidiary of American Water Works Company, Inc.

Foster Township (Foster) is a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Foster's mailing address is 1000 Wyoming Avenue, Freeland, Pennsylvania 18224. Foster owns, maintains, and operates a wastewater collection and conveyance system and related assets (West End System) and furnishes wastewater service to approximately 544 customers within the Villages of Highland, Youngstown, and Upper Lehigh, and designated areas known as Woodside and Sub-Area 5. The customers served consist of 512 residential, 30 commercial, 1 industrial, and 1 municipal. Foster also provides wastewater conveyance service to Butler Township (Butler) at two bulk service interconnection points located within Foster, and to the Borough of Freeland Municipal Authority (Freeland Authority) for approximately 16 properties located partially or entirely within, or proximate to, Freeland Borough (Freeland) that connect to Foster's wastewater main in the West End System along Fern and Cedar Streets in Foster. PAWC-WD indicated that wastewater, generated in Foster's West End System and portions of Butler, is conveyed to the Freeland Authority for treatment. Additionally, PAWC-WD indicated in supplemental information filed with the Commission that water service within the requested service territory is provided by the Freeland Authority with the exception of one customer,

identified as Citterio, which is provided water service by both Freeland Authority and Hazleton City Authority. The Application does not contemplate a change to water service.

PAWC-WD submitted proofs of publication and service to the appropriate entities. Notice of the Application was published in the *Pennsylvania Bulletin*, 51 Pa.B. 6502, on Saturday, October 9, 2021. The protest period ended October 25, 2021. No protests were filed, and no hearings were held.

II. LOCATION AND DESCRIPTION OF THE REQUESTED TERRITORY

Foster is located at the southeast corner of Luzerne County bounded generally by Dennison Township and White Haven Borough to the north, Kidder Township in Carbon County to the east, Lehigh and Lausanne Townships in Carbon County to the south, and Hazle and Bulter Townships and Jeddo Borough to the west. Specifically, the requested service territory is comprised of two noncontiguous service areas situated in the western portion of Foster immediately north and south of Freeland. A map depicting PAWC-WD's requested service territory along with a written description of the territory's boundaries by bearing angles and distances representing an area of approximately 358 acres of land was provided in the Application's Appendix R.

III. DESCRIPTION OF FACILITIES FOR FURNISHING SERVICE

PAWC-WD will acquire certain West End System assets that include land, easements, approximately 47,900 linear feet (LF) of gravity and forced main sanitary sewer pipe, and four pumping stations with submersible duplex pumps and other appurtenances. The gravity portion of the West End System includes approximately 33,805 LF of eight-inch diameter polyvinyl chloride (PVC) pipe; approximately 3,105 LF of 10-inch diameter PVC pipe; approximately 2,865 LF of 12-inch diameter PVC pipe; 218 concrete manholes; and one Parshall flume metering manhole. Correspondingly, the force main portion of the West End System contains approximately 7,490 LF of four-inch

diameter PVC pipe, approximately 590 LF of two-inch diameter PVC pipe, approximately 65 LF of one and one quarter-inch diameter PVC pipe, six air release manholes, and three flush connection manholes. A more complete summary of Foster's West End System is detailed in Schedule 1.1 of the APA, provided as the Application's Appendix A.

Foster's Chapter 94 Municipal Wasteload Management Annual Report submitted to the Pennsylvania Department of Environmental Protection (DEP) for the 2020 calendar year (2020 Chapter 94 Report), provided in supplemental information filed with the Commission, indicated Foster's projected wastewater flow to be 108,000 gallons per day (GPD), based on a total of 810 equivalent dwelling units (EDUs). Foster and Freeland Authority mutually defined an EDU to be equal to 260 GPD as described later in Section V, below. Citterio, as Foster's single industrial customer, is the only customer billed based on metered water usage and had an average usage in 2020 of 62,400 GPD, or 240 EDUs. Additionally, the 2020 Chapter 94 Report indicated wastewater flows from Foster are projected to increase by 2025 to an estimated 113,280 GPD of Foster's 390,000 GPD maximum average daily flow reserved at Freeland Authority's wastewater treatment plant (Freeland Authority WWTP). The 2020 Chapter 94 Report also indicated Foster does not foresee any hydraulic or organic overload conditions from the collection system for the next five years based on the West End System being relatively new. However, the 2020 Chapter 94 Report noted that Foster is committed to reducing or eliminating overload conditions in West End System's Sub-Area 5 due to inflow and infiltration (I&I) by replacing that portion of the West End System. Further, Foster, in cooperation with Freeland Authority, began a flow monitoring program in 2014 to isolate and investigate potential I&I areas. Freeland Authority's WWTP has a permitted hydraulic capacity of 1.2 million gallons per day (MGD) and operates under National Pollutant Discharge Elimination System (NPDES) Permit No. 4010401. As discussed in Sections V and X, below, the capacity of Foster's pump station on Wyoming Street (Foster Wyoming PS) has been determined by DEP to be indeterminate until a required

Act 537 Plan Special Study regarding the Foster Wyoming PS has been completed and approved by DEP.

In supplemental information filed with the Commission, PAWC-WD provided a copy of Foster's Sewer System Rules and Regulations, dated December 2012, prepared by Entech Engineering, Inc. (Foster Sewer Regulations) and adopted by Foster in Ordinance No. 1 of 2013. In Section II of the Foster Sewer Regulations, Foster established a mandatory sewer connection requirement for the owners of any improved property located within 150 feet of the sanitary sewer anywhere in Foster at the owner's expense. PAWC-WD averred, based upon available information, all properties in the West End System are in compliance with Foster Sewer Regulations except for two properties along Carbon Street that have not paid a tap-on fee and are not connected to the West End System.

