

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water	:	A-2021-3024058
Company under Sections 1102(a) and 1329 of	:	
the Pennsylvania Public Utility Code, 66 Pa C.S.	:	
§§ 1102(a) and 1329 for approval of (1) the	:	
transfer, by sale, of substantially all of the	:	
Borough of Brentwood’s assets, properties and	:	
rights related to its wastewater collection and	:	
conveyance system to Pennsylvania-American	:	
Water Company, and (2) the rights of	:	
Pennsylvania-American Water Company to	:	
begin to offer or furnish wastewater service	:	
to the public in the Borough of Brentwood,	:	
Allegheny County, Pennsylvania	:	

RECOMMENDED DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

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I. INTRODUCTION

In this application, which seeks approval from the Commission for the acquisition of a municipal wastewater system and approval of a ratemaking rate base, the parties have litigated the substantive issues in this matter. This decision recommends the Commission deny the Application because Pennsylvania-American Water Company did not meet its burden of establishing that there is an affirmative public benefit to the acquisition of Borough of Brentwood's wastewater system assets. The Commission's last reasonable Public Meeting before the end of the six-month statutory deadline is March 14, 2024.

II. HISTORY OF THE PROCEEDING

On March 31, 2023, Pennsylvania-American Water Company (PAWC) filed with the Pennsylvania Public Utility Commission (Commission) its Application, pursuant to Sections 1102 and 1329 of the Public Utility Code, for approval to acquire substantially all of the assets, properties and rights related to the wastewater collection system owned by the Borough of Brentwood (Brentwood) as follows: (1) the transfer, by sale, of substantially all of Brentwood's assets, properties and rights related to its wastewater collection and conveyance system to PAWC, and (2) the rights of PAWC to begin to offer or furnish wastewater service to the public in Brentwood (the Application). On May 31, 2023, PAWC filed an Amendment to the Application, and seeks approval of, *inter alia*, the Asset Purchase Agreement and First Amendment to the Asset Purchase Agreement By and Between Brentwood, as Seller, and PAWC, as Buyer, dated as of December 22, 2020, and as amended on March 2, 2023 (collectively the Purchase Agreement or APA).

On April 7, 2023, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement as well as a Notice of Appearance for Sharon Webb, Esquire. On May 4, 2023, the Office of Consumer Advocate (OCA) filed a Protest to the Application and Notice of Appearance for Christine Maloni Hoover, Esquire. On May 12, 2023, the Bureau of Investigation and Enforcement (BIE) filed a Notice of Appearance for Carrie Wright, Esquire. On May 31, 2023, June 15, 2023, and July 7, 2023, PAWC filed the updates and supplemental responses to Standard Data Requests (SDRs).

On July 20, 2023, the Secretary's Bureau issued a Letter conditionally accepting PAWC's Application. On the same date, PAWC filed a Letter requesting the Secretary's Bureau establish October 16, 2023, as the deadline for filing protests and/or petitions to intervene. The Secretarial Letter establishing the deadline was issued on July 25, 2023.

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, on all its customers and current wastewater customers of the Borough of Brentwood. PAWC also filed Proof of Publication showing that notice of the Application appeared in the Pittsburgh Post-Gazette on August 17, 2023, and August 24, 2023.

On September 14, 2023, the Secretary's Bureau issued a Letter accepting the Application of PAWC to acquire Brentwood.

On October 2, 2023, the Borough of Brentwood filed its Petition to Intervene and, on October 11, 2023, the Allegheny County Sanitary Authority (ALCOSAN) filed its Petition to Intervene.

On September 15, 2023, the Office of Administrative Law Judge (OALJ) issued an Initial Telephonic Prehearing Conference Notice which scheduled a telephonic prehearing conference for October 17, 2023, and the matter was assigned to Administrative Law Judge Katrina L. Dunderdale (ALJ Dunderdale or presiding officer), who issued a Prehearing Conference Order which indicated the issues to be addressed at the Prehearing Conference. On October 16, 2023, the following parties submitted Prehearing Conference Memorandums, as directed by the Prehearing Conference Order: PAWC, OCA, BIE, OSBA, Brentwood and ALCOSAN.

The presiding officer conducted a prehearing conference in this matter on October 17, 2023. Counsel for PAWC, Brentwood, BIE, OCA, OSBA, and ALCOSAN

participated. The procedural schedule discussed at the Prehearing Conference on October 17, 2023, was memorialized in the Prehearing Order dated October 18, 2023.

On October 26, 2023, two public input hearings were held telephonically, at which five people presented testimony on-the-record.

On November 8, 2023, prior to the start of the evidentiary hearing, PAWC filed the Joint Stipulation entered into between PAWC, Brentwood and ALCOSAN, (collectively, Stipulating Parties). PAWC served a copy of the filing upon the presiding officer and other parties via electronic mail. At 9:00 a.m. on November 8, 2023, the presiding officer convened the first day of evidentiary hearings as scheduled. At the start of the evidentiary hearing, PAWC asked the presiding officer to mark the Joint Stipulation, which request was granted, and the Joint Stipulation subsequently was marked as ALJ Exhibit 1. During the evidentiary hearing, PAWC notified the presiding officer and other parties that the Joint Stipulation, as filed, did not contain Schedules as appendices, as referenced within the body of the Joint Stipulation. Accordingly, ALJ Exhibit 1 was not admitted into the hearing record.

On the hearing record on November 8, 2023, the presiding officer advised the Stipulating Parties to correct the defect by filing the amendment before the second day of evidentiary hearings (i.e., November 14, 2023).¹ The presiding officer noted the other parties would need time in which to review the Joint Stipulation in full and, thus, be able to determine if additional cross-examination was needed, objections would be appropriate, or if the parties would consent. The Stipulating Parties indicated they understood the directions from the presiding officer and would re-file the Joint Stipulation with the schedules referenced in the original filing in sufficient time for a meaningful review by the other parties.

The Stipulating Parties did not re-file an amended stipulation prior to the start of the second day of evidentiary hearings on November 14, 2023.

¹ November 8, 2023 was a Wednesday, and Friday, November 10, 2023, was the observed state holiday to commemorate Veteran's Day.

On November 14, 2023, the presiding officer reconvened the evidentiary hearing at 9:00 a.m. as scheduled. While discussing preliminary matters, PAWC indicated it filed an amended version of the Joint Stipulation (Amended Stipulation) earlier that morning.² PAWC served the Amended Stipulation via electronic mail on the presiding officer and other parties at 9:28 a.m. on November 14, 2023, after the start of the evidentiary hearing. BIE, OCA and OSBA objected to the admission of the Amended Stipulation, citing due process concerns. Brentwood and ALCOSAN noted their support for the request of PAWC to admit the Amended Stipulation. The presiding officer marked the Amended Stipulation as ALJ Exhibit 2 and indicated on the hearing record the parties would have an opportunity to comment on or object to the admission of ALJ Exhibit 2, provided any comment or objection was in writing and filed with the Commission by close of business on November 14, 2023.

The presiding officer conducted the evidentiary hearings on November 8, 2023, and November 14, 2023, at which the parties waived cross-examination of all witnesses and moved to have their pre-submitted testimony and exhibits entered into the record. As there were no objections, all documents and exhibits were entered into the record at the time of the hearing.

On or before November 14, 2023, written comments in support of admitting the Amended Stipulation, or in the alternative the Stipulation, were received from PAWC, Brentwood and ALCOSAN, and a written objection was received from BIE. Thereafter, on November 16, 2023, the presiding officer issued Post-Hearing Order No. 1 and denied the request of the Stipulating Parties to admit the Stipulation (ALJ Exhibit 1) or the Amended Stipulation (ALJ Exhibit 2) into the hearing record.

On November 22, 2023, counsel for PAWC provided a common outline for the Main Briefs, on behalf of all the parties.

² The Commission's time stamp indicated the Amended Stipulation was filed at 9:05 a.m. on November 14, 2023.

Main Briefs were filed on November 30, 2023, by PAWC, Brentwood, BIE, OCA, OSBA and ALCOSAN. Thereafter, Reply Briefs were filed on December 14, 2023, by PAWC, Brentwood, BIE, OCA, OSBA and ALCOSAN.

The record closed on December 14, 2023, when the Reply Briefs were filed.

III. FINDINGS OF FACT

PARTIES

1. Pennsylvania-American Water Company (PAWC) is the Commonwealth's largest investor-owned provider of water and wastewater services serving a combined population of over 2.3 million customers in Pennsylvania that includes over 97,000 wastewater customers. PAWC St. 1 at 14, 16; Application at Para. 9.

2. Currently, PAWC provides water service to current Brentwood customers. PAWC St. 1SR at 14.

3. The Borough of Brentwood (Brentwood) is a municipality located in Allegheny County with a population of approximately 10,082, that owns and operates a wastewater collection-only system and conveyance system collecting wastewater from approximately 3,980 active customers. PAWC St. 1 at 16; Application at ¶ 8; Brentwood St. 1 at 4.

4. The Bureau of Investigation and Enforcement (BIE) is the Commission's prosecutory bureau charged with representing the public interest in ratemaking and service matters, balancing the interests of ratepayers, the utility company and the regulated community, and for enforcing compliance with the Pennsylvania Public Utility Code pursuant to 66 Pa.C.S. §§ 101–3316, the Commission regulations at 52 Pa. Code §§ 1.1–1065.1. and the *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered Aug. 11, 2011). I&E St. 1 at 1.

5. The Office of Small Business Advocate (OSBA) is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

6. The Office of Consumer Advocate (OCA) is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

7. The Allegheny County Sanitary Authority (ALCOSAN) is a joint municipal authority organized under the Municipality Authorities Act, as amended, 53 Pa.C.S. §§ 5601-5623, that currently provides wastewater conveyance and treatment services for the Brentwood collection system, in addition to providing the same service to 82 other municipal-owned collection systems in Allegheny County. ALCOSAN St. 1 at 2-3; OCA St. 2 at 8.

ASSETS BEING TRANSFERRED

8. Brentwood owns and operates a wastewater system, which is a collection and conveyance wastewater system serving only customers located in Brentwood and which, as of February 2023, consisted of approximately 3,980 active customers. PAWC St. 2 at 3; Brentwood St. 1 at 5, 6.

9. The Brentwood wastewater system consists of approximately 200,000 linear feet of gravity collection mains, approximately 1,050 manholes, associated infrastructure and appurtenances, and numerous related land rights. The vast majority of the system is nearly 100 years old. Brentwood St. 1 at 5.

10. Brentwood’s Department of Public Works has eight employees tasked with administration and management of sanitary sewer service in Brentwood, in addition to other unrelated responsibilities involving Brentwood’s roadways, stormwater system, parks, swimming pools, traffic control, the Brentwood stadium, four ballfields, and all other Brentwood

facilities, plus responsibilities assisting capital construction contractors, and ensuring all rights-of-way are clear of any obstruction. Brentwood does not employ an in-house engineer.

Brentwood St. 1-R at 3.

11. Currently, the Brentwood wastewater system receives sewage flow from upstream municipalities through trunklines and discharges sewage flows into downstream municipalities through trunklines. PAWC St. 2 at 6.

12. No fees are paid to Brentwood by upstream municipalities for their wastewater flows into the System and Brentwood does not pay fees to downstream municipalities for Brentwood's wastewater flows into the downstream systems. PAWC St. 2 at 6.

13. There are cost-sharing arrangements among the various municipalities for capital improvement projects. PAWC St. 2 at 6.

14. The Brentwood system includes assets that serve non-customers. I&E St. 1 at 10.

STATUS OF THE BRENTWOOD SYSTEM

15. Brentwood has access to capital to upgrade its system and has met its current compliance goals. Brentwood St. 1 at 10; OCA Exh. ND-3.

16. Brentwood has complied with a consent decree entered in 2008 between ALCOSAN, the United States Environmental Protection Agency (USEPA), the Pennsylvania Department of Environmental Protection (PaDEP), and the Allegheny County Health Department (ACHD). PAWC St. 2 at 12.

17. The 2008 consent decree specifically concerned 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.

18. Brentwood has met its obligations under the first phase (2016-2018) of the Consent Order and Agreement (COA) between Brentwood, ACHD, and PaDEP, which COA required Brentwood to conduct Source Reduction Studies to reduce wastewater flows into the ALCOSAN system. OCA St. 1 at 10.

19. Under the second phase (to be completed by the end of calendar year 2026), Brentwood will be implementing Flow Reduction projects to eliminate sanitary sewer overflows or reduce flows causing sanitary sewer overflows by at least 10%. OCA St. 1 at 10.

20. While a portion of the Brentwood I&I originates from upstream municipalities, the exact source and quantity of the I&I is unknown. I&E St. 1-SR at 5.

21. Upstream municipalities throughout the ALCOSAN treatment network impact the compliance levels of downstream users, including Brentwood customers, regardless of the level of capital investment committed to by the downstream municipality to reduce I&I. I&E St. 1-SR at 5.

22. Brentwood's budget has been sufficient to fund routine maintenance and system upgrades without altering its existing service fees, in addition to the dollars Brentwood budgets each year for an emergency.³ OCA St. 1 at 12-13.

23. Brentwood has not experienced issues or problems with funding infrastructure replacements or upgrades. OCA St. 1 at 14.

24. Brentwood can adequately manage its system with little to no cost increases and any necessary future maintenance costs should cost significantly less due to

³ Brentwood's budget includes "hundreds of thousands of dollars" for emergencies in its budgets. OCA St. 1 at 12-13.

Brentwood’s lower cost of capital, with its access to low interest state-sponsored loans and grants.⁴ OCA St. 1 at 14.

25. ALCOSAN has a “Grow Program” which provides grants specifically limited to funding programs to reduce I&I in the participating municipalities, including Brentwood. Brentwood St. 1-R at 6.

26. PAWC can provide some improvements, resulting from standardization of notices, collections, consolidation of water and wastewater bills into one billing statement, a low-income bill discount program and alternative payment plan options on PAWC’s wastewater collection charges. PAWC St. 3 at 16–17; OCA St. 2 at 5.

27. If the Application is approved, PAWC will not be able to provide its low-income discount program to Brentwood customers to assist with ALCOSAN costs. Appendix A-12 (revised) at 16.⁵

28. Brentwood customers currently have access to ALCOSAN’s low-income program for the ALCOSAN portion of customers’ wastewater charge. OCA St. 1 at 19.

29. Currently, the portion of a Brentwood customer’s bill dedicated solely to ALCOSAN expenses is 56.7% of the total wastewater bill. OCA St. 1 at 24.

30. If the Application is approved, former Brentwood customers will have to apply separately for ALCOSAN’s low-income discount program to receive the quarterly credit to their bill for ALCOSAN services. Appendix A-12 (revised) at 16.

⁴ Municipalities can have a lower cost of capital due to being able to issue tax-free bonds at lower interest rates, not having to pay taxes on income, possibly having access to low interest government loans and grants, and not requiring equity returns which typically would be higher than debt costs. PAWC St. 1-R at 9.

⁵ Appendix A-12 was filed, with other appendices, on April 3, 2023, in reference to the original filing. Numbered references to “Appendix A” can be located on the Commission’s docket.

31. Currently, Brentwood customers receive two bills: a bill from PAWC for water service; and a bill from Brentwood which includes the charges for wastewater collection, wastewater service by ALCOSAN, and Brentwood refuse (garbage) charges. OCA St. 2 at 5.

32. If the Application is approved, a former Brentwood customer would receive two bills: a bill from PAWC for water service and wastewater collection, which includes charges for wastewater service by ALCOSAN; and a bill from Brentwood for refuse charges. PAWC St. 3-R at 18.

33. If the Application is approved, PAWC can provide its customers with personnel who are available at all times (i.e., 24/7), and Brentwood customers would be served through PAWC's operations center located approximately 8 miles away in McKeesport, Allegheny County, Pennsylvania. PAWC St. 2-R at 15.

34. If the Application is approved, Brentwood customers will no longer have localized customer service from Brentwood employees who provide an opportunity to discuss wastewater service while making in-person payments. OCA St. 2SR at 3-4.

35. Brentwood currently assesses a \$4.57 service fee per household and an \$8.91 consumption fee per thousand gallons of water used. Brentwood St. 1 at 20.

36. Currently, ALCOSAN assesses a \$7.30 service fee per household and a \$10.42 consumption fee per thousand gallons of water used. Brentwood St. 1 at 7, 19-20.

37. In October 2021, ALCOSAN announced it would institute 7% annual increases from 2022 through 2026 and Brentwood raised the amount it collected for ALCOSAN's charges by 7% in 2022 and 2023. If the Transaction does not close, Brentwood is expected to raise the amount it collects for ALCOSAN's charges each time ALCOSAN raises its rates. Brentwood St. 1 at 19-20.

38. The fees charged by Brentwood are set annually by the Borough of Brentwood Council. Brentwood St. 1 at 20.

ASSET PURCHASE AGREEMENT (APA)

39. Beginning in September 2019, Brentwood undertook to value its system, assess future costs of capital and revenue requirements, evaluate the ongoing time commitments of its personnel to address system issues, and consider the numerous qualitative and quantitative factors that weigh in favor of or against Brentwood keeping the system. Brentwood St. 1 at 9–10.

40. On September 25, 2020, Brentwood issued the Request for Bids (RFB) for the sale of the wastewater collection system assets, and on October 28, 2020, PAWC submitted a proposal to acquire Brentwood’s wastewater system assets. PAWC St. 1 at 8; Brentwood St. 1 at 11.

41. After Council discussion and public meetings, Brentwood published articles regarding the proposed sale of the Brentwood system in the Spring 2020, Winter 2020, and Spring 2021 editions of the Borough’s IN Community magazine. Brentwood St. 1 at 11-13; Brentwood St. 1-R.

42. On December 7, 2020, Brentwood Borough Council unanimously approved the sale of the Brentwood system. Brentwood St. 1 at 13.

43. On December 22, 2020, Brentwood and PAWC entered into the Asset Purchase Agreement (APA) for the sale of substantially all the assets, properties, and rights of the Brentwood system. PAWC St. 1 at 8.

44. The purchase price for the Brentwood system is \$19,364,443, subject to certain adjustments, and with the understanding PAWC will pay Brentwood up to \$70,000 as reimbursement for engineering and legal fees related to the Transaction. PAWC St. 1 at 12.

45. As of the Closing Date, Brentwood will fund an easement escrow fund in the amount of \$2,000 per easement for any missing easement. PAWC St. 1 at 13.

46. Upon Closing, PAWC agreed it would implement Brentwood's wastewater rates then in effect, and PAWC would not increase these rates until after the second anniversary of the Closing Date. PAWC St. 1 at 13; PAWC St. 3-REV at 7.

47. PAWC agreed to bill customers the charges at the rates determined by ALCOSAN. PAWC St. 3-REV at 7.

48. Immediately upon Closing, Brentwood's customers will be subject to PAWC's prevailing wastewater tariff on file with the Commission with respect to miscellaneous fees and charges, rules, and regulations for wastewater service. PAWC St. 1 at 13.

49. Brentwood customers will not be charged the Distribution System Improvement Charge (DSIC) until after PAWC's Long Term Infrastructure Improvement Plan (LTIIP) has been amended to include the Brentwood system. PAWC St. 1 at 13.

50. The Closing will occur after obtaining all applicable governmental approvals, including the Commission's approvals, and after meeting (or waiving) all applicable conditions by the parties. Upon Closing, PAWC will take ownership of the Brentwood system and begin rendering wastewater service to Brentwood's current customers, and Brentwood will discontinue furnishing wastewater service to the public. PAWC St. 1 at 10.

51. PAWC and Brentwood jointly retained the services of an engineer (The Gateway Engineers, Inc.) to complete an engineers' assessment of the Brentwood system. PAWC Exhibit MS-2 Appendix A-15-a.

52. PAWC selected Jerome C. Weinert of Weinert Appraisal and Depreciation Services, LLC (WAD Consultants), to perform an appraisal of the Brentwood system, and

Brentwood selected Gannett Flemming Valuation and Rate Consultants, LLC (Gannett Fleming) to perform an appraisal of the Brentwood system. PAWC St. 4 at 1–3.

53. PAWC’s Utility Valuation Expert (UVE) appraisal, as performed by Jerome C. Weinert, Principal and Director of WAD Consultants,⁶ was completed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) (2020-2021 Edition).⁷ PAWC’s UVE appraised the System as follows:

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

PAWC St. 4 at 1–3.

54. Brentwood’s UVE appraisal, as performed by Harold Walker III of Gannett Fleming, a UVE registered with the Commission, was completed in accordance with USPAP and appraised the System as follows:

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

Brentwood St. 2 at 13.

⁶ WAD Consultants is a registered UVE with the Commission.

⁷ The Appraisal Foundation, which issues the USPAP, extended the applicability of the 2020-2021 Edition until December 31, 2023.

55. If the Application is approved, the transaction will create a revenue requirement of \$4,695,000 with an annual revenue deficiency of \$664,000 in Year 1. Appendix 18-d, as amended, AWW, at 4.

56. PAWC's 5-year capital investment obligation is estimated to be \$8,055,000. PAWC Exhibit DJH-2.

57. PAWC's valuation of Brentwood's used and useful plant under Section 1329 includes all plant owned by Brentwood, including the plant facilities that provide wastewater conveyance service without charge to the Borough of Whitehall and the City of Pittsburgh. I&E St. 1-SR at 20.

58. As part of the proposed acquisition of Brentwood's wastewater system assets, the APA contains rate commitments, in Section 7.03(a) of the APA, which prohibit PAWC from implementing a base rate increase for Brentwood customers until after the second anniversary of the Closing Date of the proposed transaction. OSBA St. 1 at 2.

SECTIONS 1102 AND 1103 APPROVALS

59. PAWC calculates the Brentwood system will generate an annual revenue deficiency of \$664,000 that will be recovered from Brentwood customers, PAWC water customers and/or PAWC wastewater customers. OCA Exh. ND-2.

60. If the Application is approved, Brentwood rates will need to increase by 11% to cover the projected annual revenue deficiency of the Brentwood system under PAWC ownership but, the rates will likely increase to 13.5% of their current level, if the rate estimation includes one-fifth of the cost of the projected capital improvements. OCA St. 1SR at 13.

FITNESS

Legal Fitness

61. PAWC is a certificated public utility regulated by the Pennsylvania Public Utility Commission, with a good compliance history, with no material issues complying with the Public Utility Code, the Clean Streams Law, or other regulatory requirements, and with no pending proceedings alleging PAWC is not legally fit to provide service to customers on Brentwood's System. PAWC St. 1 at 21, 23.

62. PAWC has the resources, skills, and expertise to respond to ever-increasing environmental standards for wastewater treatment and to manage the long-term infrastructure renewal and replacement needs inherent in wastewater systems. PAWC St. 2 at 23.

Financial Fitness

63. PAWC had total assets of \$5.9 billion and annual revenues of \$769 million in 2021, when it had operating income of approximately \$342 million and net income of approximately \$229 million, producing cash flows from operations of approximately \$438 million. PAWC St. 3-REV at 3.

64. PAWC is a financially-sound business that can support the acquisition of the Brentwood system and the ongoing operating and investment commitments required to operate, maintain and improve those assets in serving the public. PAWC St. 3-REV at 3.

65. The acquisition of the Brentwood system should not negatively impact PAWC's cash flows, credit ratings or access to capital or deteriorate in any manner PAWC's ability to continue to provide safe, adequate, and reasonable service to its existing customers at just and reasonable rates. PAWC St. 3-REV at 5.

Technical and Managerial Fitness

66. PAWC currently employs approximately 1,150 professionals with expertise in all areas of water and wastewater utility operations including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, material management, risk management, human resources, legal, accounting, and customer service and, as a subsidiary of American Water, PAWC has access to additional resources available to highly trained professionals with expertise in various specialized areas. PAWC St. 2 at 21.

67. PAWC has an ongoing program of capital investment focused on replacing and adding new water and wastewater infrastructure and funded more than \$1 billion in capital construction over the past five years with expenditures expected to total from \$470 million to \$600 million per year for the next five years. PAWC St. 2 at 19.

68. From a financial, managerial and technical perspective, PAWC is in a position to ensure high quality wastewater service that meets all federal and state requirements for Brentwood's customers, if the Application is approved, while maintaining the same service for its existing customers. PAWC St. 3-REV at 3.

RATE BASE

69. The purchase price of the system currently includes the value of the plant assets used to serve non-customers. I&E St. 1, at 12.

70. The depreciated original cost of the Brentwood system, evaluated under Section 1329, is \$7.09 million. PAWC St. 3 at 5.

