

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American	:	A-2022-3037047
Water Company-Wastewater Section 1329	:	
of the Pennsylvania Public Utility Code,	:	
66 Pa. C.S. § 1329, for the Acquisition of	:	
Butler Area Sewer Authority's	:	
Wastewater System Assets	:	

RECOMMENDED DECISION

Before
Marta Guhl
Administrative Law Judge

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I. INTRODUCTION

In this application, which seeks approval from the Commission for the acquisition of a municipal wastewater system and approval of a ratemaking rate base, the parties have submitted a Joint Petition for Settlement. This decision recommends that the Commission deny the Joint Petition for Settlement and deny the Application because Pennsylvania American Water Company (PAWC) did not meet its burden of establishing that there is an affirmative public benefit to the acquisition of the Butler Area Sewer Authority's (BASA or System) wastewater system assets. The Commission's last reasonable Public Meeting before the end of the six-month statutory deadline is November 9, 2023.

II. HISTORY OF THE PROCEEDING

PAWC and BASA entered into an Asset Purchase Agreement (APA) dated as of October 11, 2022, by which PAWC will purchase the wastewater system currently owned and operated by BASA. On February 14, 2023, PAWC filed the instant Application (as amended, the "Application"), asking the Commission to approve the acquisition pursuant to Sections 507, 1102 and 1329 of the Pennsylvania Public Utility Code ("Code"), 66 Pa. C.S. §§ 507, 1102 and 1329. An Amended Application was filed on February 17, 2023.

Steven C. Gray, Esq. and Nakea S. Hurdle, Esq. filed Notices of Appearance on February 17, 2023 and March 2, 2023, respectively, on behalf of the Office of Small Business Advocate ("OSBA"). Ms. Hurdle subsequently filed a Withdrawal of Appearance on June 16, 2023.

On February 22, 2023, Erika L. McLain, Esq. filed a Notice of Appearance on behalf of the Commission's Bureau of Investigation and Enforcement ("I&E"). On May 26, 2023, Ms. McLain withdrew her appearance, and Carrie B. Wright, Esq., filed her Notice of Appearance.

On April 12, 2023, Erin L. Gannon, Esq., Harrison W. Breitman, Esq., and Mackenzie C. Battle, Esq. filed Notices of Appearance on behalf of the Office of Consumer Advocate (“OCA”). Ms. Battle withdrew her appearance on July 20, 2023.

On March 7, 2023, 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. TUS staff requested that the information be provided within ten business days (i.e., by March 21, 2023). On March 13, 2023, PAWC filed the information requested by TUS. On March 16, 2023, TUS staff notified PAWC that certain information remained missing. PAWC filed the requested information on March 27, 2023.

On April 6, 2023, TUS staff notified PAWC that it deemed PAWC’s filing deficient because it included a pro forma tariff that did not include BASA’s Industrial Pretreatment Program (“IPP”) pollutant loading rates together with an alternate pro forma tariff that included BASA’s IPP pollutant loading rates. On April 6, 2023, PAWC responded by filing a Second Amended Appendix A-12, which reflected the changes directed by TUS. PAWC asked that the Commission conditionally accept the Application and provide a due date for protests and notices of intervention.

On April 10, 2023, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Application until PAWC complied with certain service and notice requirements. The April 10, 2023 Secretarial Letter, however, did not set a due date for protests and notices of intervention. By letter dated April 10, 2023, PAWC asked the Commission to establish such a due date. On April 12, 2023, a Secretarial Letter was issued setting a protest period end date of July 10, 2023. On May 22, 2021, PAWC filed a verification stating that it had complied with all service and notice requirements of the Secretarial Letter of April 10, 2023.

On May 23, 2023, the Commission notified PAWC that it had finally accepted the Application. The Commission further notified PAWC that notice of the Application would be

published in the Pennsylvania Bulletin on June 10, 2023, with a protest deadline of July 10, 2023.

The Commission issued a Call-in Telephonic Pre-Hearing Conference Notice on June 1, 2023 scheduling a Pre-Hearing Conference for July 11, 2023. I issued a Prehearing Conference Order for Telephonic Conference on June 27, 2023.

John J. Dolan filed a Petition to Intervene on May 20, 2023, which was granted. Cynthia L. Spigelmyer filed a Protest on May 22, 2023. On May 26, 2023, BASA, the City, and the Township (collectively, the “BASA Parties”) filed Petitions to Intervene. Those Petitions were granted. On June 9, 2023, PAWC filed a Petition for Leave to File Supplemental Direct Testimony, which was granted by the ALJ’s Interim Order #1, issued on July 3, 2023. William Rissmiller filed a Protest on June 15, 2023. On June 30, 2023, Center Township and Summit Township¹ filed Protests. On July 3, 2023, Cleveland-Cliffs filed a Petition to Intervene, which was subsequently granted. On July 5, 2023, PAWC filed Supplemental Direct Testimony pursuant to Interim Order #1.

The Prehearing Conference was held on July 11, 2023. On July 12, 2023, Direct Testimony was filed by the OCA, I&E, the OSBA, Center, and Summit. PAWC filed a Petition for Protective Order on July 14, which was granted by the ALJ by Order issued July 19, 2023.

On July 14, 2023, the BASA Parties filed Motions to Strike portions of the Direct Testimony of Center and Summit. Center and Summit filed Answers on July 21, 2023. At the evidentiary hearing on July 28, 2023, the BASA Parties withdrew these motions.

Center, Summit, PAWC, and the BASA Parties filed Rebuttal Testimony on July 18, 2023. Telephonic public input hearings were held on the evenings of July 18 and July 19, 2023. On July 20, 2023, the BASA Parties filed a Motion to Strike the Rebuttal Testimony of Center and Summit. On July 26, 2023, Center and Summit filed an Answer to this Motion. At the evidentiary hearing on July 28, 2023, the BASA Parties withdrew this motion.

¹ Center and Summit Township residents receive wastewater service from BASA.

PAWC, the BASA Parties, the OCA, the OSBA, Center and Summit filed Surrebuttal Testimony on July 21, 2023.

At the telephonic evidentiary hearing on July 28, 2023, PAWC, the BASA Parties, the OCA, the OSBA, and I&E informed me that they had reached a settlement. The hearing was delayed to give Center, Summit, and Cleveland-Cliffs an opportunity to review the settlement. When the hearing convened, counsel for Center and Summit indicated that those townships would not oppose the settlement and, at the next meeting of the township supervisors, counsel expected to receive authority to join the settlement. PAWC, BASA, I&E, OCA, OSBA and Center and Summit moved their statements and exhibits into the record at the hearing and they were entered into the record at that time. I asked some questions of PAWC witnesses at the hearing as well.

On August 3, 2023, I issued a Briefing Order which outlined when settlement documents were due as well as the briefing schedule, if any issues were unresolved, and expectations that were discussed at the time of the hearing.

On July 31, 2023, Cleveland-Cliffs advised me that it would not oppose the Settlement. By e-mails of August 3 and August 10, 2023, counsel for Center and Summit notified me that Center and Summit would not oppose the Settlement.

On August 5, 2023, the parties reached out to me via email and requested that I extend the time for the parties to submit the settlement documents. On August 6, 2023, I granted the request via Post Hearing Order which indicated that settlement documents must be filed on or before August 14, 2023.

On August 14, 2023, the parties submitted the Joint Petition for Settlement. PAWC, BASA, I&E, OCA and OSBA also filed Statements in Support.

On August 16, 2023, I sent a letter to the consumer protestants indicating that there was a settlement from the parties. I directed the protestants to file any written objections to

the settlement no later than August 23, 2023. As of the date of this Recommended Decision, none of the consumer protestants filed any written objections.

The record closed on August 23, 2023, when written objections to the Settlement were due.

III. FINDINGS OF FACT

The Parties

1. PAWC, a subsidiary of American Water Works Company, Inc. (“American Water”), is the largest regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the business of collecting, treating, storing, supplying, distributing, and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. PAWC St. No. 1 pp. 15-16.

2. As of January 31, 2023, PAWC furnished wastewater service to approximately 97,305 residential, commercial, industrial, municipal and bulk customers in Pennsylvania. As of January 31, 2023, PAWC furnished water service to approximately 679,777 customers in Pennsylvania. PAWC St. No. 1 pp. 15-16.

3. The Butler Area Sewer Authority (“BASA”) is a municipal authority created pursuant to the Municipality Authorities Act of 1945 by the City of Butler (the “City”) and the Township of Butler (the “Township”). BASA St. No. 1 p. 2.

4. The City is a third-class city incorporated in 1918. The City has a population of approximately 13,000. City St. No. 1 p. 1.

5. The Township is a township of the first-class with a population of approximately 17,000. Township St. No. 1 p. 3.

6. 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. I&E St. No. 1 p. 1; *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered Aug. 11, 2011).

7. 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.

8. 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.

9. Center Township (“Center”) is a township in Butler County, Pennsylvania. Center is a customer of BASA. Center St. No. 1 p. 1.

10. Summit Township (“Summit”) is a township in Butler County, Pennsylvania. Summit is a customer of BASA. Summit St. No. 1 p. 1.

11. Cleveland-Cliffs Steel is a large industrial customer of PAWC. Cleveland-Cliffs Steel Petition to Intervene p. 2.

BASA’s Wastewater System

12. BASA owns and operates a wastewater system (“the System”), consisting of 224 miles of interceptor sewers, eight miles of force mains, twenty-three pump stations, seven flow equalization tanks, and a wastewater treatment plant (“WWTP”) that has a design and permitted average daily flow capacity of 10.0 million gallons per day (“MGD”) and a rated

maximum flow capacity of 28.0 MGD. BASA also owns nearly 6,500 manholes. BASA St. No. 1 p. 3.

13. The System is a regional sewage service provider, providing sewage treatment for eight municipalities. PAWC St. No. 2 p. 13. The System serves all of the City of Butler, and portions of the Township, Center, Summit, Connoquenessing Township, East Butler Borough and Oakland Township, all in Butler County, Pennsylvania. The System's service area comprises approximately 30 square miles and closely matches the service area of the PAWC Butler water system. PAWC St. No. 2 pp. 3-4; BASA St. 1 pp. 2-3.

14. The System's collection network is a sanitary-only system; there are no combined sewers in the System. PAWC St. No. 2 pp. 2-3.

15. As of December 31, 2022, the System furnished wastewater service to approximately 14,792 customers. PAWC St. No. 1 p. 16. There are no bulk service agreements with any contributing municipalities. PAWC St. No. 2 pp. 3-4.

16. BASA has an industrial pretreatment program approved by the United States Environmental Protection Agency ("USEPA"). BASA currently has permits with one Categorical Industrial User ("CIU"), three Significant Non-Categorical Industrial Users ("SNIUs"), and three Non-Significant Industrial Users that discharge, or may discharge, process wastewater into the sewer system. PAWC St. No. 1 p. 5.

The Sale Process

17. The Township, the City, and the Authority's Board Members worked together to weigh the pros and cons of BASA's continued ownership of the System. Township St. No. 1 pp. 4-5; City St. No. 1 p. 5.

18. PAWC and BASA entered into an exploratory process through the execution of a confidentiality agreement in December 2021 to determine if, in the view of those

parties, an acquisition would be in the best interest of all stakeholders. After approximately ten months, deal terms were presented and negotiated in principle in September 2022. PAWC St. No. 1 pp. 9-10.

19. Prior to signing a purchase agreement, BASA conducted a public awareness campaign. The City and the Township requested and considered public input on the sale of the System. Before signing the APA with PAWC, the City and the Township hosted open houses to provide the public with an opportunity to speak directly with representatives from BASA, the City, the Township, and PAWC regarding any concerns or thoughts about the sale. Local and regional media covered the announcement of PAWC's offer and ran stories about the open houses. BASA also created a website with resources for customers pertaining to the sale including the reasons BASA reviewed the offer, the impact the sale will have on the community, and links to several pertinent documents related to the sale (such as the APA). Township St. No. 1 pp. 6-7; City St. No. 1 p. 7.

20. In October 2022, the Township, the City and BASA voted unanimously to authorize all actions related to the execution and performance of the APA. Township St. No. 1 pp. 6-7; City St. No. 1 p. 7.

The Asset Purchase Agreement

21. The APA sets forth the terms and conditions pursuant to which BASA will sell, and PAWC will purchase, the System (the "Transaction"). PAWC St. No. 1 pp. 10-11.

22. The consideration for the purchase of the System is \$231,500,000, subject to certain adjustments. The First Amendment to the APA will reduce that purchase price to \$230,000,000. *Pro Forma* First Amendment to the APA, Attachment 11.

23. PAWC gave BASA a \$3,000,000 Letter of Credit on October 11, 2022, but this was subsequently returned by BASA. PAWC St. No. 1 p. 12; OCA St. No. 1 p. 27.

24. Two escrow accounts will be established at closing of the Transaction (“Closing”): (i) \$9,200,000 will be placed into an Indemnity Escrow Fund to pay for BASA’s post-Closing obligations, and (ii) an amount to be determined will be placed in an Easement Escrow Fund for all of the easements that are missing as of Closing. PAWC St. No. 1 p. 12. As of the Closing Date, BASA will fund the Easement Escrow Fund in the amount of \$2,000 for each missing easement. PAWC St. No. 1 p. 13.