IV. ASSET PURCHASE AGREEMENT

On May 12, 2021, PAWC-WD and Foster entered into the APA that outlined the terms of PAWC-WD's acquisition of Foster's West End System for a purchase price of \$3,750,000. A copy of the APA was included in the Application as Appendix A. In the Application, PAWC-WD averred all negotiations were conducted at arm's length and that there is no affiliation between PAWC-WD and Foster. Further, filed as the Application's Appendix N, PAWC-WD provided a copy of the resolution entitled "Pennsylvania-American Water Company's Board Resolutions approving the Execution of the APA and Consummation of the Proposed Transfer" that was adopted by the Board of Directors of PAWC authorizing the execution of the APA. Additionally, the Application's Appendix O included a copy of the May 12, 2020 meeting minutes of Foster's Board of Supervisors ratifying the execution of the APA. PAWC-WD stated that it will initially finance the purchase with short-term debt or cash on hand.

The tentative journal entries to record the transaction closing in PAWC-WD’s accounts, as provided in supplemental information filed with the Commission, are:

Account Description	Debit	Credit
Account 104 – Utility Plant Purchased or Sold	\$3,750,000	
Account 232 – Short-Term Debt		\$3,750,000

The APA defined the term “assets” to mean certain assets, properties and rights of Foster that are held or used in connection to the West End System. Additionally, the assets are to be sold free and clear of all mortgages, liens, pledges, security interest, charges, claims, restrictions and encumbrances of any nature whatsoever. Section 1.3 of the APA identified assets not included in the transaction as: any and all customer laterals, including any grinder pumps on private property; any and all piping and fixtures internal to each customer’s structure; Foster’s cash on hand and accounts receivable up to the closing date; and any and all stormwater facilities, which include facilities that are connected to the West End System and located within the public right-of-way.

Section 1.7 of the APA indicated that following the closing of the proposed transaction, if PAWC-WD identifies sources of stormwater being discharged into, or stormwater system facilities interconnected with the West End System, PAWC-WD may, at its sole cost and discretion, disconnect or separate such stormwater system facilities from the West End System. Further, pursuant to Section 1.7, PAWC-WD shall either connect the stormwater system facilities into a municipal separate storm sewer system (MS4) owned by Foster or create MS4 facilities for dedication to Foster at no cost to Foster and transfer ownership of the MS4 facilities to Foster or its designee. The Commission notes the Application indicated the West End System is a separate wastewater collection and conveyance system and, as such, is not a combined sewer system. In supplemental information filed with the Commission, PAWC-WD stated it, along with Foster, reviewed the West End System assets and information provided by

Foster's engineers, and averred there are no known stormwater facilities connected to the West End System. If an interconnection between Foster's stormwater system and the West End System is discovered post-acquisition, PAWC-WD stated it will coordinate with Foster to limit the work completed by PAWC-WD to removing the connection and sealing off openings to the West End System.

Therefore, through this Order, the Commission will direct that, in its next base rate case that proposes to include any stormwater expenditures in rate base completed under the APA, PAWC-WD shall, specifically referencing Docket No. A-2021-3028676, provide testimony listing any stormwater facilities, along with any associated itemized costs, completed under Section 1.7 of the APA and justify why any amount claimed in rate base should be recoverable through rates and why PAWC-WD's ratepayers should be subject to the financial, managerial, and technical risks related to constructing separate storm sewer system facilities for dedication at no cost to Foster.¹

Section 4.1(b) of the APA required PAWC-WD to adopt Foster's current rates as PAWC-WD's base rates, as set forth in the APA's Schedule 4.1(b), within the requested service territory and to agree not to seek approval from the Commission to increase these rates until after December 31, 2024. The APA's Section 4.1(c) indicated that PAWC-WD will apply all other rules and regulations for wastewater service as forth in PAWC-WD's effective wastewater tariff to the customers of the West End System, including its then-existing miscellaneous fees and charges and distribution system improvement charge (DSIC).²

In supplemental information filed with the Commission on December 29, 2021, PAWC-WD provided a copy of an original cost study entitled "Original Cost of Wastewater Utility Plant and Depreciation Reserve Calculations" for the West End System as of December 16, 2021, prepared by AUS Consultants, Inc. and dated

¹ See Ordering Paragraph No. 11.

² PAWC-WD's *pro forma* tariff supplement, discussed in Section VII, below, exempts West End System wastewater service from PAWC-WD's DSIC.

December 2021 (2021 Draft Original Cost Study). PAWC-WD indicated the 2021 Draft Original Cost Study is marked as the final draft version pending PAWC-WD's close of the West End System acquisition at which point a final report will be prepared and filed with the Commission. Additionally, the 2021 Draft Original Cost Study identified that, excluding contributions in aid of construction and related accrued depreciation, the West End System's estimated depreciated original cost was \$5,806,651. PAWC-WD also indicated that it intended to record any utility plant acquisition adjustment in Account 123 – Goodwill, 186.3 – Regulatory Assets, or 253.1 – Regulatory Liabilities depending on whether the acquisition adjustment is claimed in a future rate case.

Through this Order, the Commission shall direct PAWC-WD to file a copy of its original cost study for the West End System with the Commission and serve a copy of the filing on relevant stakeholders upon completion of the study.³ We will also direct PAWC-WD to provide, at the time of filing its next base rate case that proposes to include the West End System in rate base, testimony that specifically references this docket number and justifies any amount claimed in rate base in order to evaluate the reasonableness of original cost, contributions, accumulated depreciation, and any utility plant acquisition adjustment claims pursuant to Section 1327 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1327.⁴ To be clear, the fact that the purchase price in the APA is lower than the West End System's estimated depreciated original cost in the 2021 Draft Original Cost Study indicates that a utility plant acquisition adjustment claim (relating to acquisition cost lower than depreciated original cost) may be appropriate unless PAWC-WD demonstrates the Application involves matters of substantial public interest pursuant to 66 Pa.C.S. § 1327(e).

