

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held February 22, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman, Statement
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Application of Pennsylvania-American Water Company,
pursuant to 66 Pa. C.S. §§ 1102 and 1329 for:

A-2021-3024058

(1) approval of the acquisition by Pennsylvania-American Water Company of substantially all of the assets, properties and rights related to the wastewater collection and conveyance system owned by the Borough of Brentwood (Brentwood); (2) approval of the right of Pennsylvania-American Water Company to begin to offer, render, furnish and supply wastewater service in the Borough of Brentwood, Allegheny County, Pennsylvania; and (3) an order approving the acquisition that includes the ratemaking rate base of Brentwood's wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code

Request for Approval of Contracts, between Pennsylvania-American Water Company, Brentwood and municipal corporations to be assumed by Pennsylvania-American Water Company upon the closing of the requested acquisition, Pursuant to Section 507 of the Public Utility Code

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Pennsylvania-American Water Company (PAWC, the Company, or the Applicant) and the Borough of Brentwood (Brentwood or the Borough) filed on January 24, 2024, in the above-captioned proceeding. The Exceptions were filed in response to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale issued on January 17, 2024.¹ For the reasons below, we shall: (1) deny PAWC Exception No. 1, consider PAWC Exception Nos. 2 and 3 moot, and deny the Exceptions of Brentwood; (2) adopt the Recommended Decision; and (3) deny the Application, consistent with this Opinion and Order.

I. History of the Proceeding

This matter concerns the Application filed with the Commission by PAWC on March 31, 2023,² pursuant to Sections 507, 1102, and 1329 of the Public Utility Code

¹ Reply Exceptions were filed by the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), and Allegheny County Sanitary Authority (ALCOSAN) on January 29, 2024.

² PAWC submitted Amendments to the Application on May 31, 2023, and July 7, 2023. The May 31, 2023, Amendment was filed due to PAWC determining, through discovery, that the annual operation and maintenance expenses (O&M) were understated in the initial filing. Therefore, the Amendment was filed to correctly reflect projected O&M expenses as part of the estimated annual revenue requirement. PAWC also clarified in the amended *pro forma* tariff that for connections that require approval from ALCOSAN, that approval is required prior to connection to the Brentwood System. This Rule is required by and consistent with the Cooperation Agreement between PAWC and Brentwood. The amended *pro forma* tariff also clarifies that ALCOSAN treatment charges are excluded from PAWC's bill discount program (customers can apply for the ALCOSAN discount for that portion of their bill). The July 7, 2023, Amendment requested approval under 66 Pa. C.S. § 507 of three additional agreements shown in Amended Appendix A-25.4 and Amended Appendix A-25.5.

(Code), 66 Pa. C.S. §§ 507, 1102, and 1329 (as amended, the Application). In its Application, PAWC requested Commission approval of the acquisition of substantially all the assets, properties and rights related to the wastewater collection system (the System) owned by Brentwood, and the right for the Company to provide wastewater service in the areas served by Brentwood, through the issuance of a Certificate of Public Convenience under Section 1102. Application at ¶ 1; 66 Pa. C.S. § 1102. The Application also requested, pursuant to Section 1329(c)(2), the Commission's approval to utilize fair market value (FMV) for the ratemaking rate base of the System.³ Application at ¶ 2; 66 Pa. C.S. § 1329. PAWC also sought the accrual and deferral of certain post-acquisition improvement costs. Specifically, PAWC sought the accrual of Allowance for Funds Used During Construction (AFUDC) for post-acquisition improvements (which will not be recovered through its Distribution System Improvement Charge (DSIC) for book and ratemaking purposes, as well as the deferral of depreciation related to post-acquisition improvements (which will not be recovered through the DSIC) for book and ratemaking purposes. Application at ¶ 2. Additionally, PAWC requested approval of the inclusion, in its next base rate case, of a claim for transaction and closing costs related to the acquisition. *Id.* Lastly, PAWC requested approval of the APA, as amended, dated March 2, 2023, the Cooperation Agreement between Brentwood and PAWC dated

³ Under 66 Pa. C.S. § 1329, FMV is the lesser of the negotiated purchase price in the Asset Purchase Agreement (APA) or the average of the appraisal of Brentwood's Utility Valuation Expert (UVE) and the appraisal of PAWC's UVE. In this proceeding PAWC is seeking to establish a ratemaking rate base of \$19,364,443 for Brentwood's System assets based on the negotiated purchase price, as the negotiated purchase price of \$19,364,443 is less than the average of the fair market value appraisals, which is \$21,827,775 (determined by \$22,721,549 presented in the appraisal of Weinert Appraisal and Depreciation Services, LLC (Weinert Consultants) and \$20,934,000 presented in the appraisal of Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming). PAWC St. 3 at 6; PAWC St. 4 at 3; Brentwood St. 2 at 13; Application at ¶ 43.

March 2, 2023,⁴ as well as other municipal agreements to be assumed by PAWC as a result of the transaction, pursuant to Section 507 of the Code, 66 Pa. C.S. § 507. Application at ¶ 3; 66 Pa. C.S. § 507.

On April 7, 2023, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention and Public Statement. The OCA filed a Protest to the Application and Public Statement on May 4, 2023, as well as a Notice of Appearance on May 9, 2023. On May 12, 2023, I&E filed a Notice of Appearance.

In accordance with the Commission's Bureau of Technical Utility Services' (TUS) request during its completeness review of the Application, PAWC filed the requested missing information on May 2, 2023. PAWC filed updated responses on May 11, 2023, and June 15, 2023. On June 22, 2023, TUS notified PAWC that certain information remained missing, and on July 7, 2023, PAWC filed the requested information.

By Secretarial Letter dated July 20, 2023, the Commission notified PAWC that the Application had been conditionally accepted for filing, contingent upon certain service and notice requirements. By Secretarial Letter dated July 25, 2023, the Commission established a due date of October 16, 2023, for filing protests and notices of intervention. On September 5, 2023, PAWC filed a verification stating that it had

⁴ As the Pittsburgh Zone Project Agreement of December 1, 1949, among ALCOSAN, the City of Pittsburgh, and the Borough (Z Agreement) cannot be directly assigned to PAWC, in order to ensure the preservation and enforcement of the Borough's rights and obligations under the Z Agreement, PAWC and Brentwood entered into the Cooperation and Allocation of Responsibilities Agreement (Cooperation Agreement), setting forth the rights and obligations under the Z Agreement that will be allocated to PAWC by Brentwood at the closing if the proposed transaction is approved. *See*, Application, Appendix A-25.3.

complied with all service and notice requirements of the Secretarial Letter of July 20, 2023.

On September 14, 2023, by way of Secretarial Letter, the Commission accepted the Application for filing. The Commission published notice of the Application in the *Pennsylvania Bulletin* on September 30, 2023, with a protest deadline of October 16, 2023. 53 *Pa. B.* 6139.

On October 2, 2023, Brentwood filed its Petition to Intervene, and on October 11, 2023, ALCOSAN filed its Petition to Intervene.

An Initial Prehearing Telephonic Conference took place on October 17, 2023, during which counsel for PAWC, Brentwood, I&E, the OCA, the OSBA, and ALCOSAN participated. Brentwood and ALCOSAN's Petitions to Intervene were granted by the ALJ's Prehearing Order No. 1, issued on October 18, 2023. Prehearing Order No. 1 also set forth the procedural schedule.

On October 26, 2023, two telephonic public input hearings were held, during which a total of five individuals offered testimony.

On November 8, 2023,⁵ prior to the start of the evidentiary hearing, PAWC, Brentwood, and ALCOSAN (collectively, Stipulating Parties) filed a Joint Stipulation (marked as ALJ Exhibit 1), which was later amended through a subsequent filing on November 14, 2023 (marked as ALJ Exhibit 2), to alter provisions contained within the schedules attached to the APA in Appendix 24 to the Application.

⁵ Also on November 8, 2023, PAWC filed a general base rate increase request for wastewater operations, which included the Brentwood System. *See, Pa. PUC v. PAWC*, Docket Nos. R-2023-304189 (Water) and R-2023-3043190 (Wastewater) (*PAWC 2023 Base Rate Case*).

The evidentiary hearings were held as scheduled on November 8 and 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 ALJ Exhibit 2, or in the alternative ALJ Exhibit 1, were received from the Stipulating Parties, and a written objection was received from I&E. Thereafter, in the ALJ's Post-Hearing Order No. 1, issued November 16, 2023, the ALJ denied the oral motions of PAWC to admit either the original ALJ Exhibit 1 or amended ALJ Exhibit 2 Joint Stipulation into the record.⁶

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

The record in this case closed on December 14, 2023, when Reply Briefs were filed.

In the Recommended Decision issued on January 17, 2024, the ALJ recommended that the Commission deny the Application because PAWC did not

⁶ During the November 8, 2023, evidentiary hearing, the ALJ advised the Stipulating Parties to correct certain defects in ALJ Exhibit 1 and re-file it prior to the second day of evidentiary hearings on November 14, 2023, noting that the other parties would need sufficient time for a meaningful review. Since the Stipulating Parties did not submit ALJ Exhibit 2 prior to the start of the second day of evidentiary hearings on November 14, 2023, I&E, the OCA, and the OSBA objected to the admission of ALJ Exhibit 2, citing due process concerns. *See*, R.D. at 4-5.

meet its burden of establishing that there is an affirmative public benefit resulting from the acquisition of Brentwood's System. R.D. at 1.

As discussed, *supra*, PAWC and Brentwood filed Exceptions on January 24, 2024. Reply Exceptions were filed by I&E, the OCA, and ALCOSAN on January 29, 2024.

II. Transaction Overview

PAWC, a subsidiary of American Water Works Company, Inc. (American Water), is the largest regulated water and wastewater public utility duly organized and existing under the laws of the Commonwealth of Pennsylvania. PAWC furnishes water and wastewater service to the public in a service territory encompassing more than 417 communities in thirty-seven counties and serves a combined population of over 2.3 million customers across the Commonwealth. As of February 28, 2023, PAWC furnished wastewater services to approximately 97,325 customers, and furnished water services to approximately 680,144 customers, in Pennsylvania. PAWC St. 1 at 14, 16. PAWC currently provides water service throughout the Brentwood wastewater service area. PAWC St. 2 at 9.

Brentwood owns and operates the Borough's System, which directly serves customers located in Brentwood. PAWC St. 2 at 3; Brentwood St. 1 at 5. As of February 2023, the System furnished wastewater service to approximately 3,980 residential and commercial customers. Brentwood St. 1 at 5-6.

The System is a collection and conveyance system that consists of approximately 200,000 linear feet of gravity collection mains, approximately 1,050 manholes, associated infrastructure and appurtenances, and numerous related land rights (including easements and rights of way).

The System is located within, and is part of, the ALCOSAN regional interceptor system.⁷ Brentwood's customers receive wastewater treatment service from ALCOSAN through its wastewater treatment plant in Pittsburgh.⁸ The System receives sewage flow from two other municipalities, Whitehall Borough and the City of Pittsburgh via the Pittsburgh Water and Sewer Authority (the Upstream Municipalities), and discharges sewage flow into three other municipalities, Baldwin Borough, Whitehall Borough, and the City of Pittsburgh (the Downstream Municipalities). Brentwood does not charge the Upstream Municipalities for their flows into Brentwood's System, nor do the Downstream Municipalities charge Brentwood for Brentwood's sewage flows into their systems. Brentwood has entered into cost-sharing arrangements with other members of the ALCOSAN system for capital improvement projects. PAWC St. 2 at 6.

Brentwood customers currently receive two bills: (1) a bill for water service from PAWC; and (2) a bill for wastewater collection and treatment, that includes refuse charges, from the Borough. *See*, OCA St. 2 at 5. Regarding the latter bill, the fees for treatment service is a separate component established by ALCOSAN, which Brentwood has no control over.⁹ Brentwood St. 1 at 19-20.

On December 22, 2020, PAWC and Brentwood entered into an APA for the sale of the assets, properties, and rights of the Borough's System (other than the Excluded Assets, as defined by the APA) at an agreed-upon price of \$19,200,000. On

⁷ The Borough's sewage flows through a series of intermunicipal trunk lines that flow through downgradient communities, where the flow is ultimately treated by the ALCOSAN sewage treatment facility in Pittsburgh, Pennsylvania. Brentwood St. 1 at 6.

⁸ Brentwood is a party to the Z Agreement. Brentwood St. 1 at 6. ALCOSAN is the exclusive wastewater treatment provider in the greater Pittsburgh area pursuant to the Z Agreement. ALCOSAN St. 1 at 2.

⁹ Pursuant to Section 16 of the Z Agreement, the Borough selected the option of becoming the billing agent for ALCOSAN. In return, ALCOSAN annually pays the Borough an amount approximating the amount that ALCOSAN saved in billing expenses. *See*, PAWC Exh. MS-2; Appendix A-25.3.

March 2, 2023, PAWC entered into a First Amendment to the APA with Brentwood adjusting the purchase price to \$19,364,443, subject to certain adjustments, to reflect capital expenditures made by the Borough in the System since execution of the APA (the APA, as amended, will be referred to herein as the APA). *See*, Application, Appendix A-24-a. According to the APA, PAWC agreed to the following, *inter alia*:

- Pay Brentwood up to \$70,000 as reimbursement for engineering and legal fees incurred related to the transaction, upon receipt of invoices evidencing the amount of transaction-related fees incurred, prior to the closing;
- Establish an Easement Escrow Fund, which will be funded by \$2,000 for each missing easement at the time of the closing;
- Adopt, upon the closing, Brentwood's wastewater rates then in effect, and apply no increase to these rates until after the second anniversary of the closing date;
- Bill customers the treatment charges for ALCOSAN at the rates determined by ALCOSAN; and
- Brentwood customers will not be charged the DSIC until after PAWC's Long Term Infrastructure Improvement Plan (LTIP) has been amended to include the Brentwood System.

See, R.D. at 12-13 (citing PAWC St. 1 at 12-13; PAWC St. 3-REV at 7).

As required by Section 1329(a)(4), PAWC and the Borough jointly retained the services of Gateway Engineers, Inc. (Gateway) to complete the engineering assessment and original cost of the System. PAWC Exh. MS-2, Appendix A-15-a. PAWC selected Weinert Consultants, and Brentwood selected Gannett Fleming, as their respective UVEs to prepare FMV appraisals of the System. The PAWC-sponsored appraisal performed by Weinert Consultants concluded that the value of the System was

\$22,721,549. The Brentwood-sponsored appraisal performed by Gannett Fleming concluded that the value of the System was \$20,934,000. Both appraisals were prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards. The FMV as defined in Act 12 of 2016¹⁰ is the average of these two appraisals which is \$21,827,775. Under Section 1329, the ratemaking rate base is the lesser of either the purchase price in the APA, which is \$19,364,443, or the FMV which is \$21,827,775. Therefore, since the purchase price is lower than the FMV, the ratemaking rate base for the System is \$19,364,443. PAWC St. 4 at 3; Brentwood St. 2 at 13, 28-29.

III. Public Input Hearings

Two public input hearings were conducted telephonically to give the public an opportunity to be heard regarding the acquisition of the System by PAWC. The public input hearings were held at 1:00 p.m. and 6:00 p.m. on October 26, 2023, at which a total of five individuals testified to raise issues to be considered by the Commission. R.D. at 26. We refer to the Recommended Decision for a detailed summary describing the positions of the witnesses who testified at the public input hearings, which is incorporated herein. *See*, R.D. at 26-28.

IV. Legal Standards

A. Burden of Proof, 66 Pa. C.S. § 332(a)

As the proponent of a rule or order in this proceeding, PAWC has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa. C.S.

¹⁰ Then-Governor Wolf signed into law Act 12 of 2016 (Act 12) on April 14, 2016. Act 12 amended Chapter 13 of the Code by adding a new section, Section 1329, which became effective on June 13, 2019. 66 Pa. C.S. § 1329 (Section 1329).

§ 332(a). The Applicant must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Applicant's evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

B. Certificate of Public Convenience, 66 Pa. C.S. §§ 1102, 1103

Section 1102(a)(1)(i) of the Code requires a utility to first obtain a Certificate of Public Convenience (Certificate) prior to beginning to offer or supply utility service to a different territory than that previously authorized by the Commission. 66 Pa. C.S. § 1102(a)(1)(i).

Section 1102(a)(3) of the Code requires a utility to first obtain a Certificate from the Commission prior to a utility or an affiliated interest of a utility to acquire or transfer, to any person or corporation by any method, property used or useful in the public service. 66 Pa. C.S. § 1102(a)(3).

Section 1103(a) of the Code establishes the standard for granting a Certificate required under Section 1102:

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.* The

commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.

66 Pa. C.S. § 1103(a) (emphasis added); *see also*, *Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 763, 764-65 (Pa. Cmwlth. 1985) (*Seaboard Tank Lines*).

According to the Pennsylvania Supreme Court, satisfying the standard of Section 1103(a) requires the Commission to find that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. PUC*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972) (*City of York*). In establishing this precedent, the Court held that the statute’s clear command is that the Commission must find that the granting of a certificate “will affirmatively benefit the public.” *Id.* (overruling in part, *Northern Pennsylvania Power Co. v. Pa. PUC*, 333 Pa. 265, 267, 5 A.2d 133, 134).

The Supreme Court further held:

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

Popowsky v. Pa. PUC, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007) (*Popowsky*).

Further, the Court explained that demonstration of the affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. *Popowsky*, 594 Pa. at 617-618, 937 A.2d at 1061. In addition, “in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the requirement of Section 1103(a) will ensue.” *Id.* at n.21. The

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

One of the factors that the Supreme Court identified in *City of York* for the Commission to consider in determining whether there is an affirmative public benefit is:

[A]t least in a general fashion, the effect that a proposed merger is likely to have on future rates to consumers. Along with the likely effect of a proposed merger upon the service that will be rendered to consumers, the probable general effect of the merger upon rates is certainly a relevant criteria of whether the merger will benefit the public.

City of York, 295 A.2d at 829.

In applying this specific factor, the Pennsylvania Commonwealth Court recently held that the Commission must perform “the balancing test required by Section 1102 of the Code to weigh all the factors for and against the transaction, *including the impact on rates*, to determine if there is a substantial public benefit.” *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1066-1067 (Pa. Cmwlth. 2018), *appeal denied*, 207 A.3d 290 (Pa. 2019) (*McCloskey*) (emphasis added). While *McCloskey* held that rate impact must be addressed, it recognized that “the Commission is charged with deciding whether the impact of rates...is outweighed by...other positive factors that...served [as] a substantial public benefit.” 195 A.3d at 1067.

The Commission and the courts have held that granting a certificate need not be “absolutely necessary” in order to be in the public interest. *See, Hess v. Pa. PUC*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014). The Commonwealth Court reasoned, “[n]ot only would this approach be impractical and unrealistic, it would actually pose a danger to the health, safety and welfare of the public.” *Id.* In addition, when considering the public interest, the Commission may consider how the benefits and detriments impact “all

affected parties, and not merely one particular group or geographic subdivision.” *Middletown Twp. v. Pa. PUC*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984) (*Middletown Township*) (emphasis in original); *see also*, *Dunk v. Pa. PUC*, 232 A.2d 231, 234-35 (Pa. Super. 1967), *aff’d*, 434 Pa. 41, 252 A.2d 589 (1969) (where public benefit included companies and customers other than the proponent utility).

Recently, in *Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Cmwlth. 2023) (*Cicero*), the Commonwealth Court, upheld prior precedent that the substantial affirmative benefits of a proposed acquisition must outweigh the acknowledged harms resulting from the acquisition. The Court explained that where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction. *Cicero* at 1119. Furthermore, the Court clarified that:

Where...there are **no benefits that differ substantially** from the benefits already being provided by the existing system operator, those alleged benefits arise as a result of the acquiring utility’s fitness, rather than from the actual transaction, 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 [Certificate] under Section 1103(a).

Id. (emphasis in original). The Court explained that providing the same services as are already being provided, or providing for upgrades that the existing system operator is capable of providing, are not substantial affirmative benefits consistent with *City of York*, especially if the existing system is already operating safely and reliably. *Id.* at 19. Moreover, the public benefits arising from aspirational statements or benefits that cannot be quantified at the time of the transaction may not always constitute affirmative public benefits that will be substantial enough to outweigh known harms. *Id.* at 1120.

In order to obtain a Certificate, the acquiring public utility has the burden, by a preponderance of the evidence, to establish that it is technically, legally, and financially fit to provide the proposed service. *McCloskey*, 195 A.3d at 1058. An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the certificate holder has a propensity to operate legally. *Lehigh Valley Transp. Servs., Inc. v. Pa. PUC*, 56 A.3d 49, 58 (Pa. Cmwlth. 2012) (*Lehigh Valley Transp.*); *South Hills Movers, Inc. v. Pa. PUC*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992) (*South Hill Movers*). It is the protestant’s burden to rebut that presumption. *Lehigh Valley Transp.* at 58. Where an Applicant is both presumed fit and sets forth affirmative evidence demonstrating fitness, this burden is particularly heavy. *Id.*

C. Ratemaking Rate Base Value, 66 Pa. C.S. § 1329

Section 1329 of the Code establishes a process for ratemaking purposes to value the plant of municipal-owned water and wastewater systems to be acquired by certificated public utilities. 66 Pa. C.S. § 1329. Under Section 1329, the value of water and wastewater system assets to be included in the acquiring utility’s rate base for ratemaking purposes will be the lesser of the purchase price negotiated by the acquiring utility and seller or the “fair market value” of the selling utility’s system. 66 Pa. C.S. § 1329(c)(2).

The fair market valuation process under Section 1329 where the acquiring utility and the seller must elect and agree to have the fair market value of the seller’s assets established through separate, independent appraisals conducted by UVEs is voluntary. 66 Pa. C.S. § 1329(a). The Commission maintains a list of qualified UVEs from which the acquiring utility and seller must choose their respective appraisers. 66 Pa. C.S. §§ 1329(a)(1), (2).

The UVEs must prepare an appraisal of the seller's system assets in compliance with the USPAP, employing the cost, market, and income approaches. 66 Pa. C.S. § 1329(a)(3). The fair market value of the system is defined as the average of the two separate UVE appraisals conducted in compliance with Section 1329(a)(3). 66 Pa. C.S. § 1329(g).

The Applicant must provide to the Commission copies of the appraisals; the purchase price; the ratemaking rate base; the closing costs; and, if applicable, a tariff and rate stabilization plan. 66 Pa. C.S. § 1329(d)(1).

D. Utility-Municipal Contracts, 66 Pa. C.S. § 507

Section 507 of the Code provides as follows regarding a utility's contract with a municipal corporation:

Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date. Upon notice to the municipal authorities, and the public utility concerned, the Commission may, prior to the effective date of such contract or agreement institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the Commission grants its approval thereof.

66 Pa. C.S. § 507.

Thus, pursuant to Section 507, the Commission has discretionary power to institute proceedings to determine the reasonableness, legality, and validity of the

contracts between a municipality and a public utility. 66 Pa. C.S. § 507; *see also*, *County of Allegheny v. Pa. PUC*, 159 A.2d 227, 233 (Pa. Super. 1960).