25. In the APA, PAWC agreed to: (a) maintain an operations center at BASA’s headquarters for at least ten years after Closing, consisting of managers, customer service representatives and operators; (b) offer employment to eligible BASA employees following the Closing, subject to certain conditions; and (c) use commercially reasonable efforts to develop a pilot program for a customer-owned damaged wastewater service lateral replacement program, and then petition the Commission for approval of that pilot program. PAWC St. No. 1 p. 14.

26. In the APA, PAWC committed to adopt, upon Closing, BASA’s monthly base rates. These rates are currently \$43.00 per month per equivalent dwelling unit (“EDU”), but will be increased to \$45.50 per month per EDU prior to Closing. BASA St. No. 1 p. 10. System customers will be subject to PAWC’s prevailing wastewater tariff on file with the Commission with respect to all rates other than base rates (such as capacity reservation fees, reconnection fees and IPP charges) as well as non-rate related terms and conditions of service. PAWC St. No. 3 p. 7.

27. In the APA, PAWC agreed that it will not propose to increase BASA’s base rates until the later to occur of: (i) the first anniversary of Closing, or (ii) January 1, 2025. However, PAWC may apply a Distribution System Improvement Charge (“DSIC”) and/or State Tax Adjustment Surcharge, if approved by the Commission. PAWC St. No. 3 p. 7.

28. In the APA, PAWC agreed that, in the first base rate case following Closing, PAWC will propose to move BASA to metered rates. PAWC St. No. 3 p. 7.

29. In the APA, PAWC agreed to assume an agreement that provides for free service to the Veterans Administration Hospital Reservation in Butler (the “VA Hospital”). BASA has not entered into any other agreements for free service. PAWC St. No. 3 pp. 8-9.

30. Closing will occur after the receipt of all applicable governmental approvals, including approvals from the Commission, and after all applicable conditions have been met (or waived) by the parties. Upon Closing, PAWC will take ownership of the System and begin rendering wastewater services to BASA’s current customers and BASA will permanently discontinue furnishing wastewater service to the public. PAWC St. No. 1 pp. 10-11.

The Application

31. The Application seeks to utilize the process set forth in 66 Pa.C.S. § 1329 to determine the fair market value of the System and the ratemaking rate base of its assets. PAWC St. No. 1 p. 3.

32. As required by Section 1329, PAWC’s Application included a *pro forma* tariff. This tariff proposed that BASA customers be subject to the IPP charges in PAWC’s prevailing wastewater tariff on file with the Commission. PAWC St. No. 3-S pp. 3-4.

33. The Application proposed a ratemaking rate base of \$231,500,000. OCA St. 2 at 11.

34. During the Application Completeness review, TUS requested that PAWC revise its tariff, *inter alia*, to reflect “a \$0.00 BOD5 surcharge, a \$0.00 SS surcharge for all customers except PAWC.” PAWC St. No. 3-S p. 3. Although PAWC explained that pretreatment fees are miscellaneous fees and charges associated with PAWC’s IPP that recover actual costs incurred by PAWC in treating industrial wastewater, PAWC provided a revised *pro forma* tariff at Appendix A-12.1 to reflect the changes requested by TUS. This *pro forma* tariff did not supersede PAWC’s original filing. PAWC St. No. 3-S pp. 3-4.

35. In order to comply with TUS’s requirements, PAWC filed the Second Amended Appendix A-12, which replaced the originally filed *pro forma* tariff with the version that was previously provided as Appendix A-12.1. PAWC St. No. 3-S p. 4. PAWC subsequently clarified its position that the modifications to page 90 of Tariff Wastewater PA P.U.C. No. 16 should be excluded from the proposed *pro forma* tariff. PAWC St. No. 3-S p. 1.

The Engineers’ Assessment and the Utility Valuation Expert Appraisals

36. As required by Section 1329, PAWC and BASA jointly retained the services of Herbert, Rowland, & Grubic, Inc. to complete an engineers’ assessment of the System. PAWC Exhibit SDF-2, Appendix A-15-a.

37. PAWC’s utility valuation expert (“UVE”) appraisal, the “Fair Market Appraisal Report of Butler Area Sewer Authority’s (PA) Wastewater Collection System and Treatment System, as of October 11, 2022,” was performed by Jerome C. Weinert, Principal and Director of Weinert Appraisal and Depreciation Services, LLC (“Weinert Consultants”). Weinert Consultants is a registered Utility Valuation Expert with the Commission. PAWC’s UVE testified that this appraisal was completed in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”) (2020-2021 Edition) (the Appraisal Foundation extended the applicability of the 2020-2021 Edition until December 31, 2023). PAWC St. No. 4 p. 1.

38. PAWC’s UVE appraised the System as follows (PAWC St. No. 4 p. 3):

Appraisal Approach	Value Indicator	Weight	Wtd Value Indicator
Cost	\$ 240,895,239	50%	120,447,620
Income	\$ 259,277,679	40%	103,711,072
Market	\$ 220,195,730	10%	22,019,573
Appraisal Conclusion			\$ 246,178,265

39. BASA’s UVE appraisal, “Butler Area Sewer Authority Wastewater System Assets Fair Market Value Appraisal at January 19, 2023,” was completed by Harold Walker III of Gannett Fleming Valuation and Rate Consultants, LLC (“Gannett Fleming”). BASA St. 3 p. 1.

Gannett Fleming is a UVE registered with the Commission. BASA's UVE testified that this appraisal was completed in accordance with USPAP. BASA St. No. 3 pp. 4, 12.

40. BASA's UVE appraised the System as follows:

Approach	Indicated Value	Weight	Weighted Value
Cost Approach	254,729,592	33.33%	\$84,901,373
Market Approach	178,105,462	33.34%	59,380,361
Income Approach	264,469,512	33.33%	88,147,688
		100%	\$232,429,422
Conclusion			\$232,429,000

BASA St. No. 3 p. 13.

PAWC's Legal Fitness

41. 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 BASA's System. PAWC St. No. 1 p. 21.

42. PAWC has had no material issues in complying with the Code, the Clean Streams Law, or other regulatory requirements. PAWC has the resources, skills, and expertise to respond to ever-increasing environmental standards for the treatment of wastewater and to manage the long-term infrastructure renewal and replacement needs inherent in wastewater systems. PAWC St. No. 2 p. 21.

PAWC's Financial Fitness

43. PAWC had total assets of \$5.9 billion and annual revenues of \$769 million for 2021. For 2021, PAWC had operating income of approximately \$342 million and net income

of approximately \$229 million. These operating results produced cash flows from operations of approximately \$438 million. PAWC St. No. 1 p. 22; PAWC St. No. 3 p. 3.

44. PAWC has liquidity through a \$400 million line of credit through American Water Capital Corp. (“AWCC”), a wholly owned subsidiary of American Water Works Company, Inc. (“American Water”). PAWC St. No. 1 p. 6.

45. PAWC carries a corporate credit rating of “A3” from Moody’s Investors Services and an “A” rating from Standard and Poor’s Rating Services. PAWC obtains long-term debt financing through AWCC at favorable interest rates and payment terms. When applicable, PAWC also uses low-cost financing through the Pennsylvania Infrastructure Investment Authority (“PENNVEST”) and the Pennsylvania Economic Development Financing Authority (“PEDFA”). PAWC St. No. 1 p. 6.

46. PAWC may obtain additional equity investments through American Water based on its strong operating performance. PAWC St. No. 3 p. 4.

47. PAWC does not anticipate that the acquisition of the System will have a negative impact on PAWC’s cash flows, credit ratings or access to capital and, therefore, 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. No. 3 p. 5.

PAWC’s Technical Fitness

48. PAWC currently employs approximately 1,150 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, material management, risk management, human resources, legal, accounting, and customer service. As a subsidiary of American Water, PAWC also has available to it, additional resources of highly trained professionals who have expertise in various specialized areas. PAWC St. No. 2 p. 19.

49. PAWC is experienced in water and wastewater system acquisitions with public and private sector owners and successfully integrating those assets into its business operations. PAWC St. No. 1, pp. 22-23; PAWC St. No. 2 pp. 19-20.

50. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes, treatment and pumping facilities, and other water and wastewater infrastructure; thereby minimizing customer disruption caused by infrastructure failure. PAWC has funded in excess of \$1 billion in capital construction over the past five years with expenditures expected to total \$470 million to \$600 million per year for the next five years. PAWC St. No. 2 p. 12.

Post-Closing Operation of the System

51. After Closing, the System will be incorporated as an operating district into PAWC's Northwest Area operations. BASA's existing staff will provide the day-to-day operational services, with management oversight provided by PAWC's Northwest Area management team. This same management team oversees the PAWC Butler water system. PAWC St. No. 2 pp. 8-9.

52. After Closing, PAWC will assume BASA's responsibilities under the 2019 CAP to rebuild the existing infrastructure in order to eliminate persistent sanitary sewer overflows ("SSOs"). PAWC St. No. 2 p. 16.

Post-Closing Operation of the IPP

53. All permitted IPP users are located within the certificated service territory being proposed by PAWC for this Transaction. After Closing, PAWC will assume BASA's responsibility to implement IPP services to BASA's current IPP customers and any future IPP customers requesting service in the certificated service area. Upon Closing, PAWC will incorporate the BASA system into the IPP Rules and Regulations of its Commission-approved tariff for implementation. PAWC St. No. 2 pp. 5, 26.

Customer Notice

54. PAWC provided notice of the acquisition to existing PAWC water and wastewater customers as well as to BASA's wastewater customers. These notices contained a non-binding estimate of the potential rate impact of the acquisition. PAWC St. No. 3 p. 12.

55. The notices were prepared in accordance with the *Steelton Order*.² That Order approved a Settlement in which PAWC agreed to the form and calculation of the notices for future Section 1329 acquisition proceedings ("Settlement"). PAWC St. No. 3 p. 12. The calculation was updated to include revenues from all systems that were included in the Company's 2022 base rate case. PAWC St. No. 3 p. 13.

56. The notice estimated that: (a) rates for BASA customers would increase by 94.4% in the first base rate case in which the System is included in PAWC's rate base; (b) rates for PAWC's existing wastewater customers would increase by 7.0% in that case, and (c) rates for PAWC's existing water customers would increase by 0.8% in that case. PAWC St. No. 3 pp. 13-18.

57. The amounts included in the customer notices are not proposed rates. Any future rate changes for BASA customers will be proposed in the context of a base rate case and will be subject to review by the Commission, as well as other interested parties. PAWC St. 3-R p. 13.

IV. PUBLIC INPUT HEARINGS

At the time of the prehearing conference, there were multiple customer protests and Petitions for Intervention that had been filed. There were also multiple letters in opposition filed with the Secretary's Bureau and OCA indicated that there was public interest in the case.

² *Application of Pa.-Am. Water Co. 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 Auth.*, Docket No. A-2019-3006880 (Opinion and Order entered Oct. 3, 2019) ("*Steelton Order*").

Based on the above, I determined there was sufficient public interest in PAWC’s Application to acquire the Butler Area Sewer Authority's wastewater system to warrant holding public input hearings. Accordingly, two public input hearings were held telephonically during which a total of 24 people offered testimony:

<u>Date/Time</u>	<u>Witnesses Testifying</u>
<u>Tuesday, July 18, 2023</u> <i>6:00 p.m.</i>	13
<u>Wednesday, July 19, 2023</u> <i>6:00 p.m.</i>	11

Martin Cohen testified that he is a potential customer of PAWC. Mr. Cohen is concerned about the ongoing acquisitions that PAWC is making. He states that the cost will be passed on to the Company's customers and rates will continue to rise. He testified that if rates continue to rise prices will become unaffordable for a basic service required to sustain life.³

Kathleen Schwartz testified that she is a PAWC customer. Ms. Schwartz indicated she lives in Exeter Township and the sewer system was sold to PAWC in 2019. She stated that her water bills have gone up 170% since the sale. Ms. Schwartz testified that her water bills are now more than her gas and electric bills combined.⁴

Brandon Elinich testified that he is a PAWC customer. He stated that he is concerned about rate increases and noted that he is looking at a 175% rate increase for his water bill. He also noted that there is no way to switch his water company.⁵

William Ferguson also testified that he is not a customer of either PAWC or BASA but is a co-founder of Keep Water Affordable. Mr. Ferguson stated that the economic

³ Tr. 59-61.

⁴ Tr. 65-67.

⁵ Tr. 71-73.

costs of the sale far outweigh any public benefit from the sale. Mr. Ferguson stated that for the same service, customers will pay more, which will go to PAWC's costs and profits.⁶

Tina Gallagher testified that she is not a customer of either PAWC or BASA but is a potential PAWC customer. Ms. Gallagher testified that she is a senior citizen and is concerned about the continuing rate increases for water across the state. She indicated that she is against this sale and any other sale.⁷

Vanessa Gaynor testified that she is not currently a customer of either PAWC or BASA but is potentially a customer of PAWC. She stated that she is opposed to the acquisition of BASA by PAWC because rate payers will end up bearing the costs.⁸

Willie Adams testified that he is currently a customer of both PAWC and BASA. He is opposed to the acquisition of BASA because it will lead to unreasonably high rates. He noted that PAWC is a for profit company and it has to cover profits for executive bonuses, stock options, and shareholder dividends. Mr. Adams indicated that BASA has the capacity to make upgrades on its own as they have been in operation for 60 years. He noted that BASA has the equipment, the manpower and experience to make upgrades.⁹

Christine Ford testified that she is currently a customer of PAWC. She also opposes the acquisition because it will increase her rates even more than they currently are. She indicated that her rates have increased since PAWC acquired the wastewater system where she lives.¹⁰

⁶ Tr. 75-79.