71. PAWC did not conduct a study, including a Cost of Service Study (COSS), to determine the value of the plant assets used to serve non-customers outside the jurisdictional limits of Brentwood. I&E St. 1 at 13.

72. If the Application is approved, current and future Brentwood customers plus current and future PAWC customers would have to pay if any Brentwood plant is built or replaced including the plant used to convey the wastewater of other municipalities included within the ALCOSAN network. I&E St. 1 at 14–15.

73. If the Application is approved, the acquisition’s impact on existing PAWC water and wastewater customers will need to be decided in future base rate cases. Appendix A-14, St. No. 4 at 3; I&E St. 2-SR at 5.

74. Brentwood’s cost of capital is 4.37%. OCA St. 1 at 13.

75. PAWC requests a rate base level equal to \$19,364,443, which includes plant assets used to serve non-jurisdictional customers. PAWC St. 2; I&E St. 1 at 4, 11–12.

BASE RATE

76. PAWC filed for Commission approval of a system-wide increase to base rates on November 8, 2023, at Docket No. R-2023-3043189 (water) and at Docket No. R-2023-3043190 (wastewater) (collectively 2023 Base Rate Case), in which wastewater filing PAWC included the Brentwood conveyance system. Tr. at 369.

77. PAWC indicates through its 2023 Base Rate that existing PAWC customers, both water and wastewater customers, will pay for the Brentwood system’s revenue deficiency for two years. Tr. at 384–85.

78. PAWC proposes spending \$8,055,000 on planned capital improvements to the Brentwood system over five years. PAWC Exh. DJH-2.

79. PAWC proposes a two-year rate freeze for Brentwood wastewater customers, during which rate freeze, PAWC’s shareholders will bear the burden of that portion

of the Brentwood revenue deficiency which would be borne by Brentwood customers, if no freeze was in effect. Appendix A-24-a at § 7.03(a); OCA St. 2SR at 2.

80. 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.

81. One-fifth of the planned capital improvements to the Brentwood system will add \$147,000 to the system's annual revenue deficiency. OCA Exh. ND-13 at 5.

82. The planned capital improvements will cost PAWC approximately 232% of the annual revenue deficiency during the first year of the rate freeze, and the improvements will cost 540% during the second year of the freeze, which costs will be borne by existing PAWC customers and/or by Brentwood customers. PAWC Exh. DJH-2.

83. PAWC plans to allocate approximately 42% of Brentwood's wastewater revenue requirement to PAWC's water customers system-wide. *Pennsylvania-American Water Co. v. Pa. Pub. Util. Comm'n.*, Docket Nos. R-2023-3043189 (water) and R-2023-3043190 (wastewater) (Exh. 3-A Nov. 8, 2023) (PAWC-2023 Base Rate Case).

84. PAWC plans to allocate total water customers \$1,565,232 of Brentwood's annual revenue deficiency, and the remaining revenue deficiency (related solely to the Brentwood acquisition that will be allocated to PAWC wastewater customers) would increase rates by an estimated 0.5%. PAWC-2023 Base Rate Case at Exh. 3-A.

85. Brentwood has not raised its rates in approximately seven years in anticipation of selling its system, resulting in a need to increase rates to recover seven years' worth of increases in cost of service and at PAWC's cost of service, if the Application is approved. Brentwood St. 1-R at 9.

86. Brentwood customers will pay 2.73 more cents per dollar spent to make improvements to the Brentwood system under PAWC's ownership than the customers would pay if the Application is denied, 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.

87. Under PAWC's proposed tariff, there will be an estimated 25% increase in wastewater collection charges when the rate freeze ends, in addition to an estimated 14.4% increase in ALCOSAN costs. Supplement No. 47 to Tariff Wastewater PA P.U.C. No. 16 at 13; OCA St. 2 at 8.

88. Brentwood customers will see a 7% increase in ALCOSAN rates in each of the next several years, regardless of the outcome in this Application proceeding, and Brentwood customers' monthly bills will include an increase in rates. OCA St. 2 at 8.

89. If the Application is approved, PAWC would provide ALCOSAN with quarterly payments for the Brentwood customers' costs in bulk, and not on a per-customer basis, which arrangement is referred to by PAWC and Brentwood as a "pass-through." OCA St. 2 at 9; OCA Exh. ND-12.

90. PAWC has not implemented a pass-through arrangement in any of its other collection-only systems, but in its other collection-only systems, PAWC includes the cost of wastewater treatment in the rates charged to its customers. OCA St. 1 at 18.

91. PAWC does not intend to provide notice to the former Brentwood customers about impending (or future) ALCOSAN rate increases. PAWC St. 3-R at 17.

92. If the Application is approved, Brentwood customers will receive notice about impending ALCOSAN rate increases when ALCOSAN publishes its projected changes years in advance of a change and, ultimately, when the customers receive new bills at the higher ALCOSAN rate. PAWC St. 3-R at 17; OCA St. 2SR at 7.

93. Currently, PAWC has two other collection-only systems in which PAWC is charged by the treatment entity for treatment based off of a metered wastewater flow, but under the Z Agreement, ALCOSAN computes the treatment charge based off of the metered water usage of Brentwood residents. Tr. at 393; Appendix 25.3 at 31.

94. Brentwood has a good working relationship with ALCOSAN. Brentwood St. 1 at 8.

95. Each collection system in ALCOSAN's network 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 municipal-owned treatment authority for Allegheny County collection systems. Appendix A-25.3 at 15-43.

ALCOSAN

96. ALCOSAN's tributary systems share interconnections and trunklines, which ALCOSAN controls as one part of its Regionalization Plan. ALCOSAN St. 1 at 6.

97. ALCOSAN plans, through its Regionalization Plan, to comply with a Clean Water Plan developed pursuant to the Modified Consent Decree with the USEPA, PaDEP, and the ACHD. ALCOSAN St. 1 at 6.

98. ALCOSAN developed the Regionalization Plan – in which Brentwood and PAWC refuse to participate – to reduce the costs incurred by tributary municipalities to minimize the I&I and sanitary sewer overflows in each of the ALCOSAN sewersheds. OCA St. 1SR at 9.

99. Brentwood refused to cooperate with ALCOSAN after Brentwood engaged in negotiations with PAWC for the sale of the Brentwood system. OCA St. 1SR at 9.

100. ALCOSAN requested, without success, that Brentwood donate two eligible trunklines. OCA St. 1SR at 9.

101. Currently, the Borough of Whitehall and the City of Pittsburgh (the upstream entities) use the Brentwood system, as a flow-through, to reach the ALCOSAN treatment authority and there is no fee or charge imposed by Brentwood or paid by the two upstream entities. I&E St. 1 at 10.

102. Wastewater collected in Brentwood flows through collection systems owned by the Boroughs of Whitehall and Baldwin, as well as the City of Pittsburgh, before the wastewater reaches the ALCOSAN treatment facility. I&E St. 1 at 10.

103. If the Application is approved, PAWC will have no direct relationship with ALCOSAN and will not be a party to the Z Agreement. Appendix 25.

Z AGREEMENT

104. ALCOSAN, the City of Pittsburgh, and Brentwood are parties to the Pittsburgh Zone Project Agreement of December 1, 1949 (also known as the “Z Agreement”). PAWC St. 1 at 8.

105. The Z Agreement provides that ALCOSAN and the City of Pittsburgh may permit other municipalities within the wastewater treatment network to use the Brentwood system, among other systems, to reach the ALCOSAN treatment plants, without Brentwood’s knowledge or consent, and the Cooperation Agreement between PAWC and Brentwood requires PAWC to adhere to that provision. Appendix A-25.3 at 7, 28.

106. The Z Agreement and Other Z Agreements established ALCOSAN’s service area, serves as the foundational document for ALCOSAN’s entire service area and defines the relationship between and among ALCOSAN, Pittsburgh, and Brentwood. ALCOSAN St. 1 at 8.

107. Under the Z Agreement, ALCOSAN is designated as the “Sewage Agency,” and serves as the sole and exclusive provider of wastewater treatment and conveyance services to 83 municipalities in the Commonwealth of Pennsylvania, including Pittsburgh and Brentwood. ALCOSAN St. at 2.

108. To finance, construct, operate, and maintain its wastewater treatment and conveyance system, ALCOSAN entered into agreements identical to the Z Agreement with each of the original customer municipalities and with subsequent customer municipalities (collectively referred to as the “Other Z Agreements”), under which ALCOSAN is designated as the exclusive provider for wastewater treatment and conveyance services. ALCOSAN St. 1 at 3, 5–6.

109. Since 1959, ALCOSAN has provided wastewater treatment and conveyance services with a current service area extending over 310 square miles and nearly 900,000 individuals relying on its wastewater treatment and conveyance services. ALCOSAN St. 1 at 2–3.

110. On January 23, 2008, ALCOSAN contracted together with the United States Environmental Protection Agency (USEPA or EPA), the Pennsylvania Department of Environmental Protection (DEP or PaDEP) and the Allegheny County Health Department (ACHD) in the “Consent Decree,” and the same signatories modified the Consent Decree on May 14, 2020 (also known as the Modified Consent Decree). ALCOSAN St. 1 at 6.

111. The Modified Consent Decree requires ALCOSAN to implement ALCOSAN’s Clean Water Plan, which is a \$3.6 billion long-term plan to reduce significantly combined sewage overflow within ALCOSAN’s service area by 7 billion gallons annually plus eliminate sanitary sewage overflows to the maximum extent practicable. ALCOSAN St. 1 at 6.

112. Brentwood receives wastewater treatment and conveyance services from ALCOSAN pursuant to the Z Agreement and it is required to comply with the Modified Consent

Decree obligations to reduce sewage overflows within its wastewater collection system. ALCOSAN St. 1 at 7.

113. To meet its obligations under the Modified Consent Decree, Brentwood entered into a Consent Order and Agreement (the COA) with the Allegheny County Health Department, which specified Brentwood must perform certain corrective actions to reduce its sewage overflows, and to cooperate with ALCOSAN and ALCOSAN's other municipal customers to implement ALCOSAN's Clean Water Plan. ALCOSAN St. 1 at 7.

114. Under the Z Agreement, Brentwood has certain obligations, including but not limited to, rates, billing, payment, and collection arrangements. ALCOSAN St. 1 at 8.

115. The Z Agreement cannot be directly assigned to PAWC. ALCOSAN St. 1 at 9.

116. Because the Z Agreement cannot be directly assigned to PAWC, PAWC and Brentwood entered into the Cooperation and Allocation of Responsibilities Agreement (the Cooperation Agreement) on March 2, 2023, which allocates certain rights and obligations under the Z Agreement to PAWC and leaves Brentwood primarily responsible for its municipal rights and obligations under the Z Agreement. Brentwood St. 1 at 6, 9; PAWC Application at ¶¶ 3.d, 44; PAWC St. 1 at 8–9.

SECTION 507

117. The Z Agreement (in Paragraph 14) required Brentwood to remit the uncollectible amount of ALCOSAN charges to ALCOSAN out of Brentwood's revenues. Appendix A-25.3 at 35.

118. In Section 2(g)(ii) of the Cooperation Agreement, PAWC agrees to pay ALCOSAN, on Brentwood's behalf, the aggregate charges due to ALCOSAN quarterly. Appendix A-25.3 at 6.

119. The Cooperation Agreement provides that PAWC will 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 ALCOSAN being required to bill the Brentwood customers directly. Appendix A-25.3 at 4.

120. The cost to PAWC for billing ALCOSAN services to Brentwood wastewater customers would be a small increase over the cost PAWC currently pays to bill Brentwood water customers for water service, if the Application is approved. PAWC St. 1SR at 14.

121. The ALCOSAN rates which are passed through to Brentwood customers do not include the costs to bill Brentwood customers, which costs are a ratemaking expense. Appendix A-25.3 at 29-30.

122. The Cooperation Agreement does not require PAWC to update PAWC's tariff filings and reflect the current or anticipated increases in ALCOSAN rates in its tariffs. Appendix 25.

123. Overall, ALCOSAN charges would comprise approximately 0.9% of PAWC's overall, system-wide operations and maintenance expenses. PAWC Exh. AEE-1REV; Appendix F.

124. Under the proposed revenue increases in PAWC's 2023 Base Rate Case, Brentwood rates will increase by 20.3% following the termination of the rate freeze. PAWC 2023 Base Rate Case at Exh. 3-A.

125. 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%, which leads to an increased rate for PAWC's water customers. Tr. at 385.

IV. PUBLIC INPUT HEARING

At the time of the prehearing conference, OCA indicated that there was public interest in the case and requested two telephonic public input hearings should be scheduled to permit the Commission to receive input from the public about the advisability of the proposed sale of assets. Accordingly, one public input hearing was held telephonically on October 26, 2023, at 1:00 p.m. and a second public input hearing was held telephonically on October 26, 2023, at 6:00 p.m. A total of five people offered testimony.

Maria Moore testified that she owns a real estate company in Brentwood where she receives wastewater service from Brentwood and water service from PAWC. Ms. Moore testified her business has been in existence for 64 years and has been located in Brentwood for the last 15 years. Brentwood is home to a lot of senior citizens and the taxing millage is higher than surrounding areas due to Brentwood's relatively small geographic area. She stated that she would favor the sale if the prices can be lowered and if the customers would receive better service from their wastewater utility. Ms. Moore testified her impression that Brentwood was ill-equipped to provide wastewater service and the residents, especially the senior citizens, need to have the price for wastewater service reduced.

Jody Robertson testified that she is a customer of PAWC at her home in Ellwood City, Lawrence County. Ms. Robertson appeared on behalf of the Dollar Energy Fund, where she works, and testified PAWC is one of the utilities with which the Dollar Energy Fund partners to provide assistance options to low- and limited-income utility customers. Ms. Robertson noted the Dollar Energy Fund is a nonprofit organization that provides utility assistance over the last 40 years with various utility partner companies, including PAWC, for households with annual income up to 150 percent of the Federal Poverty Guidelines. The utility assistance provides assistance with water and wastewater utility bills through its H2O Program. Ms. Robertson testified options can include a hardship grant applied directly to a water bill, a discount on service charges or grants for wastewater services. Ms. Robertson testified she has noticed that, whenever PAWC has expanded its service territory, new or additional utility assistance becomes available for households within the new territory. Ms. Robertson noted under cross-examination

that Brentwood does not participate in any low-income programs with the Dollar Energy Fund although Brentwood does participate in ALCOSAN's Clean Water Assistance Fund.

Kathleen Schwartz testified that she is a PAWC water and wastewater customer residing in Reading, Berks County. She testified she objected to PAWC's proposal to purchase the Brentwood wastewater system because every time PAWC buys a new water utility, her bills increase in an enormous way. Ms. Schwartz testified she has been a water customer of PAWC for 20 years, but she has seen her wastewater bills increase greatly since PAWC purchased the Exeter wastewater company in 2019. Ms. Schwartz testified she paid \$519.17 for wastewater service in 2019 for her household of four people, however, in the first ten months of 2023 she has had to pay \$1,061.45 for her household of only two people. Ms. Schwartz complained that PAWC will bill anywhere from 28 to 35 days within a billing cycle, which can have a large impact on her billed amounts. She estimated her bills have increased by approximately 170 percent since the water system was sold to PAWC in 2019. Further, Ms. Schwartz testified that her bills go up every time PAWC purchases another system, regardless of where the purchased system is located within the state of Pennsylvania. In fact, Ms. Schwartz noted that usually her water and wastewater bill is higher than her gas and electric bills, combined. Ms. Schwartz complained that PAWC considers every use of water to be wastewater even though water does not go into the wastewater system, such as when the lawn is watered, a pool is topped off or the car is washed.

Amanda Johnsen testified that she is a PAWC water and wastewater customer at her residence in Birdsboro, Berks County. She testified she received water service from PAWC since 2013 and wastewater service from PAWC since 2019 when PAWC purchased the Exeter Township assets. Ms. Johnsen agreed with the testimony provided by Ms. Schwartz and opposed the proposed acquisition of Brentwood's wastewater assets by PAWC. Ms. Johnsen testified she has seen dramatic increases in her bills. Specifically, Ms. Johnsen noted her household of four maintain strict controls over water usage to limit the increase in her water/wastewater bills, including not allowing her children to play in the sprinkler, not watering the lawn, not washing the cars, not watering plants and using the laundromat instead of washing clothes at home. Ms. Johnsen testified that a ten percent reduction in consumption recently only

netted her \$2 in savings in a recent month, leaving her frustrated to know what more she could cut back to reduce her billed amounts. In addition, Ms. Johnsen noted that even zero usage will result in approximately \$50 worth of service fees. Ms. Johnsen testified she has lost neighbors who moved out of the area because the PAWC bills were no longer affordable. Ms. Johnsen agreed with Ms. Schwartz that the combined water/wastewater bills exceed the other utility bills and are now unaffordable. Ms. Johnsen testified the wastewater rate is now three times the water rate, and she warned any additional increases will make her water/wastewater bills completely unaffordable.

Jeffrey Golvash testified that he resides in Whitehall, Allegheny County, but works at his office in Brentwood, where he currently receives wastewater service from Brentwood, which service his landlord provides through his rent. Mr. Golvash testified he does not object if the Commission approves the acquisition because he believes PAWC is a stronger, better equipped utility with more available resources to maintain and manage the wastewater infrastructure. Mr. Golvash noted the wastewater charges from PAWC would be subject to the Commission's oversight and control, and the proceeds from the sale of Brentwood's assets would benefit Brentwood's citizens by allowing Brentwood to pay off existing debts and lower the tax bills to its constituents.

V. LEGAL STANDARDS

In this case, PAWC requests approval of: (1) the acquisition, by PAWC, of the wastewater system assets of the Borough of Brentwood, Allegheny County, pursuant to Section 1329(c)(2) of the Code⁸; and (2) an order granting a Certificate of Public Convenience to provide wastewater service to some portions of the Borough of Brentwood, Allegheny County, pursuant to Section 1102 of the Code.⁹ Further, PAWC seeks approval by the Commission of the Asset Purchase Agreement (APA) and other connected agreements, including the Cooperation Agreement, pursuant to Section 507 of the Public Utility Code. Accordingly, PAWC has the

⁸ 66 Pa.C.S. § 1329(c)(2).

⁹ 66 Pa.C.S. § 1102.

burden of proof as it is the applicant requesting the Commission take actions on these three requests.¹⁰

The acquisition of some of the wastewater system assets owned by the Borough of Brentwood, by PAWC, requires the Commission’s approval, as evidenced by its issuance of a certificate of public convenience.¹¹ Before the Commission may issue a certificate of public convenience, the Commission must find that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.¹² That is, PAWC must demonstrate that the proposed acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.”¹³ To determine that the acquisition or merger is in the public interest, our Supreme Court has explained:

[T]he Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.^[14]

Even where the Commission finds sufficient public benefit to find that the granting of a certificate of public convenience is necessary or proper for the service, accommodation, convenience, or safety of the public without imposing any conditions, the Commission, nevertheless, has discretion to impose conditions which it deems to be just and reasonable. In an acquisition context when the Commission considers the public interest, it is

¹⁰ 66 Pa.C.S. § 332.

¹¹ 66 Pa.C.S. § 1102(a)(3).

¹² 66 Pa.C.S. § 1103(a).

¹³ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825 (Pa. 1972).

¹⁴ *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040, 1057 (Pa. 2007) (*Popowsky*); *see also*, 66 Pa.C.S. §1103(a).

contemplated that the benefits and detriments of the acquisition will be measured as they impact on all affected parties and not merely on one particular group or geographic subdivision.¹⁵

Further, pursuant to Section 1103 of the Code, PAWC must show it possesses the technical, legal and financial capability to own and operate the assets it seeks to purchase from Brentwood.¹⁶ However, it should be noted that, as a certificated public utility, PAWC benefits from a rebuttable presumption that it possesses such requisite fitness.¹⁷

Section 1329 sets forth a procedure which permits a public utility to utilize fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation. Section 1329 addresses the valuation of the assets of municipal or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. The acquiring utility is authorized to collect a Distribution System Improvement Charge (DSIC). Section 1329 also enables a public utility or other acquiring entity's post-acquisition improvement costs not recovered through a DSIC to be deferred for book and ratemaking purposes. In sum, Section 1329 helps mitigate the risk that a utility will not be able to fully recover its investment when water or wastewater assets are acquired from a municipality or authority.

If the parties (i.e., the buyer, or the acquiring public utility, and seller) agree to the Section 1329 process, an "acquiring public utility" and the seller of the municipal system must each select a Utility Valuation Expert (UVE) from a list of such experts established and maintained by the Commission. The selected UVEs perform independent appraisals of the system to establish the fair market value of the assets and/or facilities to be acquired. Also, the acquiring public utility and the seller must select one licensed engineer who will conduct an

¹⁵ *Middletown Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674 (Pa. Cmwlth. 1984).

¹⁶ *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958).

¹⁷ *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308 (Pa. Cmwlth. 1992); 66 Pa.C.S. § 1329.

assessment of the tangible assets of the seller which assessment is incorporated into the valuations of the UVEs.

After receiving the valuations, the acquiring public utility must apply for a certificate of public convenience under Section 1102 of the Code and include the following as an attachment to the Section 1102 application: copies of the UVE appraisals; the agreed purchase price; the ratemaking rate base; the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base; and a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable. 66 Pa.C.S. § 1329(d)(1). For applications involving an acquiring public entity under Section 1329(d)(1), the Commission has a six-month deadline for issuing a determination.

Herein, PAWC seeks additional approval of an Asset Purchase Agreement (APA) and other connected agreements pursuant to Section 507 of the Public Utility Code.¹⁸ Section 507 requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariff rates) must be filed with the Commission at least 30 days before the effective date of the contract. The Commission may allow the contract to take effect by operation of law as evidenced by issuing a certificate of filing, unless it decides to institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission grants its approval. Section 507 is a filing requirement and does not require service of the filing on any potentially interested party.

¹⁸ 66 Pa.C.S. § 507.

VI. DISCUSSION

A. Sections 1102 and 1103 Approvals

1. Fitness

No party herein disputes whether PAWC possesses the technical, legal and/or financial fitness to render wastewater conveyance service, if the Application is granted. As a certificated public utility, PAWC enjoys a presumption of fitness,¹⁹ and the findings of fact support this conclusion.

Applicant asserts that, “given its size, access to capital and its recognized strengths in system planning, capital budgeting and construction management, PAWC is well-positioned from a financial, managerial and technical perspective to ensure that high quality wastewater service meeting all federal and state requirements is provided to Brentwood’s customers and maintained for PAWC’s existing customers.”²⁰ PAWC notes the Commission may issue a Certificate of Public Convenience, pursuant to 66 Pa.C.S. § 1103(a), if the Commission finds that granting a Certificate of Public Convenience is necessary or proper for the service, accommodation, convenience, or safety of the public. PAWC acknowledges an applicant for a Certificate must demonstrate technical, financial and legal fitness to own and operate a certificated system.²¹ However, PAWC contends it enjoys a rebuttable presumption of the requisite fitness because it is a certificated public utility already,²² because the hearing record demonstrates PAWC’s fitness, and because no party challenged its fitness.

¹⁹ *South Hills Movers*, 601 A.2d 1308. Similarly, PAWC enjoys a presumption that a public need continues for wastewater service because service like that of a public utility is being provided currently within the service territory. *Re Glenn Yeager et al.*, 49 Pa.P.U.C. 138 (1975). No party has contested the need for wastewater service in Brentwood, Allegheny County.

²⁰ PAWC St. 3-REV p. 3.

²¹ *Seaboard Tank Lines*, 502 A.2d 762.

²² *South Hills Movers*, 601 A.2d 1308.

Based on the evidence presented, PAWC proved it is a Pennsylvania public utility certificated by the Commission to provide wastewater service in the Commonwealth of Pennsylvania with a good compliance history. There are no pending legal proceedings challenging PAWC's ability to provide safe and adequate service to customers or alleging PAWC has material issues complying with the Public Utility Code, the Clean Streams Law, or other regulatory requirements. PAWC is legally fit to provide service to customers on Brentwood's system. Further, PAWC has the resources, skills, and expertise to respond to ever-increasing environmental standards for wastewater services and to manage the long-term infrastructure renewal and replacement needs inherent in wastewater systems.²³

PAWC had total assets of \$5.9 billion and annual revenues of \$769 million for 2021. PAWC's operating income in 2021 consisted of approximately \$342 million and a net income of approximately \$229 million. These operating results produced cash flows from operations of approximately \$438 million.²⁴ PAWC is a financially-sound business that can support the acquisition of the Brentwood system and the ongoing operating and investment commitments necessary to operate, maintain and improve those assets in serving the public.²⁵ Further, there is no evidence to suggest PAWC will realize a negative impact on its cash flows, credit ratings or access to capital, or its ability to provide safe and adequate service to its existing customers, if the Application is approved.²⁶

Technically, PAWC furnished wastewater service to approximately 97,325 residential, commercial, industrial, municipal and bulk customers, and furnished water service to approximately 680,144 customers in Pennsylvania (as of February 28, 2023). PAWC employs approximately 1,150 professionals with expertise in water and wastewater utility operations including engineering, regulatory compliance, water and wastewater treatment plant operation

²³ PAWC St. 1 at 21, 23.

