



September 21, 2023

VIA E-FILING

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

Re: Application of Pennsylvania-American Water Company under Section 1102(a) and 1329 of the Pennsylvania Public Utility Code, 66 Pa C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of the assets, properties and rights related to its wastewater collection and treatment system owned by the Butler Area Sewer Authority, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of Butler, portions of East Butler, and portions of the Townships of Butler, Center, Connequenessing, Oakland and Summit, in Butler County, Pennsylvania; Docket No. A-2022-3037047

Exceptions of Pennsylvania-American Water Company

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the Exceptions of Pennsylvania-American Water Company in the above-referenced proceeding. Copies are being served as shown on the attached certificate of service.

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

Sincerely,

COZEN O'CONNOR

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

DPZ/kmg
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water :
Company under Sections 1102(a) and 1329 of the :
Pennsylvania Public Utility Code, 66 Pa C.S. §§ 1102(a) :
and 1329, approval of (1) the transfer, by sale, to :
Pennsylvania-American Water Company, of : Docket No. A-2022-3037047 *et al.*
substantially all of the assets, properties and rights :
related to the wastewater collection and treatment :
system owned by the Butler Area Sewer Authority, (2) :
the rights of Pennsylvania-American Water Company to :
begin to offer or furnish wastewater service to the public :
in the City of Butler, and portions of the Borough of East :
Butler, and portions of the Townships of Butler, Center, :
Connoquenessing, Oakland, and Summit, in Butler :
County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of September, 2023 served a true copy of the foregoing **Exceptions of Pennsylvania-American Water Company** upon the parties, listed below and in the manner described below in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Marta Guhl

In re: Application of Pennsylvania-American Water :
Company under Sections 1102(a) and 1329 of the :
Pennsylvania Public Utility Code, 66 Pa C.S. §§ 1102(a) :
and 1329, for approval of (1) the transfer, by sale, to :
Pennsylvania-American Water Company, of substantially : Docket Nos. A-2022-3037047
all of the assets, properties and rights related to the : *et al.*
wastewater collection and treatment system owned by the :
Butler Area Sewer Authority, (2) the rights of :
Pennsylvania-American Water Company to begin to offer :
or furnish wastewater service to the public in the City of :
Butler, portions of the Borough of East Butler, and portions :
of the Townships of Butler, Center, Connoquenessing, :
Oakland, Penn and Summit, in Butler County, Pennsylvania :

EXCEPTIONS OF PENNSYLVANIA-AMERICAN WATER COMPANY

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September 21, 2023

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AND NOW COMES Pennsylvania-American Water Company (“PAWC” or the “Company”), pursuant to 52 Pa. Code § 5.533, to file these Exceptions to the Recommended Decision (“Recommended Decision” or “R.D.”) issued by Administrative Law Judge Marta Guhl (the “ALJ”) on September 14, 2023. PAWC respectfully requests that the Commission reverse the Recommended Decision and approve the Application,¹ as modified by the Joint Petition for Approval of Unanimous Settlement of All Issues (the “Settlement”), without modification. For ease of reference, the Application, as modified by the Settlement, will be referred to herein as the “Acquisition.”

I. PROCEDURAL HISTORY

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

PAWC incorporates by reference the procedural history set forth in the Background section of the Settlement, Settlement ¶¶ 1-14. On August 14, 2023, the Joint Petitioners submitted the Settlement. All of the active parties to the case either joined the Settlement or did not object to it.²

¹ The application was filed on February 14, 2023, and amended several times during the application completeness review process. The application, as amended, is referred to herein as the “Application.”

² At the Evidentiary Hearing, counsel for Cleveland-Cliffs Steel (“Cleveland-Cliffs”) stated that he needed to consult with his client about the Settlement. On Monday, July 31, he sent the ALJ and the Parties an e-mail stating that Cleveland-Cliffs did not oppose the Settlement. This was subsequently confirmed in a letter filed with the Commission on August 21, 2023.

The Settlement modified the Application in significant ways. Among other things, the Settlement provided that:

- PAWC would increase the eligibility for hardship grants for all PAWC customers (including existing customers) from 200% to 250% of Federal Poverty Income Guidelines (“FPIG”), Settlement ¶ 35;
- PAWC would contribute \$700,000 annually to the Company’s hardship grant program for five years following closing on the Acquisition (“Closing”) for a total of \$3,500,000, which will not be recovered in rates, Settlement ¶ 36; and
- PAWC would implement a formal program for payment arrangements for commercial customers, Settlement ¶ 37.

The ALJ notified consumer protestants of the Settlement, and gave them an opportunity to submit comments on the Settlement. No such comments were timely submitted.

The Recommended Decision proposes that the Application, as modified by the Settlement, be denied. According to the Recommended Decision, PAWC did not meet its burden of establishing that there is an affirmative public benefit to its acquisition of the System. For the reasons stated in these Exceptions, and based upon the extensive record developed in this proceeding and the commitments reflected in the Settlement, PAWC respectfully disagrees with the Recommended Decision and requests that the Commission approve the Application, as modified by the Settlement, without modification.

At the Evidentiary Hearing, counsel for Center and Summit Townships (the “Townships”) indicated that they had authority to represent that those parties would join the Settlement, subject to confirmation by their respective Township Boards. The Joint Petitioners relied on these representations to waive cross-examination of the Townships’ witnesses and to withdraw Motions to Strike portions of the testimony of the Township’s witnesses. By e-mail of August 3, 2023, Counsel for the Townships notified the ALJ and the Parties that Summit Township had adopted a motion stating “Summit Township will not oppose, nor will it contest the settlement for the sale” of BASA. That motion further stated “Summit Township will take no further action in the Protest filed with the Public Utility Commission at Docket No. A-2022-3037047.” By e-mail of August 10, 2023, Counsel for the Townships notified the ALJ and the parties that Center Township had adopted a motion that was virtually identical to Summit Township’s motion. Neither Township filed comments supporting or opposing the Settlement.

II. EXCEPTIONS

A. EXCEPTION 1: THE RECOMMENDED DECISION ERRED IN DEVIATING FROM THE COMMISSION'S SETTLEMENT POLICY AND FINDING THAT THE SETTLEMENT IS NOT IN THE PUBLIC INTEREST.

