

COMMONWEALTH OF PENNSYLVANIA



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November 30, 2023

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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Re: Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code to acquire the wastewater collection and conveyance system owned by the Borough of Brentwood and to provide wastewater service to the public in the Borough of Brentwood in Allegheny County, Pennsylvania Docket No. A-2021-3024058

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: The Honorable Katrina L. Dunderdale (**email only**)
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Certificate of Service

*4854-9899-5858

CERTIFICATE OF SERVICE

Application of Pennsylvania-American Water :
Company under Sections 1102(a) and 1329 of :
the Pennsylvania Public Utility Code to acquire : Docket No. A-2021-3024058
the wastewater collection and conveyance system :
owned by the Borough of Brentwood and to provide:
wastewater service to the public in the Borough of :
Brentwood in Allegheny County, Pennsylvania :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 30th day of November 2023.

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**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 : Docket No. A-2021-3024058
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 :

MAIN BRIEF
OF THE
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I. STATEMENT OF THE CASE

A. Procedural History

On March 31, 2023, Pennsylvania-American Water Company (PAWC, Applicant, or Company) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code. PAWC first requested that the Public Utility Commission (Commission) (1) approve its acquisition of the wastewater system assets of Borough of Brentwood (Brentwood) and (2) approve the right of PAWC to provide wastewater service in the requested territory, by issuing Certificates of Public Convenience under Section 1102. Application at ¶ 1; 66 Pa. C.S. § 1102. PAWC also requested that the Commission include, in its Order approving the acquisition, the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code, in addition to other costs associated with the proposed transaction. Application at ¶ 2; 66 Pa. C.S. § 1329. PAWC also requested approval of the Asset Purchase Agreement (APA), as amended, dated March 2, 2023, the Cooperation Agreement between Borough of Brentwood and Pennsylvania-American Water Company dated March 2, 2023, as well as other municipal agreements, pursuant to Section 507 of the Public Utility Code. Application at ¶ 3; 66 Pa. C.S. § 507.

PAWC provides wastewater service to approximately 97,325 customers throughout Pennsylvania. Application at ¶ 9. Brentwood owns a sanitary wastewater collection-only system which provides direct wastewater collection service to approximately 3,974 customers in the Borough of Brentwood, who will become PAWC customers if the Application is approved. Application at ¶ 8.

On April 7, 2023, the Office of Small Business Advocate filed a Notice of Intervention, and Public Statement. The OCA filed a Protest and Public Statement on May 4, 2023. On May 12,

2023, the Commission's Bureau of Investigation and Enforcement (I&E) entered its appearance in the matter.

By Secretarial Letter dated July 20, 2023, the Commission conditionally accepted the Application for filing. The Commission directed PAWC to provide individual notice to PAWC's potentially affected existing water and wastewater customers, ensure concurrent notice is provided to all current Brentwood wastewater customers and that newspaper notice be provided in the Brentwood area. Upon completion, PAWC was directed to file proof of publication of the newspaper notice with the Commission. On September 5, 2023, PAWC filed notice it served a copy of the Application on all parties listed in the Secretarial Letter dated July 25, 2023, and on all its customers as well as current wastewater customers of the Borough of Brentwood. PAWC also filed Proof of Publication showing that notice the Application appeared in the Pittsburgh Post-Gazette on August 17, 2023, and August 24, 2023.

On September 15, 2023, the Office of Administrative Law Judge assigned Administrative Law Judge Katrina L. Dunderdale (ALJ Dunderdale) to the instant matter, and scheduled a telephonic prehearing conference for October 17, 2023, directing the parties to submit a prehearing conference memorandum on or before October 16, 2023. On October 2, 2023, the Borough of Brentwood filed a Petition to Intervene. On October 11, 2023, the Allegheny County Sanitary Authority (ALCOSAN) filed a Petition to Intervene. ALCOSAN provides treatment services for the Brentwood collection system, as well as 82 other municipally-owned collection systems in Allegheny County. ALCOSAN St. 1 at 2. A prehearing conference was held on October 17, 2023, during which the Borough and ALCOSAN's Petitions were granted.

On October 24, 2023, the OCA served the direct testimony of Nicholas A. DeMarco¹ and Barbara R. Alexander.² I&E and OSBA also served direct testimony on October 24, 2023. Both the Company and Borough of Brentwood served rebuttal testimony on October 31, 2023. I&E and the OCA served surrebuttal testimony on November 6, 2023. Evidentiary hearings were held on November 8, 2023, and November 14, 2023, where the OCA and other parties submitted their testimony and associated exhibits into the record. On November 7, 2023, PAWC, the Borough, and ALCOSAN filed a joint stipulation, which was later amended through a subsequent filing on November 14, 2023, to alter provisions contained within the schedules attached to the Asset Purchase Agreement in Appendix 24 to the Application. In an order issued November 16, 2023, ALJ Dunderdale denied the oral motions of PAWC to admit either the original or amended joint stipulation into the record.

Pursuant to the schedule, the OCA files this Main Brief in support of its position.

B. Overview of the Proposed Transaction

In accordance with Section 1102 of the Public Utility Code, PAWC is requesting a Certificate of Public Convenience to acquire Brentwood's wastewater collection-only system and provide wastewater service to those areas previously served by Brentwood. Application at ¶ 1. PAWC proposes to pay \$19,364,443 for Brentwood's assets that were valued at a depreciated

¹ Mr. DeMarco is a Regulatory Analyst at the Office of Consumer Advocate. He received his Bachelor of Arts degree from Bloomsburg University of Pennsylvania and his Master's degree from Lehigh University. Mr. DeMarco regularly analyzes the financial, economic, and policy issues relevant to utility filings, including utility acquisition filings, universal service, as well as work on behalf of the OCA on issues related to the PJM Interconnection. A more complete description of Mr. DeMarco's education and experience may be found at Exhibit-ND-1 to OCA St. 1.

² Ms. Alexander is a Consumer Affairs Consultant who runs her own consulting practice, Barbara Alexander Consulting LLC. She received her Bachelor of Arts degree from the University of Michigan and her J.D. from the University Of Maine School Of Law. Ms. Alexander has provided extensive written testimony and commentary over the past two decades on a wide variety of service quality and consumer protection issues. Her professional experiences and qualifications are attached as Exhibit BA-1 to OCA St. 2.

original cost of \$7.09 million.³ PAWC Statement No. 3 at 5; 66 Pa. C.S. § 1329(d)(5). PAWC also chose to file its application under Section 1329 of the Public Utility Code. PAWC requests that the purchase price of \$19,364,443 be approved as the rate base for ratemaking purposes. App'x A-24-b.⁴ A portion of the Brentwood system includes trunklines which service upstream municipalities who do not pay for Brentwood's transfer of wastewater towards the ALCOSAN treatment plant. In addition, PAWC seeks approval from the Commission for several other municipal agreements pursuant to Section 507 of the Public Utility Code, including the APA and Cooperation Agreement between the Borough of Brentwood and PAWC. Application at ¶ 3.

II. BURDEN OF PROOF

Under Sections 315(c) and 332 of the Public Utility Code, the burden of proof rests with PAWC as the Applicant. Section 332 states:

Burden of proof. - Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

66 Pa. C.S. § 332. Section 315(c) places the burden of proof upon the Applicant. It states that:

In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility.

³ Depreciated original cost, as used in Section 1329(d)(5), does not reflect an offset for contributed plant or capital, as is done in ratemaking.

⁴ Under Section 1329, the purchasing utility may include in ratemaking rate base "the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility." 66 Pa.C.S. § 1329(c). In this case, PAWC's UVE appraisal was \$20,934,000. App'x A-5.2 at 1. The Borough's UVE appraisal was \$22,721,549. App'x A-5.1 at 6. The average of the two UVE appraisals is \$21,827,775, which is greater than the purchase price of \$19,364,443; as a result, if this transaction is approved PAWC has requested that the purchase price be included in rate base under Section 1329(c). However, as outlined more fully below and evidenced by the testimony submitted by the Bureau of Investigation and Enforcement's witness, because PAWC and Brentwood have not provided an accurate UVE assessment as to the value of the used and useful plant in the Brentwood system, the Commission does not have a sufficient basis to determine what should be added to PAWC's ratemaking rate base under Section 1329.

66 Pa. C.S. § 315(c). Therefore, it is PAWC that has the burden of demonstrating by a preponderance of evidence that its proposed acquisition of Brentwood satisfies the requirements of Pennsylvania law. *See Lansberry v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Cmwlth. Ct. 1990) (*Lansberry*). More precisely, the evidence supporting the Applicant's case must be more convincing than the evidence presented against it. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (1950).

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party established a *prima facie* case, the party with the burden of proof must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. P.U.C.*, 461 A.2d 1234, 36 (1983). Additionally, the evidence must be substantial and legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. *Lansberry* at 602.

The Applicant has the burden of proving that the acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. P.U.C.*, 295 A.2d 825, 828 (Pa. Cmwlth. Ct. 1972) (*City of York*); 66 Pa. C.S. § 315(c). Under *City of York*, the Commission must conduct a “net benefits assessment,” whereby the proposed substantial benefits of a transaction must outweigh the harms caused by the transaction, should the Commission approve the Application. *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040, 1056 (Pa. 2007) (*Popowsky*). All factors must be considered, including rate impact, to determine if a transaction will result in net benefit. *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055, 1067 (Pa. Cmwlth. Ct. 2018) (*McCloskey*). To qualify as benefits of a transactions, the services, expertise, or fitness provided by the acquiring utility must differ substantially from the benefits

already provided by the system operator, and must be specific to the transaction in question, not merely arising out of the fitness of the acquiring utility. *Cicero v. Pa. P.U.C.*, 300 A.3d 1106, 1119 (Pa. Cmwlth. Ct. 2023) (*Cicero*), *petitions for allowance of appeal filed*, Nos. 568 MAL 2023 (Commission), 569 MAL 2023 (East Whiteland Township), 570 MAL 2023 (Aqua Pennsylvania) (all filed Oct. 26, 2023).

In sum, for an acquiring utility to warrant an approved Certificate of Public Convenience for the proposed acquisition of another utility, the acquiring utility must demonstrate by a preponderance of the evidence that benefits will arise out of the transaction which: (1) are substantial and unique to the transaction and (2) outweigh the acknowledged or known harms that will result from the transaction. That is, the law requires that the Commission conduct a fact-based evaluation and fact-based balancing such that any approval must demonstrate that the public is better off – on net – because of the transaction than it would be in the absence of the transaction, and this decision must be rooted in the facts that are specific to both the acquiring utility and the acquired system. *Application of Pennsylvania-American Water Co. under Section 1329 for Acquisition of the Butler Area Sewer Authority*, Docket No. A-2022-3037047 at p. 14 (Order Nov. 9, 2023) (BASA Order) (citing *Cicero*, 300 A.3d at 1117)⁵.

Further, under Section 1307(a) of the Public Utility Code, where a utility proposes a pass-through charge to its ratepayers, that utility must demonstrate that there is a need for the pass-through, and the costs to which it applies are unique, unexpected, or non-recurring, such that they are not normal, ongoing costs of providing water service. *Aqua Pennsylvania, Inc. v. Pa. P.U.C.*, Docket No. R-2021-3027385, 2022 PA. PUC LEXIS 161, *155 (Opinion May 12, 2022) (Aqua 2021 Base Rate Case)⁶. Where an expense which a utility seeks to collect under a pass-through is

⁵ Available at: <https://www.puc.pa.gov/pcdocs/1805882.pdf>.

⁶ Available on the Commission's website at: <https://www.puc.pa.gov/pcdocs/1744354.pdf>.

considered a routine operations and maintenance expense, it is less likely to justify collection outside of base rates. *Id.*

III. SUMMARY OF ARGUMENT

PAWC's request for approval of its proposed purchase of the Borough of Brentwood wastewater system under Sections 1102 and 1103 of the Public Utility Code should be denied because PAWC failed to establish that the transaction would result in substantial affirmative public benefit. 66 Pa. C.S. §§ 1102, 1103; *City of York*, 295 A.2d at 828; *Popowsky*, 937 A.2d at 1057; *McCloskey*, 195 A. 3d at 1067. PAWC's averred benefits are either not benefits at all – because they do not differ in any substantial way from the technical, legal, or financial capability of Brentwood – or they do not outweigh the substantial adverse impact on its existing wastewater customers and the Brentwood customers who would be served by PAWC following the close of the proposed transaction.

PAWC calculated a \$664,000 annual revenue deficiency to support the Brentwood system if the proposed \$19,364,443 rate base is approved. PAWC St. No. 2, Exh. DJH-2. If the known costs are applied only to Brentwood's customers, it would require an 11% increase to their current rates. AEE-1REV. If the known costs, including one-fifth of the cost of PAWC's anticipated capital expenditures, are applied only to Brentwood's customers, it would require a 13.5% increase to their current rates. OCA Exh. ND-13. If not, the additional revenue requirement will be recovered from existing PAWC wastewater customers and PAWC water customers. The evidence shows no substantial or material change in quality or conditions of service will result from changing ownership from Brentwood to PAWC. Thus, the OCA recommends that the Commission deny the proposed transaction.

Further, PAWC and Brentwood's utility valuation experts (UVE) inflated the value of

the Brentwood system by including portions of the system which provide free service to neighboring municipalities, a purpose which should not be included in rate base because it is not used and useful. Section 1329 provides for the addition to ratemaking rate base of the lesser of the negotiated purchase price or fair market value of the selling utility – as determined by averaging the valuations of the UVEs for the buyer and seller. Because PAWC and Brentwood have not provided an accurate UVE assessment as to the value of the used and useful plant in the Brentwood system, the Commission does not have a basis to determine how much should be added to PAWC’s ratemaking rate base under Section 1329. Currently, it is impossible to tell whether the purchase price is actually lower than the averaged UVE appraisals due to the included plant which is not entirely used and useful; until the Commission can be certain as to the amount which should be added to ratemaking rate base under Section 1329(c), no amount should be added. *See* I&E St. 1-SR at 20.

While the OCA did not submit expert testimony on the issue of Brentwood’s “non-customer” downstream municipalities, the OCA supports the position advanced by I&E expert witness Mr. Kubas. *See generally* I&E St. 1 and 1-SR. Therefore, should the Commission approve the transaction, the OCA supports I&E’s recommendation that the Commission require PAWC and Brentwood to submit accurate UVE reports which do not include used and useful plant dedicated to service of non-customers, and that PAWC provide a cost of service study for the Brentwood system in all future rate cases which does not include the cost of servicing plant which is not used and useful.

PAWC is also requesting Commission approval of a municipal agreement which is unreasonable, as written, for ratemaking purposes. Under the Cooperation Agreement between PAWC and the Borough of Brentwood, PAWC will maintain Brentwood’s current practice of a separate line item on its bill to pass through to customers PAWC’s calculation of the direct costs

for the wastewater treatment services provided by ALCOSAN. As a result, under the proposed agreement, PAWC will be passing through – by a separate line item on its bill to Brentwood customers – a rate for wastewater treatment which is not Commission-approved, as ALCOSAN is not a Commission-regulated entity. The pass-through rate will not be reflected in PAWC’s proposed Brentwood tariff.⁷ This approach directly conflicts with PAWC’s current practice as PAWC does not charge a pass-through rate or otherwise directly assess treatment costs to any of its current collection-only systems. The Public Utility Code and Commission Regulations require that customers of Commission-regulated utilities pay only Commission-approved rates for their utility services, and that a public utility should not unreasonably discriminate in rates between different classes of customers. Additionally, under the terms of Cooperation Agreement that PAWC seeks to have approved, PAWC would not be required to provide the protections afforded by Commission regulations to rate increases made by ALCOSAN, such as noticing its customers for ALCOSAN rate increases prior to receiving their first bill at a higher rate. This is inconsistent with applicable regulatory and legal requirements.

