



November 30, 2023

VIA E-FILING

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Re: Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of the Transfer, by Sale, of Substantially All of the Assets, Properties and Rights Related to the Wastewater Collection and Conveyance System Owned by Borough of Brentwood; and the Rights to Begin to Offer or Furnish Wastewater Service to the Public in the Borough of Brentwood, Allegheny County, Pennsylvania; Docket No. A-2021-3024058, et al.

Main Brief of Pennsylvania-American Water Company

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Main Brief of Pennsylvania-American Water Company in the above-referenced matter.

Copies are being served in accordance with the attached Certificate of Service.

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

Sincerely,

Cozen O'Connor
Counsel for *Pennsylvania-American Water Company*

DPZ/kmg
Enclosure

cc: Administrative Law Judge Katrina L. Dunderdale
Per Certificate of Service
Elizabeth Rose Triscari, Esq.
Erin Fure, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water Company :
Pursuant to Sections 1102 and 1329 of the Public Utility :
Code for Approval of the Transfer, by Sale, of :
Substantially All of the Assets, Properties and Rights :
Related to the Wastewater Collection and Conveyance : Docket No. A-2021-3024058 *et al.*
System Owned by Borough of Brentwood; and the :
Rights to Begin to Offer or Furnish Wastewater Service :
to the Public in the Borough of Brentwood, Allegheny :
County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of November, 2023 served a true copy of the foregoing **Main Brief 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 Katrina L. Dunderdale

In re: Application of Pennsylvania-American Water :
Company for Approval of the Transfer, by Sale, of :
Substantially all of the assets, properties and rights :
related to the wastewater collection and conveyance : Docket Nos. A-2021-3024058 *et al.*
system Owned by Borough of Brentwood and the :
rights to begin to offer or furnish wastewater service :
to the public in The Borough of Brentwood, :
Allegheny County, Pennsylvania :

**MAIN BRIEF OF PENNSYLVANIA-AMERICAN
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November 30, 2023

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AND NOW COMES Pennsylvania-American Water Company (“PAWC” or the “Company”) to submit this Main Brief pursuant to 52 Pa. Code §§ 5.501 and 5.502, and Prehearing Order #1 issued in this matter on October 18, 2023 by Administrative Law Judge Katrina L. Dunderdale (the “ALJ”). For the reasons set forth below, PAWC respectfully requests that the ALJ recommend that the Commission approve PAWC’s application (the “Application”) to acquire the wastewater collection and conveyance system (the “System”) owned by the Borough of Brentwood (“Brentwood”). The evidentiary record developed in this proceeding clearly demonstrates that, upon weighing all of the benefits and detriments of the transaction, the acquisition would produce an affirmative public benefit of a substantial nature. Brentwood is not currently , and is not capable prospectively of, providing adequate service (having, among other things, been under environmental consent orders for 16 of the last 19 years) and the rate impact upon Brentwood-area wastewater customers and PAWC’s existing wastewater and water customers would be minimal.

I. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

PAWC and Brentwood entered into an Asset Purchase Agreement, dated as of December 22, 2020, by which PAWC will purchase the System (the “Transaction”). PAWC and Brentwood executed a First Amendment on March 2, 2023 (the Asset Purchase Agreement, as amended, is referred to herein as the “APA”).

On March 31, 2023, PAWC filed the Application asking the Commission to approve its acquisition of the System pursuant to 66 Pa. C.S. §§ 507, 1102 and 1329. Amendments to the Application were filed on May 31, 2023 and July 5, 2023.

On April 7, 2023, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention. On May 5, 2023, the Office of Consumer Advocate (“OCA”) filed a Protest. On May 12, 2023, counsel for the Commission’s Bureau of Investigation and Enforcement (“I&E”) entered her appearance.

On April 18, 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. On May 2, 2023, PAWC filed the requested information. Updated responses were filed on May 11, 2023. Further updates were filed on June 15, 2023. On June 22, 2023, staff from TUS notified PAWC that they had determined that certain information remained missing. PAWC filed the requested information on July 6, 2023.

By Secretarial Letter dated July 20, 2023, the Commission conditionally accepted the Application. By Secretarial Letter dated July 25, 2023, the Commission established a due date of October 16, 2023 for filing protests and notices of intervention.

On September 5, 2023, PAWC filed a verification stating that it had complied with all service and notice requirements of the Secretarial Letter of July 20, 2023. On September 14, 2023, the Commission notified PAWC that it had finally accepted the Application. Notice of the Application was published in the Pennsylvania Bulletin on September 30, 2023 at 53 *Pa.B.* 6139.

On October 2, 2023, Brentwood filed a Petition to Intervene. On October 11, 2023, the Allegheny County Sanitary Authority (“ALCOSAN”) filed a Petition to Intervene. Both Petitions to Intervene were granted.

On November 8, 2023, PAWC, Brentwood and ALCOSAN filed a Joint Stipulation, which was marked as Exhibit ALJ -1.¹ Evidentiary Hearings were held on November 8 and 14, 2023. On November 14, 2023, PAWC, Brentwood and ALCOSAN filed an Amended Joint Stipulation, which was marked as Exhibit ALJ-2. Counsel for PAWC moved to admit Exhibit ALJ-2 into the record, or, in the alternative, to admit Exhibit ALJ-1 into the record (the “Motion”). On November 16, 2023, the ALJ denied the Motion. On November 17, 2023, the record was closed.

B. OVERVIEW OF THE PROPOSED TRANSACTION

1. THE SYSTEM

Brentwood owns and operates the System, Brentwood St. No. 1 p. 5, which directly serves customers located in Brentwood. PAWC St. No. 2 p. 3. As of February 2023, the System furnished wastewater service to approximately 3,980 customers. Brentwood St. No. 1 p. 6.

The System is a collection and conveyance system that consists of approximately 200,000 linear feet of gravity collection mains, approximately 1,050 manholes, associated infrastructure and appurtenances, and numerous related land rights (including easements and rights of way). The vast majority of the System is nearly 100 years old. Brentwood St. No. 1 p. 5.

The System is located within, and is part of, the ALCOSAN regional interceptor system. Brentwood’s customers receive wastewater treatment service from ALCOSAN through its wastewater treatment plant in Pittsburgh. The System receives sewage flow from two municipalities (the “Upstream Municipalities”) and discharges sewage flow into two municipalities (the “Downstream Municipalities”). Brentwood does not charge the Upstream Municipalities for their flows into Brentwood’s System, nor do the Downstream Municipalities

¹ Also on November 8, 2023, PAWC filed a general base rate base for wastewater operations. *Pa. Pub. Util. Comm’n v. PAWC*, Docket Nos. R-2023-3043189 (Water) and R-2023-3043190 (Wastewater), which includes the System.

charge Brentwood for Brentwood's sewage flows into their systems. Brentwood has entered into cost-sharing arrangements with other members of the ALCOSAN system for capital improvement projects. PAWC St. No. 2 p. 6.

Brentwood is a party to the Pittsburgh Zone Project Agreement of December 1, 1949, between ALCOSAN, the City of Pittsburgh, and Borough of Brentwood (the "Z Agreement"). Brentwood and PAWC entered into a Cooperation and Allocation of Responsibilities Agreement ("Cooperation Agreement") defining and agreeing to allocate certain rights and obligations to PAWC under the Z Agreement. Brentwood will remain primarily responsible for its municipal rights and obligations under the Z Agreement. Brentwood St. No. 1 p. 6.

Brentwood has eight employees in its Department of Public Works who are tasked with the administration and management of the System, but this is a very small portion of their responsibilities. The System does not employ an in-house engineer. Brentwood St. No. 1-R p. 3.

Each month, Brentwood customers receive a bill with two separate components: (1) the ALCOSAN fees for treatment service, and (2) the Borough's fees for collection and conveyance service.² Brentwood St. No. 1 p. 19. Brentwood has no control over the fees established by ALCOSAN and Brentwood customers are treatment customers of ALCOSAN, not Brentwood. As of January 1, 2023, ALCOSAN assessed a \$7.30 service fee per household and a \$10.42 consumption fee per thousand gallons of water used. Brentwood St. No. 1 pp. 7, 19-20. The fees charged by Brentwood are set annually by the Brentwood Borough Council. The Borough currently assesses a \$4.57 service fee per household and an \$8.91 consumption fee per thousand

² Pursuant to Section 16 of the Z Agreement, PAWC St. No. 1, Exhibit MS-2, Appendix A-25.3, the Borough selected the option of becoming the billing agent for ALCOSAN. In return, ALCOSAN annually pays the Borough an amount approximating the amount that ALCOSAN saved in billing expenses.

gallons of water used. Brentwood St. No. 1 p. 20. Brentwood has not increased the fee it charges to System customers since 2019. Brentwood St. No. 1 p. 10.

2. PAWC'S WASTEWATER OPERATIONS

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. As of February 28, 2023, PAWC furnished wastewater service to approximately 97,325 residential, commercial, industrial, municipal and bulk customers in Pennsylvania. As of February 28, 2023, PAWC furnished water service to approximately 680,144 customers in Pennsylvania. PAWC St. No. 1 pp. 14, 16. PAWC currently provides water service throughout the Brentwood wastewater service area. PAWC St. No. 2 p. 9.

After Closing on the Transaction, the System will become an operating district in PAWC's Southwest Area operations. Current PAWC employees in the McKeesport wastewater operation will be available to assist Brentwood with wastewater operations, as needed. In addition, all operations and employees within PAWC and within the broader American Water footprint have access to each other when circumstances require or when a specialized skill or experience is needed to support local issues. PAWC St. No. 2 p. 10.

3. CHRONOLOGY OF THE TRANSACTION

Beginning in September 2019, with the assistance of outside experts, Brentwood undertook an extensive process to value the System, assess future costs of capital and revenue requirements, evaluate the ongoing time commitments of borough personnel to address System issues, and carefully consider the numerous qualitative and quantitative factors that weigh in favor

of or against Brentwood keeping the System. Brentwood St. No. 1 pp. 9-10. Brentwood determined that its continued ownership of the System was no longer feasible, considering the administrative and financial burden of operating the System, the capital investment necessary to improve the aging System, and the challenges posed by the persistent environmental compliance issues in the region generally. Brentwood St. No. 1 Pp. 8-10.

Brentwood identified two options: (1) transfer ownership of the large intermunicipal trunk lines to ALCOSAN for no compensation and continue to own and maintain other collection assets, or (2) exit the sewer business by selling the System and allocating certain rights and obligations under the Z Agreement to a Commission-regulated utility. Brentwood decided the second option was in its best interest financially and administratively. Brentwood St. No. 1 p. 10-11.

On September 25, 2020, Brentwood issued the Borough of Brentwood Sewer System Sale - Request for Bids (“RFB”) for the sale of the wastewater collection system assets. On October 28, 2020, PAWC submitted a proposal to acquire Brentwood’s wastewater system assets. PAWC St. No. 1 p. 8; Brentwood St. No. 1 p. 11. Brentwood’s Borough Council discussed the potential sale at several public meetings where residents had the opportunity to attend and provide comments. Brentwood St. No. 1 pp. 11-13. Brentwood also published articles regarding the proposed sale of the System in the Spring 2020, Winter 2020, and Spring 2021 editions of the Borough’s IN Community magazine. Brentwood St. No. 1 p. 13.

After arms-length negotiations with PAWC, on December 7, 2020, Brentwood Borough Council unanimously approved the sale of the wastewater collection system. Brentwood St. No. 1 p. 13. On December 22, 2020, Brentwood and PAWC entered into the Asset Purchase Agreement for the sale of substantially all the assets, properties, and rights of the Borough’s System at an agreed-upon price. PAWC St. No. 1 p. 8.

4. SUBSTANCE OF THE TRANSACTION

The APA sets forth the terms and conditions pursuant to which Brentwood will sell, and PAWC will purchase, the System. PAWC St. No. 1 p. 10. The consideration for the purchase of the System is \$19,364,443, subject to certain adjustments. In addition, PAWC will pay Brentwood up to \$70,000 as reimbursement for engineering and legal fees incurred related to the Transaction, upon receipt of invoices evidencing the amount of transaction-related fees incurred, prior to Closing. PAWC St. No. 1 p. 12. As of the Closing Date, Brentwood will fund an easement escrow fund in the amount of \$2,000 for each missing easement. PAWC St. No. 1 p. 13.

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 Brentwood's current customers and Brentwood will permanently discontinue furnishing wastewater service to the public. PAWC St. No. 1 pp. 10-11.

Upon Closing of the Transaction, PAWC will implement the Borough's wastewater rates then in effect. PAWC St. No. 3-REV p. 7. PAWC will not increase these rates until after the second anniversary of the Closing Date. PAWC St. No. 1 p. 13. Immediately upon Closing, the Borough's customers will be subject to PAWC's prevailing wastewater tariff on file with the Commission with respect to miscellaneous fees and charges, rules, and regulations for wastewater service. In addition, PAWC will bill customers the treatment charges for ALCOSAN at the rates determined by ALCOSAN – as Brentwood currently does. PAWC St. No. 3-REV p. 7. PAWC will be compensated for this service in an amount approximating the amount that ALCOSAN saves because PAWC is acting as billing agent. PAWC Exhibit MS-2 Appendix A-25.3 ¶ 16. Borough customers will not be charged a distribution system improvement charge (“DSIC”) until after

PAWC's Long Term Infrastructure Improvement Plan ("LTIIIP") has been amended to include the System. PAWC St. No. 1 p. 13.

5. THE APPLICATION

PAWC and Brentwood elected to use the process 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. 4. As required by Section 1329, PAWC and Brentwood jointly retained the services of an engineer (The Gateway Engineers, Inc.) to complete an engineer's assessment of the System. PAWC Exhibit MS-2 Appendix A-15-a .

PAWC's utility valuation expert ("UVE") appraisal, the "Fair Market Appraisal Report of Borough of Brentwood (PA) Wastewater System, as of January 1, 2023," was performed by Jerome C. Weinert, Principal and Director of Weinert Appraisal and Depreciation Services, LLC ("WAD Consultants"). WAD Consultants is a registered Utility Valuation Expert with the Commission. PAWC St. No. 4 pp. 1, 3. This appraisal valued the System at \$22,721,549. PAWC St. No. 4 p. 3.

Brentwood's UVE appraisal, "Borough of Brentwood Wastewater System Assets Fair Market Value Appraisal at January 13, 2023," was completed by Harold Walker III of Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett Fleming"). Brentwood St. 2 pp. 2, 3. Gannett Fleming is a UVE registered with the Commission. Brentwood St. No. 2 pp. 2, 4, 9. This appraisal valued the System at \$20,934,000. Brentwood St. No. 2 p. 13.

PAWC was delayed in filing the Application due to the need to resolve certain rights and obligations of Brentwood and PAWC pursuant to the Z Agreement, which was determined to be not directly assignable to PAWC. On March 2, 2023, Brentwood and PAWC entered into the Cooperation Agreement. PAWC filed the Application on March 31, 2023.

II. BURDEN OF PROOF

As the party seeking affirmative relief from the Commission, PAWC has the burden of proof in this proceeding. 66 Pa. C.S. § 332(a). PAWC must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). That is, PAWC's evidence must be more convincing, by even the smallest amount, than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Any finding of fact necessary to support the Commission's decision must be supported by substantial evidence, which is such evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa 109, 413 A.2d 1037 (1980).

Once PAWC establishes a *prima facie* case by presenting substantial record evidence in support of the proposed action, the burden of production shifts to the other parties. If the other parties present evidence of co-equal value or weight, the burden of going forward with some additional evidence to rebut the opposing party's evidence then shifts back to PAWC. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (1983). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts; the burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

III. SUMMARY OF ARGUMENT

The crux of this case is whether to approve the Transaction. The applicable legal standard is the affirmative public benefit test; PAWC must show that the Transaction will "affirmatively promote the service, accommodation, convenience or safety of the public in some substantial

way.” *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (1972). When the benefits of the Transaction are weighed against the detriments, the preponderance of the evidence shows that the specific benefits of this particular Transaction clearly outweigh any perceived detriments. This is particularly clear when one compares what would happen (a) if the Commission approves the Transaction (thereby allowing PAWC to acquire the System) to (b) what would happen if the Commission disapproves the Transaction (thereby maintaining the *status quo*).

This is also clear when one compares the instant Transaction to other recent transactions. In the most recent Section 1329 case to come before the Commission, the Commission approved PAWC’s acquisition of the Butler Area Sewer Authority (“BASA”). *Application of PAWC to Acquire the Wastewater Collection and Treatment System Owned by the Butler Area Sewer Authority*, Docket No. A-2022-3037047 (Opinion and Order entered Nov. 16, 2023) (“*BASA Order*”). In that case, as in this case, the proposed acquisition had important environmental benefits (PAWC would assume the seller’s responsibilities under a Corrective Action Plan to rebuild infrastructure to address environmental compliance issues). In the BASA case, as in this case, the buyer proposed a multi-million dollar capital plan to upgrade and maintain the system. *BASA Order* p. 61. In the BASA case, as in this case, disapproving the acquisition would result in a substantial rate increase by the seller (in doing so, the seller would not be subject to the Commission's oversight), whereas approving the acquisition would have no immediate rate impact on the seller’s customers. *Id.* pp. 61-62. Finally, in that case, as in this case, the benefits of the acquisition outweigh the detriments for PAWC’s existing customers when considering the uncertainty of the extent of the rate impacts and the certainty of the benefits. *Id.* p. 62.