³ See Ordering Paragraph No. 9.

⁴ See Ordering Paragraph No. 10.

V. FREELAND AUTHORITY SEWER AGREEMENTS

In the Application's Appendix B, PAWC-WD provided an executed copy of an Agreement between Freeland Authority, Freeland and Foster, dated December 8, 1999, (1999 Sewer Agreement) for the conveyance and treatment of wastewater flows from Foster's West End System to Freeland Authority's WWTP. Further, the 1999 Sewer Agreement identified that Foster's maximum average daily flow shall be equal to 360,000 GPD (Reserved Capacity) with a limitation that Foster shall, at no time, discharge an instantaneous peak flow in excess of four times Foster's Reserved Capacity. Foster is also required to contribute to or share in the costs of any upgrades, improvements, modifications, or other projects of a capital nature undertaken by Freeland Authority associated with the WWTP, Freeland Authority's Wyoming Avenue pump station (Freeland Authority Wyoming PS), and the associated force main between the Freeland Authority Wyoming PS and WWTP. The original term of the 1999 Sewer Agreement was for 20 years or the length of Foster's loan required for the construction of Foster's West End System, whichever was greater. If Foster's loan is for a period of time that extended beyond the year 2024, both Freeland Authority and Freeland agreed to take all steps necessary in order to extend the term of Freeland Authority for a period of time that, at least, coincides with the term of Foster's loan.

Additionally, the 1999 Sewer Agreement included a provision to allow 17 properties located in Freeland (Freeland Properties), listed in the 1999 Sewer Agreement's Exhibit A, to connect to Foster's West End System in lieu of requiring Foster to make a capital contribution to Freeland Authority. The Freeland Properties were to remain customers of Freeland Authority and be billed by Freeland Authority at Freeland's residents' rate. In supplemental information filed with the Commission, PAWC-WD indicated that there are currently 16 Freeland Properties that are connected to

the West End System at points within PAWC-WD's requested territory.⁵ PAWC-WD stated that Foster does not currently receive cost recovery from Freeland Authority for the Freeland Properties and was unable to confirm whether the Freeland Properties are counted as part of Foster's Reserved Capacity. PAWC-WD also indicated that it plans to bill Freeland Authority for wastewater service to the Freeland Properties post-acquisition. Further, PAWC-WD averred that it will work with Freeland Authority to reach mutually agreeable terms for an agreement detailing how Freeland Authority will be billed for PAWC-WD's services associated with the Freeland Properties. PAWC-WD indicated that it will file with the Commission any agreement with Freeland Authority pursuant to Section 507 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 507.

PAWC-WD provided a copy of an amendment to the 1999 Sewer Agreement also included in the Application's Appendix B, entitled "Modifying Contract," between Freeland Authority, Freeland, and Foster, dated January 14, 2010 (2010 Sewer Amendment). The 2010 Sewer Amendment added a definition for EDU and stated that it will be equal to 260 GPD. Additionally, the 2010 Sewer Amendment clarified the areas included in Foster's West End System and indicated that Foster shall build its Foster Wyoming PS adjacent to the Freeland Authority Wyoming PS with each entity retaining ownership of their respective pump station. However, Foster and Freeland Authority agreed that Freeland Authority's wastewater will flow into the Foster Wyoming PS, which shall then pump said sewage into Freeland Authority's collection system. Further, the 2010 Sewer Amendment stipulated that the mechanical and electrical components of the Foster Wyoming PS will be housed in the existing Freeland Authority Wyoming PS building and shall be used by Foster and Freeland Authority jointly in the future. In support of both entities' joint use, Foster and Freeland Authority agreed to execute joint easements, if necessary, providing for joint use by both entities of the Foster Wyoming PS and the Freeland Authority PS. The yearly operating expense of the jointly-used

⁵ PAWC-WD identified that Foster provides wastewater service to one Freeland Property, which was not identified in the 1999 Sewer Agreement's Exhibit A, and that the Freeland Authority currently provides wastewater service to two Freeland Properties located in Freeland.

pump station, including upgrades, repairs and maintenance, shall be divided between Foster and Freeland Authority on a proportional EDU basis. However, any rehabilitation work of the existing Freeland Authority Wyoming PS will be divided equally between Foster and Freeland Authority. Further, Foster and Freeland Authority agreed to execute joint easements, if necessary, providing for joint use by both entities of the Foster Wyoming PS and the Freeland Authority PS. The 2010 Sewer Amendment also increased Foster's Reserved Capacity from 360,000 GPD to 390,000 GPD, and modified the terms to allow the 1999 Sewer Agreement and subsequent amendments to be assigned by Foster and Freeland Authority without the written consent of the other.

At this time, the list of equipment and appurtenances owned by Foster in the Foster Wyoming PS, which was built within the Freeland Authority Wyoming PS, that will be transferred to PAWC-WD as part of its acquisition of the West End System is unclear. Therefore, through this Order, the Commission will direct PAWC-WD to file a report with the Commission and serve copies on relevant stakeholders as part of its original cost study for the West End System, providing an itemized breakdown of all equipment and appurtenances of the Foster Wyoming PS owned exclusively by PAWC-WD, upon completion of said study.⁶

As noted in Section I above, Foster provides bulk wastewater conveyance service to Butler and an executed copy of an agreement between Freeland Authority, Freeland, Foster and Butler, for the first Butler interconnection to the West End System, dated March 23, 2005, (2005 Butler Agreement) was provided in the Application's Appendix C. The 2005 Butler Agreement indicated that Foster allows wastewater generated from Butler Terrace to flow into and be conveyed through Foster's West End System, and that Freeland Authority, correspondingly, agreed to provide conveyance of those same flows through its system to be treated at the Freeland Authority WWTP. The wastewater generated in Butler Terrace will in no way reduce or be counted as part of Foster's

⁶ See Ordering Paragraph No. 9.