²⁴ PAWC St. 3-REV p. 3.

²⁵ PAWC St. 3-REV at 3.

²⁶ PAWC St. 3-REV at 5. It should be noted the parties, especially BIE and OCA, challenge PAWC's contention that the acquisition of the Brentwood system would not create a negative impact on its ability to provide reasonable service with just and reasonable rates imposed on its existing customers.

and maintenance, distribution and collection system operation and maintenance, material management, risk management, human resources, legal, accounting, and customer service. As a subsidiary of American Water, PAWC has access to highly trained professionals with expertise in various specialized areas.²⁷

Financially, PAWC maintains an ongoing program of capital investment focused on replacing and adding new water and wastewater infrastructure, which investments tend to minimize service disruptions caused by infrastructure failure. PAWC has funded over \$1 billion in capital construction over the past five years with expenditures expected to total \$470 million to \$600 million per year for the next five years.²⁸

Overall, PAWC is a certificated public utility that is well-positioned – from a financial, managerial and technical perspective – to ensure that Brentwood customers receive high quality wastewater service that meets all federal and state requirements and that the same is maintained for PAWC’s existing customers.²⁹

2. Substantial Public Benefit

PAWC’s Position

Applicant acknowledges it must demonstrate its acquisition of the Brentwood system and subsequent ownership/operation of the system must “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way,”³⁰ but contends it is not required to show that every utility customer will benefit from the proposed transaction, nor is it required to show the proposed transaction is absolutely necessary.³¹ PAWC

²⁷ PAWC St. 1 at 14, 16, 21.

²⁸ PAWC St. 2 at 19.

²⁹ PAWC St. 3-REV at 3.

³⁰ *City of York*, 295 A.2d at 828.

³¹ *Cicero v. Pa. Pub. Util. Comm’n*, 300 A.3d 1106 (Pa. Cmwlth 2023).

argues this affirmative public benefit test is a “net benefits assessment,” which should focus its analysis on all affected parties, not merely a particular group or a particular geographic area, in its determination that the transaction provides an affirmative benefit that outweighs the adverse impacts of the transaction.³²

PAWC contends it proved the proposed transaction will provide a substantial affirmative public benefit to all impacted stakeholder groups: the public-at large; Brentwood (as the seller) and its citizens; the existing customers of Brentwood’s System; and the existing water and wastewater customers of PAWC. PAWC argues it will do more than provide the same level of service provided currently by Brentwood and, when taken as a whole, PAWC argues the net benefits to all stakeholder groups outweigh the net detriment which might occur to one particular stakeholder group. As a result, PAWC contends the proposed transaction should be approved because it yields a net benefit to the public.

PAWC asserts the Commission should approve the proposed transaction because of the impact to the stakeholders and the public if the Commission does not approve the transaction versus the benefits to be enjoyed if the transaction is approved. PAWC contends it demonstrated through its evidence that the Transaction’s benefits outweigh any detriments for each affected stakeholder group and, in the aggregate, far outweigh the detriments. Further, PAWC asserts these benefits that would result from the proposed transaction will differ substantially from the benefits Brentwood currently provides.

PAWC asserts that, even if the ALJ finds that the detriments outweigh the benefits for one particular stakeholder group, the ALJ should still recommend that the Commission approve the Transaction. According to PAWC, when all the benefits for all stakeholder groups are weighed against all the detriments for all stakeholder groups, the benefits still outweigh the detriments. Consequently, PAWC contends the Commission should find the Transaction satisfies the affirmative public benefit test.

³² *Middletown Township*, 482 A.2d 674.

Brentwood's Position

Brentwood asserts the proposed transaction satisfies PAWC's burden to establish a substantial affirmative public benefit, given the numerous affirmative benefits set forth in the evidentiary record. Brentwood contends it initially identified the two primary benefits to Brentwood specifically: (1) to address the compliance issues posed by the nearly 100-year-old system that contributes to the region-wide environmental challenges by engaging an industry expert while simultaneously lessening Brentwood's financial burden in maintaining the system; and (2) to enhance the operation/management of the system and customer service with a large team whose sole focus would be utility service, thus freeing up Brentwood to reallocate administrative time and expense to other Borough responsibilities.³³ Brentwood contends the proposed transaction offers further affirmative public benefits to the system, to Brentwood, to its residents, and to the ALCOSAN region at large by addressing the environmental challenges. More specifically, the benefits of the proposed transaction significantly outweigh any potential "harm" set forth by the Statutory Advocates – including the estimated modest rate impact to Brentwood customers, and to an even lesser extent, PAWC's existing customers.

a. The Transaction Benefits the Public-at-Large

Concerning the benefit to the Brentwood system and the ALCOSAN region from the Transaction, Brentwood asserts the age of the system contributed to the long history of non-compliance with environmental regulations and was one primary reason Brentwood explored a sale of its wastewater assets. Brentwood faces environmental challenges due to the following: more than 80% of the system was installed between 1919 and 1930; the system's 1,050 manholes are made of concrete and brick – which are susceptible to corrosion and exacerbate issues of infiltration in a wastewater system like Brentwood's; the Borough has been subject to a regulatory order with the Allegheny County Health Department, for 16 of the last 19 years, to remediate upstream and downstream environmental compliance concerns in its operation of the

³³ See Brentwood St. 1, p. 14.

system; and the Borough is bound by the terms of ALCOSAN's Modified Consent Decree pursuant to the Z Agreement.³⁴

Brentwood contends it attempted to remedy the environmental challenges with routine repairs and required maintenance, but eventually recognized it lacks the capital investment required to remedy the on-going environmental challenges with operating the system and also lacks the technical ability, expertise, and professional staff to implement the necessary comprehensive repair/replacement of the aging system.³⁵ Brentwood argues if the Commission approves the proposed transaction, PAWC will integrate Brentwood's wastewater system into PAWC's comprehensive and proactive environmental program.³⁶ Specifically, Brentwood points to the statements of PAWC about what activities PAWC will initiate once the Commission approves the Application: apply PAWC's O&M Program Plan and SSO Response Plan to ensure efficient operations and maintain compliance with the current ACHD consent order and all environmental laws and regulations; connect Brentwood staff with the operations team located in McKeesport, which includes a Senior Operations Superintendent, Senior Operations Supervisor, Operations Supervisor, and Water Quality Supervisor whose operational responsibilities are dedicated to wastewater operations.³⁷

Brentwood notes there are other benefits including PAWC's compliance team with access to its statewide resources and advanced management tools, plus the resources of its parent company and a Manager of Wastewater Compliance. Brentwood contrasts PAWC's staffing and resources with its own current staff which does not include an employee who is dedicated solely to compliance, an in-house engineer or access to the same resources and tools to monitor, address, and remedy environmental compliance issues. Brentwood points out it only

³⁴ See Brentwood St. 1, pp. 6-9; PAWC St. 2-R, p. 5; Tr. pp. 149-150.

³⁵ See *Id.* at 8-9; see also Brentwood St. 1-R, p. 5; PAWC St. 2, p. 20.

³⁶ See PAWC St. 2, pp. 17-18 (explaining precisely how Pennsylvania-American will address Brentwood's environmental issues upon closing, if the proposed transaction is approved).

³⁷ See *Id.* at 17; Brentwood St. 1-R, p 3.

employs eight Public Works employees assigned to sanitary sewer service, who concurrently perform other tasks for the Public Works Department.³⁸

Lastly, Brentwood argues there will be a benefit to the environmental compliance efforts in the ALCOSAN region by adding PAWC to that region. A collaborative working relationship between PAWC and ALCOSAN is not only ideal to remedy the environmental challenges in Brentwood and the ALCOSAN region, but necessary. Brentwood asserts PAWC has made efforts to build a relationship with ALCOSAN and commit to proactively address the environmental challenges within the ALCOSAN region, culminating in PAWC and Brentwood executing the Cooperation Agreement with ALCOSAN, which sets forth and allocates certain rights and obligations from Brentwood to PAWC under the Z Agreement, and the Amended Stipulation³⁹ among Brentwood, ALCOSAN, and PAWC to ensure that each party understands and agrees to honor all respective duties and obligations if the proposed transaction is approved.

Brentwood argues the application of PAWC's expertise and experience to the particular facts at issue underscores a critical transaction benefit and the evidentiary record reflects Brentwood's continuing struggles to deal with environmental issues while it cannot seriously be questioned that PAWC is much more capable and equipped to address any System replacements, upgrades, and other improvements/maintenance. Brentwood notes BIE agreed with Brentwood and PAWC, and recognized the benefits, particularly to Brentwood, and acknowledged Brentwood is unable to provide anywhere near the same level of service as PAWC without significant expenditures and raising of rates.⁴⁰ Overall, Brentwood contends PAWC's plan to address the on-going environmental challenges with its already-available, professionally trained staff will bring a marked improvement from the current state of affairs in Brentwood, and to the ALCOSAN region. Brentwood asks the Commission to approve the Transaction.

³⁸ See PAWC St. 2, p. 17. See Brentwood St. 1, pp. 14–15; Brentwood St. 1-R, pp. 2–4 (comparing Brentwood's Public Works Department to Pennsylvania-American's team).

³⁹ The Amended Stipulation was not admitted into the hearing record in this proceeding.

⁴⁰ Tr. at 330–333.

b. The Transaction Benefits the Borough of Brentwood

Brentwood did not address this issue in the Main Brief

c. The Transaction Benefits Brentwood Customers

Brentwood alleges its customers will enjoy an enhanced customer service experience, both administratively and operationally, if the Application is approved. Brentwood points out it currently has eight Public Works employees, who are tasked with administration and manage sanitary sewer service while maintaining roadways, the stormwater system, snow removal, parks and swimming pools, traffic control, the Borough Stadium, four ballfields, all Borough facilities, assisting capital construction contractors, and ensuring all rights-of-way are clear of any obstruction.⁴¹ In addition, Brentwood notes its customer service hours are limited to the regular business hours of 8:00 a.m. to 4:30 p.m.⁴² and if a customer experiences an after-hours sewage emergency, the customer has only two options: (1) leave a voice message with the Public Works Department that will be addressed the following day, or (2) call 911 to report the emergency, which will only be addressed the same evening if there is a public safety concern.

Brentwood contrasts its current customer service capabilities with PAWC's, especially when emergencies occur outside normal business hours. Brentwood contends its customers will have more access to customer services with a more user-friendly bill-pay experience with PAWC than currently is available. While Brentwood customers currently receive two separate bills for their water and wastewater service, after the Transaction Brentwood's customers will have one bill for both water and wastewater services.⁴³ Finally, Brentwood notes its customers currently have no access to a low-income customer assistance program to assist with paying sewer bills other than what Brentwood currently offers – a

⁴¹ See Brentwood St. 1 at 14–15; Brentwood St. 1-R at 2.

⁴² See Brentwood St. 1 at 16.

⁴³ See Brentwood St. 1 at 15.

standardized delinquency payment arrangement that does not consider the customer's income and requires the customer to pay off the entire balance, regardless of the amount the customer owes, over a maximum of 12 months.⁴⁴ Brentwood notes its customers will have access not only to PAWC's three tiers of low-income discounts to fixed and volumetric wastewater charges but, since PAWC already provides water service, any customer already enrolled in a PAWC low-income discount program for their water service will be automatically enrolled in the discounts available for wastewater service.⁴⁵

d. The Transaction Benefits PAWC's Existing Wastewater Customers

Brentwood did not address this issue in the Main Brief

e. The Transaction Benefits PAWC's Existing Water Customers

Brentwood did not address this issue in the Main Brief

BIE's Position

a. Fitness

BIE notes it did not challenge PAWC's legal or technical fitness to own or operate the Brentwood system.

b. Substantial Public Benefit Test

BIE notes the Commission should only grant a certificate of public convenience "if the commission shall find or determine that the granting of such certificate is necessary or

⁴⁴ See *Id.* at 17.

⁴⁵ See PAWC St. 3 at 16–18 (describing and summarizing the available Pennsylvania-American's low-income programs).

proper for the service, accommodation, convenience or safety of the public.”⁴⁶ BIE contends the Commission established an applicant must show affirmatively the public benefit will promote the service, accommodation, convenience or safety of the public in some substantial way, pursuant to *City of York v. Pennsylvania Public Utility Commission*.⁴⁷ BIE argues Applicant made only unquantified and generalized assertions that current customers will benefit from the economies of scale, but this weak evidence is simply insufficient to show affirmative public benefits.

BIE points out the Commission must weigh the factors for and against the acquisition, which includes the impact on rates, before making its decision⁴⁸ and points to the recent Commonwealth Court decision in *Cicero v. Pennsylvania Public Utility Commission*.⁴⁹ BIE contends when an existing system operates safely and reliably, there are “**no benefits that differ substantially** from the benefits already being provided by the existing system operator, [and] those alleged benefits arise as a result of the acquiring utility’s fitness, rather than from the actual transaction, and where there are acknowledged or known harms that will result from the transaction, there are insufficient net benefits to support approving the transaction and granting the CPC under Section 1103(a).”⁵⁰

BIE acknowledges PAWC has the expertise to provide wastewater service to Brentwood. However, BIE argues this expertise alone does not demonstrate that approval of the Application will result in substantial public benefits, especially since Brentwood currently provides adequate service and can continue to do so potentially at a lower cost than PAWC can.

⁴⁶ 66 Pa.C.S. § 1103(a).

⁴⁷ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825 (1972).

⁴⁸ *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2021-3024267 (Opinion and Order entered Jan. 13, 2022).

⁴⁹ *Cicero v. Pa. Pub. Util. Comm’n*, 300 A.3d 1106 (Pa. Cmwlth 2023).

⁵⁰ *Id.* at 1119 (Emphasis in original).

BIE notes Brentwood’s largest issue appears to be infiltration and inflow (I&I) but it appears Brentwood currently is taking the necessary steps to correct this issue. BIE points out the testimony provided by OCA’s witness DeMarco⁵¹ and contends Brentwood is improving its system and meeting the milestones specified in the agreements.⁵² Next, BIE points out the source of the excess I&I is unclear and notes PAWC’s witness Hufton testified, “each of the municipalities in the ALCOSAN regional system ... are under Consent Orders similar to Brentwood to [reduce I&I]. So it is reasonable to expect that the upstream municipalities have their own [I&I] challenges.”⁵³

With the agreement that the excess I&I is likely due in part to the upstream municipalities, and with the understanding that Brentwood has been meeting the required milestones to lessen or fix the I&I problem, BIE argues PAWC is more likely to simply maintain the status quo related to the I&I issues this system experiences. BIE argues that maintaining the status quo is not an affirmative public benefit, PAWC failed to provide any evidence it would do anything more than what Brentwood currently does, and Brentwood provided no evidence to demonstrate that it cannot continue to work towards the measures it has been working towards to control I&I.

BIE acknowledges Brentwood’s service is not perfect but notes perfect utility service is not required for utility service to be adequate. BIE agrees with OCA’s witness DeMarco, who noted Brentwood has not claimed it is a troubled system;⁵⁴ Brentwood has not violated its portion of the ALCOSAN consent decree; Brentwood has stated affirmatively it is not in financial distress;⁵⁵ Brentwood has had no issue running and maintaining its system;⁵⁶ and

⁵¹ OCA St. 1 at 9.

⁵² OCA St. 1 at 10.

⁵³ Tr. at 175.

⁵⁴ PAWC St. 1 A-13-a.

⁵⁵ Appendix A-13-a at 5.

⁵⁶ Appendix A-18-a at 1.

in the last five years the Borough has not had issues funding any infrastructure replacement or updates while maintaining good cashflow.⁵⁷

Second, BIE contends Brentwood customers likely will face large rate increases under PAWC's ownership and, to the extent Brentwood customers' rates are not substantially increased, existing PAWC customers face the burden of subsidizing the Brentwood customers. All the alleged benefits result not from the acquisition itself, but from the size and technical fitness of PAWC. BIE argues Brentwood operates its system currently in such a way as to not need the leadership of a larger utility to maintain safe and reliable service. BIE contends the Commission should require more than a willing buyer and willing seller to determine that an acquisition meets the affirmative public benefits test and, PAWC has not demonstrated any benefit over status quo will result from this transaction.

Third, BIE denies a public benefit results simply because PAWC also provides water service to Brentwood customers. BIE argues having one entity provide both water and wastewater service does not implicitly yield a public benefit, especially when considered in conjunction with the potential for higher rates under PAWC's ownership.⁵⁸ Furthermore, BIE contends the benefit of being able to access PAWC's 24/7/365 customer service is at best a minor benefit because currently Brentwood is able to handle issues arising during normal business hours or outside of normal business hours. BIE points out the public input hearings failed to produce any testimony that Brentwood customers had concerns about customer service needs outside of business hours. BIE also noted that not all Commission regulated utilities have 24/7/365 access to customer service and, accordingly, access to 24/7/365 customer service is not a requirement for having adequate utility service.

BIE contends there is no concrete evidence that Brentwood is not operating, and cannot operate in the future, its system in a safe and reliable manner, or that it cannot continue to operate at a potentially lower cost than PAWC. BIE argues the evidence presented consists of

⁵⁷ OCA St. 1 at 14-15; Exhibit ND-6 OCA-II-3; Exhibit ND-I at 18.

⁵⁸ I&E St. 1 at 7-8.

only vague assertions of regionalization and consolidation as the alleged affirmative public benefits of this transaction along with a larger customer base over which to spread costs. These vague “benefits” are benefits that would be present in any acquisition but simply do not rise herein to the level of an affirmative public benefit. Furthermore, BIE asserts the rates for the large customer base over which these costs are spread continue to rise as a result of these transactions by PAWC. BIE contends that, since there appears to be little to no benefit arising to existing PAWC customers, or to Brentwood customers, the Application, as filed, does not meet the affirmative public benefits test and should be rejected.

c. The Transaction Benefits the Public-at-Large

BIE did not address this issue specifically in the Main Brief.

d. The Transaction Benefits Brentwood and its Citizens

BIE did not address this issue specifically in the Main Brief.

e. The Transaction Benefits the Customers of the Brentwood System

BIE did not address this issue specifically in the Main Brief.

f. The Transaction Benefits PAWC’s Existing Wastewater Customers

BIE did not address this issue specifically in the Main Brief.

g. The Transaction Benefits PAWC’s Existing Water Customers

BIE did not address this issue specifically in the Main Brief.

OCA's Position

a. Fitness

OCA notes it did not present evidence contesting PAWC's fitness as a certificated public utility. However, OCA points out PAWC must present evidence that any benefits derived from its technical, managerial, or financial fitness provide a substantial benefit over the fitness of the acquired utility.⁵⁹ OCA argues PAWC failed to provide sufficient evidence to prove the approval of the Application would create a substantial improvement for Brentwood customers over the *status quo*.

b. Substantial Public Benefit Test

OCA provided a lengthy and, at times, disjointed argument that did not follow the common brief outline used by the other parties. OCA's position is summarized here but can be found in detail in its Main Brief and Reply Brief. In short, OCA contends PAWC failed to establish or prove substantial affirmative public benefits will result from the Application, despite the requirements of Sections 1102 and 1103, and the known and foreseeable harms which will result from approval of this Application outweigh the benefits which PAWC avers will result from approval. OCA asserts there are no net benefits to the transaction and, accordingly, 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.⁶⁰

OCA points out PAWC must demonstrate that the approval of the Application will affirmatively promote the "service, accommodation, convenience, or safety of the public" in some substantial way.⁶¹ Further, this benefit should be seen after weighing the impact of the

⁵⁹ *Cicero*, 300 A.3d at 1119.

⁶⁰ 66 Pa.C.S. §§ 1102, 1103.

⁶¹ 66 Pa.C.S. § 1103; *City of York*, 295 A.2d at 828.

proposed transaction on all affected parties, not just certain groups.⁶² The primary objective of this provision in the law is to serve, ultimately, the interests of the public.⁶³

c. The Transaction Benefits the Public-at-Large

OCA contends PAWC did not demonstrate the 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,⁶⁴ otherwise known as the “affirmative public benefits test.”⁶⁵ OCA asserts these benefits – which allegedly derive from the acquiring utility’s technical, managerial, and financial fitness – are not sufficient to satisfy the utility’s burden to find substantial affirmative benefits, where the system being acquired provides similar benefits.⁶⁶ Instead, OCA asserts only those benefits which are specific to the transaction (herein, the acquisition of the Brentwood system) are considered substantial; and only those benefits may be weighed against the harm which would result from the proposed transaction.⁶⁷

OCA argues the Application fails to meet the appropriate legal standard because the benefits PAWC asserts will result from the transaction are almost exclusively based on PAWC’s fitness (especially as derived from its size), are not specific to the transaction proposed in this Application and are not marked improvements over the safe and reliable service already provided by Brentwood. OCA contends the general benefits claimed by PAWC would apply to *any* utility acquisition PAWC could engage in and this benefit, standing alone, is not sufficient to meet the *City of York* standard.⁶⁸

⁶² *Middletown Township v. Pa. Pub.Util.Comm’n*, 482 A.2d 674 (Pa. Cmwlth. 1984).

⁶³ *Id.*; see also *Popowsky*, 937 A.2d at 1057.

⁶⁴ *Application of CMV Sewage Co., Inc.*, 2008 Pa.P.U.C. LEXIS 950, *30 (Dec. 18, 2008) (*CMV*).

⁶⁵ See *Popowsky*, 937 A.2d at 1052-53.

⁶⁶ *Cicero*, 300 A.3d at 1119.

⁶⁷ *Id.* at 1120.

⁶⁸ *Id.* at 1119.

d. The Transaction Benefits Brentwood and its Citizens

OCA did not speak to this issue in its Brief.

e. The Transaction Benefits the Customers of the Brentwood System

OCA argues Brentwood customers will pay higher rates, if the Commission approves the Application. In addition, OCA contends 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. OCA asserts 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. OCA contends that, because PAWC cannot satisfy the substantial affirmative public benefit standard provided under Sections 1102 and 1103, the Commission should deny the Application.

OCA contends that in the *Cicero* case, the applicant wastewater company sought Commission approval to acquire a wastewater system, averring that the acquired customers would benefit from managerial and technical expertise, access to capital, and other, aspirational, proposed benefits.⁶⁹ OCA notes the Commission approved the application but the Commonwealth Court reversed, finding that the applicant's reliance on general, aspirational benefits flowing from its fitness were not substantial enough to outweigh the known harms of the proposed transaction.⁷⁰ Pursuant to that case and the law, OCA argues PAWC must show, and has failed to prove, that affirmative public benefits arise this specific transaction, and outweigh the harms of the transaction, such that a substantial affirmative public benefit will result.

⁶⁹ *Id.* at 1117.

⁷⁰ *Id.* at 1120.

OCA asserts it does not contest that PAWC is fit.⁷¹ But it does contest 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. OCA submits that these purported benefits are not substantial and, instead, simply perpetuate the *status quo*.

OCA contends that Brentwood customers will not substantially benefit from the additional capital investment proposed by PAWC. OCA asserts the Brentwood system is not distressed or troubled, and the system does not need an immediate influx of capital investment to provide safe and reliable service. While OCA acknowledges the Borough of Brentwood 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.⁷² OCA points out that, even while PAWC avers the Brentwood system has environmental challenges, the system has been able to meet its current compliance goals.⁷³ OCA specifically points to Brentwood's compliance with the 2008 consent decree and points out Brentwood met its obligations under the first phase (2016-2018) of the Consent Order and Agreement (COA), which required Brentwood to conduct Source Reduction Studies in order to reduce wastewater flows into the ALCOSAN system.⁷⁴ OCA also notes Brentwood is on track to implement the 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 argues 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

⁷¹ *Id.* at 1120.

⁷² Brentwood St. 1 at 10.

⁷³ *Compare* PAWC St. 2 at 11 *with* OCA Exh. ND-3.

⁷⁴ OCA St. 1 at 10.

higher cost – is not a substantial improvement on the *status quo*.⁷⁵ In fact, given the higher costs of PAWC’s capital, OCA contends the record clearly reveals that PAWC’s ownership would provide a net financial harm rather than any net benefit. Accordingly, OCA contends the benefits alleged by the Borough and PAWC – regarding access to capital or environmental compliance – are not substantial benefits, and either 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*.