In another recent case, *Cicero v. Pa. Pub. Util. Comm’n*, 300 A.3d 1106 (Pa. Cmwlth. 2023), *petitions for allocatur pending* (“*Cicero*”), the Commonwealth Court of Pennsylvania (the

“Commonwealth Court”) disapproved a public utility’s acquisition of a municipally-owned wastewater system, finding that the transaction did not pass the affirmative public benefit test. In that case, the Court found that the Commission relied on its policy favoring regionalization and consolidation, and the applicant’s fitness, to find that the benefits of the acquisition outweighed the detriments.

In the BASA proceeding, at least one Commissioner found the *Cicero* case distinguishable on the facts. *See, Statement of Chairman Stephen M. DeFrank* p. 2. The instant Transaction is also distinguishable from *Cicero* on the facts. In this case, PAWC does not rely on its legal, technical and financial fitness to establish that the Transaction is in the public interest. Instead, PAWC and Brentwood have established an extensive record showing a number of specific benefits from the Transaction that outweigh the detriments of the Transaction for each relevant stakeholder group.³ Comparing what would happen if the Transaction is approved to what would happen if the *status quo* is maintained demonstrates that PAWC would do more than just provide the same level of services as are already being provided by Brentwood.

As stated above, the instant transaction has significant environmental benefits; similar benefits were not present in the *Cicero* case. In this case, unlike the *Cicero* case, the seller’s customers who testified at the public input hearing voiced unanimous support for the Transaction. One witness noted that the Brentwood area has many senior citizens living on fixed incomes. She argued that the sale proceeds from the Transaction could help the Borough keep taxes stable, which would benefit the public – particularly the seniors in the area. PAWC St. No. 1-R pp. 2-4. Finally, in this case, unlike the *Cicero* case, rates for the seller’s customers will increase regardless of

³ As Vice Chairman Barrow stated in oral remarks from the Bench in the BASA proceeding, it is the weight of the benefits and detriments, not the number of benefits and detriments, that controls.

whether the Transaction is approved. In fact, if the Transaction is disapproved, Brentwood customers are likely to experience a substantial rate increase in the near term (possibly an increase of 29% by 2026, based on inflation alone, compared to an increase of 11% based on the Transaction) without receiving any of the benefits of the Transaction.

In this case, the benefits of the Transaction outweigh the detriments for each relevant stakeholder group. Consequently, PAWC respectfully requests that the ALJ recommend that the Commission approve the Transaction.

IV. ARGUMENT

A. SECTION 1102 AND 1103 ISSUES

1. FITNESS

The Commission may issue a certificate of public convenience (“Certificate”) upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a) (“Procedure to obtain certificates of public convenience”). An applicant for a Certificate must demonstrate that it is technically, financially, and legally fit to own and operate the System. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985). 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). The record demonstrates PAWC’s fitness, and no party has challenged PAWC’s fitness.

With respect to technical fitness, PAWC is the Commonwealth’s largest water and wastewater provider. PAWC employs about 1,150 professionals with expertise in all areas of water and wastewater utility operations. In addition, as a subsidiary of American Water, PAWC has available to it additional highly-trained professionals with expertise in specialized areas.

PAWC St. No. 2 p. 21. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes and infrastructure. PAWC has funded more than \$1 billion in infrastructure investment in the past five years. 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. In fact, PAWC is often called upon by the Commission to step in and resolve troubled water and wastewater systems.⁴ PAWC has demonstrated its ability to improve troubled municipal wastewater systems following acquisition through improving operational efficiencies, fostering a proactive environmental compliance culture in the local workforce, and investing capital to replace and renew assets. PAWC St. No. 1, pp. 22; PAWC St. No. 2 pp. 22.

With respect to legal fitness, PAWC has had no material issues in complying with the Code, the Clean Streams Law, or other regulatory requirements. PAWC St. 2 p. 23. There are no pending legal proceedings that would suggest that PAWC is not legally fit to provide wastewater service to System customers. PAWC St. No. 1 p. 21.

With respect to financial fitness, PAWC had total assets of approximately \$5.9 billion as of December 31, 2021. In addition, PAWC had a net income of approximately \$228.7 million for the 12 months ending December 31, 2021. PAWC St. No. 1 p. 21. In addition to positive operating cash flows, PAWC may obtain financing through a \$400 million line of credit, long term debt financing, and equity investments. PAWC St. No. 3 p. 4.

PAWC is a financially-sound business that can financially support the acquisition of the System as well as the ongoing operating and investment commitments that will be required to

⁴ See, e.g., *Joint Petition of Pennsylvania-American Water Company and the Department of Environmental Protection Requesting an Ex Parte Emergency Order in Regard to Receivership of East Dunkard Water Authority*, Docket No. P-2023-3043950 (Ratification Order entered November 20, 2023).

operate, maintain and improve those assets in serving the public. PAWC does not anticipate that the Transaction will harm PAWC's financial status in any manner. PAWC St. No. 3-REV pp. 3-

4. PAWC witness Everette testified:

Given its size, access to capital and its recognized strengths in system planning, capital budgeting and construction management, PAWC is well-positioned from a financial, managerial and technical perspective to ensure that high quality wastewater service meeting all federal and state requirements is provided to Brentwood's customers and maintained for PAWC's existing customers.

PAWC St. No. 3-REV p. 3.

2. SUBSTANTIAL PUBLIC BENEFIT TEST

In addition to demonstrating fitness, PAWC must demonstrate that the Transaction and PAWC's ownership/operation of the System will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." *City of York*. The affirmative public benefits test does not require that every utility customer benefit from the proposed transaction, nor does it require that the utility's proposed action be absolutely necessary. *Cicero*.⁵ Instead, the affirmative public benefit test is a "net benefits assessment." An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950. When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. *Middletown Township v. Pa. Pub. Util. Comm'n*, 482 A.2d 674 (1984).

⁵ The OCA (the party which was successful in the *Cicero* case), has argued that *Cicero* is not a "paradigm shift." According to the OCA, the Commonwealth Court did not deviate from or contradict prior appellate decisions; it simply applied them to the record before it. OCA's Answer in Opposition to Petitions for Allowance of Appeal, *Cicero v. Pa. Pub. Util. Comm'n*, 568-570 MAL 2023 (filed November 9, 2023).

PAWC respectfully submits that the Transaction provides a substantial affirmative public benefit because it benefits all of the stakeholder groups impacted by the Transaction: the public-at large; Brentwood (as the seller) and its citizens; the existing customers of Brentwood’s System; and the existing water and wastewater customers of PAWC. When one compares what would happen if the Commission approves the Transaction to what would happen if the Commission would maintain the *status quo* by disapproving the Transaction, it is obvious that PAWC would do more than just provide the same level of services as are already being provided by Brentwood. Even if the ALJ disagrees with PAWC, and finds that the Transaction does not benefit one particular stakeholder group, the net benefits to all of the stakeholder groups, taken together, outweigh the net detriments to all of the stakeholder groups. As a result, the Transaction yields a net benefit to the public and should be approved.

a. THE TRANSACTION BENEFITS THE PUBLIC-AT-LARGE

The Transaction benefits members of the public-at-large (all residents of the Commonwealth, whether or not they are customers of Brentwood or PAWC) in that the Transaction promotes the Legislature’s policy goals when it enacted Section 1329. PAWC St. No. 1 p. 21. The Commission has recognized that Section 1329 reflects a Legislative determination that fair market value acquisitions of municipal water and wastewater systems further the public interest. *See Implementation of Section 1329 of the Public Utility Code – Tentative Implementation Order*, Docket No. M-2016-2543193 (Order entered Jul. 21, 2016) (“*TIO*”) and *Implementation of Section 1329 of the Public Utility Code – Tentative Supplemental Implementation Order*, Docket No. M-2016-2543193 (Order entered Sept. 20, 2018) (“*TSIO*”).

In addition, the Transaction benefits the public-at-large because it promotes the Commission’s policy favoring regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721(a). The Transaction promotes consolidation because the Transaction will

result in one existing wastewater provider acquiring another's system, and the seller will cease to provide service. In addition, the Transaction promotes consolidation because one entity will provide both water and wastewater services to Brentwood's customers. PAWC Amended St. No. 1 p. 17; Tr. 156. The Transaction also promotes regionalization because the Brentwood System is close to PAWC's McKeesport system; although the two systems are not interconnected, they can still share resources, improving the economic efficiency of both systems. Tr. 156.

Brentwood is part of the ALCOSAN regional interceptor system. By stepping into the shoes of Brentwood, PAWC will not weaken the existing regional system. PAWC has an excellent working relationship with ALCOSAN. It is significant that ALCOSAN does not oppose the Transaction; if ALCOSAN was concerned that the Transaction would weaken its regional interceptor system, it would oppose the Transaction. PAWC St. No. 2-R p. 16. Additionally, by giving PAWC a presence in the ALCOSAN system, the Transaction could contribute to further regionalization and consolidation in the future because PAWC is more likely than Brentwood to acquire additional wastewater systems in the ALCOSAN regional system. Tr. 157.

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." The Commission must consider environmental impacts when adjudicating cases. *Township of Marple v. Pa. Pub. Util Comm'n*, 294 A.3d 965 (Pa. Cmwlth. 2023). The environmental benefits of the Transaction are not just benefits to the customers of the System; they benefit all residents of the Commonwealth.

"Brentwood has been, and continues to be, in violation of state and federal environmental regulations." PAWC St. No. 2-R p. 2. The System has a long history of environmental challenges,

which Brentwood has not been able to resolve.⁶ This is not surprising because 75% of the System was built between 1925 and 1930. PAWC St. No. 2 p. 3. Given that most of the System is aged, the System is bound to fail. Tr. 120. PAWC witness Hufton testified at length about the System’s extensive history of environmental challenges. Since 2022, the System has been subject to a Consent Order and Agreement (“COA”) with the Allegheny County Health Department (“ACHD”). From 2016-2018, the System was under a different COA with ACHD. From 2005 to 2015, the System was under an Administrative Consent Order with ACHD. In short, for 16 of the last 19 years, the System has been subject to a regulatory order due to persistent environmental violations in its operations. PAWC St. No. 2-R p. 5. Even before that, as far back as 1983, Brentwood was under a Corrective Action Plan (“CAP”) with the Pennsylvania Department of Environmental Protection (“DEP”). PAWC St. No. 2 pp. 11-16; PAWC St. No. 2-R pp. 2-4. Brentwood has had every opportunity to properly upgrade its System, but has failed to do so. Tr. 151.

OCA witness DeMarco states that Brentwood has complied with the milestones in its current environmental agreements. OCA St. 1 p. 10. He jumps to the conclusion: “The record in this case shows that Brentwood can maintain the system and improve environmental compliance.” OCA St. 1SR p. 7. Based on Brentwood’s proven track record of environmental non-compliance, it is difficult to take this comment seriously. PAWC witness Hufton stated that, if the Transaction is disapproved, Brentwood would not have the financial and technical capabilities to materially improve its environmental performance in the future.⁷ PAWC St. No. 2 p. 20. Even if Brentwood

⁶ If a Commission-regulated utility had a similar history of environmental non-compliance over a prolonged period, the Commission might initiate a proceeding to order the acquisition of the utility by a capable public utility pursuant to 66 Pa. C.S. § 529.

⁷ In weighing the evidence, PAWC respectfully submits that the ALJ should consider the foundation for each witness’s testimony. OCA witness DeMarco and I&E witness Kubas admitted that they have not viewed the System, nor have

had the financial resources to bring the System into compliance (which record evidence does not support), the Borough Manager of Brentwood does not believe the Borough has the technical expertise to do so.⁸ Brentwood St. No. 1-R p. 7.

Mr. DeMarco further claims that “[t]he record also shows that the cost [to maintain the system and improve environmental compliance] – based on cost of capital – would be less under Brentwood than PAWC.” OCA St. 1SR p. 7. Again, the evidence does not support the proffered conclusion. Cost of capital is just one element of the total cost of wastewater service to customers. Just because Brentwood’s cost of capital is lower does not mean that Brentwood customers would be better off if the Transaction is disapproved, compared to if it is approved.

PAWC has committed to investing over \$8 million in the System within five years of Closing to help improve environmental compliance. PAWC St. No. 2 p. 18, PAWC Exhibit DJH-2. If the Transaction is approved, the Commission could permit PAWC to spread these costs among its large water and wastewater customer base. In contrast, if the Transaction is disapproved, each of Brentwood’s 3,980 customers would need to pay over \$2,000 to finance these same improvements (not including amounts needed to pay debt service, if Brentwood obtains a loan).

I&E witness Kubas states that Brentwood is providing “adequate” service, primarily because it is “making efforts to comply with the environmental challenges.” I&E St. 1-SR p. 5;

they spoken with Brentwood officials or customers about the System. The testimony of Messrs. Kubas and DeMarco was based entirely on their review of the papers exchanged in this proceeding. Tr. 189, 249. Additionally, OCA witness DeMarco did not testify as a fact witness; he purported to testify as an expert on “policy.” OCA St. 1SR p. 3; Tr. 188. In contrast, PAWC witnesses Salvo and Hufton have considerable knowledge of the System through their due diligence activities. PAWC St. 2 pp. 1-2; Tr. 116, 149. Similarly, the Borough Manager of Brentwood has occupied that position since 2008 and supervises the Director of the Department of Public Works. Brentwood St. No. 1 pp. 2-3. He has extensive knowledge of the System because of his daily job responsibilities.

⁸ I&E witness Kubas contends that, if the Transaction is disapproved, Brentwood could spend money (such as by hiring contractors) to improve its technical fitness. Tr. 331. As discussed in Section IV.A.2.c. below, if the Transaction is disapproved, Brentwood customers are likely to see a substantial rate increase in the near term – without receiving the benefits of the Transaction. The Commission should not add insult to injury by requiring Brentwood customers to pay higher rates so the Borough can duplicate the technical expertise that it would have received if the Transaction had been approved.

I&E St. No. 1 p. 7. This argument should likewise be rejected. PAWC witness Hufton testified that being under a regulatory order such as a Consent Order means that a system has persistently violated environmental regulations to the point that the regulator had to step in and enforce a regulatory order. In this case, Brentwood has been under a regulatory order for 16 of the past 19 years. Being compliant with the terms of a Consent Order does not mean that the System is in compliance with environmental regulations. If the system was compliant with applicable regulations, it would not be under a Consent Order. PAWC St. No. 2-R pp. 2-4; Tr. 146. PAWC respectfully submits that Brentwood is not in compliance with environmental laws and regulations at the present time, and there is no reason to believe it will become compliant if the Transaction is disapproved.

Mr. Kubas also hypothesizes that some environmental issues in the Borough could be the result of pollution coming from Upstream Municipalities. I&E St. No. 1-SR p. 4. PAWC witness Hufton explained that, in the one Brentwood sewershed that is contributing to the sanitary sewer overflow (“SSO”), the ACHD identified Brentwood as the majority contributor. Brentwood, not the Upstream Municipalities, is responsible for this illegal SSO. Tr. 148-149.

The question before the Commission is whether the Transaction will result in affirmative public benefits, so the Commission should compare what would happen if the Transaction is disapproved as compared to what would happen if the Transaction is approved. If the Transaction is disapproved, there would be no change in the *status quo*. Brentwood would remain in violation of applicable environmental laws for the foreseeable future. Brentwood’s Borough Manager testified: “I cannot recall an instance where the Borough proactively funded, designed and implemented an improvement in its System (aside from routine required maintenance and repairs) as is evident from the fact that the majority of the System is nearly a century old.” Brentwood St.

No. 1-R p. 5. If Brentwood did not comply with applicable environmental laws and regulations when Brentwood wanted to own and operate the System, there is no reason to believe its performance will improve if it is forced to continue operating a System it does not want.

In contrast, if the Transaction is approved, PAWC will “not only comply with the provisions of the current COA but also prevent the need for future regulatory orders.” PAWC St. No. 2-R p. 4. PAWC will invest over \$8 million in the System within five years of Closing. PAWC Exhibit DJH-2. PAWC also will incorporate the Brentwood System into its comprehensive and proactive environmental compliance program. PAWC St. No. 2 p. 17. This program includes a level of continuing capital investment that is more than three times the level of investment that Brentwood has made in its System in recent years (\$762 per year per customer connection compared to \$236 per year per customer connection). PAWC St. No. 2 p. 22.

PAWC has a good compliance history. PAWC St. No. 1 p. 21. No PAWC system is under a regulatory order (except for systems that were recently acquired, and PAWC is in the process of bringing them up to regulatory standards). PAWC St. No. 2-R p. 7. PAWC has experience turning around systems with environmental challenges similar to those of the Brentwood System (such as the Clarion Area Sewer Authority and the Scranton Sewer Authority). PAWC St. No. 2-R p. 4.

In short, the preponderance of the evidence demonstrates that Brentwood is not providing, and is not capable of providing, the same or similar benefits as PAWC in terms of compliance with environmental laws and regulations.

In the *TIO* p. 2, and the *TSIO* p. 4, the Commission recognized that there a number of water and wastewater systems owned by municipalities or authorities throughout the Commonwealth where sale to an investor-owned public utility can facilitate necessary infrastructure improvements

and ensure the continued provision of safe, reliable service to customers at reasonable rates. Brentwood's collection and conveyance system is such a system.