E. General Standards

In the Recommended Decision, the ALJ made 125 Findings of Fact and reached twenty-eight Conclusions of Law. *See*, R.D. at 6-25, 129-134. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As we proceed in our review of the various positions of the Parties in this proceeding, we are reminded that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also*, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Exceptions that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

V. Discussion

A. Sections 1102 and 1103 Approvals

1. Fitness

Pursuant to 66 Pa. C.S. § 1103, PAWC must show that it possesses the technical, legal, and financial capability to own and operate the assets it seeks to purchase from Brentwood. *Seaboard Tank Lines*, 502 A.2d 762; *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240 (Pa. Super. 1958). As to legal fitness, PAWC must demonstrate

that it has obeyed the Code and Commission Orders and Regulations. As to financial fitness, PAWC must demonstrate that it has sufficient financial resources to provide the proposed service. As to technical/managerial fitness, PAWC must have sufficient staff, facilities, and operating skills to provide the proposed service. *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982). As a certificated public utility, PAWC benefits from a rebuttable presumption that it possesses such requisite fitness. *South Hills Movers*, 601 A.2d 1308; 66 Pa. C.S. § 1329.

The ALJ found that the evidence of PAWC's fitness supports that PAWC is able to operate the Brentwood wastewater system consistent with the Commission's Regulations. R.D. at 121. Upon review of the record, we agree with the ALJ that PAWC has proven that it is technically, legally, and financially fit to acquire Brentwood's System. As the ALJ pointed out, no Party disputed or challenged PAWC's technical, legal, and financial fitness to render wastewater service. In addition, PAWC is a public utility regulated by the Commission with a good compliance history and there are no pending legal proceedings that would suggest PAWC is not legally fit to provide service to customers on Brentwood's System. PAWC has also demonstrated on the record that it possesses the requisite financial and technical fitness to provide safe, adequate, and reasonable service to its customers. R.D. at 16-17, 33-34 (citing PAWC St. 1 at 21, 23; PAWC St. 2 at 21; PAWC St. 3 at 3).

2. Substantial Affirmative Public Benefits

a. Positions of the Parties

(1) PAWC

PAWC recognized that it is required to show that the Acquisition and the Company's ownership/operation of the System will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." PAWC M.B. at 14 (quoting *City of York*). According to PAWC, the affirmative public benefits test does not require that every utility customer benefit from the proposed transaction or that the utility's proposed action be absolutely necessary. PAWC M.B. at 14 (citing *Cicero*). PAWC clarified that the affirmative public benefit test is a "net benefits assessment." PAWC M.B. at 14. The Company explained that an acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Id.* (citing *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950). The Company further explained that when analyzing the benefits and detriments of an acquisition, all affected parties must be taken into account, not just one specific group or a specific geographic location. PAWC M.B. at 14 (citing *Middletown Township*). According to PAWC, the Acquisition provides a substantial affirmative public benefit because it benefits all impacted stakeholder groups, including the public-at-large, Brentwood (as the seller) and its citizens, Brentwood's existing customers, and PAWC's existing water and wastewater customers. PAWC M.B. at 15.

First, PAWC argued that the transaction benefits the public-at-large, including all Commonwealth residents, whether or not they are customers of PAWC or Brentwood, by promoting the Legislature's public policy goals in Section 1329 of the Code and the Commission's policy favoring regionalization and consolidation of water and wastewater systems. PAWC M.B. at 15 (citing PAWC St. 1 at 1; 52 Pa. Code

§ 69.721(a)). PAWC submitted that the transaction provides environmental benefits, noting Brentwood's history of environmental challenges, including aging infrastructure. PAWC M.B. at 16-17. The Company highlighted the System's history of persistent environmental violations in its operations and the resulting regulatory orders to which the System was subject. *Id.* at 17 (citing PAWC St. 2-R at 5). Specifically, PAWC noted that the System is currently subject to a 2022 Consent Order and Agreement (COA) with the Allegheny County Health Department (ACHD). PAWC M.B. at 17. PAWC further recognized its commitment to investing over \$8 million in the System, within five years of closing, to improve environmental compliance. PAWC also recognized its expertise in wastewater compliance and its ability in bringing systems that it acquires into compliance. *Id.* at 18, 20. According to PAWC, the resulting environmental benefits from the transaction promote the public's constitutional right to a clean environment and should be given significant weight. PAWC R.B. at 9.

Next, PAWC argued that the transaction benefits Brentwood and its citizens. PAWC M.B. at 21. According to PAWC, the transaction fulfills the will of the elected officials who weighed the advantages and disadvantages of the Borough's continued ownership of the System and determined that continued ownership was no longer practicable when considering the administrative and financial burden, the capital investment required for improvement, and the persistent environmental non-compliance challenges. *Id.* (citing Brentwood St. 1 at 10). The Company acknowledged that the primary benefit of the transaction for Brentwood is the receipt of the proceeds from the sale of the System (over \$19 million) to be used for public purposes. PAWC M.B. at 21. Additionally, PAWC listed the other benefits that the transaction will have on the Borough, including increasing tax revenues and reducing the Borough's delinquent account balance and expenses. *Id.* at 22-23.

Regarding Brentwood's existing customers, the Company contended that the transaction impacts this stakeholder group in the same way that it impacts all other

members of the public-at-large, referencing the net benefits of the transaction for members of the public-at-large. PAWC M.B. at 23. As for rate impact, PAWC claimed that a rate increase for Brentwood's existing customers is unavoidable whether or not the System is sold. *Id.* at 25 (citing Brentwood St. 1-R at 7; Tr. at 136). If the transaction is approved, PAWC contended that there will be no rate increase for two years following the closing and any subsequent rate impact will be determined by the Commission. PAWC M.B. at 25 (citing PAWC St. 3-R at 2; 66 Pa. C.S. §1301). In support, the Company argued that it estimated the rate impact of the transaction for Brentwood's existing customers consistent with the settlement that the Commission approved in *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered October 3, 2019) (*Steelton Order*), resulting in the estimate of 11%. PAWC M.B. at 25 (citing PAWC St. 3-REV at 13). PAWC noted additional benefits of the transaction for Brentwood's customers, including PAWC's 24/7 customer service center hours, Commission oversight, and the provision of water and wastewater service from a single provider, resulting in a more efficient payment process for both services. PAWC M.B. at 28-29. Additionally, PAWC asserted that low-income customers will have access to PAWC's customer assistance program and payment arrangements, if qualified. *Id.* at 29.

PAWC relied on the Consumer Price Index (CPI) to show that if the transaction is disapproved, then Brentwood would need to increase rates by almost 20% just to cover the cost of inflation from the date of its last rate increase in 2019 to October 2023. PAWC M.B. at 26. In summary, PAWC asserted that the disapproval of the transaction would result in a substantial increase in rates for Brentwood's existing customers, without Commission oversight, due to inflation, which the Company noted would only maintain the *status quo* and not fund any improvements to the System. *Id.* at 26-27 (citing Brentwood St. 1-R at 14-15). Therefore, the Company asserted that

the rate impact from the approval of the transaction is “modest” and “quite possibly less” than the rate impact from its disapproval. PAWC M.B. at 30.

As for PAWC’s existing wastewater customers, PAWC argued that the transaction impacts such customers in the same way that it impacts all other members of the public-at-large, referencing the net benefits of the transaction for members of the public-at-large. PAWC M.B. at 30. According to PAWC, there will be no immediate impact on the rates of PAWC’s existing wastewater customers and any future impact on rates will be determined by the Commission. *Id.* (citing PAWC St. 3-REV at 10; 66 Pa. C.S. § 1301). The Company estimated the rate impact of the transaction for existing wastewater customers to be 0.3%. PAWC M.B. at 30 (citing PAWC St. 3-REV at 13). The Company highlighted the addition of new customers to PAWC’s customer base which, the Company asserted, will benefit PAWC’s existing wastewater customers in the long-term. PAWC M.B. at 30. According to PAWC, the addition of new connections to the entire PAWC system will spread the costs of future infrastructure investment, promoting long-term rate stability. *Id.* at 30-31.

Next, PAWC contended that the transaction impacts PAWC’s existing water customers in the same way that it impacts all other members of the public-at-large, referencing the net benefits of the transaction for members of the public-at-large. PAWC M.B. at 31. Similar to existing wastewater customers, PAWC asserted that there will be no immediate rate impact on PAWC’s existing water customers, and any future rate impact will be determined by the Commission. *Id.* (citing PAWC St. 3-REV at 10; 66 Pa. C.S. § 1301). According to the Company, the rate impact of the transaction for existing water customers would be 0.0%. PAWC M.B. at 31 (citing PAWC St. 3-REV at 15). PAWC emphasized that the transaction will have no rate impact at all on PAWC’s existing water customers unless the Commission determines that an allocation of PAWC’s wastewater revenue requirement to the water customer base is in the public interest. PAWC M.B. at 31 (citing 66 Pa. C.S. § 1311(c)).

Lastly, PAWC argued that the transaction benefits PAWC as the Company will acquire the Brentwood System and its 3,980 additional customers for 11% less than its value. PAWC R.B. at 24. According to PAWC, the transaction will not have any material adverse impacts on the Company. *Id.* at 25.

In conclusion, PAWC asserted that when all the benefits for all the impacted stakeholder groups are weighed against all the detriments, the aggregate benefits of the transaction outweigh the aggregate detriments in satisfaction of the affirmative public benefit test. PAWC R.B. at 26.

(2) Brentwood

Brentwood noted initially that PAWC has the legal, technical, and financial fitness to purchase and operate Brentwood's wastewater system and points out the agreement of the Parties as to this point. Brentwood M.B. at 13. Brentwood contended that the proposed transaction provides substantial affirmative public benefits with two benefits of special importance: (1) the sale of the wastewater system to PAWC would allow an "industry expert" to address compliance issues inherent in the nearly 100-year-old system while reducing the maintenance burden and cost on Brentwood; and (2) the improvement of the operation and management of the system by utilizing the expertise and customer service resources of PAWC, allowing Brentwood to reallocate resources and expenses to other responsibilities. *Id.*, *see also*, Brentwood St. 1 at 14. Brentwood posited the transaction offers additional benefits as to addressing environmental challenges, with these cumulative benefits outweighing any potential harms suggested by the Statutory Advocates. *Id.* Therefore, Brentwood requested that, based on the substantial affirmative benefits of the transaction, the Commission approve the transaction. *Id.* at 17.

Brentwood addressed the benefits of the proposed acquisition to the public-at-large. Pointing to the age of the wastewater system, Brentwood suggested ongoing non-compliance with environmental regulations contributed to consideration of a sale. Brentwood M.B. at 14. Specifically, Brentwood stated more than 80 percent of the system was installed between 1919 and 1930 – with age exacerbating environmental challenges – and the System’s 1,050 older concrete and brick manholes are more susceptible to corrosion by sewer processes and increase the impact of infiltration. *Id.*; *see also*, Brentwood St. 1 at 9. Referring to the scope of non-compliance, Brentwood pointed out that it has been subject to a regulatory order with the ACHD requiring Brentwood to remediate numerous environmental compliance concerns for sixteen of the last nineteen years. *Id.*; *see also*, PAWC St. 2-R at 5. The Borough is also bound by the terms of ALCOSAN’s Modified Consent Decree pursuant to the Z Agreement. Brentwood St. 1 at 6.

Brentwood argued that despite its best efforts to remediate these ongoing environmental challenges with routine repairs and maintenance, it has recognized it lacks the capital investment, technical ability and expertise, and staffing to complete the comprehensive repair and replacement of the aged System. Brentwood M.B. at 14-15; *see also*, Brentwood St. 1 at 8-9, Brentwood St. 1-R at 5; PAWC St. 2 at 20. As part of this, Brentwood conceded it does not currently employ an in-house engineer and instead relies on eight Public Works employees who have additional responsibilities across the Public Works Department. Brentwood M.B. at 15-16, *see also*, Brentwood St. 1-R at 2-4, St. 1 at 14-15.

Brentwood contended that if the proposed transaction is approved, PAWC will integrate the Brentwood system into PAWC’s “comprehensive and proactive” environmental program, including assigning staff under PAWC’s Operation and Maintenance (O&M) Program Plan and sanitary sewer overflow (SSO) Response Plan to ensure efficient operations and compliance with the ACHD consent order and other

pertinent laws and regulations. Brentwood M.B. at 15; *see also*, PAWC St. 2 at 17-18. Additionally, PAWC's Brentwood staff would be connected with the PAWC Operations Team in McKeesport, which includes a Senior Operations Superintendent, Senior Operations Supervisor, Operations Supervisor, and Water Quality Supervisor all dedicated to wastewater operations. *Id.*; *see also*, Brentwood St. 1-R at 3. Brentwood stated the staffing, statewide resources and management tools, and resources of PAWC's parent company will assist with compliance, particularly so when paired with PAWC's Manager of Wastewater Compliance, who has the sole responsibility of ensuring wastewater treatment system compliance. Brentwood M.B. at 15-16; *see also*, PAWC St. 2 at 17.

Lastly, Brentwood suggested approving the proposed transaction and allowing PAWC to assume control of the operations of the Brentwood System will benefit environmental compliance efforts across the ALCOSAN region. Brentwood M.B. at 16. Brentwood noted that the cooperation between PAWC and ALCOSAN shows PAWC's commitment to proactively address environmental challenges within the Brentwood System and ALCOSAN region. Brentwood M.B. at 16.

Brentwood stated PAWC's expertise and experience, when applied to the issues facing the System, shows a critical benefit compared to Brentwood's ongoing struggles to deal with environmental issues within the System. Brentwood M.B. at 17. Brentwood pointed to I&E's testimony which agreed that Brentwood is unable to provide the same level of service as PAWC without significant expenditures and the raising of rates. *Id.*; *see also*, Tr. at 330-333.

With respect to benefits of the proposed acquisition to the Borough itself, other than briefly referring to the ability of Brentwood to reallocate Borough resources to other priorities and responsibilities, Brentwood did not address this matter in its Main Brief or Reply Brief.

Regarding the benefits of the proposed acquisition to Brentwood's water customers, Brentwood argued its customers will experience improved administrative and operational customer service experiences if the transaction is approved. Brentwood M.B. at 17-18. Providing support for this statement, Brentwood stated that it currently has eight Public Works employees assigned to administration and management of the sewer system, with these employees having additional responsibilities pertaining to, *inter alia*, maintaining roadways, removing snow, maintaining parks, and assisting capital construction contractors. Brentwood M.B. at 18, *see also*, Brentwood St. 1 at 14-15; Brentwood St. 1-R at 2. Brentwood also pointed to limitations in its customer service, chief among these is that staff is only available during regular business hours of 8:00 a.m. to 4:30 p.m., which leaves customers experiencing an after-hours sewage issue two remedies: (1) leaving a message with the Public Works Department that will be addressed the next day; or (2) utilizing 911, which will result in the issue being addressed outside of business hours only if there is a public safety concern. *Id.*; *see*, Brentwood St. 1 at 16.

By comparison, Brentwood offered that PAWC employs roughly 1,200 professionals across its water and wastewater utility operations, including, among other specialties, engineering, regulatory compliance, maintenance, and customer service. Brentwood M.B. at 18; *see*, PAWC St. 1 at 14-15. Brentwood noted PAWC provides expanded customer call center hours, the option to email a customer service representative, and a 24/7/365 customer service call center for customer emergencies with specialists also available to address emergency fieldwork. PAWC St. 2 at 28, 33. Brentwood also asserted customers will have a more "user-friendly" bill payment experience. *Id.* at 19. This includes customers receiving consolidated water and wastewater bills with PAWC providing both services and access to PAWC's low-income customer assistance programs, including automatic enrollment in certain discounts. Brentwood M.B. at 19-20; *see also*, Brentwood St. 1 at 5, 17; PAWC St. 3 at 16-18.

Finally, Brentwood did not address the benefits of the proposed acquisition to PAWC's existing wastewater or water customers in its briefs.

(3) I&E

Relying on the language of 66 Pa. C.S. §1103(a), I&E argued the Application in this matter made only unquantified and generalized statements that current customers of the Brentwood system will benefit from the transaction based on economies of scale. I&E M.B. at 6-7. I&E stated these generalities are insufficient to show affirmative public benefits resulting from the transaction. *Id.* at 7. I&E also pointed to the Commonwealth Court's decision in *Cicero* for its contention that where an existing system provides safe and reliable service and where 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).” I&E M.B. at 7 (citing *Cicero* at 1119 (emphasis in original)).

I&E suggested that despite PAWC's expertise, Brentwood is currently providing adequate service and may be able to continue providing adequate service at a lower cost than PAWC. I&E M.B. at 8. In support of this position, I&E noted Brentwood's most serious issue appears to be inflow and infiltration (I&I), a problem that Brentwood is currently taking steps to remediate and correct. *Id.* Pointing to evidence within the record, I&E noted the source of excess I&I is unclear and posited municipalities upstream may be contributing to the issue with their own I&I issues. *Id.* at 9, Tr. at 148. With Brentwood meeting the metrics and milestones it has agreed to as part of its remediation efforts, I&E suggested the proposed transaction would simply maintain the status quo, which is not an affirmative public benefit. *Id.* at 9.

After pointing out that Brentwood does not provide perfect utility service, I&E argued that perfect service is not required for utility service to be adequate. I&E M.B. at 9. I&E contended the record evidence in this matter shows that Brentwood has not shown it is a troubled system, Brentwood has not violated its Consent Decree or other environmental obligations, Brentwood is not in financial distress and has no issue running and maintaining its System, and Brentwood has not experienced issues funding infrastructure replacement and updates and maintained good cash flow. *Id.* at 9-10 (citing OCA St. 1 at 14-15, internal citations omitted).

Second, I&E also argued that Brentwood customers will face rate increases under PAWC's ownership of the system and, if rate increases are gradual, existing PAWC customers will be subsidizing the Brentwood customers. I&E M.B. at 10. I&E stated the alleged benefits of the transaction result "not from the acquisition itself, but from the size and technical fitness of PAWC." *Id.* I&E's position is that PAWC has not demonstrated that anything other than "the status quo" will come about from the acquisition. *Id.*

Finally, I&E asserted the alleged customer benefits do not necessarily yield public benefits. I&E noted that having consolidated water and wastewater service does not yield a public benefit, particularly so when considered alongside possible rate increases. I&E M.B. at 11 (citing I&E St. 1 at 7-8). I&E went on to allege that access to PAWC's 24/7/365 customer service is a minor benefit, at best, citing to the fact issues can be resolved during and after business hours currently and that Brentwood customers did not express concerns or issues with current customer service. *Id.*

I&E asserted there is no concrete evidence Brentwood cannot and is not operating the system in a safe and reliable manner, and there is no evidence it cannot continue to operate the system – potentially at a lower cost than PAWC. I&E M.B. at 11. I&E argued the Application does not meet the affirmative public benefits test as the only

evidence left is assertions of regionalization and consolidation, along with a larger customer base over which to spread costs, which do not rise to the level of substantial public benefits. *Id.* at 11-12.

(4) OCA

It is the OCA's position that PAWC failed to satisfy the "substantial affirmative benefits" standard under Sections 1102 and 1103 of the Code as the benefits that PAWC claimed will result from the transaction are "almost exclusively based on its fitness (especially as derived from its size) and not specific to the transaction proposed in this Application and are not marked improvements over the safe and reliable service already being provided by Brentwood." OCA M.B. at 13-14. According to the OCA, PAWC's technical, legal, and financial fitness and the benefits flowing from such fitness do not constitute substantial affirmative public benefits. *Id.* at 14 (citing *Cicero* at 1120).

First, the OCA argued that Brentwood's existing customers will not substantially benefit from PAWC's access to capital flow as the System is not distressed and not in need of an immediate influx of capital investment to provide safe and reliable service. OCA M.B. at 15. According to the OCA, the Borough clearly has access to the capital required for improving its System. *Id.* (citing Brentwood St. 1 at 10). Noting PAWC's position on the System's history of environmental challenges and its expertise in environmental compliance, the OCA argued that the System has complied with its current COA, and there is no indication that Brentwood would be unable to raise additional capital, if needed, to ensure continued compliance. OCA M.B. at 15-16 (comparing PAWC St. 2 at 11 with OCA Exh. ND-3). Furthermore, the OCA noted that Brentwood has access to additional capital through the ALCOSAN Grow Program. OCA M.B. at 17. It is the OCA's position that the Borough's access to Grow grants to fund the necessary improvements for compliance demonstrates that PAWC's access to

capital, at a much higher cost, is not a substantial improvement on the *status quo*. *Id.* (citing OCA St. 1SR at 7).

Next, the OCA contended that PAWC will not be able to offer Brentwood's existing customers substantially better customer service than that already provided by Brentwood. OCA M.B. at 18. The OCA asserted that PAWC's proposed improvements result mainly from standardization, including the routinization of notices, collections, receipt of both water and wastewater bills on a single bill, and alternative payment plan options. *Id.* (citing OCA St. 2 at 5). According to the OCA, former Brentwood customers will not receive a single bill from PAWC if the transaction is approved as PAWC claimed. OCA M.B. at 17 (citing PAWC St. 3-R at 18). The OCA explained that a former Brentwood customer will still receive two bills, a water and wastewater bill from PAWC and a bill from Brentwood for refuse charges. *Id.* Noting PAWC's emphasis on 24/7 customer service center hours as a benefit, the OCA argued that PAWC failed to provide any specific example as to how the Brentwood customer experience will improve. OCA M.B. at 18.

As for PAWC's low-income customer program, the OCA contended that PAWC has not shown that Brentwood customers' access to this program will outweigh the harms resulting from the transaction, particularly given that any discount offered by PAWC would only apply to a fraction of the customer base and then only to a portion of the customer's bill. OCA M.B. at 18. The OCA acknowledged that Brentwood customers currently have access to ALCOSAN's low-income program for its treatment portion of customers' wastewater charge. *Id.* at 19 (citing OCA St. 1 at 19, 24). According to the OCA, under the current proposal, PAWC will not offer its low-income discount program to Brentwood customers to assist with ALCOSAN treatment costs. M.B. at 19 (citing Appendix A-12 (revised) at 16). The OCA explained that instead, Brentwood customers will still have to apply separately for ALCOSAN's low-income program. OCA M.B. at 19. It is the OCA's position that the benefits asserted by PAWC,

relating to customer service improvements, flow entirely from PAWC's fitness and not from the transaction as they result from PAWC's size and experience. *Id.*

Furthermore, the OCA argued that existing Brentwood customers will likely face higher rates because of the transaction. OCA M.B. at 25. The OCA submitted that the rate freeze proposed by PAWC does not provide a net benefit to Brentwood customers. *Id.* at 26. The OCA contended that when rates are increased, Brentwood customers will experience a rate increase to recover approximately seven years' worth of increases in cost of service and at PAWC's cost of service. *Id.* (citing Brentwood St. 1-R at 9). Therefore, the OCA argued that such rate freeze creates a delayed harm as it compels Brentwood customers to bear the burden of their revenue deficiency, along with that of other acquired systems, immediately at the end of their rate freeze. OCA M.B. at 27 (citing PAWC St. 3-R at 4). The OCA further argued that while PAWC purports that the rates of Brentwood customers will need to increase by 11% following the end of the rate freeze, to account for the estimated annual revenue deficiency of the System, this number does not include the estimated capital improvements. OCA M.B. at 27 (citing OCA St. 1SR at 13). In addition, the OCA challenged the Company's use of the CPI to estimate a rate increase in the event that the Application is denied, on grounds that it is extra record evidence and is "a bad proxy for estimating the increasing cost of utility service over time – which should form the basis for the Borough's collection service charge – as the consumer basket of goods is not meant to estimate the increasing costs faced by utility service providers due to inflation." OCA R.B. at 16-17.

