

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :  
Company under Section 1102(a) of the :  
Pennsylvania Public Utility Code, 66 Pa.C.S. :  
1102(a), for Approval of (1) the transfer, by sale, of :  
Substantially All of the Sadsbury Township :  
Municipal Authority’s Assets, Properties and :  
Rights Related to its Wastewater Collection and : A-2023-3042058  
Conveyance system to Pennsylvania-American :  
Water Company, and (2) the Right of Pennsylvania- :  
American Water Company to Begin to Offer or :  
Furnish Wastewater Service to the Public in :  
Portions of Sadsbury Township, Lancaster County, :  
Pennsylvania :

**RECOMMENDED DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

This Decision recommends the Pennsylvania Public Utility Commission approve, without modification, the Amended Joint Petition for Approval of Unanimous Settlement of All Issues (the Amended Settlement) dated February 21, 2024, to be effective upon order of the Commission because it is in the public interest. The Joint Petitioners agree the Amended Settlement resolves all issues arising under Sections 1103(a) and 507 of the Public Utility Code, 66 Pa.C.S. §§ 1103(a) and 507, and should be approved without modification.

## HISTORY OF THE PROCEEDING

On August 3, 2023, Pennsylvania-American Water Company (PAWC) filed an application (Application) asking the Pennsylvania Public Utility Commission (Commission) to approve its acquisition of the Sadsbury Township Municipal Authority (STMA or Sadsbury Township) wastewater collection and conveyance system (System) in Sadsbury Township, Lancaster County, Pennsylvania, pursuant to Sections 507 and 1102(a) of the Pennsylvania Public Utility Code (Code), 66 Pa.C.S. §§ 507 and 1102(a). In addition, PAWC requested the Commission grant to PAWC the right to offer or furnish wastewater service to the public in portions of Sadsbury Township, Lancaster County, Pennsylvania.

On August 30, 2023, the Commission issued an Initial Telephonic Status Conference Notice scheduling this matter for a telephonic status conference on September 11, 2023. On August 30, 2023, the presiding officer issued the Prehearing Conference Order.

On September 11, 2023, the presiding officer convened the prehearing conference, at which time the parties requested the presiding officer hold the proceeding in abeyance for 45 days while the parties engaged in discovery and settlement negotiations. Thereafter, on September 11, 2023, the Commission issued the Initial Telephonic Status Conference Notice, scheduling a status conference for November 2, 2023.

On October 10, 2023, Applicant filed the Proof of Publication, showing that publication occurred in the LNP, a newspaper of general circulation in Lancaster, Lancaster County, Pennsylvania, on September 29, 2023 and on October 6, 2023.

On October 19, 2023, Applicant filed the Motion for Continuance (Motion) asking to have the status conference on November 2, 2023, cancelled and rescheduled approximately thirty days later. Applicant asserted no statutory deadline exists in this proceeding which requests approval of certain contracts and proposes the approval of a Certificate of Public Convenience. Applicant averred that while Sadsbury Township and Applicant had engaged in some discovery requests, additional discovery requests remain outstanding. Applicant requested additional time in

which to exchange information and conduct settlement discussions. Applicant represented that no party opposed the Motion. The presiding officer denied the Motion on October 24, 2023 in the Second Interim Order, because insufficient justification for the continuance was provided and in order to encourage the parties to discuss the status of discovery and negotiations.

On November 2, 2023, the presiding officer conducted a telephonic status conference with the parties to discuss discovery and the status of settlement discussions. The parties advised discovery was progressing and the parties were hopeful of reaching a settlement. Thereafter, on November 2, 2023, the OALJ served the Further Telephonic Status Conference Notice on the parties, scheduling a status conference for December 5, 2023.

On December 5, 2023, the presiding officer conducted a further status conference with the parties. The parties advised the presiding officer a settlement in principle had been reached between PAWC, OCA and Sadsbury Township. However, the parties requested additional time to work out the details of the settlement. Accordingly, on January 4, 2024, the OALJ served the Further Telephonic Status Conference Notice on the parties, scheduling a status conference for January 16, 2024.

On January 16, 2024, the presiding officer conducted a further status conference with the parties. The parties advised the presiding officer that the parties reached an agreement to settle the issues on stipulated facts, but additional time was needed to obtain final approval from all the parties.

On February 21, 2024, PAWC filed a Joint Petition for Approval of Unanimous Settlement of All Issues which was signed by PAWC, OCA and Sadsbury Township (collectively, Joint Petitioners). The Settlement included Statements in Support from PAWC, OCA and Sadsbury Township, and the parties included proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs. Also, on February 21, 2024, the Joint Petitioners filed the Joint Stipulation of Facts in which the Joint Petitioners stipulated the facts are not in dispute.

On March 12, 2024, the presiding officer issued the Interim Order Closing the Hearing Record.

On April 11, 2024, the presiding officer issued the Post Hearing Order which reopened the hearing record for the purpose of scheduling a conference with the parties. The purpose of the conference was to discuss various errors, vague references and inconsistent references or apparent references to entities which did not participate in the proceeding. The presiding officer reopened the record to receive the input of the Joint Petitioners on how to correct and clarify the Settlement and the Joint Stipulation of Facts.