The record demonstrates that the Transaction will benefit members of the public-at-large, in part, because of its significant environmental benefits. The record does not establish that the Transaction will have any material detrimental impacts for members of the public-at-large. Consequently, the ALJ should recommend that the Commission find that the benefits of the Transaction outweigh the detriments for the public-at-large.

b. THE TRANSACTION BENEFITS THE BOROUGH OF BRENTWOOD AND ITS CITIZENS

The Transaction benefits Brentwood, the seller of the System. The Transaction accomplishes the will of the elected officials who worked hard over many months to consider the advantages and disadvantages of Brentwood's continued ownership of the System. Brentwood St. 1 pp. 9-13. Those officials determined that the Borough's "continued ownership of the System was no longer feasible when [they] considered the administrative and financial burden of operating the System, the capital investment necessary to improve the aging system, and the challenges posed by the persistent environmental compliance issues in the region generally." *Id.*, p. 10.

The public was kept apprised of developments throughout the sale process by a thorough public awareness campaign. Brentwood St. 1 pp. 12-13. It is not surprising that all of the witnesses from the Brentwood area who testified at the public input hearing on the Transaction supported the Transaction. The people who know the System best, and will be most affected by the Transaction, understand that the Transaction will benefit the public.

The Transaction's primary benefit for Brentwood is that Brentwood will receive over \$19 million, which it will use for public purposes. Although the Borough Council has not committed on how it will use the sale proceeds, it may allocate at least some of the proceeds to: (1) eliminating

the Borough's debt, (2) funding renovations to the Borough's Civic Center; (3) assisting with future grant matching/cost sharing opportunities for other projects, (4) maintaining current tax rates, and (5) creating an economic development fund. Brentwood St. No. 1 p. 18. "Each Brentwood sewer customer is either a citizen or property owner in Brentwood, and thus will reap the benefits of however Brentwood chooses to spend the proceeds received from the Proposed Transaction." Brentwood St. No. 1-R. p. 11.

In contrast, if the Transaction is not approved, "with some of the Borough's debt repayment obligations (approximately \$900,000 per year), the Borough may be required to increase taxes to create financial breathing room." Brentwood St. No. 1 p. 5. These tax increases would be in addition to any rate increases that are necessary if the Transaction is disapproved, because the System is funded through rates, not taxes. Tr. 176. Any reprieve that the Borough can provide its constituents with respect to property taxes is a benefit. Brentwood St. No. 1 p. 5.

The Transaction will also benefit Brentwood by enabling it to reallocate administrative resources to focus on other key initiatives. Brentwood St. No. 1 p. 18. If the Transaction is approved, the eight employees of Brentwood's Department of Public Works could focus on their other duties, including maintaining roads, maintaining the stormwater system, removing snow, maintaining parks and swimming pools, controlling traffic, maintaining the Borough stadium and four ballfields, maintaining all Borough facilities, assisting capital construction contractors, and ensuring that all rights-of-way are clear of any obstruction. Brentwood St. No. 1 pp. 14-15; Brentwood St. No. 1-R p. 2.

The Transaction will have numerous other benefits for the Borough, including:

- increasing tax revenues because a public utility's assets are subject to tax, whereas a municipality's assets are not subject to tax, Tr. 342;
- reducing the Borough's delinquent account balance, which is typically \$400,000-\$500,000, due to unpaid wastewater rates, Brentwood St. No. 1 p. 17;

- reducing Borough expenses because it will no longer spend resources chasing bad debt, Brentwood St. No. 1-R p. 10.

In his testimony, Mr. Kubas contended that there are intangible benefits from municipal ownership of the System, such as local control. Tr. 257. The democratically-elected officials of the Borough – who are very familiar with the System – carefully considered all of the tangible and intangible benefits and detriments of the Transaction and determined that the benefits outweigh the detriments for the Borough and its citizens. Brentwood St. 1 pp. 9-19. PAWC respectfully submits that the ALJ should recommend that the Commission also find that the benefits of the Transaction outweigh the detriments for this stakeholder group.

c. THE TRANSACTION BENEFITS THE CUSTOMERS OF THE BRENTWOOD SYSTEM

The Transaction impacts Brentwood’s existing customers in the same way that it impacts all other members of the public-at-large. As discussed above, the Transaction has net benefits for members of the public-at-large. Additionally, as also discussed above, all of the customers of the System will benefit from the Transaction in their capacity as citizens of Brentwood.

Much of the opposition to the Transaction has been focused on the impact of the Transaction on the rates of Brentwood’s customers.⁹ Before addressing this point, a few preliminary points should be noted.

First, at the Evidentiary Hearing of November 8, 2023, PAWC witness Salvo described the estimated rate impact on Brentwood’s customers as “minimal,” Tr. 119, which prompted questions from counsel for the OCA, Tr. 123, and the ALJ. Tr. 135. Mr. Salvo was speaking based on his experience in and knowledge of other PAWC Section 1329 proceedings.

⁹ Ironically, despite this focus on the Transaction’s rate impact, the OCA and I&E seek conditions on the Commission’s approval that would increase rather than alleviate the rate impact of the Transaction, such as by shifting an existing ALCOSAN-funded discount to be a PAWC ratepayer-funded discount. See Section IV.E.5, *infra*.

To place the estimated rate increase on Brentwood’s customers in context, the chart below compares the estimated rate increases in this case to those proposed in PAWC’s four most recently-approved Section 1329 wastewater acquisitions.

Acquired System	Docket Number	Estimated Increase in Rates			PAWC’s Proposed Rate Increase, in the Next Base Rate Case, for Acquired Customers ¹⁰
		Acquired System’s Customers	PAWC’s Wastewater Customers	PAWC’s Water Customers	
Brentwood	A-2021-3024058	11.0%	0.3%	0.0%	11% ¹¹
Butler Area Sewer Authority	A-2022-3037047	94.4%	7.0%	0.8%	40%
City of York Sewer Authority	A-2021-3024681	47.5%	8.0%	1.3%	47%
Upper Pottsgrove Township	A-2020-3021460	42.1%	2.0%	0.1%	46%
Valley Township	A-2020-3020178	25%	2.3%	0.1%	25%

Second, as discussed at length in Section IV.B.6.a, *infra*, all of the assets that PAWC is acquiring in this proceeding are used and useful in providing service to Brentwood’s customers. The ALJ should reject any argument that the proposed ratemaking rate base is too high because it includes assets that are not used and useful in providing service to Brentwood’s customers.

¹⁰ In Butler Area Sewer Authority, City of York Sewer Authority and Valley Township, the Commission approved settlements in which PAWC agreed to propose in its next rate case a rate increase that was the lower of its system-wide average Zone 1 rates or these percentages. For Upper Pottsgrove Township, the Commission approved a settlement in which PAWC agreed to propose in its next base rate case the lower of its system-wide average Zone 1 rates or cost of service and in its next rate case PAWC proposed moving Upper Pottsgrove customers to Zone 1 rates which was a 46% proposed increase.

¹¹ Docket No. R-2023-3043190, PAWC St. No. 10 p. 49.

Third, the proposed ratemaking rate base is the negotiated purchase price of \$19,364,443. This is more than 11% lower than the average of the two fair market value appraisals. *See* Section IV.B.1., *infra*. It is a public benefit that PAWC is acquiring the System for substantially less than its value, according to two Commission-recognized utility valuation experts.

The record demonstrates that a rate increase for Brentwood’s customers is inevitable, whether or not the System is sold. Brentwood St. No. 1-R p. 7, Tr. 136. If the Transaction is approved, there will be no rate increase for two years following Closing. PAWC St. No. 3-R p. 2. Any rate impact after that time will be determined by the Commission, based on the requirement that rates be just and reasonable. 66 Pa. C.S. § 1301.

The Company estimated the rate impact of the Transaction in accordance with the settlement approved by the Commission in *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered Oct. 3, 2019) (“*Steelton Order*”). Using that methodology, the rate impact of the Transaction for Brentwood’s existing customers is estimated to be 11.0%. PAWC St. No. 3-REV p. 13. To put that figure in context, because the APA provides for a two-year rate freeze after Closing, and Closing cannot occur until after the Commission approves the Transaction, the rate freeze will continue until at least April 2026. Based on the consumer price index, the inflation rate for the 12-month period ending September 2023 was 3.7%.¹² At that pace, prices will rise by about 9.25% compared to present levels just because of inflation by the time the

¹² <https://www.bls.gov/news.release/pdf/cpi.pdf>

rate freeze is over.¹³ PAWC St. No. 1-R p. 12. The incremental impact of the Transaction on rates is quite modest.

On the other hand, if the Transaction is disapproved, rates will increase without Commission oversight. Brentwood 1-R p. 14-15. This rate increase could occur in the near future; Brentwood has not raised rates since 2019 in anticipation of the Transaction, but this is not sustainable. Brentwood St. No. 1 p. 10. The rate increase could be greater than it would be if the Transaction is approved – without any of the benefits of the Transaction. Brentwood 1-R p. 8. During his testimony, Borough Manager Zboyovsky stated that, in 2012, the Borough estimated that it would need to increase its collection rates by 50% by 2027. Tr. 178.¹⁴ Since the Borough has not raised rates since 2019, Brentwood St. 1-R p. 9, a large portion of these estimated rate increases have yet to take effect.

Moreover, since Brentwood has not raised rates since 2019, if the Transaction is disapproved, rates will need to increase substantially just because of inflation over the last four years. The Consumer Price Index for all Urban Consumers (“CPI-U”) as of October 2019 was 257.346, whereas the CPI-U for October 2023 was 307.671¹⁵ – an increase of 19.55%. Thus, if the Transaction would be disapproved, Brentwood would need to increase rates immediately by almost 20% just to maintain the *status quo*.

In summary, if the Commission approves the Transaction, Brentwood customers will go from 2019 to 2026 with a rate increase of 11% due to the Transaction, but if the Commission disapproves the Transaction, Brentwood customers could see a rate increase of nearly 29% over

¹³ 3.7% (not compounded) over a period of 2.5 years is 9.25%.

¹⁴ This estimate was only for increases in the Borough’s rate for collection and conveyance service. If increases in ALCOSAN’s treatment charges are included, Brentwood customers could experience a 160% increase in rates by 2027. Tr. 179.

¹⁵ https://www.bls.gov/regions/mid-atlantic/data/consumerpriceindexhistorical_us_table.htm

that same period just because of inflation (19.55% from 2019-2023 plus 9.25% from 2023 to 2026). This 29% rate increase would maintain the *status quo* – it would not fund any upgrades to the System. This increase, for example, would not fund \$8 million in capital improvements to the System, which PAWC has promised to complete within five years after Closing. As discussed above, if the Transaction is disapproved, each of Brentwood’s 3,980 customers would need to pay another \$2,000 (not including amounts needed to pay debt service, if Brentwood obtains a loan) to finance these same improvements.

If the Transaction is approved, Brentwood will lose access to ALCOSAN’s Grow grants and cost splitting. OCA St. 1 p. 19. These amounts available from this program, however, are small compared with the System’s needs. Brentwood received a grant of approximately \$160,000 for one project through this program, and ALCOSAN contributed \$72,000 to another project through this program. OCA Exhibit ND-7. PAWC has superior access to capital to invest in the System. Tr. p. 122. PAWC has committed to invest more than \$8,000,000 in the System during the first five years after Closing on the Transaction. PAWC St. No. 2; PAWC Exhibit DJH-2.

Of course, the decision to approve or disapprove the Transaction will impact more than just the rates for Brentwood customers. If the Transaction is disapproved, service will continue to be provided by eight members of the Department of Public Works, who have many other responsibilities. If the Transaction is approved, in contrast, the System will become an operating district in PAWC’s Southwest Area operations. Current PAWC employees in the McKeesport wastewater operation will be available to assist Brentwood with wastewater operations, as needed. In addition, the System will have access to all operations and employees within PAWC when necessary. PAWC St. No. 2 p. 10. PAWC currently employs approximately 1,150 professionals with expertise in all areas of water and wastewater utility operations. PAWC St. No. 2 p. 21.

Finally, the System will have access to the resources of the broader American Water footprint when circumstances require or when a specialized skill or experience is needed to support local issues. PAWC St. No. 2 p. 10.

If the Transaction is disapproved, customers can continue to contact the Borough between 8:00 am to 4:30 pm Monday through Friday. After normal working hours, customers would continue to leave a voice message or call 911 to report emergencies. PAWC St. No. 1-R p. 15. In contrast, if the Transaction is approved, customers could reach PAWC's customer service call center for routine customer interactions from 7:00 a.m. to 7:00 p.m., Monday through Friday and could call 24/7/365 for emergencies. PAWC has full-time, dedicated employees to respond during normal work hours and after hours. Field service crews are on-call and available for emergency field work outside of normal work hours. PAWC St. No. 2 pp. 28, 33.

If the Transaction is disapproved, Brentwood customers still could not reach a System representative by email. Brentwood St. No. 1 p. 16. If the Transaction is approved, customers could reach a customer service representative via email. In addition, they could manage their account via PAWC's "My H2O" online portal. Customers could also use PAWC's website, which has up-to-date customer information on emergencies so customers can plan accordingly. PAWC St. No. 1-R p. 15.

If the Transaction is disapproved, Brentwood customers would continue to lack access to a customer assistance program. PAWC St. 2 p. 35. Brentwood would continue to offer a standardized payment arrangement – regardless of the amount the customer owes, the customer is required to pay off the balance in a maximum of twelve months. Brentwood St. No. 1 p. 17.

If the Transaction is approved, in contrast, low-income residents would have access to PAWC's customer assistance program. Brentwood St. 1 p. 17. For wastewater customers, this

program offers two main services: (1) grants of up to \$500 per year and (2) a tiered discount on total wastewater charges based on percentage of Federal Poverty Level (“FPL”) (Tier 1 0%-50% of FPL 80% discount; Tier 2 51%-100% of FPL 55% discount; Tier 3 101%-150% of FPL 30% discount). Additionally, PAWC offers payment arrangements and budget billing to residential customers who qualify for the programs. PAWC St. No. 2 pp. 34-35. Finally, because PAWC is already the water provider in the Brentwood area, customers enrolled in the low income discount for their water service will be automatically enrolled in the discount for wastewater service at the time of Closing. PAWC St. No. 3-REV p. 17.

If the Transaction is disapproved, Brentwood customers would continue to receive service from a provider that is not subject to the Pennsylvania Public Utility Code (“Code”) or the Commission’s regulations. If they have a complaint about rates or service, they would need to pursue remedies in the civil courts. In contrast, if the Transaction is approved, Brentwood customers would receive service from a Commission-regulated entity. As a result, their provider would be required to provide adequate, efficient, safe and reasonable service at just and reasonable rates. PAWC St. No. 1 pp. 17-18. Brentwood customers could file a complaint at no cost at the Commission. They would be protected by the Responsible Utility Customer Protection Act, 66 Pa. C.S. § 1401 *et seq.*, and the Commission's regulations – including but not limited to Chapter 56, 52 Pa. Code § 56.1 *et seq.* In addition, Brentwood customers would receive the benefit of representation by the OCA, the OSBA and I&E. They have no similar representation currently.

If the Transaction is not approved, Brentwood customers would continue to receive water and wastewater service from different providers. If the Transaction is approved, Brentwood customers will receive water and wastewater service from a single provider, which provides customers with a more efficient payment process for both services, Brentwood St. No. 1 p. 15,

and allows the water/wastewater provider to coordinate projects and share resources, enhancing efficiencies and minimizing disruptions to customers. PAWC St. No. 2 p. 23; PAWC St. No. 1-R pp. 13-14; Tr. 121.

In this case, most of the opposition to the Transaction has been due to its alleged rate impact on Brentwood customers. The rate impact of approving the Transaction, however, is modest compared to other Section 1329 applications that the Commission has approved and is quite possibly less than the rate impact of disapproving the Transaction. In terms of quality of service, the *status quo* would be maintained if the Transaction is disapproved, whereas PAWC would provide better service to Brentwood's customers in many respects if the Transaction is approved. In short, if the Transaction is approved, PAWC would do more than simply provide the same level of benefits that the System is already providing to its customers. PAWC respectfully submits that the benefits of the Transaction outweigh the detriments for Brentwood's customers.

d. THE TRANSACTION BENEFITS PAWC'S EXISTING WASTEWATER CUSTOMERS

The Transaction impacts PAWC's existing wastewater customers in the same way that it impacts all other members of the public-at-large. As discussed above, the Transaction has net benefits for members of the public-at-large.

The Transaction will have no immediate rate impact on PAWC's existing wastewater customers. PAWC St. No. 3-REV p. 10. 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 Company estimated that the rate impact of the Transaction for existing wastewater customers would be 0.3%. PAWC St. No. 3-REV p. 13.

The Transaction will benefit PAWC's existing wastewater customers in the long-term by expanding PAWC's customer base. By adding additional connections to the entire PAWC system,

there will be more customers to share future infrastructure investment costs, which promotes stable rates across the entire PAWC system. Customers who benefit from near-term improvements will one day help pay for improvements on behalf of other customers on other parts of the PAWC system. Being able to spread the costs of investing in and maintaining public wastewater systems over a growing customer base, particularly in a time of aging infrastructure and increased environmental requirements, is essential to the continued success and longevity of wastewater systems and maintaining reasonable rates for customers. PAWC St. No. 1 p. 19.