Moreover, the OCA contended that Brentwood customers will see a 7% increase in ALCOSAN rates in each of the next several years under the PAWC's proposed rate treatment for ALCOSAN charges. OCA M.B. at 28 (citing OCA St. 2 at 8). The OCA argued that as a result, the monthly bills of Brentwood customers will increase, despite the proposed rate freeze. *Id.* Moreover, the OCA highlighted that under the Company's current proposal, Brentwood customers would be charged wastewater

treatment as a pass-through for ALCOSAN rates, while the treatment costs in PAWC's other collection-only systems are included in operation expenses. OCA M.B. at 30-32. According to the OCA, should the Commission approve the Application, PAWC's pass-through charge proposal should be denied because the Company has no statutory or regulatory authorization to treat ALCOSAN charges as pass-through and has not provided sufficient evidence to support the treatment of such charges as adjustable rates under Section 1307. OCA R.B. at 21.

Lastly, the OCA asserted that Brentwood customers would be deprived of significant benefits stemming from Brentwood's membership within the ALCOSAN treatment regional cooperative, should the transaction be approved. OCA M.B. at 33. The OCA noted that Brentwood currently has a good working relationship with ALCOSAN and is a part of the ALCOSAN tributary network and a party to the Z Agreement. *Id.* at 34 (citing Brentwood St. 1 at 8; ALCOSAN St. 1 at 2). The OCA emphasized that ALCOSAN has already facilitated regionalization of its tributary collection systems. OCA M.B. at 35. The OCA submitted that PAWC will disrupt the current regional plan in effect within the ALCOSAN treatment tributaries, because: (1) PAWC will have no direct relationship with ALCOSAN; (2) it will not be a party to the Z Agreement; (3) it faces a higher cost of capital; and (4) its ability to invest in cooperative agreements is constrained by its certificated public utility status. *Id.*

Regarding PAWC's existing customers, the OCA purported that it is both likely and foreseeable that the rates of this impacted stakeholder group will increase as a result of the transaction. OCA M.B. at 20. The OCA acknowledged the public input testimony provided by two existing PAWC wastewater customers, who were former customers of the Exeter Township wastewater system prior to its acquisition by PAWC and attested to the significant increases that existing PAWC customers have faced due to PAWC's continued use of fair market valuation for ratemaking rate base in its expansion throughout the Commonwealth. *Id.* The OCA argued that 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 if the transaction is approved. *Id.* at 22. Specifically, the OCA noted that PAWC has proposed spending \$8,055,000 over five years and agreed to a two-year rate freeze for Brentwood customers in the APA. *Id.* (citing PAWC Exh. DJH-2; Appendix A-24-a at § 7.03(a); OCA St. 2 at 8). The OCA further noted that PAWC calculates the Brentwood system will generate an annual revenue deficiency of \$667,000, before considering planned capital improvement costs. OCA M.B. at 23 (citing OCA Exh. ND-2). According to the OCA, while PAWC has proposed that its shareholders will bear the burden of that portion of the Brentwood revenue deficiency for the duration of the rate freeze, the Company proposes no such measure for the total revenue deficiency that may be assigned to existing customers through a Section 1311(c) shift, nor does the Company commit to bear the increased cost of Brentwood's planned capital improvements. OCA M.B. at 23 (citing OCA St. 2SR at 2). The OCA contended that during the first year of the rate freeze, planned capital improvements are expected to cost PAWC approximately 232% of the annual revenue deficiency and during the second, 540% and that those costs will be borne by existing PAWC consumers, Brentwood customers, or both. OCA M.B. at 23 (citing PAWC Exh. DJH-2).

With respect to the public-at-large, the OCA argued that the benefits alleged by PAWC, regarding the coordination of infrastructure upgrades and reduction of road cuts, simply maintains the *status quo*. OCA M.B. at 37 (citing PAWC St. 2SR at 16). The OCA further specified that the ability to coordinate internally is not a public benefit. OCA M.B. at 37.

In conclusion, the OCA asserted that when the substantial benefits proposed by PAWC are weighed against the known or foreseeable harms which would result from the transaction, there is no substantial affirmative public benefit. OCA M.B. at 38. According to the OCA, the benefits alleged by PAWC result entirely from the

Company's fitness, are not specific to the transaction, and maintain the *status quo*.
Id. at 41.

(5) OSBA

The OSBA took no position regarding the substantial public benefits test and its impact on the proposed acquisition of Brentwood's wastewater system assets by PAWC.

(6) ALCOSAN

At the onset, ALCOSAN noted that it does not take a position either in support of or in opposition to the proposed transaction. ALCOSAN M.B. at 8. ALCOSAN contended that should the Commission approve the Application, the undisputed record evidence demonstrates that there is an affirmative public benefit to the Commission also approving the Cooperation Agreement between PAWC and Brentwood. *Id.* In support, ALCOSAN argued that, if the Application is approved, the Cooperation Agreement is necessary for ALCOSAN to continue to provide its integral and exclusive wastewater treatment and conveyance services to its municipal customers, including for users in Brentwood. *Id.* (citing ALCOSAN St. 1 at 9-10). ALCOSAN explained that the Cooperation Agreement guarantees the preservation and ongoing enforcement of the terms of the Z Agreement and Other Z Agreements, consistent with past practice, including setting forth the relative rights and responsibilities of PAWC and Brentwood under the Z Agreement, which ensures ALCOSAN's compliance with the Modified Consent Decree. ALCOSAN M.B. at 8. According to ALCOSAN, the Z Agreement and the Other Z Agreements are crucial for ALCOSAN to provide its wastewater treatment and conveyance services within its service area. *Id.* (citing ALCOSAN St. 1 at 8; PAWC St. 1 at 8-9; Appendix A-25.3).

b. Recommended Decision

The ALJ recommended that the Commission deny the Application because PAWC did not meet its burden of establishing that there is an affirmative public benefit to the acquisition of Brentwood's wastewater system assets. R.D. at 2, 118, 129, 134. The ALJ found that the public-at-large will not enjoy a more safe and more reliable conveyance system as a result of the proposed acquisition, that Brentwood customers will not benefit from lower bills or from a conveyance system that is safer and more reliable than what they currently have, and that PAWC's existing customer base (both wastewater and water), in addition to its future customer base, will not benefit from the 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. Rather, the ALJ concluded that only two parties will benefit from this acquisition - Brentwood and PAWC – because Brentwood will receive over \$19 million and be relieved of the day-to-day operational costs and some (but not all) of the responsibilities to ALCOSAN, and 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. R.D. at 121-122.

In determining whether 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 customers of PAWC and Brentwood and the public-at-large, the ALJ noted that the Brentwood system is not a total wastewater system as it only includes assets associated with collection and conveyance. Therefore, the ALJ concluded that the only improvements PAWC can make to the Brentwood system would be a replacement of the pipes which might benefit Brentwood customers and Upstream Municipalities by reducing leaks or overflows; however, the ALJ stated that the evidence presented overwhelmingly proved that Brentwood currently provides safe, adequate, and reliable collection and conveyance

service and that Brentwood has not failed to address issues in its older conveyance system. Rather, the ALJ found that 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. R.D. at 123.

In addition, the ALJ found PAWC's argument that the acquisition will improve regionalization to be misleading. The ALJ noted that PAWC has no contractual rights relative to ALCOSAN other than to transmit payments from Brentwood customers for treatment service, and that Brentwood will not be released from performing under the agreements with ALCOSAN. Although PAWC is agreeing to be responsible, if a problem develops between PAWC and ALCOSAN, the ALJ stated that Brentwood will need to be pulled back into the dispute because its contractual responsibilities to ALCOSAN do not appear to disappear when it sells its wastewater conveyance assets. Therefore, the ALJ concluded, that the APA allows Brentwood to expect, and to 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. R.D. at 123-124.

Furthermore, the ALJ found PAWC's assertion that 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 not credible. While Brentwood customers will not see an increase in the rates as a result of the acquisition, the ALJ concluded that PAWC's existing water and wastewater customers will be impacted. The ALJ found that PAWC failed to prove the need for the acquisition and public interest benefits that might accrue because it did not provide evidence in support of its unsubstantiated claims concerning the acquisition. Nor did PAWC sufficiently address the corresponding harm or potential harm to existing PAWC

wastewater and water customers, and to the Brentwood customers, after the acquisition. R.D. at 124.

To the contrary, the ALJ found that the evidence presented clearly shows that 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. The ALJ noted that PAWC acknowledged that some of the cost will be distributed to its existing water customers, pursuant to 66 Pa. C.S. § 1311. Also, the ALJ stated that 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." R.D. at 125.

Moreover, the ALJ concluded that PAWC did not present sufficient evidence to prove that the benefits it asserts will outweigh the harms raised by other parties. Rather, the ALJ stated that the evidence clearly shows that "the purchase of the Brentwood system by PAWC would be a 'sum zero' enterprise." R.D. at 126. To that end, the ALJ found that the evidence showed that Brentwood customers are already receiving reasonable, adequate, safe and reliable service from Brentwood. The ALJ also determined that the addition of customer service availability "24/7," the ability for Brentwood customers to pay online, and the availability of customer assistance programs for Brentwood customers for only the portion of the bill relating to the conveyance service but not treatment charges, provide only nominal benefits. *Id.* at 126.

In addition, the ALJ explained that the recommended denial also results 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. The ALJ stated that PAWC failed to conduct a Cost-of-Service Study (COSS) which removes from the fair market value, the costs associated with the free utility service Brentwood provides to the Upstream Municipalities, and that some unknown portion of the Brentwood's I&I

originates in upstream flows, and that PAWC is in error to argue that the facilities are used and useful. R.D. at 126.

The ALJ concluded that if the Application is approved, assets owned by PAWC would be used to provide wastewater conveyance service to non-customers, without charge. The ALJ noted that PAWC did not justify why it should be allowed to provide free utility service to some entities while its customers in Brentwood must pay for free service that they will not enjoy, and that no Brentwood customer benefits from the free service given to the Borough of Whitehall and the City of Pittsburgh. The ALJ recommended that 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. R.D. at 126-127.

The ALJ also stated that the 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.*” R.D. at 127 (emphasis in original). Therefore, the ALJ found that 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. *Id.*

Next, the ALJ addressed Brentwood’s existing service. The ALJ found that Brentwood is not operating a struggling System. Instead, the ALJ found that Brentwood is paying its bills, complying with its agreements and requirements, and taking the corrective action required by environmental regulators and ALCOSAN. The ALJ also stated that no evidence was presented about any instance when an emergency occurred, or that a complaint was filed by a Brentwood customer about a failure to respond timely to any complaint or problem. While the evidence showed that Brentwood would prefer

to receive the purchase price and would no longer be responsible for the day-to-day operations of the wastewater conveyance system, the ALJ said that 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. R.D. at 127.

Further, the ALJ stated that while PAWC's size creates the potential for volume discounts, PAWC did not prove that its higher cost of capital would not offset those savings. The ALJ noted that no evidence was presented that Brentwood has been unable or would be unable to secure funding or discounts, or that Brentwood would be unable to raise the capital necessary to ensure continued compliance, to the extent additional capital is needed. The ALJ found Brentwood's budget sufficient to fund routine maintenance and system upgrades without altering existing service fees, and that Brentwood has not had issues funding infrastructure replacements or upgrades in the past five years. Additionally, the ALJ noted that Brentwood is able to raise capital for additional improvements at a lower cost of capital than PAWC, because it does not have to provide for shareholder compensation, and Brentwood, unlike PAWC, has access to additional capital through the ALCOSAN Grow program. R.D. at 127-128.

Finally, the ALJ found the arguments of I&E and the OCA, in conjunction with the facts, to be persuasive. The ALJ stated that the benefits claimed by PAWC are general benefits that are anticipated by an acquisition like the one proposed here and were not supported by any specific evidence. The ALJ concluded that the crux of PAWC's argument rests 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. The ALJ noted that PAWC did not specify or quantify when the alleged operational efficiencies will benefit PAWC or Brentwood customers. Further, the ALJ concluded that the absence of an immediate rate increase, due to a rate freeze, is not a substantial benefit by itself. Although the ALJ acknowledged that existing Brentwood

customers were notified there might be an increase equal to 11% at the time of PAWC's next base rate case filing, the ALJ found I&E's assertion troubling that PAWC has a history of under-projecting the revenue shortfall in the first base rate case after acquiring a system under Section 1329. R.D. at 128-129.

For all these reasons, the ALJ found that PAWC failed to establish that the Brentwood wastewater system under PAWC's ownership will affirmatively promote the service, accommodation, convenience, or safety of the public, and that 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. Therefore, the ALJ recommended that the Application be denied. R.D. at 129.

c. Exceptions and Replies

(1) PAWC Exception No. 1,¹¹ Brentwood Exception No. 2 and Replies

i. PAWC Exception No. 1

PAWC argues in its first Exception that the Recommended Decision erred in its conclusion that the net detriments of the transaction outweigh the net benefits for the public-at-large, Brentwood existing customers, and PAWC existing water and

¹¹ PAWC notes that it does not except to the Recommended Decision's findings that the transaction would have a net positive impact on the Borough of Brentwood, as the seller of the System, and PAWC, as the buyer of the System. PAWC Exc. at 12, 18 (citing R.D. at 122). PAWC further notes that no party has alleged any detriment to Brentwood or PAWC. PAWC Exc. at 12, 18. Thus, PAWC argues that the Commission should find that the transaction will have a substantial net benefit for Brentwood and PAWC. *Id.*

wastewater customers. PAWC Exc. at 7. In addition, PAWC contends that the Recommended Decision erred by not weighing the benefits against the detriments of the transaction as a whole. *Id.* at 8.

Regarding the public-at-large, PAWC reiterates its arguments from its testimonies that this impacted stakeholder group will benefit from the transaction as it promotes regionalization and consolidation of water and wastewater systems. PAWC Exc. at 8 (citing 52 Pa. Code § 69.721(a)). PAWC asserts that while the Recommended Decision disagreed that the transaction promotes regionalization, the Recommended Decision did not consider whether the transaction promotes consolidation. PAWC Exc. at 8 (citing R.D. at 123). PAWC argues that the Recommended Decision’s primary basis for finding that the transaction does not benefit the public-at-large is based on the Recommended Decision’s conclusion that “Brentwood currently provides safe, adequate and reliable collection and conveyance service.” PAWC Exc. at 9 (quoting R.D. at 123). PAWC, noting its disagreement with such conclusion, explains that this conclusion does not mean that the transaction is a net detriment to the public-at-large, but rather that the transaction would maintain the environmental *status quo*. PAWC Exc. at 9. According to PAWC, even if the transaction would only maintain the environmental *status quo*, the transaction still constitutes a net benefit for the public-at-large because the benefits outweigh any adverse impacts of the transaction for this impacted stakeholder group, which PAWC contends were not alleged. *Id.*

Next, PAWC draws comparisons to PAWC’s acquisition of the Butler Area Sewer Authority (BASA), noting that system’s history of environmental issues and the Corrective Action Plan (CAP) to which the system was subject. PAWC Exc. at 9 (citing *Application of Pennsylvania-American Water Company under Section 1329 for Acquisition of the Butler Area Sewer Authority*, Docket No. A-2022-3037047 (Opinion and Order entered Nov. 16, 2023) (BASA)). PAWC acknowledges that although BASA was complying with its CAP, PAWC argued in that case that the transaction would

benefit the public-at-large because PAWC would bring the system into compliance and committed to invest a significant amount of money in capital improvements to address the environmental issues. *Id.* at 9-10. According to PAWC, the Commission agreed with PAWC in *BASA* that the acquisition benefited the public-at-large from an environmental perspective. *Id.* at 10. PAWC contends that the Recommended Decision downplays the extent to which PAWC can remediate Brentwood's System, noting the Recommended Decision's claim that Upstream Municipalities may continue to pollute Brentwood and that the only improvement PAWC will be able to make is replacement of the System's pipes. PAWC Exc. at 11 (citing R.D. at 123, 127). According to PAWC, the record demonstrates that the System is polluting the environment and therefore, it must be brought into compliance with the applicable environmental laws and regulations. PAWC Exc. at 11 (citing PA. CONST. art. I, § 27). PAWC argues that its proven track record of addressing environmental issues in the systems that it acquires and its commitment to do so will result in environmental improvements that will benefit the public-at-large. PAWC Exc. at 12.

Regarding Brentwood's existing customers, PAWC reiterates its arguments from its testimonies that this impacted stakeholder group will benefit from the transaction. PAWC Exc. at 13. PAWC argues that the Recommended Decision erroneously inflated the impact of the transaction on rates. *Id.* In support, the Company notes the Recommended Decision's consideration of the public input testimony of two customers in a recently-acquired PAWC system, who testified to experiencing significant rate increases after closing on that acquisition due to PAWC's subsequent rate increases. *Id.* at 13 (citing R.D. at 125). PAWC contends that such testimony is irrelevant as the scope of this proceeding is limited to the impact of solely this transaction. PAWC Exc. at 13 (citing *BASA* at 62). The Company further contends that the Recommended Decision was influenced by I&E's assertions that PAWC's estimates have not proven to be accurate predictors of future events. PAWC Exc. at 14 (citing R.D. at 129).

PAWC further argues that the Recommended Decision erroneously failed to consider the impact on the rates of Brentwood's customers if the transaction is disapproved. PAWC Exc. at 14, 16 (citing *BASA* at 61-62). It is PAWC's position that the record clearly demonstrates that rates will increase even if the Commission does not approve the transaction. PAWC Exc. at 14 (citing Brentwood St. 1-R at 7; Tr. at 136). According to PAWC, it is unclear as to whether Brentwood customers would experience a greater rate increase if PAWC acquires the System or if Brentwood retains the System. PAWC Exc. at 16. Due to this uncertainty, PAWC argues that this factor should be afforded little weight and that the Recommended Decision erred by giving this factor significant weight. *Id.* (citing *BASA* at 62). In addition, the Company asserts that the Recommended Decision's finding that Brentwood's loss of access to grants through ALCOSAN's Grow program will have a detrimental impact on this stakeholder group should be given little weight due to the small amounts that Brentwood received through Grow grants. PAWC Exc. at 16 (citing R.D. at 128; PAWC R.B. at 13).

Next, PAWC contends that the Recommended Decision erred in its consideration of the benefits of the transaction for Brentwood customers as the Recommended Decision stated that "[t]he 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 Exc. at 16 (quoting R.D. at 128). According to PAWC, this statement is contradicted by a significant amount of evidence, reflected in the record, demonstrating the specific benefits that will flow from the transaction. PAWC Exc. at 16-17 (citing PAWC R.B. at 10-11). PAWC further asserts that the Recommended Decision recognizes that the transaction will have benefits for this stakeholder group and objects to the Recommended Decision's characterization of such benefits as "nominal." PAWC Exc. at 17 (citing R.D. at 126). PAWC argues that these benefits should be given modest weight considering the likelihood of their occurrence. PAWC Exc. at 17. PAWC concludes that the benefits that Brentwood's customers will receive from the transaction

outweigh the nominal impact of the System's loss of access to Grow grants and the uncertain rate impacts of the transaction. *Id.* at 17-18.

As for PAWC's existing wastewater customers, PAWC reiterates its arguments from its testimonies that this impacted stakeholder group will benefit from the transaction. PAWC Exc. at 18. PAWC argues that the finding of the Recommended Decision that the transaction will have detrimental impacts on this stakeholder group is mainly due to the transaction's potential rate impact. *Id.* at 19. The Company asserts that the Commission will set just and reasonable rates for this stakeholder group and that it estimated the rate impact by utilizing the Commission-approved methodology from the *Steelton Order*. *Id.* PAWC objects to the Recommended Decision's suggestion that the rate impact will be significantly greater than 0.3%. *Id.* PAWC reiterates its arguments that the Recommended Decision erroneously considered the irrelevant testimony of two witnesses at the public input hearing and was influenced by I&E's assertions that PAWC's estimates have not proven to be accurate predictors of future events. *Id.* (citing R.D. at 129). According to the PAWC, in its pending rate case before the Commission, Exhibit No. 3-A, Combined Water and Wastewater Revenue Requirement – Summary, the Company has proposed that none of the increase associated with Brentwood be assigned to PAWC's other wastewater customers. PAWC Exc. at 19. Additionally, PAWC contends that the Recommended Decision's suggestion that the transaction will have a detrimental impact on PAWC existing wastewater customers due to PAWC becoming part of the ALCOSAN system is unsupported and not explained in the Recommended Decision. *Id.* (citing R.D. at 122).

Regarding PAWC's existing water customers, PAWC argues that the transaction will not have an immediate impact on the rates of this stakeholder group but notes the possibility of a future rate impact. PAWC Exc. at 20 (citing 66 Pa. C.S. § 1311(c)). The Company argues that it estimated the rate impact for PAWC's existing water customers as a possible 0%, in accordance with the methodology employed in the

Steelton Order, and objects to the Recommended Decision’s suggestion that the rate impact will be greater than 0%. PAWC Exc. at 20. According to PAWC, the transaction will have no impact on the rates of this stakeholder group unless the Commission finds that such a result is in the public interest. *Id.* at 21.