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

The Recommended Decision concluded that the unanimous settlement of all parties, resolving all issues, is not in the public interest.³ R.D. pp. 66, 71 (Conclusion of Law 28). This recommendation sends a chilling message to litigants, which will create a considerable disincentive to future settlements. This result is not in the public interest because, on a going-forward basis, it will cause litigants and the Commission to expend considerable additional resources litigating cases to conclusion because of the heightened uncertainty surrounding the Commission's policy favoring settlements. Put another way, the Recommended Decision signals to parties that there is a risk to departing from litigation positions and that compromise is

³ Although the Recommended Decision did not cite the Commonwealth Court of Pennsylvania's recent decision in *Cicero v. Pa. Pub. Util. Comm'n*, 910 C.D. 2022 (July 31, 2023), Application for Reargument *En Banc* pending, it appears to be based (at least in part) on an interpretation of that case (in which Judge Guhl served as the ALJ in the proceeding below and had her recommended denial of the application reversed by the Commission). The *Cicero* decision, however, is not final. Three Applications for Reargument *En Banc* have been filed (including one filed by the Commission). As of this date, these Applications remain pending. Even if all of these Applications are denied, one or more of the parties to that proceeding could seek review by the Supreme Court of Pennsylvania. Further, the Commission should recognize that the facts of each case are unique and distinguishable. In this case, PAWC has developed an extensive record that demonstrates numerous, specific benefits of this particular transaction. PAWC, with the assistance of BASA, the City of Butler and the Township of Butler, developed the Application with knowledge of the issues on appeal in *Cicero* and the parties negotiated the Settlement with knowledge of those issues. The Pennsylvania Consumer Advocate, who filed the *Cicero* appeal, is a signatory to the Settlement.

discouraged. PAWC respectfully submits that the Recommended Decision is in error and should be reversed as itself being contrary to the public interest.

The active parties to this case represented many stakeholders: the parties to the Transaction, the statutory advocate representing residential public utility consumers, the statutory advocate representing small business consumers, the statutory advocate representing the general public interest in Commission rate-making and service matters, local municipalities who were not parties to the Transaction, and a large commercial customer of PAWC. The Joint Petitioners, their counsel and experts have extensive experience in acquisition proceedings and a deep understanding of how the Commission has historically viewed the public interest in order to provide regulatory consistency and certainty. That extensive experience was used in this proceeding to investigate and evaluate the Application. Their knowledge, experience and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus on the issues. The Joint Petitioners, their counsel and experts fully explored the issues in this case. The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners. These facts constitute strong evidence that the Settlement is in the public interest.

Section V of the Recommended Decision summarizes the Settlement. However, the Recommendation section of the Recommended Decision, Section VII.B., discusses very few provisions of the Settlement. Accordingly, it is unclear what, if any weight, was assigned to many provisions in the Settlement.

PAWC respectfully objects to the Recommended Decision's apparent failure to give due consideration to all provisions of the Settlement in making its conclusion. Although the Application satisfied the statutory requirements of Sections 507, 1102(a) and 1329, the Joint

Petitioners reached a Settlement containing a number of additional provisions that clearly establish that the Acquisition meets the applicable legal standards (including the requirement that the Acquisition affirmatively promotes the service, accommodation, convenience or safety of the public in some substantial way, *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972)). For example:

- PAWC's customer notice had estimated that the 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. PAWC St. No. 3 pp. 13-14. The Settlement provides that, in the first base rate case in which the System is included in PAWC's rate base, PAWC will propose to move the System to 1.4 times 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. Settlement ¶ 19(e).
- BASA does not offer customer assistance programs, but PAWC does. PAWC St. No. 2-SR p. 8. PAWC already provides water service to many of BASA's existing customers. In the Settlement, PAWC agreed that, after Closing, it 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. Settlement ¶¶ 32-33. The Settlement also requires PAWC to conduct outreach to BASA customers about PAWC's low income programs, Settlement ¶¶ 32-35.
- The purchase price for the System was \$231,500,000 (which was less than the average of the two fair market value appraisals of the System). The Joint Petitioners agree that PAWC will only put \$228,000,000 into rate base as a result of the Acquisition. Settlement ¶ 21.
- The Settlement provides that PAWC will increase eligibility for hardship grants for *all* PAWC customers (not just former BASA customers) from 200% to 250% of FPIG, Settlement ¶ 35.
- The Settlement provides that PAWC will contribute \$700,000 annually to the Company's hardship grant program for five years after Closing, for a total of \$3,500,000, Settlement ¶ 36. This contribution will be in addition to any existing commitments, and any commitments made in a future base rate case. Settlement ¶ 36.
- The Settlement includes provisions similar to those included in many previous Commission-approved settlements of Section 1329 proceedings, which protect PAWC's customers from having to pay for the acquisition of easements post-Closing, Settlement ¶¶ 37-38.
- The Settlement requires that PAWC will implement a formal program for payment arrangements for commercial customers, Settlement ¶ 39.

The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401. This case is a perfect

illustration. Many of the public benefits found in the Settlement could not have been achieved in the absence of a settlement. The Commission is a creation of the General Assembly, and has only the authority that the Legislature has given it, explicitly or implicitly. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977). The Commission would not have had the authority to order many of the beneficial provisions in the Settlement. For example: unless the Commission would adjust one or both of the fair market value appraisals, the Commission could not require PAWC to use a rate base for the System that is less than both the purchase price and the average of the two fair market value appraisals, 66 Pa. C.S. § 1329(c)(2), nor could the Commission require a public utility to make involuntary, nonrecoverable charitable contributions (such as PAWC's hardship fund contributions). *See generally* 66 Pa. C.S. § 319(a)(10) ("Code of ethics") (prohibiting Administrative Law Judges and Commissioners from soliciting charitable contributions).

Each Joint Petitioner concluded that the Settlement is in the public interest. The Recommended Decision somehow reached a different conclusion. It erred by overlooking the public benefits contained in the Settlement. In the alternative, the Recommended Decision erred by giving too little weight to the benefits of the Settlement and giving too much weight to the perceived detriments of the Settlement.

For example, the Recommended Decision acknowledged that the Settlement provides that, in its next base rate case, PAWC will propose to move BASA customers to 1.4 times the current system rate or PAWC's proposed Rate Zone 1 system average rates (whichever is lower) on the later of the first anniversary of Closing or January 1, 2025. PAWC strongly believes that this provision is in the public interest because 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.

PAWC St. No. 3 pp. 13-14. In other words, it was a substantial benefit to BASA's existing customers.

The Recommended Decision, however, concluded that this Settlement provision is not in the public interest because it could have an adverse impact on the future rates of PAWC's existing customers. R.D. p. 62 and 65. The Recommended Decision fails to acknowledge that the Settlement requires PAWC merely to *propose* the specified increase and that parties to the future base rate case maintain their ability to contest the proposed rate. The Commission maintains its statutory authority and duty to set just and reasonable rates in future base rate proceedings.