For all of the above reasons, PAWC respectfully submits that the benefits of the Transaction outweigh the detriments to this stakeholder group.

e. THE TRANSACTION BENEFITS PAWC'S EXISTING WATER CUSTOMERS

The Transaction impacts PAWC's existing water customers in the same way that it impacts all other members of the public-at-large. As discussed above, the Transaction has net benefits for members of the public-at-large.

The Transaction will have no immediate rate impact on PAWC's existing water customers. PAWC St. No. 3-REV p. 10. 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 Company estimated that the rate impact of the Transaction for existing water customers would be 0.0%. PAWC St. No. 3-REV p. 15.

Most importantly, the Transaction will have no rate 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 water customers. 66 Pa. C.S. § 1311(c). The Pennsylvania Legislature recognized the importance of consolidation and cost sharing in the passage of Act 11 of 2012. As the Commission stated in a recent PAWC base rate case:

We also agree with the Company's argument that, in the circumstances, applying Section 1311(c) in conjunction with Section 1329 is in the public interest because otherwise, larger viable public utilities would be discouraged from acquiring municipal water and wastewater systems and contravene the legislative intent and the Commission's policy of encouraging consolidation and regionalization.

Pa. Pub. Util. Comm'n v. PAWC, Docket Nos. R-2020-3019369, *et al.* (Opinion and Order entered Feb. 25, 2021) p. 82.

For all of the above reasons, PAWC respectfully submits that the benefits of the Transaction outweigh the detriments for PAWC's existing water customers.

f. SUMMARY

As stated above, the affirmative public benefit test is a net benefits assessment. The affirmative public benefit test also requires the Commission to consider the impact of the Transaction on all affected stakeholders – not just on Brentwood's existing customers. By comparing what would happen if the Commission approves the Transaction to what would happen if the Commission maintains the *status quo* by disapproving it, PAWC has demonstrated that the Transaction has benefits that outweigh the detriments for each affected stakeholder group. In the aggregate, the benefits of the Transaction far outweigh the detriments. These benefits differ substantially from the benefits already being provided by Brentwood.

Even if the ALJ finds that the detriments outweigh the benefits for one particular stakeholder group, the ALJ should still recommend that the Commission approve the Transaction. When all the benefits for all stakeholder groups are weighed against all the detriments for all stakeholder groups, the benefits still outweigh the detriments. Consequently, the ALJ should recommend, and the Commission should find, that the Transaction satisfies the affirmative public benefit test.

B. SECTION 1329 ISSUES

1. FAIR MARKET VALUE FOR RATEMAKING PURPOSES

The negotiated purchase price for the System is \$19,364,443. The average of the appraisals of the buyer's Utility Valuation Expert ("UVE") and the seller's UVE is \$21,827,775.¹⁶ Accordingly, the negotiated purchase price of \$19,364,443 is the fair market value for ratemaking rate base purposes under Section 1329 (*i.e.*, it is the lower of the negotiated purchase price and the average of the UVEs' appraisals). PAWC St. No. 3-REV p. 5.

As discussed further in Section IV.B.6.a. below, all of the assets that PAWC is acquiring are used and useful in providing service to Brentwood's customers. The ALJ should reject any argument that the proposed ratemaking rate base is too high because it includes assets that are not used and useful in providing service to Brentwood's customers.

Section 1329 does not address the proper accounting treatment of the rate base or approval of a depreciation reserve in determining the ratemaking rate base. The Company believes that recording the net value of \$19,364,443 is appropriate and consistent with Section 1329. Consequently, the Company requested approval to record the acquisition on a net basis, consistent with the Commission's decision in *Application of Pennsylvania-American Water Company to Acquire the Wastewater System of the York City Sewer Authority*, Docket Nos. A-2021-3024681 *et al.* (Order entered April 14, 2022) ¶ 3(h). No party disputed this request.

Wherefore, for all of the foregoing reasons, PAWC requests that the ALJ recommend that the Commission approve the addition of \$19,363,443 to rate base for the acquisition of the System, and to allow PAWC to record that rate base addition at net value.

¹⁶ PAWC's appraisal was \$22,721,549. PAWC St. No. 4 p. 3. Brentwood's appraisal was \$20,934,000. Brentwood St. No. 2 p 13. $\$22,721,549 + \$20,934,000/2 = \$21,827,775$.

2. TARIFF AND RATES

During the completeness review process, PAWC amended the *pro forma* tariff twice. The tariff at PAWC Exhibit MS-2, Second Amended Appendix A-12, is consistent with 66 Pa. C.S. § 1329(d)(1)(v), which requires PAWC to charge rates after Closing that are equal to the selling utility's existing rates. PAWC requested permission to make this tariff supplement effective upon Closing on the Transaction. Amended Application p. 17. No party disputed this request. It is reasonable and in accordance with law. PAWC asks that the ALJ recommend that the Commission allow PAWC to issue compliance tariff supplements consistent with the tariff at PAWC Exhibit MS-2, Second Amended Appendix A-12, to become effective immediately upon Closing.

3. DSIC

Section 1329(d)(4) permits an acquiring utility to collect a DSIC prior to the first base rate case that includes the acquired system. PAWC requested authority to approve the collection of a DSIC in the future, prior to the first base rate case in which the System plant-in-service is incorporated into rate base. PAWC witness Everette testified that PAWC would not begin charging a DSIC until the eligible System plant is approved by the Commission in an amendment to PAWC's LTIP for wastewater. PAWC St. No. No. 3-REV p. 11.

OCA witness DeMarco recommended that Brentwood assets be excluded from the DSIC until the DSIC applies to customers in Brentwood. OCA St. 1 p. 21. PAWC accepted this recommendation. PAWC St. No. 3-R p. 5.

Mr. DeMarco also recommended that PAWC file a revised LTIP including Brentwood within ninety days of Closing. OCA St. 1 p. 21. PAWC opposes this recommendation. There are many factors to consider regarding the timing of an LTIP modification, and a single acquisition should not automatically require an LTIP modification. This is particularly true for an acquisition

the size of Brentwood, which represents less than 2% of PAWC's total wastewater rate base and only approximately 4% of PAWC's wastewater customer base.¹⁷ PAWC St. 3-R p. 5.

PAWC respectfully requests that the ALJ recommend that the Commission allow PAWC to collect a DSIC from System customers upon (i) PAWC's filing of an amended wastewater LTIP including the System, (ii) the Commission's approval of the amended LTIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement that incorporates the System into PAWC's DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the amended LTIP. This proposal is reasonable and consistent with the Code, and should be approved.

4. CLAIMS FOR AFUDC AND DEFERRED DEPRECIATION

Section 1329(f) allows an acquiring utility to (a) accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, and (b) defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. In this proceeding, PAWC seeks authority from the Commission to accrue AFUDC on post-acquisition improvements, and to defer depreciation on non-DSIC-eligible post-acquisition improvements. PAWC St. No. No. 3-REV p. 19.

The OCA recommended that the Commission not preapprove the recovery of accrued AFUDC or deferred depreciation in this proceeding. According to the OCA, the Commission should address that issue in the first base rate case that includes the Brentwood System. OCA St. 1 p. 22. PAWC does not object to this recommendation.

¹⁷ Based on PAWC's wastewater rate base at December 31, 2023, as projected at Docket No. R-2022-3031672 and actual PAWC customers as of September 30, 2023.

PAWC respectfully submits that it be allowed to accrue AFUDC, and to defer depreciation, for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, consistent with 66 Pa. C.S. § 1329.

5. TRANSACTION AND CLOSING COSTS

Section 1329 provides that transaction and closing costs on an acquisition become part of the acquiring utility's rate base. 66 Pa. C.S. § 1329(d)(iv). PAWC estimated that its transaction and closing costs from this Transaction will range from \$510,000 to \$620,000. PAWC St. No. No. 3-REV p. 18.

The OCA recommended that, when PAWC claims its transaction and closing costs in its next base rate case, PAWC should separately identify outside legal fees. OCA St. 1 p. 5. In its recently-filed base rate case, PAWC separately identified its estimated outside legal fees in its claim for transaction and closing costs. Docket No. R-2023-3043190 at PAWC Exhibit 3-C.

In addition, OCA witness DeMarco recommended that the Company not be permitted to recover legal and engineering fees for which PAWC will reimburse Brentwood, pursuant to the APA. He contended that Section 1329 does not allow transaction and closing costs incurred by the seller to be included in the buyer's ratemaking rate base. OCA St. 1 at 5. I&E witness Kubas recommended that the Company not be allowed to pay any of Brentwood's legal and engineering costs, nor should PAWC be permitted to recover the legal and engineering fees for which PAWC will reimburse Brentwood. I&E St. No. 1 at 21.

PAWC is obligated by the APA to reimburse Brentwood for up to \$70,000 in legal and engineering fees. PAWC Exhibit 3-C in PAWC's recently-filed base rate case included this cost in its claim for recovery of transaction and closing costs. Any ratemaking determination about the recoverability of this cost should be made in that base rate case. PAWC St. No. 3-R p. 10. I&E

witness Kubas accepted PAWC's commitment to resolve this issue in the rate case. I&E St. No. 1-R p. 31.

6. ADDITIONAL ISSUES

a. PLANT IN SERVICE USED TO SERVE "NON-CUSTOMERS"

Brentwood conveys wastewater from the Upstream Municipalities through the System to the Downstream Municipalities, so the wastewater from the Upstream Municipalities can be treated at the ALCOSAN wastewater treatment plant. I&E St. No. 1 p. 11. I&E witness Kubas claims these Brentwood assets are not used and useful in providing service to Brentwood customers. I&E St. No. 1-SR p. 20. Therefore, he contends, these assets should be removed from PAWC's requested rate base of \$19,643,443. I&E St. No. 1 pp. 11-16. Moreover, Mr. Kubas recommends that, before the Commission even considers the instant Transaction, PAWC should be required to undertake a study that separates plant used to serve "non-customers" in order to establish an appropriate rate base. I&E St. No. 1 p. 14. Mr. Kubas recommends that the Commission disapprove the instant Transaction because PAWC has not yet completed the recommended study. I&E St. No. 1 p. 31.

The Commission should reject I&E's argument that the Application should be disapproved because PAWC has not yet completed the recommended study. That argument is inconsistent with Sections 1102 and 1103, which require that the Commission apply the affirmative public benefit test when determining whether to approve an application for a Certificate. *See* Section IV.A.2, *supra*. The Commission should not reject the Application without considering whether the Transaction passes the substantial public benefit test.

The Commission should also reject I&E's argument because it is inconsistent with Section 1329. Section 1329(c)(2) states "[t]he 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 this case, the lower of these values is the negotiated purchase price.¹⁸ The UVEs calculated the fair market value based on the assets listed in the engineer’s assessment, which properly included the assets used to provide service to “non-customers” because those assets are used and useful in providing service to Brentwood customers.

First, contrary to Mr. Kubas’ testimony, all the trunklines are in fact used and useful to provide service to *Brentwood customers*. The trunklines convey Brentwood sewage through the Borough to the Downstream Municipalities for conveyance to the ALCOSAN regional plant for treatment. No portion of the trunklines in Brentwood is used solely to convey wastewater from Upstream Municipalities to Downstream Municipalities. Tr. 152, 372.

Second, the trunk lines are part of the comprehensive system set up by ALCOSAN via uniform Other Z Agreements. The Other Z Agreements for all municipalities are substantively the same and require the establishment of a regional interceptor system through the use of municipal trunk lines for the transport of sewage to the ALCOSAN plant. Brentwood’s trunklines are used by other municipalities, just as Brentwood uses the trunklines of other municipalities. It is a mutual assistance system and therefore the trunklines are completely used and useful. PAWC St. No. 2-R pp. 10-11; Tr. 152.

“Used and useful” is a flexible concept. James J. Hoecker, *‘Used and Useful’: Autopsy of a Ratemaking Policy*, 8 Energy L.J. 303, 310 and 333 (1987); Tr. 271.

Generally speaking, the case law regards costs incurred and investments made used and useful if: (1) there is a direct and immediate benefit to customers; traditionally, the investment is in a plant that is operational now or in a future test year or in the period during which the rates may reasonably be expected to be in effect; (2) the investment or expense, even if not affording an immediate tangible benefit, meets

¹⁸ The negotiated purchase price is \$19,643,443. The two appraisals valued the System as worth \$22,721,549 and \$20,934,000, or an average of \$21,827,775. The negotiated price is lower than the average of the two appraisals.

certain secondary benefit criteria, such as reasonably foreseeable plant completion, a necessary cost of continuing business (including land acquisition to enhance gas reserves or other reasonable plans and commitments to dedicate property to public service), or assets held in reserve to ensure service reliability; or (3) the expenditure is necessitated by the projected immediate needs of the ratepaying public.

Id., at 312.

Brentwood's trunklines provide a direct and immediate benefit to *System customers*. They are directly used to provide wastewater collection and conveyance service to System customers. In addition, the trunklines, and the level of capacity thereof, provide a benefit to System customers because they permit Brentwood customers to receive wastewater treatment service through the ALCOSAN regional interceptor system. Brentwood would not have wastewater treatment service if it did not participate in the comprehensive ALCOSAN system. PAWC St. No. 2-R p. 11; Tr. 152. If Brentwood did not participate in the ALCOSAN system, it would need to construct its own wastewater treatment plant, which would be contrary to the Commission's policy promoting the regionalization of water and wastewater systems. 52 Pa. Code § 69.721 ("water and wastewater system acquisitions").

To the extent that existing agreements are being assigned to PAWC, PAWC is requesting Commission approval of those agreements pursuant to Section 507 in the instant proceeding. Future capital projects related to improvements to, or major repair/replacement of the trunk lines, will be handled via negotiated capital contribution agreements and will be subject to Commission review under Section 507 of the Code to ensure that they are in the public interest.¹⁹ 66 Pa. C.S. § 507 ("contracts between public utilities and municipalities"). PAWC St. No. 2-R p. 10.

¹⁹ This can be found in PAWC's proposed tariff, PAWC Exhibit MS-2 Second Amended Appendix A-12 Original Page 94 Section X.3. Tariffs have the force and effect of law. *Stiteler v. Bell Tele. Co.*, 379 A.2d 339, 341 (Pa. Cmwlth. 1977).

Therefore, there is no need for the Commission to delay its consideration of the Transaction due to the trunklines that make the ALCOSAN regional interceptor system feasible.

This case appears to present an issue of first impression because it is the first transaction in which a municipality in the ALCOSAN system is attempting to sell its wastewater system to a public utility. PAWC respectfully submits that the Commission should not issue a decision that would effectively prevent any municipality in the ALCOSAN system from selling its system to a qualified public utility (whether under Section 1329 or otherwise). I&E's position with regard to the intermunicipal trunklines represents bad public policy and, if adopted, would be contrary to the public interest – especially considering that many of the other collection systems in the ALCOSAN regional interceptor system are also older systems experiencing many of the same challenges as Brentwood's System. PAWC St. No. 1-R pp. 6-7.

Mr. Kubas recommends that the Commission require a complex, costly and lengthy cost of service study before the Commission even considers whether to approve the Transaction. This would strongly discourage more than 80 municipalities in the ALCOSAN system from selling their wastewater systems, regardless of how prudent that might be, or how much the public interest might favor such a transaction. PAWC St. 2-R p. 12. The Legislature made a policy decision in Section 1329 that municipalities that want to sell their water and wastewater systems should be able to do so, using the fair market value methodology. The Legislature gave that option to all municipalities in Pennsylvania. The Commission should not take that option away from the 83 municipalities that are part of the ALCOSAN treatment system. Instead, the Commission should exercise its reasonable discretion to find that the trunklines are used and useful.

b. IS THE RATE FREEZE A RATE STABILIZATION PLAN?

Section 7.03(a) of the APA states that PAWC will not increase rates until after the second anniversary of the Closing Date. OCA witness DeMarco contends that this provision is a “rate

stabilization plan” as defined in Section 1329(g): “[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case.” OCA St. 1 p. 16; OCA St. 1R p. 10.

The rate freeze is not a rate stabilization plan. While the APA contractually restricts PAWC from increasing base rates until the second anniversary of Closing, nothing in the APA purports to restrict the Commission’s authority to set rates that it considers to be “just and reasonable” in the context of a base rate proceeding or otherwise. PAWC St. No. No. 3-REV p. 9. PAWC is not asking the Commission in this Application proceeding to maintain rates for a period of time beyond the next base rate case. In PAWC’s recently-filed base rate case, PAWC proposed that rates for Brentwood customers increase in August 2024, subject to Commission approval. Docket No. R-2023-3043190, *pro forma* tariff. Rates should be determined in that base rate case, not in this Application proceeding.

In a previous Section 1329 proceeding, the Commission stated the following regarding the relationship between rate commitments and rate stabilization plans:

The ALJ determined that the rate commitment provision contained in the APA does not trump the Commission’s ultimate authority to set and allocate rates. We agree. Here, the APA provides firm, unqualified guarantees to the seller as a term of the APA. However, it does not purport to hold rates constant or phase rates in over a period [of] time after the next base rate case. It offers no tariff language for us to approve. Thus, we decline to hold that the rate commitment constitutes a rate stabilization plan pursuant to Section 1329(g) of the Code.