In conclusion, PAWC asserts that the Commission should consider all benefits and detriments in weighing the benefits and detriments of the transaction. PAWC Exc. at 21 (citing *McCloskey* at 1067). According to the Company, the Recommended Decision erred by not considering the beneficial impacts of the transaction on Brentwood and PAWC when determining whether the transaction, as a whole, satisfies the affirmative public benefits test. PAWC Exc. at 22. Additionally, PAWC argues that when weighing the benefits and detriments, the Recommended Decision often discounts the benefits when finding that if the transaction is not approved, Brentwood could spend ratepayer dollars to obtain the same benefits it would have received if the transaction was approved. *Id.* (citing R.D. at 127-28). According to the Company, the Recommended Decision does not explain how it is in the public interest for the Borough to spend untold amounts of money to obtain the same benefits that it could receive by selling the System. PAWC Exc. at 22. PAWC further argues that the Recommended Decision weighs the benefits and detriments in a way that favors municipal ownership, contrary to the legislative intent of Section 1329. *Id.* Specifically, PAWC asserts that the Recommended Decision discounts the benefits on the grounds that such benefits would occur whenever a utility acquires a municipal system but does not similarly discount the detriments on the same grounds. *Id.* (citing R.D. at 128). Lastly, PAWC asserts that the Recommended Decision is heavily influenced by the inaccurate statement that “Brentwood is not operating a struggling system.” PAWC Exc. at 23 (quoting R.D. at 127). According to the Company, Section 1329 and the affirmative public benefits test do not require a system to be struggling for an acquisition to be approved. PAWC Exc. at 23. PAWC concludes that when balancing all the benefits and detriments of the transaction, as a whole, the net benefits outweigh the detriments. *Id.*

ii. Brentwood Exception No. 2

In its second Exception, Brentwood argues that in addition to the erroneous standard it argues was applied, ALJ Dunderdale made erroneous factual findings that “ignore the clear, and numerous, public benefits that exist.” Brentwood Exc. at 15. This trifurcated argument suggests the Recommended Decision: (1) did not consider all testimony given at the Public Input Hearings conducted in this matter; (2) mischaracterized the current service and capabilities of Brentwood; and (3) failed to consider all evidence of public benefits within the record.

First, Brentwood suggests a thorough review of the testimony provided at the Public Input Hearings does not support a conclusion that the transaction is not in the public interest. Brentwood Exc. at 16. In particular, Brentwood points to testimony offered by two business owners in Brentwood who testified the Borough is not properly equipped to provide wastewater service and argues the Recommended Decision wrongly disregards this testimony in giving weight to the PAWC customers who testified regarding rate increases. *Id.* Brentwood asks the Commission to reject any conclusions made in the Recommended Decision based on this analysis of Public Input Hearing testimony. *Id.* at 17.

Second, Brentwood states the Recommended Decision “grossly misstates the record evidence regarding the adequacy of Brentwood’s provision of wastewater service.” Brentwood Exc. at 17. Noting and citing to the testimony of the Borough of Brentwood’s Manager, Brentwood argues the testimony directly contradicts the Recommended Decision’s holdings regarding the ability of Brentwood to provide adequate service and fund necessary improvements. *See, Id.* at 17-19. Brentwood suggests this testimony and I&E’s concession that PAWC is more capable and equipped to address the changes facing the system are “overlooked, mischaracterized, or

disregarded” in reaching the conclusion Brentwood provides adequate and safe wastewater service. *Id.* at 19-20 (citing Tr. at 334-337).

Finally, Brentwood excepts to the Recommended Decision’s finding the evidence of transaction’s benefits did not outweigh the harms of the transaction. Brentwood again advances its argument that the benefits of the transaction outweigh the projected 11% rate increase. Brentwood Exc. at 21. Citing to the alleged benefits of the transaction, Brentwood argues these benefits were not properly considered and weighed by the Recommended Decision and the findings of ALJ Dunderdale are “directly contradicted.” *Id.* at 21-23.

iii. I&E Replies

In response to PAWC’s Exception No. 1, I&E states the Recommended Decision was correct in finding the transaction did not benefit the public-at-large, customers of the Brentwood system, PAWC’s existing wastewater customers, or PAWC’s existing water customers.

Regarding benefits to the public-at-large, I&E explains that PAWC places misplaced emphasis on the Commission’s policy statement at 52 Pa. Code § 69.721 regarding regionalization and consolidation for the idea that fair market acquisitions of municipal water and wastewater utilities furthers the public interest. I&E R. Exc. at 4, 6. I&E goes on to state the ALJ properly considered regionalization as a benefit, but that regionalization alone is not sufficient to show the acquisition is in the public interest. *Id.* at 5. Finally, I&E notes that Brentwood is not a troubled system without access to capital and currently provides safe and reliable service, with a sale simply maintaining the environmental status quo and not conferring a public benefit. *Id.* at 6-8.

I&E also states the Recommended Decision correctly found the transaction did not benefit current customers of the Brentwood System. I&E believes PAWC erroneously focuses on the Public Input Hearing testimony of witnesses who had seen their rates increase after the closing of Section 1329 acquisitions previously completed by PAWC and expresses concern that PAWC suggests this testimony is irrelevant. I&E R. Exc. at 9. I&E believes the testimony is relevant as the possible rate impact on customers and notes PAWC did not dispute or object to this testimony. *Id.* at 9-10. I&E also points out PAWC's under-projection of rate impact on municipal utilities it has acquired pursuant to Section 1329. *Id.* at 10-11. I&E also asks the Commission to reject PAWC's position that ALJ Dunderdale erred in not considering the rates Brentwood customers would pay if the transaction did not go through, pointing out that rates of municipal owned utilities fall outside the jurisdiction of the Commission and tend to be lower than investor-owned utilities and that, if no determination can be made whether customers would be financially better off rate-wise under PAWC's ownership of Brentwood, the ALJ would be unable to determine whether this factor provides a benefit or outweighs possible harms. *Id.* at 11-12. Finally, I&E agrees with the Recommended Decision the proposed customer service benefits are nominal at best. *Id.* at 12-13.

I&E argues the transaction does not benefit PAWC's existing wastewater customers as, despite the larger customer base to spread costs, customer rates will continue to rise, and no evidence is in the record showing PAWC would be able to provide service to Brentwood at a lower rate due to approval of the Application. I&E R. Exc. at 13-14. Lastly, I&E states the transaction does not benefit PAWC's existing water customers, who will experience some impact on their rates based on the allocation of 42% of Brentwood's wastewater revenue requirement to PAWC water customers. *Id.* at 14.

Regarding Brentwood's second Exception, I&E expresses shock that Brentwood asks the Commission to disregard the testimony of individuals at the Public

Input Hearing who expressed concern regarding the rate impact of this transaction. I&E R. Exc. at 24-25. Turning to Brentwood's argument the ALJ mischaracterized its service and capabilities, I&E argues that while PAWC is "likely more capable to address system improvements than Brentwood," this alone is not sufficient to show substantive affirmative public benefits or to approve the transaction. *Id.* at 25-26.

iv. OCA Replies

In its Replies to PAWC Exception No. 1 and Brentwood Exception No. 2, the OCA submits that the Recommended Decision properly weighed the benefits and detriments of the Application in concluding that PAWC did not establish that approval of the Application would result in net benefit. OCA R. Exc. at 1.

First, the OCA argues that PAWC's fitness does not subsume the affirmative benefits test. OCA R. Exc. at 2. According to the OCA, PAWC and Brentwood rely on PAWC's fitness to disprove the Recommended Decision because of the lack of record evidence supporting the existence of affirmative public benefits. *Id.* The OCA explains that the existence of "capabilities, services, or offerings" that an acquiring public utility has due to its size or longevity do not constitute substantial benefits to satisfy the *City of York* standard, when they do not substantially differ from the services that the selling utility offers or which the selling utility is capable of offering. *Id.* (citing *City of York*; *Cicero* at 1119). The OCA contends that the Recommended Decision properly found that the benefits suggested by the Company, which arise out of its fitness, are nominal. OCA R. Exc. at 2.

Second, the OCA asserts that there is no record evidence to support that the rate impact, if the Application is approved, would be modest, capped at 11%, and/or would not exceed the rate increases required for Brentwood to provide adequate service. OCA R. Exc. at 3. According to the OCA, the Recommended Decision accurately

determined that PAWC's estimates regarding projected rate impact were inaccurate and misleading as the Recommended Decision relied on the public input testimony, the Company's other pending acquisitions, and I&E's comparison of the noticed and actual rate impacts of PAWC's proposed acquisitions. *Id.* (citing R.D. at 124, 128-29; Tr. at 69-78; I&E St. 1 at 28-30). The OCA argues that the 11% figure, that the Company and Brentwood rely upon, does not include the \$8 million in capital investment that the Company has planned for the System over the next five years or any of the rate increases for ALCOSAN's treatment costs. OCA R. Exc. at 4 (citing OCA St. 1SR at 13; R.D. at 126; OCA St. 2 at 8). In addition, the OCA submits that 42% of Brentwood's current revenue requirement deficiency would be paid for by PAWC water customers under the Company's Act 11 shift proposed in its 2023 Base Rate Case. OCA R. Exc. at 4 (citing Tr. at 385; PAWC 2023 Base Rate Case at Exh. 3-A).

According to the OCA, PAWC used the CPI to measure the potential impact on rates instead of acknowledging that the 11% rate impact is inaccurate. OCA R. Exc. at 5 (citing PAWC Exc. at 14-15). In addition, the OCA contends that there is no record evidence to support PAWC's claim that rates would increase just as much, if not more, if the transaction were disapproved as under the Company's ownership. OCA R. Exc. at 6. Therefore, the OCA asserts that the Recommended Decision correctly determined that the evidence showed that approval of the Application would result in rate harm. *Id.*

Next, the OCA agrees with the Recommended Decision's holding that PAWC failed to meet its burden of proof and argues that Brentwood's existing customers would receive hardly any benefit from the Acquisition, specifically regarding environmental compliance. OCA R. Exc. at 7 (citing R.D. at 126). According to the OCA, the System's ability to comply with the COA and applicable environmental regulations will not substantially improve under PAWC's ownership when compared to Brentwood's ownership. *Id.* The OCA asserts that Brentwood can fulfill its obligations

under the COA and there is no evidence of a lack the skill, expertise, or necessary capital on the part of Brentwood. OCA R. Exc. at 8 (citing OCA St. 1 at 11). According to the OCA, the Company's access to capital and history of addressing environmental issues in systems that it acquires are not affirmative benefits but a continuation of the *status quo* as it is unlikely that a substantial environmental benefit will result from the Acquisition. OCA R. Exc. at 9 (citing PAWC Exc. at 12).

Regarding the impact on regionalization and consolidation, the OCA notes that Commission regulations only support consolidation when it “may, with appropriate management, result in greater environmental and economic benefits to customers.” OCA R. Exc. at 10 (quoting 52 Pa. Code § 69.721(a)). The OCA agrees with the Recommended Decision that the Borough already provides safe, adequate, and reliable service and thereby concludes that there is no environmental consolidation benefit to be realized by approval of the Application. OCA R. Exc. at 10 (citing R.D. at 123).

Further, the OCA argues that PAWC and Brentwood “either mischaracterized or disavowed” the public input hearing testimony provided in the proceeding, noting the Borough's argument that the Recommended Decision cherry-picked public input hearing testimony. OCA R. Exc. at 10 (citing Brentwood Exc. at 16). According to the OCA, the Recommended Decision did not give disproportionate weight to the public input testimony of the two customers in PAWC's Exeter rate division, but rather appropriately weighed the public input testimony, directly referencing only that testimony that was corroborated by other record evidence. OCA R. Exc. at 11, 12-13 (citing R.D. at 125). According to the OCA, the Company argued that the testimony of its own ratepayers is irrelevant. OCA R. Exc. at 12 (citing PAWC Exc. at 13). The OCA asserts that the testimony of PAWC customers regarding the rate impact that the transaction alone will have on them is relevant. OCA R. Exc. at 12 (citing *Middletown* at 682).

(2) PAWC Exception No. 2 and Replies

i. PAWC Exception No. 2

In its second Exception, PAWC excepts to the Recommended Decision's finding that "[s]ome unknown portion of the Brentwood [inflow and infiltration] originates in upstream flows and PAWC is in error to argue that the facilities are used and useful." PAWC Exc. at 24 (quoting R.D. at 126-27). PAWC argues that all the System's assets, including the trunklines, are used and useful for providing public utility service to Brentwood's customers. PAWC Exc. at 24 (citing Tr. at 152, 372). PAWC explains that "all System assets convey Brentwood sewage through the Borough to the downstream municipalities for conveyance to the ALCOSAN regional wastewater treatment plant for treatment" and that "no portion of the trunklines in Brentwood is used solely to convey wastewater from upstream municipalities to downstream municipalities." PAWC Exc. at 24-25. The Company further explains that the trunklines are part of a mutual assistance system. *Id.* at 25. According to PAWC, the Recommended Decision incorrectly stated that Brentwood customers do not benefit from the service to Upstream Municipalities. *Id.* In support, PAWC argues that Brentwood customers can use Downstream Municipalities' conveyance facilities at no additional cost to receive wastewater treatment service and that the ability to receive wastewater treatment service is a benefit to System customers. *Id.*

Next, the Company contends that the Recommended Decision erred in concluding that approval of the transaction results in PAWC providing free service to upstream municipalities. PAWC Exc. at 26. PAWC notes that while the Company proposed a tariff, in the Application, in which the Upstream Municipalities would not be charged a tariffed rate, this does not mean that PAWC will provide free service to these municipalities. *Id.* (citing Second Amended Appendix A-12). According to the Company, it will receive valuable consideration in return for its service, including the

right to convey PAWC's wastewater through the trunklines of Downstream Municipalities free of charge per the Cooperation Agreement and the Other Z Agreements executed between ALCOSAN and the municipalities. *Id.* PAWC distinguishes the facts of the instant proceeding from *Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. 2002) (*Philadelphia Suburban Water*), involving a utility that agreed to make a payment to a municipal fund for the amount paid by the municipality for fire hydrant service. PAWC Exc. at 27. PAWC asserts, in contrast, that the members of the ALCOSAN regional interceptor system agreed to a mutual exchange of consideration for their participation in a large mutual assistance network, which negates any claim that the conveyance service they provide to one another is free. *Id.* It is PAWC's position that the mutual consideration contained in the Cooperation Agreement is reasonable and should be approved by the Commission under Section 507 of the Code. *Id.* at 27. According to PAWC, the Commission's adoption of the Recommended Decision would effectively prevent any municipality in the ALCOSAN system from selling its system to a public utility. *Id.* at 28.

ii. I&E Replies

Replying to PAWC's second Exception, I&E agrees with the Recommended Decision's finding that PAWC failed to separate from rate base the assets used to provide service to non-customers. I&E R. Exc. at 15-16. The Brentwood System is a conveyance only system, with Brentwood discharging its wastewater and that of communities of non-customers into downstream systems and ALCOSAN treatment plant. *Id.* at 16-17. I&E suggests requiring a study to determine the amount of plant used to serve non-customers, so that rate base can be properly determined. *Id.* at 17. I&E argues this is congruent with the requirements of Sections 1102 and 1103, because affirmative public benefits do not exist where ratepayers pay for utility plant not used and useful. *Id.*

iii. OCA Replies

In its Reply Exception to PAWC Exception No. 2, the OCA asserts that the Recommended Decision correctly denied PAWC’s Application because of the Company’s failure to separate the value of the portion of the plant dedicated to providing free service from its claimed rate base. OCA R. Exc. at 13 (citing R.D. at 126). The OCA argues that PAWC neglected to provide a reason as to why the Company needed to include the portion of the plant that provides free service in ratemaking rate base. OCA R. Exc. at 13 (citing PAWC Exc. at 24-28). Further, it is the position of the OCA that the Company’s attempt to distinguish the instant case from that of *Philadelphia Suburban Water* is flawed. OCA R. Exc. at 14. According to the OCA, “the provision of free service in this case is between two contracting parties as valuable consideration for a bargained-for exchange” as was the case in *Philadelphia Suburban Water*. *Id.* (citing Appendix 25-3). In support, the OCA contends that the fact that the Company may be able to claim a contract right for free service from Downstream Municipalities is not relevant. OCA R. Exc. at 14. The OCA explains that PAWC, as a certificated public utility, is subject to Section 1303 and therefore cannot provide free service, even if it receives free service from Downstream Municipalities. *Id.* at 14-15.

(3) Brentwood Exception Nos. 1 and 3 and Replies

i. Brentwood Exc. Nos. 1 and 3

In its Exception No. 1, Brentwood argues that ALJ Dunderdale’s Recommended Decision misapplies the legal standards in Section 1102 and 1103 as interpreted by Pennsylvania Courts. Brentwood’s first exception can best be viewed as suggesting ALJ Dunderdale failed to consider that Pennsylvania Courts have held a Certificate of Public Convenience does not have to be “absolutely necessary” as “not only would this approach be impractical and unrealistic, but it would also actually pose a

danger to the health, safety, and welfare of the public.” Brentwood Exc. at 10 (citing *Hess v. Pa. PUC*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014)).

Brentwood goes on to argue that substantial affirmative benefits to the public need not be legally binding or quantified, with the Commission applying a preponderance of the evidence standard to its review. Brentwood Exc. at 10 (citing *Popowsky*). Brentwood further states that PAWC, as the acquiring utility is not required to offer specific evidence of how the transaction would offer benefits over that of the incumbent utility, “as long as the reasons the applicant advances are a public benefit even if the reasons as well as the means by which they are to be achieved are general in nature, these reasons, if accepted by the Commission, constitute substantial evidence to find that there is a public benefit sufficient” to support approval of the transaction. Brentwood Exc. at 11 (citing *McCloskey*).

Brentwood argues the evidentiary standard applied in the Recommended Decision erroneously creates an “especially necessary” standard, a heightened standard not supported by the language of the relevant Code sections. Brentwood Exc. at 12-13. Brentwood advances that this erroneous standard, when paired with ALJ Dunderdale’s weighing of evidence, disregards the substantial affirmative benefits of the transaction based on possible rate spreading and rate increases. *Id.* at 13-14. Brentwood posits the standard applied in the Recommended Decision would render any proposed Section 1329 transaction not in the public interest because the ALJ views rate increases resulting from the spreading of rates to the acquiring utility’s existing customer as an insurmountable harm. *Id.*

Brentwood also suggests the Commonwealth Court has held potential rate impact does not render a proposed transaction detrimental to the public and that rates should be assessed to determine whether the rate impact is outweighed by the benefits of the transaction. Brentwood Exc. at 11 (citing *McCloskey* at 1066-1067). Brentwood,

noting the projected 11% rate increase for Brentwood's customers, argues the weight of the evidence in the record is in favor of approving the transaction and "far outweigh[s] the sole harm of a potential 11% rate increase." *Id.* at 14.

Brentwood states the question before the Commission is "whether Pennsylvania-American's acquisition of the System under the terms of the proposed transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way..." and that PAWC does not need to show Brentwood is incapable of or deficient in providing adequate utility service. Brentwood Exc. at 15.

Brentwood, in its third Exception, believes the Recommended Decision seeks to supplant the reasoning and judgment of local elected officials by "creating a new legal standard and implementing public policy that requires a municipality to be providing worse service than the potential acquiring utility and/or to be in some form of financial distress for a transaction to be approved." Brentwood Exc. at 24. Brentwood argues the local Borough Council is "best situated" to know the impact of continued wastewater operations on Brentwood and if the transaction is denied it will create a barrier to future transactions and remove difficult decision making from local communities and their representatives. *Id.* at 24-25.

Brentwood adopts and incorporates by reference the Exceptions filed by PAWC and based on the Exceptions and the alleged errors in the analysis of the Recommended Decision, Brentwood requests the Commission grant the Exceptions submitted by Brentwood and PAWC and approve the proposed transaction. Brentwood Exc. at 26.

ii. I&E Replies

In response to Brentwood's first Exception, I&E argues the criticism of the Recommended Decision's language is a "distinction without a difference," in that "[w]hether the affirmative public benefits test is 'necessary' or 'especially necessary' it remains necessary." I&E R. Exc. at 20. I&E goes on to argue the record evidence demonstrates that Brentwood currently provides safe and reliable service with the ability to attract sufficient capital to make improvements in its system, and that Brentwood is indeed improving its system and meeting the requirements imposed on it in its agreements. *Id.* at 21-22. Noting that perfect service is not a requirement, I&E questions Brentwood for continually stating ALJ Dunderdale ignored evidence of the inadequacy of the Brentwood System without pointing to any evidence within the record. *Id.* at 22-23.

In reply to Brentwood's Exception No. 3, I&E disputes Brentwood's contention the Recommended Decision establishes a public policy that a municipality cannot sell its wastewater assets unless or until dire circumstances warrant the sale. I&E states that ALJ Dunderdale's analysis found Brentwood is currently operating the system in a reasonable and safe manner and that PAWC has not established it will operate the system in a markedly different manner. I&E R. Exc. at 27. I&E argues that maintenance of the status quo is not a public benefit and that the analysis of ALJ Dunderdale has not created new public policy but has simply conducted an appropriate review to determine whether there is a substantial affirmative benefit to the transaction. *Id.*

iii. OCA Replies

In the OCA's Reply Exception to Brentwood Exception Nos. 1 and 3, the OCA argues that the Recommended Decision applied the proper legal standards of the Code and the interpretations of those standards by the Commonwealth appellate courts in concluding that "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." OCA R. Exc. at 16 (quoting R.D. at 129). Noting Brentwood's argument that the Recommended Decision misstated the applicable legal standard, the OCA specifies that the Recommended Decision stated that "for PAWC to meet its burden" it must demonstrate that net benefits would result to its customer, Brentwood customers, and the public-at-large and contends that the Recommended Decision follows this statement. OCA R. Exc. at 17 (citing Brentwood Exc. at 12-13; quoting R.D. at 123). Furthermore, in response to the Borough's argument that the Recommended Decision seeks to create a new legal standard whereby municipalities will be required to be providing worse service or in financial distress for the acquisition of that system to be approved, the OCA argues that in ruling on the evidence presented in the case, the Recommended Decision properly applied the *City of York* standard and determined that the detriments of the Application outweighed the benefits. OCA R. Exc. at 18 (citing Brentwood Exc. at 23-24; R.D. at 129).

d. Disposition

With respect to evaluating whether the acquisition has substantial affirmative public benefits that outweigh the harms resulting from the acquisition, as set forth in the Commonwealth Court's decision in *McCloskey*, our obligation in performing "the balancing test under Section 1102 of the Code [is] to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit." *McCloskey*, 195 A.3d at 1066 (applying *City of York*). We are further "charged with deciding whether the impact of rates ... is outweighed by ... other positive factors that ... served [as] a substantial public benefit." *Id.* at 1067. Moreover, the Pennsylvania Supreme Court has explained that "in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the

requirement of Section 1103(a) will ensue.” *Popowsky*, 937 A.2d at 1061, n.21. The Commission has consistently applied this balancing test for evaluating whether to issue Certificates in Section 1329 proceedings. *See, e.g., Cheltenham; Application of Pennsylvania-American Water Company under Section 1329 for Acquisition of Valley Township*, Docket Nos. A-2020-3019859 and A-2020-3020178 (Opinion and Order entered October 28, 2021), and *Lower Makefield*.

In the seminal Section 1329 case in *McCloskey*, the Commonwealth Court considered the Commission’s findings that the applicant in that proceeding, as an owner of numerous water and wastewater systems, had sufficient expertise and ability to raise capital to support system operations. The Court also acknowledged the finding that the Commission has a policy in support of consolidation and regionalization of wastewater system assets that allows for increased maintenance, upgrade, and expansion of public sewer and water facilities. In its rationale, the Court stated that these Commission findings were of the type that the Pennsylvania Supreme Court in *Popowsky* held were sufficient to meet the Section 1103 public benefit standard. “As per [*Popowsky*], these *aspirational statements are substantial evidence* to support the notion that there is a public benefit for the merger.” *McCloskey*, 195 A.3d at 1065 (emphasis added).