Similarly, the Recommended Decision acknowledged that: (a) PAWC and BASA agreed to reduce the purchase price of the System to \$230,000,000 in the First Amendment to the APA, and (b) the Settlement provides that the ratemaking rate base will be \$228,000,000. Nevertheless, the Recommended Decision concludes that this Settlement provision is a detriment because the amount of the rate base is still too large. R.D. p. 65. It failed to consider the benefits of the Settlement: the original purchase price was \$231,500,000, which was lower than the average of the two fair market appraisals. As a result of the Settlement, PAWC is acquiring a system that was valued at more than \$239,000,000 for a purchase price of \$230,000,000, but is only placing \$228,000,000 in rate base (despite its statutory right to claim a higher rate base). These agreements will benefit all PAWC ratepayers every year, as long as PAWC owns the System, but the Recommended Decision concludes that they are a detriment.

Many previous PAWC settlements, which the Commission has approved, included a provision requiring cost-of-service studies for the acquired system in PAWC's next base rate case. The instant Settlement includes a similar provision, Settlement ¶¶ 19a, 19b, 30, and 31, but the

Recommended Decision dismisses the benefits of these provisions, focusing instead on the impact of the revenue requirement associated with the acquisition. R.D. p. 64.

Finally, the Recommended Decision states:

[A] municipal authority does not have [to] 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. [R.D. p. 65]

and

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 [the Acquisition] would only be in [the] public interest if capital cannot be raised by BASA. [R.D. p. 66]

These statements are surprising in the context of a Section 1329 application, considering that the Recommended Decision also recognizes that “Section 1329 reflects a determination by the General Assembly that fair market value acquisitions of municipal water and wastewater systems further the public interest.” R.D. p. 59. The Recommended Decision essentially held that, as long as a seller is providing adequate service and can borrow more money (which record evidence does not support), any Section 1329 application should be denied because of the rate impacts of the acquisition. This holding would prohibit all Section 1329 acquisitions except for acquisitions of troubled systems. Section 1329, however, is not restricted to acquisitions of troubled systems. The Recommended Decision improperly rewrites Section 1329.

If adopted by the Commission, the Recommended Decision’s reasoning would completely undermine the Legislature’s determination that fair market value acquisitions of municipal water and wastewater systems further the public interest. It would even suggest that the Commission

has an implicit bias in favor of government-owned utilities and against investor-owned public utilities.⁴

In *Cicero*, *supra* pp. 13-14, the OCA argued that the Commission was employing an analysis that was too lenient, allowing virtually any acquisition to be approved. The Recommended Decision goes too far in the other direction.⁵

The Commission need not develop a new standard for approving Section 1329 acquisitions in the context of this unanimous settlement of all issues. The standard is already well-established: the Commission should find that the Settlement is in the public interest. *C.S. Water and Sewer Assocs.*, *supra*.

In this case, the evidence establishes that the Settlement is in the public interest, and should be approved. The benefits of the Acquisition outweigh the detriments for all stakeholder groups. *See* Exception 3 below; PAWC Statement in Support pp. 5-19. In addition, the Settlement is in the public interest because it is consistent with Pennsylvania law. As discussed further below, the Application, as modified by the Settlement, satisfies all of the pertinent requirements of the Code, as interpreted by the Pennsylvania courts – including the requirement that the Acquisition promotes the service, accommodation, convenience or safety of the public in some substantial way. *City of York*, *supra*.

For all of the above reasons, PAWC respectfully submits that the Commission should reverse the Recommended Decision and find that the Settlement is in the public interest.

⁴ In this regard, it should be noted that the Municipalities Authorities Act, 53 Pa. C.S. § 5607(b)(2), limits the ability of municipal authorities to compete with existing enterprises serving substantially the same purposes.

⁵ It should be noted that the Commission has filed an Application for Reargument *En Banc* in *Cicero*, which remains pending.

B. EXCEPTION 2: THE RECOMMENDED DECISION ERRED BY NOT FINDING THAT PAWC IS LEGALLY, FINANCIALLY AND TECHNICALLY FIT TO OWN AND OPERATE THE SYSTEM.

Section 1103 of the Code, 66 Pa. C.S. § 1103, requires that PAWC demonstrate that it is legally, technically and financially fit to own and operate the System. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). As a certificated public utility, PAWC enjoys a rebuttable presumption that it possesses the requisite fitness. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). Although no party challenged PAWC's fitness, PAWC introduced extensive evidence demonstrating its legal, technical and financial fitness. This evidence is summarized at pages 3-5 of PAWC's Statement in Support of the Settlement, which PAWC incorporates by reference as fully as if set forth herein.

The Recommended Decision stated "No substantial challenge was presented to the fitness of PAWC to provide the proposed service." R.D. p. 60. Nevertheless, the Recommended Decision does not include a finding on this legal issue. Based on the evidence summarized at pages 3-5 of PAWC's Statement in Support of the Settlement, and the lack of any serious attempt by any party to rebut the presumption that PAWC is fit, the Commission should find that PAWC is legally, technically and financially fit to own and operate the System.

C. EXCEPTION 3: THE RECOMMENDED DECISION ERRED IN FINDING THAT THE ACQUISITION DOES NOT AFFIRMATIVELY PROMOTE THE SERVICE, ACCOMMODATION, CONVENIENCE OR SAFETY OF THE PUBLIC IN SOME SUBSTANTIAL WAY.

In addition to demonstrating fitness, PAWC must demonstrate that the Acquisition will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York, supra*. An acquisition provides an affirmative benefit if the benefits

of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950. Nevertheless, every customer need not receive a benefit from the proposed transaction. R.D. p. 57 (citing *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007)). When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. *Middletown Township v. Pa. Pub. Util. Comm'n*, 85 Pa. Cmwlth. 191, 482 A.2d 674 (1984).

The Recommended Decision denied the Acquisition because it concludes that PAWC did not bear its burden of showing that the acquisition will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. According to the Recommended Decision, the detriments of the Acquisition outweigh the benefits for BASA's existing customers, PAWC's existing wastewater customers, and PAWC's existing water customers. R.D. pp. 62-66.

PAWC respectfully submits that this was clear error. The Recommended Decision's analysis was limited to the impact of the Acquisition on BASA's existing customers and PAWC's existing customers. By failing to consider the Acquisition's impact on all stakeholders, the Recommended Decision failed to give due consideration to numerous significant benefits of the Acquisition. Furthermore, with respect to the analysis of the Acquisition's impact on BASA's existing customers and PAWC's existing customers, the Recommended Decision erred by focusing on the rate impacts of the Acquisition and failing to give due consideration to other important impacts of the Acquisition.

1. The Recommended Decision Erred by Limiting Its Analysis to the Impact of the Acquisition on Ratepayers.

When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. *Middletown Township, supra*. The Recommendation section of the Recommended Decision, however, is limited to a discussion of the impact of the Acquisition on BASA's existing customers and PAWC's existing customers. The Recommended Decision summarized the Joint Petitioners' positions on the affirmative public benefits of the Acquisition for other stakeholders, R.D. pp. 33-40, but the Recommendation section of the Recommended Decision ignores these benefits. As a result, the Recommended Decision overlooked and failed to consider numerous significant public benefits of the Acquisition.