Further, under the terms of the proposed transaction, PAWC will be able to collect uncollectible ALCOSAN charges in rate base as an operations expense and will receive compensation from ALCOSAN for collecting customer service charges on its behalf. These practices are inconsistent with the Public Utility Code and form an additional basis for the Commission to deny this Application, as the practices do not benefit the public. Furthermore, the OCA respectfully requests that, if the transaction is approved, the Commission exercise its

⁷ The use of the term “pass-through” in this proceeding has been used to describe the relationship whereby “PAWC will seek to charge Brentwood customers ALCOSAN treatment rates based solely on the costs determined and assessed by ALCOSAN.” OCA St. 1SR at 11. Traditionally, the Commission has required “pass-through” charges to be readily identifiable and beyond the control of the requesting public utility, and treats such charges as a Section 1307 automatically adjusting rate. *Popowsky v. Pa. P.U.C.*, 13 A.3d 583 (Pa. Cmwlth. Ct. 2011) (*Newtown*).

authority under Section 508 of the Public Utility Code to revise the Cooperation Agreement and require that PAWC treat the ALCOSAN treatment cost as an operations expense for wastewater treatment, and not pass the charge through. Should the billing arrangement remain permissible under the Cooperation Agreement, the Agreement should require PAWC to provide notice to Brentwood customers for increases in ALCOSAN fees. Specifically, PAWC should provide in their tariff the rate charged by ALCOSAN, update the tariff to reflect ALCOSAN's proposed rate increases, notice their customers regarding updates to rates, and be required to file for reconciliation of charges collected by customers and paid to ALCOSAN. In addition, pursuant to Section 1307(e), PAWC should be required to file an annual report stating any difference between pass-through charges collected for treatment, and pass-through charges owed to ALCOSAN. Because of the levels of complexity required to reflect changes in ALCOSAN rates and PAWC's ability to collect charges on behalf of ALCOSAN, the Cooperation Agreement should require PAWC to include the costs of treatment in base rates.

Finally, should the Commission determine to approve the proposed transaction under Sections 1102 and 1103, the OCA identified several conditions that are necessary to protect the public interest and should be adopted as part of such determination.

IV. ARGUMENT

A. Section 1102 and 1103 Issues

1. Fitness

The OCA did not present evidence which contested PAWC's fitness as a certificated public utility. However, under *Cicero*, PAWC is required to present evidence that any benefits which derive from its technical, managerial, or financial fitness provide a substantial benefit over the fitness of the acquired utility. *Cicero*, 300 A.3d at 1119. As discussed in Section IV.A.2.a.i, PAWC

has not provided evidence sufficient to prove that the approval of the instant Application would create a substantial improvement for Brentwood customers over the *status quo*.

2. Substantial Public Benefits Test

a. Despite the requirements of Sections 1102 and 1103, PAWC Failed to Establish That There Will Be Substantial Affirmative Public Benefits Resulting from This Application.

The known and foreseeable harms which will result from approval of this Application outweigh the benefits which PAWC avers will result from approval. There are no net benefits to the transaction. PAWC has failed to meet its burden of demonstrating that substantial benefits will result from the Application's approval, that those benefits arise out of the instant transaction, and that those benefits outweigh the known or foreseeable harms which will result from approval. Therefore, PAWC's Application does not meet the standard established by law under Sections 1102 and 1103 of the Public Utility Code and should be denied. 66 Pa. C.S. §§ 1102, 1103.

Under Section 1102 of the Public Utility Code, the Commission may grant a certificate of public convenience to a regulated public utility, permitting that utility to begin to offer service in an additional territory, and to acquire property used and useful in the public service, as is requested in this application. 66 Pa. C.S. § 1102(a)(1), (3). Section 1103 provides that the Commission may only grant a certificate of public convenience "if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103.

In *City of York*, the Pennsylvania Supreme Court established the standard applied by the Commission under Section 1103. The Court addressed the Commission's approval of the proposed merger of three telephone companies, where the Commission's approval was based on the absence of adverse effects. *City of York* at 828. Specifically, the Court held that:

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

Id. (referring to Section 203, the predecessor statute to Section 1103) (quoted in *Application of Pennsylvania-American Water Co.*, Docket No. A-2016-2537209, Order at 11 (Oct. 19, 2016)).

This is the standard by which all acquisitions proposed by Commission-regulated utility companies must be judged.

The Commonwealth Court, in *Middletown Township v. Pa. P.U.C.*, 482 A.2d 674 (Pa. Cmwlth. Ct. 1984) (*Middletown*), clarified that *City of York* required weighing the impact of the proposed merger on all affected parties, not just certain groups. In that case, Middletown Township filed an application for a Certificate of Public Convenience to acquire part of the facilities of the Newtown Artesian Water Company. *Id.* at 678. After finding that the Commission’s rejection of Middletown’s application was supported by substantial evidence, the Commonwealth Court affirmed the Commission’s decision, deciding that “when the ‘public interest’ is considered, it is contemplated that the benefits and detriments of the acquisition be measured as they impact on *all affected parties*, and not merely on one particular group or geographic subdivision as might have occurred in this case.” *Id.* at 682 (emphasis in original). The Court added that “the primary objective of the law in this area is to serve the interests of the public.” *Id.*; see also *Popowsky*, 937 A.2d at 1057.

Sections 1102 and 1103, as a result, require an Applicant to demonstrate that a proposed acquisition provides an affirmative public benefit, meaning that the benefits of the transaction outweigh the adverse impacts of that transaction, when all affected parties are considered. *Application of CMV Sewage Co., Inc.*, 2008 PaPUC LEXIS 950, *30 (Dec. 18, 2008) (*CMV*). This is commonly referred to as the “affirmative public benefits test.” See *Popowsky* at 937 A.2d at

1052-53. To determine whether benefits meet this standard, the Commission may consider: “(1) the legal and technical fitness of the purchasing entity to provide service; (2) the public need for service; (3) the inadequacy of the existing service; and (4) any other relevant evidence.” *Application of North Heidelberg Water Co.*, 2010 PaPUC LEXIS 919, *20 (June 7, 2010).

The Commonwealth Court recently provided additional clarity to the evaluation of utility acquisitions under Section 1102 and 1103 and the relationship between these sections and Section 1329. The Court held that the benefits which derive from the acquiring utility’s technical, managerial, and financial fitness are not sufficient to satisfy the utility’s burden under *City of York* to find substantial affirmative benefits, where the system being acquired provides similar benefits. *Cicero*, 300 A.3d at 1119. Instead, only those benefits which are specific to the transaction before the Commission are considered substantial; and only those benefits may be weighed against the harm which would result from the proposed transaction. *Cicero*, 300 A.3d at 1120.

This application fails to meet the appropriate legal standard. The benefits PAWC asserts will result from the transaction are almost exclusively based on its fitness (especially as derived from its size) and not specific to the transaction proposed in this Application and are not marked improvements over the safe and reliable service already being provided by Brentwood. The general benefits claimed by PAWC would apply to *any* utility acquisition PAWC could engage in and this, standing alone, is not sufficient to meet the *City of York* standard. *Cicero*, 300 A.3d at 1119.

On the other hand, ***all*** existing PAWC and Brentwood customers will pay higher rates because of this transaction, should the Application be approved. In addition, PAWC’s proposed acquisition will interfere with wastewater regionalization which currently results from Brentwood’s ownership, and which provides Brentwood customers with environmental and economic benefits. As a result, PAWC has purported few, if any, benefits will result from the

instant transaction, none of which are substantial, and all of which are greatly outweighed by the significant rate and other harms which will result from the acquisition of the Brentwood wastewater system. Because PAWC cannot satisfy the substantial affirmative public benefit standard provided under Sections 1102 and 1103, the instant Application must be denied.

- i. PAWC's Technical, Legal, and Financial Fitness and the Benefits Flowing From its Fitness Are Not Substantial Affirmative Public Benefits.

Under *Cicero*, a regulated public utility applying for a Certificate of Public Convenience approving a proposed merger must demonstrate that benefits will result from the transaction which are specific to the proposed transaction and do not merely flow from the acquiring utility's fitness. *Cicero*, 300 A.3d at 1120. In that case, Aqua Pennsylvania Wastewater, Inc. (Aqua), sought Commission approval of its acquisition of the East Whiteland Township wastewater system, averring that the acquired customers would benefit from Aqua's managerial and technical expertise, access to capital, and other, aspirational, proposed benefits. *Id.* at 1117. The Commission approved the application; however, the Commonwealth Court reversed, finding that Aqua's reliance on general, aspirational benefits flowing from its fitness were not substantial enough to outweigh the known harms of the proposed transaction. *Id.* at 1120. Instead, the Commonwealth Court applied the *City of York* standard, that affirmative public benefits must arise from and be specific to a transaction, and outweigh the harms of the transaction, such that substantial affirmative public benefit would result therefrom *Id.*

In its Application, PAWC avers several benefits, each of which flow from the technical, managerial, and financial fitness of the Company and are not specific to the transaction at hand. The OCA does not contest that PAWC is fit. *See McCloskey*, 195 A.3d at 1058 (certificated public utilities are presumed to be fit). However, PAWC's proposition that Brentwood customers would benefit from, among other things, additional capital investment by PAWC and better customer

service relate more to PAWC's fitness than to the proposed transaction, specifically. Therefore, the OCA submits that these purported benefits are not substantial and, instead, simply perpetuate the *status quo*.

(a) Brentwood Customers Do Not Substantially Benefit From the Additional Capital Investment Proposed by PAWC.

The Borough of Brentwood system is not distressed or troubled and does not need an immediate influx of capital investment to provide safe and reliable service. While the Borough has purported that the environmental compliance of its system will improve because of PAWC's expertise in wastewater compliance, the record is clear that Brentwood has access to the capital required to upgrade its system. Brentwood St. 1 at 10.

While PAWC has averred that the Brentwood system has environmental challenges, the system has been able to meet its current compliance goals. *Compare* PAWC St. 2 at 11 *with* OCA Exh. ND-3. Specifically, Brentwood has complied with the 2008 consent decree between the Allegheny County Sanitation Authority (ALCOSAN) – the authority which provides Brentwood's wastewater treatment service – and the U.S. Environmental Protection Agency (USEPA), the Pennsylvania Department of Environmental Protection (PaDEP), and the Allegheny County Health Department (ACHD). PAWC St. 2 at 12. The consent decree specifically addresses inflow and infiltration (I/I) into the service area of the ALCOSAN Woods Run Treatment Facility and was amended in 2013 and 2020 to include ALCOSAN's draft and updated Wet Weather Plans. *Id.* Brentwood has also met its obligations under the first phase (2016-2018) of the Consent Order and Agreement (COA) between Brentwood, ACHD, and PaDEP which required Brentwood to conduct Source Reduction Studies in order to reduce wastewater flows into the ALCOSAN system. OCA St. 1 at 10. As a part of Phase II of the COA, Brentwood will be implementing Flow Reduction

projects, with a target completion date of December 31, 2026, to eliminate sanitary sewer overflows or reduce flows causing sanitary sewer overflows by at least 10%. *Id.*

As pointed out by I&E, there is a distinct possibility that a significant portion of the Brentwood I/I originates in upstream flows. I&E St. 1-SR at 5. For example, Brentwood has been identified as the primary municipality for excess I/I at two points of connection with the ALCOSAN system, with Whitehall Borough contributing excess at both, and the City of Pittsburgh at one; however, Brentwood is listed as a contributing municipality in one point of connection, where Whitehall Borough is the primary. PAWC St. 2 at 13. Throughout the ALCOSAN treatment network, upstream municipalities will be able to impact the compliance levels of their downstream neighbors, *regardless of the level of capital investment of which the downstream municipality can commit to reducing I/I.* I&E St. 1-SR at 5. Therefore, like Brentwood currently, PAWC will not be able to reduce the flows of upstream municipalities which contribute to Brentwood's excess I/I at its points of contact with the ALCOSAN system.

Further, to the extent that additional capital is needed, there is no indication that Brentwood would be unable to raise the capital necessary to ensure continued compliance. Instead, the Borough's budget is sufficient to fund routine maintenance and system upgrades without altering its existing service fees, in addition to the hundreds of thousands of dollars the Borough budgets for each year in case of an emergency. OCA St. 1 at 12-13; *see also* Brentwood St. 1 at 5 ("Financially, the Borough is not in distress."). In the past five years, the Borough has not had issues funding infrastructure replacements or upgrades. *Id.* at 14. Importantly, should the Borough need to raise capital for additional improvements through a rate increase, it is able to do so at a lower cost of capital than PAWC, because it does not have to provide for shareholder compensation. *Id.* at 14.

Additionally, Brentwood, unlike PAWC, has access to additional capital through the ALCOSAN Grow program, which is discussed in greater detail below. *Infra* at Section IV.A.2.a.i(a). While Mr. Zboyovsky states that the Grow Program grants are specifically limited to funding programs which reduce I/I, the record is clear that I/I is the very thing that Brentwood needs to continue to reduce. Brentwood St. 1-R at 6; PAWC St. 2 at 11. The Borough's ability to utilize Grow grants, as it has done in the past, to fund the improvements necessary to keep Brentwood in compliance with federal, state, and local regulators' requirements shows that PAWC's ability to provide capital – at a notably higher cost – is not a substantial improvement on the *status quo*. OCA St. 1SR at 7 (“Brentwood Borough’s cost of capital is 4.37%” while “PAWC’s cost of capital is 7.10%.”) In fact, given the higher costs of PAWC’s capital, the record is clear that PAWC’s ownership would provide a net financial harm rather than any net benefit.

As a result, because Brentwood has complied with its COA with ACHD, and has not had difficulty in funding improvements necessary to ensure adequate wastewater service, the alleged benefits regarding PAWC’s expertise in environmental compliance and access to capital flow from PAWC’s fitness and are not specific to this transaction. *Cicero*, 300 A.3d at 1119 (“Where, as here, there are no benefits that differ substantially from the benefits already being provided by the existing system operator, those alleged benefits arise as a result of the acquiring utility’s fitness, rather than from the actual transaction.”). Therefore, the benefits alleged by the Borough and PAWC regarding access to capital or environmental compliance are not substantial and merely maintain the *status quo* or result in net harm to the public because of the increased costs. In either case, PAWC’s access to capital or record of environmental compliance does not contribute to satisfying the burden required for Commission approval under *City of York*.

(b) PAWC Will Not Be Able to Provide Substantially Better Customer Service to Brentwood Customers.

PAWC is not able to offer customer service to current Brentwood customers which differs substantially from that already being provided by the Borough. PAWC's improvements are largely a result of standardization, including the routinization of notices, collections, receiving both water and wastewater bills on a single bill, and alternative payment plan options. OCA St. 2 at 5. Regarding the single bill issue, this is Brentwood customers' *status quo* because they currently receive two bills: a water bill from PAWC, and a wastewater collection and treatment bill, that includes refuse charges from the Borough. OCA St. 2 at 5. If the transaction is approved, a former Brentwood customer will still receive two bills – one from PAWC for water and wastewater collection and treatment, and one from the Borough for refuse charges. PAWC St. 3-R at 18.