Recently, as discussed, *supra*, the Commonwealth Court in *Cicero* reversed a Commission Order that had approved the acquisition of a municipality’s wastewater assets by a large public utility under 66 Pa. C.S. § 1329 because the benefits did not outweigh the acknowledged harms of the acquisition. The Court in *Cicero* upheld prior precedent that the substantial affirmative benefits of a proposed acquisition must outweigh the acknowledged harms resulting from the acquisition. The Court further explained that where harms result from the transaction, the acquisition must also provide benefits that differ substantially from those already being provided by the existing system operator, and providing the same services that are already being provided, or providing for upgrades that the existing system operator is capable of providing, are not substantial

affirmative benefits consistent with *City of York*. Also, the Court stated that public benefits arising from aspirational statements or those benefits that cannot be quantified at the time of the transaction may not always constitute affirmative public benefits that will be substantial enough to outweigh known harms. *See, Cicero* at 1119-1120.

PAWC argued that the transaction benefits the public-at-large by promoting the Commission's policy favoring regionalization and consolidation of water and wastewater systems and the public policy goals in 66 Pa. C.S. § 1329. Indeed, the Commission supports the consolidation and regionalization of water and wastewater system assets. To that end, in our *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926 (Order entered August 17, 2006) (*2006 Final Policy Statement*), we stated:

[A]cquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry. Additionally, these types of acquisitions will also enhance the quality of ratepayers' daily lives, promote community economic development and provide environmental enhancements. We strongly believe that these types of acquisitions generally serve public policy goals....

2006 Final Policy Statement at 18.

More recently, and after enactment of Section 1329, we emphasized similar public policy goals. We explained that Section 1329 reflects a determination by the General Assembly that fair market value acquisitions of municipal water and wastewater systems further the public interest. *See, generally, Implementation of Section 1329 of the Public Utility Code – Tentative Implementation Order*, Docket No. M-2016-2543193 (Order entered July 21, 2016) (*TIO*); and *Implementation of Section 1329 of the Public Utility Code – Tentative Supplemental Implementation Order*, Docket No. M-2016-2543193 (Order entered September 20, 2018) (*TSIO*). Specifically, we noted

that there are a number of water and wastewater systems owned by municipal corporations or authorities throughout the Commonwealth where sale to an investor-owned public utility can facilitate necessary infrastructure improvements and ensure the continued provision of safe, reliable service to customers at reasonable rates. *TIO* at 2. Additionally, we explained that:

[t]he development of water and wastewater service throughout the Commonwealth over the years has led to the creation of large numbers of geographically dispersed water and wastewater systems owned by municipal corporations or authorities. For these systems, sale to a larger, well-capitalized and well-run regulated public utility or entity can be prudent because it can facilitate necessary infrastructure improvements and access to capital markets, and, ultimately, it can ensure the long-term provision of safe reliable service to customers at reasonable rates.

TSIO at 4.

The proposed acquisition is no exception to these principles. Furthermore, the analysis set forth in *City of York*, *McCloskey*, *Popowsky*, and *Cicero* is equally applicable in this proceeding. Therefore, we shall further evaluate whether PAWC has established that the substantial affirmative benefits of the proposed acquisition outweigh the acknowledged harms resulting from it. Our evaluation will consider whether PAWC has satisfied the preponderance of the evidence standard with the understanding that it is not required to secure legally binding commitments nor quantify benefits if impracticable, burdensome, or impossible. *See, Popowsky* at 1057; *Cicero* at 1119-1120. Additionally, an integral part of our review must include full consideration of the harms of the acquisition on the existing customers of PAWC and Brentwood, and the public-at-large.

Before addressing our review of benefits and harms resulting from the proposed transaction, we will first discuss a difference with respect to the proposed transaction as compared to other Section 1329 wastewater acquisitions that have been previously considered and approved by the Commission. Initially, we note that the proposed transaction here is different when compared to other prior Section 1329 wastewater applications. Of the twenty-seven applications submitted under Section 1329 that the Commission has received to date, the Brentwood System is unique when compared to other acquisition applications because: (1) it is a collection-only system located within, and as part of, a regional system (*i.e.*, ALCOSAN); and (2) if the proposed acquisition is approved, PAWC would act as a billing agent for ALCOSAN, which is the wastewater treatment provider, whereby customers would receive a separate line item on their bills for the cost of treatment, as determined by ALCOSAN.¹² Under this System, the Borough's wastewater flows through a series of intermunicipal trunk lines that flow through downgradient communities, where the flow is ultimately treated by the ALCOSAN wastewater treatment facility. The Borough's intermunicipal trunklines accept flow from Upstream Municipalities, just as the Borough utilizes the intermunicipal trunk lines of Downstream Municipalities. Brentwood does not charge the Upstream Municipalities for their flows into Brentwood's System, nor do the Downstream Municipalities charge Brentwood for Brentwood's sewage flows into their systems. PAWC St. 2 at 6. The ALJ noted that because the Brentwood wastewater system is not a total wastewater system, as it includes only assets associated with

¹² ALCOSAN is a municipal authority organized under the Municipality Authorities Act, as amended, 53 Pa. C.S.A. §§ 5601-5623. ALCOSAN Petition to Intervene at 1. As such, jurisdiction of the rates and services of a municipal authority, such as ALCOSAN, beyond, as well as within, the limits of the municipality which created the authority, lies exclusively with the courts of common pleas, not the Commission. *Conyngham Township v. Sanitary Sewer Authority of the Borough of Shickshinny*, Docket No. C-2021-3023624 (Opinion and Order entered November 1, 2023); *Pa. PUC v. East Dunkard Water Authority*, Docket No. C-2021-3027615 (Opinion and Order entered November 1, 2023).

collection and conveyance, the only improvements PAWC can make to it would be a replacement of pipes. R.D. at 123.

Due to this configuration, there are unique challenges that exist that were not present in prior Section 1329 wastewater acquisition proceedings brought before this Commission. For example, as of December 12, 2022, the Borough enacted an ordinance to increase sewer rates in accordance with ALCOSAN's planned 2023 rate increase. *See*, Appendix A-18-a at 1. According to this ordinance, the ALCOSAN portion of a Brentwood customer's sewer bill is 56.7%. The same ordinance notes that through "proactive planning" the Borough would not have to increase its portion of the bill. *See*, Appendix A-18-a at 1. Under PAWC's proposed tariff, ALCOSAN charges comprise 56.7% of Brentwood customers' bills, as is currently, and will increase as ALCOSAN increases its rates. OCA St. 1 at 19. As such, there are no economies of scale that would address more than half of the charges on customers' bills, attributable to ALCOSAN charges, as a result of the configuration of this acquisition.

In addition, because Brentwood receives wastewater treatment and conveyance services from ALCOSAN, Brentwood must comply with the Modified Consent Decree, executed between ALCOSAN, the United States Environmental Protection Agency (USEPA), the Pennsylvania Department of Environmental Protection (PADEP), and the ACHD. Accordingly, in order to facilitate the achievement of flow targets developed by ALCOSAN, Brentwood, like other contributing municipalities, entered into a COA with ACHD and PADEP that establishes corrective actions Brentwood must take to reduce its I&I during wet weather events and requires

Brentwood to cooperate to implement ALCOSAN's Modified Consent Decree.¹³
ALCOSAN St. 1 at 7.

Also, we do not doubt that PAWC would be proactive in addressing I&I; however, the uniqueness of the Brentwood System presents a challenge to reducing I&I because some of the excess flow is potentially coming from the Upstream Municipalities, which PAWC would not be able to influence, no matter its expertise or available capital. This scenario is different than previous Section 1329 wastewater acquisitions addressed by the Commission. With that understanding and the fact that Brentwood has been meeting the required milestones to lessen the I&I problem, as pointed out by I&E, PAWC is likely to simply maintain the *status quo* related to the I&I issues the System experiences.

Furthermore, Brentwood's access to ALCOSAN's GROW Program, facilitates, in part, Brentwood's ability to achieve the flow targets for the System. Brentwood's witness, Mr. Zboyovsky, explained that the GROW Program grants are used for addressing I&I. Brentwood St. 1-R at 6. And, as PAWC's witnesses, Mr. Salvo and Mr. Hufton explained, controlling I&I in the Borough is the issue addressed in the Borough's COA with the ACHD. *See*, PAWC St. 1-R at 6-7; PAWC St. 2-R at 2-3. In addition, as the OCA's witness, Mr. DeMarco, pointed out, it was due to existing regionalization and consolidation that Brentwood was able to receive grants and split the costs of a project through ALCOSAN's GROW Program in 2017. OCA St. 1 at 19-20; OCA Exh. ND-7. A memorandum of understanding signed in 2021 allowed the sharing of costs between Brentwood, Baldwin Borough, the Pittsburgh Water and Sewer Authority, West Mifflin Sanitary Sewer Municipal Authority, and Whitehall Borough in

¹³ On January 23, 2008, a Consent Decree was entered into between and among ALCOSAN, the USEPA, the PADEP and the ACHD. On May 14, 2020, ALCOSAN, the USEPA, the PADEP, and the ACHD entered into the Modified Consent Decree. ALCOSAN St. 1 at 6.

connection with ALCOSAN's GROW Program to finance a project with the M-42 - Streets Run "Sewershed." *See*, OCA Exh. ND-8. This program does not appear to be available under PAWC's ownership of the Brentwood collection system because PAWC does not appear to be eligible for the ALCOSAN GROW grants.¹⁴

Additionally, although PAWC agreed to adopt and assume Brentwood's obligations under the contracts noted in Appendix A-25, pursuant to Section 507 of the Code (Agreement between Brentwood and the City of Pittsburgh, the Street Run Sewer Joint Management Agreement, and the Z Agreement between Brentwood and ALCOSAN), we agree with the advocates that the proposed acquisition will likely have the effect of weakening the regionalization agreements that have developed in the Pittsburgh region, given the different focus of the entities involved. Specifically, PAWC's priority would likely be to its shareholders, while the Borough's focus would be on the local population and other partner municipalities.

Not only is there nothing to suggest that the proposed transaction will be at all beneficial to PAWC's existing customers, as will be further discussed below, but the only potentially tangible benefit from the proposed transaction would be access by a small set of Brentwood customers to PAWC's wastewater low-income program. PAWC posits its H2O – Help to Others Program as a substantial benefit to the Borough's low-income customers; however, Brentwood customers currently have access to ALCOSAN's low-income program for the ALCOSAN portion of customers' wastewater charge. OCA St. 1 at 19. And, as previously indicated, 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. Therefore, the discount provided by PAWC would only apply to a portion of the customer base and then only to a portion of the customer's bill.

¹⁴ <https://www.alcosan.org/clean-water-plan/grow-program>: "Any municipality or municipal sewer authority within the ALCOSAN service area is eligible for GROW grants."

Furthermore, PAWC attempted to draw a comparison between the instant matter and other recent Section 1329 acquisitions that have come before the Commission, specifically *BASA*.¹⁵ See, PAWC M.B. at 10; PAWC Exc. at 2-3, 9-10. PAWC argues that in the *BASA* case, as in this case, the proposed acquisition included significant environmental benefits. Additionally, PAWC averred that in the *BASA* case, and in this case, the Recommended Decisions' recommended disapproval of the proposed acquisitions due to the rate impacts to customers of the buyer and seller were in error because they overlooked evidence that the rates will increase for the acquired system's customers regardless of whether the proposed acquisitions are approved or not. Both the environmental impacts and rate impacts on customers resulting from the proposed acquisition will be addressed, *infra*, in reviewing the analysis under Sections 1102 and 1103 of the Code, 66 Pa. C.S. §§ 1102 and 1103.

Additionally, with respect to PAWC's comparisons of the instant matter and the transaction in *BASA*, we note that the *BASA* proceeding came before us as a result of a settlement, supported by several parties, whereas the instant matter was fully litigated. This fact alone does not warrant the denial of the Application; however, it is a factor that distinguishes this matter from *BASA*. The absence of a settlement in this matter makes the instant case similar to the proceeding regarding the *Application of Aqua Pennsylvania Wastewater, Inc. under Section 1329 for Acquisition of East Whiteland Township*, Docket No. A-2021-3026132 (Opinion and Order entered July 29, 2022) (This proceeding was the subject of the Commonwealth Court's decision in *Cicero*, for which Petitions for Allowance of Appeal of the Commonwealth Court decision are pending before the Pennsylvania Supreme Court) (*East Whiteland*), which was fully litigated.

¹⁵ In that case, as in this case, the proposed acquisition had important environmental benefits (PAWC would assume the seller's responsibilities under a Corrective Action Plan to rebuild infrastructure to address environmental compliance issues). In *BASA*, as in this case, the buyer proposed a multi-million-dollar capital plan to upgrade and maintain the system. *BASA* at 61.

Next, we will turn to our review of whether the proposed acquisition has substantial affirmative public benefits that outweigh the harms resulting from the acquisition. As summarized above, the ALJ recommended denial of the Application because PAWC failed to establish that the Brentwood System under PAWC's ownership will affirmatively promote the service, accommodation, convenience, or safety of the public, and that 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. R.D. at 129.

In their Exceptions, PAWC and Brentwood each object to the ALJ's conclusions and argue that the proposed transaction is supported by substantial affirmative benefits. As summarized, *supra*, PAWC describes the benefits of the proposed transaction. PAWC argues that the benefits of the proposed acquisition substantially outweigh the detriments for the public-at-large, Brentwood, and PAWC. In addition, PAWC states that although the question is closer, the benefits of the proposed acquisition outweigh the detriments for Brentwood's existing customers, PAWC's existing water customers, and PAWC's existing wastewater customers. PAWC submits that, overall, the net benefits of the proposed acquisition outweigh the net detriments. PAWC Exc. at 23.

Similarly, as described, *supra*, Brentwood also listed the benefits of the proposed transaction. Brentwood argues that there is no basis in fact for the conclusion in the Recommended Decision that the evidence did not establish that any benefit of the proposed acquisition would outweigh its harms. Rather, Brentwood avers that the question for the Commission is whether all the benefits of the proposed transaction, taken together, outweigh its potential rate impact. Brentwood Exc. at 23.

In Reply, as summarized, *supra*, both I&E and the OCA argue that the Recommended Decision correctly determined that the proposed acquisition does not

result in a net benefit for the public-at-large, customers of the Brentwood System, PAWC's existing wastewater customers, or PAWC's existing water customers. I&E R. Exc. at 4-13; OCA R. Exc. 2-12.

With respect to whether the proposed acquisition has substantial affirmative public benefits that outweigh the harms resulting from the acquisition, we agree with the ALJ's recommendation to deny the Application because PAWC failed to present sufficient evidence to sustain a finding that substantial affirmative public benefits will result from the acquisition of the Brentwood System and the issuance of a Certificate of Public Convenience, pursuant to 66 Pa. C.S. §§ 507, 1102, 1103 and 1329. Based upon the record evidence in this particular instance, the benefits to be realized from the proposed acquisition do not outweigh the harms to current PAWC customers or existing Brentwood wastewater customers. Therefore, we will deny the Application.

Regarding the impact of the proposed acquisition on existing Brentwood customers, pursuant to the terms of the APA, during the first two years post-acquisition, PAWC touts that it agrees to freeze rates for Brentwood customers and continue to charge Brentwood customers their wastewater rates in effect at the closing. *See*, Appendix A-24-a, APA, Section 7.03(a).¹⁶ However, while the proposed rate freeze might delay PAWC from increasing Brentwood customers' rates at the end of the next base rate case, we find that the rate freeze provides no net benefit to Brentwood customers should the Application be approved.

¹⁶ Brentwood's existing rates consist of a monthly fixed charge of \$4.57 and a usage charge of \$0.8910 per 100 gallons for collection service. *See*, Appendix A-12. The current average monthly bill for a Brentwood residential customer, using 3,212 gallons per month is \$73.96. The current rate for PAWC residential Rate Zone 1 (*i.e.*, Main Division) wastewater customers with an average usage of 3,212 gallons per month is \$106.65. As such, the average monthly bill paid by a residential customer in Brentwood is currently, \$32.69, or 30.7%, less than the equivalent bill paid by a PAWC Rate Zone 1 residential customer.

Specifically, PAWC provided that Brentwood rates will need to increase by 11% following the termination of the rate freeze, to cover the projected annual deficiency of the Brentwood System under PAWC ownership.¹⁷ *See*, Amended Appendix 18-d. However, this appears to be an incorrect representation of the required increase to Brentwood rates to cover the System’s cost of service. In the PAWC 2023 Base Rate Case, PAWC identified the current Brentwood revenues to be \$1,815,000, while in the instant proceeding, PAWC identified the current revenues to be \$4,031,000, which includes the \$1,815,000 as well as the \$2,216,000 in revenues collected on behalf of ALCOSAN for treatment. *See*, PAWC Exh. AEE-1 (Revised); PAWC 2023 Base Rate Case, PAWC Exh. 3-A. When determining the projected rate increase to cover the Brentwood System’s revenue deficiency, the Company should not have included the \$2,216,000 in revenues collected on behalf of ALCOSAN for treatment, as the Company has adamantly maintained that ALCOSAN charges are not revenues, which means they should not contribute to a revenue deficiency. Therefore, the estimated revenue increase should have been calculated to be 24.5% by dividing the estimated revenue deficiency

¹⁷ PAWC’s notice to Brentwood customers shows the following potential rate impacts of the Acquisition:

Brentwood Wastewater Customers				
Rate Class	Average Usage	Average Monthly Bill at Brentwood’s Rates at Closing	Potential Average Monthly Bill	Potential Increase
Residential	3,212 gal/month	\$73.96	\$82.10	11.0%
Commercial	22,561 gal/month	\$436.10	\$484.07	11.0%
Industrial	528,207 gal/month	\$10,210.24	\$11,333.37	11.0%

allocated to wastewater customers of \$444,880¹⁸ by the actual System revenues of \$1,815,000.

Further, despite PAWC's calculated rate impact of 11% to Brentwood customers in the instant proceeding,¹⁹ in the PAWC 2023 Base Rate Case, PAWC proposed to increase rates by 20.3% following the termination of the rate freeze. *See*, PAWC 2023 Base Rate Case, PAWC Exh. 3-A at A. In its current base rate filing, PAWC is proposing to increase Brentwood's revenue requirement by \$1,934,637, or 106%; approximately 42% of the proposed revenue requirement will be shifted to PAWC water customers, including those who are not customers of the Brentwood System, as opposed to the 33% proposed in the instant proceeding. PAWC 2023 Base Rate Case, PAWC Exh. 3-A, A; PAWC Exh. AEE-1 (Revised).

Therefore, although the Commission may not grant the full increase in revenue requirement that PAWC is requesting in the PAWC 2023 Base Rate Case, should this proposed transaction be approved, when Brentwood customers resume receiving rate

¹⁸ The amount of estimated revenue deficiency allocated to water customers pursuant to Act 11 of 2012 (Act 11) is calculated by PAWC to be \$219,000 (\$664,000 x 33%). PAWC Exh. AEE-1 (Revised). Act 11, amending Chapters 3, 13 and 33 of the Code, provides, *inter alia*, wastewater utilities the opportunity to allocate a portion of their revenue requirement to the combined wastewater and water utility customer base. Specifically, Section 1311(c) of the Code, 66 Pa. C.S. § 1311(c), provides that, upon petition of a utility that provides water and wastewater utility service, the Commission may, *after notice and opportunity to be heard*, allocate a portion of the wastewater utility's revenue requirement to the combined water and wastewater customer base if deemed to be "in the public interest." The benefits of this provision are that the costs of necessary upgrades to wastewater systems to maintain safe and reliable service, which can be substantial on a stand-alone basis, can be spread among the common customer base of the water and wastewater utilities. In PAWC's last base rate case, 33% of the wastewater revenue requirement for 2023 was allocated to water customers under Act 11. PAWC St. 3-REV at 13.

¹⁹ It should also be noted that the 11% estimate does not include any planned capital improvements.

increases to cover the increased cost of service on the second anniversary of the closing, the rate increases will presumably be much higher than 11%.

As Brentwood has stated, in anticipation of the sale of its System, the Borough has not raised rates in several years; thus, when its rates would be increased (before or following the end of the rate freeze), if this proposed acquisition were approved, Brentwood customers would experience an increase of rates to recover approximately seven years' worth of increases in cost of service, at PAWC's cost of service. Brentwood St. 1-R at 9. Consequently, going forward, Brentwood customers would not only have to make up this difference, but as a result of the rate freeze, Brentwood rates will fall behind the presumably increasing rates for PAWC's existing water and wastewater customers, further exacerbating the amount of the subsidy going forward, which also, does not include the estimated impact of PAWC's five-year \$8,055,000 capital investment obligation.²⁰ To catch up, Brentwood customers would see higher rate increases than currently forecasted, if the proposed acquisition was approved.

Also, both PAWC and Brentwood express concern over Brentwood's ability to upgrade and maintain the System, indicating that Brentwood lacks the skill and expertise to operate the System, and aver that the proposed transaction is beneficial to address this concern. Brentwood Exc. at 19. However, we agree with the ALJ's finding that "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." R.D. at 123. With regard to service, Brentwood's largest issue appears to be I&I, which has been an issue for some time with the System.

²⁰ See, PAWC Exh. DJH-2.

However, it appears Brentwood is currently taking the necessary steps to correct this issue. As explained in the OCA's witness, Mr. DeMarco's testimony:

In 2016 Brentwood entered a two phase Consent Order and Agreements (COA) with ACHD and PADEP. Phase I which required the completion of a Source Reduction Study by Brentwood to see how it most effectively do its part to reduce sanitary sewer overflows and to reduce flows downstream from Brentwood's sanitary sewer system and/or at its connection with the ALCOSAN interceptor system. Phase I June 1, 2018 (PAWC Statement 2 A-14-a p. 12-14).

Under Phase II which began October 6, 2023, Brentwood is to implement source Flow Reduction projects and source reduction studies on the two identified lines. By December 31, 2026 Brentwood should complete its projects to eliminate sanitary sewer over flows (SSO) or enact a Ten Percent Project and submit all studies deemed necessary to PADEP and ALCOSAN (PAWC Statement 2 A-14-a p. 14-16).

OCA St. 1 at 9. Furthermore, there is no evidence of a lack of skill, expertise, or necessary capital and no information that indicates Brentwood is not able to hire additional employees or pursue other options for operation and maintenance of its System. We acknowledge Brentwood's service is not perfect; however, perfection is not required for service to be adequate. *Analytical Lab Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Opinion and Order entered December 21, 2007). Brentwood merely uses PAWC as the benchmark by which it measures itself. *See*, Brentwood Exc. at 17-19. As asserted by the OCA, it appears that the Borough remains capable of meeting its environmental compliance targets under the COA. OCA St. 1 at 11; OCA Exh. ND-3 (Brentwood Borough's June 30, 2023, report on COA compliance progress to ACHD, providing "[t]here are no anticipated delays in meeting the requirements of the

COA²¹”). In addition, it is also unclear where the excess I&I comes from. As PAWC’s witness, Mr. Hufton, stated at hearing, “each of the municipalities in the ALCOSAN regional system...are under Consent Orders similar to Brentwood to produce I and I. So it is reasonable to expect that the upstream municipalities have their own I and I challenges.” Tr. at 148.