⁷ Tr. 85-86.

⁸ Tr. 90-91.

⁹ Tr. 93-95.

¹⁰ Tr. 97-98.

Dennis Crouse testified that he agrees with Mr. Adams' testimony and is concerned that his sewer rates will skyrocket if PAWC acquires BASA.¹¹

Joseph Gray testified that he owns several businesses and properties and indicated that he has had issues working with BASA. He stated that he has seen issues with the sewer system and problems with expansion by BASA.¹²

Sherry Vasquez testified that she is a current PAWC customer. Ms. Vasquez stated that her water bills have increased from \$100.00 to \$300.00 per month. She is concerned about affordability of her water bills.¹³

John Ellison stated that he is a customer of both PAWC and BASA. Mr. Ellison is concerned about affordability for senior citizens and low-income households. He noted that PAWC indicated that BASA customers' bills could go up 94% with the acquisition of the system. He was concerned with the difference between the purchase price for the system and the actual value of the system.¹⁴

Rep. Marci Mustello, who represents the 11th Legislative District, indicated that she is in favor of the acquisition of BASA by PAWC. She stated that PAWC has the resources to help BASA make the upgrades that are needed by the system. She also noted that the money from the sale of BASA will provide the municipalities with money needed for their budgets.¹⁵

¹¹ Tr. 101-102.

¹² Tr. 106-108.

¹³ Tr. 120-121.

¹⁴ Tr. 124-126.

¹⁵ Tr. 152-154.

Heather Schaffer Pringle testified that she is concerned about the 94% increase in sewage rates. She indicated that she is a customer of BASA and PAWC. She stated that PAWC will continue to raise rates.¹⁶

Amanda Johnsen, Kofi Orsei, Kendra Robinson, Michael Knoll, Paul Kowalik, Donald Pringle, and Nicole Vancoeur all testified that they opposed the acquisition. They noted the increase in rates that all PAWC customers have experienced since the Company began acquiring water systems in the state. They also indicated that they were concerned about affordability of water which is a basic human necessity.¹⁷

Jordan Grady and Audrianna Bly stated that they are currently customers of BASA and PAWC and work for the Butler County Chamber of Commerce and Butler Downtown, respectively. They indicated that they support the acquisition because of the money that will come to the local economy.¹⁸

V. SETTLEMENT TERMS

PAWC, BASA, I&E, OCA and OSBA entered into a Joint Petition for Unanimous Settlement. The Joint Petition includes the terms and conditions of the Settlement relating to the agreed upon fair market value for ratemaking purposes, the rate treatment of the acquired system, cost of service study, distribution system improvement charge (DSIC), long term infrastructure improvement plan (LTIIP), allowance for funds used during construction, deferral of depreciation and transaction costs and other rate-related issues and the agreements necessary to effectuate the Transaction. The Joint Petition includes Attachments 1-10:

¹⁶ Tr. 157-159.

¹⁷ Tr. 164-167, 171-173, 195-197, 199-203, 205-208, 212-216, 219-220.

¹⁸ Tr. 180-182, 189-190.

1.	Statement in Support of Pennsylvania-American Water Company
2.	Statement in Support of BASA
3.	Statement in Support of Bureau of Investigation and Enforcement
4.	Statement in Support of the Office of Consumer Advocate
5.	Statement in Support of the Office of Small Business Advocate
6.	Proposed Findings of Fact
7.	Proposed Conclusions of Law
8.	Proposed Ordering Paragraphs
9.	<i>Pro Forma</i> Tariff
10.	First Amendment to the APA

The terms of the proposed settlement are set forth below. The Terms and Conditions of the Settlement can be found in Paragraph Nos. 15-30 of the Joint Petition.¹⁹ The Settlement petition also includes the usual “additional terms and conditions” that are typically included in settlements. These terms, which, among other things, protect the parties’ rights to file exceptions if any part of the Settlement is modified, condition the agreement upon approval by the Commission and provide that no party is bound in future cases by any position taken in this Settlement. The Joint Petitioners also agreed to waive exceptions if the Settlement is approved without modification.²⁰ These additional terms and conditions will not be repeated here verbatim.

¹⁹ Joint Petition, pp. 6-14. For ease of reference, the essential terms of the Settlement, including footnotes, have been adopted verbatim and using the same paragraph numbering as found in the original. Although no substantive modifications were made, the formatting, including footnote numbers, may have been slightly modified consistent with the formatting and footnote numbering found within this recommended decision.

²⁰ Joint Petition, p. 9, ¶¶ 34-38.

The Joint Petitioners agreed to the following terms:

A. Approval of Application

15. The Joint Petitioners agree that the Commission should approve PAWC's acquisition of the wastewater system assets ("System") currently owned by BASA and PAWC's right to begin to offer, render, furnish, or supply wastewater services in the areas served by the System, as well as any other necessary approvals or certificates for the transactions, subject to approval of all of the following conditions and without modification.

B. Tariff

16. The *pro forma* tariff supplement attached to this Settlement, including all rates, miscellaneous fees and charges, rules and regulations regarding conditions of PAWC's wastewater service, shall be permitted to become effective immediately upon closing of the transaction ("Closing").

17. In the first base rate proceeding that includes the BASA wastewater system assets, PAWC will propose to charge cost-of-service based rates for wastewater service to all entities it serves in the System, including but not limited to the VA Hospital, as limited by Paragraph 19(e) below.

C. Rates

18. 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.

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

a. PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of BASA's systems.

b. PAWC will provide a separate cost of service study for the BASA system.

c. PAWC will not propose an increase in BASA's base rates if the rates would become effective before the

later of: (a) the first anniversary of Closing or (b) January 1, 2025.

d. In PAWC's first base rate case that includes the BASA system assets, if PAWC proposes a different effective date for new rates for BASA customers beyond the effective date of new rates for other customers, PAWC agrees to calculate its proof of revenue as if the BASA customers were paying proposed rates without any delay to the effective date. The Joint Petitioners agree that all rights are reserved with respect to the issue of delayed effective dates of rates in subsequent proceedings. This term should not be construed to limit parties' ability to make recommendations in any future PAWC base rate case to bring customers in systems with delayed effective dates to an appropriate cost of service as though they have paid the tariffed rates without any delay.

e. PAWC will propose to move the System to 1.4x the current System rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower, upon the later of (a) the first anniversary of Closing or (b) January 1, 2025.

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

g. 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 19, 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.

h. The rate at Closing for System residential wastewater customers with an average usage of 3,212 gallons per month is approximately \$45.50.

i. The current rate for PAWC residential Rate Zone 1 wastewater customers with an average usage of 3,212 gallons per month is approximately \$106.00.

D. Industrial Pretreatment Program (“IPP”) Fees

20. The Joint Petitioners acknowledge that IPP fees are miscellaneous fees that may be applied to acquired customers, rather than existing rates that must be adopted by the acquiring utility pursuant to Section 1329(d)(v). IPP fees are intended to cover costs associated with a comprehensive enforcement program to ensure that industrial wastewater is properly pretreated in order to protect the integrity of the System and the environment, and to ensure that the costs are allocated to the cost causers and not other ratepayers. Without imposition of the IPP fees, industrial customers would have no meaningful incentive to pretreat their wastewater. The *pro forma* tariff supplement attached to this Settlement incorporates BASA industrial customers into PAWC’s existing IPP tariff and does not exempt any BASA industrial customers from IPP fees. IPP tariffed fees will be adjusted in the context of future PAWC base rate proceedings. Impacted industrial customers were given notice of the possibility of the imposition of PAWC’s tariffed IPP fees by direct mail notice from PAWC, dated May 10, 2023, and were afforded an opportunity to participate in this proceeding. The imposition of IPP fees is supported by substantial evidence of record.

E. Fair Market Value for Ratemaking Rate Base Purposes

21. Joint Petitioners agree that pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$228,000,000 for ratemaking rate base purposes for the acquired System.

22. The Joint Petitioners agree that PAWC may record the acquisition at the net value of the assets, consistent with generally accepted accounting principles.

23. PAWC and BASA have executed a First Amendment to the Asset Purchase Agreement (“First Amendment”) to reflect a purchase price of \$230,000,000. A copy of the First Amendment is attached. **Attachment 10.** PAWC requests approval of the First Amendment pursuant to 66 Pa. C.S. § 507.

F. Distribution System Improvement Charge

24. 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 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 and all other systems included in the amended LTIIIP into PAWC's DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after Commission approval of the Amended LTIIIP.

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

25. 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.

H. Transaction and Closing Costs

26. 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.

27. The inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the Asset Purchase

Agreement shall be separately identified in PAWC's next base rate case, and OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

28. Any claim by PAWC to recover transaction and closing costs associated with the transaction will not include costs incurred by BASA.

I. Approval of Section 507 Agreements²¹

29. Pursuant to 66 Pa. C.S. § 507, the Commission shall issue Certificates of Filing or approval for:

a. the Asset Purchase Agreement By and Between Butler Area Sewer Authority, as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of October 11, 2022, and the attached First Amendment thereto;

b. Water Pollution Control Agreement for Central Butler County between City of Butler, Township of Butler, Township of Center, Township of Summit, Borough of East Butler, Deshon Area Sanitary Disposal and Sewer Authority, East Butler Borough Sewer Authority, East Butler Borough Sewer Authority, Meridian Water and Sewer Authority, Municipal Water and Sewer Authority of Center Township and Butler Area Sewer Authority dated as of February 20, 1974;

c. Service Agreement between The Township of Oakland and Butler Area Sewer Authority for the Service Area along Route 38 dated March 7, 1994;

d. Service Agreement between the Township of Connoquenessing and Butler Area Sewer Authority for Cupps Road Service Area dated April 3, 1995; and

e. Service Agreement between the Township of Connoquenessing and Butler Area Sewer Authority for Winterwood Drive Service Area dated December 14, 2005.

²¹ The OCA does not join in this paragraph but does not oppose PAWC's request.

J. Cost of Service Studies

30. 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.

31. 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 consistent with typically filed ratemaking exhibits including, but not limited to, the following: Rate Base (Measures of Value), Statement of Operating Income, Proof of Revenue, and Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods. In the first PAWC base rate case that includes the BASA system, when PAWC provides customer notice, it shall provide notice to customers in the BASA system consistent with the rates agreed to be proposed in Paragraph 19(e), above.

K. Low Income Program Outreach and Welcome Letter

32. Within the first billing cycle following Closing, 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 automatically enroll any BASA wastewater customers, who are PAWC water customers enrolled in PAWC's water low income programs, in PAWC's wastewater low-income programs following Closing.

33. The welcome letter will be sent within the first 30 days of Closing and will also include information about payment options (including low-income programs, eligibility requirements, PAWC contact information), free places to pay, and in-person bill payment locations reasonably proximate to the areas served by the BASA system.

34. PAWC will work with community-based organizations with offices local to the areas served by the System for purposes of providing information and enrolling customers in PAWC's customer-assistance programs. PAWC

will include this information in the welcome letter referenced in the previous paragraph.

L. Hardship Fund

35. Effective on and after Closing, PAWC will increase eligibility for hardship grants to all PAWC customers including existing customers and newly acquired customers from the BASA System from 200% to 250% of Federal Poverty Income Guidelines (“FPIG”). All parties reserve the right to re-evaluate the appropriate eligibility for hardship grants in a future base rate case filed after five (5) years following Closing.

36. In addition to existing commitments and any commitments made in a future base rate case, PAWC will contribute \$700,000 annually to the Company’s hardship grant program for the five (5) years following Closing (\$3,500,000 total). These contributions shall not be recovered in rates. All unspent funds at the end of the program year will be rolled over and added to the budget for the hardship grant program in the following year(s).

M. Easements

37. PAWC and BASA should be required to (1) identify all missing easements including public rights-of-way and other property rights; (2) take 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) BASA shall bear all costs and expenses for obtaining and conveying the missing easements and other property rights.

38. Additionally, if for any circumstances beyond BASA’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 BASA may at their discretion close the transaction without the transfer of missing easements and other property rights, provided that an escrow account be established as set forth in the APA in which BASA will fund an easement escrow fund in the amount of \$2,000 for each missing easement.

N. Commercial Customer Payment Arrangements

39. At Closing, PAWC will implement a formal program for payment arrangements for commercial customers, including eligibility and payment terms.