As for customer service, OCA argues PAWC will not be able to provide substantially better customer service to Brentwood because PAWC is not able to offer customer service to current Brentwood customers which differs substantially from that customer service already being provided by the Borough. PAWC’s proposed 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.⁷⁶ OCA contends PAWC is wrong to state Brentwood customers will receive a single bill. OCA asserts Brentwood customers currently receive two bills: a water bill from PAWC, and a wastewater collection and treatment bill, that includes refuse charges from the Borough.⁷⁷ OCA contends, however, that if the transaction is approved, a Brentwood customer will receive two bills – one from PAWC for water and wastewater collection and treatment, and one from the Borough for refuse charges.⁷⁸

In addition, OCA asserts PAWC is in error to emphasize its 24/7 customer service center hours as a benefit,⁷⁹ where PAWC failed to provide any specific examples of how the Brentwood customer experience will improve specifically resulting from the acquisition.

⁷⁵ OCA St. 1SR at 7 (“Brentwood Borough’s cost of capital is 4.37%” while “PAWC’s cost of capital is 7.10%.”).

⁷⁶ OCA St. 2 at 5.

⁷⁷ OCA St. 2 at 5.

⁷⁸ PAWC St. 3-R at 18.

⁷⁹ PAWC St. 2-R at 15.

Further, OCA notes that PAWC posits its low-income program as a substantial benefit to the Borough's customers.⁸⁰ OCA acknowledges that while it does not minimize the importance of a wastewater servicer offering a low-income program, OCA contends PAWC did not show that access to this program will outweigh the harms that would result from 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 the ALCOSAN portion of customers' wastewater charge, which accounts for 56.7% of the total wastewater bill for Brentwood customers.⁸¹

Moreover, OCA points out that under the current proposal, PAWC cannot provide its low-income discount program to Brentwood customers to assist with ALCOSAN costs,⁸² because ALCOSAN requires Brentwood customers to apply to its low-income discount program to receive the quarterly credit to their bill for ALCOSAN services. OCA also contends the existence of a low-income program will do little to alleviate the rate pressure placed on Brentwood customers after the end of the system's proposed rate freeze, especially for those customers whose income is near the qualifying threshold for PAWC's H2O program without qualifying.⁸³

OCA asserts 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.⁸⁴

⁸⁰ PAWC St. 3 at 16-17.

⁸¹ OCA St. 1 at 19, 24.

⁸² Appendix A-12 (revised) at 16.

⁸³ OCA St. 1 at 23.

⁸⁴ OCA St. 2SR at 3-4.

In sum, OCA contends that, while PAWC asserts its customer service improvements demonstrate a benefit to current Brentwood customers, those referenced 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.⁸⁵

Therefore, OCA argues PAWC and Brentwood 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.

f. The Transaction Benefits PAWC's Existing Wastewater Customers

OCA contends PAWC's existing wastewater customers likely will face higher wastewater rates, because some stakeholders will have to pay for the annual revenue requirement deficiency that will result. If approved, OCA argues it is both likely and foreseeable that the rates paid by existing PAWC customers will increase as a result of this transaction.⁸⁶ OCA points to PAWC's failure to provide any concrete benefit that will accrue to its existing PAWC customers which will result from this transaction, outside of vague, illusory, aspirational and unsupported statements regarding cost-sharing, regionalization, and consolidation.

⁸⁵ *Cicero*, 300 A.3d at 1119.

⁸⁶ In its current base rate proceedings [at Docket Nos. R-2023-3043189 (water) and R-2023-3043190 (wastewater)], PAWC included Brentwood in its wastewater rate filing and proposed to impute any rate increase that Brentwood customers would have otherwise paid until the expiration of its proposed rate freeze. Tr. at 384-385. OCA argues 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.

OCA notes, at length, the public input testimonies provided by two current PAWC wastewater customers who were prior customers of the Exeter Township, Berks County, wastewater system prior to its acquisition by PAWC. OCA argues 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. OCA also points out these witnesses testified prior to PAWC filing its now-pending rate case in which PAWC has proposed a \$203,945,911, or 20.2%, rate increase company-wide.⁸⁷

OCA contends 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 – and PAWC already proposes to spend \$8,055,000 over five years. PAWC Exh. DJH-2. Further, OCA notes PAWC agreed to a two-year rate freeze for Brentwood customers in the APA, and calculates the Brentwood system will generate an annual revenue deficiency of \$667,000, even before the capital improvements are made. OCA Exh. ND-2. OCA argues PAWC will hoist the burden of that portion of the Brentwood revenue deficiency onto its existing customers and PAWC does not make any commitment to bear the increased cost of Brentwood's planned capital improvements.⁸⁸

OCA contends 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 year, those costs will be borne by existing PAWC consumers or by Brentwood customers, or both.⁸⁹ Specifically, in the PAWC 2023 Base Rate Case, OCA asserts

⁸⁷ *Pennsylvania-American Water Company v. Pa. Pub. Util. Comm'n*, Docket Nos. R-2023-3043189 (water) and R-2023-3043190 (wastewater) (Exh. 3-A Nov. 8, 2023) (PAWC 2023 Base Rate Case).

⁸⁸ OCA asserts PAWC indicated 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. OCA argues, 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. PAWC Exh. AEE-1REV. *See also*, OCA St. 2SR at 2; *see Phila. Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 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.”).

⁸⁹ PAWC Exh. DJH-2.

that 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.⁹⁰ Under this proposal, PAWC water customers will be responsible for \$1,565,232 of Brentwood’s annual revenue deficiency.⁹¹ 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%.⁹²

OCA asserts these estimates do not include the increase in rates which will arise out of PAWC’s other pending Section 1329 acquisitions.⁹³ OCA argues that, 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.⁹⁴

⁹⁰ PAWC 2023 Base Rate Case, Exh. 3-A.

⁹¹ *Id.*

⁹² *Id.*; *see also* PAWC 2023 Base Rate Case.

⁹³ OCA points out PAWC has one pending acquisition under Section 1329, in the matter involving 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). Further, OCA notes the recent Commission approval of PAWC’s acquisition of the Butler Area Sewer Authority wastewater system. *See generally Application of Pennsylvania-American Water Co., pursuant to 66 Pa.C.S. §§ 1102 and 1329 Acquisition the Butler Area Sewer Auth.*, Docket No. A-2022-3037047 (Opinion and Order entered Nov. 16 2023) (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.

⁹⁴ 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 knows or is able to acknowledge that

OCA argues existing PAWC customers will see substantial rate harms if the Application is approved – in addition to other applications under Section 1329. OCA contends PAWC failed to produce any evidence of potential substantial benefits which existing PAWC customers will see because of this transaction. Simply put, OCA contends the record is replete with harm and devoid of benefit.

In summary, OCA argues PAWC’s allegation of potential benefits is without merit or evidence, and asserts that other proposed benefits, whether considered separately or together, are not 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. OCA contends Brentwood residents may see a small financial benefit from a proposed short-term tax stabilization by Brentwood – and, to a lesser extent, by reducing the Borough’s debt obligations – but, given the rate differences PAWC will charge for the same service, any benefit to Brentwood citizens is likely to be outpaced by rate increases under PAWC’s ownership.

OCA acknowledges PAWC’s argument that regulation under the Public Utility Code is an affirmative public benefit of the transaction.⁹⁵ While the OCA acknowledges that protections provided by the Public Utility Code are a benefit, standing alone, those protections are not sufficient to outweigh the harms here. OCA argues, if PAWC’s argument was correct, any acquiring utility’s status as a certificated public utility would be enough to satisfy the *City of York* standard for affirmative public benefits, and then any acquisition by an entity regulated by the Public Utility Commission would meet the standard. OCA asserts that result is not consistent with the Public Utility Code, the case law or the Commission’s prior determinations.

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.

⁹⁵ Application at ¶ 33(h).

Likewise, OCA contends PAWC's claims - regarding benefits to the public-at-large - are illusory and unsupported, especially since Brentwood engages in the conduct PAWC says it will do, if the Application is approved – coordinate infrastructure upgrades, reduce road cuts, coordinate improvement projects with ALCOSAN, and have an excellent working relationship with ALCOSAN.⁹⁶ Further, OCA argues that while an ability to coordinate internally may be an efficiency for PAWC, that ability is not a public benefit. Lastly, OCA notes 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.⁹⁷

Finally, OCA argues there is no substantial affirmative public benefit, after weighing the substantial benefits proposed by PAWC against the known or foreseeable harms which would result from the proposed transaction. 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.⁹⁸ 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.⁹⁹

OCA notes that the Brentwood system is currently in compliance with its COA from the ACHD.¹⁰⁰ Neither PAWC nor Brentwood have estimated the anticipated cost of

⁹⁶ PAWC St. 1SR at 14, PAWC St. 2SR at 16:11-14.

⁹⁷ *McCloskey v. Pa. Pub. Util. Comm'n*, 195 A.3d 1055 (Pa. Cmwlth. 2018) (*New Garden Order*) (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.

⁹⁸ *Cicero*, 300 A.3d at 1119.

⁹⁹ *Id.*

¹⁰⁰ OCA St. 1SR at 7.

required capital improvements for the next five to ten years.¹⁰¹ While PAWC has made aspirational assurances 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.¹⁰² 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. Accordingly, OCA contends PAWC failed to provide sufficient evidence which the Commission may rely on that long-term ownership under PAWC will actually be a substantial benefit to consumers.

In a similar manner, OCA notes PAWC's claimed economies of scale do not reduce the cost to Brentwood customers or PAWC customers because the efficiencies attendant to the proposed economies of scale will not be sufficient to cover the cost of servicing the Brentwood system.¹⁰³ As a result, if the Application is 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.¹⁰⁴ The idea that, theoretically, due to economies of scale, PAWC is able to provide such service to the Brentwood system cheaper than the Borough can provide such service, is not reflected in short- or long-term estimates of the rate impact which would result from approval of this Application.

e. The Transaction Benefits PAWC's Existing Water Customers

OCA argues all existing PAWC customers will pay higher rates because of this transaction if the Commission approves the Application, for the reasons stated above.

¹⁰¹ *Id.*

¹⁰² OCA St. 1SR at 5.

¹⁰³ *See* OCA St. 1SR at 5.

¹⁰⁴ OCA St. 1SR at 13.

OSBA's Position

a. Fitness

OSBA took no position on this issue.

b. Substantial Public Benefit Test

OSBA took no position on this issue.

ALCOSAN's Position

a. Fitness

ALCOSAN does not take a position either in support of or in opposition to the proposed transaction that is the subject of the Application and ALCOSAN took no position regarding PAWC's fitness.

b. Substantial Public Benefit Test

ALCOSAN asserts the undisputed record evidence establishes there is an affirmative public benefit for the Commission to approve the Cooperation Agreement between PAWC and Brentwood. ALCOSAN contends that, should the Commission approve the Application, the Cooperation Agreement is necessary for ALCOSAN to continue to provide its integral and exclusive wastewater treatment and conveyance services to its 83 municipal customers, including for users located in Brentwood,¹⁰⁵ because the Cooperation Agreement ensures the preservation and ongoing enforcement of the terms of the Z Agreement and the Other Z Agreements consistent with past practice. ALCOSAN asserts the preservation and enforcement includes setting forth the relative rights and obligations of PAWC and Brentwood

¹⁰⁵ ALCOSAN St. 1, at 9-10.

with respect to the Z Agreement, which, in turn, ensures ALCOSAN's ability to comply with the Modified Consent Decree. ALCOSAN argues the Z Agreement and the Other Z Agreements are essential for ALCOSAN to be able to provide its wastewater treatment and conveyance services within its service area.¹⁰⁶

c. The Transaction Benefits

ALCOSAN took no specific position on these issues concerning the other groups discussed in detail above about the public, Brentwood, Brentwood's customers or PAWC's customers.

B. Section 1329 Issues

PAWC's Position

1. Fair Market Value for Ratemaking Purposes

PAWC notes the negotiated purchase price for the System is \$19,364,443, while the average of the appraisals of the buyer's Utility Valuation Expert (UVE) and the seller's UVE is \$21,827,775.¹⁰⁷ PAWC asserts the evidence demonstrates the negotiated purchase price is the fair market value for ratemaking rate base purposes, under Section 1329 (*i.e.*, it is the lower of the negotiated purchase price and the average of the UVEs' appraisals).¹⁰⁸ PAWC further asserts all assets included in the proposed transaction are used and useful in providing service to Brentwood's customers, and argues the ALJ should reject any argument asserting the proposed ratemaking rate base is too high because it includes assets that are not used and useful in providing service to Brentwood's customers.

¹⁰⁶ ALCOSAN St. 1, at 8; PAWC St. 1, at 8-9; Appendix A-25.3.

¹⁰⁷ Specifically, PAWC's appraisal was \$22,721,549, per PAWC St. 4 p. 3, while Brentwood's appraisal was \$20,934,000, per Brentwood St. 2 p 13.

¹⁰⁸ PAWC St. 3-REV p. 5.

PAWC notes Section 1329 does not address the proper accounting treatment of the rate base or approval of a depreciation reserve in determining the ratemaking rate base, but PAWC asserts that recording the net value of \$19,364,443 is appropriate and consistent with Section 1329. For those reasons, PAWC requested the Commission approve recording the acquisition on a net basis, consistent with the Commission's decision in *Application of Pennsylvania-American Water Company to Acquire the Wastewater System of the York City Sewer Authority*, Docket Nos. A-2021-3024681 (Order entered Apr. 14, 2022). PAWC further notes no party in this proceeding disputed this request. PAWC requests the Commission approve the addition of \$19,363,443 to rate base for the acquisition of the System, and to allow PAWC to record that rate base addition at net value.

2. Tariff and Rates

PAWC asserts its tariff, as reflected in PAWC Exhibit MS-2, Second Amended Appendix A-12, is consistent with 66 Pa.C.S. § 1329(d)(1)(v), which requires PAWC to charge rates after Closing that are equal to the selling utility's existing rates. PAWC requested permission to make this tariff supplement effective upon Closing on the Transaction, as reflected in Amended Application p. 17. PAWC notes no party disputed this request, and the request is reasonable and in accordance with law. PAWC requests the Commission allow PAWC to issue compliance tariff supplements consistent with the tariff at PAWC Exhibit MS-2, Second Amended Appendix A-12, to become effective immediately upon Closing.

3. Distribution System Improvement Charge

PAWC notes Section 1329(d)(4) permits it, as the acquiring utility, to collect a Distribution System Improvement Charge (DSIC) prior to the first base rate case that includes the acquired system. PAWC requested authority to approve the collection of a DSIC in the future, prior to the first base rate case in which the System plant-in-service is incorporated into rate base, noting PAWC would not begin charging a DSIC until the eligible System plant is approved by the Commission in an amendment to PAWC's LTIP for wastewater.¹⁰⁹ However,

after OCA's witness DeMarco recommended Brentwood's assets should be excluded from the DSIC until the DSIC applies to customers in Brentwood,¹¹⁰ PAWC notes it agreed and accepted this recommendation.¹¹¹ Accordingly, PAWC revised its request and requests the Commission allow PAWC to collect a DSIC from Brentwood system customers upon (i) PAWC's filing of an amended wastewater LTIP including the Brentwood system, (ii) the Commission's approval of the amended LTIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement that incorporates the System into PAWC's DSIC tariff, which will include all applicable customer safeguards, after Commission approval of the amended LTIP. PAWC contends this proposal is reasonable and consistent with the Code.

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

PAWC requests the Commission allow it to accrue Allowance for Funds Used During Construction (AFUDC), and to defer depreciation, for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, consistent with 66 Pa.C.S. § 1329, which permits PAWC, as an acquiring utility, to (a) accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, and (b) defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes.¹¹²

5. Transaction and Closing Costs

PAWC notes that, pursuant to Section 1329(d)(iv), transaction and closing costs on an acquisition become part of the acquiring utility's rate base, and PAWC estimated the

¹⁰⁹ PAWC St. 3-REV p. 11.

¹¹⁰ OCA St. 1 p. 21.

¹¹¹ PAWC St. 3-R p. 5.

¹¹² OCA had recommended the Commission should address this issue in the first base rate case that includes the Brentwood System (OCA St. 1 p. 22) and PAWC did not object to this recommendation.

transaction and closing costs from this proceeding will range from \$510,000 to \$620,000.¹¹³ PAWC acknowledged OCA contended PAWC should not be allowed to recover legal and engineering fees for which PAWC will reimburse Brentwood, pursuant to the APA, because Section 1329 does not allow transaction and closing costs incurred by the seller to be included in the buyer's ratemaking rate base.¹¹⁴ PAWC also acknowledged BIE's contention that PAWC should not be allowed to pay any of Brentwood's legal and engineering costs, nor should PAWC be permitted to recover the legal and engineering fees for which PAWC will reimburse Brentwood.¹¹⁵

Despite the objections, PAWC continues to argue that is obligated by the APA to reimburse Brentwood for up to \$70,000 in legal and engineering fees. For that reason, PAWC asserts it included this case in its claim for recovery of transaction and closing costs in PAWC Exhibit 3-C in its current base rate case.¹¹⁶ PAWC argues any Commission determination about the recoverability of this cost should be made in that base rate case,¹¹⁷ and notes BIE accepted PAWC's commitment to resolve this issue in the current rate case.

6. Additional Issues

a. Plant in Service Used to Serve "Non-Customers"

In a matter involving an issue of first impression, PAWC notes the Brentwood wastewater system currently conveys wastewater from the Upstream Municipalities through the Brentwood system to the Downstream Municipalities, where the wastewater from the Upstream Municipalities can be treated at the ALCOSAN wastewater treatment plant.¹¹⁸ What makes this

¹¹³ PAWC St. 3-REV p. 18.

¹¹⁴ OCA St. 1 at 5.

¹¹⁵ I&E St. 1 at 21.

¹¹⁶ PAWC's current base rate is located at Docket No. R-2023-3043190.

¹¹⁷ PAWC St. 3-R p. 10.

¹¹⁸ I&E St. 1 p. 11.

matter one of first impression is the fact the instant proceeding involves the first time a municipality in the ALCOSAN system is attempting to sell its wastewater system to a public utility. PAWC requests the Commission should reject contrary arguments, which call for the Commission to reject the Municipality of Brentwood from selling its wastewater assets to a qualified public utility because the Municipality of Brentwood's system is included in the ALCOSAN system. PAWC argues that such an action by the Commission would effectively prevent any municipality in the ALCOSAN system from selling its system to a qualified public utility, whether part of a Section 1329 proceeding or part of any other type of proceeding.

PAWC disagrees with BIE's claims the Brentwood assets are not used and useful to provide service to Brentwood customers, because of the benefit to Upstream Municipalities, and the assets should be removed from the requested rate base of \$19,643,443.¹¹⁹ In addition, PAWC disagrees with BIE's contention that the Application should be denied because PAWC has not yet completed a study that separates plant used to serve "non-customers" in order to establish an appropriate rate base.¹²⁰ PAWC argues BIE's argument is inconsistent with Sections 1102 and 1103, and the Commission should not reject the Application until the Commission considers whether the proposed transaction passes the substantial benefit test.

PAWC also contends the Commission should reject BIE's argument because it is inconsistent with Section 1329(c)(2), which states "[t]he ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility."¹²¹ PAWC asserts the lower of these values is the negotiated purchase price herein.¹²² PAWC also notes the UVEs used in this proposed transaction calculated the fair market value based on the assets listed in the engineer's assessment. PAWC asserts the engineer's assessment properly included the assets used to

¹¹⁹ I&E St. 1 pp. 11-16; I&E St. 1-SR p. 20.

¹²⁰ I&E St. 1 pp. 14, 31.

¹²¹ 66 Pa.C.S. § 1329(c)(2).

¹²² The negotiated purchase price is \$19,643,443. The two appraisals valued the System as worth \$22,721,549 and \$20,934,000, or an average of \$21,827,775. The negotiated price is lower than the average of the two appraisals.

provide service to “non-customers” because those assets are used and useful in providing service to Brentwood customers.

In support of its arguments, PAWC asserts: (1) all trunklines are used and useful to provide wastewater service to Brentwood customer; and (2) the trunklines are part of a comprehensive system set up by ALCOSAN through other Z Agreements. First, PAWC argues all trunklines included in the transaction are used and useful to provide service *to* Brentwood customers, because the trunklines convey Brentwood sewage through the Borough to the Downstream Municipalities for conveyance to the ALCOSAN regional plant for treatment. PAWC argues no portion of the trunklines is used solely to convey wastewater from Upstream Municipalities to Downstream Municipalities.¹²³

Second, PAWC notes the trunklines are part of the comprehensive system set up by ALCOSAN via uniform Other Z Agreements, which agreements are substantively the same and require the establishment of a regional interceptor system through the use of municipal trunklines for the transport of sewage to the ALCOSAN plant. Brentwood’s trunklines are used by other municipalities, just as Brentwood uses the trunklines of other municipalities and, because it is a mutual assistance system, all of the trunklines are used and useful.¹²⁴

PAWC argues the term, “used and useful” is a flexible concept.¹²⁵ Quoting from a treatise, PAWC asserts:

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

¹²³ Tr. 152, 372.

¹²⁴ PAWC St. 2-R pp. 10-11; Tr. 152.

¹²⁵ James J. Hoecker, ‘*Used and Useful*’: *Autopsy of a Ratemaking Policy*, 8 Energy L.J. 303, 310 and 333 (1987); Tr. 271.

immediate tangible benefit, meets certain secondary benefit criteria, such as reasonably foreseeable plant completion, a necessary cost of continuing business (including land acquisition to enhance gas reserves or other reasonable plans and commitments to dedicate property to public service), or assets held in reserve to ensure service reliability; or (3) the expenditure is necessitated by the projected immediate needs of the ratepaying public.^[126]

PAWC argues Brentwood's trunklines provide a direct and immediate benefit to Brentwood's customers and are directly used to provide wastewater collection and conveyance service to the same customers. Further, the trunklines – with the current level of capacity – permits Brentwood customers to receive wastewater treatment service through the ALCOSAN regional interceptor system. If not for the comprehensive ALCOSAN treatment system, Brentwood would not have wastewater treatment service.¹²⁷ Without its participation in the comprehensive ALCOSAN treatment system, Brentwood would have to construct its own wastewater treatment plant, which PAWC argues is a circumstance that is contrary to the Commission's policy promoting the regionalization of water and wastewater systems.¹²⁸

Further, PAWC requests and argues in support of receiving Commission approval, pursuant to Section 507, to the extent that existing agreements are being assigned to PAWC in the instant proceeding. PAWC asserts its future capital projects related to improvements to, or major repair/replacement of the trunklines, will be handled via negotiated capital contribution agreements and will be subject to Commission review under 66 Pa.C.S. § 507 to ensure that they are in the public interest.¹²⁹ PAWC also noted these costs and agreements can be found in its proposed tariff in the current rate proceeding (at Docket No. R-2023-3043190). As a result, PAWC argues the Commission has no need to delay its

¹²⁶ James J. Hoecker, *'Used and Useful': Autopsy of a Ratemaking Policy*, 8 Energy L.J. 303, 310 and 333 (1987), at 312.

¹²⁷ PAWC St. 2-R p. 11; Tr. 152.

¹²⁸ 52 Pa. Code § 69.721.

¹²⁹ PAWC Exhibit MS-2 Second Amended Appendix A-12 Original Page 94 Section X.3, in Docket No. R-2023-3043190; PAWC St. 2-R p. 10.

consideration of the Transaction due to the trunklines that make the ALCOSAN regional interceptor system feasible.

PAWC contends the Commission should reject BIE's argument regarding intermunicipal trunklines because BIE's position represents bad public policy. PAWC argues BIE's argument is contrary to the public interest and effectively would prevent any municipality in the ALCOSAN system from selling its system to a qualified public utility, especially since many of the other collection systems in the ALCOSAN regional interceptor system are older systems experiencing many of the challenges as Brentwood's system.¹³⁰ PAWC contends BIE's argument, if accepted by the Commission, would strongly discourage the 83 municipalities in the ALCOSAN system from selling their wastewater systems, regardless of how prudent that might be, or how much the public interest might favor such a transaction.¹³¹ PAWC argues the Pennsylvania Legislature made a policy decision in Section 1329 that municipalities should be able to sell their water and wastewater systems, using the fair market value methodology, and the Legislature gave that option to all municipalities in Pennsylvania. PAWC asserts the Commission would be in error to take that option away from the 83 municipalities. Instead, PAWC contends the Commission should exercise its reasonable discretion to find that the trunklines are used and useful.

b. Is the Rate Freeze a Rate Stabilization Plan?