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. OCA St. 1 at 12-13; *see also*, Brentwood St. 1 at 5. The OCA correctly pointed out that, in the past five years, the Borough has not had issues funding infrastructure replacements or upgrades. OCA St. 1 at 14. 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, as previously discussed, Brentwood, unlike PAWC, has access to additional capital through the ALCOSAN GROW Program. Brentwood’s witness, Mr. 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.

In support of the alleged benefits to Brentwood customers, the Borough explained that under PAWC ownership customers will have 24/7/365 access to PAWC

²¹ The ALJ found that the evidence supported that Brentwood is not operating a struggling system, but, rather, is currently providing safe, adequate and reliable collection and conveyance service. Also, the ALJ concluded that there was no evidence that showed that Brentwood has failed to address issues in the older conveyance system. R.D. at 123.

customer service representatives. Brentwood M.B. at 18. However, when reviewing *East Whiteland* the Commonwealth Court was not persuaded that this was a true benefit as it noted that while Aqua had a toll-free line to provide 24/7/365 customer service, East Whiteland did as well even if part of that service required a call to the police. *See, Cicero* at 1119. As such, benefits such as access to PAWC's 24/7/365 customer service is at best a minor benefit. Issues that arise during normal business hours can be directed to Brentwood itself, while problems that arise outside of normal business hours can be directed to emergency services such as the police or 911 if warranted. As noted by the ALJ, from the public input testimony it does not appear that Brentwood customers had concerns about after-hours customer service and Brentwood can address emergencies without PAWC's oversight. R.D. at 126.

Turning to the impacts on PAWC's customers, while PAWC has proposed that, for the duration of the rate freeze, its shareholders will bear the burden of that portion of the Brentwood revenue deficiency which would otherwise be borne by Brentwood customers, it proposed no such measure for the total revenue deficiency that may be assigned to other wastewater customers or other water customers via the Act 11 allocation, and it does not make any commitment to bear the increased cost of Brentwood's planned capital improvements.²² Although PAWC's concession appears to be framed as an attempt to mitigate the risk to PAWC's existing wastewater and water customers of subsidizing the revenue requirement deficiency not recovered from Brentwood wastewater customers as a result of the rate freeze for the Brentwood System, it does nothing to mitigate the impact to PAWC's existing customers of absorbing the

²² PAWC has provided that the proof of revenues for Brentwood customers will be calculated as if Brentwood customers were paying the estimated 11% increase in rates until the end of the proposed rate freeze, while the additional revenue was not collected. PAWC St. 3-R at 4. This 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 or water customers under the Act 11 allocation. PAWC Exh. AEE-1 (Revised).

potential revenue requirement deficiency of \$1,565,232 assigned to PAWC's current water customers via the Act 11 allocation. *See*, PAWC 2023 Base Rate Case, PAWC Exh. 3-A.²³ We agree with the ALJ that the evidence presented shows that PAWC's existing customers are at risk for supporting the costs of acquiring the Brentwood customers in the proposed transaction, especially during the two-year rate freeze. R.D. at 125.

In weighing the public benefit, the totality of the utility's financial capabilities, and the future impacts of an application to rates for wastewater and water customers, must be considered. Entities acquired in Section 1329 acquisitions will have a cumulative impact on PAWC's existing wastewater and water customers. Not only would PAWC's existing customers be impacted, but Brentwood rates may be increased in the future to subsidize the revenue deficiencies generated by PAWC's other (pending and future) Section 1329 acquisitions.

There is no indication of how long it will take for this transaction to benefit PAWC's existing customers, especially not in the near term. There is no information to show that the proposed transaction would make any customers' rates more affordable in the near term as compared to the absence of the transaction, and there has also been no showing that the transaction would make rates more affordable in the long-term due to economies of scale. There is, in fact, nothing to suggest that this transaction will be beneficial to PAWC's existing customers.

²³ It is noteworthy that of PAWC's requested \$1,934,637 increase in revenue requirement from Brentwood in the 2023 Base Rate Case, PAWC has proposed that 81% (\$1,565,232 / \$1,934,637) be paid by current water customers, while the remaining 19% (\$369,405 / \$1,934,637) will be accounted for in Brentwood's proof of revenues until the end of the System's rate freeze. PAWC 2023 Base Rate Case, PAWC Exh. 3-A.

With respect to the impacts on the public-at-large from the proposed transaction, PAWC posits that this acquisition would benefit the public-at-large because it promotes the Commission's policy regarding the regionalization and consolidation of viable water and wastewater systems at 52 Pa. Code § 69.721. PAWC M.B. at 15; PAWC Exc. at 8-9. Specifically, the Commission's Regulations provide that "[t]he Commission believes that further consolidation of water and wastewater systems within this Commonwealth may, with appropriate management, result in greater environmental and economic benefits to customers." 52 Pa. Code § 69.721(a).

However, the goal of regionalization and consolidation is not simply to acquire as many water and wastewater systems as possible and combine them into one system, but to consolidate systems in a way that benefits customers. In fact, our Policy Statement at 69 Pa. Code § 69.721 recognizes the uncertainty of whether affirmative benefits will result by citing our language that the consolidation of water and wastewater systems "may" benefit customers.

In cases such as the instant proceeding, which involves an acquisition of a municipal entity, the Commission must approve the APA itself pursuant to 66 Pa. C.S. § 507. Here, the APA provides a purchase price and a rate freeze provision by which PAWC agrees not to increase Brentwood customers' rates during the first two years post-acquisition, which comprises part of what the Commission must approve. As such, in approving an acquisition like this one, the Commission is statutorily required to consider whether the ratemaking rate base under Section 1329 of the Code should be approved. Therefore, by statute, the rate impact, whatever it may be, is appropriately included as part of the calculus of weighing the evidence to determine whether the acquisition should be approved under Section 1103 of the Code.

That being said, under Section 1329, fair market valuations are significantly more advantageous to acquiring utilities than prior methodologies, such as those

described under Section 1311 of the Code, 66 Pa. C.S. § 1311, and referred to in our Regulations at 52 Pa. Code § 69.721(b)-(c).²⁴ Under Section 1311 of the Code, an acquiring utility may request inclusion of the value of the used and useful assets of the acquired system in its rate base in its next filed base rate proceeding. However, the acquired assets must be booked at the original cost of the acquired system when first devoted to public service less applicable accrued depreciation and related contributions. *See*, 66 Pa. C.S. § 1311(b) and 52 Pa. Code § 69.721(c). Under this valuation methodology, assets are valued much lower than the fair market valuations under Section 1329, resulting in a much lower purchase price. In fact, Section 1329 acquisitions will almost always result in a purchase price higher than the depreciated original cost of the system. For example, in this instance, the purchase price of \$19,364,443 is approximately 2.7 times greater than the depreciated original cost of

²⁴ Our Statement of Policy at 52 Pa. Code § 69.721, Acquisitions of Viable Water and Wastewater Systems, provides in part:

(b) Inclusion of acquisition assets in rate base. After the approval of an acquisition, as evidenced by the receipt of a certificate of public convenience, an acquiring utility may request the inclusion of the value of the used and useful assets of the acquired system in its rate base. A request will be considered during the acquiring utility's next filed rate case proceeding. *See* 66 Pa. C.S. § 1311(a) (relating to valuation of and return on the property of a public utility).

(c) Method of valuation of acquisition assets. The assets of the acquired system should be booked at the original cost of the acquired system when first devoted to the public service less the applicable accrued depreciation and related contributions. *See* 66 Pa. C.S. § 1311(b).

52 Pa. Code § 69.721(b)-(c).

Brentwood's System.²⁵ In addition to customers paying a return of and return on these higher rate base values, as previously noted, we have also considered the detriment to PAWC's existing customers of shouldering a disproportionate share of the revenue deficiency. These factors have also been considered in the context of the rate limitation of the APA and that Brentwood is financially capable of completing the necessary upgrades to its System.

Upon review, we agree with the ALJ that although PAWC established that it has the technical, managerial, and financial ability to acquire and operate the Brentwood System, fitness alone does not establish that the proposed acquisition will further the public interest. The financial, technical, and managerial "benefits" alleged to result from this transaction are related to, but do not appear to, rise to the level of benefits that "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way," because Brentwood is already providing and is capable of providing the same or similar benefits without the proposed transaction. *See, City of York* at 828; *Cicero* at 1119. Just because PAWC can acquire systems and has technical, managerial, and financial ability does not necessarily mean that every acquisition will further the public interest.

Furthermore, the proposed transaction must affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. It must reflect benefits that are substantial, and the various risks and harms that could result

²⁵ Based on the Gateway analysis presented in Appendix A-15-a to the Application, Gannett Fleming indicated the original cost of the Brentwood System is \$9,942,185. With the calculated accrued depreciation reserve of \$3,016,883, the net book value of the Brentwood assets is \$6,925,302. *See, Appendix A-5.2* at 82. Weinert Consultants indicated the original cost of the Brentwood System was \$9,942,191. With the calculated accrued depreciation reserve of \$2,681,203, the net book value of the Brentwood assets is \$7,260,988. *See, Appendix A-5.1* at 53. The average of Brentwood System's net book values as calculated by the UVEs is \$7,093,145 $[(\$6,925,302 + \$7,260,988) / 2]$.

from the acquisition must be mitigated. PAWC must show that the benefits will substantially outweigh the harms.

Moreover, while we support regionalization because the acquisition of smaller systems by larger systems may improve the viability of the water and wastewater industry in Pennsylvania, we agree with the ALJ's conclusion that, in this particular instance and under these circumstances, the record supports that the proposed acquisition will significantly impact existing PAWC and Brentwood customers while not providing substantial affirmative benefits. The evidence did not establish that any benefit realized from the transaction would outweigh the significant harms to current PAWC and Brentwood customers. As described by the ALJ, the evidence presented by PAWC shows that the proposed acquisition would be a "sum zero enterprise," as it did not prove that the asserted benefits will outweigh the resulting harms of the proposed transaction. R.D. at 126. Such an acquisition, where providing the same services as are already being offered, or where providing for upgrades that the existing system operator is capable of providing, does not satisfy the substantial affirmative benefits requirement under *City of York*, especially when there are known harms and the existing system is already operating safely and reliably. *Cicero* at 1119.

For the reasons set forth above, we agree that the ALJ properly determined that Brentwood is currently providing safe, adequate, and reliable collection and conveyance service. R.D. at 123. As such, to meet the *City of York* standard, and consistent with *McCloskey*, *Popowsky*, and *Cicero*, PAWC needed to establish that other types of benefits would result from the transaction and that those benefits are substantial enough to outweigh the harms. We find that the ALJ properly determined that PAWC did not do so here. In accordance with *Popowsky* and *Cicero*, we find that the cost of this acquisition, and especially its significant impact on PAWC's and Brentwood's customers, as explained above, outweighs the benefits that are alleged to result from the transaction.

Therefore, we shall deny PAWC's Exception No. 1 and Brentwood's Exception Nos. 1, 2 and 3.

Next, we find that PAWC's second Exception is moot because, as discussed above, we agree with the ALJ's conclusion that there is not sufficient proof of a public benefit from the proposed acquisition.²⁶

B. Section 1329 Analysis

1. Fair Market Value for Ratemaking Purposes

a. Positions of the Parties

(1) PAWC

PAWC states the negotiated price for the System is \$19,364,443 and the average of the appraisals of the buyer's Utility Valuation Expert (UVE) and the seller's UVE is \$21,827,775.²⁷ The Company notes, under Section 1329, the fair market value for ratemaking rate base purposes is the lower of the negotiated purchase price and the average of the UVEs' appraisals. PAWC M.B. at 33. Therefore, PAWC asserts \$19,364,443 is the fair market value of the System. PAWC St. 3-REV at 5.

The Company avers Section 1329 does not address the proper accounting treatment of the rate base or approval of a depreciation reserve in determining the

²⁶ This is consistent with our conclusions, *infra*, that the other corollary issues and additional approval requests became moot for the same reasons.

²⁷ PAWC's appraisal was \$22,721,549 and Brentwood's appraisal was \$20,934,000. PAWC St. 4 at 3; Brentwood St. 2 at 13. Therefore, $\$22,721,549 + \$20,934,000 / 2 = \$21,827,775$.

ratemaking rate base, but PAWC asserts that recording the net value of \$19,364,443 is appropriate and consistent with Section 1329. Consequently, PAWC requested the Commission approve recording the acquisition on a net basis, consistent with the Commission's decision in the *Application of Pennsylvania-American Water Company to Acquire the Wastewater System of the York City Sewer Authority*, Docket No. A-2021-3024681 (Order entered April 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.

As discussed further below, PAWC claims all of the assets that it is acquiring are used and useful in providing service to Brentwood's customers and any argument that the proposed ratemaking rate base is too high because it includes assets that are not used and useful in providing service to Brentwood's customers should be rejected. Based on the foregoing, PAWC requested 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. PAWC M.B. at 33.

(2) Brentwood

Brentwood endorsed and adopted PAWC's Main Brief position related to the fair market value of Brentwood's System for ratemaking purposes. Brentwood M.B. at 24.

(3) I&E

I&E argues that a portion of the System is used to serve the Upstream Municipalities and the Downstream Municipalities that are non-customers of Brentwood. However, I&E contends that the purchase price of the System includes the value of the

plant serving the non-customers. As stated by I&E witness Joseph Kubas “[t]he plant, or portion of the plant used to serve ‘non-customers’ should be removed from the requested rate base of \$19,643,443.” I&E witness Kubas notes PAWC failed to provide any analysis that indicates the amount of assets being used by non-customers making it impossible to quantify the exact amount to be removed. Because the amount of the System’s rate base that should be incorporated into PAWC’s rate base cannot be determined, I&E argues the Application should be denied. I&E M.B. at 13 (citing I&E St. 1 at 13-14). If the Commission approves the Application, I&E requests that PAWC must be required to undertake a study that separates the plant used to serve non-customers from the rest of the plant in service so that an accurate rate base can be established. I&E M.B. at 13.

(4) OCA

The OCA did not present any evidence regarding adjustments to the fair market value of the System for ratemaking purposes. However, the OCA adopted the position of I&E regarding PAWC’s inclusion of non-customer plant which is not used and useful in its appraisals of the fair market value of the System. Hence, the OCA contends the fair market value of the System is unknown because the fair market valuation should not include plant which services non-customers. OCA M.B. at 74.

(5) OSBA

The OSBA did not take a position on the fair market value of the System. OSBA M.B. at 81.

(6) ALCOSAN

ALCOSAN did not take a position on the fair market value of the System. ALCOSAN M.B. at 10.

2. Tariff and Rates

a. Positions of the Parties

(1) PAWC

PAWC submits that its tariff at 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 the closing that are equal to the selling utility's existing rates. The Company requested permission to make this tariff supplement effective upon the closing of the transaction. Application at 17. PAWC notes no party disputed this request and avers it is reasonable and in accordance with law. Therefore, the Company requested the Commission allow it to issue compliance tariff supplements consistent with the tariff at PAWC Exhibit MS-2, Second Amended Appendix A-12, to become effective immediately upon the closing. PAWC M.B. at 34.

(2) Brentwood

Brentwood endorsed and adopted PAWC's Main Brief position related to the Company's *pro forma* tariff and rates. Brentwood M.B. at 24.

(3) I&E

I&E took no specific position regarding the tariff and rates. However, I&E recommended the rate freeze be denied as not being in the public interest and argued that the notice provided to Brentwood customers was likely inaccurate as to what the full extent of how much rates will need to increase for Brentwood customers.

(4) OCA

The OCA claims the tariff provided by PAWC in its initial application, amendment to that application, and rate filing does not correctly display the rates paid by Brentwood customers. Exhibit MS-2, Second Amended Appendix A-12. Specifically, the OCA disputes where the tariff provides that treatment rates are “as determined by ALCOSAN.” *Id.* The OCA acknowledges that PAWC’s tariff is true, however it contends that the Company did not provide a reason that ALCOSAN rates should not be included on its tariff. By incorporating the ALCOSAN rate schedule into its tariff, the OCA believes Brentwood customers will be better informed about ALCOSAN rate increases. OCA M.B. at 42.

(5) OSBA

The OSBA notes that Section 7.03 of the APA confirmed a required two-year rate moratorium, which PAWC agreed to honor in order to submit a bid conforming to Brentwood’s Request for Proposal (RFP). However, the OSBA states 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 rate case, the 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 Company’s base rate case. Therefore, the OSBA argues 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 M.B. at 4-5.

The OSBA contends the Commission should reject the rate commitment contained in Section 7.03 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 rate case. As an alternative solution, the 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. The OSBA notes PAWC accepted the alternative recommendation in its Rebuttal, in response to the OSBA's concerns and similar concerns raised by the 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.

OSBA M.B. at 5-6 (citing PAWC St. 3-R at 4).

The 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 of the acquisition. OSBA M.B. at 6.

(6) ALCOSAN

ALCOSAN did not take a position either in opposition to or in support of the proposed transaction. However, if the proposed transaction is approved, ALCOSAN states 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 notes no party disputed that it is a Pennsylvania joint municipal authority organized under, and governed by, the Municipality Authorities Act, as amended at 53 Pa. C.S. §§ 5601-5623. Consequently, ALCOSAN asserts the Commission has no jurisdiction over municipal authorities, including over ALCOSAN's rates and services. ALCOSAN M.B. at 10-11.

ALCOSAN asserts under PAWC's proposed tariff, ALCOSAN will continue to determine its rates for treatment services to users located in Brentwood. ALCOSAN M.B. at 12 (citing ALCOSAN St. 3 at 7, Second Amended Appendix A-12 at Revised Page 11). 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. *Id.*

3. Distribution System Improvement Charge

a. Positions of the Parties

(1) PAWC

PAWC noted Section 1329(d)(4) permits the acquiring utility to collect a Distribution System Improvement Charge (DSIC) prior to the first base rate case that includes the acquired system. Accordingly, PAWC requested authority to approve the collection of a DSIC in the future, prior to the first base rate case in which the System plant-in-service is incorporated into rate base. PAWC M.B. at 34. However, the OCA recommended that Brentwood assets be excluded from the Company's DSIC until the DSIC applies to customers in Brentwood. OCA St. 1 at 21. PAWC accepted this recommendation. PAWC St. 3-R at 5. Additionally, the OCA recommended that the Company file a revised LTIIP including Brentwood within ninety days of the closing. OCA St. 1 at 21. Noting that there are many factors to consider regarding when to file an LTIIP modification and Brentwood's small size, PAWC opposed this recommendation. PAWC M.B. at 34-35.

Based on the foregoing, the Company requested that the Commission allow PAWC to collect a DSIC from System customers upon:

(i) PAWC's filing of an amended wastewater LTIIP including the System, (ii) the Commission's approval of the amended LTIIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement that incorporates the System into PAWC's DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the amended LTIIP.

PAWC M.B. at 35.

(2) Brentwood

Brentwood endorsed and adopted PAWC's Main Brief position related to distribution system improvement charges. Brentwood M.B. at 24.

(3) I&E

I&E did not take a specific position on the DSIC. M.B. at 14.

(4) OCA

The OCA recommended that PAWC modify its LTIP within 90 days of the closing. Noting that the Company has other acquisitions pending before the Commission, the OCA claims filing an amended LTIP would most likely benefit PAWC and does not create hardship. OCA M.B. at 42-43.

(5) OSBA

The OSBA took no position on this issue. OSBA M.B. at 6.

(6) ALCOSAN

ALCOSAN did not take a position regarding this issue. ALCOSAN M.B. at 12.

4. Claims for AFUDC and Deferred Depreciation

a. Positions of the Parties

(1) PAWC

PAWC states Section 1329(f) allows an acquiring utility to: (1) accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes; and (2) defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Consistent with Section 1329(f), PAWC requested to accrue AFUDC, and to defer depreciation, for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. PAWC at M.B. at 35-36.

(2) Brentwood

Brentwood endorsed and adopted PAWC's Main Brief position related to AFUDC and deferred depreciation. Brentwood M.B. at 24.

(3) I&E

I&E took no specific position on claims for AFUDC and deferred depreciation. I&E M.B. at 14.

(4) OCA

The OCA noted PAWC included Brentwood in its 2023 Base Rate Case. Therefore, the OCA states the Company's request for AFUDC and deferred depreciation

is not relevant as all post-acquisition improvements will be included in the Company's new base rates. OCA M.B. at 43.

(5) OSBA

The OSBA took no position on AFUDC and deferred depreciation. OSBA M.B. at 6.

(6) ALCOSAN

ALCOSAN did not take a position on AFUDC and deferred depreciation. ALCOSAN M.B. at 12.

5. Transaction and Closing Costs

a. Positions of the Parties

(1) PAWC

PAWC argued that it is obligated by the APA to reimburse Brentwood for up to \$70,000 in legal and engineering fees. The Company noted that it included its claim for recovery of transaction and closing costs in its current base rate case. PAWC asserted any Commission determination about the recoverability of this cost should be made in that base rate case. PAWC St. 3-R at 10.

(2) Brentwood

Brentwood endorsed and adopted PAWC's Main Brief position related to transaction and closing costs. Brentwood M.B. at 25.

(3) I&E

I&E noted in testimony that Section 1329 permits only the acquiring public utility's transaction and closing costs to be included in rate base and recovered from ratepayers. Thus, I&E recommended that the Commission order explicitly exclude PAWC's APA obligation to reimburse Brentwood \$70,000 in legal and engineering fees from the ratemaking rate base and not otherwise be passed along to ratepayers. I&E M.B. at 14-15.

(4) OCA

The OCA did not provide evidence or adjustments to the transaction and closing costs claimed by PAWC. OCA M.B. at 43.

(5) OSBA

The OSBA took no position on this issue. OSBA M.B. at 6-7.

(6) ALCOSAN

ALCOSAN did not take a position on transaction and closing costs. ALCOSAN M.B. at 13.

6. Additional Issues

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

As noted by ALJ Dunderdale, this case presents an issue of first impression before the Commission, as the instant proceeding involves the first time a municipality in

the ALCOSAN system is attempting to sell its wastewater system to a public utility. *See*, R.D. at 61-62.

As explained *supra*, all municipalities in the ALCOSAN bulk treatment service area are subject to what are essentially uniform Z Agreements that have been executed between ALCOSAN and the municipalities and have been in effect since 1949. Because of the mutual benefit to the participating municipalities of the regional interceptor system, the municipalities have not charged for the collection and conveyance of bulk wastewater from other municipalities. As explained by I&E's witness, Mr. Kubas, there are no intermunicipal agreements governing the terms of discharge of sewage between these various municipalities. Brentwood does not charge the Upstream Municipalities for flows into Brentwood's System, nor do the Downstream Municipalities charge Brentwood for Brentwood's sewage flows into the downstream systems. There are, however, cost-sharing arrangements for capital improvement projects. *See*, I&E St. 1 at 11 (citing PAWC St. 2 at 6).