Reserved Capacity. Further, the 2005 Butler Agreement specified the installation of a metering device to measure and record the rate of flow or quantity of flow, or both, discharged at the interconnection of Butler's wastewater system into Foster's West End System (Butler Terrace Flow Meter). Freeland Authority agreed to deduct from the total metered gallonage recorded at the flow meter located between Foster's West End System and Freeland Authority's wastewater system (Foster Flow Meter) the sum of 360 GPD for each EDU connected to the Butler Terrace wastewater system. The term of the 2005 Butler Agreement was for a period of 20 years or the length of Butler's loan, whichever is greater. If Butler's loan was for a period of time that extended beyond the year 2024, both Freeland Authority and Freeland agreed to take all the steps necessary in order to extend the term of Freeland Authority for a period of time that, at least, coincides with the term of Butler's loan. The 2005 Butler Agreement may be assigned by Foster and/or Freeland Authority without the written consent of Butler and does not affect, supersede, modify, terminate or in any way change the 1999 Sewer Agreement.

PAWC-WD provided copies of amendments to the 2005 Butler Agreement, also included in the Application's Appendix C, entitled "Modifying Contract," between Freeland Authority, Freeland, Foster and Butler, dated March 19, 2009 (March Amendment), May 11, 2009 (May Amendment), and December 14, 2009 (December Amendment), respectively. In supplemental information filed with the Commission, PAWC-WD indicated the March Amendment is actually one and the same as the May Amendment and PAWC-WD will be assigned only the March Amendment as part of the closing of the proposed transaction. Further, PAWC-WD stated a fully executed copy of the December Amendment could not be provided and PAWC-WD will work with the municipal entities to determine if a new amendment needs to be executed by all parties in advance of closing. The March Amendment primarily reduced the deduction from the total metered gallonage recorded at the Foster Flow Meter from the sum of 360 GPD to 260 GPD for each EDU connected to the Butler Terrace wastewater system. Therefore, through this Order, the Commission will consider the Application to be amended to

conform with the evidence presented by PAWC-WD in the Application's supplemental information and will remove the May and December Amendments to the 2005 Butler Agreement from PAWC-WD's requested list of agreements for assignment included in the issuance of Certificates of Filing, pursuant to 66 Pa.C.S. § 507.⁷

Further, the Application's Appendix D included an executed copy of an agreement between Freeland Authority, Freeland, Foster and Butler, dated March 19, 2009, (2009 Butler Agreement) for the second Butler interconnection to the West End System. The 2009 Butler Agreement indicated that Foster agreed to allow wastewater generated from the Butler section of Upper Lehigh (Butler Upper Lehigh) to flow into and be conveyed through Foster's West End System and Freeland Authority, correspondingly, agreed to provide conveyance of those same flows through its system to be treated at the Freeland Authority WWTP. The wastewater generated in Butler Upper Lehigh will in no way reduce or be counted as part of Foster's Reserved Capacity and an EDU was defined to be equal to 260 GPD. Further, the 2009 Butler Agreement specified the installation of a metering device to measure and record the rate of flow or quantity of flow, or both, discharged at the interconnection of Butler's wastewater system into Foster's West End System (Butler Upper Lehigh Flow Meter). Freeland Authority agreed to deduct from the total metered gallonage recorded at Foster Flow Meter an amount of 260 GPD for each EDU connected to the Butler Upper Lehigh wastewater system. The term of the 2009 Butler Agreement was for a period of 20 years or the length of Butler's loan, whichever is greater. If Butler's loan was for a period of time that extended beyond the year 2026, both Freeland Authority and Freeland agreed to take all the steps necessary in order to extend the term of Freeland Authority for a period of time that, at least, coincides with the term of Butler's loan. The 2009 Butler Agreement may be assigned by Foster and/or Freeland Authority without the written consent of Butler and does not affect, supersede, modify, terminate or in any way change the 1999 Sewer Agreement.

⁷ See Ordering Paragraph Nos. 13 and 14.

VI. ADDITIONAL CAPITAL REQUIREMENTS

As discussed in Section IV above, PAWC-WD stated that it will initially finance its \$3,750,000 purchase price for the West End System with short-term debt or cash on hand. In supplemental information filed with the Commission, PAWC-WD provided an itemized breakdown of its projected \$1,481,120 capital expenditures for the West End System during the first five years post-acquisition. The breakdown of the capital expenditures per year is shown in Table 1, below:

Table 1: Breakdown of Projected West End System Capital Expenditures Per Year

Projects	Year 1	Year 2	Year 3	Year 4	Year 5
Condition based Assessment	\$89,520				
Targeted Inflow/Infiltration Improvements		\$187,000	\$187,000	\$187,000	\$187,000
SCADA (Supervisory Control and Data Acquisition)	\$60,000	\$62,400	\$31,200		
Pump Station Improvements	\$70,000	\$140,000			
Safety & Security	\$60,000				
Reoccurring Capital Projects	\$44,000	\$44,000	\$44,000	\$44,000	\$44,000
Total	\$323,520	\$433,400	\$262,200	\$231,000	\$231,000
				Total - 5 Years	\$1,481,120

VII. PROPOSED RATES

After closing, PAWC-WD will adopt proposed rates that are equivalent to Foster's existing rates for wastewater service and in the Application's Appendix F, PAWC-WD provided a copy of a *pro forma* tariff supplement. Foster's current wastewater rates include a monthly flat (i.e., unmetered) rate of \$85 per EDU as approved in Foster's Resolution No. 2 of 2020, dated February 20, 2020 (2020 Foster Rate Resolution).

PAWC-WD provided a copy of the 2020 Foster Rate Resolution in supplemental information filed with the Commission.