PAWC also emphasizes its 24/7 customer service center hours. PAWC St. 2-R at 15. PAWC has failed to provide any specific examples of how the Brentwood customer experience will actually improve as a result of the acquisition; such aspirational statements are not sufficient to warrant consideration in a net benefits assessment. OCA St. 2SR at 3. These marginal conveniences, to the extent they are sufficiently identified, arise out of PAWC's fitness as a large, investor-owned utility and are not specific to the instant transaction and are not sufficiently substantial or material to outweigh the harms of the transaction.

In addition, PAWC posits that its low-income program would provide substantial benefit to the Borough's customers. PAWC St. 3 at 16-17. While the OCA does not minimize the importance of a wastewater servicer offering a low-income program, PAWC has not shown that access to this program will outweigh the harms that would occur as a result of the transaction, especially given that any discount provided by PAWC would apply to only a portion of the customer base and then only to a portion of the customer's bill. Furthermore, while Brentwood

itself does not have a low-income program, customers served by Brentwood currently have access to ALCOSAN's low-income program for its treatment portion of customers' wastewater charge, which is 56.7% of the total wastewater bill for Brentwood customers. OCA St. 1 at 19, 24. Moreover, under the current proposal, PAWC will not afford its low-income discount program to Brentwood customers to assist with ALCOSAN treatment costs. App'x A-12 (revised) at 16. Instead, Brentwood customers will still have to separately apply for ALCOSAN's low-income discount program to receive the quarterly credit to their bill for treatment services. Further, the existence of a low-income program does little to alleviate the rate pressure which will be placed on Brentwood customers after the end of the system's proposed rate freeze, especially those customers whose income is near the qualifying threshold for PAWC's H2O program without qualifying. OCA St. 1 at 23.

The standardization proposed by PAWC also has its detriments for Brentwood customers. As a result of the proposed transaction, Brentwood customers will not have the more personalized and localized customer service associated with dealing with Borough employees, including the ability to discuss their wastewater service while making in-person payments. OCA St. 2SR at 3-4.

In sum, while PAWC asserts that its customer service improvements demonstrate benefit to current Brentwood customers, those benefits flow entirely from PAWC's fitness and not from this transaction, specifically, because they result from PAWC's size and experience. In addition, they are not so different in quality or effect that they rise to provide a benefit. Where purported benefits flow from fitness, and not the specific transaction, the extent of the acquiring utility's fitness subsumes the affirmative public benefits test. *Cicero*, 300 A.3d at 1119. Therefore, PAWC and Brentwood have alleged almost no benefits regarding customer service which differ substantially from those already offered by the Borough. To the extent that customer service

benefits have been alleged which differ substantially from those offered by Brentwood, those benefits are not material when weighed against the significant rate harms which will result.

ii. Existing PAWC Customers Will Likely Face Higher Rates.

While the Commission is vested with the ultimate authority to set the rates charged by regulated public utilities, it is axiomatic that someone will have to pay for the annual revenue requirement deficiency that would result if the Commission approves this transaction and, thus, it is both likely and foreseeable that the rates paid by existing PAWC customers will increase as a result of this transaction.⁸ In contrast, PAWC has provided no concrete benefits to existing PAWC customers which will result from this transaction, outside of vague, illusory, aspirational and unsupported statements regarding cost-sharing, regionalization, and consolidation.

As Ms. Johnsen and Ms. Schwartz described in their testimony at the October 26, 2023, Public Input Hearing, existing PAWC customers have faced significant increases as a result of the Company's continued use of fair market valuation for ratemaking rate base in its expansion throughout the Commonwealth. Ms. Johnsen and Ms. Schwartz were formerly customers of the Exeter Township wastewater system in Berks County. Ms. Schwartz described that, following the end of Exeter's rate freeze, the bills increased dramatically. Tr. at 69. For a household of four, she paid \$519.17 in 2019; for a household of two, in 2023 – after only 10 months of payments – she has paid \$1,001.45.⁹ *Id.* Some months, her sewer bill exceeds her electric and gas bills, combined.

⁸ PAWC filed for Commission approval of an increase to base rates on November 8, 2023. Docket Nos. R-2023-3043189 (water) and R-2023-3043190 (wastewater). PAWC has included Brentwood in its wastewater rate filing, despite not having received Commission approval for acquisition of the Brentwood system. Tr. at 369. While PAWC has proposed to impute any rate increase that Brentwood customers would have otherwise paid until the expiration of its proposed rate freeze, this is not likely to be sufficient to cover the Brentwood revenue deficiency. Tr. at 384-85. It seems apparent that the Brentwood system's revenue deficiency will be paid-for, in part, by other PAWC customers, including its water customers, as PAWC only proposes to impute the rates which would be paid by Brentwood customers *after* a portion of the revenue requirement is shifted under Section 1311(c). PAWC St. 3-R at 4.

⁹ In response to Counsel for PAWC's cross-examination, Ms. Schwartz stated that her bill was \$1,061.45. It is unclear whether the \$60 difference is a result of a transcription error. Tr. at 69:5, 70:14.

Id. Ms. Schwartz provided that, every time PAWC purchases a new system, anywhere in the Commonwealth, she sees higher rates as a result. *Id.* at 70.

Ms. Johnsen's testimony relayed similar facts. Ms. Johnsen stated that some neighbors refuse to wash their cars, do their laundry, or even shower at home, because the rates charged by PAWC are so unaffordable. *Id.* She reported neighbors could not afford their water and wastewater bills, even those who applied for budget billing still faced bills which they could not feasibly pay. *Id.* Ms. Johnsen remarked that people are moving out of Exeter Township because of PAWC's service rates. *Id.* at 77. She is especially concerned for how rates will increase as a result of other pending acquisitions; despite the proposed .3% increase that was in the notice to PAWC customers in this case, that, combined with the increases in other cases, could cause a substantial increase in rates over time. *Id.* at 78. When asked by Counsel for PAWC if she had discussed testifying with Ms. Schwartz prior to the Hearing, Ms. Johnsen replied that she had, because she had tried to rally support in her community to try and slow PAWC's rate of acquiring new wastewater systems. *Id.* at 80. Of course, these witnesses all testified about their concerns before PAWC filed its now-pending rate case in which PAWC has proposed a \$203,945,911, or 20.2%, rate increase company-wide. *Pennsylvania-American Water Company v. Pa. P.U.C.*, Docket Nos. R-2023-3043189 (water) and R-2023-3043190 (wastewater) (Exh. 3-A Nov. 8, 2023) (PAWC 2023 Base Rate Case).¹⁰

In rebuttal, PAWC witness Hufton claimed that the high rates paid by former Exeter customers were due to costs related to environmental compliance remediation because Exeter Township's system was troubled at the time of its acquisition in 2019. PAWC St. 2-R at 17-18. However, neither Mr. Hufton nor Ms. Everette were able to quantify what part of the Exeter

¹⁰ Available at: <https://www.puc.pa.gov/pdocs/1804574.pdf>.

Township rate increases, if any, were tied to environmental compliance costs after the acquisition. Tr. at 379. Thus, Mr. Hufton's testimony on this point is nothing more than unsubstantiated speculation that is inconsistent with any evidentiary support.

According to PAWC's 2020 Base Rate filing, at Docket No. R-2020-3019371, between the time of the acquisition of the Exeter system and March of 2021 – when Exeter customers saw their first rate increase following the acquisition – the Company had invested approximately \$2 million in additions and retirements to Exeter plant. *Pennsylvania-American Water Company v. Pa. P.U.C.*, Docket No. R-2020-3019371 (Exhibit 3-C Apr. 29, 2020) (PAWC-Wastewater 2020 Base Rate Case). However, the Company requested an approximately \$7.2 million rate increase for Exeter customers; in other words, contributions to plant, without considering those that were purportedly necessary to bring the Exeter system into compliance, only accounted for, at most, approximately 28% of the total requested rate increase. PAWC-Wastewater 2020 Base Rate Case, Exhibit 3-A.

It is important to note that, until March of 2021, other PAWC customers were paying for the revenue requirement shortfall regardless of the reason for the shortfall. *See* Tr. at 72:2-8; PAWC St. 2-R at 17. According to PAWC, the Company invested approximately \$20 million in capital improvements to bring the Exeter system into compliance. PAWC St. 2-R at 18. As a result, the first \$2 million of capital improvements to plant were borne entirely by other PAWC customers, including water customers, who contributed to satisfying PAWC's wastewater revenue deficiencies under a Section 1311 adjustment.

Similarly, if this transaction is approved, existing PAWC customers will have to pay for the planned capital improvements to the Brentwood system in addition to the operations and management of the system. PAWC has proposed spending \$8,055,000 over five years. PAWC Exh. DJH-2. In addition, PAWC agreed to a two-year rate freeze for Brentwood customers in the APA.

App'x A-24-a at § 7.03(a); OCA St. 2 at 8. However, before considering the cost of planned capital improvements, PAWC calculates the Brentwood system will generate an annual revenue deficiency of \$667,000. OCA Exh. ND-2. While PAWC has proposed that, for the duration of the rate freeze, its shareholders will bear the burden of that portion of the Brentwood revenue deficiency which would otherwise be borne by Brentwood customers, it proposes no such measure for the total revenue deficiency that may be assigned to other wastewater customers or other water customers via a Section 1311(c) shift, and does not make any commitment to bear the increased cost of Brentwood's planned capital improvements. OCA St. 2SR at 2; *see Phila. Suburban Water Co. v. Pa. P.U.C.*, 808 A.2d 1044, n. 15 (Pa. Cmwlth Ct. 2002) ("Pennsylvania-American and the PUC make much of the 'shareholder funds' aspect of the arrangement. . . Shareholder funds are created out of the rates paid by Pennsylvania-American's customers.").¹¹

As Mr. DeMarco explained, the impact of one-fifth of the capital improvements adds \$147,000 to the annual revenue deficiency. OCA Exh. ND-13 at 5. As planned capital improvements are estimated to cost PAWC approximately 232% of the annual revenue deficiency during the first year of the rate freeze and 540% during the second, those costs will be borne by existing PAWC consumers or by Brentwood customers, or both. PAWC Exh. DJH-2. Specifically, in the PAWC 2023 Base Rate Case, PAWC plans to allocate approximately 42% of Brentwood's wastewater revenue requirement to water customers system-wide, including those who are not customers of the Brentwood wastewater system. PAWC 2023 Base Rate Case, Exh. 3-A. Under this proposal, PAWC water customers will be responsible for \$1,565,232 of Brentwood's annual

¹¹ Specifically, PAWC has provided that the proof of revenues for Brentwood customers will be calculated as if Brentwood customers were paying the estimated 11% increase in rates until the end of the proposed rate freeze, while the additional revenue was not collected. PAWC St. 3-R at 4. While this accounting fiction does reduce shareholder earnings for the duration of the rate freeze, it only addresses the portion of the revenue requirement paid-for by Brentwood customers and does not include the portion of the Brentwood revenue requirement borne by existing PAWC wastewater customers or water customers under the Act 11 shift. AEE-1REV.

revenue deficiency. *Id.* The remaining revenue deficiency related solely to the Brentwood acquisition that will be allocated to PAWC wastewater customers will increase rates by an estimated 0.5%. *Id.*; *see also* PAWC 2023 Base Rate Case. As the former Exeter Township customers testified, there are many such acquisitions and the impact for all of those on existing water and wastewater customers is cumulative.

Further, these estimates do not include the increase in rates which will arise out of PAWC's other pending Section 1329 acquisitions. Currently, PAWC has one pending acquisition under Section 1329, that of the Towamencin wastewater system. OCA St. 1 at 15; *Application of Pennsylvania-American Water Co. under Section 1329 for Acquisition of the Towamencin Municipal Authority*, Docket No. A-2023-3039900 (Application filed May 16, 2023). Recently, the Commission approved PAWC's acquisition of the Butler Area Sewer Authority wastewater system. *See generally* BASA Order. The estimated annual revenue deficiency of those two systems, combined, is approximately \$25,626,000, or 38.4 times greater than the Brentwood annual revenue deficiency. OCA St. 1 at 15. As a result, however marginal the Brentwood system's impact may seem alone, its acquisition is part of a larger, upward pressure, which continues to increase the rates PAWC customers pay system-wide, as utilities are acquired at fair market value.¹²

¹² In the BASA Order, the Commission concluded that the ALJ in that case "incorrectly considered the rate impact of the acquisition together with the rate impact of other PAWC acquisitions and not this acquisition alone." BASA Order at 62. The Commission reasoned that the "acquisition will not have an immediate rate impact on PAWC's existing wastewater customers, and any future rate impact will be determined by the Commission in future rate cases." *Id.* To the extent that this statement can be read to preclude consideration of the impact that other pending acquisitions have on the probability of rate increases when coupled with consideration of an application under 1102 and 1103 that seeks to have ratemaking rate base determined by Section 1329, the Commission's analysis in BASA is inconsistent with applicable law that requires the Commission to weigh all "acknowledged or known harms" when performing the net benefits assessment. *Cicero*, 300 A.3d at 1119. While the extent of the harm associated with other pending acquisition may not be known, the Commission cannot turn a blind eye to the pancaking effect that these acquisitions have on rates. One need only look at PAWC's recent rate cases to see how significant of an impact these acquisitions have had on rates. Thus, while it is true that the Commission is able to weigh the rate impact of prior acquisitions in future rate cases, the damage will already have been done; the proper time to consider future rate impact is during the net benefit analysis required prior to approval of an application to acquire a system, when the plant will be added to rate base and produces a higher revenue requirement. Once approved, the Commission must ensure the opportunity to earn a fair rate of return on ratemaking rate base under generally accepted ratemaking principles. In other words, the Commission

Existing PAWC customers will see substantial rate harms, should this Application – and other applications under Section 1329 – be approved. PAWC and Brentwood have failed to produce any evidence as to potential substantial benefits which existing PAWC customers will see because of this transaction. Simply put, the record is replete with harm and devoid of benefit.

- iii. Brentwood Customers Will Likely Face Higher Rates.
 - (a) PAWC Will Impose Higher Rates On Brentwood Customers.

In addition to existing PAWC customers, current Brentwood customers will also experience higher rates as a result of this transaction. While the Commission is vested with the ultimate authority to determine the rates charged by regulated public utilities, PAWC provided estimates on the rate impact to Brentwood customers which will result from the approval of this Application.

PAWC proposes a two-year rate freeze for Brentwood customers because it agreed to one in the APA. OCA St. 2 at 8. Under Section 1329, a rate stabilization plan is defined as “[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case.” 66 Pa. C.S. § 1329(g). PAWC’s proposal to freeze rates for the Brentwood customers for two years after closing is, thus, a rate stabilization plan because it has the potential to hold rates constant or phase rates in over a period of time after its next base rate case.

The Commission has required that “if a rate stabilization is proposed, the applicant will be required to provide testimony, schedules, and work papers that establish the basis for the plan and its impact on existing customers who need to cover the revenue requirement that would be shifted to them under the plan.” *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Implementation Order at 27 (Oct. 27, 2016). No such plan was provided

knows or is able to acknowledge that *other* acquisitions, which are filed for approval and pending during its consideration of a proposed acquisition, create a cumulative upward pressure on rates, which must be considered when determining whether an individual transaction provides substantial affirmative public benefit.

in this proceeding. This has the effect of depriving the Commission and the parties of the ability to fully evaluate the benefits and harms of the proposed transaction. OCA St. 1 at 16. PAWC's failure to provide the required information in this proceeding was not adequately explained by PAWC, beyond the averment that the proposed rate freeze is not a rate stabilization plan. *See* PAWC St. 3-R at 4.

Whether or not the Commission finds that the rate freeze is a rate stabilization plan, the Commission should not approve a rate freeze that attempts to remove the Commission's discretion in setting rates and should reject any rate freeze for Brentwood customers that extends beyond the effective date of new rates in PAWC's next base rate case. This would help to protect existing PAWC customers from covering the Brentwood revenue deficiency. OCA St. 1 at 17.