The Acquisition benefits three important stakeholder groups that are not discussed in the Recommendation section of the Recommended Decision: (a) BASA, the City and the Township; (b) other municipalities in the Butler Area (such as Center and Summit Townships – two active parties to this proceeding who affirmatively did not object to the Settlement); and (c) the public-at-large (all residents of the Commonwealth, whether or not they are customers of BASA or PAWC). The Recommended Decision should have considered the benefits and detriments of the Acquisition for these stakeholder groups when determining whether the Acquisition affirmatively promotes the service, accommodation, convenience, or safety of the public in some substantial way. Additionally, to the extent that the Recommended Decision considered the environmental benefits of the Acquisition (a significant benefit for the public-at-large), its erroneous weighing of the benefits and detriments of the Acquisition was not supported by substantial evidence.

a. The Benefits of the Acquisition Outweigh the Detriments for BASA, the City and the Township.

The Acquisition benefits BASA (the seller of the System), as well as the City and the Township (the incorporators of BASA). The Acquisition 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. Local officials, who best know the capabilities of the BASA System, determined that the substantial costs that will be necessary in the near future to keep the System running efficiently were too great for BASA to handle and will be better addressed by a larger, more experienced public utility. Township St. No. 1 pp. 4-5; City St. No. 1 p. 5.

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. BASA St. No. 1 p. 7. BASA then will be dissolved. City St. No. 1 p. 9.

The Acquisition 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. City St. No. 1 p. 9; Township St. No. 1 p. 9. The infusion of capital from the sale will have a transformative impact on the local economy. Tr. 153.
- The System will become subject to tax. Center St. No. 1 p. 6; PAWC St. No. 1-R p. 10.
- An improved and environmentally compliant System will promote economic development, Township St. No. 1 p. 8; City St. No. 1 p. 8, Tr. 181, 189-190, further increasing tax revenues.
- 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. Township St. No. 1 p. 13; City St. No. 1 p. 13; PAWC St. No. 2-SR p. 5.
- 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. City St. No. 1 p. 13; Township St. No. 1 p. 12.

- 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. 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 at a reasonable cost to ratepayers. Township St. No. 1 p. 12; City St. No. 1 p. 10.

The record does not demonstrate that the Acquisition will have any significant detriments for BASA, the City or the Township. Balancing the benefits and the detriments of the Acquisition to BASA, the City and the Township, it is clear that the benefits outweigh the detriments for this stakeholder group.

The Recommended Decision erred by ignoring these benefits. Rates will increase for ratepayers, in part, because public utilities must pay taxes whereas municipal authorities do not. Those tax revenues benefit the public, which the Recommended Decision completely ignored. To hold that higher rates (due, in part, to taxes) is a detriment, without giving credit for the public benefits that result from those tax payments, is completely one-sided and ensures that no public utility will ever be able to purchase a system owned by a municipality or a municipal authority. This result undermines the General Assembly's purpose in enacting Section 1329.

In this case, BASA will use the proceeds of the sale to pay off public debt, saving thousands of dollars in interest expense. Those savings will be passed on to the City and the Township, who will use the balance of the sale proceeds to keep taxes stable and otherwise promote the public good.

The Recommended Decision completely ignored these specific, substantial affirmative public benefits of the Acquisition. Again, the Recommended Decision's analysis was one-sided

because it considered the detriment of including \$228,000,000 in PAWC's rate base, but did not consider the benefits of a \$230,000,000 infusion into the local economy.⁶

The Recommended Decision's section on the public interest begins by stating "Section 1329 reflects a determination by the General Assembly that fair market value acquisitions of municipal water and wastewater systems further the public interest." R.D. p. 59. The subsequent analysis, however, completely ignores some of the key benefits of such acquisitions. These benefits explain why the General Assembly determined that fair market acquisitions of municipal water and wastewater systems further the public interest: local governments want to get out of the water and wastewater business and the fair market value model allows them to monetize utility assets so they can achieve other worthwhile public purposes.⁷

BASA, the City and the Township negotiated a deal that included specific benefits that were important to them: receiving a purchase price that is commensurate with the appraised value of the System; preserving local jobs and a local operations center; and receiving a commitment that PAWC will use local contractors when feasible. The Commission should consider all of these specific public benefits when determining whether the Acquisition affirmatively benefits the public in some substantial way. If it includes these benefits in its analysis, the Commission will surely find that the Acquisition affirmatively promotes the service, accommodation, convenience or safety of the public in a substantial way.

⁶ The First Amendment to the APA reduced the purchase price for the System to \$230,000,000, whereas the Settlement provides that PAWC will only place \$228,000,000 into its rate base as a result of the Acquisition.

⁷ Although many of these benefits occur in every acquisition, they are nonetheless substantial affirmative public benefits that should not be ignored. For example, substantial public benefits flow from a municipal entity receiving a payment of \$230,000,000. These benefits should not be ignored just because every municipal entity that sells its utility assets receives proceeds from the sale.

b. The Benefits of the Acquisition Outweigh the Detriments for Other Municipalities in the Butler Area.

Municipalities surrounding the City and the Township, such as Center and Summit, will not receive any of the proceeds from the sale of the System, nor do they have any entitlement to do so. Nevertheless, the Acquisition will benefit the entire region. For example, BASA owns property in surrounding municipalities, including Center and Summit. PAWC St. No. 2-R p. 7. Because the Acquisition will make the System subject to tax, tax revenues will increase for municipalities surrounding the City and the Township.

Additionally, having an improved and environmentally compliant System will promote economic development in other municipalities in the region. Township St. No. 1 p. 8; City St. No. 1 p. 8. Improved economic development will directly benefit the residents of these other municipalities. 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 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 the poor condition of the sewer assets. PAWC St. No. 2-SR p. 3. By improving the condition of the System, the restrictions on connections can be removed and economic growth in the area can improve.

The record thus demonstrates that the Acquisition benefits other municipal entities in the Butler area. The record does not demonstrate that the Acquisition will have any significant detrimental impacts on other municipalities in the Butler area. Consequently, the record demonstrates that the Acquisition's benefits outweigh the costs for this stakeholder group.

Again, the Recommended Decision's limited focus on the benefits/detriments of the Acquisition for ratepayers completely ignores these very real benefits to other stakeholders. The affirmative benefits of the Acquisition will not be confined within the borders of the City and the Township; they will be felt throughout the region. The Commission should consider these benefits when determining whether the Acquisition affirmatively benefits the public in some substantial way. If it does, the Commission will surely find that the Acquisition affirmatively promotes the service, accommodation, convenience or safety of the public in some substantial way.

c. The Benefits of the Acquisition Outweigh the Detriments for the Public-at-Large.