PAWC notes it disagrees with OCA's characterization that the rate freeze qualifies as a rate stabilization plan.¹³² PAWC points out Section 7.03(a) of the APA requires PAWC to hold rates constant until after the second anniversary of the Closing Date. PAWC argues this rate freeze is not a rate stabilization plan because, while the APA contractually restricts PAWC from increasing base rates, nothing in the APA purports to restrict the Commission's authority to set rates that it considers to be "just and reasonable" within the

¹³⁰ PAWC St. 1-R pp. 6-7.

¹³¹ PAWC St. 2-R p. 12.

¹³² OCA St. 1 p. 16; OCA St. 1R p. 10.

context of a base rate proceeding or otherwise.¹³³ PAWC argues it does not ask the Commission to maintain rates for a period of time beyond the next base rate case and notes that, in its current base rate case, at Docket No. R-2023-3043190, PAWC proposes a rate increase for Brentwood customers in August 2024. PAWC argues the base rate case is the proceeding where the rates should be determined, not in this Section 1329 Application proceeding.

PAWC points that in a previous Section 1329 proceeding, the Commission stated the following regarding the relationship between rate commitments and rate stabilization plans:

The ALJ determined that the rate commitment provision contained in the APA does not trump the Commission's ultimate authority to set and allocate rates. We agree. Here, the APA provides firm, unqualified guarantees to the seller as a term of the APA. However, it does not purport to hold rates constant or phase rates in over a period [of] time after the next base rate case. It offers no tariff language for us to approve. Thus, we decline to hold that the rate commitment constitutes a rate stabilization plan pursuant to Section 1329(g) of the Code.^[134]

PAWC insists it was careful during its negotiations in this APA to respect the statutory authority of the Commission to set just and reasonable rates. Accordingly, PAWC requests the Commission find that the rate freeze is not a rate stabilization plan.

c. Should Future Customer Notices Show a Range of Impacts?

PAWC requests the Commission reject OCA's argument that, in future Section 1329 Applications, the Commission should require PAWC to modify its customer notice to show a range of rate impacts to include the rate impact on customers with typical usage, customers using 50% more than typical usage, and customers using 100% more than typical usage.¹³⁵ In

¹³³ PAWC St. No. 3-REV p. 9.

¹³⁴ *Application of Aqua Pennsylvania Wastewater, Inc. to Acquire the Wastewater System Assets of New Garden Township and the New Garden Township Sewer Authority*, Docket No A-2016-2580061 (Opinion and Order entered Jun. 29, 2017) p. 41 (note omitted) (herein referred to as *New Garden Order*), *reversed on other grounds, McCloskey*, 1624 C.D. 2017 (Pa. Cmwlth. 2018).

¹³⁵ OCA St. 1 p. 25.

argument against OCA's proposal, PAWC asserts the notice it sent out in the instant proceeding complies with the *Steelton Order*,¹³⁶ a proceeding in which OCA was a party to the settlement.

First, PAWC argues the Commission should not change the notice now, just because one party is no longer satisfied with the bargain that it struck. Second, PAWC contends the customer notice estimates the bill impact in terms of a percentage increase and this percentage increase is applicable to all customer classes and usage amounts. With that information, PAWC asserts any customer with any level of usage can estimate the personal impact using the estimated percentage increase as shown on the customer notice. Third, PAWC contends the impact of OCA's suggestion will result in requiring PAWC to show nine different bill impacts for the three customer classes. PAWC argues this large number of scenarios will confuse customers. PAWC assert its current practice – to show the average usage amount for residential, commercial and industrial customers – is consistent with the Commission's regulations regarding customer notice in rate cases, which require only one average usage amount to be shown in the notice for each customer class.¹³⁷

Brentwood's Position

a. Fair Market Value for Ratemaking Purposes

Brentwood asserts it endorses and adopts PAWC's position, as expressed in PAWC's Main Brief.

b. Tariff and Rates

Brentwood asserts it endorses and adopts PAWC's position, as expressed in PAWC's Main Brief.

¹³⁶ *Application of Pa-American Water Co., re: Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered Oct. 3, 2019).

¹³⁷ 52 Pa. Code § 53.45(b).

c. DSIC

Brentwood asserts it endorses and adopts PAWC's position, as expressed in PAWC's Main Brief.

d. Claims for AFUDC and Deferred Depreciation

Brentwood asserts it endorses and adopts PAWC's position, as expressed in PAWC's Main Brief.

e. Transaction and Closing Costs

Brentwood asserts it endorses and adopts PAWC's position, as expressed in PAWC's Main Brief.

f. Additional Issues

Brentwood asserts it endorses and adopts PAWC's position, as expressed in PAWC's Main Brief.

BIE's Position

a. Fair Market Value for Ratemaking Purposes

BIE contends the problem with the Application is that a portion of the Brentwood assets are used to serve non-customers of Brentwood, i.e., individuals/service addresses that are not located in Brentwood but who/which use a portion of the wastewater assets of Brentwood. However, BIE points out the purchase price for these assets include the value of the plant being used to serve non-customers. BIE's witness Kubas recommended "the plant, or portion of the plant used to serve 'non-customers' should be removed from the requested rate base of

\$19,643,443,¹³⁸ for the purposes of determining the Fair Market Value. BIE asserts PAWC failed to provide any analysis that indicates the amount of assets being used by non-customers which makes impossible quantifying the exact amount to be removed.¹³⁹ Because it is impossible to determine the Brentwood rate base that should be incorporated into PAWC's rate base, BIE argues this acquisition should not be approved.

BIE argues, in the alternative that if the Commission determines that approval is warranted, PAWC must be required to undertake a study that separates this plant used to serve non-customers from the rest of the plant in service so that an accurate rate base can be established. BIE contends that if the Commission determines approval of the Application is warranted, it is inappropriate to require Brentwood customers, and also PAWC's existing customers, to pay for a return of and a return on rate base that is not used and useful.

b. Tariff and Rates

BIE notes it took no specific position regarding the tariff and rates, other than recommending the rate freeze be denied as not being in the public interest and noting that the notice provided to Brentwood customers likely was inaccurate as how much rates will need to increase for Brentwood customers if the Application is approved.

c. DSIC

BIE notes it took no specific position on this issue.

d. Claims for AFUDC and Deferred Depreciation

BIE notes it took no specific position on this issue.

¹³⁸ I&E St. 1, p. 13.

¹³⁹ I&E St. 1, pp. 13-14.

e. Transaction and Closing Costs

BIE notes Section 1329 permits only the acquiring public utility's transaction and closing costs to be included in rate base and recovered from ratepayers.¹⁴⁰ Despite that provision, BIE points out PAWC agreed, in Section 3.01(d) of the Asset Purchase Agreement, to pay Brentwood up to \$70,000 to reimburse Brentwood for engineering and legal fees incurred related to the proposed transaction. Accordingly, BIE recommended the Commission should exclude these costs from the ratemaking rate base and not allow these costs to be passed along to ratepayers.

BIE points out PAWC acknowledged, in rebuttal testimony, the APA required PAWC to pay these fees, but PAWC agreed to separate out the costs related to Brentwood in its next base rate case. BIE asserts that, since PAWC's stated intention is to follow the mandate of Section 1329, BIE requests this intention should be memorialized in the Commission's final Order in this proceeding, to avoid any confusion regarding the fact that ratepayers are not to be responsible for these particular transaction and closing costs.

f. Additional Issues

BIE did not address any additional issues.

g. Plant Used to Serve Non-Customers

BIE points out Brentwood's wastewater system is a conveyance only system, i.e., the wastewater treatment occurs outside Brentwood. BIE notes Brentwood discharges wastewater of its customers and the wastewater flow of customers who are not Brentwood customers (the "non-customers") into the Baldwin Borough, Whitehall Borough and City of Pittsburgh systems, all of which eventually combine and are treated at the ALCOSAN treatment

¹⁴⁰ I&E St. 1, p. 21.

plant.¹⁴¹ Brentwood does not charge upstream municipalities for flows into the Brentwood system and the downstream municipalities do not charge Brentwood for Brentwood's flows into those downstream systems. BIE contends, however, there are cost sharing agreements related to capital improvements.

BIE acknowledges the need for this interconnection as Brentwood is a conveyance system and not a treatment system, but BIE argues this factual scenario does pose an issue for a Commission regulated utility – because Commission regulated utilities can only earn a return on plant that is used and useful in the provision of service to its customers.

BIE points to the Commission's decision in *Pa. Pub. Util. Comm'n v. West Penn Power Company* (which concerned closing a generating unit) in which the Commission determined:

The unit is not now entirely used and useful for current ratepayers. Under these circumstances ratepayers should not be required to pay West Penn a full return on this property. We believe that an appropriate treatment would be to allow a return of the investment in the plant by leaving it in the original cost of the rate base.^[142]

BIE asserts, in the same way, the Brentwood system would not be entirely used and useful in the provision of service to jurisdictional ratepayers, if PAWC's Brentwood acquisition was approved.

h. Rate Freeze

BIE acknowledges it did not allege specifically whether the rate freeze agreed to in this Acquisition was a rate stabilization plan. BIE contends, however, the rate freeze as touted by PAWC is inherently misleading to customers, because the Commission ultimately retains its rate setting authority no matter what terms PAWC agrees to in the APA. BIE asserts the rate

¹⁴¹ PAWC St. 2, p. 6.

¹⁴² *Pa. Pub. Util. Comm'n v. West Penn Power Co.*, 1981 WL 178828, at *2 (Pa.P.U.C. Dec. 12, 1981).

freeze should not be approved because it provides Brentwood customers with a false sense of security that rates will not be increased for a period of time when, in fact, PAWC cannot promise that a rate increase will not occur for these customers.

a. Customer Notices

BIE asserts provisions in the customer notice, like the rate freeze, are inherently misleading and ask the Commission to affirm misleading customers in order make a Section 1329 acquisition more appealing and is therefore not in the public interest. BIE points out customer notices often contain artificially low percentage increases that end up being much lower than the increase necessary to cover the cost to serve.

BIE asserts PAWC notified, Brentwood customers of a possible 11% increase but this estimate assumed the entire revenue deficiency would be allocated to water customers under Act 11.¹⁴³ BIE contends the actual estimated increase to Brentwood customers, prior to the Act 11 subsidy, would be approximately 16.5%,¹⁴⁴ but was estimated based solely on the purchase price and does not include any post-acquisition plant additions that may occur. In addition, BIE contends PAWC currently is acquiring other water and wastewater systems under Section 1329 at a rapid pace where most, if not all, of these systems operate at a revenue shortfall which other customers, including Brentwood customers if the Application is granted, would be expected to subsidize. BIE also argues PAWC has a history of under-projecting the increases necessary for systems acquired under Section 1329¹⁴⁵ and cites to examples involving the Royersford Application, at Docket A-2020-3019634¹⁴⁶ (where PAWC projected an increase of \$1,102,000, but in the first base rate case, PAWC showed an actual increase of \$2,061,092), the Upper Pottsgrove Application, at Docket A-2020-3021460 (where PAWC projected an increase of

¹⁴³ PAWC St. 3-Revised, p. 11.

¹⁴⁴ I&E St. 1, p. 25.

¹⁴⁵ I&E St. 1, p. 28.

¹⁴⁶ Note that in the Royersford Application, PAWC reflected the incorrect docket number of A-2020-3014248 on the schedules, which are reflected on I&E Ex. 1, Sch. 4, pp. 1–2.

\$1,002,000, but in the first base rate case, PAWC showed an actual increase of \$1,471,196), and the York Wastewater Application, at Docket A-2021-3024681 (where PAWC projected an increase of \$17,557,000, but in the first base rate case filed even before the York system was acquired, the actual increase was \$23,248,247).¹⁴⁷

BIE argues these comparisons reveal the projected revenue increase in each case was less than the increase in the first base rate case. Importantly, the notices PAWC provided to those customers understated the size of the rate increase that would be necessary for the acquired customers. BIE agrees exact certainty in predicting Brentwood's rate increase is not possible, however, the above information shows just how inaccurate PAWC's predictions have been in the past.

BIE contends the Commonwealth Court has noted these cases involve a substantial property right because the outcome impacts a rate increase.¹⁴⁸ The information contained in these customer notices is information upon which customers of the systems being acquired should be able to rely and the information contained therein should be as accurate as possible. BIE argues misleading customers about the real impact that an acquisition will have on their rates is not in the public interest nor does it benefit the public interest to mislead ratepayers into believing that PAWC has the ability to freeze rates for a certain period of time. BIE points out PAWC clearly knows the Commission ultimately holds the ratemaking authority to increase these rates, and it is imperative that Brentwood customers are given accurate information about their rates under PAWC's ownership. BIE argues that, to do otherwise will blindside customers when the false promises of a rate freeze are not realized and after rates are imposed that are much higher than the customers were able to anticipate given the information provided. For these reasons, BIE asserts a rate freeze is not in the public interest and should not be approved by the Commission.

¹⁴⁷ I&E St. 1, p. 29.

¹⁴⁸ *New Garden Order*, 195 A.3d 1055, 1068 (Pa. Cmwlth. 2018).

OCA's Position

a. Fair Market Value for Ratemaking Purposes

OCA notes it did not present any evidence regarding adjustments to the fair market value of the Brentwood system for ratemaking purposes. OCA asserts it agrees with BIE's position regarding PAWC's inclusion of plant which is not used and useful in its appraisals of the fair market value of the Brentwood system. OCA argues no party in this proceeding knows the actual fair market value of the Brentwood system because the fair market valuation should not include plant which services non-customers.

b. Tariff and Rates

OCA contends the tariff provided by PAWC – in the Application, in the amendment to the Application, and the rate filing – does not display correctly the rates paid by Brentwood customers.¹⁴⁹ The tariff provided specifies the treatment rates are “as determined by ALCOSAN.”¹⁵⁰ While OCA acknowledges the tariff is technically correct, OCA points out PAWC did not provide a reason why ALCOSAN rates should not be included on its tariff. ALCOSAN provided its rate projections for the next five years.¹⁵¹ OCA argues 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 themselves of pursuing information from other sources about ALCOSAN rate increases, when PAWC is better able to provide an accurate and digestible notice of how such rates will impact Brentwood customers.

¹⁴⁹ Appendix 12 (as amended); Supplement No. 47 to Tariff Wastewater-PA P.U.C. No. 16, Fourth Revised Page 13 (Brentwood Proposed Tariff).

¹⁵⁰ Appendix 12 (as amended).

¹⁵¹ Appendix 12 (as amended).

c. DSIC

OCA notes PAWC agreed that Brentwood assets will be excluded from the DSIC until the DSIC applies to customers of the Brentwood system.¹⁵² However, OCA contends PAWC rejected OCA's recommendation that PAWC modify its Long-Term Infrastructure Improvement Plan (LTIIP) within 90 days of closing, and PAWC argued "a single acquisition" should not require a modification to its LTIIP.

OCA points out that PAWC currently has five pending acquisitions before the Commission,¹⁵³ and asserts PAWC could close on any number of other pending acquisitions within 90 days of the closing herein, allowing for the Company to include several new systems in its amended LTIIP at a time. As such, OCA argues that the Commission requiring PAWC to file an amended LTIIP 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 LTIIP amendment.

d. Claims for AFUDC and Deferred Depreciation

OCA points out PAWC specifically requested herein for the Commission to pre-approve 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.¹⁵⁴ OCA also points out PAWC included Brentwood system assets in its 2023 Base Rate Case. Accordingly, OCA argues PAWC's request for AFUDC and deferred depreciation herein is not relevant because all post-acquisition improvements will be included in PAWC's new base rates.

¹⁵² PAWC St. 3-R at 5.

¹⁵³ 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).

¹⁵⁴ PAWC St. 3 at 19.

e. Transaction and Closing Costs

OCA notes it did not provide evidence, or suggest adjustments, concerning the transaction and closing costs claimed by PAWC in this Application.

f. Additional Issues

OCA did not refer to any additional issues.

g. Plant in Service Used to Serve Non-Customers

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

OCA points out that "rate base" is defined in the Public Utility Code 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,"¹⁵⁵ however, until the plant becomes used and useful in the public service, the capital cost expended to construct the plant may not be recovered.¹⁵⁶ OCA contends PAWC, as 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, but whether utility property is used and useful is committed to the discretion of the Commission.¹⁵⁷

OCA also notes that 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,

¹⁵⁵ 66 Pa.C.S. § 102.

¹⁵⁶ *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989).

¹⁵⁷ *Bell Tel. Co. v. Pa. Pub. Util. Comm'n*, 408 A.2d 917 (Pa. Cmwlth. 1979).

and the public.”¹⁵⁸ Accordingly, OCA contends the relationship that permits Whitehall Borough and the City of Pittsburgh to 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, pursuant to 66 Pa.C.S. § 102.¹⁵⁹ OCA points out, however, the Z Agreement allows ALCOSAN and the City of Pittsburgh to 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.¹⁶⁰

OCA notes PAWC’s averment 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, but OCA contends PAWC misstates the applicable law.¹⁶¹ OCA argues the Public Utility Code defines what a wastewater public utility is, not which acts constitute a “public utility service.”¹⁶² OCA points out the Public Utility 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.¹⁶³

OCA asserts 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.¹⁶⁴ Further, OCA points out municipal corporations and authorities are part

¹⁵⁸ 66 Pa.C.S. § 102.

¹⁵⁹ PAWC St. 2 at 6.

¹⁶⁰ *See* Appendix A-25.3 at 7, 28.

¹⁶¹ PAWC St. 2-R at 9-10.

¹⁶² *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).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

of “the public” under the Public Utility Code, and a municipal corporation includes a borough, when the borough was “created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.”¹⁶⁵ 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.¹⁶⁶ OCA notes PAWC offers wastewater service to municipalities in its Rate Zones One, Two, Three, Six, and Seven.¹⁶⁷

OCA argues PAWC, as a public utility, cannot provide free service to any member of “the public,” and “the public” includes the upstream municipalities.¹⁶⁸ OCA contends that 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,¹⁶⁹ but 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.¹⁷⁰ OCA contends Pennsylvania courts have held consistently that any offer of free service is, effectively, a departure from a Commission-approved tariff.¹⁷¹ OCA submits that, where the 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.

¹⁶⁵ 66 Pa.C.S. § 102.

¹⁶⁶ *Id.*

¹⁶⁷ *See* PAWC Supplement No. 46 to Tariff Wastewater PA P.U.C. No. 16.

¹⁶⁸ 66 Pa.C.S. § 1303; *Phila. Suburban Water Co. v. Pa. Pub. Util. Comm’n*, 808 A.2d 1044 (Pa. Cmwlth. 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.”).

¹⁶⁹ *Phila. Suburban Water*, 808 A.2d at 1051.

¹⁷⁰ *Id.* at 1055.

¹⁷¹ *See Scranton Elec. Co. v. School Dist. of Borough of Avoca*, 37 A.2d 725 (Pa. Super. 1944).

OCA argues 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.¹⁷² OCA contends that, 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.¹⁷³

In summary, OCA requests that, if the Commission finds PAWC satisfied its burden under Section 1103 and approves the Application, 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. OCA requests the Commission condition the granting of this Application 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.

h. Is the Rate Freeze a Rate Stabilization Plan

OCA notes PAWC proposes a two-year rate freeze for Brentwood customers.¹⁷⁴ 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.”¹⁷⁵ OCA argues that

¹⁷² I&E St. 1-SR at 20.

¹⁷³ 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.”).

¹⁷⁴ OCA St. 2 at 8.

¹⁷⁵ 66 Pa.C.S. § 1329(g).

PAWC’s proposal – to freeze rates for the Brentwood customers for two years after closing – is 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 indicated Brentwood customers’ rates will increase on the second anniversary of its acquisition date, meaning the Company proposed holding Brentwood rates constant for a period of time after its base rate case.

The Commission has required that when “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.”¹⁷⁶ OCA argues, however, PAWC did not provide the basis or impact of the plan, which has the effect of depriving the Commission and the parties of the ability to fully evaluate the benefits and harms of the proposed transaction.¹⁷⁷ OCA contends 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.¹⁷⁸

i. Should Future Customer Notices Show a Range of Impacts

OCA notes it recommended 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.¹⁷⁹ OCA asserts that, 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

¹⁷⁶ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, at 27 (Final Implementation Order entered Oct. 27, 2016).

¹⁷⁷ OCA St. 1 at 16.

¹⁷⁸ PAWC St. 3-R at 4.

¹⁷⁹ OCA St. 1 at 25.

representative of most of its customers' monthly water usage because it is merely the 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 increase, should the acquisition be approved by the Commission.

OCA notes that, while PAWC 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.¹⁸⁰ 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." Accordingly, OCA requests that, if the Commission approves the Application, the Commission should require or encourage PAWC to provide more accurate notices going forward to existing and acquired customers regarding a range of potential bill impacts following a proposed acquisition.

OSBA's Position

a. Fair Market Value for Ratemaking Purposes

OSBA took no position on this issue.

b. Tariff and Rates

OSBA notes that Section 7.03 of the APA addresses the current and future sanitary wastewater rates applicable to Brentwood customers and OSBA argues the key provision of Section 7.03, states:

1) Buyer shall implement the Seller's sanitary wastewater rates then in effect upon the Closing Date of the Proposed Transaction, inclusive of any PaPUC permitted or required surcharges or pass-through costs;

¹⁸⁰ Tr. at 383-84.

- 2) Buyer shall implement monthly billing for Brentwood customers at and after Closing;
- 3) Buyer shall not increase existing base rates for Brentwood customers until after the second anniversary of the Closing Date; and
- 4) Buyer shall include the rate provisions contained in Section 7.03(a) in its requested PaPUC Governmental Approval.

OSBA points out PAWC confirmed Brentwood's Request for Proposal (RFP) required a two-year rate moratorium, which the Company agreed to honor in order to submit a conforming bid. OSBA notes that Brentwood's wastewater rates are much lower than those of PAWC's Rate Zone 1 (*i.e.*, Main Division) by approximately 30.7%. Depending on the timing of the resolution of PAWC's next base rates case, OSBA argues there is the possibility that Brentwood customers base rates would be held constant beyond the effective dates of new rates established in the base rates case. OSBA opines that all of PAWC's wastewater base rates should be evaluated in each of the Company's base rate proceedings and, further, all rate areas should exhibit movement toward the system average wastewater rate (*i.e.*, toward cost of service) in each rate case, consistent with the Commission's long-standing policy of implementing single tariff pricing.

OSBA contends the Commission should reject the rate commitment contained in Section 7.03(a) of the APA as a condition for approval of the Proposed Transaction, to preclude the possibility that Brentwood customers might benefit inappropriately from a rate freeze that extends beyond the effective date of the new rates to be established in PAWC's next base rates case. Alternatively, OSBA recommends the Commission direct PAWC to impute revenues to its Brentwood service area, as necessary, to make up for any revenue shortfall associated with rate increase that would otherwise be applicable to Brentwood customers in PAWC's first base rate case following the closing date as a condition of approval of the proposed transaction. OSBA contends that, with this condition, PAWC's shareholders, rather than the general ratepayers, will bear the cost associated with PAWC's commitment to freeze the rates of Brentwood's customers. OSBA notes PAWC accepted the alternative recommendation in its Rebuttal, in response to OSBA's concerns and similar

concerns raised by OCA, PAWC accepted the alternative recommendation made by the OSBA and provided as follows:

[i]f PAWC filed a base rate case that will be effective prior to the second anniversary of Closing, PAWC will propose an increase for Brentwood customers that will become effective on the second anniversary of Closing and will calculate its proof of revenues as if the increase to Brentwood revenues were not delayed.¹⁸¹

OSBA requests that, if the Commission approves the Proposed Acquisition of the Borough's wastewater assets by PAWC, the approval should be conditioned on PAWC's requirement to impute the revenues to its Brentwood service area to make up for any revenue shortfall associated with the rate increase that would otherwise be attributable to Brentwood customers in the Company's first Base rate case following the Closing Date of the acquisition.

c. DSIC

OSBA took no position on this issue.

d. Claims for AFUDC and Deferred Depreciation

OSBA took no position on this issue.

e. Transaction and Closing Costs

OSBA took no position on this issue.

f. Additional Issues

OSBA took no position on these issues, except as outlined above under Tariff and Rates, concerning the Rate Freeze.

¹⁸¹ PAWC Statement No. 3-R at 4.