O. Other Necessary Approvals

40. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Code to carry out the transactions contemplated in the Application in a lawful manner.^[22]

VI. LEGAL STANDARDS/BURDEN OF PROOF

In this case, PAWC requests (1) approval to acquire the wastewater system assets of Butler Area Sewer Authority; and (2) an order approving the acquisition that includes the ratemaking rate base of the BASA wastewater system assets pursuant to Section 1329(c)(2) of the Code.²³ Accordingly, PAWC has the burden of proof.²⁴

The acquisition of the BASA facilities by PAWC requires the approval of the Commission as evidenced by its issuance of a certificate of public convenience.²⁵ Before the Commission may issue a certificate of public convenience it must find that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.²⁶ That is, PAWC must demonstrate that the proposed acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.”²⁷ To determine that the acquisition or merger is in the public interest, our Supreme Court has explained:

²² Joint Petition, pp. 6-14.

²³ 66 Pa.C.S. § 1329(c)(2).

²⁴ 66 Pa.C.S. § 332.

²⁵ 66 Pa.C.S. § 1102(a)(3).

²⁶ 66 Pa.C.S. § 1103(a).

²⁷ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972).

the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.^[28]

Even where the Commission finds sufficient public benefit to find that the granting of a certificate of public convenience is necessary or proper for the service, accommodation, convenience, or safety of the public without imposing any conditions, the Commission, nevertheless, has discretion to impose conditions which it deems to be just and reasonable. In an acquisition context, when the Commission considers the public interest, it is contemplated that the benefits and detriments of the acquisition will be measured as they impact on all affected parties and not merely on one particular group or geographic subdivision.²⁹

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 BASA.³⁰ As a certificated public utility, there is a rebuttable presumption that PAWC possesses the requisite fitness.³¹

Section 1329 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. Section 1329 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. The acquiring utility is authorized to collect a distribution system improvement charge (DSIC). Section 1329 also enables a public

²⁸ *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1057 (Pa. 2007) (*Popowsky*); also see, 66 Pa.C.S. §1103(a).

²⁹ *Middletown Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674 (Pa. Cmwlth. 1984).

³⁰ *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);

³¹ *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308 (Pa. Cmwlth. 1992); 66 Pa.C.S. § 1329.

utility or other acquiring entity's post-acquisition improvement costs not recovered through a DSIC to be deferred for book and ratemaking purposes. 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.

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 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.

PAWC also seeks approval of an asset purchase agreement (APA) and other connected agreements pursuant to Section 507 of the Public Utility Code.³² 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. 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

³² 66 Pa.C.S. § 507.

grants its approval. Section 507 is a filing requirement and does not require service of the filing on any potentially interested parties.

The Commission encourages parties in contested on-the-record proceedings to settle cases.³³ Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.³⁴

VII. DISCUSSION

A. Sections 1102 and 1103 Approvals

1. Fitness

No party disputed PAWC's technical, legal and financial fitness to render wastewater service. Indeed, as a certificated public utility, it enjoys a presumption of fitness.³⁵ I&E, OSBA and OCA did not put forth any arguments that PAWC did not meet the fitness

³³ See 52 Pa. Code § 5.231.

³⁴ *Pa. Pub. Util. Comm'n v. CS Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991); See also *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

³⁵ *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). Similarly, PAWC enjoys a presumption of a continuing public need for service because public utility service is already being provided in the service territory. *Re Glenn Yeager*, 49 Pa..P.U.C. 138 (1975). No party has contested the need for wastewater service in the City of Butler and Township of Butler.

requirements under Sections 1102 and 1103 of the Public Utility Code. The findings of fact support this conclusion.

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 BASA's System.³⁶

PAWC has had no material issues in complying with the Code, the Clean Streams Law, or other regulatory requirements. PAWC has the resources, skills, and expertise to respond to ever-increasing environmental standards for the treatment of wastewater and to manage the long-term infrastructure renewal and replacement needs inherent in wastewater systems. PAWC St. No. 2 p. 21. PAWC had total assets of \$5.9 billion and annual revenues of \$769 million for 2021. For 2021, PAWC had operating income of approximately \$342 million and net income of approximately \$229 million. These operating results produced cash flows from operations of approximately \$438 million. PAWC St. No. 1 p. 22; PAWC St. No. 3 p. 3. PAWC has liquidity through a \$400 million line of credit through American Water Capital Corp. ("AWCC"), a wholly owned subsidiary of American Water Works Company, Inc. ("American Water"). PAWC St. No. 1 p. 6. PAWC carries a corporate credit rating of "A3" from Moody's Investors Services and an "A" rating from Standard and Poor's Rating Services. PAWC obtains long-term debt financing through AWCC at favorable interest rates and payment terms. When applicable, PAWC also uses low-cost financing through the Pennsylvania Infrastructure Investment Authority ("PENNVEST") and the Pennsylvania Economic Development Financing Authority ("PEDFA"). PAWC St. No. 1 p. 6. PAWC may obtain additional equity investments through American Water based on its strong operating performance. PAWC St. No. 3 p. 4. PAWC does not anticipate that the acquisition of the System will have a negative impact on PAWC's cash flows, credit ratings or access to capital and, therefore, 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. No. 3 p. 5.

³⁶ PAWC St. No. 1 p. 21.

Lastly, PAWC currently employs approximately 1,150 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, material management, risk management, human resources, legal, accounting, and customer service. As a subsidiary of American Water, PAWC also has available to it additional resources of highly trained professionals who have expertise in various specialized areas. PAWC St. No. 2 p. 19. PAWC is experienced in water and wastewater system acquisitions with public and private sector owners and successfully integrating those assets into its business operations. PAWC St. No. 1, pp. 22-23; PAWC St. No. 2 pp. 19-20. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes, treatment and pumping facilities, and other water and wastewater infrastructure; thereby minimizing customer disruption caused by infrastructure failure. PAWC has funded in excess of \$1 billion in capital construction over the past five years with expenditures expected to total \$470 million to \$600 million per year for the next five years. PAWC St. No. 2 p. 12.

2. Affirmative Public Benefits

a. PAWC's Position

The Transaction Benefits the Public-at-Large

PAWC argues that the Transaction benefits members of the public-at-large (all residents of the Commonwealth, whether or not they are customers of BASA or PAWC) in that the Transaction promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems. In part, the Transaction accomplishes this objective because PAWC will provide both water and wastewater services to BASA's customers.³⁷ In addition, PAWC also contends the Transaction benefits members of the public-at-large by promoting the Legislature's policy goals when it enacted Section 1329, which sought to facilitate the

³⁷ PAWC Amended St. No. 1 p. 20.

acquisition of municipal and authority-owned wastewater systems by investor-owned utilities for the benefit of the municipal corporation and its residents.³⁸

PAWC argues the Transaction also benefits the public-at-large due to its environmental benefits. The Environmental Rights Amendment, PA. CONST. art. I, § 27, states: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.” Therefore, the Commission must consider environmental impacts when adjudicating cases. *Twp. of Marple v. Pa. Pub. Util Comm’n*, 294 A.3d 965 (Pa. Cmwlth. 2023).

The System has a long history of environmental challenges. Most of these environmental challenges relate to sewer system overflows (“SSOs”) caused by the high level of inflow and infiltration (“I/I”) from defects and aging infrastructure in the collection system.³⁹ BASA is currently subject to a 2019 Corrective Action Plan (“CAP”) with the Pennsylvania Department of Environmental Protection (“PADEP”). The approved 2019 CAP requires sewer rehabilitation repairs in two subareas of the collection system, the replacement of six sewage pump stations, and a restriction on new sewer connections in these areas.⁴⁰

All work on the 2019 CAP was to be completed by June 30, 2024. BASA submitted a revised 2019 CAP to PADEP on October 13, 2020, requesting an extension of the completion date to December 31, 2025. PADEP approved this revised 2019 CAP and deadline on February 22, 2021. BASA submitted a second revision to the 2019 CAP on May 18, 2022, and amended the proposed revision on May 31, 2022. This second revision requested a further extension of the completion deadline to August 31, 2026. PADEP approved this second revision to the 2019 CAP and completion deadline on June 2, 2022. BASA is currently in the design and permitting phases of the projects required under the approved 2019 CAP.⁴¹

³⁸ PAWC Amended St. No. 1 p. 21.

³⁹ PAWC St. No. 2 p. 13.

⁴⁰ PAWC St. No. 2 pp. 14-15; BASA St. No. 1 p. 6.

⁴¹ PAWC St. No. 2 pp. 14-15; BASA St. No. 1 p. 6.

By implementing the CAP, BASA uncovered several shortcomings in the System. As a result, it has become evident that a comprehensive overhaul of the aging System is necessary. For example, since 2018, the Authority has conducted 2,601 inspections to address illegal connections and I&I through its Realty Transfer Inspection Program. Nearly 40% of these inspections failed and required a replacement lateral.⁴²

The BASA System continues to experience SSOs and hydraulic overloading in portions of its collection system. From 2018 through November 10, 2022, the System received forty-six notices of violations from PADEP for illegal SSO discharges. Each of these SSO discharges resulted in raw sewage being discharged into the environment where it could have come into contact with humans, pets, and wildlife, or could have been detrimental to aquatic life. Raw sewage can contain bacteria, viruses and parasites that are a direct threat to human health and the environment.⁴³

If the Transaction is approved, PAWC will assume BASA's responsibilities under the 2019 CAP to rebuild the existing infrastructure in order to eliminate the persistent SSOs.⁴⁴ PAWC has developed a five-year capital plan totaling \$75.8 million that includes the 2019 CAP projects, *as well as* numerous other projects that will: replace the System's aging infrastructure, replace targeted areas of the collection system components known to have unacceptably high I/I and/or SSOs, make process improvements that will yield environmental, safety and security benefits to customers and employees, and improve the efficiency of operations.⁴⁵

From 2018 through 2021, PAWC has made capital investments in its wastewater systems averaging \$762 per year per customer connection. This is over three times the level of investment made by BASA in its System for the same period, averaging \$226 per year per

⁴² BASA St. No. 1 pp. 6-7.

⁴³ PAWC St. No. 2 p. 14; PAWC St. No. 2-R p. 6; BASA St. No. 1 p. 4.

⁴⁴ PAWC St. No. 2 p. 16.

⁴⁵ PAWC St. No. 2 p. 17.

customer connection.⁴⁶ BASA's current rates appear to be so low that the System cannot invest in reasonable and prudent maintenance and upkeep.⁴⁷ The five-year capital improvement plan proposed by PAWC includes \$74.8 million in fixed asset replacements, or approximately \$15 million per year. This needed level of investment is "35 times" the level of investment that BASA has averaged in the previous three years.⁴⁸

In addition, if the Transaction is approved, PAWC will use commercially reasonable efforts to develop a pilot program for a customer-owned damaged wastewater service lateral replacement program, and then petition the Commission for approval of that pilot program.⁴⁹

PAWC contends if the Transaction is not approved, BASA would need to significantly increase customers' rates. PAWC explains that even with a significant rate increase, BASA lacks the necessary skillset, expertise, and project experience to complete the large scale, complex projects that are needed to bring the System into compliance.⁵⁰ Even if BASA could complete the 2019 CAP on its own, BASA probably would only be able to deliver the projects required by the 2019 CAP due to their large investment of time, resources, and funding, leaving little left over to address the numerous other issues in the System.⁵¹ PAWC argues that BASA has demonstrated a reactive approach to environmental compliance, rather than proactively addressing the underlying problem of lack of regular infrastructure renewal and replacement.⁵²

⁴⁶ PAWC St. 2 p. 20.

⁴⁷ PAWC St. 1-R p. 11.

⁴⁸ PAWC St. No. 2-R pp. 3-4 (emphasis in original).

⁴⁹ PAWC St. No. 1 p. 14.

⁵⁰ BASA St. No. 1 p. 7.

⁵¹ PAWC St. No. 2 p. 11.

⁵² PAWC Amended St. No. 2 p. 17.

It appears that BASA's rates have been kept so low that the system could not invest in reasonable and prudent maintenance and upkeep.⁵³ One witness at the public input hearing testified that, in his opinion, the System has been neglected for many years. He testified that rates have remained low at the expense of the maintenance of the System.⁵⁴

The Transaction Benefits BASA, the City and the Township

According to PAWC, the Transaction also benefits BASA (the seller of the System), as well as the City and the Township (the incorporators of BASA). PAWC suggests the Transaction accomplishes the will of the municipal officials who worked hard over many months to consider the advantages and disadvantages of BASA's continued ownership of the System. Throughout the sale process, the interests and concerns of the residents and all customers of the System served as the primary focus for officials from BASA, the Township and the City. Those officials determined that the substantial costs that will be necessary in the near future to keep the System up and running efficiently were too great for BASA to handle and will be better addressed by a larger, more experienced public utility.⁵⁵ The public was kept apprised of developments throughout the sale process by a thorough public awareness campaign.⁵⁶

One purpose of selling the System was to engage an industry expert to improve the aging System while maintaining reliable wastewater service and managing the inevitable rate increases due to the necessary investment.⁵⁷ Another purpose was to provide an opportunity for local economic development as a result of an improved and compliant System.⁵⁸ The Transaction achieves these objectives by selling the System to the largest water/wastewater

⁵³ PAWC St. No. 1-R p. 11.

⁵⁴ Tr. 107.

⁵⁵ Township St. No. 1 pp. 4-5; City St. No. 1 p. 5.