As described in Section II above, Foster has a single industrial customer, Citterio, that is charged based on water meter usage. Specifically, the APA's Schedule 4.1(b) states that Citterio is billed at the same monthly rate of \$85 per EDU, where EDUs are calculated based upon water consumption provided by Freeland Authority and divided by 260 GPD per EDU. PAWC-WD averred that it currently has no contract or agreement with Freeland Authority to continue receiving water consumption data in order to bill Citterio. However, PAWC-WD stated that it intends to engage in discussions with Citterio and its water providers to develop a plan for obtaining water consumption data and, if a contract or agreement is required, it will be executed prior to closing and filed with the Commission.

PAWC-WD also provided a copy of Foster's Resolution No. 11 of 2009, dated August 10, 2009, (2009 Foster Rate Resolution) that included metered rate user charges in Section 2.03 and confirmed Foster's rate for Citterio is based upon monthly water consumption data divided by 260 GPD per EDU to determine the total number of EDUs for Citterio. PAWC-WD averred that the metered rates included in the 2009 Foster Rate Resolution were not incorporated into the Foster Sewer Regulations in 2012. Further, the Commission notes the Foster Sewer Regulations appear to define a metered rate that is computed on the basis of one EDU per each 60,000 gallons or portion thereof of water consumed or sewage discharged annually (i.e., one EDU for metered rate customers equals approximately 164 GPD). Despite these differing rates between the 2009 Foster Rate Resolution and the Foster Sewer Regulations, PAWC-WD indicated that Foster continues to charge Citterio based upon the 2009 Foster Rate Resolution methodology. Correspondingly, PAWC-WD provided a revised *pro forma* tariff supplement that included Foster's metered rate from the 2009 Foster Rate Resolution.

For the remainder of Foster's wastewater customers, an EDU allocations table was included in the Foster Sewer Regulations' Appendix D that detailed how Foster apportions EDUs on an unmetered basis for domestic, commercial, combination domestic/commercial and industrial establishments. In PAWC-WD's effective wastewater tariff, an EDU is defined to be a measure based upon the estimated average daily wastewater flow for the type of business, as calculated by 25 Pa. Code § 73.17, divided by the typical estimated average daily wastewater flow from a current single-family unit, which under DEP's regulations, is currently 400 GPD for units of 3 bedrooms or less. In supplemental information filed with the Commission, PAWC-WD averred, based upon its preliminary analysis, that there are no significant differences between the EDU calculations used by Foster and PAWC-WD. Further, PAWC-WD stated that the Foster EDU allocations were assigned to existing customers through the municipal planning process and it intends to adopt those same Foster EDU allocations for all existing customers. However, PAWC-WD indicated that, when new customers connect to the West End System, PAWC-WD will determine new EDU allocations pursuant to its effective wastewater tariff. Subsequently, PAWC-WD provided a copy of a revised *pro forma* tariff supplement that included, for existing customers in Foster that are connected to the West End System prior to the close of the acquisition, an EDU Unit Schedule in Section A - Definitions of its Rules and Regulations (Section A). Additionally, in Section A, PAWC-WD delineated that for the West End System, new customers that connect after close of the acquisition, and existing customers who modify their properties in a manner that impacts the EDU calculation, will be subject to the EDU definition described by 25 Pa. Code § 73.17.

In supplemental information filed with the Commission, PAWC-WD stated that Foster does not bill Butler residents directly for wastewater conveyance and clarified that Foster bills Butler monthly as a bulk customer based on a flat rate of \$15 per EDU for each residential customer connected to Butler's wastewater system that provides flow to the interconnections to Foster's West End System, which is currently 57 EDUs. PAWC-

WD averred that the \$15 per EDU monthly rate was established by oral agreement between Foster and Butler as evidenced by copies of Foster's bills to Butler for wastewater conveyance services and, after reasonable investigation, it was not able to locate any documents to provide a basis for this rate. PAWC-WD also averred that it intends to bill Butler Township as a bulk wastewater customer, as provided in a revised *pro forma* tariff supplement, at the orally established monthly flat rate of \$15 per EDU. The 2005 Butler Agreement and its amendment contemplates Foster charging Butler an operation and maintenance charge, but PAWC-WD indicated that no operation and maintenance charge was included in the revised *pro forma* tariff supplement.

PAWC-WD also provided copies of Freeland Authority's current Sewer Regulations (Freeland Authority Regulations) and Freeland Authority's Current Rates Structure, dated January 26, 2021 (Freeland Authority Rates), in supplemental information filed with the Commission. The Freeland Authority Rates indicated that it bills Foster a flat rate of \$39.50 per EDU for each customer connected to the West End System for wastewater services.

In supplemental information filed with the Commission, PAWC-WD provided an estimate of anticipated annual revenue for providing wastewater service to customers within the requested territory to be approximately \$852,780, as broken down by customer class in Table 2, below, and annual operating expenses to be approximately \$792,262, including operation and maintenance, depreciation, tax, and the estimated treatment fees to be paid to Freeland Authority.

Table 2: Breakdown of Estimated Annual Operating Revenues by Customer Class

	No. of EDUs	Rate per EDU	Revenue
Residential	507	\$85	\$517,140
Commercial	29	\$85	\$29,580
Industrial	290	\$85	\$295,800
Butler - Bulk	57	\$15	\$10,260
		Total Revenue	\$852,780

The estimated revenue and expenses would result in a net annual operating income of approximately \$60,518. A calculation of the estimated annual revenue and expenses was provided in supplemental information filed with the Commission as the second revision of the Application's Appendix W.