ALCOSAN's Position

a. Fair Market Value for Ratemaking Purposes

ALCOSAN took no position on this issue.

b. Tariff and Rates

Regardless of what the Commission decides in this matter, ALCOSAN argues it must ensure that, as a Pennsylvania municipal authority, it is empowered to continue to set its sewer rates and charges without Commission oversight, and that ALCOSAN is paid in full for its services. ALCOSAN contends no party disputes that it is a Pennsylvania joint municipal authority organized under and governed by the Municipality Authorities Act, as amended, 53 Pa.C.S. §§ 5601-5623.¹⁸² ALCOSAN asserts the Commission has no jurisdiction over municipal authorities, including over ALCOSAN's rates and services.¹⁸³ Consistent with well-established precedent, ALCOSAN contends the Commission has no jurisdiction over ALCOSAN, including jurisdiction over ALCOSAN's rates and charges for its sewage services.¹⁸⁴ Further, ALCOSAN asserts its rates and charges are not at issue in this proceeding.¹⁸⁵

ALCOSAN notes other parties raised issues regarding whether Brentwood customers should bear the full cost of ALCOSAN's service charges upon PAWC's acquisition of the System and ALCOSAN notes it takes no position on those issues. Importantly for

¹⁸² ALCOSAN St. 1, p. 2; Brentwood St. 1-R, p. 13; PAWC St. 3-R, p. 6; Tr. 211, 224-225, 398, 408.

¹⁸³ See *Rankin v. Chester Mun. Auth.*, 68 A.2d 458 (Pa. Super. 1949); *Elizabeth Twp. v. Mun. Auth. of McKeesport*, 447 A.2d 245 (Pa. 1982); *Graver v. Pa. Pub. Util. Comm'n*, 469 A.2d 1154 (Pa. Cmwlth. 1984); *Conyngnam Twp. v. Sanitary Sewer Auth. of the Borough of Shickshinny*, Docket No. C-2021-3023624 (Opinion and Order entered Nov. 1, 2023).

¹⁸⁴ PAWC St. 3-R, p. 6; Tr. 195, 225, 398.

¹⁸⁵ Tr. 400-401.

ALCOSAN's interests, ALCOSAN asserts no party disputed that in the event of PAWC's acquisition, ALCOSAN must and will be able to continue to determine its rates for its sewer services to users located in Brentwood, nor did any party dispute PAWC's obligation to pay ALCOSAN in full for such services to Brentwood users at the rates set by ALCOSAN.

ALCOSAN argues, if the Application is approved, it is imperative ALCOSAN continue to be able to establish and enforce its rate structure as authorized under Pennsylvania law to be able to continue to provide its wastewater treatment and conveyance services.¹⁸⁶ Further, ALCOSAN insists it is a fully ratepayer funded authority and must ensure that, if the Application is approved, it will continue to be paid for its services provided to users located in Brentwood.¹⁸⁷

ALCOSAN contends that, under PAWC's proposed tariff, ALCOSAN will continue to determine its rates for services to users located in Brentwood upon PAWC's acquisition of the Brentwood assets.¹⁸⁸ Accordingly, if the Application is approved, ALCOSAN agrees that PAWC's proposal for ALCOSAN to continue to determine its rates for conveyance and treatment services to users located in Brentwood without Commission oversight is correct, necessary to enable ALCOSAN to continue to provide its services, and consistent with well-established Pennsylvania law.

c. DSIC

ALCOSAN took no position on this issue.

d. Claims for AFUDC and Deferred Depreciation

ALCOSAN took no position on this issue.

¹⁸⁶ ALCOSAN St. 1, pp. 2, 8.

¹⁸⁷ ALCOSAN St. 1, p. 11.

¹⁸⁸ ALCOSAN St. 3, p. 7; Second Amended Appendix A-12 at Revised Page 11.

e. Transaction and Closing Costs

ALCOSAN took no position on this issue.

f. Additional Issues

ALCOSAN took no position on these issues.

C. Section 507 Approvals

PAWC's Position

PAWC seeks Commission approval, pursuant to Section 507, of the following agreements:

- 1) Asset Purchase Agreement and First Amendment to the Asset Purchase Agreement By and Between Brentwood Borough, as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of December 22, 2020 and amended March 2, 2023;
- 2) Agreement between Borough of Brentwood and City of Pittsburgh, dated October 14, 1936;
- 3) Streets Run Sewer Joint Management Agreement between Boroughs of Brentwood, Baldwin and Whitehall and the Western Mifflin Sanitary Sewer Authority dated July 19, 2000;
- 4) Cooperation and Allocation of Responsibilities Agreement between Borough of Brentwood and Pennsylvania-American Water Company dated March 2, 2023;

- 5) Bulk Wastewater Conveyance Agreements (The Borough of Brentwood Ordinances No. 188 and 189) for Fairhaven Road, Stewart Avenue, Saw Mill Run between the Borough of Brentwood, Baldwin Township, Carrick Borough and Overbrook Borough Dated as of September 30, 1926; and
- 6) Bulk Wastewater Conveyance Agreement (Saw Mill Run) between the City of Pittsburgh, Borough of Brentwood, Carrick Borough, Castle Shannon Borough, Dormont Borough, Knoxville Borough, Mt. Lebanon Township, Mt. Oliver Borough and Overbrook Borough dated October 31, 1925.

PAWC contends the specific agreements are necessary to allow PAWC to provide service to the service territory currently served by the System and, if the proposed transaction is approved, the agreements consequently will be reasonable and in the public interest.

Brentwood's Position

Brentwood asserts it endorses and adopts PAWC's position, as expressed in PAWC's Main Brief.

BIE's Position

BIE did not address this issue.

OCA's Position

OCA contends the Application, as written, is not in the public interest regarding the Cooperation Agreement between Brentwood and PAWC. OCA argues PAWC will benefit from ALCOSAN refunds without guaranteeing that those refunds will be passed on to ratepayers, despite ratepayers funding the services resulting in the refund. Further, PAWC's existing 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.

OCA notes that, to receive approval of a contract between a public utility and a municipal corporation, the public utility must seek Commission approval of that contract, pursuant to 66 Pa.C.S. § 507. When considering the filing, the Commission is tasked, under 66 Pa.C.S. § 507, with ensuring the contract is reasonable, legal, and otherwise valid. 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, pursuant to 66 Pa.C.S. § 508.

OCA points out that, pursuant to the Cooperation Agreement, PAWC is required to pay for all uncollectible accounts on behalf of ALCOSAN. Specifically, Paragraph 14 of the Z Agreement required Brentwood to remit the uncollectible amount of ALCOSAN charges to ALCOSAN out of the Borough's revenues.¹⁸⁹ 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.¹⁹⁰ Therefore, until such a time as the uncollectible amounts are collected by PAWC, the Company's customers across the Commonwealth will have to pay the difference between what PAWC collects from Brentwood customers and what was owed to ALCOSAN. Any uncollectible expense required to provide for delinquent ALCOSAN bills would, therefore, be included in PAWC's revenue requirement. Accordingly, OCA argues PAWC's claim – to simply act as a “billing agent” for ALCOSAN – is an oversimplification and misnomer.

OCA stresses PAWC also would receive a refund from ALCOSAN as an annual credit for ALCOSAN's savings in billing expenses resulting from PAWC's election to pay quarterly instead of requiring ALCOSAN to bill customers directly.¹⁹¹ While a “billing agent” may normally expect to receive compensation for collecting from customers on behalf of a third-

¹⁸⁹ Appendix A-25.3 at 35.

¹⁹⁰ Appendix A-25.3 at 6.

¹⁹¹ Appendix A-25.3 at 4.

party, the cost to PAWC to do so is nominal. PAWC continues to emphasize, as the water provider for Brentwood customers, wastewater and water billing would occur at the same time, should the Application be approved. OCA points out that the cost for PAWC to provide billing services for ALCOSAN, as a result, would be an infinitesimal increase over the cost PAWC already pays to bill Brentwood customers for their water service.¹⁹² OCA asserts, to the extent PAWC incurs 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.¹⁹³ Accordingly, OCA argues PAWC will receive an annual refund which it will not pass on to consumers for incurring little expense while PAWC ratepayers pay the full bill.

Further, OCA contends the combination of PAWC's ability to receive the refund for conducting collection activities on behalf of ALCOSAN, with the cost of delinquent accounts that would be paid out of PAWC's rates charged to its customers, indicate the Cooperation Agreement, as written, is unreasonable. OCA asserts the Cooperation Agreement 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. OCA contends that, 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, pursuant to 66 Pa.C.S. § 507. Instead, OCA notes the Commission is vested with the ability to revise the contract, such that its terms become just, reasonable, and equitable.¹⁹⁴

In addition, OCA notes that the Cooperation Agreement, as written, does not include a provision requiring Brentwood or PAWC to provide notice to its customers of ALCOSAN rate increases prior to when customers are charged higher rates. Also, OCA points out the Cooperation Agreement fails to require PAWC to update tariff filings and reflect the

¹⁹² PAWC St. 1-SR at 14.

¹⁹³ Appendix A-25.3 at 29-30.

¹⁹⁴ 66 Pa.C.S. § 508; *Columbia Gas v. Pa. Pub. Util. Comm'n.*, 535 A.2d 1246 (Pa. Cmwlth.1988) (approving the Commission's balancing the interests of the parties by reforming an inequitable contract).

current or anticipated increases in rates in its tariffs.¹⁹⁵ OCA asserts PAWC will be able to incorporate that information into its tariff and plan on when such filings or notices should be required as the anticipated ALCOSAN rate increases are available publicly.¹⁹⁶ OCA contends 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, OCA avers 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. OCA notes the Commission previously required any utility proposing a pass-through to prove that the pass-through is necessary, and unique, unexpected, or non-recurring, such that it is not part of the normal, ongoing cost of providing service. In addition, the charge had to be easily identifiable and beyond the utility's control.¹⁹⁷

OCA asserts that in *Newtown*, a water utility sought to include in its tariff an adjustment clause for purchased water where, according to the water utility, the cost of purchased water was approximately 29% of its operations expenses.¹⁹⁸ OCA points to the Aqua 2021 Base Rate Case¹⁹⁹, by contrast, and asserts the purchased water adjustment charge which Aqua sought was only approximately 1.4%.²⁰⁰ While in *Newtown*, the purchased water adjustment charge was approved under Section 1307(a), the purchased water adjustment charge was rejected in Aqua, in part due to the predictable nature of the charge and its immaterial overall impact on Aqua's budget.²⁰¹ OCA contends that with this Application, ALCOSAN

¹⁹⁵ See 66 Pa.C.S. § 1308(a); 52 Pa. Code § 53.45.

¹⁹⁶ OCA St. 2 at 8.

¹⁹⁷ *Popowski v. Pa. Pub. Util. Comm'n*, 13 A.3d 583 (Pa. Cmwlth. 2011) (*Newtown*).

¹⁹⁸ *Id.* at 584.

¹⁹⁹ *Aqua Pennsylvania, Inc. v. Pa. Pub.Util.Comm'n*, Docket No. R-2021-3027385, 2022 PA. PUC LEXIS 161, *155 (Opinion May 12, 2022) (Aqua 2021 Base Rate Case).

²⁰⁰ Aqua 2021 Base Rate Case at *155.

²⁰¹ Compare *Newtown*, 13 A.3d at 591 with Aqua 2021 Base Rate Case at *155.

treatment charges would comprise approximately 0.9% of PAWC's operations and maintenance expenses.²⁰² OCA contends PAWC failed to properly furnish the necessary evidence under Section 1307 to satisfy the statutory requirements for the creation of a pass-through charge, even if the charges represented a significant proportion of PAWC's expenses.

OCA argues the Commission should require PAWC 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. OCA points, as an example, to Veolia Water which currently includes a pass-through charge for purchased water for its customers in Bethel Township, the Township of Concord, and Delaware County.²⁰³ OCA notes those customers are charged a separate line item on their bill, which is calculated in the tariff, to contribute toward the purchased water costs but, 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.²⁰⁴

OCA argues 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 services billed to PAWC, and that Brentwood customers receive the protection of Commission regulations under PAWC regarding rates charged by PAWC. Accordingly, OCA requests the Commission exercise its discretion under Section 508 of the Public Utility Code to reform the Cooperation Agreement and require PAWC to 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 and, if the Commission decides to maintain the pass-through billing arrangement, the Cooperation Agreement should require PAWC to comport with the Commission regulations regarding customer protections for adjustable rates.

²⁰² PAWC Exh. AEE-1REV; Appendix F.

²⁰³ *See* Supplement No. 66 to Water – Pa. P.U.C. No. 7 at 65-66.

²⁰⁴ *Id.*

OSBA's Position

OSBA took no position on this issue.

ALCOSAN's Position

ALCOSAN notes as part of its Application, PAWC requests the Commission's approval of the Cooperation Agreement, which is attached to the Application as Appendix A-25.3. ALCOSAN contends it takes no position on the proposed transaction but does assert that if the Commission approves the proposed transaction, the record evidence demonstrates a substantial public benefit for approving the Cooperation Agreement as part of the transaction, including benefits to Brentwood users and all users within ALCOSAN's service territory. Without the Cooperation Agreement, ALCOSAN argues it cannot ensure its ability to continue to provide its integral and exclusive wastewater treatment and conveyance services to its 83 municipal customers, including users located in Brentwood.²⁰⁵

D. Preservation of the Z Agreement and Other Z Agreements

PAWC's Position

PAWC requests the Commission approve the Cooperation Agreement pursuant to Section 507 of the Code. PAWC acknowledges, and agrees with, ALCOSAN's request to preserve and maintain as uniform the Z Agreement and the Other Z Agreements.²⁰⁶ PAWC notes it is committed to honoring its obligations under the Cooperation Agreement and requests the Commission should take no action to modify the Z Agreement or the other Z Agreements in any way.

Brentwood's Position

²⁰⁵ ALCOSAN St. 1, pp. 9-10.

²⁰⁶ ALCOSAN St. 1 p. 4.

Brentwood asserts it endorses and adopts PAWC's position, as expressed in PAWC's Main Brief.

BIE's Position

BIE did not address this issue but notes its arguments related to this issue were specific to the issues of plan in service used to serve non-customers.

OCA's Position

OCA notes it presented no evidence on the issue of the preservation of the Z Agreements and other Z Agreements, but indicates it supports ALCOSAN's position – that the uniformity of the Z Agreements is an important consideration for approval of the instant Application. OCA submits that approval of the Application interferes with ALCOSAN's current regionalization efforts, including its Regionalization Plan and, 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. Accordingly, OCA contends the preservation of the uniformity of the Z Agreements requires the Application, as written, should be denied, as preservation of the Z Agreements' uniformity provides significant benefit to wastewater customers and municipalities within ALCOSAN's treatment network, and the Application substantially interferes with that preservation.

OSBA's Position

OSBA took no position on this issue.

ALCOSAN's Position

ALCOSAN argues at length about the Z Agreement and the Other Z Agreements. It asserts the Z Agreement and the Other Z Agreements are the foundation upon which

ALCOSAN's Clean Water Plan and Regionalization Program are based and are, therefore, essential for ALCOSAN to meet its obligations under the Modified Consent Decree.²⁰⁷ ALCOSAN argues that, to continue to provide its wastewater treatment and conveyance services and meet all obligations related to the same, the terms of the Z Agreement and the Other Z Agreements must remain unchanged and continue to be uniformly and consistently interpreted and implemented.²⁰⁸ ALCOSAN contends no party presented any evidence or argument disputing ALCOSAN's continued essential role as the exclusive service provider for sanitary sewage conveyance and treatment in its service territory, and likewise no party presented any evidence or argument to dispute the essential role of the Z Agreement and the Other Z Agreements and the need for preserving and not amending these agreements. ALCOSAN points out PAWC and Brentwood agree that, in the event of PAWC's acquisition, the Z Agreement must remain in place among the original parties and cannot be directly assigned to PAWC.²⁰⁹

ALCOSAN contends PAWC and Brentwood entered into the Cooperation Agreement to ensure that the Z Agreement and the Other Z Agreements would not be compromised and would continue to be uniform in the event of PAWC's acquisition of Brentwood's System.²¹⁰ ALCOSAN notes it is a third-party beneficiary of the Cooperation Agreement "with rights to enforce the respective covenants and obligations of PAWC and [Brentwood] as set forth in this Agreement."²¹¹ Further, ALCOSAN contends that, under the Cooperation Agreement, Brentwood and PAWC expressly acknowledge the essential role of the Z Agreement and the Other Z Agreements for ALCOSAN to be able to continue to serve the sewage conveyance and treatment needs of its municipal customers.²¹² ALCOSAN argues the terms of the Cooperation Agreement require PAWC and Brentwood to support the ongoing

²⁰⁷ ALCOSAN St. 1, p. 8.

²⁰⁸ ALCOSAN St. 1, p. 8.

²⁰⁹ ALCOSAN St. 1, p. 9; Application at ¶ 44; PAWC St. 1, p. 8-9.

²¹⁰ Tr. 133; ALCOSAN St. 1, p. 9.

²¹¹ Application at Appendix A-25.3, Section 10.

²¹² Application at Appendix A-25.3, Section 2.a.(ii).

implementation and adherence to the Z Agreement and not undermine the Z Agreement or the Other Z Agreements.²¹³ In short, ALCOSAN contends that, in the event the Application is approved, the Commission must approve the Cooperation Agreement as part of the transaction in the interest of the public.

E. Recommended Conditions for Approval

PAWC's Position

a. Missing Easements and Other Property Rights

PAWC notes it agrees with BIE's recommendation that, before the Commission approves the proposed transaction, the Commission should impose a condition on its approval that would prohibit Closing unless and until Brentwood proves to PAWC that it has: (a) identified all missing easements and property rights, (b) taken action to obtain any missing easements and property rights for conveying the same to PAWC at Closing, and (c) borne all costs and expenses for obtaining and conveying all missing easements and property rights.²¹⁴ Further, PAWC notes BIE recommended that PAWC and Brentwood should have the option to proceed with Closing, if an escrow account can be established to obtain any post-Closing transfers of missing easements and property rights, in the event circumstances beyond Brentwood's control prevent it from transferring all easements and property rights at Closing. PAWC notes BIE's recommendation is similar to several settlements that PAWC entered into in previous Section 1329 acquisition proceedings and points out the APA provides for an Easement Escrow Fund for easements that are missing as of Closing.²¹⁵

b. Cost of Service Studies

²¹³ Application at Appendix A-25.3, Section 2.a.(ii).

²¹⁴ I&E St. 2 p. 7.

²¹⁵ PAWC notes Brentwood agreed to fund the Easement Escrow Fund in the amount of \$2,000 for each missing easement. PAWC St. 1-R p. 5.

PAWC points out OCA recommended that PAWC should be required to provide a separate cost of service study (COSS) for the system in its next base rate case, if the proposed transaction is approved, on the grounds the costs associated with the acquired system should be evaluated separately from PAWC's other wastewater systems. PAWC notes OCA also recommended that, if approved, PAWC should be required to submit a COSS that removes all costs and revenues associated with the operation of the Brentwood System.²¹⁶ PAWC asserts it already submitted a cost of service study in its current base rate proceeding (at Docket No. R-2023-3043190), which study removes all costs and revenues associated with the operation of the Brentwood system and a separate cost of service study for the system.²¹⁷ PAWC contends this approach is similar to what PAWC did in the Company's prior base rate case for certain recently-acquired systems.²¹⁸

However, PAWC asserts it disagrees with BIE's recommendation that, if approved, PAWC should be required to provide a separate COSS for the Brentwood system in all future rate cases. This COSS would separately identify the plant in service, the test year plant additions and retirements, and all taxes, expenses and revenue separately for the Brentwood system, and would remove the plant and expenses assigned or allocated to "non-customers" and any expenses associated with "non-customer plant." PAWC points out BIE opined all plant and expenses related to "non-customers" should be excluded from any revenue requirement claims in a base rate case.²¹⁹ PAWC asserts it disagrees with BIE's assertions because it is premature at this point to determine that a separate COSS will be appropriate in all future rate cases, and parties to future rate cases are free to recommend a separate cost study, if they believe it is necessary.²²⁰

²¹⁶ OCA St.1 p. 22.

²¹⁷ PAWC St. 1 p. 18.

²¹⁸ PAWC St. 3-R p. 11.

²¹⁹ I&E St. 1 pp. 16-20.

²²⁰ PAWC St. 3-R p. 12.

PAWC further objects to BIE’s recommendation because PAWC continues to assert all assets that it is acquiring are used and useful in providing service to Brentwood customers, and it would be inappropriate to exclude a portion of these assets from the rate base and make those costs non-recoverable to PAWC.²²¹ PAWC acknowledge a COSS theoretically might be able to assign a portion of the cost of wastewater collection to Upstream Municipalities, PAWC argues this kind of COSS would provide an incomplete picture. PAWC argues that – if the cost would have existed even in the absence of agreements with Upstream and Downstream Municipalities – the cost is necessary to provide service to Brentwood customers and must be recoverable.²²²

d. Rate Freeze

PAWC points out that, pursuant to Section 7.03(a) of the APA, Brentwood’s rates will not be increased until two years following Closing. While initially OCA, OSBA and BIE opposed this rate freeze,²²³ PAWC notes these parties no longer appear to oppose the rate freeze. PAWC asserts that, in the event it files a base rate case to be effective prior to the second anniversary of Closing, it will propose an increase for Brentwood customers, to become effective on the second anniversary of the Closing. PAWC also commits that, if it files a base rate case that will be effective prior to the second anniversary of Closing, it will calculate its proof of revenues as if the increase to Brentwood revenues was not delayed.²²⁴ PAWC also notes it proposed that rates for Brentwood’s customers increase in August 2024 in its recently-filed base rate case, but calculated PAWC’s proof of revenues as if the effective date was not delayed.²²⁵

e. Customer Notice

²²¹ PAWC St. 3-R p. 11.

²²² PAWC St. 3-R p. 12.

²²³ OCA St. 2 p. 11; OSBA St. 1 p. 7; I&E St. 1 p. 22.

²²⁴ PAWC St. 3-R p. 4.

²²⁵ *See*, Docket No. R-2023-3043190 *pro forma* tariff and PAWC Exhibit 10-D.

PAWC points out both OCA and BIE recommended the Commission impose conditions pertaining to customer notice. OCA argued the Commission should not approve the proposed transaction because of the customer notice,²²⁶ and opined that “[t]he lack of proper customer notice alone should influence the decision about whether this transaction should be approved.”²²⁷ PAWC argues the Commission should reject OCA’s argument as inconsistent with Sections 1102 and 1103, because OCA would have the Commission disapprove the proposed transaction, regardless of the benefits of the Transaction, even though Sections 1102 and 1103 require the Commission to weigh the benefits against the detriments of the proposed acquisition.

PAWC also argues OCA’s argument should be rejected on the merits. PAWC contends OCA found the customer notice to be deficient for two reasons: (1) the rate impact of future PAWC investments in the Brentwood System was not included in that customer notice; and (2) customer notice was deficient because it did not discuss changes in ALCOSAN’s rates during the two-year rate freeze period.²²⁸

PAWC argues OCA errs in its recommendation that the Commission should require PAWC to include capital investment in the customer notice calculations in future Section 1329 proceedings, in part because such a requirement would make PAWC’s customer notice consistent with how Aqua Pennsylvania calculates rate impact for purposes of its Section 1329 customer notices.²²⁹ PAWC contends the Commission should reject these arguments because it is not reasonable to require PAWC’s notice to conform to the methodology utilized by Aqua Pennsylvania. PAWC argues the reasons for Aqua Pennsylvania’s treatment are unknown to PAWC and should not be binding on PAWC.

²²⁶ OCA St. 2 pp. 10-11; OCA St. 2-R pp. 6-7.

²²⁷ OCA St. 2-R p. 7.

²²⁸ OCA St. 2-R p. 3.

²²⁹ OCA St. 1 p. 24.

PAWC asserts the notice as provided used the same methodology agreed to by multiple parties, including OCA, and the methodology was approved by the Commission in the *Steelton Order*, which did not include post-acquisition improvements. PAWC argues OCA is disingenuous to argue the Transaction should be disapproved because PAWC gave customers notice in compliance with a Commission order. PAWC contends that, when it sends the Notice of Proposed Rate Base Addition to its current and future customers, PAWC is noticing customers of the estimated revenue requirement of the acquisition, utilizing the proposed ratemaking rate base. PAWC asserts that herein it seeks approval of the ratemaking rate base, in accordance with Section 1329 but it does not seek pre-approval of the cost of future, post-acquisition investments. PAWC contends it is correct to issue a customer notice that reflects what the Company is requesting, which is the revenue requirement associated with the proposed rate base.²³⁰

PAWC acknowledges notice is required for Section 1329 acquisitions,²³¹ but whether “individualized notice is required depends on whether the outcome of the proceeding binds the Commission to increase rates.”²³² PAWC also acknowledges a rate base determination is fundamental to a determination of rates, and accordingly individualized notice has to be given to all ratepayers of the proposed sale as well as an opportunity for them to participate in the Section 1329 proceeding.²³³ PAWC agrees that notice of the sale is required due to the rate base determination that the Commission will make in this proceeding, and because rates will be set in the future based on that approved rate base.²³⁴

²³⁰ PAWC St. 3-R pp. 13-14.