Finding that PAWC's proposal to acquire the Brentwood System should not be approved pursuant to Section 1102 of the Code, as discussed *supra*, the ALJ presumably did not find it necessary to address the remaining issues related to Section 1329 of the Code, nor provide conditional recommendations should the Commission not agree with her primary recommendation. The ALJ does, however, highlight her agreement with I&E, as supported by the OCA, regarding the issue of the appropriate ratemaking rate base under the instant 1329 transaction, stating that "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." R.D. at 126.

Although raised in the context of the determination of rate base, this issue has important implications for the proposed transaction as a whole, particularly as it relates to the use of intermunicipal trunk lines.

(1) Positions of the Parties

i. PAWC

As indicated *supra*, PAWC requested approval of the addition of \$19,363,443 to rate base for the acquisition of the System, pursuant to 66 Pa. C.S. § 1329(c). However, as described below, I&E, as supported by the OCA, contended that a portion of Brentwood’s assets are not “used and useful” in providing service to Brentwood customers, because of the benefit to Upstream Municipalities (characterized by I&E as “non-customers”), and therefore, should be removed from the requested ratemaking rate base of \$19,363,443. *See*, I&E St. 1 at 11-16; OCA M.B. at 8.

Contrary to I&E’s contention, PAWC countered that no portion of the trunk lines in Brentwood is used solely to convey wastewater from Upstream Municipalities to Downstream Municipalities, and therefore, all trunk lines are, in fact, used and useful to provide service to Brentwood customers. PAWC M.B. at 38.

In addition, PAWC explained that the plant in service used to provide service to customers of the Upstream Municipalities directly benefits Brentwood’s customers because it allows them to receive downstream conveyance and treatment through the ALCOSAN regional system. PAWC argued that if the System was not part of the ALCOSAN regional system, Brentwood customers would not receive downstream conveyance and treatment service. PAWC St. 2-R at 11; Tr. at 152. PAWC explained that if Brentwood did not participate in the ALCOSAN system, it would need to construct its own wastewater treatment plant, which would be contrary to the Commission’s policy

promoting the regionalization of water and wastewater systems. PAWC R.B. at 29 (citing 52 Pa. Code § 69.721 (water and wastewater system acquisitions)).

PAWC argued in its Main Brief that “used and useful” is a flexible concept and the Commission should exercise its discretion to find that, to the extent Brentwood’s assets are also used to provide public utility service to “non-customers” through the ALCOSAN regional interceptor system, those assets are used and useful in providing service to Brentwood’s customers. PAWC M.B. at 38-40.

Therefore, PAWC maintained that the engineer’s assessment used to develop the UVEs’ appraisals properly included all assets of the System because all assets are used and useful for providing public utility service to Brentwood’s customers. PAWC M.B. at 38-40.

Furthermore, PAWC argued that I&E’s position with regard to the intermunicipal trunklines represents bad public policy and would discourage any municipality in the ALCOSAN system from selling its system to a qualified public utility, no matter how much the public interest might favor such a transaction. Therefore, PAWC asserted that the Commission should exercise its reasonable discretion to find that the trunklines are used and useful; therefore, affording the eighty-three municipalities in the ALCOSAN system the same option to sell their wastewater systems, using the FMV methodology, pursuant to Section 1329 of the Code, that was given to all municipalities in Pennsylvania by the Legislature’s policy decision. PAWC St. 1-R at 6-7, 12.

ii. Brentwood

Brentwood noted its support of PAWC’s position and asserted that it is simply incorrect for I&E and the OCA to claim that the System assets are not fully “used and useful.” Brentwood contended that “[w]ithout the trunk lines, Brentwood customers

would be left without any sort of viable treatment option.” Brentwood M.B. at 25; Brentwood R.B. at 12.

iii. I&E

I&E contended that the amount that should be incorporated in PAWC’s rate base, as a result of the proposed transaction, cannot be determined at this time because the purchase price for the System includes plant that is used to provide service to “non-customers.” I&E M.B. at 13; I&E St. 1 at 11-16.

I&E’s concern is that the ratemaking rate base should be accurate and that it would not be an affirmative benefit for customers to pay a return of and on rate base that is not used and useful to serve utility customers, nor would it be in the public interest to do so. I&E R.B. at 18. To remedy this concern, I&E recommended that a COSS be conducted. Specifically, I&E argued that the acquisition should be denied unless and until a study was undertaken that would separate out the cost of plant used to serve non-customers from that used to serve Brentwood customers, in order to determine an accurate rate base. I&E St. 1 at 14.

iv. OCA

Although the OCA did not submit expert testimony on the issue of Brentwood’s “non-customer” Upstream Municipalities, the OCA’s Main Brief noted its adoption of I&E’s position, regarding PAWC’s inclusion of plant which is not used and useful in its appraisals of the FMV of the Brentwood System. *See*, OCA M.B. at 42, 44-47. The OCA countered PAWC’s reasoning with a legal argument. The OCA contended that a public utility cannot provide free service to any member of the public, including the Upstream Municipalities. The OCA argued that, where a utility provides free service, the portion of its plant dedicated to providing free service should not be

considered used and useful because Brentwood customers would bear the burden of paying for free service. OCA M.B. at 46.

The OCA argued that PAWC's assertions that requiring a UVE appraisal which excludes the intermunicipal assets in its rate base would be a disincentive to other municipalities within the ALCOSAN system from selling their collection systems are irrelevant, since the Commission has a statutory mandate to only include plant which is used and useful to the public service in ratemaking rate base. OCA M.B. at 44.

Therefore, the OCA, in accord with I&E's concerns, agreed that in order to ensure that only used and useful plant is added to PAWC's rate base should the Application be approved, the Commission should require PAWC and the Borough to submit accurate UVE appraisals, which exclude the portion of plant that would provide free service to Upstream Municipalities, to determine the correct FMV of Brentwood's rate base under Section 1329 of the Code. OCA M.B. at 47.

v. OSBA

The OSBA took no position on this issue.

vi. ALCOSAN

ALCOSAN took no position on this issue.

b. Is the Rate Freeze a Rate Stabilization Plan?

(1) Positions of the Parties

i. PAWC

PAWC pointed out that Section 7.03(a) of the APA requires PAWC to hold rates constant until after the second anniversary of the closing date. Contrary to the OCA's assertions, PAWC argued that 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 context of a base rate proceeding or otherwise. PAWC St. 3-REV at 9.

PAWC argued that it is not asking the Commission in this Application proceeding to maintain rates for a period of time beyond the next base rate case and noted that, in its current base rate case, PAWC proposed that rates for Brentwood customers increase in August 2024, subject to Commission approval.²⁸ PAWC argued the base rate case is the proceeding where the rates should be determined, not in this Section 1329 Application proceeding. PAWC M.B. at 41.

PAWC's witness, Ashley E. Everette, indicated that the Commission addressed this issue in a previous Section 1329 proceeding, as follows:

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

²⁸ See, *Pa. PUC v. PAWC*, Docket No. R-2023-3043190.

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.

OCA St. 3 at 9 (citing *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township and the New Garden Township Sewer Authority*, Docket No. A-2016-2580061 (Opinion and Order entered June 29, 2017) (*New Garden*) at 41 (note omitted)).

PAWC contended that there is no reason for the Commission to modify its decision from six years ago, nor is there any basis for the Commission to distinguish this decision on the facts. PAWC insisted 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 requested the Commission find that the rate freeze is not a rate stabilization plan. PAWC R.B. at 33.

ii. Brentwood

Brentwood noted its support of PAWC's position, asserting that it endorses and adopts PAWC's position, as expressed in PAWC's Main Brief. Brentwood M.B. at 25.

iii. I&E

I&E took no position on whether the rate freeze constitutes a rate stabilization plan.

iv. OCA

The OCA's witness, Mr. Nicholas DeMarco, contended that Section 7.03(a) of the APA is a "rate stabilization plan" as defined in Section 1329(g): "[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case." OCA St. 1 at 16; OCA St. 1R at 10; 66 Pa. C.S. § 1329(g). Therefore, the OCA argued that PAWC's proposal to freeze rates for the Brentwood customers for two years after the closing is, thus, a rate stabilization plan because it has the potential to hold rates constant over a period of time after its next base rate case. OCA M.B. at 47. The OCA highlighted that in PAWC's current base rate case, the proposed tariff phases in the Brentwood customers' rate increase on the second anniversary of the transaction's closing, meaning that the Company proposed holding Brentwood's rates constant for a period of time after its base rate case. *Id.*

The OCA further contended that PAWC's reliance on the Commission's decision in *New Garden* is misplaced, as the determination that *one* proposed rate freeze is not a rate stabilization plan does not mean that *all* rate freezes are not rate stabilization plans. OCA R.B. at 30 (citing PAWC M.B. at 41).

Based on the OCA's assertion that PAWC's proposed rate freeze, pursuant to the APA, is a stabilization plan, as defined in Section 1329(g) of the Code, the OCA argued that the proposal has the effect of depriving the Commission and the Parties of the ability to fully evaluate the benefits and harms of the proposed transaction. OCA St. 1 at 16; OCA M.B. at 48. Therefore, the OCA requested that the Commission deny the proposed rate freeze and, if it is approved, require the Company to submit the evidence required under Section 1329(g). OCA R.B. at 31.

v. OSBA

The OSBA took no position on these issues, except as outlined above under Tariff and Rates, concerning the rate freeze.

vi. ALCOSAN

ALCOSAN took no position on this issue.

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

(1) Positions of the Parties

i. PAWC

PAWC asserted that the 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, should be rejected. PAWC M.B. at 42-43. Specifically, the OCA contended that, in future acquisitions under Section 1329, PAWC should be required to present three versions of the potential rate impact for each class of customer (one for a customer using the average water usage, one for a customer using 150% of the average water usage, and another for a customer using 200% of the average water usage). OCA St. 1 at 25.

PAWC argued that the OCA's proposal is counterproductive, since it would result in PAWC showing a total of nine scenarios (three scenarios for residential customers, three scenarios for commercial customers, and three scenarios for industrial customers). PAWC explained that when this is replicated for PAWC's water customers and its wastewater customers, there would be eighteen scenarios on the customer notice,

which would likely cause confusion. PAWC M.B. at 42; PAWC R.B. at 35. PAWC asserted that 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 requires only one average usage amount to be shown in the notice for each customer class. PAWC M.B. at 42 (citing 52 Pa. Code § 53.45(b)).

Further, PAWC asserted that a form of customer notice to use in future Section 1329 proceedings was previously approved by the Commission in *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered October 3, 2019) (*Steelton*), a proceeding in which the OCA was a party to the settlement. PAWC M.B. at 42; PAWC R.B. at 34.

Lastly, PAWC contended that the OCA’s proposal would impose a customer notice requirement for future Section 1329 proceedings, which would only apply to PAWC, and therefore, would violate PAWC’s right to equal protection under the law. PAWC R.B. at 34.

ii. Brentwood

Brentwood noted its support of PAWC’s position, asserting that it endorses and adopts PAWC’s position, as expressed in PAWC’s Main Brief. Brentwood M.B. at 25.

iii. I&E

I&E's arguments regarding future customer notices will be discussed in the subsection of "Customer Notices" in the "Recommended Conditions for Approval" section, below, because I&E framed the issue differently than did the OCA.

iv. OCA

The OCA's witness, Mr. DeMarco, recommended that PAWC should add a range of bill impacts in Section 1329 proceedings, including the impact to customers using 150% and 200% of PAWC's estimated average household water usage of 3,212 gallons per month. OCA St. 1 at 25.

Contrary to PAWC's argument regarding the level of customer confusion that a modified customer notice might cause, the OCA argued that the modified notice, as suggested by its witness, Mr. DeMarco, will assist more customers in determining the actual rate impact a proposed transaction might have on their monthly bills than it would potentially confuse. OCA R.B. at 31.

Accordingly, the OCA requested 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. OCA M.B. at 48.

v. OSBA

The OSBA took no position on this issue.

vi. ALCOSAN

ALCOSAN took no position on this issue.

C. Section 507 Approvals

1. Positions of the Parties

a. PAWC

PAWC requested in its Application that the Commission approve, pursuant to 66 Pa. C.S. § 507, which requires that contracts between a public utility and a municipal corporation for other than the furnishing of service at tariff rates be filed with the Commission, 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 contended that these agreements are necessary to allow PAWC to provide service to the service territory currently served by the Brentwood System and are reasonable and in the public interest. R.D. at 86-87.

b. Brentwood

Brentwood endorsed and adopted PAWC's position. Id. at 87.

c. OCA

The OCA, on the other hand, contended that the Application is not in the public interest regarding the Cooperation Agreement between Brentwood and PAWC. The OCA argued that PAWC will benefit from ALCOSAN refunds without guaranteeing that such refunds will be passed on to ratepayers, despite ratepayers funding the services resulting in the refund. The OCA further averred that PAWC's existing system-wide ratepayers will bear the burden of funding any difference between ALCOSAN charges collected by PAWC and the amount the Company actually owes ALCOSAN. R.D. at 87-88.

More specifically, the OCA argued that, under the Cooperation Agreement, PAWC is required to pay for all uncollectible accounts on behalf of ALCOSAN. Furthermore, the OCA avers that, until 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. The OCA submits that any uncollectible expense required to provide for delinquent ALCOSAN bills would be included in PAWC's revenue requirement. R.D. at 88.

In addition, the OCA argued that PAWC 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. The OCA asserted that, 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, because they are not included in the ALCOSAN rates which pass-through to Brentwood customers. The OCA stated that 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. R.D. at 88-89.

The OCA contended that the Cooperation Agreement is unreasonable due to 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. In addition, the OCA argued that since the Cooperation Agreement 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, nor does it require PAWC to update tariff filings and reflect current or anticipated increases in rates in its tariffs, the Cooperation Agreement is unreasonable. Moreover, the OCA avers that PAWC's proposal is similar to a pass-through under 66 Pa. C.S. § 1307(a), but PAWC has not shown that a pass-through is warranted as easily identifiable and beyond PAWC's control, as well as necessary, unique, unexpected, or non-recurring. R.D. at 89-90.

The OCA argued that 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. The OCA argued PAWC should be subject to an arrangement under 66 Pa. C.S. § 1307(a) 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 regarding rates charged by PAWC. Accordingly, the OCA requested that the Commission reform the Cooperation Agreement, pursuant to 66 Pa. C.S. § 508 to 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. R.D. at 91.

d. ALCOSAN

Although ALCOSAN took no position on the proposed transaction, it did 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 argued that it cannot ensure its ability to continue to provide its wastewater treatment and conveyance services to its 83 municipal customers, including users located in Brentwood. R.D. at 92.

e. I&E

I&E did not address this issue. R.D. at 87.

f. OSBA

The OSBA took no position on this issue. R.D. at 92.

2. Disposition

Based upon the ALJ's recommendation that the Commission find insufficient proof of a public benefit, as discussed, *supra*, the ALJ concluded that the request for approval of the APA and other contracts or documents pursuant to 66 Pa. C.S. § 507 became moot because these contracts and documents are relevant only if the Acquisition is approved. R.D. at 118. We agree with the ALJ's conclusion that because there is not sufficient proof of a public benefit resulting from the proposed acquisition, the request to approve the APA, as amended, and other contracts or documents under 66 Pa. C.S. § 507, became moot because the Acquisition is not being approved. Accordingly, we will not review or address this issue any further.

D. Preservation of the Z Agreement and Other Z Agreements

1. Positions of the Parties

a. PAWC

In addition to PAWC's request for Commission approval of the Cooperation Agreement pursuant to Section 507 of the Code as discussed, *supra*, PAWC acknowledged and agreed with ALCOSAN's request to preserve and maintain as uniform

the Z Agreement and the Other Z Agreements.²⁹ PAWC noted its commitment to honor its obligations under the Cooperation Agreement and requested that the Commission take no action to modify the Z Agreement or the other Z Agreements in any way. R.D. at 92.

b. Brentwood

Brentwood endorsed and adopted PAWC's position. *Id.* at 93.

c. ALCOSAN

ALCOSAN argued that 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. ALCOSAN averred that, to continue to provide its wastewater treatment and conveyance services and meet all obligations related thereto, the terms of the Z Agreement and the Other Z Agreements must remain unchanged and continue to be uniformly and consistently interpreted and implemented. ALCOSAN contended that no party presented any evidence or argument disputing ALCOSAN's role as the exclusive service provider for sanitary sewage conveyance and treatment in its service territory, nor did any party present any evidence or argument to dispute the essential role of the Z Agreement and the Other Z Agreements and the need for

²⁹ 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. R.D. at 22; Application, Appendix A-25.3 at 7, 28. 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. R.D. at 22; ALCOSAN St. 1 at 8. Further details regarding the Z Agreement and Other Z Agreements may be found in Findings of Fact 104-115 of the Recommended Decision. *See*, R.D. at 22-24.

preserving them. ALCOSAN noted that PAWC and Brentwood agreed 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. R.D. at 93-94.

Furthermore, ALCOSAN contended that 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. ALCOSAN noted 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. ALCOSAN argued that the terms of the Cooperation Agreement require PAWC and Brentwood to support the ongoing implementation and adherence to the Z Agreement and not undermine the Z Agreement or the Other Z Agreements. ALCOSAN submitted 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. R.D. at 94-95.

d. OCA

The OCA did not present evidence on the issue of the preservation of the Z Agreements and Other Z Agreements. However, the OCA submitted that approval of the Application interferes with ALCOSAN's current regionalization efforts, and the Z Agreement's requirement that free service be provided to Upstream Municipalities complicates the Section 1329 appraisal procedure, to the extent that PAWC and Brentwood failed to submit accurate UVE appraisals. Accordingly, OCA contended that the preservation of the uniformity of the Z Agreements requires the Application, as written, to be denied, because preservation of the Z Agreements' uniformity provides a significant benefit to wastewater customers and municipalities within ALCOSAN's

treatment network, and the Application substantially interferes with that preservation. R.D. at 93.

e. I&E

I&E did not address this. R.D. at 93

f. OSBA

The OSBA took no position on this issue. R.D. at 93.

2. Disposition

Based upon the ALJ's recommendation that the Commission find insufficient proof of a public benefit, as discussed, *supra*, the ALJ concluded that consideration of corollary issues such as the Z Agreement and Other Z Agreements became moot because such issues are relevant only if the Acquisition is approved. R.D. at 118. We agree with the ALJ's conclusion that because there is not sufficient proof of a public benefit resulting from the proposed acquisition, the request to approve the Z Agreement and Other Z Agreements became moot because the Acquisition is not being approved. Accordingly, we will not review or address these issues any further.

E. Recommended Conditions for Approval

While I&E and the OCA noted their opposition to the relief requested in the Application, discussed *supra*, should the Commission grant approval, both I&E and the OCA recommended certain conditions be applied, as discussed below.

1. Missing Easements and Other Property Rights

a. Positions of the Parties

(1) PAWC

As explained in PAWC's Main Brief, it does not object to I&E's recommendation regarding missing easements. PAWC M.B. at 45.

PAWC noted I&E'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 the closing.³⁰ R.D. at 95.

(2) Brentwood

Brentwood noted its support of PAWC's position, asserting that it endorses and adopts PAWC's position related to conditions for approval, as expressed in PAWC's Main Brief. Brentwood M.B. at 25.

(3) I&E

I&E recommended that the closing of the transaction not be permitted to occur unless and until Brentwood provides proof to PAWC's satisfaction that it has: (1) identified all missing easements including public rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other

³⁰ PAWC noted Brentwood agreed to fund the Easement Escrow Fund in the amount of \$2,000 for each missing easement. PAWC. St. 1-R at 5.

property rights so that they may be conveyed to PAWC at the closing; and (3) assumed all costs and expenses for obtaining and conveying the missing easements and other property rights so that PAWC's ratepayers are not burdened with those costs and associated expenses. I&E St. 2 at 6-7.

Further, I&E requested the Commission condition the approval of the 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 should have the option to proceed with the closing, if an escrow account can be established to obtain any post-closing transfers of missing easements and property rights. I&E St. 2 at 7. I&E noted the agreement to establish an Easement Escrow Fund which will be funded with \$2,000 for each missing easement at the time of closing. I&E M.B. at 21 (citing PAWC St. 1 at 13).

I&E contended that, since both PAWC and I&E agree, any Commission approval of the Application should be conditioned on the closing not occurring unless I&E's recommended provisions are met. I&E M.B. at 21-22.

(4) OCA

The OCA took no position on this issue.

(5) OSBA

The OSBA took no position on this issue.

(6) ALCOSAN

ALCOSAN took no position on this issue.

2. Cost of Service Studies

a. Positions of the Parties

(1) PAWC

Although PAWC agreed that it will provide a separate COSS for the Brentwood System in its next base rate case,³¹ the Company rejected the proposal by I&E, adopted by the OCA, that a separate COSS should be done in all subsequent base rate cases for Brentwood, which excludes the cost of service of plant which is not used and useful. PAWC St. 3-R at 11-12; PAWC M.B. at 46. PAWC contended this approach is similar to what PAWC did in the Company's prior base rate case for certain recently-acquired systems. PAWC St. 3-R at 11.

PAWC disagreed that a separate COSS should be required for the Brentwood System in every future rate case, arguing that 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 COSS, if they believe it is necessary. PAWC St. 3-R at 12.

³¹ PAWC asserted that it already submitted a COSS in its current base rate proceeding (at Docket No. R-2023-3043190), which removes all costs and revenues associated with the operation of the Brentwood System and separate COSS for the System. PAWC St. 1 at 18.

Moreover, as previously discussed, PAWC also objects on the grounds that there is no reason to exclude the assets used to provide service to “non-customers,” as recommended by I&E. PAWC continued 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. PAWC St. 3-R at 11. PAWC argued 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. PAWC St. 3-R at 12.

(2) Brentwood

Brentwood noted its support of PAWC’s position, asserting that it endorses and adopts PAWC’s position related to conditions for approval, as expressed in PAWC’s Main Brief. Brentwood M.B. at 25.

(3) I&E

I&E argued that “[j]urisdictional customers should not be required to pay for a return of and a return on plant that serves non-customers.” I&E M.B. at 22. I&E therefore proposed that, if the transaction is approved, PAWC be required to complete a COSS in every subsequent rate case that, not only separates out the plant in the Brentwood System, but also separates out the plant in the Brentwood System that is used to serve “non-customers.” *Id.*

I&E asserted that, if the Commission approves this acquisition, it is imperative that PAWC provide a COSS related to the Brentwood System in any subsequent base rate cases in which the System is included. I&E contended that this proposal is in the public interest as it ensures that the plant used to serve non-customers

can be separated so that ratepayers only pay for plant that is used and useful in the provision of utility service and it establishes the existence and extent of any subsidizations to ensure that rates are properly set. I&E M.B. at 23-24.