The Acquisition benefits members of the public-at-large in that the Acquisition promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721(a). In part, the Acquisition accomplishes this objective because PAWC will provide both water and wastewater services to BASA's customers. PAWC Amended St. No. 1 p. 20. In addition, the Acquisition benefits members of the public-at-large by promoting the Legislature's policy goals when it enacted Section 1329. As the Recommended Decision notes, "Section 1329 reflects a determination by the General Assembly that fair market value acquisitions of municipal and wastewater systems further the public interest." R.D. p. 59.

The Acquisition also benefits the public-at-large due to its environmental benefits. The Environmental Rights Amendment in the Pennsylvania Constitution states: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment." PA. CONST. art. I, § 27. The Commission must consider

environmental impacts when adjudicating cases.⁸ *Township of Marple v. Pa. Pub. Util Comm'n*, 319 C.D. 2022 (Pa. Cmwlth. 2023).

The Recommended Decision dismisses the environmental benefits of the Acquisition, saying “While BASA is currently under a [Department of Environmental Protection (“DEP”)] compliance plan, it appears that [BASA] is making progress in remediating issues and providing safe service.” R.D. p. 63. *See also*, R.D. p. 65. BASA’s current status of “making progress in remediating issues” should not negate the extensive evidence of BASA’s long history of repeated environmental violations, and the benefits that would come from the transfer of the System to PAWC (which has an excellent track record of environmental compliance).

The System has a long history of environmental non-compliance. BASA entered into a Consent Order and Agreement with DEP in 2001, with which BASA did not comply. As a result, in 2006, BASA had to pay stipulated penalties. In 2006, BASA and DEP entered into a second Consent Order and Agreement. BASA complied with this agreement, but needed to enter into another Corrective Action Plan in 2019 (the “2019 CAP”). PAWC St. No. 2 pp. 13-15. All work on the 2019 CAP was to be completed by June 30, 2024, but BASA submitted a revised 2019 CAP to DEP on October 13, 2020 requesting an extension of the completion date to December 31, 2025. DEP approved this revised 2019 CAP and deadline on February 22, 2021. BASA then 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. DEP approved this second revision to the 2019 CAP and completion deadline on June 2, 2022. PAWC St. No. 2 pp. 14-15; BASA St. No. 1 p. 6.

⁸ However, Section 1329 does not require that a system be a troubled system in order to be acquired pursuant to that section.

If the Acquisition is not approved, BASA's environmental challenges will continue well into the future. BASA has admitted that it will need to significantly increase customers' rates to deal with its environmental challenges, but even with a significant rate increase, BASA believes it lacks the necessary skillset, expertise, and project experience to complete the large scale, complex projects that are needed to bring the System into compliance. BASA St. No. 1 p. 7. Moreover, compliance with the 2019 CAP will not address the System's numerous other issues. PAWC St. No. 2 p. 11. 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 inflow and infiltration through its Realty Transfer Inspection Program. Nearly forty percent (40%) of these inspections failed and required a replacement lateral. BASA St. No. 1 pp. 6-7.

The BASA System continues to experience sewer system overflows ("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 DEP for illegal SSO discharges. Each of these SSO discharges resulted in raw sewage being discharged into the environment where it can come into contact with humans, pets, and wildlife, or be detrimental to aquatic life. Raw sewage can contain bacteria, viruses and parasites that are a direct threat to human health and the environment. PAWC St. No. 2 p. 14; PAWC St. No. 2-R p. 6; BASA St. No. 1 p. 4.

The Recommended Decision seriously undervalued the significance of these repeated instances of environmental non-compliance by simply saying that BASA is "making progress in remediating issues." As a result, the environmental impacts of the decision were not adequately

considered, as required by the Environmental Rights Amendment and appellate case law.⁹ *Township of Marple, supra*. The Commission should not make the same mistake.

Similarly, the Recommended Decision undervalued the significance of these instances of environmental non-compliance by stating that the record demonstrates the “adequacy” of existing BASA service. R.D. p. 62. While PAWC will not go so far as to say that BASA lacks technical fitness, PAWC respectfully submits that there is a broad range of “adequate” service. By way of analogy, an “A” and a “D” are both passing grades, but most people would want their children to get the “A.” Similarly, PAWC respectfully submits that most consumers would want to receive grade “A” utility service rather than something that is just barely adequate. The Commission should find that transferring the System from BASA to PAWC will produce environmental benefits for all Pennsylvanians, which affirmatively benefits the public in a substantial way.

If the Acquisition is approved, PAWC will assume BASA’s responsibilities under the 2019 CAP to rebuild the existing infrastructure in order to eliminate the persistent SSOs. PAWC St. No. 2 p. 16. 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 inflow and infiltration and/or SSOs, make process improvements that will yield environmental, safety and security benefits to customers and employees, and improve the efficiency of operations. PAWC St. No. 2 p. 17.

⁹ The Recommended Decision also creates a warped incentive structure for BASA. Local officials want to sell the System, but the Recommended Decision finds that the System is not in bad enough shape yet to approve its transfer. This creates an incentive for an unwilling owner to cease maintaining its system, which is certainly not in the public interest. Moreover, allowing the System to further deteriorate would (a) decrease the value of the System if it is sold in the future, and (b) increase the cost to rehabilitate the System if it is sold in the future. Neither result is in the public interest.

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 customer connection. PAWC St. 2 p. 20. The record demonstrates that PAWC is better equipped than BASA to address the System's existing environmental challenges and to prevent future challenges as environmental regulations become increasingly strict in the future. The Acquisition therefore yields benefits for the public-at-large that differ substantially from the benefits already being provided by the existing system operator.

The record does not demonstrate any significant environmental or other detriments from the Acquisition to the public-at-large. Consequently, the net benefits of the Acquisition far outweigh the net detriments to this stakeholder group. The Recommended Decision erred by failing to give sufficient weight to these affirmative public benefits.

2. The Recommended Decision Erred in Its Analysis of the Impact of the Acquisition on BASA's Existing Customers and PAWC's Existing Customers.

The Recommended Decision found that the Acquisition should be disapproved because the detriments outweigh the benefits for BASA's existing customers, PAWC's existing wastewater customers, and PAWC's existing water customers. This was error. As discussed below, the Commission should find that the Application, as modified by the Settlement, yields net benefits for each of these stakeholder groups.

a. The Benefits of the Acquisition Outweigh the Detriments for BASA's Existing Customers.