²³¹ *New Garden Order*, 195 A.3d 1055.)

²³² *Id.* at 1069.

²³³ *Id.*

²³⁴ PAWC asserts the customers of PAWC and Brentwood received direct notice of the proposed transaction, which notified customers where customers could find additional information if they were interested in it. PAWC Exhibit MS-2 Appendix A-18-d. Notice of the Application was also published in the *Pennsylvania Bulletin*, which also provided information about where additional information could be found. 52 *Pa.B.* 6139-6140 (Sept. 30, 2023).

The Company argues it provided notice of the sale, including notice of the purchase price for which it requests approval but asserts it is not requesting currently a rate base determination for its projected future capital investments, nor is it requesting pre-approval of those investments. PAWC requests the Commission reject OCA's argument – that PAWC's customer notice was fatally flawed because it did not include post-acquisition improvements – as well as reject OCA's argument – that PAWC's notice to Brentwood customers was deficient because it did not inform Brentwood customers about ALCOSAN rate increases during the “rate freeze” period.²³⁵ PAWC contends OCA is in error to insist PAWC must notify customers about another provider's rate increase but it does note that, since Brentwood currently notifies its customers of changes in ALCOSAN's charges, PAWC intends to do the same if the Transaction is approved.²³⁶

Furthermore, PAWC contends the purpose of the notice is to advise PAWC's present and future customers of the potential impact of the rate base determination that the Commission will make in a proceeding, but an increase in ALCOSAN's charges during the “rate freeze” period will not affect the Commission's rate base determination herein. PAWC asserts there was no need for a change in ALCOSAN's charges to be reflected in the notice that was sent to customers in connection with this Transaction.

PAWC also notes BIE recommended a condition concerning customer notice that, if the proposed transaction is approved, the Commission should affirm that future base rate increases are “likely to be higher than projected by PAWC.”²³⁷ PAWC opposes this proposal, as a thinly veiled request that the Commission direct PAWC to modify the methodology it uses to calculate the customer notice. PAWC points out the Commission approved a settlement in which PAWC, BIE, and other parties agreed on the methodology that PAWC would use to complete its customer notice, and PAWC argues the methodology should not be changed by Commission order now because BIE is dissatisfied with the bargain it struck.

²³⁵ OCA St. 1 at 8; OCA St. 2R p. 3.

²³⁶ Brentwood St. 1-R p. 13.

²³⁷ I&E St. 1 p. 32; I&E St. 1-SR p. 34.

e. ALCOSAN Charges and Discounts

PAWC notes that Brentwood provides wastewater collection and conveyance service to its customers while ALCOSAN provides wastewater treatment service to those same customers. PAWC acknowledges ALCOSAN could bill Brentwood's customers directly, however, in the Z Agreement, ALCOSAN gave municipalities the option of billing ALCOSAN's customers in return for a payment approximating the amount that ALCOSAN saved in billing expense because the municipality opted to serve as ALCOSAN's billing agent.²³⁸ PAWC points out Brentwood selected this option and has acted as a billing agent for ALCOSAN for years, by showing ALCOSAN's charges as a separate line item on bills to Brentwood's customers.

PAWC contends it agreed to assume this obligation of Brentwood in the Cooperation Agreement.²³⁹ As compensation for this service, PAWC will receive a payment in an amount approximating the amount ALCOSAN saves in billing expenses. PAWC asserts this ALCOSAN payment would benefit Brentwood's existing customers for some of the same reasons that they benefit from having a single provider of water and wastewater service – the bill paying process is easier and more efficient for customers because they pay two bills with one payment.

PAWC contends it disagrees with OCA's recommendation that ALCOSAN's charges be included in PAWC's rates as an operations and maintenance expense.²⁴⁰ PAWC argues OCA seeks to treat Brentwood like other PAWC collection-only systems, but the facts are different at Brentwood in comparison. Accordingly, PAWC asserts Brentwood should be treated differently. PAWC points out it is a bulk customer of the treatment provider at its other

²³⁸ PAWC Exhibit MS-2, Appendix A-25.3 ¶ 16.

²³⁹ PAWC Exhibit MS-2, Appendix A-25.3 ¶ 2.g.

²⁴⁰ OCA St. 1R p. 11; OCA St. 2R p. 2.

collection-only systems and, therefore, PAWC appropriately includes the treatment provider's rates in its rates as an operations and maintenance expense.²⁴¹

PAWC asserts Brentwood, in contrast, is not a customer of ALCOSAN and contends that, upon Closing, PAWC will not be a customer of ALCOSAN either. PAWC's conveyance customers in Brentwood would remain customers of ALCOSAN because PAWC would simply be the billing agent for the provider.²⁴² As a result, PAWC intends that charges collected on behalf of ALCOSAN will be recorded to a "collection for others" liability account and will not be revenue to PAWC.²⁴³ PAWC argues its billing arrangement with ALCOSAN would be similar to the consolidated billing that electric distribution companies perform for electric generation suppliers and, because of this factual difference, the two situations should not be treated the same for ratemaking purposes.²⁴⁴ PAWC contends that because Brentwood's collection-only customers are customers of ALCOSAN, ALCOSAN's charges should not be spread to other PAWC wastewater customers, because this action would improperly increase the cost of the Transaction to PAWC's wastewater customers (and possibly PAWC's water customers, pursuant to 66 Pa.C.S. § 1311(c)).

PAWC contends that by collecting the ALCOSAN charges from Brentwood customers, it ensures that the cost causers pay the appropriate costs, and it properly aligns price signals by timely reflecting ALCOSAN charges on customer bills. PAWC points out that the ALCOSAN charges are a significant expense, representing more than 50% of current bills for Brentwood customers.²⁴⁵ PAWC argues that, if the Commission were to accept OCA's recommendation – to not allow PAWC to timely collect the ALCOSAN charges by continuing to

²⁴¹ Tr. 391.

²⁴² Tr. 394.

²⁴³ PAWC St. 3-R p. 6; Tr. 394.

²⁴⁴ PAWC St. 3-R p. 6.

²⁴⁵ OCA St. 1, p. 19.

reflect them on customer bills – regulatory accounting treatment may be necessary to allow PAWC to recover increases to this cost between rate cases.²⁴⁶

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

- a. In addition to the Minimum Charge and the Conveyance Charge, customers will be required to pay rates for Wastewater/Sewage treatment to Premises.
- b. The rates for Wastewater/Sewage treatment to Premises within the Authority's service area are established by ALCOSAN, and are paid by the Authority to ALCOSAN. Information on ALCOSAN's rates is available on its website.
- c. Wastewater/Sewage treatment charges may be reflected on Authority bills/invoices as ALCOSAN charges, basic service and sewage treatment.^[247]

PAWC argues there is no reason why it should not be permitted to use the same arrangement.

Finally, PAWC refers to the Surrebuttal Testimony of Mr. DeMarco in which he notes that Brentwood customers could lose the ALCOSAN low-income discount if the Commission adopts OCA’s recommendation to include ALCOSAN’s charges in PAWC’s rates. To offset the loss of this assistance, Mr. DeMarco recommends the Commission direct PAWC to increase the amount of its low-income discount for wastewater by \$15 per month.²⁴⁸

PAWC argues Mr. DeMarco’s proposed discount would effectively shift an ALCOSAN-funded discount to a PAWC ratepayer-funded discount, but contends it is unreasonable for OCA to ask PAWC’s customers to finance a low-income assistance program to

²⁴⁶ PAWC St. 3-R pp. 6-7. In the absence of such treatment, PAWC contends its shareholders would bear the risk of changes in ALCOSAN’s rates between PAWC’s rate cases. Tr. 405.

²⁴⁷ PAWC Exhibit AEE-2.

²⁴⁸ OCA St. 1SR p. 11.

make up for a discount that Brentwood customers will lose because of another OCA recommendation. Instead, PAWC contends the Commission should reject the proposal to include ALCOSAN's charges in PAWC's rates, and allow Brentwood customers to remain eligible to receive the discount they currently receive from ALCOSAN.

Additionally, PAWC opposes OCA's recommendation because:

The Company has an existing low income discount that has been approved by the Commission to provide discounts ranging from 30 percent to 80 percent off the total wastewater bill for customers between 0 and 150 percent of the federal poverty level. These discounts apply to eligible residential customers in all [rate zones]. The OCA has not provided any reason that if the Commission adopts the OCA proposal regarding ALCOSAN billing, the discount available to Brentwood customers should be different than the discount available to other Pennsylvania-American customers. The Company recommends that its discount program not be fragmented, with different levels of discount applying to different groups of customers.^[249]

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

f. Specific Notice for Brentwood Customers Prior to Closing

PAWC acknowledges OCA's recommendation that the Commission should require PAWC to issue a notice to Brentwood customers:

outside of the normal bill messages to explain their new customer service options, bill payment options, how to qualify and enroll in low income programs available from both PAWC and ALCOSAN, as well as the change in policies and rights governing collection practices compared to prior Brentwood practices and policies.^[250]

²⁴⁹ Tr. 376.

²⁵⁰ OCA St 2 p. 12.

PAWC asserts it has no objection to this recommendation and notes it conveys most of this information to customers in its standard welcome packet when a system is acquired.²⁵¹

g. Payment Agent in Brentwood

PAWC notes OCA's recommendation that, if the Transaction is approved, the Commission should require PAWC to arrange for a payment agent in Brentwood to collect customer bills.²⁵² PAWC objects to this proposal because it already is the provider of water service in Brentwood and does not have a local payment agent. PAWC argues there is no need for a local payment agent if it becomes the wastewater provider in the area.²⁵³ PAWC contends many customers pay bills over the phone and online, and OCA's recommendation would be an unnecessary cost imposed on the Company (and its ratepayers) – particularly considering that Brentwood does not presently offer its customers this payment option.²⁵⁴

Brentwood's Position

Brentwood asserts it endorses and adopts PAWC's position, as expressed in PAWC's Main Brief concerning:

1. Missing Easements and Other Property Rights
2. Cost of Service Studies
3. Rate Freeze
4. Customer Notices
5. ALCOSAN Charges and Discounts

²⁵¹ PAWC St. 1-R p. 17.

²⁵² OCA St. 1 p. 12; OCA St. 2SR p. 8.

²⁵³ Tr. 377.

²⁵⁴ Brentwood St. 1-R p. 10.

6. Specific Notice for Brentwood Customers prior to Closing
7. Payment Agent in Brentwood

Brentwood asserts its customers will receive an improved, more streamlined billing process if the Commission approves the Transaction. Brentwood notes it currently acts as a billing agent for ALCOSAN and it includes ALCOSAN's wastewater charges on the monthly bills.²⁵⁵ Brentwood notes it remits payments to ALCOSAN on a quarterly basis. In exchange for performing the billing and collection of payments operations, Brentwood notes it receives an annual credit from ALCOSAN which approximates the amount ALCOSAN saves because it does not perform billing operations, pursuant to the Z Agreement.²⁵⁶ Brentwood notes PAWC has agreed to assume the same obligation to ALCOSAN, pursuant to the Cooperation Agreement.²⁵⁷ Brentwood argues the consolidated billing that will result after Closing will avoid confusion and limit the number of utility bills customers receive, which changes are in the best interest of Brentwood's residents.²⁵⁸

BIE's Position

BIE contends the Commission should deny the Application but, if the Commission determines to grant the Application, BIE recommends the following conditions below.

- a. Missing Easements and Other Property Rights

BIE recommends the Commission not permit PAWC and Brentwood to close on the proposed transaction unless and until Brentwood provides proof to PAWC's satisfaction that Brentwood (1) identified all missing easements including public rights-of-way and other

²⁵⁵ See Brentwood St. 1-R, p. 13; *see also* Z Agreement, Para. 16.

²⁵⁶ See Z Agreement, Para. 16.

²⁵⁷ See Cooperation Agreement, Para. 2(g).

²⁵⁸ Brentwood St. 1, p. 15.

property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to PAWC at closing; and (3) assumed all costs and expenses for obtaining and conveying the missing easements and other property rights so PAWC's ratepayers are not burdened with those costs and associated expenses.²⁵⁹ In addition, BIE requests the Commission condition the approval of PAWC's Application that, if there are circumstances beyond Brentwood's control where Brentwood is unable to transfer all missing easements including public rights-of-way and other property rights before or at the closing of the transaction – PAWC and Brentwood may at their discretion close the transaction without the transfer of missing easements and other property rights, provided PAWC and Brentwood establish an escrow account with an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the easements and other real property rights.²⁶⁰ BIE notes PAWC has agreed to establish an Easement Escrow Fund which will be funded with \$2,000 for each missing easement at the time of closing.²⁶¹ BIE notes PAWC had no objection to these provisions.²⁶²

BIE points out the Commission recently acknowledged its concern about missing easements and other property rights in a recent PAWC's Section 1329 Application,²⁶³ where the Commission directed PAWC and the Township to continue working to achieve the transfer of real property rights and permitted PAWC, at its discretion, to close the transaction without the transfer of all real property rights, provided that an escrow account was established from the purchase price to be used to obtain any post-closing transfers of the real property rights. BIE contends that, since both PAWC and BIE agree, any Commission approval of this Application should be conditioned on the closing not occurring unless and until these identified provisions are met.

²⁵⁹ I&E St. 2, pp. 6-7.

²⁶⁰ I&E St. 2, p. 7.

²⁶¹ PAWC St. 1, p. 13.

²⁶² PAWC St. 1-R, p. 4.

²⁶³ *Application of Pennsylvania American Water Co. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Upper Pottsgrove Township*, Docket No. A-2020-3021460, p. 3 (Order entered Sept. 15, 2021).

b. Cost of Service Studies

BIE points out the primary goal of a COSS is to determine a utility's revenue requirement to serve its different customer classes. BIE notes the COSS will determine the cost to operate the different systems, calculate the cost of the utility's services, separate the costs between the different customer classes, attribute the costs to the different classes, determine how the costs will be recovered from the different customer classes, and establish the existence and extent of any inter- or intra-class subsidizations. BIE notes assets within the Brentwood system are used to serve non-customers, yet neither PAWC nor Brentwood took efforts to perform a COSS study and to determine the value of the plant that serves non-customers.

BIE argues jurisdictional customers should not be required to pay for a return of and a return on plant that serves non-customers as this cost would be contrary to the public interest. PAWC claims a cost of service study of this nature would be costly and complex but BIE argues the cost is an insufficient ground to justify PAWC's' avoidance of this exercise since PAWC wishes to acquire this system. BIE also contends these types of COSS are routinely performed with electric utilities, which provide cost of service studies that remove non-jurisdictional plant and leave only jurisdictional plant and expense for Commission review. BIE argues this study with electric utilities demonstrates that other regulated entities have undertaken this type of cost of service study.²⁶⁴ In addition, BIE points to certain water utilities, such as City of Lancaster, which has customers both inside and outside of their City boundaries, will routinely allocate costs to jurisdictional versus non-jurisdictional customers in a cost of service study. Accordingly, BIE argues there is no hardship on PAWC for the Commission to require PAWC to provide a cost of service study which separates out plant to serve customers and non-customers.

BIE also asserts that, beyond the difficulties arising from the service to non-customers, a cost of service study is beneficial in the following ways: (1) determining the cost to

²⁶⁴ I&E St. 1-SR, p. 25.

operate the Brentwood wastewater system separately; (2) calculating the costs of PAWC's different services; (3) separating the costs between PAWC's different customer classes and service areas; (4) attributing costs to PAWC's different customer classes and service areas; (5) determining how costs will be recovered from PAWC's customer classes and service areas; and (6) establishing the existence and extent of subsidization (inter- and intra-class) and assist in determining the appropriate amount of revenue requirement, if any, to be shifted from wastewater customers to water customers.²⁶⁵

Accordingly, BIE contends that, if the Commission approves this acquisition, it is imperative the Commission require PAWC to provide a cost of service study related to the Brentwood system in any subsequent base rate cases in which the system is included. This recommendation is in the public interest because a COSS ensures the plant used to serve non-customers can be separated, ratepayers only pay for plant that is used and useful in the provision of utility service to the ratepayers, and it establishes the existence and extent of any subsidizations to ensure that rates are properly set.

c. Rate Freeze

BIE asserts the Commission should deny the provision found in Section 7.03 of the Asset Purchase Agreement, which states base rates will not be increased until after the second anniversary of the closing date of this transaction.²⁶⁶ BIE contends this provision is unreasonable for at least four reasons.²⁶⁷ First, the Commission always retains the final decision as to whether and by how much a utility's rates will increase. Second, a 2-year moratorium on a rate increase does not align with PAWC's current rate case filing schedule. Third, the age of the system, projected plant additions, and use of the Fully Projected Future Test Year (FPFTY) will cause rates to diverge further from the cost to serve Brentwood customers if some sort of rate increase is not implemented. Further, Brentwood is one of many systems that PAWC has

²⁶⁵ I&E St. 1, pp. 17-18.

²⁶⁶ I&E St. 1, p. 21.

²⁶⁷ I&E St. 1, p. 22.

acquired from which its ratepayers pay a subsidy to cover the costs not recovered by the customers of these systems.

BIE explains these types of agreement are only enforceable in the sense that PAWC will propose in its next base rate case not to increase Brentwood rates.²⁶⁸ However, as the Commission ultimately has the authority to set rates, this proposed rate freeze does nothing to ensure that Brentwood customers will not receive a rate increase. Provisions such as these are misleading because newly acquired customers receive a skewed picture of what will actually occur with their rates when the system they are currently served by is acquired by PAWC. BIE argues it is disingenuous to mislead customers in this manner when they are facing potentially very large increases resulting from these acquisitions and utilities, such as PAWC, owe it to their current ratepayers and potential future ratepayers to portray an accurate picture of the impact these acquisitions can actually have on their rates.

Further, BIE argues rate freezes, in general, are simply not in the public interest because artificially holding a specific group of customers rates lower than they should be leads to unnecessary subsidizations from other ratepayers. BIE notes a fundamental ratemaking principle is that rate classes should generally pay their cost to serve and, while BIE recognizes Act 11 allows for certain subsidies for wastewater rates so long as those subsidies are in the public interest, artificially holding the Brentwood rates to a lower level creates an even larger subsidy. Accordingly, an even larger burden occurs for all other PAWC customers. BIE argues creating these unnecessary subsidies is counterintuitive to sound ratemaking principles, offering these rate freezes without the ability to actually enforce them is misleading, and rate freezes provide customers with an inaccurate picture of what to expect of their rates as potential PAWC customers. As a result, BIE contends the Commission should deny the rate freeze as it is not in the public interest, if the Commission approves this Acquisition.

d. Customer Notice

²⁶⁸ I&E St. 1, p. 30.

BIE contends the 2-year rate increase moratorium is misleading, does not portray an accurate picture of Brentwood's future rates, and the rate increase contained in the customer notices for Brentwood customers is most likely not an accurate reflection of the extent to which the Brentwood rates need to be increased under PAWC ownership. BIE asserts it demonstrated in this proceeding that PAWC has a history of under projecting rate increases to customers in its prior acquisition proceedings – and the Commission needs to correct this deficiency. BIE argues the Commission needs to affirm that base rate increases are likely to be higher than PAWC is projecting to customers in these notices.²⁶⁹ Accordingly, BIE asserts the Commission should direct PAWC to provide Brentwood customers with an accurate indication of what level of rate increase they can expect and direct PAWC going forward, to provide customers of future acquisitions with an accurate assessment of the level of rate increase they should expect.

e. ALCOSAN Charges and Discounts

BIE took no specific position regarding the ALCOSAN charges and discounts themselves, but its arguments related to Brentwood's interconnection with ALCOSAN were limited specifically to the impact of the connection on PAWC's rate base and not the charges themselves.

f. Specific Notice for Brentwood Customer Prior to Closing

BIE took no position related to a notice to Brentwood customers prior to closing except to note its arguments related to Brentwood's notice related solely to the fact that the notice already provided to these customers did not accurately portray the rate increases they will potentially face. If the Commission requires a further notice be provided to Brentwood customers prior to closing, BIE reiterates that the notice should provide the most accurate information related to how much of a potential rate increase Brentwood customers face.

g. Payment Agent in Brentwood

²⁶⁹ I&E St. 1-SR, p. 34.

BIE took no position on whether there should be a Payment Agent in the Brentwood Borough but notes it is not opposed to such an agent.

OCA's Position

OCA recommends the Commission deny the relief requested in the Application. If, however, the Commission approves the proposed acquisition, OCA recommends the following conditions:

- a. Missing Easements and Other Property Rights

OCA took no position on this issue.

- b. Cost of Service Studies

OCA contends 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. OCA notes PAWC agrees to provide a separate Cost of Service Study for the Brentwood system in its next base rate case, but asserts the Company has rejected BIE's proposal – 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.²⁷⁰ OCA asserts 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, OCA contends it adopts BIE's request 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.²⁷¹

²⁷⁰ PAWC St. 3-R at 11-12.

²⁷¹ I&E St. 1 at 16-18.

c. Rate Freeze

OCA requests the Commission reject the rate freeze provision.²⁷² If the Commission does not reject the rate freeze provision, OCA requests the Commission condition its approval on the recognition 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.²⁷³

OCA points out that, 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.

d. Customer Notice

OCA contends that, 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.

OCA notes, 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

²⁷² OCA St. 2 at 11.

²⁷³ OCA St. 2SR at 7.

becomes effective.²⁷⁴ Further, OCA argues 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, and OCA contends Brentwood customers should be afforded these protections for ALCOSAN cost increases.²⁷⁵

e. ALCOSAN Charges and Discounts

OCA argues PAWC should be required to include ALCOSAN costs as an operations expense, recovered in base rate, and not as a pass-through, line-item charge on bills. OCA asserts 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 costs or the ALCOSAN bill servicing refund. Further, OCA asks the Commission to require PAWC to include ALCOSAN costs in the base rates for Brentwood customers, pursuant to 66 Pa.C.S. § 1304.

f. Specific Notice for Brentwood Customer Prior to Closing

OCA contends 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. Before considering the 2023 base rate filing, Brentwood customers would have to provide an 11% rate increase to cover the system's revenue deficiencies; under the proposed rate increase, Brentwood customers are facing a 20.3% increase.²⁷⁶ The Brentwood revenue

²⁷⁴ See 52 Pa. Code § 53.45.

²⁷⁵ OCA St. 2SR at 7.

²⁷⁶ OCA St. 2 at 8-9.

requirement that was 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.²⁷⁷ As a result, OCA argues Brentwood customers should be provided with a renewed notice reflecting the more-accurate rate impact of the proposed transaction, to ensure that the instant transaction comports with the requirements under the *McCloskey* and the *Steelton* settlements.²⁷⁸

Further, OCA contends Brentwood customers were not provided with notice of PAWC's other proposed and pending transactions between when Brentwood customers initially were provided notice of the instant transaction and its approval.²⁷⁹ OCA requests the Commission require PAWC 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, in future applications under Section 1329.

g. Payment Agent in Brentwood

OCA contends 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.²⁸⁰ 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.²⁸¹ OCA notes that, while in-person payment options are available within 15 miles, none are available within the Borough of Brentwood, and OCA contends that lack of an option presents an inconvenience to Brentwood customers.

²⁷⁷ Tr. at 385.

²⁷⁸ Tr. at 372.

²⁷⁹ OCA St. 1 at 25.

²⁸⁰ OCA St. 2 at 6.

²⁸¹ OCA St. 2SR 5.

OSBA's Position

a. Missing Easements and Other Property Rights

OSBA took no position on this issue.

b. Cost of Service Studies

OSBA took no position on this issue.

c. Rate Freeze

OSBA took no position on this issue except as discussed above in the context of Tariffs.

d. Customer Notice

OSBA took no position on this issue.

e. ALCOSAN Charges and Discounts

OSBA took no position on this issue.

f. Specific Notice for Brentwood Customer Prior to Closing

OSBA took no position on this issue.

g. Payment Agent in Brentwood

OSBA took no position on this issue.