Application of Aqua Pennsylvania Wastewater, Inc. to Acquire the Wastewater System Assets of New Garden Township and the New Garden Township Sewer Authority, Docket No A-2016-2580061 (Opinion and Order entered Jun. 29, 2017) p. 41 (note omitted), *reversed on other grounds, McCloskey, supra*. PAWC was careful in negotiating the APA to respect the statutory authority of the Commission to set just and reasonable rates.

For all of the above reasons, the ALJ should recommend, and the Commission should find, that the rate freeze is not a rate stabilization plan.

c. SHOULD FUTURE CUSTOMER NOTICES SHOW A RANGE OF IMPACTS?

The OCA recommended that, in future Section 1329 Applications, PAWC be required to modify its customer notice to show a range of rate impacts. For each customer class, the OCA recommended that PAWC be required to show the rate impact on customers with typical usage, customers using 50% more than typical usage, and customers using 100% more than typical usage. OCA St. 1 p. 25.

PAWC respectfully requests that the ALJ recommend that the Commission reject this proposal. First, the notice sent by PAWC in this case complies with the *Steelton Order*. The OCA was a party to the settlement that the Commission approved in that proceeding. The Commission should not require that the notice be changed now, just because one party is no longer satisfied with the bargain that it struck.

Second, the customer notice estimates the bill impact in terms of a percentage increase. This percentage increase is applicable to all customer classes and usage amounts. Therefore, a customer with any level of usage could estimate his own impact using the estimated percentage increase that is shown on the customer notice.

Third, the impact of adding additional usage levels as OCA requests is that the Company would be required to show nine different bill impacts for the three customer classes. This large number of scenarios is likely to cause confusion for customers. PAWC currently shows the average usage amount for residential, commercial and industrial customers, consistent with the Commission's regulations regarding customer notice in rate cases, which require only one average usage amount to be shown in the notice for each customer class. 52 Pa. Code § 53.45(b).

For all of the above reasons, the ALJ should recommend that the Commission reject the OCA's proposed change in PAWC's customer notice.

C. SECTION 507 APPROVALS

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

In this proceeding, PAWC seeks Commission approval, pursuant to Section 507, of:

- a. Asset Purchase Agreement and First Amendment to the Asset Purchase Agreement By and Between Brentwood Borough, as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of December 22, 2020 and amended March 2, 2023;
- b. Agreement between Borough of Brentwood and City of Pittsburgh, dated October 14, 1936;
- c. Streets Run Sewer Joint Management Agreement between Boroughs of Brentwood, Baldwin and Whitehall and the Western Mifflin Sanitary Sewer Authority dated July 19, 2000;
- d. Cooperation and Allocation of Responsibilities Agreement between Borough of Brentwood and Pennsylvania-American Water Company dated March 2, 2023;
- e. Bulk Wastewater Conveyance Agreements (The Borough of Brentwood

Ordinances No. 188 and 189) for Fairhaven Road, Stewart Avenue, Saw Mill Run between the Borough of Brentwood, Baldwin Township, Carrick Borough and Overbrook Borough Dated as of September 30, 1926; and

- f. Bulk Wastewater Conveyance Agreement (Saw Mill Run) between the City of Pittsburgh, Borough of Brentwood, Carrick Borough, Castle Shannon Borough, Dormont Borough, Knoxville Borough, Mt. Lebanon Township, Mt. Oliver Borough and Overbrook Borough dated October 31, 1925.

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

D. PRESERVATION OF THE Z AGREEMENT AND OTHER Z AGREEMENTS

In this proceeding, ALCOSAN seeks the preservation and uniformity of the Z Agreement and the Other Z Agreements. ALCOSAN St. No. 1 p. 4. PAWC supports this request.

In this proceeding, PAWC has requested that the Commission approve the Cooperation Agreement pursuant to Section 507 of the Code. PAWC is committed to honoring its obligations under the Cooperation Agreement. The Commission should take no action in this proceeding that will modify the Z Agreement or the other Z Agreements in any way.

E. RECOMMENDED CONDITIONS FOR APPROVAL

1. MISSING EASEMENTS AND OTHER PROPERTY RIGHTS

In his Direct Testimony, I&E witness Patel expressed concern about missing/unidentified easements and other property rights that Brentwood will need to convey to PAWC to operate the System. To address this concern, he recommended that, if the Commission approves the Transaction, it should impose a condition on its approval that would prohibit Closing on the

Transaction unless and until Brentwood proves to PAWC that it has: (a) identified all missing easements and property rights, (b) taken action to obtain any missing easements and property rights so they may be conveyed to PAWC at Closing, and (c) borne all costs and expenses for obtaining and conveying all missing easements and property rights. I&E St. No. 2 p. 7. Additionally, Mr. Patel recommended that, if circumstances beyond Brentwood's control prevent it from transferring all easements and property rights at Closing, PAWC and Brentwood should have the option of Closing, provided that an escrow account be established to obtain any post-Closing transfers of missing easements and property rights. *Id.*

PAWC has no objection to this recommended condition. I&E's recommendation is similar to several settlements that PAWC entered into in previous Section 1329 acquisition proceedings. The APA provides for an Easement Escrow Fund for easements that are missing as of Closing. Brentwood will fund the Easement Escrow Fund in the amount of \$2,000 for each missing easement. PAWC St. No. 1-R p. 5.

For all of the foregoing reasons, PAWC respectfully requests that the ALJ recommend that the Commission approve I&E's recommended condition.

2. COST OF SERVICE STUDIES

OCA witness DeMarco recommended that, if the Transaction is approved, PAWC should be required to provide a separate cost of service study ("COSS") for the System in its next base rate case. He argued that the costs associated with the acquired System should be evaluated separately from PAWC's other wastewater systems. Additionally, Mr. DeMarco recommended that, if the Transaction is approved, PAWC should be required to submit a COSS that removes all costs and revenues associated with the operation of the Brentwood System. OCA St.1 p. 22.

PAWC has no objection to these recommendations. In its recently-filed base rate case, PAWC submitted a cost of service study that removes all costs and revenues associated with the

operation of the System and a separate cost of service study for the System. Docket No. R-2023-3043190, PAWC St. No. 1 p. 18. This is similar to the approach that PAWC used in the Company's prior base rate case for certain recently-acquired systems. PAWC St. No. 3-R p. 11.

In contrast, PAWC disagrees with the recommendation of I&E witness Kubas that, if the Transaction is approved, PAWC should be required to provide a separate COSS for the System in all future rate case. This COSS would separately identify the plant in service, the test year plant additions and retirements, and all taxes, expenses and revenue separately for the Brentwood System. This COSS would remove the plant and expenses assigned or allocated to "non-customers" and any expenses associated with "non-customer plant." All plant and expenses related to "non-customers" should be excluded from any revenue requirement claims in a base rate case. I&E St. No. 1 pp. 16-20.

PAWC disagrees that a separate COSS should be required for Brentwood in every future rate case. It is premature at this point to determine that a separate COSS will be appropriate in all future rate cases. Parties to future rate cases can recommend a separate cost study, if they believe it is necessary. PAWC St. No. 3-R p. 12.

PAWC further objects to Mr. Kubas' recommendation that the COSS should separately identify the plant serving "non-customers." As discussed above, all assets that PAWC is acquiring are used and useful in providing service to Brentwood customers. It would be inappropriate to exclude a portion of these assets from the rate base and made non-recoverable to the Company. PAWC St. 3-R p. 11. While a COSS may theoretically be able to assign a portion of the cost of wastewater collection to Upstream Municipalities, this would provide an incomplete picture. If the cost would have existed even in the absence of agreements with Upstream and Downstream

Municipalities, the cost is necessary to provide service to Brentwood customers and therefore is recoverable. PAWC St. 3-R p. 12.

3. RATE FREEZE

Section 7.03(a) of the APA provides that Brentwood's rates will not be increased until two years following Closing. OCA witness Alexander stated that, if the Transaction is approved, "[t]he costs associated with the offered two-year freeze in tariffed rates for Brentwood's customers should not be shifted to other PAWC customers." OCA St. 2 p. 11. OSBA witness Kalcic makes a similar recommendation. OSBA St. No. 1 p. 7. I&E witness Kubas went further, recommending that the Commission not approve the two-year rate freeze. I&E St. No. 1 p. 22.

PAWC committed that, if it files a base rate case that will be effective prior to the second anniversary of Closing, PAWC will propose an increase for Brentwood customers that will become effective on the second anniversary of Closing and PAWC will calculate its proof of revenues as if the increase to Brentwood revenues were not delayed. PAWC St. No. 3-R p. 4. As a result, I&E witness Kubas withdrew his opposition to the rate freeze. I&E St. No. 1-SR p. 31. OCA witness Alexander was also satisfied with this response, I&E St. 2-SR p. 1. OSBA witness Kalcic apparently was also satisfied because he did not submit surrebuttal testimony.

PAWC followed-through on these commitments in its recently-filed base rate case. PAWC proposed that rates for Brentwood's customers increase in August 2024, but calculated PAWC's proof of revenues as if the effective date was not delayed. *See*, Docket No. R-2023-3043190 *pro forma* tariff and PAWC Exhibit 10-D.

4. CUSTOMER NOTICE

Both OCA and I&E recommended conditions pertaining to customer notice. In response to a question about conditions the Commission should impose, if it approves the Transaction, OCA witness Alexander argued that the Commission should not approve the Transaction because of the

customer notice. OCA St. 2 pp. 10-11; OCA St. 2-R pp. 6-7. She states “[t]he lack of proper customer notice alone should influence the decision about whether this transaction should be approved.” OCA St. 2-R p. 7.

In other words, according to the OCA, the Transaction should be disapproved based on improper notice, regardless of the benefits of the Transaction. This argument should be rejected as inconsistent with Section 1102 and 1103, which requires that the Commission weigh the benefits against the detriments of the proposed acquisition.

The OCA’s argument should also be rejected on the merits. According to the OCA, PAWC’s customer notice was deficient for two reasons. First, the rate impact of future PAWC investments in the Brentwood System was not included in that customer notice.²⁰ OCA St. 2R p. 3. Mr. DeMarco recommends that, in future 1329 proceedings, PAWC should be required to include capital investment in the customer notice calculations: “This is consistent with how Aqua Pennsylvania calculates rate impact for purposes of its Section 1329 customer notices.” OCA St. 1 p. 24. Second, the OCA alleges that PAWC’s customer notice was deficient because it did not discuss changes in ALCOSAN’s rates during the two year rate freeze period. OCA St. 2R p. 3.

These arguments should be rejected. It is not reasonable to require PAWC’s notice to conform to the methodology utilized by Aqua Pennsylvania. The reasons for Aqua Pennsylvania’s treatment of this issue are unknown to PAWC and should not be binding on PAWC.

PAWC provided notice using the methodology that was agreed-to by multiple parties, including the OCA, and was approved by the Commission in the *Steelton Order*. That notice does not include post-acquisition improvements. It is disingenuous for the OCA to argue that the

²⁰ I&E witness Kubas also noted that PAWC’s customer notice did not include post-acquisition improvements, but he did not argue that the customer notice was deficient, nor did he argue that the customer notice should be changed in the future. OCA St. 1 pp. 25-26

Transaction should be disapproved because PAWC gave customers notice in compliance with a Commission order.

When the Notice of Proposed Rate Base Addition is sent to the Company's current and future customers, PAWC is noticing customers of the estimated revenue requirement of the acquisition, utilizing the proposed ratemaking rate base. In this proceeding, the Company is seeking approval of the ratemaking rate base, in accordance with Section 1329. The Company is not seeking pre-approval of the cost of future, post-acquisition investments. The customer notice reflects what the Company is requesting, which is the revenue requirement associated with the proposed rate base. PAWC St. 3-R pp. 13-14.

In *McCloskey v. Pa. Pub. Util. Comm'n*, 195 A.3d 1055 (Pa. Cmwlt. 2018) *alloc. denied*, 207 A.3d 290 (Pa. 2019) (“*New Garden Order*”), the Commonwealth Court determined that notice is required for Section 1329 acquisitions. The *New Garden Order* states: “[W]hether individualized notice is required depends on whether the outcome of the proceeding binds the Commission to increase rates.” 195 A.3d at 1069. The *New Garden Order* further states: “Because a rate base determination is fundamental to a determination of rates, under [*Barasch v. Pa. Pub. Util. Comm'n*, 546 A.2d 1296, 1305-1306 (Pa. Cmwlt. 1988)], individualized notice has to be given to all ratepayers of the proposed sale as well as an opportunity for them to participate in the Section 1329 proceeding.” 195 A.3d at 1069. In other words, notice of the sale is required due to the rate base determination that the Commission will make in this proceeding, because rates will be set in the future based on that approved rate base.²¹

²¹ Customers of PAWC and Brentwood received direct notice of the Transaction, which notified customers where they could find additional information if they were interested in it. PAWC Exhibit MS-2 Appendix A-18-d. Notice of the Application was also published in the *Pennsylvania Bulletin*, which also provided information about where additional information could be found. 52 *Pa.B.* 6139-6140 (Sept. 30, 2023).

In this case, the Company is requesting approval of the \$19,364,443 purchase price as the ratemaking rate base. The Company provided notice of the sale, including notice of the purchase price it is requesting for approval. PAWC is not requesting a rate base determination at this time for its projected future capital investments, nor is the Company requesting pre-approval of those investments. Consequently, the ALJ should recommend that the Commission reject the OCA's argument that PAWC's customer notice was fatally flawed because it did not include post-acquisition improvements.

Similarly, the ALJ should recommend that the Commission reject the OCA's argument that PAWC's notice to Brentwood customers was deficient because it did not inform Brentwood customers about ALCOSAN rate increases during the "rate freeze" period. OCA St. 1 at 8, OCA St. 2R p. 3. The OCA provides no reason why PAWC is required to notify customers about another provider's rate increase. Brentwood currently notifies its customers of changes in ALCOSAN's charges, and PAWC will do so if the Transaction is approved. Brentwood St. No. 1-R p. 13. There is no need for additional notice of changes in ALCOSAN's rates.

In addition, the purpose of the notice is to advise PAWC's present and future customers of the potential impact of the rate base determination that the Commission will make in this proceeding. An increase in ALCOSAN's charges during the "rate freeze" period will not affect the Commission's rate base determination in this proceeding. Therefore, there was no need for a change in ALCOSAN's charges to be reflected in the notice that was sent to customers in connection with this Transaction.

I&E witness Kubas also recommended a condition concerning customer notice. If the Commission approves the Transaction, he recommended that the Commission "affirm" that future

base rate increases are “likely to be higher than projected by PAWC.” I&E St. No. 1 p. 32; I&E St. No. 1-SR p. 34.

PAWC opposes this proposal. This recommendation is a thinly-veiled request that the Commission direct PAWC to modify the methodology it uses to calculate the customer notice. The Commission approved a settlement in which PAWC, I&E, and other parties agreed on the methodology that PAWC would use to complete its customer notice. It should not be changed by Commission order now because I&E is dissatisfied with the bargain it struck.

As discussed above, the purpose of the notice required by *McCloskey* is to provide customers with notice of the rate impact they may experience due to the Commission’s rate base decision *in this Application proceeding*. That impact is inherently uncertain and difficult to predict. Moreover, the customer notice required by *McCloskey* is not an attempt to predict the outcome of other, future proceedings. Customers of the selling utility will receive additional notices, and will have an opportunity to participate in later proceedings, if subsequent rate proceedings, acquisitions, or other proceedings could impact their rates as customers of PAWC.

For all of the foregoing reasons, the ALJ should recommend that the Commission reject I&E’s proposal.

5. ALCOSAN CHARGES AND DISCOUNTS

Brentwood provides wastewater collection and conveyance service to its customers. ALCOSAN provides wastewater treatment service to those same customers. ALCOSAN could bill Brentwood’s customers directly, but instead, in the Z Agreement, ALCOSAN gave municipalities the option of billing ALCOSAN’s customers in return for a payment approximating the amount that ALCOSAN saved in billing expense because the municipality opted to serve as ALCOSAN’s billing agent. PAWC Exhibit MS-2 Appendix A-25.3 ¶ 16. Brentwood selected

this option and has been acting as a billing agent for ALCOSAN for years, showing ALCOSAN's treatment charges as a separate line item on bills to Brentwood's customers.

In the Cooperation Agreement, PAWC agreed to assume this obligation of Brentwood. PAWC Exhibit MS-2 Appendix A-25.3 ¶ 2.g. As compensation for this service, PAWC will receive a payment in an amount approximating the amount ALCOSAN saves in billing expenses. This would be a benefit to Brentwood's existing customers for some of the same reasons that they benefit from having a single provider of water and wastewater service – the bill paying process is easier and more efficient for customers because they pay two bills with one payment.

If the Transaction is approved, the OCA recommends that ALCOSAN'S treatment charges be included in PAWC's rates as an operations and maintenance expense. OCA St. 1R p. 11; OCA St. 2R p. 2. The OCA contends that there is no protection of Brentwood customers from ALCOSAN rate increases because ALCOSAN is not a Commission-regulated utility. The OCA believes these rates should not be passed on to PAWC's customers without Commission oversight. OCA St. 1 p. 24. OCA also contends that, under PAWC's proposal to include ALCOSAN charges as a separate line item on the bills of existing Brentwood customers, ALCOSAN's treatment charges will not be spread to other PAWC customers, as is the case for other collection systems owned by PAWC. OCA St. 1 pp. 18, 23.