⁵⁶ Township St. No. 1 pp. 6-7; City St. p. 7.

⁵⁷ City St. No. 1 p. 8; Township St. No 1 p. 9.

⁵⁸ Township St. No. 1 p. 8; City St. No. 1 p. 8.

utility in the Commonwealth, who has made a commitment to improve the System and bring it into compliance with environmental laws and regulations. The primary benefit for BASA is that BASA will use the proceeds of the sale to pay off its existing debt (approximately \$40.6 million), saving thousands of dollars in interest payments.⁵⁹

PAWC also asserts the Transaction has numerous benefits for the City and the Township. These include:

- The City and the Township will receive the balance of the proceeds of the sale. This influx of cash will give the City and the Township financial flexibility in future years without increasing residents' taxes, and will provide a security blanket to weather emergencies.⁶⁰ The infusion of capital from the sale will have a transformative impact on the local economy.⁶¹
- The System will become subject to tax.⁶²
- An improved and compliant System will promote economic development, further increasing tax revenues.⁶³
- Since PAWC will provide both water and wastewater services, projects can be coordinated, reducing the number of street openings and lessening inconvenience to the public.⁶⁴
- PAWC will retain all active personnel currently employed by BASA in operating the System with substantially similar retirement and health benefits. This was a critical requirement for the Township and the City.⁶⁵
- PAWC will maintain an operations center at BASA's current headquarters for at least ten years, consisting of various managers, customer service representatives, and operators.⁶⁶

⁵⁹ BASA St. No. 1 p. 7. City St. No. 1 p. 9.

⁶⁰ City St. No. 1 p. 9; Township St. No. 1 p. 9.

⁶¹ Tr. 153.

⁶² Center St. No. 1 p. 6; PAWC St. No. 1-R p. 10.

⁶³ Township St. No. 1 p. 8; City St. No. 1 p. 8, Tr. 181, 189-190.

⁶⁴ Township St. No. 1 p. 13; City St. No. 1 p. 13; PAWC St. No. 2-SR p. 5.

⁶⁵ City St. No. 1 p. 13; Township St. No. 1 p. 12.

⁶⁶ Township St. No. 1 p. 12; City St. No. 1 p. 13.

- PAWC will award contracts for development projects to local Butler County-based contractors, to the extent it is feasible and at a reasonable cost to ratepayers.⁶⁷

PAWC therefor concludes, the record does not demonstrate that the Transaction will have any significant detriments for BASA, the City or the Township. Balancing the benefits and the detriments of the Transaction to BASA, the City and the Township, it is clear that the benefits outweigh the detriments for this stakeholder group. While the residents of the City and the Township who are customers of BASA may see an increase in their wastewater rates, a portion of those increases would have occurred even absent the Transaction.

The Transaction Benefits Other Municipalities in the Butler Area

Municipalities surrounding the City and the Township of Butler, such as Center and Summit, will not receive any of the proceeds from the sale of the System. Nevertheless, PAWC contends they will benefit from the Transaction.⁶⁸ BASA owns property in surrounding municipalities, including Center and Summit.⁶⁹ Because the Transaction will make the System subject to tax, tax revenues will increase for these municipalities.

Additionally, PAWC claims having an improved compliant System will promote economic development in other municipalities in the Butler area.⁷⁰ Improved economic development will directly benefit the residents of these communities. It will also have indirect benefits (such as increasing local tax revenues, allowing local governments to keep taxes stable in the future). For example, a portion of the System in Center is currently subject to restrictions

⁶⁷ Township St. No. 1 p. 12; City St. No. 1 p. 10.

⁶⁸ Center and Summit initially opposed the Transaction, in part, because they would not receive any of the proceeds of the sale. *See, e.g.*, Summit St. No. 1 p. 5. The BASA Parties moved to strike this testimony on the grounds that the Commission lacks jurisdiction over this claim. This motion was withdrawn when the parties reached a unanimous settlement. Center and Summit also initially opposed the Transaction, in part, due to concerns about the rate impacts on BASA's customers in Center and Summit.

⁶⁹ PAWC St. No. 2-R p. 7.

⁷⁰ Township St. No. 1 p. 8; City St. No. 1 p. 8.

on connections. Although BASA received approval for a limited number of taps in this area, if there had been plans for significant new growth and development in these areas of the township, those plans might have been thwarted by the lack of capacity and poor condition of the sewer assets.⁷¹ By improving the condition of the System, the restrictions on connections can be removed and economic growth in the area can improve.

The Benefits of the Transaction Outweigh the Detriments for BASA's Existing Customers

PAWC maintains the Transaction, as modified by the Settlement, has benefits for BASA's existing customers that outweigh the detriments. First, BASA's customers enjoy the same benefits from the Transaction as do other members of the public-at-large. These benefits include, but are not limited to, promoting the right of all Pennsylvanians to a clean environment. As discussed above, PAWC believes the benefits of the Transaction outweigh the detriments for the public-at-large.

Second, if the Transaction is approved, PAWC explains that BASA's customers will enjoy many of the same benefits from the Settlement as will other PAWC customers. These benefits include:

- PAWC will use a rate base of \$228,000,000 for the System, rather than the initial purchase price of \$231,500,000 or the average of the two fair market value appraisals (\$239,303,632).⁷²
- PAWC will increase the eligibility for hardship grants from 200% to 250% of Federal Poverty Income Guidelines.⁷³
- PAWC will contribute \$700,000 annually to the Company's hardship grant program for five years following closing on the Transaction ("Closing"), for a total contribution of \$3,500,000. This contribution will be in addition to any existing commitments, and any commitments made in a future base rate case.⁷⁴

⁷¹ PAWC St. No. 2-SR p. 3.

⁷² Joint Petition, ¶ 21.

⁷³ Joint Petition, ¶ 35.

⁷⁴ Joint Petition, ¶ 36.

- PAWC will implement a formal program for payment arrangements for commercial customers.⁷⁵

PAWC further argues the Transaction will cause economies of scale because PAWC's size allows it to (a) procure pipe at 37% below the market index for assets of that type, (b) purchase light duty vehicles at about 13% below dealer invoice for new vehicles; (c) acquire chemicals at approximately 20% below the current market index; and (d) purchase natural gas at about 10% below the market price. In addition, since PAWC is the water provider in the area, it can use equipment (such as backhoes, emergency generators, and portable pumps) for both water and wastewater operations, whereas Butler had to rent that equipment for its System, as necessary.⁷⁶

Third, PAWC asserts BASA's existing customers will receive unique benefits from the Transaction, as modified by the Settlement, that are not enjoyed by other stakeholder groups. These include:

- BASA does not currently have any customer assistance programs, but PAWC does. If the Transaction, as modified by the Settlement, is approved, many BASA customers who cannot currently receive assistance will be eligible to do so.⁷⁷
- Following Closing, PAWC will automatically enroll any BASA wastewater customers, who are PAWC water customers enrolled in PAWC's water low-income programs, in PAWC's wastewater low-income programs.⁷⁸
- In the first base rate case in which the System is included, PAWC will propose to move the System to metered rates, which are more fair than flat rates, because customers are billed based on their actual usage.⁷⁹
- After Closing, most BASA customers will have one provider for both water and wastewater service. This means most BASA customers will receive one bill for both water and wastewater services, providing customers with a more efficient payment process for both services. It is easier for customers

⁷⁵ Joint Petition, ¶ 39.

⁷⁶ Tr. 299-300.

⁷⁷ PAWC St. No. 2-SR p. 8.

⁷⁸ Joint Petition, ¶ 32.

⁷⁹ PAWC St. No. 3 p. 7.

to call for service if they only need to call one company for all of their water and sewer needs. It also means less disruption from road cuts and other projects, because PAWC can coordinate water and wastewater projects.⁸⁰

- Wastewater service to BASA’s existing customers will become subject to the regulatory oversight of the Commission. PAWC will be required to provide adequate, efficient, safe and reliable service at just and reasonable rates. BASA has no such regulatory oversight. If a BASA customer is dissatisfied with the service or rates of BASA, the customer currently must seek redress in a court of common pleas.⁸¹
- The OCA, the OSBA, and I&E could serve as ombudsmen for BASA customers. BASA customers currently have no such ombudsman.⁸²
- After Closing, PAWC will conduct outreach activities to existing BASA customers to inform them of PAWC’s customer-assistance programs.⁸³

In this litigation, several parties argued that the rate impact of the Transaction would outweigh all the benefits of the Transaction for BASA’s existing customers because, using the methodology mandated by the *Steelton Order*,⁸⁴ PAWC estimated that rates for BASA customers could increase by 94.4% in the first base rate case in which the System is included in PAWC’s rate base.⁸⁵ Some witnesses made the same argument at the public input hearings.⁸⁶

Nevertheless, PAWC insists if the Transaction, as modified by the Settlement is approved, there will be no immediate impact on the rates of BASA’s customers; PAWC will adopt BASA’s rates in effect at the time of Closing and residents will not experience another increase for at least one year after Closing.⁸⁷ Moreover, in the first base rate case in which the

⁸⁰ Township St. No. 1 p. 13; City St. No. 1 p. 13; PAWC St. No. 2-SR p. 5.

⁸¹ PAWC St. No. 1 p. 18; PAWC St. No. 2 p. 39; PAWC St. No. 2-SR p. 6.

⁸² PAWC St. No. 2 pp. 40-41.

⁸³ Joint Petition, ¶¶ 32-34.

⁸⁴ *Application of Pa.-Am. Water Co. 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 Auth.*, Docket No. A-2019-3006880 (Opinion and Order entered Oct. 3, 2019) (“*Steelton Order*”).

⁸⁵ PAWC St. No. 3 pp. 13-14.

⁸⁶ *See, e.g.*, Tr. 75.

⁸⁷ PAWC St. No. 3 p. 11.

System is included in PAWC's rate base, PAWC will propose to move the System to 1.4x the current System rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower, upon the later of (a) the first anniversary of Closing or (b) January 1, 2025.⁸⁸ As a result, PAWC argues the Settlement could reduce the Transaction's rate impact for BASA customers by more than one-half, consistent with the concept of gradualism – noting that actual rates will be set in a future base rate case.

PAWC cautions that if the Transaction is not approved, in contrast, BASA will likely need to impose a significant, abrupt rate increase to help fund capital projects.⁸⁹ In setting these new rates, BASA would not be subject to Commission oversight to ensure that the rates are just and reasonable.⁹⁰ Even with a significant rate increase, BASA lacks the necessary skillset, expertise, and project experience to complete the large scale, complex projects that are needed to bring the System into compliance with environmental laws and regulations.⁹¹

The Benefits of the Transaction Outweigh the Detriments for PAWC's Existing Customers

PAWC also argues the Transaction, as modified by the Settlement, benefits PAWC's existing customers in the same way that it benefits all other members of the public-at-large. These benefits include, but are not limited to, promoting the right of all Pennsylvanians to a clean environment.

In addition, PAWC maintains the Transaction, as modified by the Settlement, has specific benefits for PAWC's existing wastewater customers. One such benefit is the addition of

⁸⁸ Joint Petition, ¶ 19(e).

⁸⁹ City St. No. 1 p. 9; Township St. No. 1 p. 8. One witness at the public input hearing testified that he believed the rate increases would be greater if the System remains with BASA rather than being sold to PAWC. Tr. 108, 110.

⁹⁰ PAWC St. No. 1-R p. 12.

⁹¹ BASA St. No. 1 p. 7.

approximately 14,792 customers.⁹² Expanding PAWC's customer base benefits PAWC's existing customers in the long term because it promotes long-term rate stability across the entire PAWC system. Existing customers who require improvements in their area in the future will benefit because the cost of those improvements will be spread among more customers – including the former BASA customers. This benefit will occur for different existing PAWC customers at different times. It may not occur for all existing PAWC customers in the near term, but it will surely happen over the long term. Increasing the total number of PAWC's customers helps avoid spikes in the cost of service, as can occur in small systems. Being able to spread the costs of investing in and maintaining public wastewater systems over a growing customer base is essential to maintaining reasonable rates for all customers over the long term.⁹³

Further, PAWC noted that in the Settlement, the Joint Petitioners agreed that PAWC will not include System-related investments in its DSIC until PAWC collects a DSIC from System customers.⁹⁴ This provision benefits PAWC's existing customers by ensuring that they do not have to pay all the costs of improving the System.

In this litigation, several parties initially argued that the rate impact of the Transaction would outweigh all of the benefits of the Transaction for PAWC's existing customers because PAWC estimated that: (a) rates for PAWC's existing wastewater customers could increase by 7% in the first base rate case in which the System is included in PAWC's rate base, and (b) rates for PAWC's existing water customers could increase by 0.8% in the first base rate case in which the System is included in PAWC's rate base.⁹⁵ PAWC disagrees with this conclusion upon weighing the benefits and detriments of the Transaction. Nevertheless, the Settlement clearly tips the scales in favor of approving the Transaction – as demonstrated by the fact that the Settlement is unanimous.

⁹² PAWC St. No. 1 p. 16.

⁹³ PAWC St. 1-SR pp. 14-15.

⁹⁴ Joint Petition ¶ 24.

⁹⁵ PAWC St. No. 3 p. 15.