While the proposed rate freeze might delay PAWC from increasing Brentwood customers' rates at the end of the next rate case, should this Application be approved, it provides no net benefit to Brentwood customers. As Brentwood has stated, in anticipation of the sale of this system, the Borough has not raised rates in several years; thus, when its rates are increased (before or following the end of the rate freeze), Brentwood customers will experience an increase of rates to recover approximately seven years' worth of increases in cost of service and at PAWC's cost of service. Brentwood St. 1-R at 9.¹³ Brentwood customers will be responsible for catching-up in rate increases following the end of the rate freeze; should Brentwood rates be increased gradually, then PAWC customers will continue to bear the burden of Brentwood's cost of service.

¹³ For context, PAWC's Rate Zone One has been subject to an increase in rates, on average, every 25 months, or 59 months fewer than the estimated span of time between when the Borough stopped increasing rates in 2019 and when the Brentwood rate freeze will end. PAWC filed for base rate increases in April of 2013, 2017, 2020, and 2022, and in November 2023, at Docket No. R-2013-2355276, R-2017-2595853, R-2020-3019369 (water) and R-2020-3019371 (wastewater), R-2022-3031672 (water) and R-2022-3031673 (wastewater), and R-2023-3043189 (water) and R-2023-3043190 (wastewater), respectively.

$4/13 - 4/17 = 48\text{-month interval}$; $4/17 - 4/20 = 36\text{-month interval}$; $4/20 - 4/22 = 24\text{-month interval}$; $4/22 - 11/23 = 19\text{-month interval}$. $48 + 36 + 24 + 19 = 127$. $127 / 5 = 25.4$.

As a result, the proposed rate freeze – should it be accepted and implemented by the Commission – constitutes a delayed harm, forcing Brentwood customers to bear the burden of their revenue deficiency, as well as that of other acquired systems, immediately at the end of their rate freeze. PAWC St. 3-R at 4. In the interim, PAWC’s existing customers will have to bear the revenue shortfall which is not accounted-for in Brentwood’s proof of revenues, as PAWC’s accounting fiction only imputes revenues from Brentwood customers *after* a portion of the system’s revenue requirement is shifted under Section 1311(c). PAWC St. 3-R at 4. Ms. Johnsen, in her testimony at the Public Input Hearing, described what will likely occur following the termination of the Brentwood rate freeze: “the rate increases at the beginning right after our sale, were very - very incremental, small, small. But recently, given the number of sales that are currently in traction and have taken place across the state, our rates have increased dramatically.” Tr. at 75:15-20.

While PAWC provides that Brentwood rates will need to increase by 11% following the termination of the rate freeze, to cover the projected annual revenue deficiency of the Brentwood system under PAWC ownership, this number does not include the projected capital improvements. OCA St. 1SR at 13. If the rate estimation includes one-fifth of the cost of the projected capital improvements, rates will likely increase to 13.5% of their current value. *Id.* It also does not include any other costs that would be allocated to Brentwood rate zone in a future rate increase filing.

If the transaction is approved, Brentwood customers will also pay higher rates for capital improvements because of PAWC’s higher cost of capital. PAWC’s cost of capital is 7.10%, while the Borough’s is 4.37%. OCA St. 1 at 13. Effectively, this means that Brentwood customers will pay 2.73 more cents per dollar spent to make improvements to the Brentwood system than they would under Borough ownership, without considering the availability for low- or no-interest loans

or capital which are available only to municipalities, such as the ALCOSAN Grow program. OCA Exh. ND-5. While PAWC may claim that the higher cost of capital is offset, at least in part, by the ability of the Company to acquire parts or equipment at a lower price than the Borough, the Company has provided no quantitative evidence to support efficiencies which will result from the Company's size compared to the Borough's. *See* PAWC St. 2-R at 12-13. Instead, the examples provided in PAWC's testimony were highly speculative, included no estimate as to how much of the savings would be passed on to ratepayers, and did not provide that PAWC's cost-savings would be materially different from any available to the Borough. *Id.* Moreover, the two areas of claimed savings would already be reflected in the calculation of the revenue deficiency. OCA St. 1SR at 5.

Ultimately, the Commission is not restricted by PAWC's agreement with the Borough not to raise rates for two years following closing. As a result, Brentwood customers could bear the immediate brunt of the system's revenue deficiency, while also beginning to bear the costs associated with other PAWC systems. Should the Commission approve the rate freeze, and PAWC not increase Brentwood base rates for two years following closing, then Brentwood customers will face steep rate increases when their rate freeze is over. Under PAWC's newly proposed tariff, there will be an approximately 20.3% increase when the rate freeze ends for collection costs, before considering the estimated 14.4% increase in ALCOSAN treatment costs. Supplement No. 47 to Tariff Wastewater PA P.U.C. No. 16 at 13; OCA St. 2 at 8. Therefore, Brentwood customers will see significant rate increases over the long term, if not in the short term, under PAWC ownership.

(b) ALCOSAN Rates Will Continue to Increase During the Two-Year Rate Freeze.

Further, under PAWC's proposed rate treatment for ALCOSAN charges, Brentwood customers will see a 7% increase in ALCOSAN rates in each of the next several years. OCA St. 2 at 8. Despite the proposed rate freeze, Brentwood customers' monthly bills will still see an increase

in rates, as a result. *Id.* Importantly, ALCOSAN is not a Commission-regulated utility. *Id.* As a result, PAWC will charge and collect increasing wastewater treatment rates – which are not subject to Commission oversight – during the rate freeze. *Id.* While PAWC alleges that it would be merely acting as a billing agent on behalf of ALCOSAN, and remit the rates associated with wastewater treatment directly to ALCOSAN, PAWC would provide ALCOSAN with quarterly payments for its customers’ costs in bulk, and not on a per-customer basis, which ALCOSAN does permit. *Id.* at 9. PAWC and Brentwood refer to this arrangement as a pass-through. OCA Exh. ND-12.

PAWC has not implemented a pass-through collection in any of its other collection-only systems. OCA St. 1 at 18. Instead, in its other collection-only systems, PAWC has included the cost of wastewater treatment in the rates charged to its customers. *Id.* PAWC has provided no reasonable basis for its decision to do so in this case, outside of the fact that Brentwood is currently passing-through ALCOSAN charges. OCA St. 1SR at 11. However, PAWC has no obligation to continue passing-through such charges, as will be discussed below. *Infra* at Section IV.C.

PAWC is not even willing to concede that it should be providing notice to Brentwood customers for ALCOSAN’s rate increases. OCA St. 2SR at 3. Instead, PAWC has provided that its customers will receive notice of the rate increases on their bills *when the customers are billed at ALCOSAN’s higher rates*. PAWC St. 3-R at 17. While PAWC compares the ALCOSAN charge increase notice to how it notices customers of its DSIC rate changes, this comparison fails for two reasons. First, ALCOSAN charges comprise 56.7% of Brentwood customers’ bills; DSIC charges are not remotely as significant a proportion of ratepayers’ bills. PAWC St. 3-R at 17; OCA St. 1 at 19. Second, PAWC also does not propose including ALCOSAN rate changes in its wastewater tariffs, unlike DSIC charges – despite ALCOSAN publishing projected changes years in advance

– or other such protections which are afforded for changes in rates under Commission regulations. OCA St. 2SR at 7.

Despite PAWC’s claims that Brentwood customers will see “economies of scale” as a result of this transaction, the use of a pass-through system to bill customers for the cost of treatment undermines any claimed economies. Specifically, economies of scale exist when cost of production decreases as the capacity of production facilities increases; in other words, the cost of providing utility service to each additional customer decreases because the cost of providing service can be spread over a greater number of customers. Tr. at 378-79. PAWC provided an example of such economies by referencing the Company’s ability to procure pipe and light vehicles for lesser costs than market index or dealer invoices, respectively. PAWC St. 1-R at 13; OCA St. 1SR at 5.

However, PAWC is not willing to apply economies of scale to the cost of treatment for Brentwood customers. Instead, PAWC seeks to act as a billing agent for such charges on behalf of ALCOSAN, and not to spread the cost of sourcing treatment service to all PAWC customers, as the Company is currently doing in its collection-only systems. OCA St. 1 at 19, 23; 66 Pa. C.S. § 1304 (“No public utility shall, as to rates, make or grant any *unreasonable* preference” to a particular class of consumers.) (emphasis added). PAWC has not provided a sufficient basis to reconcile the different treatment of the Brentwood customers’ treatment costs with those of its other collection-only systems. While the OCA generally agrees with the premise that consumers should pay for their cost of service – though it is necessary to consider other, relevant factors – PAWC has not reconciled its inconsistent positions on socializing the cost of Brentwood’s planned capital improvements without also socializing the cost of its wastewater treatment.

Specifically, in two of PAWC’s other collection-only systems – of which there are three: Fairview, Foster, and Upper Pottsgrove – PAWC is charged for treatment based off of a metered

wastewater flow. Tr. at 393 (Ms. Everette described that in one of the collection systems, PAWC is billed per EDU, or equivalent dwelling unit, of wastewater treated; an EDU is a measure of volume). Under the Z Agreement, ALCOSAN computes the charge for treatment based off of the metered water usage of Brentwood residents. App'x 25.3 at 31. As such, there is no significant distinction between how ALCOSAN charges are computed and how treatment charges are computed by treatment service providers in other collection systems; PAWC must provide a substantial basis to differentiate how it charges its customers for identical services by third parties.

However, the only support PAWC provides for why the pass-through arrangement should be maintained is its erroneous conclusion that Brentwood customers are also customers of ALCOSAN. Tr. at 395. Under the Company's theory, PAWC will only act as a "billing agent" and not as the customer of ALCOSAN's treatment services; instead, the Company considers wastewater ratepayers to be the customers of ALCOSAN's treatment services. *Id.* However, wastewater collection services are required to seek treatment from a third-party. Tr. at 380. In this case, the Z Agreement provides that *Brentwood* is a customer of ALCOSAN. App'x 25.3 at 35 ("In consideration of the services rendered by the Sewage Agency to the Borough under the provisions of this Agreement, which will effect compliance by the Borough with the duty imposed upon it by law to cease pollution of the waters of the Commonwealth . . .").

While Brentwood's customers benefit from ALCOSAN's treatment, it is not because ALCOSAN is fulfilling any of a customer's legal obligations – as ALCOSAN currently does for Brentwood – but rather because ALCOSAN is providing the means for Brentwood to dispose of collected wastewater. While language in the Z Agreement may appear to create a direct relationship between ratepayer and ALCOSAN, it is limited to establishing how ALCOSAN is paid for its services. App'x 25.3. As a result, there is no evidence to support PAWC's distinction between

which party is a customer to the treatment services; as the collection service provider, PAWC is the customer, regardless of the payment structure.

PAWC's comparison of its proposed method of collecting ALCOSAN charges to that of the Pittsburgh Water and Sewer Authority's (PWSA) current billing arrangement with ALCOSAN is disingenuous. Specifically, PAWC points to PWSA's current tariffs, which provides for the collection of a pass-through charge for the cost of wastewater treatment by ALCOSAN. PAWC St. 3-R at 7. However, PWSA's current billing arrangement with ALCOSAN was codified by statute in 2020, as it was contained within the Cooperation Agreement between PWSA and the City of Pittsburgh which the General Assembly granted "the force and effect of law until January 1, 2025." 71 P.S. § 720.212. As PAWC is not a city of the second-class and has not received legislative authority to bill ALCOSAN treatment charges in a pass-through manner, PAWC cannot use PWSA's current billing arrangement as evidence in support of implementing its own pass-through charge.

Therefore, when considering the long-term effect PAWC ownership will have on Brentwood rates and the increasing cost of treatment provided by ALCOSAN which will not be subject to PAWC's proposed economies of scale, Brentwood customers will see no benefit from this acquisition and, in fact, will see significant rate harm because of this transaction. The rate harm is already significant; however, when considering the increasing number of acquisitions by PAWC, Brentwood customers will likely see a much greater upward pressure on service rates than they would under Borough ownership. As such, the rate harm faced by Brentwood customers clearly weighs significantly against approval of this Application.

iv. PAWC Will Interfere with Current Wastewater Regionalization Plans that Provide Brentwood Customers with Environmental and Economic Benefits.

Brentwood's membership within the ALCOSAN treatment regional cooperative presents significant benefits to current Brentwood customers, who would be deprived of such benefits should the Application be approved.

The Commission has adopted a general policy promoting the consolidation and regionalization of viable wastewater systems. 52 Pa. Code § 69.721(a). Specifically, the Commission's regulations provide that "[t]he Commission believes that further consolidation of water and wastewater systems within this Commonwealth may, with appropriate management, result in greater environmental and economic benefits to customers." *Id.* Regionalization and consolidation may constitute a substantial affirmative public benefit, even if entirely aspirational, where the proposed regionalization and consolidation enhance customer benefits. *See McCloskey v. Pa. P.U.C.*, 195 A.3d 1055, 1065 (Pa. Cmwlth. Ct. 2018); *Red Lion Mun. Auth. v. Pa. P.U.C.*, 219 A.3d 730 (Pa. Cmwlth. Ct. 2019). As a result, to support its claim that the instant Application will benefit the public in its furtherance of the Commission's policy in support of regionalization and consolidation, the Company must demonstrate that consumer benefits will be enhanced or improved over the services already available to consumers. Here, the opposite is true, as approving the application will detract from regionalization and regional cooperation.

PAWC has provided no support for its assertion that Brentwood or PAWC consumers will see enhanced benefits because of the approval of this Application. In PAWC's Application, the Company claimed that economies of scale might result from the Application's approval and that small public utilities are often troubled systems. *See* Application at ¶¶ 31(a), 33(b); PAWC St. 1 at 20. This abstraction is unsupported in the record as Brentwood is neither troubled nor would its customers benefit from PAWC ownership. The Company later relies on ALCOSAN's failure to

actively oppose the transaction as evidence of the purported benefits of regionalization, relying on PAWC's good working relationship with ALCOSAN and its contention that ALCOSAN primarily cares about its tributary systems reducing their I/I. PAWC St. 2SR at 16. These purported benefits based on generalized statements are related entirely to PAWC's promises and fitness; they present no evidence as to how the Borough is not already providing, or currently capable of providing, the averred benefits at a cost which is less than the harms which would result. *See Cicero*, 300 A.3d at 1119.

In fact, according to the Borough, it currently enjoys a good working relationship with ALCOSAN. Brentwood St. 1 at 8:3. As a part of the ALCOSAN tributary network, Brentwood is one of 83 municipally-owned wastewater collection systems. ALCOSAN St. 1 at 2. Each collection system is party to an identical version of the "Z Agreement," or the initial agreement between the City of Pittsburgh, Brentwood, and ALCOSAN, which established ALCOSAN as the municipally-owned treatment authority for Allegheny County collection systems. *See App'x A-25.3* at 15-43. ALCOSAN has provided that it highly values the uniformity of obligations spread across each of its tributary municipalities. ALCOSAN St. 1 at 4. Tributary systems share a number of interconnections and trunklines, some which ALCOSAN is attempting to assume control of as a part of its Regionalization Plan, which is being implemented to comply with a Clean Water Plan developed pursuant to a Modified Consent Decree with the USEPA, PaDEP, and the ACHD. ALCOSAN St. 1 at 6.