VIII. PERMITS, EASEMENTS, AND RIGHTS-OF-WAY REQUIRED

In the Application's Appendix V, PAWC-WD provided a copy of Foster's DEP-approved Water Quality Management Permit No. 4006404 (WQM Permit) for the West End System. Under Section 5 of the APA, Foster shall support PAWC-WD in obtaining all required approvals from DEP for transferring the WQM Permit prior to the closing of the proposed transaction. Under the APA's Section 6.2(f), Foster agreed that, to the best of its belief, Foster has all rights-of-way and easements related to, and that are necessary to operate, the West End System, including various easements and rights-of-way identified in the APA's Schedule 1.1.

IX. OPERATIONS UNDER PAWC-WD

PAWC-WD averred in supplemental information filed with the Commission that it intends to operate Foster's West End System as a stand-alone system and will provide daily management, oversight and assistance from its Berwick District operations located approximately 20 miles from the West End System. Further, PAWC-WD indicated it

plans to utilize Foster's current contractor, Environmental Services Corp. of PA, to inspect and maintain the West End System.

X. ACT 537 OFFICIAL SEWAGE FACILITIES PLANNING

The Application's Appendix S consisted of a copy of the Joint Official Sewage Facilities Plan Update Revision for Freeland Borough and Foster Township, revised December 2013, completed by Borton-Lawson Engineering, Inc. (2013 Act 537 Plan Update). In supplemental information filed with the Commission, PAWC-WD provided a copy of a DEP letter, dated December 13, 2013, approving the 2013 Act 537 Plan Update (DEP Act 537 Approval Letter). PAWC-WD averred that the requested service territory for the West End System follows the service area depicted as Foster's West End System in the 2013 Act 537 Plan Update. PAWC-WD also indicated that, prior to the closing of the proposed transaction, Foster's Sewage Facilities Official Plan will be updated to reflect the change of ownership of the West End System to PAWC-WD and will be adopted by all affected municipalities and approved by DEP.⁸

Additionally, the 2013 Act 537 Plan Update detailed that Foster, in 2010, constructed the new Foster Wyoming PS, discussed in Section V above, to handle sewage flows from Foster's planning area and Freeland with 20-year growth allowances. The Freeland Authority Wyoming PS, although not routinely used, remains connected to the gravity sewer through an 18-inch diameter connection equipped with a plug valve. Both the Freeland Authority Wyoming PS and Foster Wyoming PS discharge into a common force main equipped with valves to isolate either station. The 2013 Act 537 Plan Update also indicated the current use of the Foster Wyoming PS to serve the wastewater conveyance needs of both Freeland and Foster was not authorized by DEP or by either municipality's previously approved Official Sewage Facilities Plans. In the DEP Act 537 Approval Letter, DEP expressed concern with the construction of the Foster Wyoming

⁸ See Ordering Paragraph No. 2.

PS and its capacity to handle the flows from both Foster and Freeland, as opposed to maintaining the wastewater flows separately through each entity's individual pump station. DEP also recognized the Foster Wyoming PS in the configuration described in the 2013 Act 537 Plan Update. However, DEP, for sewage planning purposes, did not recognize a rated capacity for the Foster Wyoming PS. DEP indicated that, until an Act 537 Plan Special Study (Special Study) is completed which fully substantiates the actual capacity of the Foster Wyoming PS and its associated wastewater conveyance and treatment systems, the capacity of the Foster Wyoming PS shall be indeterminate. In supplemental information filed with the Commission, PAWC-WD indicated a Special Study was not completed by Foster and PAWC-WD intended to work with DEP to complete this Special Study. Therefore, through this Order, the Commission will direct PAWC-WD to file copies of the DEP approved Special Study detailed in the 2013 Act 537 Plan Update and the associated DEP approval letter with the Commission's Secretary's Bureau within 10 days of DEP's approval of the Special Study.⁹

PAWC-WD, as the Application's Appendix E, provided an executed copy of an agreement between Freeland Authority and Foster, dated July 18, 2012, (2012 Wyoming PS Agreement), which detailed the terms for Foster and Freeland Authority to jointly use both the Foster Wyoming PS and the Freeland Authority Wyoming PS. The 2012 Wyoming PS Agreement indicated that Freeland Authority will operate and maintain the joint pump station facility. The cost of Freeland Authority's maintenance, including repairs and upgrades, shall be paid by Freeland Authority and Foster proportionally based upon EDUs. Any repairs or upgrades beyond routine maintenance will require the approval of both Foster and Freeland Authority. With the addition of the Citterio facility into the West End System, the proportional shares were projected as 63% for Freeland Authority and 37% for Foster. The term of the 2012 Wyoming PS Agreement is

⁹ See Ordering Paragraph No. 8.

indefinite and will continue in full force and effect in conjunction with the terms of the 1999 Sewer Agreement and 2010 Sewer Amendment, as described in Section V above.

XI. INDUSTRIAL PRETREATMENT PROGRAM

PAWC-WD indicated that Foster has an Industrial Pretreatment Program (IPP) that currently serves one industrial customer. PAWC-WD provided, as the Application's Appendix T, a copy of Foster's Ordinance No. 2 of 2013, dated March 13, 2013, (2013 Foster IPP Ordinance), which set forth uniform requirements for direct and indirect wastewater contributors into the West End System. Specifically, the 2013 Foster IPP Ordinance established objectives which include preventing the introduction of pollutants into the West End System that would interfere with the operation of the system and contaminate the resulting sludge, and would pass through the system, inadequately treated, into receiving streams or the atmosphere. PAWC-WD stated that Freeland Authority administers the IPP and directly invoices customers for IPP-related charges and, after the closing of the proposed acquisition, Freeland Authority will maintain its responsibilities for the administration and billing of the IPP for Freeland, Foster and Butler. The Commission notes for clarity that Freeland Authority's WWTP is a Publicly Owned Treatment Works (POTW) with an approved IPP, and its wastewater treatment service area includes Freeland, Foster and Butler.