In the Settlement, the Petitioners agree that PAWC should use \$228,000,000 as the rate base addition for the System, rather than the initial \$231,500,000 purchase price or the \$239,303,632 average of the two fair market value appraisals.⁹⁶ Petitioners contend this provision will reduce the financial impact of the acquisition on all PAWC customers in future rate cases.

PAWC suggests its existing customers will also benefit from the expansion of eligibility for PAWC's low-income customer assistance programs, Joint Petition ¶ 35, and PAWC's contribution of \$3,500,000 to its hardship grant program during the first five years after Closing, Joint Petition ¶ 36. According to PAWC, these provisions will allow many additional existing residential customers to receive assistance in paying their utility bills. Similarly, PAWC's existing commercial customers will benefit from the Settlement provision requiring PAWC to implement a formal program for payment arrangements for commercial customers.⁹⁷

PAWC asserts that not only will the Transaction have no immediate rate impact on PAWC's existing customers,⁹⁸ any future rate impact will be determined by the Commission in future rate cases, based on the requirement that rates be just and reasonable. Additionally, the Transaction will have no impact at all on PAWC's existing water customers unless the Commission finds that it is in the public interest to allocate a portion of the wastewater revenue requirement to the water customer base.

a. Butler Area Sewer Authority's Position

Benefits to the System from the Proposed Transaction

One primary reason the Authority explored a sale of the System is the compliance issues posed by System's age outlined in the Authority's current Corrective Action Plan with the

⁹⁶ Joint Petition, ¶ 21.

⁹⁷ Joint Petition, ¶¶ 35, 36, 39.

⁹⁸ PAWC Amended St. 1 p. 19.

Pennsylvania Department of Environmental Protection (the “CAP”), and the necessary investment to bring the System into compliance.⁹⁹

For example, only 3% of sewer lines in the System are under ten years old, whereas 46% of the Authority’s sewer lines are between 25 and 34 years old, 31% are between 35 and 85 years old, and 20% are more than 85 years old.¹⁰⁰ Moreover, since implementation of the CAP in 2018, BASA conducted 2,601 inspections of the sewer laterals to address inflow and infiltration and illegal connections to the System, and nearly 40% of the sewer laterals failed inspection – requiring a replacement lateral, which could cost an individual BASA customer up to \$8,500.¹⁰¹ However, as part of the Proposed Transaction, Pennsylvania-American committed to including the BASA System and the damaged sewer and/or aging laterals in its first petition to the Commission in connection with its Damaged Wastewater Service Lateral pilot program.¹⁰²

While BASA has worked to provide safe and cost-efficient service to the public, the Authority recognized that it does not have the financial or technical ability to implement the comprehensive overhaul of the aging System, or the capital investment required to bring the System into compliance without significant rate increase to its customers.¹⁰³ Even with the substantial rate increase, the Authority lacks the project experience and large workforce to complete the large scale, complex projects necessary to improve the system.¹⁰⁴ For example, Pennsylvania-American currently employs 1,105 professionals with expertise in all areas of

⁹⁹ See generally, BASA St. No. 1, Direct Testimony of Duane McKee, pp. 6-7 (discussing the various compliance issues in detail).

¹⁰⁰ See *id.* at p. 6.

¹⁰¹ See BASA St. No. 1, pp. 6-7, 9; see also PAWC Statement No. 2, p. 25.

¹⁰² See *id.*; PAWC St. No. 2, pp. 24-26 (detailing Pennsylvania-American’s plan with BASA’s damaged wastewater service laterals).

¹⁰³ See BASA St. No. 1, pp. 7-10.

¹⁰⁴ See BASA St. No. 1, p. 7; see also PAWC Statement No. 2-R, pp. 3-4 (explaining that BASA’s average capital delivery performance over the last three years has been limited to approximately \$430,000 per year, and the necessary level of investment is thirty-five times BASA’s recent average, *i.e.*, \$15 million per year).

water and wastewater utility operations as opposed to BASA which currently employs 33 full-time employees.¹⁰⁵

These are just a few examples of the affirmative public benefits that BASA customers will enjoy should the Commission approve the Proposed Transaction. Since executing the APA, it has been clear to the Authority that its customers will benefit *substantially* from Pennsylvania-American – an experienced public utility with a track record of successfully addressing PADEP compliance orders requiring substantial capital investments – implementing the \$75 million comprehensive capital improvement plan over the next five years.¹⁰⁶ Thus, the Authority argues this Proposed Transaction and Settlement should be approved without modification.

Benefits to the Butler community

In addition to the several operational benefits to the System detailed above, the Authority maintains the Proposed Transaction will also provide substantial affirmative public benefits to the entire Butler community.

In addition to purchasing BASA’s wastewater assets, Pennsylvania-American agreed to: (1) retain all active personnel – both union and non-union – employed by the Authority with substantially similar pay, retirement and health benefits, (2) award contracts for development projects to local, Butler County-based contractors, to the extent it is feasible and commercially reasonable, and (3) maintain an operations center at BASA’s current headquarters (for at least ten years) consisting of various managers, customer service representatives, and operators.¹⁰⁷ As identified by the Authority, these were crucial benefits negotiated by the Authority as the BASA team worked hard to provide safe, reliable and cost-efficient service to

¹⁰⁵ See BASA St. No. 1, p. 7; PAWC Statement No. 2, pp. 18-20.

¹⁰⁶ See PAWC St. No. 2, pp. 16-20 (detailing Pennsylvania-American’s expertise with implementation of capital improvement plans to bring systems into compliance).

¹⁰⁷ See BASA St. No. 2, Direct Testimony of Paul F. Sybert, pp. 8-9; *see also* PAWC Statement No. 1, p. 14.

the community throughout the years, and the sale of the System thus should not adversely impact any employees and local independent contractors that made the years of quality service possible.

Furthermore, the Authority contends the Butler community at large will greatly benefit from this Proposed Transaction. With an improved and compliant System (that Pennsylvania-American is better situated to provide), businesses will be more encouraged to open in the greater Butler area and achieve both the Township and the City's goal of a community that is a destination for business, industry, culture, and the arts.¹⁰⁸

While neither of the incorporating municipalities of BASA have reached any final decisions regarding the use of sale proceeds after the Authority's debt is paid off and the Authority is dissolved, there are numerous potential projects and redevelopment opportunities that the respective municipalities' leadership identified in their testimony that would otherwise require tax increases or placing the municipalities in a risky financial position.¹⁰⁹ The influx of cash will not only provide the respective leadership in the City and the Township with great flexibility in spending, but it also provides significant liquidity and a greater security blanket to allow the municipalities to weather any sort of emergency they may face – something that cannot be taken for granted with the cost-of-living continuously increasing due to inflation and other economic changes. In the event that these funds can be allocated elsewhere, they would help allow for redevelopment opportunities that may otherwise not be attainable absent significant tax increases to the public.

Pursuant to the express terms of the APA, Pennsylvania-American committed to imposing a rate-freeze at \$45.50 per EDU for the acquired BASA customers' rates for at least one year after closing.¹¹⁰ However, as part of the Settlement, the Joint Petitioners further

¹⁰⁸ See City of Butler St. No. 1, Direct Testimony of Mayor Robert A. Dandoy, pp. 8-14 (summarizing numerous anticipated benefits to the Butler Community from the sale of the System); Township of Butler St. No. 1, Direct Testimony of Dave Zarnick, pp. 7-13.

¹⁰⁹ See generally City of Butler St. No. 1, pp. 11-12 (discussing potential redevelopment opportunities for the proceeds); Township of Butler St. No. 1, pp. 10-11.

¹¹⁰ See Appendix A-24-a, APA, Section 7.04(a), attached with Pennsylvania-American's Application.

negotiated that Pennsylvania-American “will propose to move the System to 1.4x the current System rate or Pennsylvania-American’s proposed Rate Zone 1 system-average wastewater rates, whichever is lower, upon the later of (a) the first anniversary of Closing or (b) January 1, 2025.”¹¹¹

According to the Authority, while rate increases were inevitable regardless of ownership of the System given the necessary capital improvement, Pennsylvania-American’s commitment regarding the first base rate case ensures that the acquired BASA customers are not subject to significant rate shock immediately upon closing and further “capped” by the express terms of the Settlement. Further, the Settlement provides additional assistance for the BASA customers that may qualify for low-income assistance (in addition to the low-income assistance program that Pennsylvania-American already has in place for all of its customers) via contributions to its hardship program and creation of a payment arrangement program for commercial customers.

Hardship Grant Program

Pennsylvania-American has a Hardship Grant Program that provides one-time assistance grants to its residential customers that may be applied directly to their utility bills. In connection with this Settlement, Pennsylvania-American committed to contribute \$700,000 annually to the hardship grant program for the five years following Closing (\$3,500,000 total) that cannot be recovered in rates.¹¹² More significantly, Pennsylvania-American also agreed to increase eligibility for the one-time grants to all Pennsylvania-American customers (both existing customers and newly acquired BASA customers) from 200% to 250% of Federal Poverty Income Guidelines.¹¹³ These particular provisions of the Settlement provide additional assistance to the acquired BASA customers to help counteract any prospective rate increase.

¹¹¹ Joint Petition, ¶ 19(e).

¹¹² Joint Petition, ¶ 36.

¹¹³ Joint Petition, ¶ 35.

Commercial Customer Payment Arrangement

Commercial customers are not eligible for Pennsylvania-American's Hardship Grant Program. Nonetheless, the Authority submits that Pennsylvania-American is committed to implementing a formal program for payment arrangements for commercial customers, including eligibility and payment terms.¹¹⁴ The novel establishment of such a program for Pennsylvania-American's existing commercial customers and acquired BASA commercial customers will provide long-lasting substantial affirmative public benefits.

b. OCA's Position

OCA did not specifically address whether there was an affirmative public benefit to the acquisition. Instead, OCA indicated that the Joint Petition for Unanimous Settlement should be approved as it represents a compromise in the parties' positions.

However, In this proceeding, OCA identified the need for PAWC to provide – in the first base rate case in which it includes BASA's assets in rate base – a cost of service study that removes all costs and revenues associated with the operations of the BASA wastewater system, as well as a separate cost of service study for the BASA system.¹¹⁵ OCA stated that these studies will provide information to establish rates that reflect the costs for the BASA system. The Settlement adopts the OCA's recommendation.

OCA raised a concern that delaying rate increases for customers in the BASA system would put PAWC's existing wastewater and water customers at risk to subsidize the revenue requirement needed to keep rates lower than the new rates established for those systems in the base rate case.¹¹⁶ Settlement Paragraphs 18 and 19(d) mitigate this risk by reserving all parties' rights regarding rate recommendations in future PAWC proceedings and, specifically,

¹¹⁴ Joint Petition, ¶ 39.

¹¹⁵ OCA St. No. 1 at 27-28; OCA St. No. 1SR at 21.

¹¹⁶ OCA St. 1 at 16.

the right to challenge a proposal to delay the effective date of new rates for the BASA system. Further, if new rates are delayed beyond the effective date of new rates for other customers, PAWC will calculate its proof of revenue as if the BASA customers were paying proposed rates without any delay to the effective date. As such, PAWC will forego any lost revenue attributable to the rate freeze for the BASA system rather than recovering it from other PAWC customers. To provide additional assurance that the rate freeze will not impact future recommendations to move customers in the BASA system to an appropriate cost of service, the Settlement sets forth the parties' agreement that those customers will be treated as though they have paid the tariffed rates without any delay.

Toward the same end, Paragraph 19(e) provides that, in the first rate case in which PAWC includes BASA's wastewater system assets in rate base, PAWC will propose to move BASA's wastewater system assets to 1.4x the current BASA wastewater rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower.¹¹⁷ Paragraph 31 of the Settlement requires PAWC to provide notice to customers in the BASA system of the proposed increase under Paragraph 19(e). This ensures that those customers will receive appropriate notice so the Commission can exercise its discretion in setting rates for the BASA system.

OCA explains that, taken together, these Settlement terms will provide a means for the parties to use the cost of service data to set rates for BASA customers that reflect the cost of service under PAWC ownership, or movement towards the cost of service, and that may differ, as appropriate, from rates established for other water and wastewater customers. This will help to mitigate the potential level of subsidy by PAWC's other water and wastewater customers and applies the ratemaking principle of gradualism to rates set for customers in the BASA service area to lessen the rate increases for these customers and gradually increase rates towards cost of service.¹¹⁸

¹¹⁷ The current rate at Closing for System residential wastewater customers with an average usage of 3,212 gallons per month is approximately \$45.50. Settlement ¶ 19(h). The current average PAWC rate for a residential wastewater customer using 3,212 gallons per month in Zone 1 is \$106, or 2.3x higher. Settlement ¶ 19(i).

¹¹⁸ OCA St. 1 at 31.

Based on appraisals presented by PAWC and BASA ((\$246,114,043 and \$232,429,000), respectively), PAWC sought a ratemaking rate base of \$231,500,000 for the BASA System, which was the price PAWC originally agreed to pay for the System.¹¹⁹ As such, the ratemaking rate base proposed by PAWC was less than the average of the UVE fair market value appraisals.¹²⁰ OCA recommended that \$222,505,000 be used for ratemaking rate base based on its recommended adjustments to the UVE valuation results.¹²¹

In settlement, the parties agree that for ratemaking purposes, the ratemaking rate base pursuant to Section 1329 will be \$228,000,000.¹²² The proposed ratemaking rate base is \$3.5 million less than requested in the Company's filing and represents an amount which, in 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 BASA customers by reducing overall costs.