PAWC disagrees with OCA's proposal. The OCA seeks to treat Brentwood like other PAWC collection-only systems, but the facts are different at Brentwood, so Brentwood should be treated differently. At PAWC's other collection-only systems, PAWC is a bulk customer of the treatment provider. Therefore, the treatment provider's rates are included in PAWC's rates as an operations and maintenance expense. Tr. 391. Brentwood, in contrast, is not a customer of ALCOSAN and, upon Closing, PAWC would not be a customer of ALCOSAN. PAWC's

conveyance customers in Brentwood would remain treatment customers of ALCOSAN. PAWC would simply be the billing agent for the treatment provider. Tr. 394. As a result, charges collected on behalf of ALCOSAN will be recorded to a “collection for others” liability account and will not be revenue to PAWC. PAWC St. No. 3-R p. 6; Tr. 394. PAWC’s billing arrangement with ALCOSAN would be similar to the consolidated billing that electric distribution companies perform for electric generation suppliers. Because of this factual difference, the two situations should not be treated the same for ratemaking purposes. PAWC St. No. 3-R p. 6.

Because Brentwood’s collection-only customers are treatment customers of ALCOSAN, ALCOSAN’s treatment charges should not be spread to other PAWC wastewater customers. This would improperly increase the cost of the Transaction to PAWC’s wastewater customers (and possibly PAWC’s water customers, pursuant to 66 Pa. C.S. § 1311(c)).

The OCA does not explain what the Commission is supposed to review with respect to the ALCOSAN charges. PAWC does not have information as to how ALCOSAN established its charges, nor does PAWC have the ability to change ALCOSAN’s charges. Even if Commission review were appropriate, the OCA fails to explain what the Commission is supposed to do following this review, since the Commission lacks jurisdiction over ALCOSAN. PAWC St. No. 3-R p. 6.

Collecting the ALCOSAN charges from Brentwood customers ensures that the cost causers pay the appropriate costs. It properly aligns price signals by timely reflecting ALCOSAN charges on customer bills. As Mr. DeMarco notes, the ALCOSAN charges are a significant expense, representing more than 50% of current bills for Brentwood customers. OCA St. 1, p. 19. Accordingly, if the Commission were to accept the OCA’s recommendation to not allow PAWC to timely collect the ALCOSAN charges by continuing to reflect them on customer bills, regulatory

accounting treatment may be necessary to allow PAWC to recover increases to this cost between rate cases.²² PAWC St. No. 3-R pp. 6-7.

Significantly, the Pittsburgh Water and Sewer Authority (“PWSA”), which was brought under Commission jurisdiction in 2018 pursuant to Chapter 32 of the Code, has a similar billing arrangement to what PAWC is proposing here. PWSA’s tariff provides as follows regarding charges for treatment:

- a. In addition to the Minimum Charge and the Conveyance Charge, customers will be required to pay rates for Wastewater/Sewage treatment to Premises.
- b. The rates for Wastewater/Sewage treatment to Premises within the Authority's service area are established by ALCOSAN, and are paid by the Authority to ALCOSAN. Information on ALCOSAN's rates is available on its website.
- c. Wastewater/Sewage treatment charges may be reflected on Authority bills/invoices as ALCOSAN charges, basic service and sewage treatment.

PAWC Exhibit AEE-2. There is no reason why PAWC should not be permitted to use the same arrangement.

Finally, in his Surrebuttal Testimony, Mr. DeMarco notes that Brentwood customers could lose the ALCOSAN low-income discount if the Commission adopts the OCA’s recommendation to include ALCOSAN’s charges in PAWC’s rates. To offset the loss of this assistance, Mr. DeMarco recommends that the Commission direct PAWC to increase the amount of its low-income discount for wastewater by \$15 per month. OCA St. 1SR p. 11.

Mr. DeMarco’s proposed discount would effectively shift an ALCOSAN-funded discount to a PAWC ratepayer-funded discount. Tr. 374. It is unreasonable for the OCA to ask PAWC’s customers to finance a low-income assistance program to make up for a discount that Brentwood customers will lose because of another OCA recommendation. Instead, the Commission should

²² In the absence of such treatment, PAWC’s shareholders would bear the risk of changes in ALCOSAN’s rates between PAWC’s rate cases. Tr. 405.

reject the proposal to include ALCOSAN's charges in PAWC's rates, and allow Brentwood customers to remain eligible to receive the discount they currently receive from ALCOSAN.

Additionally, PAWC opposes the OCA's recommendation because:

The Company has an existing low income discount that has been approved by the Commission to provide discounts ranging from 30 percent to 80 percent off the total wastewater bill for customers between 0 and 150 percent of the federal poverty level. These discounts apply to eligible residential customers in all [rate zones]. The OCA has not provided any reason that if the Commission adopts the OCA proposal regarding ALCOSAN billing, the discount available to Brentwood customers should be different than the discount available to other Pennsylvania-American customers. The Company recommends that its discount program not be fragmented, with different levels of discount applying to different groups of customers.

Tr. 376.

For all of the above reasons, PAWC respectfully requests that the ALJ reject the OCA's recommendations that (1) ALCOSAN's charge be included in PAWC's rates, and (2) if so, PAWC be required to increase the amount of its low-income discount for wastewater by \$15 per month.

6. SPECIFIC NOTICE FOR BRENTWOOD CUSTOMERS PRIOR TO CLOSING

OCA witness Alexander recommended that, if the Commission approves the Transaction, it should require PAWC to issue a notice to Brentwood customers:

. . . outside of the normal bill messages to explain their new customer service options, bill payment options, how to qualify and enroll in low income programs available from both PAWC and ALCOSAN, as well as the change in policies and rights governing collection practices compared to prior Brentwood practices and policies.

OCA St 2 p. 12.

PAWC has no objection to this recommendation. PAWC conveys most of this information to customers in its standard welcome packet when a system is acquired. PAWC St. 1-R p. 17.

7. PAYMENT AGENT IN BRENTWOOD

OCA witness Alexander recommended that, if the Transaction is approved, PAWC be required to arrange for a payment agent in the Borough to collect customer bills. OCA St. 1 p. 12; OCA St. 2SR p. 8. PAWC objects to this proposal. PAWC is the provider of water service in the Brentwood area and does not have a local payment agent. PAWC does not see the need for a local payment agent if it becomes the wastewater provider in the area. Tr. 377. In this electronic age, when many people pay bills over the phone and on-line, this recommendation is an unnecessary cost imposed on the Company (and its ratepayers) – particularly considering that Brentwood does not presently offer its customers this payment option. Brentwood St. No. 1-R p. 10.

V. CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, for all of the foregoing reasons, Pennsylvania-American Water Company respectfully requests that:

1. The Honorable Administrative Law Judge Katrina L. Dunderdale recommend approval of, and the Commission approve, the Application filed by PAWC on March 31, 2023 (as amended), and order that:
2. The Commission issue such Certificates of Public Convenience as may be necessary to evidence its approval under 66 Pa. C.S. § 1102(a) of (i) the transfer, by sale, of substantially all of the assets, properties and rights related to the wastewater collection system owned by Brentwood to Pennsylvania-American Water Company, and (ii) the right of Pennsylvania-American Water Company to begin to offer, render, furnish and supply wastewater service in the areas served by the wastewater collection system owned by Brentwood.
3. The Commission permit PAWC to issue compliance tariff supplements, consistent with the *pro forma* tariff supplement attached to the Application as Second Amended Appendix

A-12, including all rates, rules and regulations regarding conditions of PAWC's wastewater service as revised herein, to become effective immediately upon Closing.

4. The Commission approve, under 66 Pa. C.S. § 1329(c), a rate base addition of \$19,364,443 associated with the acquisition of the System.

5. PAWC be permitted to record the acquisition at the net value of the assets, pursuant to 66 Pa. C.S. § 1702.

6. In the first base rate case that includes Brentwood's wastewater system assets:

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

b. PAWC will provide a separate cost of service study for the Brentwood System.

c. If PAWC files a base rate case that will be effective prior to the second anniversary of Closing, PAWC will propose an increase for Brentwood customers that will become effective on the second anniversary of Closing and PAWC will calculate its proof of revenues as if the Brentwood customers were paying proposed rates without any delay to the effective date.

7. PAWC be permitted to collect a DSIC prior to the first base rate case in which the Brentwood service area plant-in-service is incorporated into rate base. However, PAWC shall not include System-related investments in its DSIC until PAWC collects a DSIC from System customers. PAWC shall be permitted to collect a DSIC from System customers upon (i) PAWC's filing of an amended wastewater LTIP including the System, (ii) the Commission's approval of the amended LTIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement which incorporates the System into PAWC's DSIC tariff, after Commission approval of the amended LTIP.

8. PAWC be permitted to (a) accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes and (ii) 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 Brentwood's System assets.

9. PAWC shall be permitted to claim transaction and closing costs associated with the Transaction in its first base rate case that includes the System.

(a) The inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the APA shall be separately identified in PAWC's next base rate case.

(b) Any claim by PAWC to recover transaction and closing costs associated with the Transaction will be resolved in a base rate case.

10. That PAWC issue a notice to Brentwood customers prior to Closing to explain their new customer service options, bill payment options, how to qualify and enroll in low income programs available from both PAWC and ALCOSAN, as well as the change in policies and rights governing collection practices compared to prior Brentwood practices and policies.

11. The Commission not permit Closing to occur until Brentwood has (a) identified all missing easements and other property rights; (b) taken all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at Closing; and (c) borne all costs for obtaining and conveying the missing easements and property rights.

12. The Commission permit PAWC and Brentwood to Close on the Transaction without the transfer of all missing easements and other property rights, if due to circumstances beyond Brentwood's control, Brentwood is unable to transfer all missing easements and other

property rights before or at Closing, provided that an escrow account be established as set forth in the APA.

13. The Commission issue Certificates of Filing or approvals, pursuant to 66 Pa. C.S. § 507, for the following agreements between PAWC and a municipal corporation:

a. Asset Purchase Agreement and First Amendment to the Asset Purchase Agreement By and Between Brentwood Borough, as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of December 22, 2020 and amended March 2, 2023;

b. Agreement between Borough of Brentwood and City of Pittsburgh, dated October 14, 1936;

c. Streets Run Sewer Joint Management Agreement between Boroughs of Brentwood, Baldwin and Whitehall and the Western Mifflin Sanitary Sewer Authority dated July 19, 2000;

d. Cooperation and Allocation of Responsibilities Agreement between Borough of Brentwood and Pennsylvania-American Water Company dated March 2, 2023;

e. Bulk Wastewater Conveyance Agreements (The Borough of Brentwood Ordinances No. 188 and 189) for Fairhaven Road, Stewart Avenue, Saw Mill Run between the Borough of Brentwood, Baldwin Township, Carrick Borough and Overbrook Borough Dated as of September 30, 1926; and

f. Bulk Wastewater Conveyance Agreement (Saw Mill Run) between the City of Pittsburgh, Borough of Brentwood, Carrick Borough, Castle Shannon Borough, Dormont Borough, Knoxville Borough, Mt. Lebanon Township, Mt. Oliver Borough and Overbrook Borough dated October 31, 1925.

14. The Commission issue any other approvals or certificates appropriate, customary, or necessary under the Code to carry out the transaction contemplated in the Application in a lawful manner.

Respectfully submitted,



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Water Company*

November 30, 2023

APPENDIX A

LIST OF PAWC'S TESTIMONY AND SPONSORED EXHIBITS

Direct Testimony

1. Direct Testimony of Michael Salvo, PAWC St. No. 1, together with PAWC Exhibits MS-1 and MS-2.¹
2. Direct Testimony of Daniel J. Hufton, P.E., PAWC St. No. 2, together with PAWC Exhibits DJH -1 through DJH-3.
3. PAWC St. No. 3-REV, the Direct Testimony of Ashley E. Everette, together with PAWC Exhibit AEE-1 (Revised);
4. Direct Testimony of Jerome C. Weinert, PE, ASA, CDP, PAWC St. No. 4, together with PAWC Exhibit JCW-1.

Rebuttal Testimony

1. Rebuttal Testimony of Michael Salvo, PAWC St. No. 1-R, together with PAWC Exhibit MS-3.
2. Rebuttal Testimony of Daniel J. Hufton, P.E., PAWC St. No. 2-R.
3. Rebuttal Testimony of Ashley E. Everette, PAWC St. No. 3-R, together with PAWC Exhibit AEE-2.

¹ PAWC Exhibit MS-2 is a complete copy of the application in this proceeding as modified by PAWC responses to Bureau of Technical Utility Services application completeness review requests. The modifications were filed on May 31, 2023 and July 6, 2023. The ALJ took official notice of the application filing (as modified and as docketed by the Secretary's Bureau), so that PAWC does not have to file another copy of the voluminous application when it files electronic copies of PAWC's testimony and exhibits with the Secretary's Bureau.

APPENDIX B

Proposed Findings of Fact

The Parties

1. PAWC,² a subsidiary of 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. 14, 16.

2. Brentwood is a municipality located in Allegheny County with a population of approximately 10,082. Brentwood St. No. 1 p. 4.

3. I&E is the prosecutory bureau for the Commission for purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the 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).

4. 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.

5. OCA is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

6. ALCOSAN is a joint municipal authority organized under the Municipality Authorities Act, as amended, 53 Pa. C.S. §§ 5601-5623. ALCOSAN St. No. 1 p. 3.

² Unless otherwise indicated, all capitalized terms and acronyms have the same definition as set forth in PAWC's Brief.

Brentwood's Wastewater System

7. Brentwood owns and operates the System, which is a collection and conveyance wastewater system. Brentwood St. No. 1 p. 5.

8. The System directly serves only customers located in Brentwood. PAWC St. No. 2 p. 3. As of February 2023, the System furnished wastewater service to approximately 3,980 active customers. Brentwood St. No. 1 p. 6.

9. The System consists of approximately 200,000 linear feet of gravity collection mains, approximately 1,050 manholes, associated infrastructure and appurtenances, and numerous related land rights. The vast majority of the System is nearly 100 years old. Brentwood St. No. 1 p. 5.

10. Brentwood' Department of Public Works has eight employees tasked with administration and management of sanitary sewer service in the Borough, as well as: maintaining roadways, and the stormwater system, removing snow, maintaining parks and swimming pools, controlling traffic, maintaining the Borough stadium, maintaining four ballfields, maintaining all Borough facilities, assisting capital construction contractors, and ensuring all rights-of-way are clear of any obstruction. The Borough does not currently employ an in-house engineer. Brentwood St. No. 1-R p. 3.

The ALCOSAN Regional Interceptor System, the Z Agreement and the Cooperation Agreement

11. The System is part of the ALCOSAN regional interceptor system. All of Brentwood's sewage is ultimately conveyed to ALCOSAN's sewage treatment facility in Pittsburgh for treatment. Brentwood's collection and conveyance customers are treatment customers of ALCOSAN. PAWC St. No. 2 p. 3, 6; ALCOSAN St. No. 1 p. 5; Tr. 394.

12. The System receives sewage flow from Upstream Municipalities and discharges sewage flows into Downstream Municipalities. Brentwood does not charge the Upstream Municipalities for their flows into the System, nor do the Downstream Municipalities charge Brentwood for Brentwood's sewage flows into their systems. There are cost-sharing arrangements for capital improvement projects. PAWC St. No. 2 p. 6.

13. Brentwood is a party to the Z Agreement. Pursuant to the Z Agreement, ALCOSAN is the exclusive provider of wastewater treatment service to 83 municipalities, including Brentwood. ALCOSAN St. No. 1 pp. 2, 8.

14. To finance, construct, operate and maintain its wastewater system, ALCOSAN has agreements identical to the Z Agreement with each of its original customer municipalities and agreements substantially similar to the Z Agreement with subsequent customer municipalities, under which ALCOSAN is designated as their exclusive provider for wastewater treatment and conveyance services. ALCOSAN St. No. 1 p. 3; PAWC St. No. 2-R p. 9.

15. On January 23, 2008, a Consent Decree was entered into between and among ALCOSAN, the EPA, the DEP and the ACHD. On May 14, 2020, ALCOSAN, the EPA, the DEP, and the ACHD entered into the Modified Consent Decree. ALCOSAN St. No. 1 p. 6.

16. Because Brentwood receives wastewater treatment and conveyance services from ALCOSAN, Brentwood must comply with the Modified Consent Decree. Brentwood has entered into a COA with ACHD that sets forth corrective actions Brentwood must take to reduce its sewage overflows and requires Brentwood to cooperate to implement ALCOSAN's Modified Consent Decree. ALCOSAN St. No. 1 p. 7.

17. The Z Agreement cannot be directly assigned to PAWC, which led to the execution of the Cooperation Agreement. ALCOSAN St. No. 1 p. 9. The Cooperation Agreement allocates

certain rights and obligations under the Z Agreement to PAWC but Brentwood remains primarily responsible for its municipal rights and obligations under the Z Agreement. Brentwood St. No. 1 p. 6.