In a letter from Freeland Authority, dated October 12, 2021, filed with the Commission at this docket, Freeland Authority averred the United States Environmental Protection Agency (EPA) has set a mandate requiring Foster, Butler and Freeland to have the same IPP Ordinances. Freeland Authority indicated that Foster has not completed the necessary steps to adopt the same updated ordinance as Freeland. In supplemental information filed with the Commission, PAWC-WD provided a copy of e-mail correspondence between the EPA and a consultant for Freeland Authority, Herbert, Rowland & Grubic, Inc., dated December 30, 2021, where the EPA reinforced that 40 CFR § 403.8(f)(1) requires the POTW with an approved program to operate its

pretreatment program throughout its service area. Additionally, PAWC-WD provided a copy of Foster's proposed ordinance establishing an IPP and other rules controlling discharges to the sewer system (Updated Foster IPP Ordinance). PAWC-WD indicated that Foster would advertise the Updated Foster IPP Ordinance at its February 9, 2022 Board of Supervisors meeting and schedule the ordinance for adoption at its March 9, 2022 meeting. The Commission notes that Paragraph No. 9 of the 1999 Sewer Agreement, as described in Section V, above, states that Foster agreed to promulgate, enact and enforce any resolutions, ordinances and rules and regulations governing acceptance of wastewater standards that are identical to those governing customers of Freeland Authority and Freeland. The Commission, through this Order, will direct PAWC-WD to file with the Commission a copy of the adopted Updated Foster IPP Ordinance and associated attestation from the Secretary of Foster's Board of Supervisors certifying the enactment.¹⁰

XII. LAND-USE PLANNING COMPLIANCE

PAWC-WD sent a letter to the Foster Planning Commission that requested verification that the Application is consistent with the adopted municipal and county comprehensive plans and zoning ordinances. Foster responded by letter, dated August 20, 2021, and verified the Application's consistency. A copy of this letter was included in the Application's Appendix Q.¹¹ In supplemental information filed with the Commission, PAWC-WD provided a copy of a letter from the Luzerne County Planning Commission (LCPC), dated January 10, 2022, indicating that LCPC completed a review of the Application. In its letter, LCPC determined that the proposed acquisition of Foster's West End System appears consistent with the 2021 Lackawanna-Luzerne County Comprehensive Plan.

¹⁰ See Ordering Paragraph No. 2.

¹¹ The Application's Appendix Q also included a copy of a similar response letter from the Butler Township Planning Commission. However, as discussed in Section II of this Order, PAWC-WD's requested territory does not include any areas within Butler Township.

XIII. OTHER CONSIDERATIONS

PAWC-WD maintained that to the best of its knowledge, no corporation, partnership or individual is currently furnishing or has corporate or franchise rights to furnish service like that to be rendered by PAWC-WD within the requested territory and no competitive condition will be created. Further, PAWC-WD averred it has the managerial, technical and financial capabilities to safely and adequately operate the West End System and to make improvements as needed, on a short and long-term basis.

PAWC-WD has no outstanding fines or assessments due to the Commission. Also, PAWC-WD is current with its annual and quarterly earnings reports and the Commission's security planning and readiness report filing requirements. In an email correspondence from DEP's Northeast Regional Office, dated November 2, 2021, DEP advised Commission staff that PAWC-WD is in violation of NPDES Permit No. PA0060640 (Saw Creeks WWTP) for repeated sanitary sewer overflows and NPDES Permit No. PA0061646 (Lake Scranton Water Filter Plant) for the release of plastic pellets to Stafford Meadow Brook. Therefore, through this Order, the Commission will direct PAWC-WD to provide a report to the Commission addressing the aforementioned DEP violations and the current status of completing DEP approved corrective actions.¹²

XIV. CONCLUSION

Based upon the facts that PAWC-WD will expand its service territory in compliance with Commission regulations; that PAWC-WD will be able to meet the needs of new customers without apparent detriment to its existing customers; and that PAWC-WD has the technical, managerial and financial fitness to operate and maintain the system assets; the Commission finds that granting PAWC-WD's Application is necessary or

¹² See Ordering Paragraph No. 7.

proper for the service, accommodation, convenience, or safety of the public and in the public interest; **THEREFORE,**

IT IS ORDERED:

1. That the Application of Pennsylvania-American Water Company – Wastewater Division at Docket No. A-2021-3028676 is hereby approved, consistent with this Order.

2. That, prior to the issuance of a Certificate of Public Convenience pursuant to Ordering Paragraph No. 3, Pennsylvania-American Water Company – Wastewater Division shall file with the Secretary’s Bureau, with a copy served upon the Bureau of Technical Utility Services, the following documents:

- a. A copy of Foster Township’s adopted Ordinance of 2022 establishing an Industrial Pretreatment Program and other Rules Controlling Discharges to the Sewer System and the associated attestation from the Secretary of Foster Township’s Board of Supervisors certifying the enactment, consistent with the Application’s supplemental information, filed February 8, 2022.
- b. A copy of the Pennsylvania Department of Environmental Protection-approved Act 537 Official Sewage Facilities Plan update for Foster Township to reflect the change of ownership of Foster Township’s wastewater assets to Pennsylvania-American Water Company – Wastewater Division.

3. That upon Pennsylvania-American Water Company – Wastewater Division meeting the conditions imposed in Ordering Paragraph No. 2, a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(3) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1102(a)(3), evidencing Commission approval of the right of

Pennsylvania-American Water Company – Wastewater Division to acquire certain wastewater system assets from Foster Township as described in the Application.

4. That Pennsylvania-American Water Company – Wastewater Division shall provide written notification to the Secretary’s Bureau within ten (10) days of the closing with Foster Township.

5. That following Commission receipt of the written notice of closing in Ordering Paragraph No. 4, a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(1)(i) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1102(a)(1)(i), evidencing Commission approval of the right of Pennsylvania-American Water Company – Wastewater Division to begin to offer, render, furnish, and supply wastewater service to the public in portions of Foster Township, Luzerne County, Pennsylvania, consistent with the Application’s Appendix R.