On April 22, 2024, the presiding officer conducted the Call-In Telephonic Post Hearing Conference with the parties. Present at the conference were representatives from PAWC, Sadsbury Township, OCA and OSBA. The parties elected to meet separately, revise the Settlement and Joint Stipulation of Facts and re-submit the Settlement as amended.

On May 23, 2024, the Joint Petitioners - PAWC, Sadsbury Township Municipal Authority and OCA -filed an Amended Joint Petition for Approval of Settlement of All Issues (Amended Settlement) and an Amended Stipulation of Facts (Amended Stipulation).<sup>1</sup>

### TERMS OF THE SETTLEMENT

The Amended Settlement is a 12-page document containing 26 numbered paragraphs, with 11 numbered paragraphs in its Request for Relief. Attached to the Amended Settlement are Attachments 1 through 3, the respective statements of PAWC, Sadsbury Township Municipal Authority and OCA in support of the Amended Settlement. Attachments 4 through 6 are Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs.

The essential terms of the Amended Settlement are contained in Paragraphs 10 through 20, which are quoted *in verbatim* below:

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<sup>1</sup> While OSBA joined with the Joint Petitioners in the Amended Stipulation, OSBA did not sign the Amended Settlement. OSBA asserted in an email sent on March 18, 2024, it did not oppose the Settlement.

## **Terms and Conditions of Settlement**

### **Approval of Application**

10. The Joint Petitioners agree that the Commission should approve PAWC's acquisition of the System currently owned by STMA and PAWC's right to begin to offer, render, furnish, or supply wastewater services in the areas served by the System, as well as any other necessary approvals or certificates for the transaction, subject to approval of all of the following conditions and without modification.

### **Tariff**

11. The *pro forma* tariff supplement attached to the Application as Appendix D shall be permitted to become effective immediately upon closing of the transaction ("Closing"). In addition, PAWC shall be authorized to implement all other miscellaneous fees and charges, and the rules and regulations regarding conditions of PAWC's wastewater service, as reflected in PAWC's prevailing wastewater tariff, to become effective upon Closing.

### **Distribution System Improvement Charge ("DSIC")**

12. The DSIC provisions of PAWC's effective tariff will apply to customers in the System no later than the first base rate case in which the System is included, pursuant to Paragraph 22 of the Joint Petition for Settlement of Rate Investigation approved in Docket No. R-2022-3031673. Additionally, PAWC will not seek to recover System-related investments in its DSIC until PAWC applies the DSIC to System customers.

### **Rates**

13. Except as explicitly agreed upon in this Settlement, nothing contained herein or in the Commission's approval of the Application shall preclude any Joint Petitioner from asserting any position or raising any issue in other PAWC proceedings. This includes but is not limited to OCA's reservation of rights to address and make other proposals for System rates in PAWC's pending and future rate cases.

14. PAWC will not seek a "substantial public interest" exception to the requirement of 66 Pa. C.S. § 1327(e) for this System and will pass through to customers any difference

between the depreciated original cost of the System and the purchase price as an addition to income that offsets expenses included in revenue requirement.

15. PAWC will treat costs incurred for System wastewater treatment, including but not limited to fees and charges pursuant to service agreements with Salisbury Township and service agreements by and among the Borough of Christiana, Christiana Borough Authority, and Sadsbury Township as Operations and Maintenance expenses to be recovered in PAWC base rates, subject to Commission review and approval.

16. Any claim by PAWC to recover transaction and closing costs associated with the System acquisition will not include costs incurred by Sadsbury Township. The OCA reserves its rights to challenge the reasonableness, prudence, and basis for PAWC's transaction and closing cost claims in the rate filing where they are claimed.

#### **Low Income Program Outreach**

17. Within the first billing cycle following Closing, PAWC shall provide a bill insert to System customers regarding PAWC's low-income programs and customer payment arrangement programs. The bill insert shall include, at a minimum, a description of the available low-income programs, eligibility requirements for participation in the programs, and PAWC's contact information.

18. Within the first 30 days of Closing, PAWC shall provide a welcome letter to System customers that includes information about bill payment options; identifies locations where customers can pay in-person for no additional fee, which are reasonably proximate to the areas served by the System; and provides the information listed in Paragraph 17 above about the Company's low-income programs and customer payment arrangement programs.

#### **Approval of Section 507 Agreements**<sup>[2]</sup>

19. Pursuant to 66 Pa. C.S. § 507, the Commission shall issue Certificates of Filing or approval for:

- a. the Asset Purchase Agreement By and Between the Sadsbury Township Municipal Authority and Sadsbury

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<sup>2</sup>

OCA does not join in this Section but does not oppose PAWC's request.

Township as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of January 5, 2023;

b. Agreement By and Among the Borough of Christiana, Christiana Borough Authority, Township of Sadsbury and Sadsbury Township Sewer Authority Dated as of November 11, 1997, as amended May 23, 2001; and

c. Agreement By and Among Township of Salisbury and Sadsbury Township Sewer Authority as of June 19, 2001 as amended July 19, 2022.