OCA witness DeAngelo raised a concern that, unless BASA customers know about and enroll, the existence of PAWC's low-income programs will not provide a benefit.¹²³ She recommended that PAWC should provide a letter to the acquired customers that provides information regarding its low-income programs, including a description of the available programs, eligibility and requirements, and PAWC's contact information. The letter should be sent within 30 days after closing so that eligible customers can benefit from the program as soon as possible and before rates are increased. Also, PAWC should include the same information regarding low-income programs in bills sent to BASA customers within 90 days after closing.¹²⁴ The Settlement reflects PAWC's agreement to the OCA recommendation.¹²⁵

¹¹⁹ OCA St. 2 at 13.

¹²⁰ OCA St. 2 at 13-14.

¹²¹ OCA St. 1SR at 20; OCA St. 2 at 9.

¹²² Joint Petition, ¶ 21.

¹²³ OCA St. 1 at 22.

¹²⁴ OCA St. 1 at 22.

¹²⁵ Joint Petition, ¶¶ 32, 33.

As PAWC already provides water service in the Butler area, the Settlement also reflects its agreement to automatically enroll any customers enrolled in the low-income discount program for their water service in the discount program for wastewater service at the time of Closing. PAWC will also work with community-based organizations with offices local to the areas served by the System for purposes of providing information and enrolling customers in its customer assistance programs.¹²⁶ Automatic enrollment, local outreach, and timely information about the availability of PAWC's low-income programs will benefit some customers in the BASA system.

Under the Settlement, effective on and after closing, PAWC will increase eligibility for hardship grants from 200% to 250% of Federal Poverty Income Guidelines for all PAWC customers.¹²⁷ OCA identified that PAWC's bill discount program is limited to customers at or below 150% of the FPIG. Therefore, the bill discount is not likely to offset the projected rate increase caused by the BASA acquisition. Also, the bill discount program does not help customers who are above 150% of FPIG. Expanding eligibility means that hardship grants will be available to more PAWC customers who face economic difficulty resulting from the rate increases that will result due to PAWC's ownership of the BASA system.

OCA made a companion recommendation that, if the proposed acquisition is approved, it should be conditioned on the requirement that PAWC make an additional annual contribution of \$500,000 to the hardship fund annually for five years following closing.¹²⁸ OCA witness DeAngelo further recommended that these contributions should not be recovered in rates and all unspent funds at the end of the program year should be rolled over and added to the budget for the hardship grant program in the following year(s).¹²⁹

¹²⁶ Joint Petition, ¶ 34.

¹²⁷ Joint Petition, ¶ 35.

¹²⁸ OCA St. 1 at 22. The Company currently contributes \$750,000 annually to its hardship fund. PAWC St. 3R at 13.

¹²⁹ OCA St. 1 at 23.

OCA noted that the Settlement provides more than was requested by the OCA in that, in addition to existing commitments and any commitments made in a future base rate case, PAWC will contribute \$700,000 annually to the Company's hardship grant program for the five years following closing (\$3,500,000 total). These contributions will not be recovered in rates. All unspent funds from the program will be rolled over and added to the budget for the hardship grant program in the following year(s).¹³⁰ Making hardship grants available to more PAWC customers, and increasing funding for the grants, will provide a concrete and actual benefit to PAWC's existing and acquired customers that will provide a small offset to the rate increases that will result from this acquisition.

d. OSBA's Position

OSBA acknowledges that PAWC and BASA have followed all the requirements of 66 Pa.C.S. § 1329 to the letter. OSBA contemplated whether the Pennsylvania Legislature thought about such significant increases when it was drafting Section 1329, or whether this is an example of the "law of unintended consequences."

Regardless, to mitigate the rate increase to BASA's customers in PAWC's first rate case (after the acquisition is complete), OSBA insisted that the rate increase be limited to 1.4x the system average increase.¹³¹ This, of course, will only provide temporary relief to BASA's customers, but it will serve to mitigate the initial impact of that 90%+ rate increase. Consequently, the OSBA submits that the 1.40 times limitation is a just and reasonable addition to the Joint Petition.

OSBA also noted the COVID-19 Pandemic caused many Pennsylvania small businesses to close. In the post-Pandemic era, Pennsylvania small business have suffered two additional impacts to their daily operation. First, there have been wide-spread supply chain shortages. Second, the rise in inflation since January 2021 has negatively impacted small

¹³⁰ Joint Petition, ¶ 36.

¹³¹ Joint Petition, ¶19.e.

businesses in a variety of ways. In response to all these issues facing Pennsylvania's small businesses, OSBA requested that PAWC establish a formal payment program for its commercial customers. PAWC agreed to the OSBA request.¹³² The OSBA realizes that such a program typically only involves low-income residential ratepayers. However, in light of the Pandemic, supply chain problems, and high inflation, OSBA submits that such a payment program is appropriate and timely.

e. I&E's Position

I&E asserts that the Application should be approved and recommends that the Commission should issue PAWC a Certificate of Public Convenience pursuant to 66 Pa.C.S. §1102(a). PAWC's Application requests permission for it to acquire substantially all BASA assets, properties and rights related to its water system and to obtain the Certificates of Public Convenience necessary for it to begin to offer water service to the public in the Service Area. I&E argues the record supports the findings that PAWC is technically, legally, and financially fit to acquire BASA, and no party has refuted those claims in the record.

Additionally, I&E submits BASA's Application will provide affirmative public benefits. The affirmative public benefits are set forth in PAWC's direct testimony, and include such things as: BASA customers will be guaranteed a minimum one-year rate freeze that would take effect upon Closing until the later of the one-year anniversary of the Closing or January 1, 2025; low-income BASA customers will have access to PAWC's grant programs that will help them pay bills; and PAWC will secure the funding for and execute a major capital program that will help BASA's system comply with current PADEP-mandated 18 Corrective Action Plan, and address other deficiencies within BASA.¹³³

I&E further contends the goal of regionalizing water systems, benefits of better management practices, economies of scale, and the resulting greater

¹³² Joint Petition, Paragraph 39.

¹³³ PAWC St. No. 1, p. 8.

customer/environmental/economic benefits will be achieved. Importantly, through the Settlement, the value of the public benefits will be better realized because the Settlement contains numerous terms to protect PAWC's ratepayers, both existing and those who will become PAWC's ratepayers through this transaction. I&E believes the Settlement will also ensure that PAWC's ratepayers receive the benefit of the bargain that PAWC negotiated without being subject to protracted and expensive litigation. Accordingly, through this Settlement, I&E's identified concerns have been addressed and I&E opines that PAWC's Application, as modified by the Joint Petition, now meets the requisite standards for approval.

Based upon I&E's analysis of the filing, acceptance of this proposed Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense.

B. Recommendation

The Code requires that the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service, and certain property transfers by public utilities or their affiliated interests. The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code. A Certificate of Public Convenience shall be granted "only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public." These provisions have been interpreted by the Pennsylvania Supreme Court in *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825, 828 (Pa. 1972) (*City of York*) for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction "with respect to the impact on all affected parties" including existing customers. To ensure that a transaction is in the public interest, the Commission may

impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.¹³⁴

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.¹³⁵ An applicant for a certificate of public convenience must also demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.”¹³⁶

In *City of York and Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*), the Supreme Court explained that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

Popowsky further explains that demonstration of affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. In addition, “in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the requirement of Section 1103(a) will ensue[.]”¹³⁷ The Commission, moreover, can, under Section 1103(a), impose conditions that it deems just and reasonable.¹³⁸

The Pennsylvania Supreme Court addressed the Commission’s review under Section 1103 in *City of York*, where it considered a proposed merger of three telephone

¹³⁴ 66 Pa.C.S. § 1103(a).

¹³⁵ *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).

¹³⁶ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972).

¹³⁷ *Popowski*, 937 A.2d 1040 at 1057 n. 21.

¹³⁸ 66 Pa.C.S. § 1103(a).

companies. The Court specifically cited Section 203, the predecessor statute to Section 1103, and set forth the standard as follows:

Section [1103] of the Public Utility Law requires that those seeking approval of a utility merger demonstrate more than the mere absence of any adverse effect upon the public. Section [1103] requires that the proponents of a merger demonstrate that the merger will affirmatively promote the “service, accommodation, convenience, or safety of the public” in some substantial way.^[139]

This standard was addressed by the Commonwealth Court in *Middletown Township v. Pennsylvania Public Utility Commission*, 482 A.2d 674 (Pa. Cmwlth. 1984) (*Middletown*). In *Middletown*, to acquire part of the facilities of the Newtown Artesian Water Company, Middletown Township filed an application for a Certificate of Public Convenience. The Commission concluded that the acquisition would be a benefit to some customers but would have an adverse impact on other customers and, thus, it denied the application. The Township appealed and, in hearing the appeal, the Commonwealth Court considered the *City of York* standard applicable through Section 1102 and Section 1103. The Court affirmed the Commission’s decision rejecting the application stating, inter alia, that “when the ‘public interest’ is considered, it is contemplated that the benefits and detriments of the acquisition be measured as they impact on all affected parties, and not merely on one particular group or geographic subdivision as might have occurred in this case.”¹⁴⁰ The Court added that “the primary objective of the law in this area is to serve the interests of the public.”¹⁴¹

An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of that transaction.¹⁴² To determine whether benefits meet this standard, the Commission may consider: “(1) the legal and technical fitness of the purchasing

¹³⁹ 295 A.2d at 828.

¹⁴⁰ 482 A.2d at 682.

¹⁴¹ *Id.*; see also *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007).

¹⁴² *Application of CMV Sewage Co., Inc.*, Docket No. A-230056F2002 (Order entered on Dec. 23, 2008).

entity to provide service; (2) the public need for service; (3) the inadequacy of the existing service; and (4) any other relevant evidence.”¹⁴³

The Public Interest

Section 1329 reflects a determination by the General Assembly that fair market value acquisitions of municipal water and wastewater systems further the public interest. In its Tentative Supplemental Implementation Order entered September 20, 2018, the Commission explained that:

The 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.¹⁴⁴

The Commission further explained how, prior to Section 1329, Section 1311(b) hampered long-term consolidation:

Prior to the enactment of Section 1329, however, the Public Utility Code worked to discourage the acquisition of these systems because Section 1311(b) requires, for rate setting purposes, that the Commission value acquired property at the original cost of construction less accumulated depreciation, in short, at depreciated original cost.¹⁴⁵

¹⁴³ *Application of North Heidelberg Water Co.*, Docket No. A-2009-2117241 (Order entered on Aug. 2, 2010).

¹⁴⁴ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 at 6 (Tentative Supplemental Implementation Order entered Sept. 20, 2018).

¹⁴⁵ *Id.* at 7.

To approve the application, the Commission must determine that there are affirmative public benefits. As an integral part of that review the Commission must fully consider the harms of this acquisition on three specific groups with respect to the traditional *City of York* affirmative public benefits test: (1) the existing PAWC wastewater customers, (2) the existing PAWC water customers, who may potentially bear costs of the BASA system, if the Commission permits costs to be shifted under 66 Pa.C.S. § 1311(c), and (3) the existing BASA customers who will be transferred to PAWC.

Fitness

As a certificated provider of utility service, PAWC's fitness is presumed. The Commission addressed the fitness criteria in *Re Perry Hassman*, 55 Pa.P.U.C. 661 (1982) (*Hassman*). As to legal fitness, PAWC must demonstrate that it has obeyed the Code and Commission regulations. As to financial fitness, PAWC must demonstrate that it has sufficient financial resources to provide the proposed service. As to technical/managerial fitness, PAWC must have sufficient staff, facilities and operating skills to provide the proposed service.¹⁴⁶

No substantial challenge was presented to the fitness of PAWC to provide the proposed service. The Parties outlined in detail the evidence to support its claim that PAWC has demonstrated that it possesses the legal, financial, technical, and managerial fitness to provide the service proposed in its Application.

Substantial Affirmative Public Benefits

As discussed by the Parties, many of the benefits identified by PAWC are generalizations associated with acquisitions and do not address the corresponding harm or potential harm to existing PAWC wastewater and water customers, and to the Butler Area Sewer Authority customers after acquisition.

¹⁴⁶ *Hassman*.

To approve the application the Commission must determine that the proposed transaction benefits the public by affirmatively promoting the service, accommodation, convenience or safety of the public in some substantial way, after considering the harms of the acquisition on existing PAWC wastewater customers, the existing PAWC water customers who may potentially bear costs of the acquired system and the existing BASA customers who would be transferred to PAWC.

Affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. The primary objective is to serve the interests of the public.

An acquisition provides an affirmative benefit if the benefits of the transaction, outweigh the adverse impacts of that transaction, considering the technical and legal fitness of the purchasing entity to provide service, the public need for service; the inadequacy of the existing service; and any other relevant evidence. PAWC asserts, as discussed above, that the proposed transaction will benefit both existing PAWC customers and the acquired BASA customers. PAWC submits, among other things, that it has a record of acquiring and improving wastewater systems and the general benefit of consolidation and regionalization.