6. That within ten (10) days following the date of closing with Foster Township, Pennsylvania-American Water Company – Wastewater Division shall file with the Secretary’s Bureau a tariff supplement, to become effective on one day’s notice, incorporating portions of Foster Township, Luzerne County in its wastewater service territory, consistent with the revised *pro forma* tariff supplement provided in the Application’s supplemental information, filed March 29, 2022.

7. That within sixty (60) days following the entry date of this Order, Pennsylvania-American Water Company – Wastewater Division shall file a report with the Secretary’s Bureau, with a copy served upon the Bureau of Technical Utility Services, addressing the violations indicated by the Pennsylvania Department of Environmental Protection at its Saw Creeks Wastewater Treatment and Lake Scranton Water Filter Plants and the current status of completing any approved corrective actions.

8. That Pennsylvania-American Water Company – Wastewater Division shall file a with the Secretary’s Bureau copies of the Pennsylvania Department of

Environmental Protection-approved Act 537 Plan Special Study detailed in the Pennsylvania Department of Environmental Protection-approved 2013 Act 537 Plan Update and the associated DEP approval letter, with a copy served upon the Bureau of Technical Utility Services, within ten (10) days of Pennsylvania Department of Environmental Protection's approval of the Act 537 Plan Special Study.

9. That Pennsylvania-American Water Company – Wastewater Division shall file with the Secretary's Bureau a copy of its original cost study of the wastewater system assets acquired from Foster Township, including a report providing an itemized breakdown of all equipment and appurtenances of the Foster Wyoming Pump Station, as defined in the Application, owned exclusively by PAWC-WD, upon completion of the study, and serve copies of the filing upon the Bureau of Technical Utility Services, the Bureau of Audits, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.

10. That, at the time of filing its next base rate case that proposes to include the assets of this acquisition in rate base, Pennsylvania-American Water Company – Wastewater Division shall, specifically referencing Docket No. A-2021-3028676, provide testimony justifying any amount claimed in rate base in order to evaluate the reasonableness of the original cost, contributions, accumulated depreciation, and any utility plant acquisition adjustment claims pursuant to Section 1327 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1327.

11. That, in Pennsylvania-American Water Company – Wastewater Division's next base rate case that proposes to include any stormwater expenditures in rate base completed under the Assets Purchase Agreement listed below in Ordering Paragraph No. 12, Pennsylvania-American Water Company – Wastewater Division shall, specifically referencing Docket No. A-2021-3028676, provide testimony listing any stormwater facilities, along with any associated itemized costs, completed under Section 1.7 of the aforementioned agreement and justify why any amount claimed in rate base should be

recoverable through rates and why Pennsylvania-American Water Company – Wastewater Division’s ratepayers should be subject to the financial, managerial, and technical risks related to constructing separate storm sewer system facilities for dedication at no cost to Foster Township.

12. That a Certificate of Filing under Section 507 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 507, shall be issued to Pennsylvania-American Water Company – Wastewater Division acknowledging a copy of the Assets Purchase Agreement By and Between the Township of Foster and Pennsylvania-American Water Company, dated May 12, 2021, has been on file with the Commission since September 22, 2021.

13. That Pennsylvania-American Water Company – Wastewater Division shall file with the Secretary’s Bureau written agreements between the Township of Foster and Pennsylvania-American Water Company – Wastewater Division assigning each of the prior agreements between the Township of Foster and various municipal entities, listed below, to Pennsylvania-American Water Company – Wastewater Division:

- a. Assignment of Agreement By and Among Foster Township, the Borough of Freeland Municipal Authority and Freeland Borough, dated December 8, 1999, amended January 14, 2010, to Pennsylvania-American Water Company – Wastewater Division.
- b. Assignment of Agreement By and Among Foster Township, the Borough of Freeland Municipal Authority, Freeland Borough, and Butler Township, dated March 23, 2005, amended March 19, 2009, to Pennsylvania-American Water Company – Wastewater Division.
- c. Assignment of Agreement By and Between Foster Township and the Borough of Freeland Municipal Authority, dated July 18, 2012, to Pennsylvania-American Water Company – Wastewater Division.

14. That upon filing of the written agreements in Ordering Paragraph No. 13, Certificates of Filing under Section 507 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 507, shall be issued to Pennsylvania-American Water Company – Wastewater Division acknowledging copies of the assignment agreements have been on file with the Commission for at least 30 days following the date the executed agreements were filed with the Commission

15. That if Pennsylvania-American Water Company – Wastewater Division determines that the transaction will not occur, it will promptly file notice of such determination with the Secretary’s Bureau and return the Certificate of Public Convenience issued in Ordering Paragraph No. 3.

16. That nothing herein shall be construed as an approval or determination of costs or expenses for the purposes of just or reasonable rates or to exempt Pennsylvania-American Water Company – Wastewater Division from obtaining all necessary permits, licenses, and approvals from other federal, state, and local government agencies having jurisdiction.

17. That a copy of this Order be served upon Pennsylvania-American Water Company – Wastewater Division, Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Pennsylvania Department of Revenue’s Bureau of Corporate Taxes, Foster Township Board of Supervisors, Foster Township Planning Commission, Luzerne County Council, Luzerne County Planning Commission, and Pennsylvania Department of Environmental Protection – Northeast Regional Office and its Bureau of Regulatory Counsel.

18. That upon the issuance of the Certificate of Public Convenience as outlined in Ordering Paragraph No. 5, or upon the return of the Certificate of Public Convenience issued in Ordering Paragraph No. 3, the proceeding at Docket No. A-2021-3028676 be closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being more prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 14, 2022

ORDER ENTERED: July 14, 2022