The Acquisition has benefits for BASA's existing customers that outweigh the detriments.¹⁰ First, BASA's customers will experience the same benefits and detriments from the Acquisition 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. These benefits will be particularly meaningful to BASA's existing wastewater customers because they are directly affected by the System's on-going environmental non-compliance issues. As discussed above, the benefits of the Acquisition outweigh the detriments for the public-at-large.

Second, BASA's existing customers will receive unique benefits from the Acquisition that are not enjoyed by other members of the public-at-large. These include:

- PAWC originally estimated that rates for BASA's existing customers could increase by 94.4% in the first PAWC base rate case in which the System is included. The Settlement provides that PAWC will propose to move BASA customers to 1.4 times the current system rate or PAWC's proposed Rate Zone 1 system average rates (whichever is lower) on the later of the first anniversary of Closing or January 1, 2025. Settlement ¶ 19(e).

¹⁰ According to the Recommended Decision, "[t]here was significant public opposition to the acquisition presented at the public input hearings." This inaccurate observation overlooks a critical fact: few of the witnesses at the public input hearing were customers of BASA. This reflects the extensive efforts of BASA, the City and the Township to inform the public about the Transaction. Based on their extensive knowledge of the proposal, and the situation faced by BASA, the vast majority of the people most affected by the Transaction did not see the need to attend the public input hearing to voice concerns about it. PAWC St. No. 1-SR pp. 2-3.

Of those BASA customers who did voice concerns about the Transaction at the public input hearings, two were witnesses for active parties to the proceeding. They should not have been permitted to "take another bite at the apple" by testifying at the public input hearing. Another witness opposing the Transaction was the spouse of one of these witnesses. Of the remaining witnesses from the BASA area, several supported the Transaction. In short, out of 14,792 existing BASA customers, a very small percentage testified against it at the public input hearings. PAWC St. No. 1-SR pp. 2-3.

The Recommended Decision stated: "Existing BASA customers did not seem to have many issues with the quality of service that is provided currently by BASA." R.D. p. 62. Considering the small number of BASA customers who testified about the Transaction at the public input hearings, a reasonable alternative interpretation of the public input testimony would be that the existing BASA customers did not seem to have many issues with the proposed Transaction.

Finally, it should be noted that the public input hearing was held before the terms of the Settlement were made public. On August 16, 2023, the ALJ served the Settlement on several consumers who had protested the Application, offering them an opportunity to submit comments or objections. No comments or objections to the Settlement were timely filed.

- The Acquisition will cause economies of scale at the System 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. Tr. 299-300.
- BASA does not currently have any customer assistance programs, but PAWC does. PAWC St. No. 2-SR p. 8. If the Acquisition is approved, many BASA customers who cannot currently receive assistance will be eligible to do so.
- 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. PAWC St. No. 3 p. 7.
- 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 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. Township St. No. 1 p. 13; City St. No. 1 p. 13; PAWC St. No. 2-SR p. 5.
- 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. Settlement ¶¶ 32.
- 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. PAWC St. No. 1 p. 18; PAWC St. No. 2 p. 39; PAWC St. No. 2-SR p. 6.
- The OCA, the OSBA, and I&E could serve as ombudsmen for BASA customers. BASA customers currently have no such ombudsman. PAWC St. No. 2 pp. 40-41.
- After Closing, PAWC will conduct outreach activities to existing BASA customers to inform them of PAWC's customer-assistance programs. Settlement ¶¶ 32-34.
- PAWC will use commercially reasonable efforts to develop a pilot program for a customer-owned damaged wastewater service lateral replacement program, and will petition the Commission for approval of that pilot program. PAWC St. No. 1 p. 14.

Some of these benefits occur every time a public utility acquires a system owned by a municipality or municipal authority. Nevertheless, these are real benefits that *will* be experienced by BASA's customers and therefore should be considered in weighing the costs and benefits of this specific Acquisition. For example, the Commission should find that BASA customers will

benefit from receiving service from a Commission-regulated public utility as compared to a non-jurisdictional entity. Public utility rates are often higher than rates charged by systems owned by municipalities or municipal authorities, in part, because of the assessments that are charged to utilities for the expenses of operating the Commission, the OCA and the OSBA. This assessment is imposed on regulated public utilities, but not on non-jurisdictional entities. It would be completely one-sided and unfair to hold that higher rates caused by Commission assessments are a detriment, but the regulatory oversight financed by those assessments is not a benefit.

Third, if the Acquisition is approved, BASA's customers will enjoy many of the same benefits from the Acquisition as will other PAWC customers. These benefits are discussed further below, but they 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). Settlement ¶ 21.
- PAWC will increase the eligibility for hardship grants from 200% to 250% of FPIG. Settlement ¶ 35.
- PAWC will contribute \$700,000 annually to the Company's hardship grant program for five years following 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. Settlement ¶ 36.
- PAWC will implement a formal program for payment arrangements for commercial customers. Settlement ¶ 39.

The Recommended Decision concluded that the rate impacts of the Acquisition for BASA customers outweigh all the benefits of the Acquisition. R.D. p. 64. This was error.

In terms of the rate impacts, if the Acquisition is not approved, BASA will likely need to impose a significant, abrupt rate increase to help fund capital projects. City St. No. 1 p. 9; Township St. No. 1 p. 8. In setting these new rates, BASA would not be subject to Commission oversight to ensure that the new rates are just and reasonable. PAWC St. No. 1-R p. 12.

In contrast, if the Acquisition 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. PAWC St. No. 3 p. 11. In the first base rate case in which the System is included in PAWC's rate base, PAWC will propose to move the System to the lower of: 1.4 times the current System rate or PAWC's proposed Rate Zone 1 system-average wastewater rates. Settlement ¶ 19(e). In that base rate case, the Commission will ensure that rates are just and reasonable. 66 Pa. C.S. § 1301. The Commission has many tools at its disposal to achieve that result, including rate design and Act 11 of 2012, 66 Pa. C.S. § 1311(c)(allowing allocation of a portion of wastewater revenue to water revenue requirement if in public interest).

Comparing the rates for BASA's existing customers if the Acquisition is approved to rates for BASA's existing customers if the Acquisition is not approved involves a great deal of speculation; it is not at all certain. One witness at the public input hearing (who had not seen the Settlement) testified that he believed the rate increases will be greater if the System remains with BASA rather than being sold to PAWC. Tr. 108, 110. PAWC respectfully submits that the Recommended Decision overstated the rate impact of the Acquisition for BASA's existing customers.

PAWC also respectfully submits that the Recommended Decision under-valued the other benefits of the Acquisition for BASA's existing customers. It states "many of the benefits identified by PAWC are generalizations associated with acquisitions and do not address the corresponding harm or potential harm to ... [BASA] customers after acquisition." R.D. p. 60. This was error.