However, since entering negotiations with PAWC for the sale of the Brentwood system, the Borough has refused to cooperate with ALCOSAN. OCA St. 1SR at 9. Specifically, the Regionalization Plan – in which the Borough and PAWC refused to participate – was developed by ALCOSAN to reduce the costs incurred by tributary municipalities in minimizing the I/I and

sanitary sewer overflows in each of the ALCOSAN sewersheds. *Id.* ALCOSAN requested that the Borough donate two eligible trunklines; the Borough and PAWC declined. *Id.* There is no reason to believe that PAWC's acquisition of the Brentwood system would create greater involvement in ALCOSAN's regional environmental initiatives, beyond PAWC's merely aspirational statements in support of continuing the relationship.

Importantly, ALCOSAN has already facilitated regionalization of its tributary collection systems. For example, the Brentwood system is currently used by the Borough of Whitehall and City of Pittsburgh as a flow-through to reach the ALCOSAN treatment authority, free of charge. I&E St. 1 at 10. Brentwood's collections flow through the systems owned by the Boroughs of Whitehall and Baldwin, as well as the City of Pittsburgh, eventually reaching the ALCOSAN treatment facility. *Id.* ALCOSAN subsidizes capital investments which reduce I/I in its tributary systems. OCA St. 1SR at 6. The cooperation of each of ALCOSAN's tributary systems is imperative to assist in ensuring compliance with federal, state, and local environmental regulations in each wastewater authority within the ALCOSAN system, due to the vast interconnection between collection systems. *See, e.g.,* App'x A-25.2 (establishing a collaborative, cost-sharing agreement between several ALCOSAN tributaries, including Brentwood, to reduce I/I).

PAWC's aspirations of continued cooperation are unsupported and insufficient to justify disrupting the current regional plan in effect within the ALCOSAN treatment tributaries. While Brentwood is assigning PAWC its current obligations to neighbor systems and ALCOSAN, that does not mean that PAWC will be able to fully step into Brentwood's position. PAWC will have no direct relationship with ALCOSAN and will not be a party to the Z Agreement, it faces a higher cost of capital, and its status as a certificated public utility constrains its ability to invest in cooperative agreements which do not benefit its shareholders, while Brentwood is able to do so

without PAWC's constraints. *See* App'x 25 (PAWC does not seek Section 507 approval for a contract with ALCOSAN); OCA St. 1SR at 7.

As a result, the ALCOSAN treatment system will have to tread lightly around partnerships with PAWC and any such partnerships will likely have to be indirect, involving Brentwood as an intermediary partner. App'x 25.3. This disrupts regionalization and consolidation as consumers' service will not be substantially enhanced following PAWC's acquisition. It is not clear how, despite PAWC's claims, consumers in Brentwood or neighboring boroughs would experience regional environmental or economic benefits which outweigh the cost of PAWC service and are a substantial improvement over those offered by the ALCOSAN treatment network that currently partners with Brentwood and other municipalities.

v. PAWC's and Brentwood's Other Proposed Benefits Do Not Provide Substantial Benefit.

In rebuttal and rejoinder, PAWC and Brentwood raised several other proposed benefits. However, none of these smaller proposed benefits either separately or together are sufficiently substantial to contribute to a net benefit, when compared with the significant rate harms and lack of regional cooperation that will result from the proposed transaction.

For example, during the Public Input Hearing, one witness testified that his primary concern with the approval of this Application was that his tax burden would be less. Tr. at 85. Another witness testified that she wished to see lower rates as a result of the transaction; however, she also went on to mention saving taxpayers money. Tr. at 31. However, the Borough has not provided evidence that taxes would decrease should this Application be approved. While it is clear that rates will not decrease following PAWC's acquisition of Brentwood, the long-term tax benefits residents of the Borough might see is less clear. Specifically, the Borough has stated five anticipated uses for the proceeds of the sale, only one of which directly addresses the tax impact

on its residents by providing that the Borough will not have to raise additional taxes in the near future. Brentwood St. 1 at 18-19. Borough residents may see a small financial benefit from the proposed short-term tax stabilization – and, to a lesser extent, reducing the Borough’s debt obligations – but, given the rate differences that PAWC will charge for the same service, any benefit will likely be outpaced by rate increases under PAWC ownership. There is not sufficient, let alone substantial, evidence for the Commission to rely on the Borough’s or PAWC’s aspirations of cost savings for Brentwood customers or residents.

PAWC also argues that regulation under the Public Utility Code is an affirmative public benefit of the transaction. Application at ¶ 33(h). While the OCA acknowledges that protections provided by the Public Utility Code are a benefit, standing alone they are not sufficient to outweigh the harms. If the acquiring utility’s status as a certificated public utility were enough to satisfy the *City of York* standard for affirmative public benefits, any acquisition by an entity regulated by the Public Utility Commission would meet the standard.

PAWC’s claims regarding benefit to the public-at-large are also illusory and unsupported. Specifically, PAWC has averred that – because it already provides water service to current Brentwood customers – its water and wastewater divisions can coordinate infrastructure upgrades and reduce road cuts. PAWC St. 1SR at 14. The trouble with this argument is that PAWC already claims to do so: it has coordinated improvement projects with ALCOSAN for many years and has an excellent working relationship with ALCOSAN. PAWC St. 2SR at 16:11-14. There is no stated reason why PAWC cannot and is not already coordinating such projects with ALCOSAN and Brentwood, given its established willingness and ability to coordinate with local authorities on infrastructure projects. While, for PAWC, the ability to coordinate internally may be an efficiency, this is not a public benefit and the Commission’s analysis does not consider the acquiring utility’s

internal efficiencies which result, only the benefits which will substantially differ following approval of the transaction. *Cf. McCloskey*, 195 A.3d at 1065 (approval of an application under 1103 must be supported by substantial evidence of benefit *to the public*) (emphasis added); *see also Cicero*, 300 A.3d at 1119. As PAWC claims that it “operates its systems with the best interests of customers in mind,” there is no reason that PAWC should not continue to coordinate with wastewater services when performing upgrades or repairs which require road cuts; in other words, the *status quo* will be maintained. PAWC St. 1-R at 9:9.

Thus, several of the smaller benefits claimed by PAWC or Brentwood are marginal or not evidenced by the record. Considered individually and collectively, there is no substantial difference between the above benefits PAWC and the Borough have proposed, and what current Brentwood customers currently receive. Therefore, these smaller, alleged benefits cannot outweigh the significant and known rate harms, as well as the harm to regionalization efforts that will result from approval of this Application.

b. There Is No Net Benefit to the Proposed Transaction.

After weighing the substantial benefits proposed by PAWC against the known or foreseeable harms which would result from the proposed transaction, it is clear that there is no substantial affirmative public benefit. Specifically, PAWC’s claims regarding economic, environmental, and regionalization benefits appear more in line with PAWC’s fitness as a large, investor-owned utility and, at least in regard to its claim of regionalization, actually are worse under PAWC ownership than Brentwood. Where an Application under Sections 1102 and 1103 of the Public Utility Code relies on benefits which flow from the acquiring utility’s fitness – as opposed to benefits which arise specifically from the transaction – those benefits cannot be considered substantial. *Cicero*, 300 A.3d at 1119. Instead, purported benefits must be specific to

the transaction, even if aspirational, to be able to outweigh any known or foreseeable harms which would result from the transaction. *Id.*

In *CMV*, the Commission concluded that the adverse impacts of the proposed transaction for the existing customers outweighed the benefits. *CMV v. Pa. P.U.C.*, 2008 PaPUC LEXIS 950, *30. While the *CMV* system might have required upgrades to comply with stricter environmental requirements at an unknown future date, the Commission emphasized the acquired system's compliance with applicable environmental regulations at the time of the application. *Id.* The Commission could not rely on the presented evidence to determine the cost of any required, future upgrades to the target system. *Id.*

Here, the Brentwood system is in a similar position to that of the target system in *CMV*. Brentwood is currently in compliance with its COA from the ACHD. OCA St. 1SR at 7. Neither PAWC nor Brentwood have estimated the anticipated cost of required capital improvements for the next five to ten years. *Id.* While PAWC has made aspirational assurances that the Company would be able to make such upgrades at a lower cost than the Borough due to its size and technical fitness, PAWC experts have failed to quantify any potential savings which would result, outside of estimated savings on pipes and light duty vehicles. OCA St. 1SR at 5. Importantly, PAWC has not provided estimates which consider the difference in cost to make capital improvements due to the Borough's lower cost of capital and access to grant funding, such as through the ALCOSAN Grow program. Therefore, there is not sufficient evidence for the Commission to rely on the Borough's or PAWC's aspirations that long-term ownership under PAWC will actually be a substantial benefit to consumers.

Relatedly, PAWC's claimed economies of scale do not reduce the cost to Brentwood customers or PAWC customers. PAWC estimates of the Brentwood system's operation and

management costs should include the efficiencies attendant to the proposed economies of scale; yet, neither PAWC nor Brentwood customers will see those benefits because they are not sufficient to cover the cost of servicing the Brentwood system. *See* OCA St. 1SR at 5. As a result, should this Application be approved, both PAWC and Brentwood customers will need to see rate increases to cover that revenue deficiency, before considering the additional cost of the contemplated capital improvements. OCA St. 1SR at 13. The idea that, theoretically, PAWC is able to provide such service to the Brentwood system cheaper than the Borough can, due to economies of scale, is not reflected in short- or long-term estimates of the rate impact which would result from approval of this Application.

PAWC's proposed acquisition will also interfere with the current regional wastewater interceptor system formed by the ALCOSAN treatment network. Under the Z Agreements, ALCOSAN has created a network of inter-connected, municipally-owned wastewater collection systems which work symbiotically to collect wastewater and transmit flows to ALCOSAN's treatment plants. As an Intervenor, ALCOSAN entered this proceeding to ensure the uniformity of Z Agreements across its treatment footprint. ALCOSAN St. 1 at 4. Yet, when given the opportunity to participate in furthering the environmental goals of the treatment network, PAWC and Brentwood refused to join in ALCOSAN's Regionalization Plan and refused to allow ALCOSAN's assumption of ownership over two inter-municipal trunklines. ALCOSAN St. 1 at 7. PAWC's ownership of the Brentwood system poses a significant stumbling block to the current regionalization of Allegheny county sewer systems, and, as a result, is a known harm.

When considering the long-term rate impact of the proposed transaction, to both PAWC and Brentwood customers, the Company has not provided evidentiary support to establish that net benefits will result. To the extent that PAWC has alleged any benefits exist – with the exception of

PAWC's ability to provide a low-income discount program – those benefits result entirely from PAWC's fitness, are not specific to this transaction, and do not differ substantially from the service currently provided by the Borough. As a result, PAWC has failed to meet its burden of its proof under Section 1103 of the Public Utility Code, as interpreted by the Commonwealth and Supreme Courts, to establish that net benefits would result from the proposed transaction. Where a utility is unable to establish a net benefit would result from an Application under Section 1102, the Commission should reject that Application. *City of York*, 295 A.2d at 141. Therefore, the OCA respectfully requests that PAWC's Application be rejected.

B. Section 1329

Under Section 1329 of the Public Utility Code, the ratemaking rate base of an acquired utility may be incorporated into the rate base of the acquiring utility, as determined by either the fair market value of the acquired utility or its purchase price. 66 Pa. C.S. § 1329(c). As set forth in Section 1329(a) and (b), the process for determining the fair market value is based on two separate appraisals, each using the Cost, Market, and Income approaches. 66 Pa. C.S. §§ 1329(a)(3), (b). The appraisals are then averaged to determine the fair market value, 66 Pa. C.S. Section 1329(g), and the lesser of the purchase price or the fair market value is what the acquiring utility will present as the proposed rate base. 66 Pa. C.S. § 1329(c)(2).

In this proceeding, the two appraisal values for the Brentwood Borough assets were \$22,721,549 (Weinart Appraisal on behalf of PAWC) and \$20,934,000 (Gannett Fleming on behalf of Brentwood). OCA St. 1 at 4; App'x A-5.1; App'x A-13-b. The average of these two appraisals is \$21,827,775. PAWC and the Borough negotiated a purchase price of \$19,364,443. OCA St. 1 at 4. As discussed below, PAWC's proposed rate base is possibly overstated due to the appraisals' inclusion of plant which is not entirely used and useful in the public service, as some portion of the plant provides free service to non-customers. I&E St. 1-SR at 20. Until the Commission can

be certain that the appraisals' value is accurate, the Commission should not approve the addition of the purchase price to ratemaking rate base under Section 1329.

1. Fair Market Value for Ratemaking Purposes

The OCA did not present any evidence regarding adjustments to the fair market value of the Brentwood system for ratemaking purposes. However, the OCA adopts the position of I&E regarding PAWC's inclusion of plant which is not used and useful in its appraisals of the fair market value of the Brentwood system. As such, the parties are not aware of the fair market value of the Brentwood system because the fair market valuation should not include plant which services non-customers, as set forth fully in Section IV.B.6.a below.

2. Tariff and Rates

The tariff provided by PAWC in its initial application, amendment to that application, and rate filing does not correctly display the rates paid by Brentwood customers. App'x 12 (as amended); Supplement No. 47 to Tariff Wastewater-PA P.U.C. No. 16, Fourth Revised Page 13 (Brentwood Proposed Tariff). Specifically, the tariff provides that treatment rates are "as determined by ALCOSAN." App'x 12 (as amended). While technically true, PAWC has not provided a reason that ALCOSAN rates should not be included on its tariff. ALCOSAN has provided its rate projections for the next five years. OCA St. 2 at 8. PAWC should be required to incorporate the ALCOSAN rate schedule into its Brentwood tariff to provide fair notice to its customers of projected ALCOSAN rate increases. Brentwood customers should not bear the burden of informing themselves about ALCOSAN rate increases, when PAWC is better able to provide an accurate and digestible notice of how such rates will impact Brentwood customers.

3. DSIC

PAWC has agreed that Brentwood assets will be excluded from the DSIC until the DSIC applies to customers of the Brentwood system. PAWC St. 3-R at 5. However, PAWC has rejected

the OCA's recommendation that the Company modify its Long-Term Infrastructure Improvement Plan (LTIIIP) within 90 days of closing. *Id.* The Company argues that "a single acquisition" should not require a modification to its LTIIIP. *Id.* PAWC currently has five pending acquisitions before the Commission. *See* Docket Nos. A-2023-3039900 (Towamencin); A-2023-3042058 (Sadsbury Township Municipal Authority); A-2023-3042567 (Township of Farmington); A-2023-3043194 (Audubon Water Company). Within 90 days of the closing of the proposed transaction in this case, PAWC could close on any number of other pending acquisitions, allowing for the Company to include several new systems in its amended LTIIIP at a time. As such, requiring PAWC to file an amended LTIIIP within 90 days of closing would most likely prove beneficial to the Company and does not constitute any level of hardship, let alone one sufficient to preclude requiring an LTIIIP amendment.

4. Claims for AFUDC and Deferred Depreciation

PAWC has specifically requested pre-approval of Allowance for Funds Used During Construction (AFUDC) for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, as well as deferring depreciation on those improvements. PAWC St. 3 at 19. PAWC has included Brentwood system assets in its 2023 Base Rate Case. *See* PAWC-Wastewater Base Rate Case. Therefore, PAWC's request for AFUDC and deferred depreciation is not relevant, as all post-acquisition improvements will be included in the Company's new base rates.

5. Transaction and Closing Costs

The OCA has provided no evidence on or adjustments to the transaction and closing costs claimed by PAWC in this Application.

6. Additional Issues

a. Plant in Service Used to Serve “Non-Customers”

PAWC and the Borough’s UVE appraisals are inaccurate because they include plant in service to non-customers, which cannot be included in a rate base addition under Section 1329.