18. The Cooperation Agreement is necessary for ALCOSAN to preserve its status as the exclusive wastewater treatment and conveyance provider within its service area, which in turn preserves its ability to continue to meet its obligations under the Modified Consent Decree and bond and trust indentures. ALCOSAN St. No. 1 pp. 9-10.

19. Each municipality within ALCOSAN's service area has two billing options for sewage treatment and conveyance services: direct billing and lump sum billing. Brentwood chose the lump sum billing option, under which ALCOSAN bills the municipality for the aggregate customer charges on a quarterly basis and the municipality then bills the customers. ALCOSAN St. No. 1 pp. 10-11.

20. If the Application is approved, under Section 2.g of the Cooperation Agreement, PAWC will continue with the lump sum billing option. PAWC will bill customers the treatment charges at the rates established by ALCOSAN. ALCOSAN St. No. 1 pp. 11-12.

Brentwood's and ALCOSAN's Existing Rates and Billing Process

21. Each month, Brentwood customers receive a bill with two components: (1) ALCOSAN's treatment fees, and (2) the Borough's collection fees. Brentwood St. No. 1 p. 19.

22. As of January 1, 2023, ALCOSAN assesses a \$7.30 service fee per household and a \$10.42 consumption fee per thousand gallons of water used. Brentwood St. No. 1 pp. 7, 19-20.

23. In October 2021, ALCOSAN approved 7% annual increases for 2022 through 2026. Accordingly, the Borough raised the amount that it collected for ALCOSAN's treatment charges by 7% in 2022 and 2023. If the Transaction does not close, the Borough is expected to raise the

amount that it collects for ALCOSAN's treatment charges each time that ALCOSAN raises its treatment rates. Brentwood St. No. 1 pp. 19-20.

24. The fees charged by Brentwood are set annually by Borough Council. The Borough currently assesses a \$4.57 service fee per household and an \$8.91 consumption fee per thousand gallons of water used. Brentwood St. No. 1 p. 20.

The Sale Process

25. Beginning in September 2019, Brentwood undertook an extensive process to value the System, assess future costs of capital and revenue requirements, evaluate the ongoing time commitments of Borough personnel to address System issues, and consider the numerous qualitative and quantitative factors that weigh in favor of or against Brentwood keeping the System. Brentwood St. No. 1 pp. 9-10

26. Brentwood determined that its continued ownership of the System was no longer feasible, considering the administrative and financial burden of operating the System, the capital investment necessary to improve the System, and the challenges posed by the persistent environmental compliance issues in the region generally. Brentwood St. No. 1 p. 8, 9, 10.

27. On September 25, 2020, Brentwood issued the RFB for the sale of the wastewater collection system assets, and on October 28, 2020, PAWC submitted a proposal to acquire Brentwood's wastewater system assets. PAWC St. No. 1 p. 8; Brentwood St. No. 1 p. 11.

28. Through the bidding process, the Borough discovered PAWC's record for successfully addressing DEP and EPA compliance orders that require operational improvements and capital investments. The Borough has no such comparable experience or institutional competence. Brentwood St. No. 1-R.

29. Borough Council discussed the potential sale at several public meetings where residents had the opportunity to attend and provide comments. Brentwood St. No. 1 pp. 11-13.

30. Brentwood published articles regarding the proposed sale of the System in the Spring 2020, Winter 2020, and Spring 2021 editions of the Borough's IN Community magazine. Brentwood St. No. 1 p. 13.

31. After arms-length negotiations, on December 7, 2020, Brentwood Borough Council unanimously approved the sale of the System. Brentwood St. No. 1 p. 13.

The Asset Purchase Agreement

32. On December 22, 2020, Brentwood and PAWC entered into the APA for the sale of substantially all the assets, properties, and rights of the System. PAWC St. No. 1 p. 8.

33. The purchase price for the System is \$19,364,443, subject to certain adjustments. In addition, PAWC will pay Brentwood up to \$70,000 as reimbursement for engineering and legal fees related to the Transaction. PAWC St. No. 1 p. 12.

34. As of the Closing Date, Brentwood will fund an easement escrow fund in the amount of \$2,000 for each missing easement. PAWC St. No. 1 p. 13.

35. Upon Closing, PAWC will implement Brentwood's wastewater rates then in effect. PAWC St. No. 3-REV p. 7. PAWC will not increase this rate until after the second anniversary of the Closing Date. PAWC St. No. 1 p. 13.

36. In addition, PAWC will bill customers the treatment charges at the rates determined by ALCOSAN. PAWC St. No. 3-REV p. 7.

37. Immediately upon Closing, the Borough's customers will be subject to PAWC's prevailing wastewater tariff on file with the Commission with respect to miscellaneous fees and charges, rules, and regulations for wastewater service. PAWC St. No. 1 p. 13.

38. Borough customers will not be charged the DSIC until after PAWC's LTIP has been amended to include the System. PAWC St. No. 1 p. 13.

39. Closing will occur after the receipt of all applicable governmental approvals, including Commission approvals, 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 service to Brentwood's current customers and Brentwood will permanently discontinue furnishing wastewater service to the public. PAWC St. No. 1 pp. 10-10.

The Application

40. The Application seeks to utilize the process 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. 4.

41. PAWC is seeking the right to provide service to the customers currently served by the Borough. PAWC St. No. 1 pp. 22-23.

42. As required by Section 1329, PAWC's Application included a *pro forma* tariff (which was subsequently amended twice). PAWC Exhibit MS-2, Appendix A-12.

43. To the extent that existing agreements are being assigned to PAWC, PAWC is requesting Commission approval of those agreements pursuant to Section 507 in the instant proceeding.

44. Future capital projects related to improvements to, or major repair/replacement of the trunk lines, will be handled via negotiated capital contribution agreements and will be subject to Commission review under Section 507 of the Code to ensure that they are in the public interest.³ 66 Pa. C.S. § 507 ("contracts between public utilities and municipalities"). PAWC Exhibit MS-2, Appendix A-12 (Second Amended *Pro Forma* Tariff); PAWC St. No. 2-R p. 10.

³ This can be found in PAWC's proposed tariff, PAWC Exhibit MS-2 Second Amended Appendix A-12 Original Page 94 Section X.3. Tariffs have the force and effect of law. *Stiteler v. Bell Tele. Co.*, 379 A.2d 339, 341 (Pa. Cmwlth. 1977).

The Engineers’ Assessment and the Utility Valuation Expert Appraisals

45. As required by Section 1329, PAWC and Brentwood jointly retained the services of an engineer (The Gateway Engineers, Inc.) to complete an engineers’ assessment of the System. PAWC Exhibit MS-2 Appendix A-15-a .

46. PAWC’s UVE appraisal, the “Fair Market Appraisal Report of Borough of Brentwood (PA) Wastewater System, as of January 1, 2023,” was performed by Jerome C. Weinert, Principal and Director of WAD Consultants. WAD Consultants is a registered UVE with the Commission. This appraisal was completed in accordance with USPAP (2020-2021 Edition) (the Appraisal Foundation extended the applicability of the 2020-2021 Edition until December 31, 2023). PAWC St. No. 4 pp. 1, 3.

47. PAWC’s UVE appraised the System as follows:

Appraisal Approach	Value Indicator	Weight	Wtd Value Indicator
Cost	\$ 24,334,695	50%	\$ 12,167,348
Income	\$ 21,280,929	40%	\$ 8,512,372
Market	\$ 20,418,286	10%	\$ 2,041,829
Appraisal Conclusion			\$ 22,721,549

PAWC St. No. 4 p. 3.

48. Brentwood’s UVE appraisal, “Borough of Brentwood Wastewater System Assets Fair Market Value Appraisal at January 13, 2023,” was completed by Harold Walker III of Gannett Fleming. Brentwood St. 2 pp. 2, 3. Gannett Fleming is a UVE registered with the Commission. This appraisal was completed in accordance with USPAP. Brentwood St. No. 2 pp. 2, 4, 9.

49. Brentwood’s UVE appraised the System as follows:

Approach	Indicated Value	Weight	Weighted Value
Cost Approach	\$19,856,726	33.33%	\$6,618,247
Market Approach	21,128,331	33.34%	7,044,186
Income Approach	21,817,878	33.33%	7,271,899
		100%	\$20,934,332
Conclusion			\$20,934,000

Brentwood St. No. 2 p. 13.

PAWC’s Legal Fitness

50. PAWC is a Commission-regulated public utility with a good compliance history. PAWC has had no material issues complying with the Code, the Clean Streams Law, or other regulatory requirements. No pending proceedings suggest that PAWC is not legally fit to provide service to customers on Brentwood’s System. PAWC St. No. 1 pp. 21, 23.

51. PAWC has the resources, skills, and expertise to respond to ever-increasing environmental standards for wastewater treatment and to manage the long-term infrastructure renewal and replacement needs inherent in wastewater systems. PAWC St. No. 2 p. 23.

PAWC’s Financial Fitness

52. 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. 3-REV p. 3.

53. PAWC is a financially-sound business that can financially support the acquisition of the System and the ongoing operating and investment commitments that will be required to operate, maintain and improve those assets in serving the public. PAWC St. No. 3-REV p. 3.

54. 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-REV p. 5.

PAWC's Technical Fitness

55. As of February 28, 2023, PAWC furnished wastewater service to approximately 97,325 residential, commercial, industrial, municipal and bulk customers in Pennsylvania. As of February 28, 2023, PAWC furnished water service to approximately 680,144 customers in Pennsylvania. PAWC St. No. 1 pp. 14, 16.

56. 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. 21.

57. PAWC has an ongoing program of capital investment focused on replacing and adding new 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. 19.

58. PAWC is well-positioned from a financial, managerial and technical perspective to ensure that high quality wastewater service meeting all federal and state requirements is provided to Brentwood's customers and maintained for PAWC's existing customers. PAWC St. No. 3-REV p. 3.

Post-Closing Operation of the System

59. After Closing, the System will be incorporated as an operating district into PAWC's Southwest Area operations. Other PAWC employees will be available to assist with wastewater operations, as needed. All operations and employees within PAWC and within the broader American Water footprint have access to each other when circumstances require or when a specialized skill or experience is required to support local issues. PAWC St. No. 2 p. 10.

Customer Notice

60. PAWC provided notice of the acquisition to existing PAWC water and wastewater customers and to Brentwood's wastewater customers. These notices contained a non-binding estimate of the potential rate impact of the acquisition. PAWC St. No. 3-REV p. 11.

61. The notices were prepared in accordance with the Commission's order in *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered Oct. 3, 2019) ("*Steelton Order*"). This Order approved a Settlement in which PAWC agreed to the form and calculation of the notices for future Section 1329 acquisition proceedings. PAWC St. No. 3-REV p. 11. 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-REV p. 12.

62. The notice estimated that, in the first base rate case in which the System is included: (a) rates for Brentwood customers would increase by 11.0%; (b) rates for PAWC's wastewater customers would increase by 0.3%, and (c) rates for PAWC's water customers would increase by 0.0%. PAWC St. No. 3-REV pp. 13-15.

Public Input Hearings

63. At the public input hearings held on October 26, 2023, five persons testified. Two witnesses were PAWC water and wastewater customers from the Exeter area, and they opposed the Transaction because they feared that it would increase their rates. All of the witnesses who are current Brentwood customers spoke in favor of the Transaction. One witness supported the Transaction because, if the Borough uses the proceeds of the sale to keep taxes stable, that would be a substantial benefit to the many senior citizens in the area, who live on fixed incomes. PAWC St. No. 1-R pp. 2-4.

Impacts of the Transaction on the Public-At Large

64. The acquisition fosters the Commission's stated goal of consolidating and regionalizing water and wastewater systems to provide greater environmental and economic benefits to customers. The Transaction would promote consolidation in the industry because it would reduce the total number of wastewater providers. In addition, it would promote regionalization because PAWC would provide both water and wastewater services to the Borough's customers. PAWC St. No. 1 pp. 17, 19-20.

65. There is a clear legislative intent associated with Section 1329 and its allowance of fair market valuation for ratemaking purposes. The General Assembly intended to facilitate the acquisition of municipal water and wastewater systems by investor-owned utilities for the benefit of municipal corporations and their residents. PAWC St. No. 1 p. 19.

66. Brentwood has long been in violation of applicable environmental laws and regulations. The fact that the System is under a regulatory order is evidence that the System is not being operated in line with industry standards and regulatory expectations. PAWC St. No. 2-R pp. 2, 6; PAWC St. No. 2 pp. 11-12.

67. Brentwood is currently under a COA with the ACHD dated October 6, 2022, due to illegal sewage overflows. Prior to that regulatory order, Brentwood was under a COA with ACHD from 2016 to 2018, also for illegal sewage overflows. Prior to that, Brentwood was under an ACO with ACHD from 2005 to 2015, also for illegal sewage overflows. Finally, as far back as 1983, Brentwood was under a CAP with the DEP for hydraulic overloading in its collection system. PAWC St. 2-R pp. 2-4.

68. Environmental regulatory agencies like the ACHD and DEP use regulatory orders, such as ACOs, CAPs and COAs, to compel a regulated entity who is persistently violating environmental regulations to take corrective actions in order to eliminate the violations and come into compliance. Brentwood has been, and continues to be, in violation of state and federal environmental regulations. PAWC St. 2-R pp. 2-4.

69. While the Borough has made progress in portions of its System through projects completed under prior COAs with the Regulatory Agencies, the System remains out of compliance with state and federal regulations regarding SSOs and hydraulic overloading. PAWC St. No. 2 p. 26.

70. If the Transaction would not occur, Brentwood would not have the financial and technical capabilities to materially improve its environmental performance in the future. PAWC St. No. 2 p. 20.

71. The Borough Manager of Brentwood could not recall an instance where the Borough proactively funded, designed, and implemented an improvement in its System (aside from routine required maintenance and repairs) as is evident from the fact that the majority of the System is nearly a century old. Brentwood St. No. 1-R p. 5.

72. Without a well-funded program to upgrade aging collection system assets, Brentwood will continue to experience excessive I/I and SSOs in portions of its system. Furthermore, environmental regulations probably will continue to become more stringent in the future, with the potential for new or more stringent source reduction targets that could require substantial new investment in the future. PAWC St. 2-R p. 4.

73. PAWC will take a proactive approach to the I/I and SSO issues through a targeted asset renewal and rehabilitation program, as it has successfully done with other wastewater systems that it has acquired. PAWC would take a similar proactive approach to solving Brentwood's challenges, and in the end not only comply with the provisions of the current COA but also prevent the need for future regulatory orders. PAWC St. 2-R p. 4.

74. PAWC is currently under regulatory orders for six of its wastewater systems. Each of these regulatory orders is associated with a wastewater system that has been recently acquired, and PAWC is in the process of bringing the system up to regulatory standards from the condition left by the previous owner. PAWC is in compliance with the terms of all of these regulatory orders. PAWC is not under any regulatory orders at any of its wastewater systems that have not been subject to a recent acquisition. PAWC St. No. 2-R p. 7.

75. PAWC has developed a five-year capital plan for the System. Under this plan, PAWC will invest \$8,055,000 in the System in the first five years after closing. PAWC Exhibit DJH-2. The plan is based on preliminary cost estimates of individual source flow reduction projects that will be required for compliance under the Phase II COA, and other recurring capital work needed to comply with obligations in the O&M Program Plan and in the ordinary course of business. PAWC St. No. 2 p. 18.

76. From 2018 through 2021, PAWC 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 Brentwood into its System over the last 10 years, averaging \$236 per year per customer connection. Prudent renewal and replacement of the aging System infrastructure through capital investment is key to achieving and maintaining long-term environmental compliance. PAWC St. No. 2 pp. 22-23.

Impacts of the Transaction on Brentwood

77. Brentwood currently has debt repayment obligations of approximately \$900,000 per year. If the Transaction is not approved, Brentwood may need to increase taxes to create financial breathing room. Brentwood St. No. 1 p. 5.

78. The Transaction will provide Brentwood with sale proceeds of \$19,364,443. At this time, Brentwood has not committed to using the proceeds in any particular manner. Brentwood St. No. 1 p. 18.

79. The APA provides that PAWC will reimburse Brentwood for up to \$70,000 in engineering and legal fees incurred related to the Transaction. PAWC St. No. 1 p. 12.

80. The Transaction will enable Brentwood to reallocate administrative resources to focus on other key initiatives. Brentwood St. No. 1 p. 18.

81. The fact that Brentwood will no longer have to expend resources chasing outstanding receivables in connection with wastewater services is yet another benefit of the Proposed Transaction. Brentwood St. No. 1-R p. 10.

82. Each Brentwood sewer customer is either a citizen or property owner in Brentwood, and thus will reap the benefits of however Brentwood chooses to spend the proceeds received from the Proposed Transaction. Brentwood St. No. 1-R p. 11.

Impacts of the Transaction on Brentwood's Customers

83. If the Transaction is approved, there will be no immediate impact on the rates of Brentwood's customers because PAWC will adopt Brentwood's rates in effect at the time of Closing. PAWC St. No. 3-REV p. 10.

84. PAWC will not increase rates for Brentwood customers for two years following Closing. Brentwood St. No. 1 p. 18.

85. Since 2019, Brentwood has not increased the fee it charges to System customers. Such a continued rate freeze is not sustainable given the System's need for capital improvement. Thus, the collection portion of Borough customers' bills is certain to increase if the Transaction does not Close. Brentwood St. No. 1 p. 10.