As discussed above, the Recommended Decision apparently failed to consider many of the specific benefits contained in the Settlement. For example, BASA's existing low-income customers do not have access to any customer-assistance programs. They will now become eligible for assistance. This benefit may occur in many acquisitions, but it would certainly be an important benefit to low-income customers who currently receive no assistance in paying their utility bills. Additionally, BASA customers will benefit from PAWC's commitments to move to metered rates and to develop a pilot program for a customer-owned damaged wastewater service lateral replacement program.

An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *CMV Sewage Co., Inc., supra*. Considering all of the above, the Commission should reverse the Recommended Decision and find that the benefits of the Acquisition outweigh the detriments for BASA's existing customers.

b. The Benefits of the Acquisition Outweigh the Detriments for PAWC's Existing Wastewater Customers.

The Acquisition has benefits for PAWC's existing wastewater customers that outweigh the detriments. First, the Acquisition benefits PAWC's existing wastewater 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. As discussed above, the benefits of the Acquisition outweigh the detriments for the public-at-large.

Second, the Acquisition has specific benefits for PAWC's existing wastewater customers. One such benefit is the addition of approximately 14,792 customers. PAWC St. No. 1 p. 16. The Acquisition would expand PAWC's wastewater customer base by approximately 15.2%.¹¹

¹¹ PAWC has 97,305 existing wastewater customers. PAWC St. No. 1 p. 16. $14,792/97,305 = 15.2\%$.

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 wastewater 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. PAWC St. 1-SR pp. 14-15.

Consistent with Section 1329, the Application asked the Commission to approve the collection of a Distribution System Improvement Charge (“DSIC”) related to the System before the first base rate case in which the System plant-in-service is incorporated into rate base. Application, ¶¶ 2 and 17. 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. Settlement ¶ 24. This Settlement provision benefits PAWC's existing wastewater customers by ensuring that they do not have to pay all the costs of improving the System.

Additionally, PAWC cannot include the System in its DSIC until certain conditions are met. The only condition that has yet to be satisfied is for PAWC to file a compliance tariff incorporating the System into PAWC's DSIC tariff after Closing. The Settlement contains a deadline for PAWC to file this tariff. Settlement ¶ 25. “Having the acquired customers pay a DSIC is one small way in which PAWC's existing customers can receive a short-term benefit from

the acquisition – by spreading the costs recovered through the DSIC over a larger customer base.”
OCA St. No. 1 p. 26 (emphasis added).

The Settlement contains the following additional benefits for PAWC’s existing wastewater customers:

- PAWC will increase the eligibility for hardship grants to all PAWC customers (including existing customers) from 200% to 250% of FPIG, Settlement ¶ 35;
- PAWC will contribute \$700,000 annually to the Company’s hardship grant program for five years following Closing, Settlement ¶ 36; and
- PAWC will implement a formal program for payment arrangements for commercial customers, Settlement ¶ 37.

Nevertheless, the Recommended Decision found that the rate impact of the Acquisition would outweigh all of the above benefits of the Acquisition for PAWC’s existing wastewater customers. At the time of filing the Application, PAWC estimated that 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. PAWC St. No. 3 p. 15. In addition, the Recommended Decision noted, the Settlement includes a cap on the amount of the increase that PAWC will propose for BASA customers in the first base rate case in which the System is included. The Recommended Decision considered this provision a detriment for PAWC’s existing wastewater customers because it means they might pay more of the revenue deficiency from the System. R.D. p. 62.

The Settlement includes a provision requiring that PAWC 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. Settlement ¶ 21. This provision will reduce the financial impact of the acquisition on PAWC’s existing wastewater customers in every future rate case. Nevertheless, the Recommended Decision concluded that this reduction in rate base was not enough; the adverse rate impact of the Acquisition still outweighed all of the benefits of the Acquisition for this stakeholder group. R.D. p. 65.

The Recommended Decision, however, overstated the rate impact of the Acquisition for PAWC's existing wastewater customers because it did not limit the analysis to the facts of this Acquisition. The Recommended Decision considered the rate impact of this Acquisition *together with* the rate impacts of other PAWC acquisitions – both acquisitions that have already been approved by the Commission and acquisitions that remain pending before the Commission. R.D. 62 (“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 was error. The Commission should not deny this Acquisition based on other acquisitions that the Commission has already found to be in the public interest, nor should the Commission deny this Acquisition because of pending acquisitions, which may or may not be approved by the Commission.

The Acquisition will have no immediate rate impact on PAWC's existing wastewater customers. PAWC Amended St. 1 p. 19. Any future rate impact will be determined by the Commission in future rate cases, based on the requirement that rates be just and reasonable. 66 Pa. C.S. § 1301. The Commission has many tools at its disposal to keep rates just and reasonable. As a result, it is impossible to know for certain what the rate impact of the Acquisition will be for PAWC's existing wastewater customers.

In contrast, the valuable public benefits of the Acquisition for PAWC's existing wastewater customers are known with considerable certainty. All of these customers will enjoy the benefits of a cleaner environment. All of them will also benefit from having more customers as part of PAWC's wastewater system in perpetuity, spreading the costs of improvements anywhere in the system in every future rate case. Some of them will become eligible for low-income customer assistance because of the expansion of eligibility for these programs. Some of them will also

receive low-income customer assistance because of the Company's increased contributions to its Hardship Fund. Some of them will benefit from the creation of a formal payment arrangement program for commercial customers.

Considering the uncertainty of the extent of the rate impacts on PAWC's existing wastewater customers, and the certainty of the benefits of the Acquisition for this group of stakeholders, the benefits of the Acquisition outweigh the detriments for PAWC's existing wastewater customers. Even if the Commission agrees with Judge Guhl's conclusion that the detriments outweigh the benefits for PAWC's existing wastewater customers (which it should not), it should still approve the Acquisition. "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." R.D. p. 61. Considering all of the benefits and detriments from the Acquisition as a whole, PAWC respectfully submits that the Acquisition affirmatively benefits the public in a substantial way. Consequently, the Commission should reverse the Recommended Decision's finding that the Acquisition should be denied because of the rate impacts for PAWC's existing wastewater customers.

c. The Benefits of the Acquisition Outweigh the Detriments for PAWC's Existing Water Customers.

The Acquisition has benefits for PAWC's existing water customers that outweigh the detriments. First, the Acquisition benefits PAWC's existing water 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. These benefits will be particularly meaningful to PAWC's existing water customers who are also existing wastewater customers of BASA, because they are directly affected by the System's on-going non-compliance

issues. As discussed above, the benefits of the Acquisition outweigh the detriments for the public-at-large.

Second, some of PAWC's existing water customers are also BASA's existing wastewater customers. As discussed above, the benefits of the Acquisition outweigh the detriments for BASA's existing wastewater customers.