The Public Utility Code defines “rate base” as “[t]he value of the whole or any part of the property of a public utility which is used and useful in the public service.” 66 Pa. C.S. § 102. Until the plant becomes used and useful in the public service, the capital cost expended to construct the plant may not be recovered. *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989). The utility attempting to claim property as used and useful bears the burden of proving that such property is actually used and useful in the public service, and whether utility property is used and useful is committed to the discretion of the Commission. *Bell Tel. Co. v. Pa. P.U.C.*, 408 A.2d 917, 925 (Pa. Cmwlth. Ct. 1979).

Service includes “any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities . . . to their patrons, employees, other public utilities, and the public.” 66 Pa. C.S. § 102. As such, the relationship whereby Whitehall Borough and the City of Pittsburgh discharge flows through the Brentwood conveyance system – as well as Brentwood’s discharge through the systems of Whitehall Borough, Baldwin Borough, and the City of Pittsburgh – constitutes service. PAWC St. 2 at 6. However, the Z Agreement provides that ALCOSAN and the City of Pittsburgh may permit other municipalities within the treatment network to flow through the Brentwood system to reach the ALCOSAN plants, without Brentwood’s knowledge or consent, and the Cooperation Agreement between PAWC and the Borough requires PAWC to adhere to that provision. *See* App’x A-25.3 at 7, 28.

While PAWC has averred that the use of trunklines to provide free service by transmitting wastewater from upstream municipalities to the ALCOSAN treatment plant is not a “public utility service” because it is not rendered to the public for compensation, PAWC misstates the applicable law. PAWC St. 2-R at 9-10. Specifically, the Public Utility Code defines what a wastewater public utility is, not which acts constitute a “public utility service.” *See* 66 Pa. C.S. § 102 (a public utility is a corporation providing owning or operating equipment for the collection, treatment, or disposal of wastewater for the public for compensation). The Code defines “service” and “public utility,” separately, and only requires that the entity conducting *any* services do so for the public for compensation but does not require *all* services are directly provided to the public. *Id.* PAWC is certainly a public utility, as it provides service to the public for compensation, but the Code does not require that all acts of service conducted by a public utility must be to the public for compensation, as “service” can also be for employees or other public utilities. *Id.*

Notably, municipal corporations and authorities are part of “the public” under the Public Utility Code. A municipal corporation includes a borough, when the borough “created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.” 66 Pa. C.S. § 102. They are not considered “corporations” or “persons”; instead, as they are served by public utilities in the same manner as ratepaying residential and industrial customers, they are included within the meaning of “the public” under the Code. *Id.* PAWC offers wastewater service to municipalities in its Rate Zones One, Two, Three, Six, and Seven, for example. *See* PAWC Supplement No. 46 to Tariff Wastewater PA P.U.C. No. 16.

A public utility cannot provide free service to any member of “the public”, which includes the upstream municipalities. 66 Pa. C.S. § 1303; *Phila. Suburban Water Co. v. Pa. P.U.C.*, 808 A.2d 1044, 1050 (Pa. Cmwlth. Ct. 2002) (“Free public utility service has been examined by our

appellate courts and found to be anathema to a system of regulation and publication of a utility's tariffs.”). In *Philadelphia Suburban Water*, PAWC attempted to “donate” to the City of Coatesville’s Economic Development Fund for the amount paid by the City for fire hydrant service. *Id.* at 1051. The Commonwealth Court found that any arrangement between a public utility and municipal corporation which sought to provide free service – directly or indirectly – was unlawful, even if the arrangement was offered as payment for an asset. *Id.* at 1055. The courts of the Commonwealth have long held that any offer of free service is, effectively, a departure from a Commission-approved tariff. *See Scranton Electric Co. v. School Dist.*, 37 A.2d 725 (Pa. Sup. Ct. 1944). The OCA submits that, where plant provides free service, the portion of that plant dedicated to providing free service should not be considered used and useful for the determination of rate base, because ratepaying consumers would otherwise bear the burden of paying for free service.

PAWC’s contemplated provision of service to Whitehall Borough and the City of Pittsburgh is free service because PAWC anticipates using the plant included in rate base to provide that service. However, if the plant in service to Whitehall Borough and the City of Pittsburgh were *not* included in rate base, then PAWC would be able to fulfill its obligations under the Cooperation and Z Agreements without violating the Public Utility Code. PAWC, when conducting its valuation of Brentwood’s used and useful plant under Section 1329, included all of Brentwood’s plant, including the portion which provides free service to Whitehall Borough and the City of Pittsburgh. I&E St. 1-SR at 20. Unless and until PAWC provides an accurate valuation report of used and useful plant, PAWC cannot include the purchase price for the Brentwood system in rate base, as ratepayers bear the risk that an accurate valuation of the fair market value of the system would be less than the purchase price. *See* 66 Pa. C.S. § 1329(c)(2) (“The ratemaking rate base of the selling

utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.”).

Therefore, should the Commission find that PAWC has satisfied its burden under Section 1103, and that the Application should be approved, PAWC and Brentwood should be required to submit valuations of the Brentwood plant purchased which do not include the plant dedicated to providing free service to Whitehall Borough and the City of Pittsburgh. The OCA respectfully requests that the granting of this Application should be conditioned on PAWC and Brentwood providing accurate appraisals of utility valuation experts, which assess the fair market value of the Brentwood system including only that plant which is used and useful in the public service.

b. The Rate Freeze is a Rate Stabilization Plan

PAWC proposes a two-year rate freeze for Brentwood customers. OCA St. 2 at 8. Under Section 1329, a rate stabilization plan is defined as “[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case.” 66 Pa. C.S. § 1329(g). PAWC’s proposal to freeze rates for the Brentwood customers for two years after closing is, thus, a rate stabilization plan because it has the potential to hold rates constant or phase rates in over a period of time after its next base rate case. In its 2023 Base Rate Case, PAWC has provided that Brentwood customers’ rates will increase on the second anniversary of its acquisition date, meaning that the Company has proposed holding Brentwood rates constant for a period of time after its base rate case. PAWC 2023 Base Rate Case.

The Commission has required that “if a rate stabilization is proposed, the applicant will be required to provide testimony, schedules, and work papers that establish the basis for the plan and its impact on existing customers who need to cover the revenue requirement that would be shifted to them under the plan.” Implementation of Section 1329 of the Public Utility Code, Docket No. M-2016-2543193, Final Implementation Order at 27 (Oct. 27, 2016). No such plan was provided

in this proceeding. This has the effect of depriving the Commission and the parties of the ability to fully evaluate the benefits and harms of the proposed transaction. OCA St. 1 at 16. PAWC's failure to provide the required information in this proceeding was not adequately explained by PAWC, beyond the averment that the proposed rate freeze is not a rate stabilization plan. PAWC St. 3-R at 4.

c. Future Customer Notices Should Show a Range of Impacts

The OCA's witness Mr. DeMarco recommended in his direct testimony that PAWC should add a range of bill impacts in Section 1329 proceedings for a customer using 150% and 200% of PAWC's estimated average household water usage of 3,212 gallons per month. OCA St. 1 at 25. By providing additional estimates on its customer notices, PAWC would provide more accurate information to customers regarding how they are likely to be impacted by a proposed acquisition. As a matter of course, PAWC's use of an "average" figure to provide notice of anticipated bill impacts is not wholly representative of most of its customers' monthly water usage because it is merely an average. Though it is convenient for the Company to use an average, a household which uses more than average should be provided with an accurate estimate of how much their rates may actually increase, should the acquisition be approved by the Commission.

While PAWC has stated that it is not required to provide such a notice, there is also no impediment to doing so other than the Company's own unwillingness. Tr. at 383-84. Any burden on the Company to produce a notice with a range of estimated bill impacts is insubstantial compared to the potential significance to its customers who use more water than "average." Therefore, should this Application be approved, PAWC should be required or encouraged to provide more accurate notices going forward to existing and acquired customers regarding a range of potential bill impacts following a proposed acquisition.

C. Section 507

To receive approval of a contract between a public utility and a municipal corporation, the public utility must seek Commission approval of that contract. 66 Pa. C.S. § 507. When considering the filing, the Commission is tasked with ensuring that the contract is reasonable, legal, and otherwise valid. *Id.* Where a contract is not reasonable, legal, or is otherwise invalid, the Commission may revise or reform the contract to ensure that its provisions are just, reasonable, and equitable. 66 Pa. C.S. § 508.

Under the Cooperation Agreement, PAWC is required to pay for all uncollectible accounts on behalf of ALCOSAN. Specifically, Paragraph 14 of the Z Agreement required that Brentwood remit the uncollectible amount of ALCOSAN charges to ALCOSAN out of the Borough's revenues. App'x A-25.3 at 35. In Section 2(g)(ii) of the Cooperation Agreement, PAWC agrees to pay ALCOSAN, on the Borough's behalf, the aggregate charges due to ALCOSAN quarterly. App'x A-25.3 at 6. Therefore, until such a time as the uncollectible amounts are collected by PAWC, the Company's customers across the Commonwealth pay the difference between what PAWC collected from Brentwood customers and what was actually owed. Any uncollectible expense required to provide for delinquent ALCOSAN bills would, therefore, be included in PAWC's revenue requirement. PAWC's claim to simply act as a "billing agent" for ALCOSAN is an oversimplification and misnomer.

Importantly, PAWC would also receive a refund from ALCOSAN as an annual credit for the savings in billing expense resulting from PAWC's election to pay quarterly instead of requiring ALCOSAN to bill customers directly. App'x A-25.3 at 4. While a "billing agent" may normally expect to receive compensation for collecting from customers on behalf of a third-party, the cost to PAWC to do so is nominal. As PAWC continues to emphasize, as the water provider for Brentwood customers, wastewater and water billing would occur at the same time, should the

instant Application be approved; the cost for PAWC to provide billing services for ALCOSAN, as a result, would be an infinitesimal increase over the cost PAWC is already paying to bill Brentwood customers for their water service. PAWC St. 1-SR at 14. To the extent that PAWC would incur costs to bill its customers on behalf of ALCOSAN, those costs would be included as an expense for ratemaking purposes, as they are not included in the ALCOSAN rates which pass-through to Brentwood customers. App'x A-25.3 at 29-30. Therefore, while incurring little expense for the Company – which would be borne by PAWC ratepayers – PAWC will receive an annual refund which it does not provide will be passed on to consumers.

The combination of PAWC's ability to receive the refund for conducting collection activities on behalf of ALCOSAN, and that the cost of delinquent accounts would be paid out of PAWC's rates charged to its customers, indicate that the Cooperation Agreement, as written, is unreasonable. It requires too many adjustments and modifications to PAWC accounting in order to justify what little value was presented by PAWC as support for its proposed pass-through system. Where an agreement between a public utility and a municipal corporation is against the public interest, as determined by the Commission, it cannot become effective. 66 Pa. C.S. § 507. Instead, the Commission is vested with the ability to revise the contract, such that its terms become just, reasonable, and equitable. 66 Pa. C.S. § 508; *Columbia Gas v. Pa. P.U.C.*, 535 A.2d 1246, 1248 (Pa. Cmwlth. Ct. 1988) (approving the Commission's balancing the interests of the parties by reforming an inequitable contract).

The instant Application, as written, is not in the public interest with regard to the Cooperation Agreement between Brentwood and PAWC. PAWC will benefit from ALCOSAN refunds without guaranteeing that those costs will be passed on to ratepayers, despite ratepayers funding the services resulting in the refund. Further, PAWC ratepayers system-wide will bear the

burden of funding any difference between ALCOSAN charges collected by PAWC and the amount the Company actually owes ALCOSAN.

In addition, as provided above, the Cooperation Agreement, as written, does not include a provision requiring that Brentwood or PAWC provide notice to its customers of ALCOSAN rate increases at prior to when customers are charged at higher rates. *Supra* at Section IV.A.2.iii(b). The Cooperation Agreement also fails to require that PAWC update tariff filings and reflect the current or anticipated increases in rates in its tariffs. *See* 66 Pa. C.S. § 1308(a); 52 Pa. Code § 53.45. As the anticipated ALCOSAN rate increases are publicly available, PAWC will be able to incorporate that information into its tariff and plan on when such filings or notices should be required. OCA St. 2 at 8. Brentwood customers should not bear the burden of informing themselves about ALCOSAN rate increases, when PAWC is better able to provide an accurate and digestible notice of how such rates will impact Brentwood customers.

Further, PAWC's proposal appears akin to a pass-through under Section 1307(a) of the Public Utility Code; yet, PAWC has not met its burden to show that such a pass-through is warranted. Aqua 2021 Base Rate Case at *155. Specifically, the Commission has previously required that the utility proposing a pass-through prove that it is necessary, and unique, unexpected, or non-recurring, such that it is not part of the normal, ongoing cost of providing service. *Id.* Further, the charge must be easily identifiable and beyond the utility's control. *Newtown*, 13 A.3d at 591. In *Newtown*, a water utility sought to include in its tariff an adjustment clause for purchased water; according to the water utility, the cost of purchased water was approximately 29% of its operations expenses. *Id.* at 584. In the Aqua 2021 Base Rate Case, by contrast, the purchased water adjustment charge which Aqua sought was only approximately 1.4%. Aqua 2021 Base Rate Case at *155. While in *Newtown*, the purchased water adjustment charge was approved under Section

1307(a), it was rejected in Aqua, in part due to the predictable nature of the charge and its immaterial overall impact on Aqua's budget. *Compare Newtown*, 13 A.3d at 591 *with Aqua 2021 Base Rate Case* at *155. In this case, ALCOSAN treatment charges would comprise approximately 0.9% of PAWC's operations and maintenance expenses. AEE-1REV; App'x F. Even if the treatment charges represented a significant proportion of PAWC's expenses, PAWC has failed to properly furnish the necessary evidence under Section 1307 to satisfy the statutory requirements for the creation of a pass-through charge.

PAWC should be required to provide procedural protections for its customers as a condition for approval of the Cooperation Agreement, if PAWC is allowed to establish ALCOSAN rates as pass-through charges. For example, Veolia Water currently includes a pass-through charge for purchased water for its customers in Bethel Township, the Township of Concord, and Delaware County. *See Supplement No. 66 to Water – Pa. P.U.C. No. 7* at 65-66. Those customers are charged a separate line item on their bill, which is calculated in the tariff, to contribute toward the purchased water costs. *Id.* In order to ensure compliance with Commission regulations, Veolia is required to file an annual reconciliation under Section 1307(e) of the Public Utility Code, and either reimburse overcharging or collect for undercharging. *Id.* PAWC should be subject to a similar arrangement under Section 1307(a) regarding ALCOSAN charges, to ensure that collected rates do not exceed the cost of treatment billed to PAWC, and that Brentwood customers receive the protection of Commission regulations under PAWC regarding rates charged by PAWC.

Therefore, the Commission should exercise its discretion under Section 508 of the Public Utility Code to reform the Cooperation Agreement and require that PAWC treat ALCOSAN charges as an operations expense in the same manner as wastewater treatment is paid-for in each of PAWC's other collection-only systems. Should the Commission decide to maintain the pass-

through billing arrangement, the Cooperation Agreement should require that PAWC comports with the Commission regulations regarding customer protections for adjustable rates.