(4) OCA

The OCA adopted the request of I&E that, should the Application be granted, PAWC should be required to provide a COSS in each base rate proceeding which includes Brentwood's assets, where the cost of providing service to Upstream Municipalities is excluded from the COSS for Brentwood customers. OCA M.B. at 54 (citing I&E St. 1 at 16-18).

(5) OSBA

The OSBA took no position on this issue.

(6) ALCOSAN

ALCOSAN took no position on this issue.

3. Rate Freeze

a. Positions of the Parties

(1) PAWC

Section 7.03(a) of the APA provides that Brentwood's rates will not be increased until two years following the closing. PAWC committed that, if it files a base rate case that will be effective prior to the second anniversary of the closing, PAWC will

propose an increase for Brentwood customers that will become effective on the second anniversary of the closing and PAWC will calculate its proof of revenues as if the increase to Brentwood revenues were not delayed. PAWC St. 3-R at 4. PAWC noted that it followed through on these commitments in its recently-filed base rate case. PAWC proposed that rates for Brentwood's customers increase in August 2024, but calculated PAWC's proof of revenues as if the effective date was not delayed. PAWC M.B. at 47 (citing Docket No. R-2023-3043190).

(2) Brentwood

Brentwood noted its support of PAWC's position, asserting that it endorses and adopts PAWC's position related to conditions for approval, as expressed in PAWC's Main Brief. Brentwood M.B. at 25.

(3) I&E

I&E's witness, Mr. Kubas, initially recommended that the Commission disapprove the two-year rate freeze in the APA. *See*, I&E St. 1 at 21-22. PAWC responded by committing that, if it files a base rate case that will be effective prior to the second anniversary of the closing, PAWC would proposed an increase for Brentwood customers that would become effective on the second anniversary of the closing and PAWC would calculate its proof of revenues as if the increase to Brentwood revenues had not been delayed.³² *See*, PAWC St. 3-R at 4. Following the concession made in PAWC's rebuttal testimony, I&E withdrew its recommendation to deny the rate freeze in surrebuttal testimony. *See*, I&E St. 1-SR at 31.

³² PAWC noted that it followed-through on these commitments in its recently-filed base rate case. PAWC proposed that rates for Brentwood's customers increase in August 2024, but calculated PAWC's proof of revenues as if the effective date was not delayed. PAWC R.B. at 40 (citing Docket No. R-2023-3043190).

I&E noted that its ultimate position is that the rate freeze is not enforceable insofar as the Commission will always retain its rate setting authority regardless of what PAWC agrees to propose in future rate filings. I&E R.B. at 23.

(4) OCA

Similar to I&E, the OCA's witness, Barbara R. Alexander, testified "[t]he costs associated with the offered two-year freeze in tariffed rates for Brentwood's customers should not be shifted to other PAWC customers." OCA St. 2 at 11. However, the OCA appears to have been satisfied with the concessions made by PAWC in rebuttal testimony. *See*, OCA St. 2SR at 1. In surrebuttal, the OCA notes the following condition, should the Commission approve the transaction: "The costs associated with the offered two-year freeze in tariffed rates for Brentwood's customers should not be shifted to other PAWC customers. I note that PAWC has apparently agreed with this recommendation." OCA St. 2SR at 7.

(5) OSBA

The OSBA took no position on these issues, except as outlined above under Tariff and Rates, concerning the rate freeze.

(6) ALCOSAN

ALCOSAN noted that it took no position regarding PAWC's proposed rate freeze. ALCOSAN further noted that 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. ALCOSAN M.B. at 19.

4. Customer Notices

a. Positions of the Parties

(1) PAWC

PAWC pointed out that both I&E and the OCA proposed the Commission impose conditions pertaining to customer notice. PAWC M.B. at 47.

PAWC asserted that I&E's vague recommendation that PAWC's future customer notices should provide a more accurate range of potential increases should be rejected, as I&E makes no specific proposal as to how PAWC should carry out this directive. PAWC R.B. at 43.

As discussed above, in the absence of a settlement, PAWC argued that establishing a rule for giving customer notice going forward, which only applies to PAWC, raises equal protection concerns. PAWC R.B. at 43. Therefore, PAWC argued that the Commission should continue to require that PAWC comply with the agreement that the Commission approved in *Steelton*. *Id.*

Additionally, PAWC requested that the Commission reject the OCA's arguments: (1) that PAWC's customer notice was fatally flawed because it did not include post-acquisition improvements; and (2) 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. PAWC M.B. at 48-50 (citing OCA St. 1 at 8; OCA St. 2R at 3).

First, PAWC argued the Commission should reject the OCA's argument as inconsistent with Sections 1102 and 1103, because the 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 M.B. at 48.

PAWC argued the OCA erred 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. *See*, OCA St. 1 at 24. PAWC contended 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 argued the reasons for Aqua Pennsylvania's treatment are unknown to PAWC and should not be binding on PAWC. PAWC M.B. at 48.

Further PAWC asserted the notice as provided used the same methodology agreed to by multiple parties, including the OCA, and the methodology was approved by the Commission in *Steelton*, which did not include post-acquisition improvements. PAWC asserted 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 contended 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. PAWC St. 3-R at 13-14.

PAWC contended the OCA is in error to insist PAWC must notify customers about another provider's rate increase, but PAWC does note that, since Brentwood currently notifies its customers of changes in ALCOSAN's charges, it intends

to do the same if the transaction is approved. PAWC St. 2-R at 17; Brentwood St. 1-R at 13.

With respect to the OCA's proposal that PAWC include ALCOSAN's charges in its tariff, the OCA claimed that its proposal is intended to provide fair notice to PAWC's conveyance customers when ALCOSAN increases its treatment charges. OCA M.B. at 42. PAWC noted that it has already agreed to give customers notice of the increase; putting that increase in PAWC's tariff rates goes well beyond what is necessary to provide ALCOSAN's customers with notice of its proposed increase. PAWC R.B. at 45.

Lastly, PAWC objected to the OCA's characterization of its arrangement with ALCOSAN as a "pass-through." *See*, PAWC R.B. at 44. PAWC explained that it proposes to act as a billing agent for ALCOSAN, collecting amounts that ALCOSAN's treatment customers owe to ALCOSAN. PAWC is not asking the Commission to allow PAWC to "pass through" an ALCOSAN charge to PAWC customers. Thus, PAWC asserted that the Section 1307(e) requirements for a pass-through charge do not apply where, as here, a utility is simply using a consolidated bill to offer customers the convenience of simultaneously paying two utility bills. *Id.*

(2) Brentwood

Brentwood noted its support of PAWC's position, asserting that it endorses and adopts PAWC's position related to conditions for approval, as expressed in PAWC's Main Brief. Brentwood M.B. at 25.

(3) I&E

I&E contended that “PAWC has a history of under-projecting the increases necessary for systems acquired under Section 1329.” I&E M.B. at 18. I&E argued the Commission should affirm that base rate increases are likely to be higher than PAWC is projecting to customers in these notices. I&E St. 1-SR at 34. As such, I&E asserted that 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. I&E M.B. at 18; I&E R.B. at 24.

(4) OCA

The OCA argued the Commission should not approve the proposed transaction because of the customer notice and opined that “[t]he lack of proper customer notice alone should influence the decision about whether this transaction should be approved.” OCA St. 2 at 10-11; OCA St. 2R at 6-7.

The 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) the customer notice was deficient because it did not discuss changes in ALCOSAN’s rates during the two-year rate freeze period. OCA St. 2R at 3.

Further, the OCA noted, under the current proposal, PAWC will not provide notice of ALCOSAN rate increases to Brentwood customers until Brentwood customers are charged those rates. The OCA opined that Brentwood customers should receive adequate notice of ALCOSAN rate increases through PAWC providing that information in its tariff, filing a new tariff every time an ALCOSAN projected rate schedule is published, and prior to when an ALCOSAN rate increase becomes effective.

Further, the OCA argued 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 the OCA contended Brentwood customers should be afforded these protections for ALCOSAN cost increases. OCA M.B. at 55; OCA St. 2SR at 7.

(5) OSBA

The OSBA took no position on this issue.

(6) ALCOSAN

ALCOSAN took no position on this issue.

5. ALCOSAN Charges and Discounts

a. Positions of the Parties

(1) PAWC

PAWC stated ALCOSAN can 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. PAWC M.B. at 51 (citing PAWC Exh. MS-2 Appendix A-25.3). The Company noted Brentwood selected this option and has been acting as a billing agent for ALCOSAN, showing ALCOSAN's treatment charges as a separate line item on bills to Brentwood's customers. *Id.*

In the Cooperation Agreement, PAWC agreed to assume this obligation of Brentwood and act as the billing agent for ALCOSAN. As compensation for this service, PAWC will receive a payment in an amount approximating the amount ALCOSAN saves in billing expenses. PAWC M.B. at 52 (citing PAWC Exh. MS-2 Appendix A-25.3). The Company asserts this benefits Brentwood's existing customers as it makes the bill paying process easier and more efficient for customers because they pay two bills with one payment. *Id.*

PAWC disagreed with the OCA recommendation that ALCOSAN'S treatment charges be included in PAWC's rates as an operations and maintenance expense. PAWC M.B. at 52 (citing OCA St. 1R; OCA St. 2R). The OCA contends that there is no protection of Brentwood customers from ALCOSAN rate increases because ALCOSAN is not a Commission-regulated utility. The Company argued that the OCA seeks to treat Brentwood like other PAWC collection-only systems. However, PAWC stated its other collection-only systems are a bulk customer of the treatment provider, and the treatment provider's rates are included in PAWC's rates as an operations and maintenance expense. PAWC M.B. at 52.

In contrast, PAWC noted Brentwood is not a customer of ALCOSAN and, upon closing, PAWC would not be a customer of ALCOSAN. PAWC stated conveyance customers in Brentwood would remain treatment customers of ALCOSAN, therefore it would simply be the billing agent for ALCOSAN. As a result, PAWC asserted that charges collected on behalf of ALCOSAN will be recorded to a "collection for others" liability account and will not be treated as revenue. PAWC argued its billing arrangement with ALCOSAN would be analogous to the consolidated billing that electric distribution companies perform for electric generation suppliers. PAWC contended that because Brentwood's collection-only customers are customers of ALCOSAN, ALCOSAN's charges should not be spread to other PAWC wastewater customers. The Company claimed 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 M.B. at 52-53.

PAWC argued that by collecting the ALCOSAN charges from Brentwood customers, it ensures that the Brentwood customers pay the appropriate costs, and it properly aligns price signals by timely reflecting ALCOSAN charges on customer bills. PAWC pointed out that the ALCOSAN charges are a significant expense, representing more than 50% of current bills for Brentwood customers. PAWC claimed that if the Commission did not allow PAWC to timely collect the ALCOSAN charges by continuing to reflect them on customer bills, regulatory accounting treatment may be necessary to allow PAWC to recover increases to this cost between rate cases. PAWC M.B. at 53-54 (citing PAWC St. 3-R).

Additionally, PAWC mentioned that the Pittsburgh Water and Sewer Authority (PWSA) has a similar billing arrangement to what PAWC is proposing in the instant case. PAWC cited PWSA's tariff where it provides as follows regarding charges for wastewater treatment:

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

- c. Wastewater/Sewage treatment charges may be reflected on Authority bills/invoices as ALCOSAN charges, basic service and sewage treatment.

PAWC M.B. at 54 (citing PAWC Exh. AEE-2). Based on the foregoing, the Company contended it should be permitted to have the same arrangement as PWSA's Commission approved tariff. *Id.*

Finally, PAWC noted Brentwood customers may lose the ALCOSAN low-income discount if the Commission adopts the OCA's recommendation to include ALCOSAN's charges in PAWC's rates. The OCA suggested that the Company offset the loss of ALCOSAN's low-income discount by increasing PAWC's low-income discount by \$15 dollars per month. PAWC M.B. at 54 (citing OCA St. 1SR at 11). The Company asserted that the OCA's proposed discount would shift an ALCOSAN-funded discount to a PAWC ratepayer-funded discount. PAWC argued it is unreasonable for the OCA to ask PAWC's customers to finance a low-income assistance program to make up for a discount that Brentwood customers will lose because of another OCA recommendation. Therefore, the Company declared 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 opposed the OCA's recommendation because it would fragment its already existing Commission approved discount program, with different levels of discount applying to different groups of customers. PAWC M.B. at 54-55.

(2) Brentwood

Brentwood averred that the proposed transaction would provide Brentwood customers with an improved, more streamlined billing process. Brentwood noted it acts as a billing agent for ALCOSAN. Rather than ALCOSAN directly billing Brentwood customers for wastewater treatment service, Brentwood states it includes the ALCOSAN

charges on Brentwood's bills for collection service and Brentwood remits payment to ALCOSAN on a quarterly basis. In exchange for this service, Brentwood confirmed it receives an annual credit from ALCOSAN in the approximate amount that ALCOSAN saves in billing expenses each year pursuant to the Z Agreement. Brentwood acknowledged that PAWC has agreed to assume this obligation under the Cooperation Agreement. Brentwood M.B. at 26.

Under the proposed transaction, Brentwood declared that its customers would continue to enjoy consolidated billing service for wastewater and Brentwood customers will also have one bill for both water and wastewater services as PAWC also provides water service to Brentwood customers. Brentwood M.B. at 26 (citing Brentwood St. 1 at 15). Brentwood submitted that such consolidated billing is in the best interests of its customers to avoid confusion and limit the number of utility bills that they receive. *Id.*

(3) I&E

I&E took no specific position on the ALCOSAN charges and discounts.

(4) OCA

The OCA argued that PAWC should be required to include ALCOSAN treatment costs as an operations expense, recovered in base rate, and not as a pass-through, line-item charge on bills. The OCA averred this condition will allow for the costs of treatment for Brentwood's wastewater collections to be regulated by the Commission, stabilized, socialized, and to prevent any unnecessary accounting complexities which would arise out of uncollectible ALCOSAN treatment costs or the ALCOSAN bill servicing refund. OCA M.B. at 55 (citing OCA St. 2 at 8-9).

(5) OSBA

The OSBA took no position on this issue.

(6) ALCOSAN

ALCOSAN cited its position from Section IV.B.2. of its Main Brief and summarized above. ALCOSAN M.B. at 19.

6. Specific Notice for Brentwood Customers Prior to Closing

a. Positions of the Parties

(1) PAWC

PAWC did not object to the OCA's recommendation that the Commission should require PAWC to issue a notice to Brentwood customers. PAWC M.B. at 55 (citing OCA St. 2 at 12).

(2) Brentwood

Brentwood noted its support of PAWC's position, asserting that it endorses and adopts PAWC's position related to conditions for approval, as expressed in PAWC's Main Brief. Brentwood M.B. at 25-26.

(3) I&E

I&E took no position related to a notice to Brentwood customers prior to the closing. However, I&E claimed that the notice already provided to Brentwood

customers did not accurately portray the rate increases they will potentially face. Therefore, I&E argued if the Commission requires a further notice be provided to Brentwood customers prior to the closing, I&E reiterated that the notice should provide the most accurate information related to how much of a potential rate increase Brentwood customers face. I&E M.B. at 27.

(4) OCA

The OCA argued that PAWC should be required to provide an additional notice to current Brentwood customers because PAWC understated the potential rate impact of the proposed transaction. OCA M.B. at 56.

(5) OSBA

The OSBA took no position on this issue.

(6) ALCOSAN

ALCOSAN did not have a position on notice for Brentwood customers.

7. Payment Agent in Brentwood

a. Positions of the Parties

(1) PAWC

PAWC noted the 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. PAWC M.B. at 55 (citing OCA St. 1 at 12). PAWC

objected to this proposal because it already is the provider of water service in Brentwood and does not have a local payment agent. PAWC argued there is no need for a local payment agent if it becomes the wastewater provider in the area. PAWC asserted many customers pay bills over the phone and online, and the OCA's recommendation would be an unnecessary cost imposed on the Company And its ratepayers. *Id.* Finally, PAWC noted that Brentwood does not presently offer its customers this payment option. PAWC M.B. at 55 (citing Brentwood St. 1-R at 10).

(2) Brentwood

Brentwood noted its support of PAWC's position, asserting that it endorses and adopts PAWC's position related to conditions for approval, as expressed in PAWC's Main Brief. Brentwood M.B. at 25-26.

(3) I&E

I&E did not take a position on whether there should be a payment agent in Brentwood. However, I&E stated it is not opposed to a payment agent in Brentwood. I&E M.B. at 27.

(4) OCA

The OCA asserted that PAWC should maintain a payment agent within the Borough of Brentwood. Under the current proposal, the OCA stated that PAWC will not provide a payment agent for in-person payment of wastewater bills within the Borough. OCA M.B. at 56 (citing OCA St. 2 at 6). The OCA noted that currently, the Borough currently allows for in-person payment through the use of a drop-box on the outside of the Borough Building. *Id.* (citing OCA St. 2SR at 5). Additionally, the OCA claimed that while there are in-person payment options available within fifteen miles of the Borough,

none are located within the Borough, thus creating an inconvenience to Brentwood customers. *Id.*

(5) OSBA

The OSBA took no position on this issue.

(6) ALCOSAN

ALCOSAN did not take a position either in support of or in opposition to the Application and therefore took no position on the issue of a payment agent in Brentwood if the Application is approved. ALCOSAN did not object to PAWC assuming the billing tasks now performed by Brentwood in billing Brentwood users for ALCOSAN's charges. ALCOSAN expressed its interest is that it is paid for its services, by Brentwood or PAWC, so that ALCOSAN can satisfy its obligations to regulators, lenders, and bondholders. ALCOSAN M.B. at 20.

F. PAWC Exception No. 3, Replies and Disposition

1. PAWC Exception No. 3

In its third Exception, PAWC contends that the Recommended Decision erred by failing to rule on the several other issues presented by the Parties in the case, including Section 1329 issues and Section 507 approvals. PAWC Exc. at 28. The Company explains that the Commission does not have the benefit of the ALJ's reasoning on these issues that must be considered should the Commission disagree with the Recommended Decision. *Id.* PAWC requests that the Commission resolve each of these issues as stated in the Company's Main Brief and Reply Brief and summarizes each issue, its resolution, and rationale for that result. *Id.* at 29; *see*, PAWC Exc. at 29-40.

2. I&E Replies

I&E counters PAWC's third Exception by agreeing with ALJ Dunderdale's decision to not issue a ruling on other issues raised in the Application. Specifically, I&E opines that based on a determination the acquisition was not in the public interest, the analysis of additional issues was not necessary. I&E R. Exc. at 19.

3. OCA Replies

In its Reply Exception to PAWC Exception No. 3, the OCA asserts that the Recommended Decision properly determined that the additional issues raised by the Parties, contingent on approval, were moot and that PAWC did not explain in its Exception why it seeks approval of the fair market valuation of its Application under Section 1329 or approval of three contracts under Section 507 if the Acquisition is disapproved. OCA R. Exc. at 19 (citing R.D. at 118; PAWC Exc. at 28-29). In response to PAWC's reiterations of the portions of its Main Brief and Reply Brief relating to the Company's positions under Sections 507 and 1329, the OCA incorporates by reference the relevant portions of its Main Brief and Reply Brief addressing the same, in addition to several recommended conditions of approval. OCA R. Exc. at 19-20; *see*, OCA R. Exc. at 20-25.

4. Disposition

Based upon the ALJ's recommendation that the Commission find that PAWC failed to meet its burden of proving that a substantial affirmative public benefit will result from the proposed acquisition, the ALJ concluded that the PAWC's request to approve the APA, as amended, as well as reviewing and disposing of the other corollary issues were moot and, therefore, were not addressed in the Recommended Decision. R.D. at 118. We agree that, due to our conclusions above that there is not sufficient proof

of a public benefit resulting from the proposed acquisition, the request to approve the APA, as amended, and address the other corollary issues became moot because the proposed acquisition is not being approved. Specifically, based upon the analyses under 66 Pa. C.S. §§ 1102 and 1103, that the alleged benefits to be realized from the proposed acquisition do not outweigh the resulting harms from it, it is not necessary to consider the additional approval requests under 66 Pa. C.S. §§ 507 and 1329.

G. ALCOSAN Reply Exceptions³³

In its Reply Exceptions, ALCOSAN notes that it does not take a position either in support of or in opposition to the proposed transaction. ALCOSAN R. Exc. at 1. ALCOSAN asserts that if the Commission approves the Application, ALCOSAN's status and rights as the exclusive provider of wastewater treatment and conveyance services in its service area must be preserved. *Id.* ALCOSAN incorporates by reference its Main Brief and urges the Commission to consider the essential role of the Z Agreement and Other Z Agreements. *Id.* at 2. Noting that the Recommended Decision did not fully rule upon the issues relating to the Cooperation Agreement, the Z Agreement, and the Other Z Agreements, ALCOSAN requests that the Commission address such agreements if the Application is approved. *Id.* at 3-4. In conclusion, ALCOSAN requests that, should the Commission approve the Application, the Commission condition approval of the Application on four requirements, involving the Z Agreement, Cooperation Agreement, and PAWC's and Brentwood's obligations under such agreements. *Id.* at 4.

³³ We note that on January 24, 2024, ALCOSAN filed a letter with the Commission indicating that it would not be filing Exceptions to the Recommended Decision issued in this proceeding. We further note that while ALCOSAN's Reply Exceptions incorporates by reference passages in previously filed briefs, it does not respond to the arguments or issues in the Exceptions as required by our Regulation at 52 Pa. Code § 5.535(a).

ALCOSAN's Reply Exceptions do not respond to any of the Exceptions filed by PAWC or Brentwood. Therefore, the Reply Exceptions of ALCOSAN will not be considered herein.

VI. Conclusion

Based on the foregoing discussion, we shall: (1) deny PAWC Exception No. 1, consider PAWC Exception Nos. 2 and 3 moot and deny the Exceptions of Brentwood; (2) adopt the Recommended Decision; and (3) deny the Application, consistent with this Opinion and Order. **THEREFORE,**

IT IS ORDERED:

1. That Exception No. 1 of Pennsylvania-American Water Company, filed on January 24, 2024, at Docket No. A-2021-3024058, is denied, consistent with this Opinion and Order.

2. That Exception Nos. 2 and 3 of Pennsylvania-American Water Company, filed on January 24, 2024, at Docket No. A-2021-3024058, are considered moot, consistent with this Opinion and Order.

3. That the Exceptions of the Borough of Brentwood, filed on January 24, 2024, at Docket No. A-2021-302058, are denied, consistent with this Opinion and Order.

4. That the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale issued on January 17, 2024, at Docket No. A-2021-3024058, is adopted, consistent with this Opinion and Order.

5. That the Application filed by Pennsylvania-American Water Company pursuant to Sections 507, 1102, 1103, and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 507, 1102, 1103, and 1329, for approval of its acquisition of the wastewater collection system assets of the Borough of Brentwood, on March 31, 2023, and as amended on May 31, 2023, and July 7, 2023, at Docket No. A-2021-3024058, is denied, consistent with this Opinion and Order.

6. That the docket at A-2021-3024058 is hereby marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta", written in a cursive style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 22, 2024

ORDER ENTERED: March 4, 2024