Third, the Acquisition has additional benefits for all of PAWC's existing customers. Many of these provisions were discussed above, because they also apply to PAWC's existing wastewater customers. For example, the Settlement contains the following benefits for PAWC's existing water customers:

- PAWC will increase the eligibility for hardship grants to all PAWC customers (including existing customers) from 200% to 250% of FPIG, Settlement ¶ 35;
- PAWC will contribute \$700,000 annually to the Company's hardship grant program for five years following Closing, Settlement ¶ 36; and
- PAWC will implement a formal program for payment arrangements for commercial customers, Settlement ¶ 37.

Thus, PAWC's water customers will benefit from greater access to PAWC's customer assistance programs and from PAWC's implementation of a program for payment arrangements for commercial customers.

The Acquisition will have no immediate rate impact on PAWC's existing water customers. PAWC Amended St. 1 p. 19. Any future rate impact will be determined by the Commission in future rate cases, based on the requirement that rates be just and reasonable. 66 Pa. C.S. § 1301.

Nevertheless, the Recommended Decision found that the detriments of the Acquisition will outweigh the benefits for PAWC's existing water customers. R.D. pp. 63-65. This is because of the rate impacts of the Acquisition on PAWC's existing water customers. This conclusion was error.

PAWC estimated that the acquisition of the System could cause rates for PAWC's existing water customers to increase by 0.8% in the first base rate case in which the System is included in PAWC's rate base. PAWC St. No. 3 p. 15. According to the Recommended Decision, this figure is low because of the Settlement provision limiting the amount of the rate increase that PAWC will propose for BASA customers in the first base rate case in which the System is included. R.D. p. 62. The Recommended Decision considered this Settlement provision a detriment for PAWC's existing water customers because it means they might pay more of the revenue deficiency from the System. R.D. p. 62.

Additionally, as discussed above, the Settlement includes a provision requiring that PAWC 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. Settlement ¶ 21. This provision will reduce the financial impact of the acquisition on PAWC's existing water customers in every future rate case. Nevertheless, the Recommended Decision concluded that this reduction in rate base was not enough; the adverse rate impact of the Acquisition still outweighed all of the benefits of the Acquisition for this stakeholder group. R.D. p. 65.

As was the case for PAWC's existing wastewater customers, the Recommended Decision overstated the rate impact of the Acquisition for PAWC's existing water customers. The Recommended Decision did not limit its analysis to the facts of this Acquisition. It considered the rate impact of this Acquisition together with the rate impacts of other PAWC acquisitions – both acquisitions that have already been approved by the Commission and acquisitions that remain pending before the Commission. R.D. 62 and 64 (“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.”). This was error. The Commission should not

deny this Acquisition based on other acquisitions that the Commission has already found to be in the public interest, nor should the Commission deny this Acquisition because of pending acquisitions, which may or may not be approved by the Commission.

The Recommended Decision also stated:

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.*

R.D. p. 62 (emphasis added). According to this reasoning, no utility that provides both water and wastewater service could ever acquire a wastewater system because such an acquisition would always be to the detriment of water customers who already pay for wastewater service. The Commission should reject this reasoning.

The Recommended Decision reviewed past PAWC rate cases to determine the amount of the wastewater revenue requirement that has been allocated to water customers, but its analysis overlooks the key legal point. Section 1311(c) of the Code, 66 Pa. C.S. § 1311(c), allows a utility that provides both water and wastewater service to allocate a portion of its wastewater revenue requirement to water customers – but only if the Commission determines that such an allocation is “in the public interest.” It is illogical to hold that the present Acquisition is not in the public interest, because of its potential rate impact on PAWC's existing water customers, when this Acquisition will never have any impact on those customers unless the Commission finds that such a result is in the public interest.

Considering all of the above, it is clear that the benefits of the Acquisition outweigh the detriments for PAWC's existing water customers. Consequently, the Commission should reverse the Recommended Decision's finding that the Acquisition should be denied because of the rate impacts for PAWC's existing water customers.

III. REQUEST FOR RELIEF

The Commission should reverse the Recommended Decision and approve the Application, as modified by the Settlement, without modification. The Application, as modified by the Settlement, is in the public interest and satisfies all legal standards established in the pertinent sections of the Code and applicable Pennsylvania case law.

Additionally, approving the Settlement without modifications would result in the final resolution of this proceeding. Since all active parties to this case have either joined the Settlement or advised the ALJ that they have no objection to it, no active party would have standing to appeal a Commission order approving the unanimous settlement. The Commission and the parties to this proceeding would not need to expend additional resources litigating this matter.

On the other hand, if the Commission would adopt the Recommended Decision, there is a reasonable likelihood that at least one party would file an appeal. Additionally, any Joint Petitioner could withdraw from the Settlement, Settlement ¶ 41, requiring this matter to be remanded for further proceedings. In the proceedings on remand, it is unlikely that the Joint Petitioners would be willing to enter into another unanimous settlement, considering that the instant unanimous settlement was disapproved by the ALJ. As a result, the Joint Petitioners and the Commission would need to devote considerable additional resources to this matter. These expenditures would ultimately be passed on to ratepayers in the form of higher rates and assessments. This result would not be in the public interest. Moreover, as discussed above, many of the benefits of the Settlement would be irretrievably lost because the Commission would lack statutory authority to include similar provisions in its order resolving a fully-litigated case.

If the Commission would choose a third path, by modifying the Recommended Decision and approving the unanimous Settlement with modifications, due process would require that the Commission issue a Tentative Order and afford the Joint Petitioners an opportunity to comment

on the proposed modifications. This process could prevent the Commission from complying with Section 1329's requirement that the Commission issue a Final Order within six months of the date the case is filed. 66 Pa. C.S. § 1329(d)(2). Additionally, there is a reasonable likelihood that at least one Joint Petitioner would withdraw from the Settlement and proceed with litigation, Settlement ¶ 41. The disadvantageous results of this scenario were described above.

Considering all of the above, the Commission should reverse the Recommended Decision and approve the Application, as amended by the Settlement, without modification. This result promotes administrative efficiency, gives effect to the carefully crafted compromise among parties with extensive experience in Section 1329 proceedings, and allows the Commission to meet its statutory deadline for issuing a Final Order. More importantly, it is the right thing to do because the unanimous settlement of all issues is in the public interest and satisfies all requirements of the Code and applicable case law.

IV. CONCLUSION

WHEREFORE, for all of the reasons set forth above, Pennsylvania-American Water Company respectfully requests that the Commission:

- (a) reverse the Recommended Decision, and
- (b) grant the relief requested in Section IV of the Settlement (including, but not limited to, approving the Application and approving the Settlement as submitted, including all terms and conditions thereof, without modification).

[Signatures appear on next page.]

Respectfully submitted,



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