D. Preservation of the Z Agreement and other Z Agreements

The OCA presented no evidence on the issue of the preservation of the Z Agreements and other Z Agreements. However, the OCA does support ALCOSAN's position that the uniformity of the Z Agreements is an important consideration for approval of the instant Application. As laid out in Section IV.A.2.e, *supra*, the OCA submits that approval of this Application interferes with ALCOSAN's current regionalization efforts, including its Regionalization Plan. Further, the Z Agreement's requirement that free service be provided to upstream municipalities significantly complicates the Section 1329 appraisal procedure, to the extent that PAWC and Brentwood failed to submit accurate UVE appraisals and should be required to submit revised evaluations. Therefore, preservation of the uniformity of the Z Agreements requires that the instant Application, as written, be denied, as preservation of the Z Agreements' uniformity provides significant benefit to wastewater customers and municipalities within ALCOSAN's treatment network, and the instant Application substantially interferes with that preservation.

E. Recommended Conditions for Approval.

As set forth above, the OCA recommends that the Commission deny the relief requested in the Application. If, however, the Commission approves the proposed acquisition, the OCA recommends the following conditions:

1. Missing Easements and Other Property Rights

The OCA presented no evidence on the issue of missing easements and other property rights.

2. Cost of Service Studies:

PAWC should be required to provide a separate Cost of Service Study for the Brentwood system, in the first base rate case which includes the system's assets, as well as all subsequent rate cases.

While PAWC has agreed that it will provide a separate Cost of Service Study (COSS) for the Brentwood system in its next base rate case, the Company rejected the proposal by I&E that a separate COSS should be done each base rate case for Brentwood which excludes the cost of service of plant which is not used and useful. PAWC St. 3-R at 11-12. The cost of performing a COSS for Brentwood for each base rate case filed by PAWC should not be cost prohibitive when the system provides free service to upstream municipalities and there is currently no data on what burden providing free service places on the Brentwood system. As such, the OCA adopts the request of I&E that, should the Application be granted, PAWC should be required to provide a COSS in each base rate case which includes Brentwood's assets, where the cost of providing service to upstream municipalities is excluded from the COSS for Brentwood customers. I&E St. 1 at 16-18.

3. Rate Freeze

The rate freeze provision should be rejected. OCA St. 2 at 11. If the Commission does not reject the rate freeze provision, the Commission should condition its approval on the recognition that the Commission retains the ultimate authority to set rates, including but not limited to, the authority to allocate revenues, if appropriate, to the Brentwood customers that are different from the restrictions contained in Section 7.03 of the Asset Purchase Agreement.

Under PAWC and Brentwood's proposal, the proposed two-year rate freeze could hold Brentwood rates constant after PAWC's next base rate case. Existing PAWC customers should not be at risk to cover the revenue requirement required to keep Brentwood rates lower than rates set for those customers in a base rate case. *Supra* at Section IV.A.2.a.ii. If the Commission does not reject the rate freeze provision, the Commission should condition its approval on the recognition that the Commission retains the ultimate authority to set rates, including but not limited to, the

authority to allocate revenues, if appropriate, to the Brentwood customers that are different from the restrictions contained in Section 7.03 of the Asset Purchase Agreement. OCA St. 2SR at 7.

4. Customer Notices

If PAWC is permitted to pass-through ALCOSAN charges, PAWC should be required to provide Brentwood customers with notice of ALCOSAN rate increases before paying increased rates, include ALCOSAN rate increases in its tariff, and provide annual reports and submit to public hearings on its pass-through adjustment in compliance with Section 1307(e) of the Public Utility Code.

Under the current proposal, PAWC will not provide notice of ALCOSAN rate increases to Brentwood customers until Brentwood customers are charged those rates. Brentwood customers should receive adequate notice of ALCOSAN rate increases through PAWC providing that information in its tariff, filing a new tariff every time an ALCOSAN projected rate schedule is published, and prior to when an ALCOSAN rate increase becomes effective. *See* 52 Pa. Code § 53.45. Further, PAWC should be subject to the reporting and reconciliation requirements of Section 1307 of the Public Utility Code, to ensure that the ALCOSAN rates collected are identical to the costs associated with treatment. Such protections are available for increases in base rates and under Section 1307(a) pass-throughs: Brentwood customers should be afforded these protections for ALCOSAN treatment cost increases. OCA St. 2SR at 7.

5. ALCOSAN Charges and Discounts

PAWC should be required to include ALCOSAN treatment costs as an operations expense, recovered in base rate, and not as a pass-through, line item charge on bills.

This condition will allow for the costs of treatment for Brentwood's wastewater collections to be Commission-regulated, stabilized, socialized, and to prevent any unnecessary accounting complexities which would arise out of uncollectible ALCOSAN treatment costs or the ALCOSAN bill servicing refund. OCA St. 2 at 8-9; *supra* at Section IV.C. PAWC should be required to include ALCOSAN treatment costs in base rates for Brentwood customers. 66 Pa. C.S. § 1304.

6. Specific Notice for Brentwood Customers Prior to Closing

PAWC should be required to provide an additional notice to current Brentwood customers because PAWC understated the potential rate impact of the proposed transaction.

As stated in Section IV.A.2.c, PAWC estimated the proposed rate impact based on the total revenues collected, and not based off of the revenues collected for collection service. *Supra*. Before considering the 2023 base rate filing, Brentwood customers would have to provide a 11% rate increase to cover the system's revenue deficiencies; under the proposed rate increase, Brentwood customers are facing a 20.3% increase. PAWC-Wastewater 2023 Base Rate Case, Exh. 3-A. The Brentwood revenue requirement shifted to water customers under Section 1311(c) is increasing from an estimated 33% to 41.6%, resulting in an increased rate for water customers. Tr. at 385. As a result, Brentwood customers should be provided with renewed notice reflecting the more-accurate rate impact of the proposed transaction, to ensure that the instant transaction comports with the requirements under *McCloskey* and the *Steelton* settlement. Tr. at 372.

Further, between when Brentwood customers were initially provided notice of the instant transaction and its approval, Brentwood customers were not provided with notice of PAWC's other proposed and pending transactions. OCA St. 1 at 25. In future applications under Section 1329, PAWC should be required to update its notices to potentially acquired customers when a new acquisition application becomes pending to ensure that potentially acquired customers are noticed as if they were current PAWC customers during the pendency of the acquisition application. *Id.*

7. Payment Agent in Brentwood

PAWC should maintain a payment agent within the Borough of Brentwood.

Under the current proposal, PAWC will not provide a payment agent for in-person payment of wastewater bills within the Borough. OCA St. 2 at 6. The Borough currently allows for in-person payment through the use of a drop-box on the outside of the Borough Building, though it

is possible that some customers might bring payment inside the Borough Building and speak with Borough staff regarding their wastewater service. OCA St. 2SR 5. While in-person payment options are available within 15 miles, none are available within the Borough of Brentwood, which presents an inconvenience to Brentwood customers.

8. Additional Conditions

PAWC and Brentwood should be required to provide Utility Valuation Expert appraisals which do not include the portion of Brentwood's plant which provides free service before any portion of Brentwood's plant is included in rate base.

PAWC and the Borough's UVE appraisals filed with this Application included plant which is not used and useful – because it provided free service to non-customers – in their valuation of the full market value of the Brentwood system. *Supra* at Section IV.B.6.a. Plant which is not used and useful cannot be included in rate base. 66 Pa. C.S. § 102. Due to the inaccuracy of the filed UVE appraisals, the Commission cannot be certain that the average of the two UVE appraisals is greater than the purchase price of the system, as claimed by PAWC. Therefore, should the Application be approved, the Commission should ensure that any plant added to rate base under Section 1329 is used and useful, and that the amount added to rate base is the lesser of the average of the two UVE appraisals and the purchase price. 66 Pa. C.S. § 1329(c).

The proposed projects reflected in the revised LTIIP should be in addition to, and not reprioritize, any capital improvements that PAWC was already committed to undertake for existing customers.

Reprioritization of capital improvements would disadvantage existing PAWC customers. OCA St. 1 at 21. This condition helps to ensure that projects and expenditures already planned for existing PAWC wastewater customers will not be given less priority as a result of the Brentwood acquisition. *Id.*

Rate claims related to the accrual of AFUDC for non-DSIC eligible, post-acquisition improvements should be made in the next PAWC base rate case following the plant additions.

This condition would ensure that the AFUDC would be claimed at the same time as the improvements are included in rates. OCA St. 1 at 22.

V. CONCLUSION WITH REQUESTED RELIEF

For the reasons stated above, the Application should be denied. PAWC has failed to meet its burden of proof under Section 1102 and 1103.

Respectfully Submitted,

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4896-0020-8267

List of OCA Sponsored Testimony and Exhibits

1. Direct Testimony of Nicholas A. DeMarco, OCA St. No. 1, together with OCA Exhibits ND-1 through ND-9
 - a. Exhibit ND-1: Qualifications of Nicholas A. DeMarco
 - b. Exhibit ND-2: OCA-VI-2 and OCA-VI-3
 - c. Exhibit ND-3: OCA-VII-9
 - d. Exhibit ND-4: OCA-II-1
 - e. Exhibit ND-5: OCA-VII-11
 - f. Exhibit ND-6: OCA-II-3
 - g. Exhibit ND-7: OCA-II-4
 - h. Exhibit ND-8: OCA-II-6
 - i. Exhibit ND-9: Aqua/Shenandoah Section 1329 Revenue Deficiency Calculation
2. Surrebuttal Testimony of Nicholas A. DeMarco, OCA St No. 1SR, together with OCA Exhibits ND-10 through ND-13
 - a. Exhibit ND-10: OCA-II-12
 - b. Exhibit ND-11: OCA-VII-1
 - c. Exhibit ND-12: OCA-I-3
 - d. Exhibit ND-13: OCA-XII-4
3. Direct Testimony of Barbara R. Alexander, OCA St. No. 2, together with OCA Exhibit BA-1 through BA-3
 - a. Exhibit BA-1: Qualifications of Barbara R. Alexander
 - b. Exhibit BA-2: PAWC Amended Appendix A-18-d
 - c. Exhibit BA-3: Response to OCA-IX-9
4. Surrebuttal Testimony of Barbara R. Alexander, OCA St. No. 2SR

OCA Proposed Findings of FactSection 1102/1103

1. PAWC provides wastewater service to approximately 97,325 customers throughout Pennsylvania. Application at ¶ 9.
2. Brentwood owns a sanitary wastewater collection-only system which provides direct wastewater collection service to approximately 3,974 customers in the Borough of Brentwood, who will become PAWC customers if the Application is approved. Application at ¶ 8.
3. ALCOSAN provides treatment services for the Brentwood collection system, as well as 82 other municipally-owned collection systems in Allegheny County. ALCOSAN St. 1 at 2.
4. PAWC has proposed adding \$19,364,443 to rate base, should the Application be approved. PAWC St. No. 2.
5. The depreciated original cost of the Brentwood system, evaluated under Section 1329, is \$7.09 million. PAWC Statement No. 3 at 5.
6. PAWC calculates the Brentwood system will generate an annual revenue deficiency of \$664,000 that will be recovered from Brentwood customers, PAWC water customers, PAWC wastewater customers, or all three. OCA Exh. ND-2.
7. Brentwood rates will need to increase by 11% to cover the projected annual revenue deficiency of the Brentwood system under PAWC ownership. OCA St. 1SR at 13.
8. If the rate estimation includes one-fifth of the cost of the projected capital improvements, rates will likely increase to 13.5% of their current level. OCA St. 1SR at 13.
9. Brentwood has access to capital to upgrade its system. Brentwood St. 1 at 10.
10. Brentwood has been able to meet its current compliance goals. OCA Exh. ND-3.
11. Brentwood has complied with the 2008 consent decree between the Allegheny County Sanitation Authority (ALCOSAN) – the authority which provides Brentwood’s wastewater treatment service – and the U.S. Environmental Protection Agency (USEPA), the Pennsylvania Department of Environmental Protection (PaDEP), and the Allegheny County Health Department (ACHD). PAWC St. 2 at 12.
12. The 2008 consent decree specifically addresses inflow and infiltration (I/I) into the service area of the ALCOSAN Woods Run Treatment Facility and was amended in 2013 and 2020 to include ALCOSAN’s draft and updated Wet Weather Plans. PAWC St. 2 at 12.
13. Brentwood has met its obligations under the first phase (2016-2018) of the Consent Order and Agreement (COA) between Brentwood, ACHD, and PaDEP which required

- Brentwood to conduct Source Reduction Studies in order to reduce wastewater flows into the ALCOSAN system. OCA St. 1 at 10.
14. As a part of Phase II of the COA, Brentwood will be implementing Flow Reduction projects, with a target completion date of December 31, 2026, to eliminate sanitary sewer overflows or reduce flows causing sanitary sewer overflows by at least 10%. OCA St. 1 at 10.
 15. There is a distinct possibility that a significant portion of the Brentwood I/I originates in upstream flows. I&E St. 1-SR at 5.
 16. Throughout the ALCOSAN treatment network, upstream municipalities will be able to impact the compliance levels of their downstream neighbors, regardless of the level of capital investment of which the downstream municipality can commit to reducing I/I. I&E St. 1-SR at 5.
 17. The Borough's budget is sufficient to fund routine maintenance and system upgrades without altering its existing service fees, in addition to the hundreds of thousands of dollars the Borough budgets for each year in case of an emergency. OCA St. 1 at 12-13.
 18. In the past five years, the Borough has not had issues funding infrastructure replacements or upgrades. OCA St. 1 at 14.
 19. Should the Borough need to raise capital for additional improvements through a rate increase, it is able to do so at a lower cost of capital than PAWC, because it does not have to provide for shareholder compensation. OCA St. 1 at 14.
 20. The ALCOSAN Grow Program provides grants that are specifically limited to funding participating municipalities with programs that reduce inflow and infiltration (I/I). Brentwood St. 1-R at 6
 21. The Borough's ability to utilize Grow grants, as it has done in the past, to fund the improvements necessary to keep Brentwood in compliance with federal, state, and local regulators' requirements shows that PAWC's ability to provide capital – at a notably higher cost, 7.10% versus the Borough's 4.37% – is not a substantial improvement on the *status quo*. OCA St. 1SR at 7.
 22. PAWC's improvements are largely a result of standardization, including the routinization of notices, collections, receiving both water and wastewater bills on a single bill, and alternative payment plan options. OCA St. 2 at 5.
 23. From a Brentwood customer perspective, receiving one consolidated bill for water and wastewater is the *status quo* because they currently receive two bills: a water bill from PAWC, and a wastewater collection and treatment bill, that includes refuse charges from the Borough. OCA St. 2 at 5.