PAWC asserts benefits to BASA customers include being a part of a larger scale, efficiently operated wastewater utility; benefits from the overlap between water and wastewater utility operations; projected decrease in operation and maintenance (“O&M”) costs under Company ownership; the potential estimated investment of approximately \$75 million in upgrades to the system over the first five years post-acquisition; enhanced customer service through toll-free telephone number from 8am to 5pm, for regular business and a 24/7 toll-free emergency response; online bill payment options including payment by text messages and the ability to receive alerts of events impacting customer service; access to PAWC’s customer assistance programs; and procedures in place under Chapter 14 of the Code to address payment, termination, reconnecting, payment arrangement and complaint procedures.

In order to determine if the proposed transaction provides a substantial affirmative benefit, it is necessary to consider the fitness of the purchasing entity to provide the service, the

adequacy of the existing service and any other relevant evidence. The evidence in this proceeding clearly establishes the public need for the service and PAWC's fitness to provide the proposed service. In addition, the record evidence clearly establishes the adequacy of the existing service provided by BASA.

Accordingly, it is necessary, in determining the existence of affirmative public benefit, to consider the harms of the acquisition on existing PAWC water and wastewater customers as well as the existing BASA customers who would be transferred to PAWC.

Harm to Existing PAWC Wastewater and Water Customers

At least in the short term, PAWC's existing water customers are at risk for supporting the costs of acquiring the BASA customers in this transaction. Currently, all PAWC water customers already must pay for wastewater disposal either to another provider, to PAWC, or with their individual wastewater system.

Although there is a general characterization that the anticipated rate increase is hypothetical in nature as the Commission has the final say in rate making matter, a rate increase to existing PAWC customers, at least in the short term, is a certainty. Additionally, PAWC has other Section 1329 acquisitions pending or approved since its last base rate case. Therefore, these other acquisitions may also increase any revenue deficiency burden on PAWC's ratepayers. This is particularly so, as PAWC has agreed to a rate cap for BASA customers at least initially.

Harm to Butler Area Sewer Authority Customers

There was significant public opposition to the acquisition presented at the public input hearings in this proceeding, as approximately 24 PAWC and BASA customers testified regarding the harms that would occur should PAWC acquire BASA's system. Existing BASA customers did not seem to have many issues with the quality of service that is provided currently by BASA. There is evidence that BASA is capable of continuing to provide service and have the

means to provide upgrades in the future. While BASA is currently under a DEP compliance plan, it appears that it is making progress in remediating issues and providing safe service.

The Adverse Impacts on PAWC's Existing Customers and the Butler Area Sewer Authority Customers Outweigh the Benefits of the Proposed Transaction

It should be noted that in PAWC's last base rate case, at Docket No. R-2022-3031672, \$26,961,881 of PAWC's wastewater revenue requirement was allocated to water customers. OCA, in Attachment OCA-I-21, provided a table that definitively indicated that the BASA acquisition, if approved by the Commission, would increase PAWC's deficient revenue requirement by approximately \$18,504,000 ($\$31,202,000 - \$12,698,000 = \$18,504,000$). The amount of PAWC's total deficient revenue requirement including the amount transferred in its last rate case would exceed approximately \$45,400,000 ($\$26,961,881 + \$18,501,000 = \$45,462,881$).

Further, when asked whether PAWC negotiated the purchase price for the BASA System with the expectation that it would be able to transfer any deficient revenue requirement via Act 11 to its water customers, PAWC testified that, with regards to negotiating a price, it does not specifically address this in its consideration. PAWC stated “[B]asically, whenever we’re negotiating, we’re looking you know, pretty much dollar figure is what, you know, makes any kind of acquisition mov[e].”¹⁴⁷ It is imperative, though, for a wastewater public utility when negotiating an acquisition price to consider the findings and implications from its most recent Commission-approved base rate case and how increasing burdens from acquisitions might impact both its existing water and wastewater ratepayers. It is evident that PAWC did not consider that a significant portion of its current revenue requirement from the wastewater utility was already being allocated to its water customers when negotiating a purchase price with BASA. There is a clear nexus and correlation between the purchase price, the rate of return on the purchase price, and the revenue requirement.

¹⁴⁷ Tr. 300-301.

Pursuant to Section 1329(c)(2) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1329(c)(2), the ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility. In the approval of an application under 1329, the Commission is in essence baking into the future rate case of the acquiring public utility the associated rate implications. While it is in the discretion of the Commission to set rates for the acquiring public utility in a future base rate case, the Commission would be approving a significant input towards the revenue requirement at this juncture. The Commission's goal of regionalization is not to encourage mergers and acquisitions regardless of the potential future ratemaking impacts. The service being provided by BASA does not appear to be inadequate, and other relevant evidence does not substantiate that the impact the transaction will have on rates outweighs the marginal benefits that would be provided by PAWC.

In weighing the public benefit, the Commission is not limited in its consideration to only the Application's specific impacts but can and should also consider the totality of the utility's financial capabilities and the future impacts of an application to rates for wastewater and water customers. If a wastewater utility cannot support existing operations through its revenues, the question of the impact and implications of continued wastewater acquisitions such as this Application, which may result in an increasing revenue requirement allocation to PAWC water customers, weighs negatively as to whether approval is in the public interest. It is clear that the cost of this acquisition outweighs the other benefits discussed in testimony, especially considering the existing rate impact of past acquisitions to PAWC water customers.

In the Joint Petition, Section III.C.19.a., PAWC has agreed to submit a cost-of-service study that removes all costs and revenues associated with the operation of BASA's system and, separately, a cost-of-service study for the BASA system. I&E argues that the cost-of-service study will protect PAWC, its customers and the parties to this proceeding and the Commission. While a cost-of-service study may help determine an appropriate level of rates in the future, it will not mitigate the deficient revenue requirement associated by this acquisition. It will assist in determining an apportionment of the deficiency, but the revenue requirement will

still have to be generated from wastewater customers alone or by a combination of wastewater and water customers.

The Joint Petition also indicated that PAWC will propose to move the BASA system to 1.4 times the current system rate or PAWC's proposed Rate Zone 1 system-average wastewater rates, whichever is lower, on the later of the first anniversary of closing or January 1, 2025. However, per attachment OCA-I-21, BASA's year one revenue will be \$12,698,000, and under the proposed 1.4x rate increase, would increase to approximately \$17,777,200. This is still significantly less than the BASA system's predicted revenue requirement of \$31,202,000, leaving a revenue requirement deficiency of \$13,424,800 ($\$31,202,000 - \$17,777,200 = \$13,424,800$).

Further, the proposed settlement term providing for a \$228,000,000 ratemaking rate base, rather than the agreed upon purchase price of \$230,000,000, does little to alleviate this deficiency. This reduction in rate base by less than 1% of the purchase price will reduce the revenue requirement for the system by far less than 1%, still leaving a very large revenue deficiency.

BASA has been and is continuing to provide sufficient service to its customers and has made continued progress with its DEP Corrective Action Plan. BASA has been successful in its efforts to obtain low-cost financing, as evidenced by BASA's financial statements, and there is no apparent reason to believe that financing future system improvements at PAWC's cost would be more advantageous than financing available to BASA. Under BASA's continued operation or PAWC's acquisition, BASA customers will be facing a significant increase in rates to fund the required approximate \$75 million investment to address the required capital improvements. However, a municipal authority does not have include a rate of return on equity for either the \$228 million acquisition or the \$75 million for capital improvements and can obtain lower interest loans than available to an investor-owned utility such as PAWC.

Both BASA and PAWC have a similar ability to obtain the necessary financing to complete the capital improvement program, so PAWC does not provide a uniquely different advantage to BASA's ratepayers than already exists in BASA as a municipal authority. Specifically, there is no evidence that BASA can't raise capital and point to past issuances as evidence that it can raise capital. BASA has previously issued debt so we know they have the ability to raise debt. BASA has a theoretical lower cost of debt and a lower overall cost of capital if equity costs are included. Further, if PAWC cost of capital is higher it would only be in public interest if capital cannot be raised by BASA.

The Commission supports regionalization because, in many cases, the acquisition of smaller systems by larger systems may improve the long-term viability of the water and wastewater industry, or otherwise enhance ratepayers' daily lives and communities. However, in this particular instance, when evaluating the BASA system and circumstances, the proposed acquisition detrimentally impacts wastewater customers in its service territory due to increased rates without providing any substantial or necessary benefit to the BASA customers. Here, the proposed acquisition also increases costs for PAWC's current customers until and unless the BASA customers' rates increase to cover the revenue deficiency estimated in this matter.

Based upon the record evidence, PAWC has failed to establish that the sewer system under PAWC's ownership will affirmatively promote the service, accommodation, convenience, or safety of the public. In addition, the evidence did not establish that any benefit to be realized from the proposed transaction would outweigh the harms to current PAWC water and wastewater customers or existing BASA wastewater customers. As such, the Joint Petition for Unanimous Settlement that the Parties agreed to is not in the public interest and should not be approved. Therefore, it is recommended that the Commission deny the Joint Petition for Unanimous Settlement and deny the Application of PAWC to acquire the wastewater assets of BASA.

VIII. CONCLUSIONS OF LAW

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

2. The Public Utility Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. 66 Pa.C.S. §§ 1102(a)(1), (3).

3. PAWC is a public utility as defined in Section 102 of the Public Utility Code. 66 Pa.C.S. § 102.

4. PAWC has the burden of proof to show that its proposed acquisition of the Butler Area Sewer Authority's system is adequate, efficient, safe, and reasonable. 66 Pa.C.S. §315(c).

5. PAWC has the burden of proof to show that its proposed purchase of the Butler Area Sewer Authority's wastewater system would provide substantial affirmative public benefit. 66 Pa.C.S. § 1102.

6. PAWC has not established that the proposed transaction would provide the required substantial affirmative public benefits to existing PAWC customers or to the acquired Butler Area Sewer Authority's customers. 66 Pa.C.S. § 1102.

7. The Commission has the authority to grant a certificate of public convenience to a utility only when doing so is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103(a).

8. PAWC has not established that the proposed transaction is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103(a).

9. The Commission can impose conditions that it deems just and reasonable. 66 Pa.C.S. § 1103(a).

10. PAWC, as the proponent of the Application, bears the burden of proof to establish that it is entitled to receive the approvals being sought in the Application. 66 Pa.C.S. § 332(a).

11. To satisfy its burden, PAWC must demonstrate, by a preponderance of the evidence, that its proposed transaction complies with Pennsylvania law and should be approved. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

12. PAWC has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102, 1103, and 1329 of the Code. 66 Pa.C.S. § 332(a).

13. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

14. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Com. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Comm., Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

15. A certificate of public convenience will be issued “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a).

16. The Commission must issue a certificate of public convenience as prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa.C.S. § 1102.

17. To establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825 (Pa. 1972).

18. Under Section 1103, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Butler Area Sewer 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).

19. In assessing PAWC's Application, the Commission should consider the benefits and detriments of the transaction "with respect to the impact on all affected parties" including existing customers. *Middletown Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

20. The Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters. In *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007).

21. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission's jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. 66 Pa.C.S. § 1329.

22. Section 1329's fair market valuation approach dictates that once the buyer and the seller agree to its use, they must engage the services of a licensed engineer to assess the tangible assets of the seller. The licensed engineer assessment is then presented to two UVEs, one to represent the buyer and one to represent the seller, to conduct independent analyses based on the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches. For ratemaking purposes, the valuation will be the lesser of the fair market value or the negotiated purchase price. 66 Pa.C.S. § 1329.

23. If the parties agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a UVE from a list of experts established and maintained by the Commission. The selected UVEs perform independent fair market value appraisals of the system in compliance with USPAP, employing the cost, market and income approaches. 66 Pa.C.S. § 1329(a).

24. In regard to the ratemaking rate base, the General Assembly directed as follows for acquisitions proceeding under Section 1329:

(c) Ratemaking rate base. – The following apply:

(2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.

66 Pa.C.S. § 1329(c)(2).

25. "Fair market value" is defined as "[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2)." 66 Pa.C.S. § 1329(g).

26. Except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date. 66 Pa.C.S. § 507.

27. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. Pub. Util. Comm'n v. CS Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991). See also *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

28. The parties have not proven that the Settlement is in the public interest in this matter. *Pa. Pub. Util. Comm'n v. CS Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

IX. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Unanimous Settlement filed by Pennsylvania American Water Company, Wastewater, Butler Area Sewer Authority, City of Butler, Township of Butler, Bureau of Investigation and Enforcement, Office of Consumer Advocate and Office of Small Business Advocate at Docket No. A-2022-3037047 be denied;

2. That the Application filed by Pennsylvania American Water Company, Wastewater pursuant to Sections 1102, 1103, 1329, and 507 of the Pennsylvania Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Butler Area Sewer Authority, filed at Docket No. A-2022-3037047, be denied.

3. The docket at No. A-2022-3037047 is hereby marked closed.

Date: September 14, 2023

/s/
Marta Guhl
Administrative Law Judge