86. Rate increases are inevitable, whether or not the system is sold. Given the fact that future issues may be unforeseen, it is possible that rate increases may be more than those that would be implemented as a result of the Transaction. Brentwood St. No. 1-R pp. 7-8.

87. Closing cannot occur until the Commission has approved the Transaction. As a result, Closing will not occur until at least April 2024. The rate freeze will continue for two years after Closing. Based on the consumer price index, the inflation rate for the 12-month period ending September 2023 was 3.7%.² At that pace, prices will rise by about 9.2% from current levels by the time the rate freeze is over. PAWC St. No. 1-R p. 12.

88. Brentwood's regular business hours for customer interactions are from 8 a.m. to 4:30 p.m. Monday through Friday. Customers calling after hours can leave a message for a sewer backup or any other type of sewage-related emergency, or they can call 911. PAWC St. No. 2 p. 28. Brentwood customers cannot reach a System representative by e-mail. Brentwood St. No. 1 p. 16.

89. PAWC's customer service call center is open for routine customer interactions from 7:00 a.m. to 7:00 p.m., Monday through Friday and is available 24/7/365 for emergencies. PAWC has full-time, dedicated employees to respond during normal work hours and after hours. Field service crews are on-call and available for emergency field work outside of normal work hours. PAWC St. No. 2 pp. 28, 33. PAWC has full-time, dedicated employees to respond during normal work hours and after hours. Customers have access to PAWC's team 24/7 to quickly address emergencies – in most cases from existing employees in nearby operations. Plus, PAWC, through its website has on-line, up-to-date customer information on emergencies so customers can plan accordingly. PAWC St. No. 1-R p. 15.

90. Brentwood does not currently provide any low-income assistance programs. Brentwood St. No. 1 p. 17.

91. As new PAWC customers, Brentwood's customers will have access to PAWC's customer assistance program (the "H2O Help to Others Program.") For wastewater customers, this program offers two main services: (1) grants of up to \$500 per year and (2) a tiered discount on total wastewater charges based on percentage of Federal Poverty Level (Tier 1 0%-50% of FPL 80% discount; Tier 2 51%-100% of FPL 55% discount; Tier 3 101%-150% of FPL 30% discount). Additionally, PAWC offers payment arrangements and budget billing to residential customers who qualify for the programs. PAWC St. No. 2 pp. 34-35.

92. Because PAWC is already the water provider in the Brentwood area, any customers enrolled in the low income discount for water service will be automatically enrolled in the discount for wastewater service at the time of Closing. PAWC St. No. 3-REV p. 17.

93. Brentwood's wastewater collection system is located within PAWC's water distribution system footprint. PAWC St. No. 1 p. 17; PAWC St. No. 2 p. 9. After Closing,

Brentwood customers will have one provider for both water and wastewater service. This means Brentwood's customers will receive one bill for both water and wastewater services, providing customers with a more efficient payment process for both services. Brentwood St. No. 1 p. 15.

94. As the public water provider in the Brentwood service area, PAWC can leverage synergies between the water and sewer infrastructure networks to the benefit of customers and the general public. For example, PAWC will evaluate needed infrastructure upgrades holistically from both the water and wastewater perspectives, and can plan water distribution system improvements and sewer system rehabilitation projects together when feasible, reducing the number of street openings, lessening the inconvenience to the public, and lowering overall construction and restoration costs. PAWC St. No. 2 p. 23; PAWC St. No. 1-R pp. 13-14.

95. A single provider of water and wastewater services is more likely to be sensitive to the combined cost of water and wastewater service than are separate service providers. PAWC St. No. 1-R p. 14.

96. PAWC is governed by the Code and Commission regulations, requiring PAWC to provide adequate, efficient, safe and reliable service at just and reasonable rates. PAWC St. No. 1 pp. 17-18.. Brentwood is not subject to the Code or the Commission's regulations. PAWC St. No. 2 pp. 36, 37.

97. In the Cooperation Agreement, PAWC agreed to assume the billing agent function of Brentwood. PAWC Exhibit MS-2 Appendix A-25.3 ¶ 2.g. As compensation for this service, PAWC will receive the same credit from ALCOSAN that was formerly paid to Brentwood pursuant to the Z Agreement. PAWC Exhibit MS-2 Appendix A-25.3 ¶ 16. In addition, Brentwood customers will be able to pay one bill instead of three separate bills (for water service, wastewater treatment service and wastewater collection and conveyance service).

98. Brentwood currently provides notice to its residents of changes in ALCOSAN charges. If the Transaction is approved, PAWC will maintain the same billing agent relationship with ALCOSAN for the convenience of customers, and will similarly provide advanced notice to Brentwood customers of any changes in ALCOSAN's charges. Brentwood St. No. 1-R p. 13.

99. Consolidated billing avoids customer confusion and limits the number of utility bills that they receive. Brentwood St. No. 1-R p. 13.

Impact of the Transaction on PAWC's Existing Wastewater Customers

100. There will be no immediate rate impact on PAWC's existing wastewater customers. PAWC St. No. 1 p. 18; PAWC St. No. 3-REV p. 10. Any impacts on the rates of PAWC's existing wastewater customers would occur only upon Commission approval as part of a base rate proceeding. PAWC St. No. 3-REV p. 10.

101. The Transaction will benefit PAWC's existing wastewater customers in the long-term by expanding PAWC's customer base. By adding additional connections to the entire PAWC system, there are more customers to share future infrastructure investment costs, which promotes stable rates across the entire PAWC system. Customers who benefit from near-term improvements will one day help pay for improvements on behalf of other customers on other parts of the PAWC system. Being able to spread the costs of investing in and maintaining public wastewater systems over a growing customer base, particularly in a time of aging infrastructure and increased environmental requirements, is essential to the continued success and longevity of wastewater systems and maintaining reasonable rates for customers. PAWC St. No. 1 pp. 18-19.

Impact of the Transaction on PAWC'S Existing Water Customers

102. There will be no immediate rate impact on PAWC's existing water customers. PAWC St. No. 1 p. 18; PAWC St. No. 3-REV p. 10. Any impacts on the rates of

PAWC's existing water customers would occur only upon Commission approval as part of a base rate proceeding. PAWC St. No. 3-REV p. 10.

103. The Transaction will have no rate 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 water customers. 66 Pa. C.S. § 1311(c).

Ratemaking Rate Base

104. All the trunklines in Brentwood convey Brentwood sewage through the Borough to the Downstream Municipalities for conveyance to the ALCOSAN regional plant for treatment. No portion of the trunklines in Brentwood is used solely to convey wastewater from Upstream Municipalities to Downstream Municipalities. Tr. 152, 372.

105. Brentwood's trunk lines are part of the comprehensive system set up by ALCOSAN via uniform Other Z Agreements. The Other Z Agreements for all municipalities are substantively the same and require the establishment of a regional interceptor system through the use of municipal trunk lines for the transport of sewage to the ALCOSAN plant. Brentwood's trunklines are used by other municipalities, just as Brentwood uses the trunklines of other municipalities. It is a mutual assistance system. PAWC St. No. 2-R pp. 10-11; Tr. 152.

106. The trunklines, and the level of capacity thereof, provide a benefit to System customers because they permit Brentwood customers to receive wastewater treatment service through the ALCOSAN regional interceptor system. Brentwood would not have wastewater treatment service if it did not participate in the comprehensive ALCOSAN system. PAWC St. No. 2-R p. 11; Tr. 152.

BILLING AGENT FOR ALCOSAN

107. ALCOSAN could bill Brentwood's customers directly, but instead, in the Z Agreement, ALCOSAN gave municipalities the option of billing ALCOSAN's customers in return

for a credit approximating the amount that ALCOSAN saved in billing expense because the municipality opted to serve as ALCOSAN's billing agent. PAWC Exhibit MS-2 Appendix A-25.3

¶ 16.

108. Because ALCOSAN is a joint municipal authority under the Municipality Authorities Act, as amended, ALCOSAN St. No. 1 p. 3, the Commission lacks jurisdiction over ALCOSAN's rates. PAWC St. No. 3-R p. 6.

109. Brentwood's collection and conveyance customers are treatment customers of ALCOSAN; Brentwood is not a bulk customer of ALCOSAN. After Closing on the Transaction, PAWC will not be a bulk customer of ALCOSAN. Tr. 394, 409. Charges collected on behalf of ALCOSAN will be recorded to a "collection for others" liability account and will not be revenue to PAWC. PAWC St. No. 3-R p. 6; Tr. 394.

110. The Commission has approved a tariff for the Pittsburgh Water and Sewer Authority ("PWSA") in which PWSA acts as the billing agent to ALCOSAN. PAWC St. No. 3-R p. 7; Tr. 375, 398-399.

APPENDIX C

Proposed Conclusions of Law

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

2. Pennsylvania-American Water Company has the burden of proof in this proceeding. 66 Pa. C.S. § 332(a).

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

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

5. An applicant for a Certificate must demonstrate that it is technically, financially, and legally fit to own and operate the system being acquired. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985).

6. A certificated public utility 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).

7. PAWC demonstrated, by a preponderance of the evidence, that it is technically, financially and legally fit to own and operate the System.

8. An applicant for a certificate of public convenience must demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

9. The affirmative public benefit test is a “net benefits assessment.” This requires a showing that, on net, the public is better off because of the transaction than it would have been in the absence of the transaction. *Cicero v. Pa. Pub. Util. Comm’n*, 300 A.3d 1106 (Pa. Cmwh.. 2023), *petitions for alloc, pending*. Where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction. *Id.*

10. The Commission must consider environmental impacts when adjudicating cases. *Township of Marple v. Pa. Pub. Util. Comm’n*, 319 C.D. 2022 (Pa. Cmwh. 2023) (citing the Environmental Rights Amendment, PA. CONST. art I, § 27).

11. PAWC demonstrated, by a preponderance of the evidence, that the Transaction affirmatively promotes the service, accommodation, convenience or safety of the public in some substantial way.

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

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

14. “Fair market value” is defined as “the average of the two utility valuation expert appraisals conducted under subsection (a)(2).” 66 Pa. C.S. § 1329(g).

15. The only rate-making determination being made in this Application proceeding is the fair market value rate-base, 66 Pa. C.S. § 1329(c)(2).

16. Parties will have the right to contest other rate issues in future base rate proceedings. In that proceeding, the PUC will have authority to set just and reasonable rates. 66 Pa. C.S. § 1301.

17. The PUC has discretion to determine if plant is used and useful. Plant is used and useful if it provides benefits to customers. James J. Hoecker, *‘Used and Useful’: Autopsy of a Ratemaking Policy*, 8 Energy L.J. 303, 310, 312 (1987).

18. All of Brentwood’s wastewater system assets are used and useful because they are used to provide service to Brentwood’s customers. In addition, all of Brentwood’s wastewater system assets benefit Brentwood’s customers because they are part of a mutual assistance arrangement with other municipalities by which Brentwood’s customers receive treatment service from ALCOSAN’s wastewater treatment plant. If not for this mutual assistance arrangement, Brentwood’s customers would not have wastewater treatment service.

19. For an acquisition in which a municipal corporation and the acquiring public utility agree to use the valuation procedure delineated in 66 Pa. C.S. § 1329, the application is to contain a tariff equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition. 66 Pa. C.S. § 1329(d)(1)(v).

20. During the period that the *pro forma* tariff supplement is in effect, an acquiring public utility may collect a DSIC, as approved by the Commission. 66 Pa. C.S. § 1329(d)(4).

21. A wastewater utility must submit a long-term infrastructure improvement plan to, and receive approval from, the Commission prior to collecting a DSIC. *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Final Implementation Order entered August 2, 2012).

22. Section 1329 permits an acquiring public utility's post-acquisition improvements, which are not included in a DSIC, to accrue allowance for funds used during construction after the date the cost was incurred until the asset has been in service for a period of four years or until the asset is included in the acquiring public utility's next base rate case, whichever is earlier. 66 Pa. C.S. § 1329(f)(1).

23. Section 1329 permits an acquiring public utility to defer depreciation on post-acquisition improvements, which are not included in a DSIC. 66 Pa. C.S. § 1329(f)(2).

24. Section 1329 permits an acquiring public utility to include transaction and closing costs in its rate base, during its next base rate proceeding. 66 Pa. C.S. § 1329(d)(2). The Commission will not approve these costs during the 1329 proceeding. *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016).

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

APPENDIX D

Proposed Ordering Paragraphs

1. That the Honorable Administrative Law Judge Katrina L. Dunderdale recommend approval of, and the Commission approve, the Application filed by PAWC on March 31, 2023, 2020 (as amended), and order:

2. That the Commission issue such Certificates of Public Convenience as may be necessary to evidence its approval under 66 Pa. C.S. § 1102(a) of (i) the transfer, by sale, of substantially all of the assets, properties and rights related to the wastewater collection system owned by Brentwood to Pennsylvania-American Water Company, and (ii) the right of Pennsylvania-American Water Company to begin to offer, render, furnish and supply wastewater service in the areas served by the wastewater collection system owned by Brentwood.

3. That, the Commission permit PAWC to issue compliance tariff supplements, consistent with the *pro forma* tariff supplement attached to the Application as **Second Amended Appendix A-12**, including all rates, rules and regulations regarding conditions of PAWC's wastewater service as revised herein, to become effective immediately upon Closing.

4. That the Commission approve, under 66 Pa. C.S. § 1329(c), a rate base addition of \$19,364,443 associated with the acquisition of the System.

5. That, pursuant to 66 Pa. C.S. § 1702, PAWC be permitted to record the acquisition at the net value of the assets.

6. That, in the first base rate case that includes Brentwood's wastewater system assets:

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

b. PAWC will provide a separate cost of service study for the Brentwood System.

c. If PAWC files a base rate case that will be effective prior to the second anniversary of Closing, PAWC will propose an increase for Brentwood customers that will become effective on the second anniversary of Closing and PAWC will calculate its proof of revenues as if the Brentwood customers were paying proposed rates without any delay to the effective date.

7. PAWC be permitted to collect a DSIC prior to the first base rate case in which the Brentwood service area plant-in-service is incorporated into rate base. However, PAWC shall not include System-related investments in its DSIC until PAWC collects a DSIC from System customers. PAWC shall be permitted to collect a DSIC from System customers upon (i) PAWC's filing of an amended wastewater LTIP including the System which does not re-prioritize other existing commitments in other service areas, (ii) the Commission's approval of the amended LTIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement which incorporates the System into PAWC's DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the amended LTIP.

8. That PAWC shall be permitted to (a) accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes and (ii) 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 Brentwood's wastewater System assets.

9. That PAWC shall be permitted to claim transaction and closing costs associated with the Transaction in its first base rate case that includes the System.

(a) The inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the APA shall be separately identified in PAWC's next base rate case.

(b) Any claim by PAWC to recover transaction and closing costs associated with the Transaction will be resolved in a base rate case.

10. That PAWC issue a notice to Brentwood customers prior to Closing to explain their new customer service options, bill payment options, how to qualify and enroll in low income programs available from both PAWC and ALCOSAN, as well as the change in policies and rights governing collection practices compared to prior Brentwood practices and policies.

11. The Commission not permit Closing to occur until Brentwood has (a) identified all missing easements and other property rights; (b) taken all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at Closing; and (3) borne all costs for obtaining and conveying the missing easements and property rights.

12. The Commission permit PAWC and Brentwood, at their discretion, to Close on the Transaction without the transfer of all missing easements and other property rights, if due to circumstances beyond Brentwood's control, Brentwood is unable to transfer all missing easements and other property rights before or at Closing, provided that an escrow account be established as set forth in the APA.

13. That, pursuant to 66 Pa. C.S. § 507, the Commission issue Certificates of Filing or approvals for the following agreements between PAWC and a municipal corporation:

- a. Asset Purchase Agreement and First Amendment to the Asset Purchase Agreement By and Between Brentwood Borough, as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of December 22, 2020 and amended March 2, 2023;
- b. Agreement between Borough of Brentwood and City of Pittsburgh, dated October 14, 1936;
- c. Streets Run Sewer Joint Management Agreement between Boroughs of Brentwood, Baldwin and Whitehall and the Western Mifflin Sanitary Sewer Authority dated July 19, 2000;
- d. Cooperation and Allocation of Responsibilities Agreement between Borough of Brentwood and Pennsylvania-American Water Company dated March 2, 2023, attaching as Exhibit A the Sewage Treatment, Plan Design, Construction and Operation Agreement by and between Allegheny County Sanitary Authority, City of Pittsburgh and Borough of Brentwood Dated as of December 1, 1949;
- e. Bulk Wastewater Conveyance Agreements (The Borough of Brentwood Ordinances No. 188 and 189) for Fairhaven Road, Stewart Avenue, Saw Mill Run between the Borough of Brentwood, Baldwin Township, Carrick Borough and Overbrook Borough Dated as of September 30, 1926; and
- f. Bulk Wastewater Conveyance Agreement (Saw Mill Run) between the City of Pittsburgh, Borough of Brentwood, Carrick Borough, Castle Shannon Borough, Dormont Borough, Knoxville Borough, Mt. Lebanon Township, Mt. Oliver Borough and Overbrook Borough dated October 31, 1925.

14. That the Commission issue any other approvals or certificates appropriate, customary, or necessary under the Code to carry out the transaction contemplated in the Application in a lawful manner.