24. If the transaction is approved, a former Brentwood customer will still receive two bills – one from PAWC for water and wastewater collection and treatment, and one from the Borough for refuse charges, as PAWC will not collect refuse charges. PAWC St. 3-R at 18.
25. PAWC has 24/7 customer service center hours. PAWC St. 2-R at 15.
26. To the extent that PAWC has alleged customer service experience improvements with specificity, they are marginal, and arise exclusively out of its fitness as a large, investor-owned utility. OCA St. 2SR at 3.
27. PAWC has a low-income bill discount program. PAWC St. 3 at 16-17.
28. Customers served by Brentwood currently have access to ALCOSAN’s low-income program for its treatment portion of customers’ wastewater charge. OCA St. 1 at 19.
29. The portion of a Brentwood customer’s bill dedicated solely to treatment expenses is 56.7% of the total wastewater bill. OCA St. 1 at 24.
30. PAWC will not provide its low-income discount program to Brentwood customers to assist with ALCOSAN treatment costs. App’x A-12 (revised) at 16.
31. Brentwood customers will still have to separately apply for ALCOSAN’s low-income discount program to receive the quarterly credit to their bill for treatment services. App’x A-12 (revised) at 16.
32. Brentwood customers will not have the more personalized and localized customer service associated with dealing with Borough employees, including the ability to discuss their wastewater service while making in-person payments. OCA St. 2SR at 3-4.
33. PAWC filed for Commission approval of an increase to base rates on November 8, 2023. Docket Nos. R-2023-3043189 (water) and R-2023-3043190 (wastewater).
34. PAWC has included Brentwood in its wastewater rate filing, despite not having received Commission approval for acquisition of the Brentwood system. Tr. at 369.
35. The inclusion of Brentwood in PAWC’s 2023 Base Rate Case indicates PAWC plans to ensure that the Brentwood system’s revenue deficiency is paid-for, in part, by other PAWC customers, including its water customers. Tr. at 384-85.
36. PAWC has proposed spending \$8,055,000 in planned capital improvements to the Brentwood system over five years. PAWC Exh. DJH-2.
37. PAWC agreed to a two-year rate freeze for Brentwood sewer customers. App’x A-24-a at § 7.03(a).
38. While PAWC has proposed that, for the duration of the rate freeze, its shareholders will bear the burden of that portion of the Brentwood revenue deficiency which would

- otherwise be borne by Brentwood customers, it proposes no such measure for the total revenue deficiency that may be assigned to other wastewater customers or other water customers via a shift under Section 1311(c) and does not make any commitment to bear the increased cost of Brentwood's planned capital improvements. OCA St. 2SR at 2.
39. PAWC has provided that the proof of revenues for Brentwood customers will be calculated as if Brentwood customers were paying the estimated 11% increase in rates until the end of the proposed rate freeze, while the additional revenue was not collected. PAWC St. 3-R at 4.
 40. This accounting fiction only addresses the portion of the revenue requirement paid-for by Brentwood customers and does not include the portion of the Brentwood revenue requirement borne by existing PAWC wastewater customers or water customers under the Act 11 shift. AEE-1REV.
 41. One-fifth of the planned capital improvements to the Brentwood system adds \$147,000 to the system's annual revenue deficiency. OCA Exh. ND-13 at 5.
 42. As planned capital improvements are estimated to cost PAWC approximately 232% of the annual revenue deficiency during the first year of the rate freeze and 540% during the second, those costs will be borne by existing PAWC consumers or by Brentwood customers, or both. PAWC Exh. DJH-2.
 43. In the PAWC 2023 Base Rate Case, PAWC plans to allocate approximately 42% of Brentwood's wastewater revenue requirement to water customers system-wide, including those who are not customers of the Brentwood wastewater system. *Pennsylvania-American Water Company v. Pa. P.U.C.*, Docket Nos. R-2023-3043189 (water) and R-2023-3043190 (wastewater) (Exh. 3-A Nov. 8, 2023) (PAWC-2023 Base Rate Case).
 44. Under the current proposal, PAWC water customers will be responsible for \$1,565,232 of Brentwood's annual revenue deficiency. PAWC-2023 Base Rate Case at Exh. 3-A.
 45. The remaining revenue deficiency related solely to the Brentwood acquisition that will be allocated to PAWC wastewater customers will increase rates by an estimated 0.5%. PAWC-2023 Base Rate Case at Exh. 3-A.
 46. PAWC currently has one pending acquisition under Section 1329, that of the Towamencin wastewater system. OCA St. 1 at 15.
 47. The estimated annual revenue deficiency of the Towamencin system in addition to that of the Butler Area Sewer Authority, which was recently acquired under Section 1329, is approximately \$25,626,000, or 38.4 times greater than the Brentwood annual revenue deficiency. OCA St. 1 at 15.

48. In anticipation of the sale of its system, Brentwood Borough has not raised rates in several years; thus, when its rates are increased (before or following the end of the proposed rate freeze), Brentwood customers will experience an increase of rates to recover approximately seven years' worth of increases in cost of service and at PAWC's cost of service. Brentwood St. 1-R at 9.
49. Brentwood customers will pay 2.73 more cents per dollar spent to make improvements to the Brentwood system under PAWC ownership than they would under the Borough's, without considering the availability for low- or no-interest loans or capital which are available only to municipalities, such as the ALCOSAN Grow program. OCA Exh. ND-5.
50. The examples of cost savings provided in PAWC's testimony were highly speculative, included no estimate as to how much of the savings would be passed on to ratepayers, and did not provide that PAWC's cost-savings would be materially different from any available to the Borough. PAWC St. 2-R at 12-13.
51. Any areas of claimed savings would already be reflected in the calculation of the revenue deficiency. OCA St. 1SR at 5.
52. Under PAWC's proposed tariff, there will be an approximately 25% increase when the rate freeze ends for collection costs, before considering the estimated 14.4% increase in ALCOSAN treatment costs. Supplement No. 47 to Tariff Wastewater PA P.U.C. No. 16 at 13; OCA St. 2 at 8.
53. Brentwood customers will see a 7% increase in ALCOSAN rates in each of the next several years. OCA St. 2 at 8.
54. Despite the proposed rate freeze, Brentwood customers' monthly bills will still see an increase in rates, as a result. OCA St. 2 at 8.
55. ALCOSAN is not a Commission-regulated authority. OCA St. 2 at 8.
56. PAWC will charge and collect increasing wastewater treatment rates – which are not subject to Commission oversight – during the rate freeze. OCA St. 2 at 8.
57. While PAWC alleges that it would be merely acting as a billing agent on behalf of ALCOSAN, and remit the rates associated with wastewater treatment directly to ALCOSAN, PAWC would provide ALCOSAN with quarterly payments for its customers' costs in bulk, and not on a per-customer basis, which ALCOSAN does permit. OCA St. 2 at 9.
58. PAWC and Brentwood refer to this arrangement as a pass-through. OCA Exh. ND-12.
59. PAWC has not implemented a pass-through system in any of its other collection-only systems. OCA St. 1 at 18.

60. In its other collection-only systems, PAWC has included the cost of wastewater treatment in the rates charged to its customers. OCA St. 1 at 18.
61. PAWC has provided no reasonable basis for its decision to do so in this case, outside of the fact that Brentwood is currently passing-through ALCOSAN charges. OCA St. 1SR at 11.
62. PAWC will not provide notice of ALCOSAN rate increases to Brentwood customers; instead, customers will become aware of increases when they are billed at ALCOSAN's higher rates. PAWC St. 3-R at 17.
63. ALCOSAN publishes projected changes years in advance. OCA St. 2SR at 7.
64. PAWC will not provide ALCOSAN rate changes in its wastewater tariffs. OCA St. 2SR at 7.
65. In two of PAWC's other collection-only systems – of which there are three: Fairview, Foster, and Upper Pottsgrove – PAWC is charged for treatment based off of a metered wastewater flow. Tr. at 393.
66. Under the Z Agreement, ALCOSAN computes the charge for treatment based off of the metered water usage of Brentwood residents. App'x 25.3 at 31.
67. There is no significant distinction between how ALCOSAN charges are computed and how treatment charges are computed by treatment service providers in other collection systems.
68. PAWC purports to have a good working relationship with ALCOSAN. PAWC St. 2SR at 16.
69. Brentwood has a good working relationship with ALCOSAN. Brentwood St. 1 at 8:3.
70. As a part of the ALCOSAN tributary network, Brentwood is one of 83 municipally-owned wastewater collection systems. ALCOSAN St. 1 at 2.
71. Each collection system is party to an identical version of the "Z Agreement," or the initial agreement between the City of Pittsburgh, Brentwood, and ALCOSAN, which established ALCOSAN as the municipally-owned treatment authority for Allegheny County collection systems. App'x A-25.3 pp. 15-43.
72. ALCOSAN highly values the uniformity of obligations spread across each of its tributary municipalities. ALCOSAN St. 1 at 4.
73. Tributary systems share a number of interconnections and trunklines, some which ALCOSAN is attempting to assume control of as a part of its Regionalization Plan, which is being implemented to comply with a Clean Water Plan developed pursuant to a Modified Consent Decree with the USEPA, PaDEP, and the ACHD. ALCOSAN St. 1 at 6.

74. Since entering negotiations with PAWC for the sale of the Brentwood system, the Borough has refused to cooperate with ALCOSAN. OCA St. 1SR at 9.
75. The Regionalization Plan – in which the Borough and PAWC refused to participate – was developed by ALCOSAN to reduce the costs incurred by tributary municipalities in minimizing the I/I and sanitary sewer overflows in each of the ALCOSAN sewersheds. OCA St. 1SR at 9.
76. ALCOSAN requested that the Borough donate two eligible trunklines; the Borough and PAWC declined. OCA St. 1SR at 9.
77. The Brentwood system is currently used by the Borough of Whitehall and City of Pittsburgh as a flow-through to reach the ALCOSAN treatment authority, free of charge. I&E St. 1 at 10.
78. Brentwood’s collections flow through the systems owned by the Boroughs of Whitehall and Baldwin, as well as the City of Pittsburgh, eventually reaching the ALCOSAN treatment facility. I&E St. 1 at 10.
79. PAWC will have no direct relationship with ALCOSAN and will not be a party to the Z Agreement, should the Application be approved. App’x 25.
80. The Borough has stated five anticipated uses for the proceeds of the sale, only one of which directly addresses the tax impact on its residents by providing that the Borough will not have to raise additional taxes in the near future. Brentwood St. 1 at 18-19.
81. PAWC already provides water service to current Brentwood customers. PAWC St. 1SR at 14.
82. PAWC already has coordinated improvement projects with ALCOSAN for many years. PAWC St. 2SR at 16:11-14.
83. ALCOSAN entered this proceeding as an intervenor to ensure the uniformity of Z Agreements across its treatment footprint. ALCOSAN St. 1 at 4.

Section 1329

84. PAWC’s Utility Valuation Expert (UVE) appraised the Brentwood system’s assets at \$22,721,549. App’x A-5.1.
85. Brentwood Borough’s UVE appraised the Brentwood system’s assets at \$20,934,000. App’x A-13-b.
86. The average of these two appraisals is \$21,827,775.
87. PAWC and the Borough negotiated a purchase price of \$19,364,443. OCA St. 1 at 4.

88. PAWC's proposed rate base is overstated due to the appraisals' inclusion of plant which is not used and useful in the public service, as the plant provides free service to non-customers. I&E St. 1-SR at 20.
89. The tariff provided by PAWC in its initial application, amendment to that application, and rate filing provides that treatment rates are "as determined by ALCOSAN." App'x 12 (as amended); Supplement No. 47 to Tariff Wastewater-PA P.U.C. No. 16, Fourth Revised Page 13.
90. PAWC has agreed that Brentwood assets will be excluded from the DSIC until the DSIC applies to customers of the Brentwood system. PAWC St. 3-R at 5.
91. PAWC rejected the OCA's recommendation that the Company modify its Long-Term Infrastructure Improvement Plan (LTIIP) within 90 days of closing. PAWC St. 3-R at 5.
92. PAWC currently has five pending acquisitions before the Commission. Docket Nos. A-2023-3039900 (Towamencin); A-2023-3042058 (Sadsbury Township Municipal Authority); A-2023-3042567 (Township of Farmington); A-2023-3043194 (Audubon Water Company).
93. The Z Agreement provides that ALCOSAN and the City of Pittsburgh may permit other municipalities within the treatment network to flow through the Brentwood system to reach the ALCOSAN plants, without Brentwood's knowledge or consent and the Cooperation Agreement between PAWC and the Borough requires PAWC to adhere to that provision. Appendix A-25.3 at 7, 28.
94. PAWC offers wastewater service to municipalities in its Rate Zones One, Two, Three, Six, and Seven, for example. PAWC Supplement No. 46 to Tariff Wastewater PA P.U.C. No. 16.
95. PAWC, when conducting its valuation of Brentwood's used and useful plant under Section 1329, included all plant, even that which provides free service to Whitehall Borough and the City of Pittsburgh. I&E St. 1-SR at 20.
96. PAWC's failure to submit a rate stabilization plan with its Application deprives the Commission and the parties of the ability to fully evaluate the benefits and harms of the proposed transaction. OCA St. 1 at 16.
97. PAWC's failure to provide the information required alongside a rate stabilization plan was not adequately explained by PAWC, beyond the averment that the proposed rate freeze is not a rate stabilization plan. PAWC St. 3-R at 4.

Section 507

98. Paragraph 14 of the Z Agreement required that Brentwood remit the uncollectible amount of ALCOSAN charges to ALCOSAN out of the Borough's revenues. App'x A-25.3 at 35.

99. In Section 2(g)(ii) of the Cooperation Agreement, PAWC agrees to pay ALCOSAN, on the Borough's behalf, the aggregate charges due to ALCOSAN quarterly. App'x A-25.3 at 6.
100. PAWC would also receive a refund from ALCOSAN as an annual credit for the savings in billing expense resulting from PAWC's election to pay quarterly instead of requiring ALCOSAN to bill customers directly. App'x A-25.3 at 4.
101. The cost for PAWC to provide billing services for ALCOSAN would be an infinitesimal increase over the cost PAWC is already paying to bill Brentwood customers for their water service. PAWC St. 1SR at 14.
102. To the extent that PAWC would incur costs to bill its customers on behalf of ALCOSAN, those costs would be included as an expense for ratemaking, as they are not included in the ALCOSAN rates which pass-through to Brentwood customers. App'x A-25.3 at 29-30.
103. The Cooperation Agreement also fails to require that PAWC update tariff filings and reflect the current or anticipated increases in rates in its tariffs. App'x 25.
104. PAWC has not produced any evidence to support the creation of a pass-through charge under Section 1307(a).
105. ALCOSAN treatment charges would comprise approximately 0.9% of PAWC's operations and maintenance expenses. AEE-1REV; App'x F.
106. Under the proposed revenue increases in PAWC's 2023 Base Rate Case, Brentwood rates will increase by 20.3% following the termination of their rate freeze. PAWC 2023 Base Rate Case at Exh. 3-A.
107. The proposed new rate is a lower increase due to a higher shift of wastewater revenue requirement to water customers, increasing from an estimated 33% to 41.6%, resulting in an increased rate for water customers. Tr. at 385.
108. There is no impediment to PAWC providing more accurate notices in acquisitions under Section 1329 to its current customers and those it is seeking to acquire, such as providing estimates for 150% and 200% average usage levels, including the cost of planned capital improvements in the revenue deficiency, and noticing customers it is seeking to acquire as if they were current customers for each acquisition which PAWC files between the initial notice and closing of the proposed acquisition. Tr. at 372.

OCA Proposed Conclusions of Law

1. Pennsylvania-American Water Company is a public utility as defined in Section 102 of the Public Utility Code. 66 Pa. C.S. § 102.
2. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa. C.S. § 101, *et seq.*
3. Pennsylvania-American Water Company has the burden of proof to show that its proposed acquisition of the Brentwood system is adequate, efficient, safe, and reasonable under Section 315(c). 66 Pa. C.S. § 315(c).
4. Pennsylvania-American Water Company has the burden of proof to show that its proposed purchase of the Brentwood wastewater system would provide substantial affirmative benefits under Section 1102 of the Public Utility Code. 66 Pa. C.S. § 1102.
5. Pennsylvania-American Water Company has not established that the proposed transaction would provide the required substantial affirmative benefits to existing Pennsylvania-American Water Company customers or to the acquired Brentwood customers under Section 1102. 66 Pa. C.S. § 1102.
6. The Commission has the authority to grant a certificate of public convenience to a utility only when doing so is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa. C.S. § 1103(a).
7. Pennsylvania-American Water Company has not established that the proposed transaction is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa. C.S. § 1103(a).

OCA Proposed Ordering Paragraphs

It is hereby ORDERED THAT:

1. The Application of Pennsylvania-American Water Company pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Brentwood Borough, is denied.