ALCOSAN's Position

a. Missing Easements and Other Property Rights

ALCOSAN took no position on this issue.

b. Cost of Service Studies

ALCOSAN took no position on this issue.

c. Rate Freeze

ALCOSAN argues no party disputes that it is a municipal authority, that the Commission does not have jurisdiction over ALCOSAN's rates or charges, and that ALCOSAN's rates and charges are not at issue in this proceeding. Accordingly, if the Commission approves the proposed transaction and any rate freeze, ALCOSAN's rates and charges will not, and cannot, be subject to any rate freeze.

d. Customer Notice

ALCOSAN took no position on this issue.

e. ALCOSAN Charges and Discounts

ALCOSAN took no position on this issue.

f. Specific Notice for Brentwood Customer Prior to Closing

ALCOSAN took no position on this issue.

g. Payment Agent in Brentwood

ALCOSAN took no position on this issue except to note that it had no objection to PAWC assuming the billing tasks now performed by Brentwood in billing Brentwood users for ALCOSAN's charges. ALCOSAN's essential interest is that it is paid, by Brentwood or PAWC, for ALCOSAN's charges so that ALCOSAN can satisfy its obligations to regulators, lenders, and bondholders.

VII. RECOMMENDATION

In this Application, PAWC requests the Commission take action on three specific and related requests: (1) approval of PAWC's acquisition of Brentwood's wastewater collection and conveyance system, including approval of the ratemaking rate base, pursuant to 66 Pa.C. S. § 1329; (2) grant a Certificate of Public Conveyance to provide wastewater collection and conveyance service to the public in Brentwood, pursuant to 66 Pa.C.S. 1102; and (3) approval of the Asset Purchase Agreement (including its First Amendment), pursuant to 66 Pa.C.S. § 507. The presiding officer recommends the Commission deny the Application because PAWC failed to present sufficient evidence to sustain its burden of proving a substantial public benefit will result from the acquisition of the Brentwood system and the issuance of a Certificate of Public Conveyance, pursuant to 66 Pa.C.S. § 1102, 1103 and 1329. Because the presiding officer recommends the Commission find insufficient proof of a public benefit, the request to approve the Asset Purchase Agreement, with the First Amendment, became moot because the Asset Purchase Agreement is relevant only if the acquisition is approved. Furthermore, the other corollary issues became moot and are not specifically addressed herein, except as listed in the Findings of Fact.

The Code requires the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service, and certain property transfers by public utilities or their affiliated interests. The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code. A Certificate of Public Convenience shall be granted "only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of

the public.” These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825, 828 (Pa. 1972), to require an applicant to establish that a proposed transaction benefits the public, by promoting affirmatively, the service, accommodation, convenience or safety of the public in some substantial way.

An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets.²⁸² In addition to assessing fitness, an applicant for a certificate of public convenience must also demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way,” with respect to the impact on all affected parties” including existing customers.²⁸³

In *Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*), the Supreme Court explained that the Commission is not required to secure legally binding commitments or to quantify benefits where quantification may be impractical, burdensome or impossible. Rather, the Commission properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters. Further, the demonstration of affirmative public benefit does not require that every customer receive a benefit from the proposed transaction.

The Pennsylvania Supreme Court addressed the Commission’s review under Section 1103 in *City of York*, where it considered a proposed merger of three telephone companies. Citing Section 203, the predecessor statute to Section 1103, the appellate court set forth the standard as follows:

[s]ection [1103] of the Public Utility Law requires that those seeking approval of a utility merger demonstrate more than the

²⁸² *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958).

²⁸³ *City of York*, 295 A.2d at 828.

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.^[284]

This standard was addressed by the Commonwealth Court in *Middletown Township v. Pennsylvania Public Utility Commission*, 482 A.2d 674 (Pa. Cmwlth. 1984) (*Middletown*). In *Middletown*, to acquire part of the facilities of the Newtown Artesian Water Company, Middletown Township filed an application for a Certificate of Public Convenience. In denying the application, the Commission concluded the acquisition would benefit some customers but would have an adverse impact on other customers. The Middletown Township appealed to Commonwealth Court, which affirmed the Commission’s decision rejecting the application stating, *inter alia*, that “when the ‘public interest’ is considered, it is contemplated that the benefits and detriments of the acquisition be measured as they impact on all affected parties, and not merely on one particular group or geographic subdivision as might have occurred in this case.”²⁸⁵ The Court added that “the primary objective of the law in this area is to serve the interests of the public.”²⁸⁶

Accordingly, the Commission can determine an acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of that transaction.²⁸⁷ 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.”²⁸⁸

²⁸⁴ 295 A.2d at 828.

²⁸⁵ 482 A.2d at 682.

²⁸⁶ *Middletown Township v. Pa. Pub. Util. Comm’n*, 482 A.2d 674.; see also *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007).

²⁸⁷ *Application of CMV Sewage Co., Inc.*, 2008 Pa.P.U.C. LEXIS 950, *30 (2008) (CMV).

²⁸⁸ *Application of North Heidelberg Water Co.*, 2010 Pa.P.U.C. LEXIS 919, *20 (2010).

Fitness

As a certificated provider of utility service, PAWC's fitness is presumed, and no party contested that presumption. The Commission addressed the fitness criteria in *Re Perry Hassman*.²⁸⁹ As to legal fitness, PAWC must demonstrate that it has obeyed the Code and Commission Orders and regulations.²⁹⁰ As to financial fitness, PAWC must demonstrate that it has sufficient financial resources to provide the proposed service.²⁹¹ As to technical/managerial fitness, PAWC must have sufficient staff, facilities and operating skills to provide the proposed service. No substantial challenge was presented to the fitness of PAWC to provide the proposed service. In its Main Brief, PAWC outlined in detail the evidence to support its claim that it demonstrated it possesses the legal, financial, technical, and managerial fitness to provide the service proposed in its Application.

No party argued PAWC lacks the legal, technical or financial fitness to operate the Brentwood system in a safe and reliable manner. PAWC operates numerous water and wastewater systems in the Commonwealth in a safe and reliable manner. The presiding officer does not question PAWC's ability and intention to operate the Brentwood conveyance system consistent with the Commission's regulations. Accordingly, the presiding officer found the evidence of PAWC's fitness to be persuasive.

The Public Interest

The problem herein – and the reason for recommending the Application should be denied – is the public at large will not enjoy a more safe and more reliable conveyance system. The Brentwood customers will not benefit from lower bills or from a conveyance system that is safer and more reliable than what they currently have. Further, PAWC's existing customer base (both wastewater and water) in addition to its future customer base will not benefit from the

²⁸⁹ 55 Pa.P.U.C. 661 (1982).

²⁹⁰ *Id.*

²⁹¹ *Id.*

costs to acquire and upgrade a conveyance system that includes a revenue deficiency for the next few years while providing utility service without charge to non-jurisdictional entities. The record evidence clearly showed only two parties will benefit from this acquisition: Brentwood and PAWC. Brentwood will receive over \$19 million plus be relieved of the day-to-day operational costs and some – though not all – of the responsibilities to ALCOSAN. PAWC will increase its customer base by approximately four thousand customers and be included in a treatment system network that does not operate pursuant to the Commission’s regulations and rules, or the Public Utility Commission.

The difficulty herein for PAWC revolved around whether PAWC proved the acquisition produced affirmative public benefits. The presiding officer recommends the Commission find PAWC failed to provide sufficient proof that an affirmative benefit will accrue to existing or future customers of PAWC (water or wastewater), to Brentwood customers, or to the public-at-large.

To approve the application, the Commission must determine that there are affirmative public benefits. As an integral part of that review the Commission must fully consider the harms of this acquisition on four specific groups: (1) the existing PAWC wastewater customers, (2) the existing PAWC water customers, who may potentially bear costs of the Brentwood system, if the Commission permits costs to be shifted under 66 Pa.C.S. § 1311(c); (3) the existing Brentwood customers who will be transferred to PAWC; and (4) the public-at-large.

The General Assembly has recognized that the sale of certain smaller systems to larger, well-capitalized and well-run regulated public utilities can be prudent as it can ensure the long-term provision of safe, reliable service to customers at reasonable rates.²⁹² To approve the application the Commission must determine that the proposed transaction benefits the public by affirmatively promoting the service, accommodation, convenience or safety of the public in some substantial way, after considering the harms of the acquisition on the groups specified above.

²⁹² 66 Pa. C.S. § 1327(a).

Determining the presence of an affirmative public benefit does not require the Commission to find every customer receives a benefit from the proposed transaction. The primary objective is to serve the interests of the public. An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of that transaction, considering the technical and legal fitness of the purchasing entity to provide service, the public need for service; the inadequacy of the existing service; and any other relevant evidence. For PAWC to meet its burden herein, it must show that the proposed transaction will benefit both existing PAWC customers and the acquired Brentwood customers, as well as the public-at-large. That determination is especially necessary when, as here, the acquiring entity (PAWC) avails itself of the provisions of 66 Pa.C.S. § 1329, saying the current service provider is struggling or at least providing lower quality service than PAWC could provide.

PAWC failed to meet its burden. PAWC is correct to point out that it has a record of acquiring and improving wastewater systems and the general benefit of consolidation and regionalization. However, the Brentwood system is not a total wastewater system – it includes only assets associated with collection and conveyance. The only improvements PAWC can make to the Brentwood system would be a replacement of the pipes. While that action might benefit Brentwood customers specifically, and upstream municipalities generally, by reducing leaks or overflows, the evidence presented overwhelmingly proved Brentwood currently provides safe, adequate and reliable collection and conveyance service. No evidence was presented to show that Brentwood has failed to address the issues in the older conveyance system. To the contrary, the evidence presented shows Brentwood is complying with the various agreements and cooperating with state and local authorities in addressing the issues in a timely manner, consistent with the networked municipalities which utilize ALCOSAN for wastewater treatment service.

Further, PAWC's argument that the acquisition will improve regionalization is misleading. PAWC has no contractual rights relative to ALCOSAN other than to transmit payments from Brentwood customers for treatment service. Brentwood will not be released from performing under the agreements with ALCOSAN. PAWC is agreeing to be responsible but, if a problem develops between PAWC and ALCOSAN, Brentwood will have to be pulled

back into the dispute because its contractual responsibilities to ALCOSAN do not appear to disappear once it sells its wastewater conveyance assets. The APA allows Brentwood to expect, and force if necessary, PAWC to perform the functions and take the actions Brentwood would have to take if it still owned the system should a future conflict develop with ALCOSAN but Brentwood will remain responsible.²⁹³

PAWC asserts benefits to Brentwood customers include being included in a larger scale, more efficiently-operated wastewater utility; benefits from the overlap between water and wastewater utility operations; the potential estimated investment of approximately \$8 million in upgrades to the system; enhanced customer service through a toll-free telephone number from 8:00 a.m. to 5:00 p.m., with a 24/7 toll-free emergency response possible; online bill payment options and the ability to receive alerts of events impacting customer service; access to PAWC's customer assistance programs; and procedures in place under Chapter 14 of the Code to address payment, termination, reconnection, payment arrangements and complaint procedures.

PAWC submits the acquisition will not have an adverse effect on the service provided to existing PAWC customers and will not have any immediate impact on the rates of existing customers of PAWC or Brentwood. However, given the testimony provided at the public input hearings, PAWC's assertion is too incredible to be accepted. While Brentwood customers will not see an increase in the rates, PAWC's existing water and wastewater customers clearly will be impacted. PAWC's use of generalizations and subjective, non-specific goals and aspirations, instead of providing evidence in support of its unsubstantiated claims concerning this acquisition, fail to prove the need for the acquisition and the public interest benefits that might accrue. PAWC did not sufficiently address the corresponding harm or potential harm to existing PAWC wastewater and water customers, and to the Brentwood customers after the acquisition.

²⁹³ It should be noted that no party presented evidence or argument over the viability of the contracts entered into by PAWC, Brentwood and ALCOSAN together and separately, or whether the contracts and agreements involve the transfer of sufficient rights and responsibilities to make the contracts/agreements enforceable. The viability and enforceability of the contracts and agreements entered into between and amongst PAWC, Brentwood and ALCOSAN were not considered in this Recommendation, as the denial makes those issues moot.

The evidence presented clearly shows PAWC's existing wastewater customers are at risk for supporting the costs of acquiring the Brentwood customers in this transaction, especially during the two-year rate freeze. Further, PAWC acknowledged that some of the cost will be distributed to its existing water customers, pursuant to the provisions of 66 Pa.C.S. §1311. In addition, the testimony presented at the public input hearing provided disturbing details about the precipitous rise in bills experienced by PAWC's existing wastewater customers, especially after PAWC acquired other wastewater systems.

The rise in rates has been so drastic that the public input witnesses credibly testified about extreme efforts that have had to be taken to render the bill totals affordable. Those extreme measures included not watering plants or lawns, not filling a pool, not washing cars and doing laundry in a laundromat. For those existing PAWC customers, the billed wastewater usage was based on the water consumption. Instead of charging customers based on the volume of effluent sent through the wastewater system and treated, PAWC charged them based on the volume coming into the residence.

PAWC recommends a similar approach herein because of ALCOSAN's rules. If the Application is approved, PAWC's new Brentwood customers would be charged wastewater treatment rates calculated using the volume of water provided by PAWC through the water meter to the household, whether the water volume is used to water the lawn or used to flush toilets. This approach led to the experiences testified to by the public input witnesses, and the evidence presented was sufficient to reflect that a similar result will happen here, if the Brentwood system is acquired by PAWC, as outlined in the Application.

In addition to the discussion set forth above, OCA's argument was accepted as persuasive. An individualized analysis of every system proposed to be acquired under Section 1329 is not only in the public interest, but also necessary to ensure that each acquisition complies with the Public Utility Code, particularly Section 1102. Although PAWC established that it has the technical, managerial and financial ability, to acquire and operate the Brentwood system, that fitness alone does not establish that the acquisition will further the public interest. PAWC must show that the benefits it touts will outweigh the harms.

PAWC did not present sufficient evidence to prove the benefits it asserts will outweigh the harms noted by the statutory parties. What the evidence clearly shows is that the purchase of the Brentwood system by PAWC would be a “sum zero” enterprise. The evidence presented showed that Brentwood customers are receiving reasonable, adequate, safe and reliable service from Brentwood. If the acquisition is approved, PAWC has proven it will provide reasonable, adequate, safe and reliable wastewater conveyance service. The addition of customer service availability “24/7” provides only nominal benefit since there is no evidence Brentwood customers complain about unavailable customer service. The alleged benefit of being able to pay online with PAWC has nominal benefit as well since no customer has been heard to desire it. PAWC is correct that it can provide customer assistance programs to the Brentwood customers – but only on the portion of the bill relating to the conveyance service. Brentwood customers will have to apply directly to ALCOSAN for payment plans on the treatment charges, which account for more than 55% of the total bill. This alleged benefit is likewise a nominal benefit.

Most importantly, this recommended denial is a direct result from PAWC’s failure to separate from rate base and the purchase price, the value of the assets used to provide service to non-jurisdictional entities. PAWC failed to conduct a Cost of Service Study which removes from the fair market value, the costs associated with the free utility service Brentwood provides to the upstream municipalities. Some unknown portion of the Brentwood I&I originates in upstream flows and PAWC is in error to argue that the facilities are used and useful.²⁹⁴

If the Application is approved, assets owned by a certificated public utility would be used to provide wastewater conveyance service to non-customers and without charge. PAWC cannot and did not justify why it should be allowed to provide free utility service to some entities

²⁹⁴ I&E St. 1-SR at 5. OCA cites to PAWC’s evidence, noting Brentwood was 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 contributor. PAWC St. 2 at 13.

while its customers in Brentwood are forced to pay for free service that they will not enjoy. No Brentwood customer benefits from the free service given to the Borough of Whitehall and the City of Pittsburgh. If PAWC elects to reprise its acquisition request in the future, a Cost of Service Study should be done which accurately reflects the actual fair market value of the assets to be acquired that are used exclusively for the customers who will be charged for the service.

Furthermore, these upstream municipalities throughout the ALCOSAN treatment network will be able to impact the compliance levels of their downstream neighbors, *regardless of the level of capital investment to which the downstream municipality can commit to reducing I&I.*²⁹⁵ PAWC, like Brentwood currently, will be unable to reduce the flows of upstream municipalities which contribute to Brentwood's excess I&I at its points of contact with the ALCOSAN system.

Inadequacy of Existing Service

It bears repeating that Brentwood is not operating a struggling system. Brentwood is paying its bills. It is complying with its agreements and requirements. It is taking the corrective action required by environmental regulators and ALCOSAN. No evidence was presented about a single instance when an emergency occurred, or a that a complaint was filed by a Brentwood customer about a failure to respond timely to any complaint or problem. The evidence clearly showed that the Borough of Brentwood would prefer to receive the purchase price and no longer be responsible for the day-to-day operations of the wastewater conveyance system. However, Brentwood's desire to be out of the wastewater conveyance service business is not a sufficient reason, by itself, to outweigh the harms that may result to existing PAWC customers, if the acquisition is approved.

Further, while PAWC's size creates the potential for volume discounts, PAWC did not prove or establish that PAWC's higher cost of capital would not offset those savings. In addition, no evidence was presented that Brentwood has been unable or would be unable to

²⁹⁵ I&E St. 1-SR at 5.

secure funding or discounts. Further, there is no indication that Brentwood would be unable to raise the capital necessary to ensure continued compliance, to the extent additional capital is needed. 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.²⁹⁶ OCA correctly points out that, in the past five years, the Borough has not had issues funding infrastructure replacements or upgrades.²⁹⁷ It is important to note that, if the Borough must raise capital for additional improvements through a rate increase, the Borough is able to do so at a lower cost of capital than PAWC, because the Borough does not have to provide for shareholder compensation. In addition, Brentwood, unlike PAWC, has access to additional capital through the ALCOSAN Grow program. Brentwood's witness Zboyovsky made clear that the Grow Program grants are specifically limited to funding programs which reduce I&I, and I&I is the problem Brentwood needs to continue to reduce.²⁹⁸

The arguments of OCA and BIE, in conjunction with the facts, are persuasive. The benefits claimed by PAWC are general benefits anticipated by an acquisition like the one proposed of the Brentwood system and were not supported by any specific evidence. The crux of PAWC's argument sits squarely on the assumption that since PAWC is fit to provide the service, its fitness is proof enough that there is a public benefit that outweighs the harm for the public as well as the customers.

PAWC did not specify or quantify when the alleged operational efficiencies will benefit PAWC customers, either Brentwood customers or current PAWC customers.²⁹⁹ The absence of an immediate rate increase, due to a rate freeze, is not a substantial benefit by itself, especially when viewing PAWC's customer base as a whole. Existing Brentwood customers were notified there might be an increase equal to 11% at the time of PAWC's next base rate case

²⁹⁶ OCA St. 1 at 12-13; *see also* Brentwood St. 1 at 5 (“Financially, the Borough is not in distress.”).

²⁹⁷ OCA St. 1 at 14.

²⁹⁸ Brentwood St. 1-R at 6; PAWC St. 2 at 11.

²⁹⁹ OCA St. 1, pp. 17-18.

filing, but BIE's assertion – that PAWC has a proven history of under-projecting the revenue shortfall in the first base rate case after acquiring a system under Section 1329 – is troubling.³⁰⁰

Based upon the record evidence, PAWC has failed to establish that the sewer system under PAWC's ownership will affirmatively promote the service, accommodation, convenience, or safety of the public. In addition, the evidence did not establish that any benefit to be realized from the proposed transaction would outweigh the harms to current PAWC water and wastewater customers or existing Brentwood wastewater customers.

Ultimately, PAWC's Application must be denied because PAWC failed to meet its burden of proof that the public interest will benefit from the acquisition of the Brentwood system, that the change in ownership will create an affirmative benefit to all affected entities, or that the inclusion of non-jurisdictional service without payment are consistent with the Public Utility Code, or the Commission's Orders and regulations.

VIII. CONCLUSIONS OF LAW

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

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

3. Pennsylvania-American Water Company is a public utility as defined in Section 102 of the Public Utility Code. 66 Pa.C.S. § 102.

³⁰⁰ I&E St. 1, p. 29; Appendix A-18-d amended.

4. Pennsylvania-American Water Company has the burden of proof to show that its proposed acquisition of the Borough of Brentwood wastewater conveyance system is adequate, efficient, safe, and reasonable. 66 Pa.C.S. § 315(c).

5. Pennsylvania-American Water Company has the burden of proof to show that its proposed purchase of the Borough of Brentwood wastewater conveyance system would provide substantial affirmative benefits. 66 Pa.C.S. § 1102.

6. 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 Borough of Brentwood customers. 66 Pa.C.S. § 1102.

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

8. 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).

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

10. Pennsylvania-American Water Company, as the proponent of the Application, bears the burden of proof to establish that it is entitled to receive the approvals being sought in the Application. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.3d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

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

12. Pennsylvania-American Water Company has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102, 1103, 1329 of the Code. 66 Pa.C.S. §§ 332(a), 507, 1102-03, 1329.

13. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. v. Pa.P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Com. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Comm., Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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

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

16. A Certificate of Public Convenience shall be granted “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa.C.S. §§ 1102–03.

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

18. Under Section 1103, Pennsylvania-American Water Company must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Borough of Brentwood. *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A. 2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958).

19. In assessing the Application of Pennsylvania-American Water Company, the Commission must consider the benefits and detriments of the transaction “with respect to the impact on all affected parties” including existing customers. *Middletown Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

20. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable. 66 Pa.C.S. § 1103(a).

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

22. An existing provider of public utility service is presumed fit. *See Re Pa.-Am. Water Co.*, 85 Pa.P.U.C. 548 (1995). The burden of proof to rebut the presumption is on Protestants. *Re: Byerly*, 270 A.2d 186 (Pa. 1970); *Morgan Drive-Away, Inc., v. Pa. Pub. Util. Comm'n*, 293 A.2d 895 (Pa. Cmwlth. 1972).

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

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

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

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

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

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

Appendix A

List of Statements and Exhibits Admitted into the Hearing Record

Pennsylvania-American Water Company

1. Direct Testimony of Michael Salvo, PAWC St. 1, with PAWC Exhibits MS-1 and MS-2³⁰¹ and a verification.
2. Rebuttal Testimony of Michael Salvo, PAWC St. 1-R, with PAWC Exhibit MS-3 and a verification.
3. Direct Testimony of Daniel J. Hufton, PAWC St. 2, with PAWC Exhibits DJH -1, DJH-2, and DJH-3 and a verification.
4. Rebuttal Testimony of Daniel J. Hufton, PAWC St. 2-R and a verification.
5. Direct Testimony of Jerome C. Weinert, PAWC St. 4, with PAWC Exhibit JCW-1 and a verification.
6. Direct Testimony of Ashley E. Everette, PAWC St. 3-Rev with PAWC Exhibits AEE-1 and AEE-2.
7. Rebuttal Testimony of Ashley E. Everette, PAWC St. 3-R with PAWC Exhibit AEE-3

Borough of Brentwood

³⁰¹ PAWC Exhibit MS-2 is a complete copy of the application in this proceeding as modified by PAWC responses to Bureau of Technical Utility Services application completeness review requests. The modifications were filed on May 31, 2023 and July 6, 2023. Official notice was taken by the presiding officer on November 8, 2023 to avoid duplication of a voluminous application in the Commission's records.

1. Direct Testimony of George Zboyovsky, Brentwood St. 1 and a verification.
2. Rebuttal Testimony of George Zboyovsky, Brentwood St. 1-R and a verification.
3. Direct Testimony of Harold Walker, III, Brentwood St. 2, with Exhibit HW-1 and a verification.

Bureau of Investigation and Enforcement

1. Direct Testimony of Joseph Kubas, I&E St. 1, with Appendix A, I&E Exhibit No. 1 and a verification.
2. Rebuttal Testimony of Joseph Kubas, I&E St. 1-SR and a verification.
3. Direct Testimony of D. C. Patel, I&E St. 2, with Appendix A and I&E Exhibit No. 2 and a verification.

Office of Small Business Advocate

1. Direct Testimony of Brian Kalcic, OSBA St. 1, with Exhibit BK-1, an Appendix and a verification.

Office of Consumer Advocate

1. Direct Testimony of Nicholas A. DeMarco, OCA St. 1, with OCA Exhibits ND-1 through ND-9 and a verification.
2. Surrebuttal Testimony of Nicholas A. DeMarco, OCA St 1SR, with OCA Exhibits ND-10 through ND-13 and a verification.

3. Direct Testimony of Barbara R. Alexander, OCA St. 2, with OCA Exhibit BA-1 through BA-3 and a verification.

4. Surrebuttal Testimony of Barbara R. Alexander, OCA St. 2SR and a verification.

Allegheny County Sanitary Authority

1. Direct Testimony of Douglas Jackson, ALCOSAN St. 1, with ALCOSAN Exhibit 1 and a verification.