**Other Necessary Approvals**

20. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the transactions contemplated in the Application in a lawful manner.

In addition, the Joint Petitioners specified acceptance of their agreement was dependent on additional conditions, entitled “Standard Settlement Conditions” in paragraphs 21 through 26, which are quoted below *in verbatim*:

**Standard Settlement Conditions**

21. The Amended Settlement is conditioned upon the Commission’s approval of the terms and conditions contained in the Amended Settlement without modification. If the Commission modifies the Amended Settlement, any Petitioner may elect to withdraw from the Amended Settlement and may proceed with litigation and, in such event, the Amended Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of an Order modifying the Amended Settlement. The Joint Petitioners acknowledge and agree that the Amended Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

22. This Amended Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceedings. If the Commission does not approve the Amended Settlement and the

proceedings continue, the Joint Petitioners reserve their respective procedural rights, including the right to present additional testimony and to conduct full cross-examination, briefing and argument. The Amended Settlement is made without any admission against, or prejudice to, any position which any Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

23. The Joint Petitioners acknowledge that the Amended Settlement reflects a compromise of competing positions and does not necessarily reflect any Petitioner's position with respect to any issues raised in these proceedings. This Amended Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Amended Settlement.

24. The Joint Petitioners have prepared Proposed Findings of Fact (Attachment 4), Proposed Conclusions of Law (Attachment 5), and Proposed Ordering Paragraphs (Attachment 6). The Joint Petitioners further agree that the facts agreed to in the Proposed Findings of Fact are sufficient to find that the Amended Settlement is in the public interest.

25. Each Petitioner has prepared a Statement in Support of Amended Settlement setting forth the bases upon which the Petitioner believes the Amended Settlement to be in the public interest.

26. If the ALJ recommends approval of the Amended Settlement without modification, the Joint Petitioners will waive their rights to file Exceptions.

#### JOINT STIPULATION OF FACTS

The Joint Petitioners request admission of the Amended Stipulation of Facts into the hearing record, which was filed on the same day the Joint Petitioners filed the Amended Settlement (May 23, 2024). The Amended Stipulation included Appendix A, which included a recitation of facts to which the Joint Petitioners agreed. All Joint Petitioners stipulated as to the veracity and authenticity of the facts as set forth in the Amended Stipulation. The Joint Petitioners provided the Amended Stipulation with the Amended Settlement with the intention to settle all issues. The

Amended Stipulation also included Appendix B, which is a proposed order admitting the stipulated facts into the hearing record.

The presiding officer grants the Joint Petitioners' request to admit the Amended Stipulation into the hearing record. The stipulated-to facts included in Appendix A are included below *in verbatim*.

## FINDINGS OF FACT

### **THE PARTIES**

1. Sadsbury Township Municipal Authority, f/k/a Sadsbury Township Sewer Authority ("STMA") is a municipal authority which owns, maintains, and operates the wastewater collection system (the "System") that serves approximately 223 residential and 28 commercial customers in Sadsbury Township ("Sadsbury Township"), Lancaster County, Pennsylvania.

2. Pennsylvania-American Water Company ("PAWC") is a regulated public utility corporation (Utility Codes 212285 (water) and 230073 (wastewater)) duly organized and existing under the laws of the Commonwealth of Pennsylvania, and is engaged in the business of collecting, treating, storing, supplying, distributing and selling water to the public, and collecting, treating, transporting and disposing of wastewater for the public. Water and wastewater service is furnished by PAWC to the public in a service territory encompassing more than 400 communities across the Commonwealth with a combined population of over 2,400,000. PAWC is a currently certificated public utility.

3. The Office of Consumer Advocate ("OCA") is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Pennsylvania Public Utility Commission ("Commission" or "PUC"). 71 P.S. §§ 309-1[ - 309-7].

4. The Office of Small Business Advocate (“OSBA”) is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small business before the Commission. 73 P.S. §§ 399.41 - 399.50.

### **NON-PARTY ENTITIES**

5. Sadsbury Township a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, located in the County of Lancaster, Commonwealth of Pennsylvania.

6. Christiana Borough (“Christiana Borough”) is a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, located in the County of Lancaster, Commonwealth of Pennsylvania.

7. Christiana Borough Authority (“Christiana Borough Authority”) is a Pennsylvania municipal authority incorporated under the provisions of the Pennsylvania Municipal Authorities Act of 1945, as amended, of Christiana Borough, of the County of Lancaster, Commonwealth of Pennsylvania.

8. The Township of Salisbury (“Salisbury Township”) is a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, located in the County of Lancaster, Commonwealth of Pennsylvania, organized and operating under the Second Class Township Code.

9. Salisbury Township abuts Sadsbury Township to the north of Sadsbury Township.

10. Christiana Borough abuts Sadsbury Township to the south of Sadsbury Township.

## **THE WASTEWATER SYSTEM**

11. STMA owns, maintains and operates the wastewater collection and conveyance system (the “System”) providing wastewater service to approximately 223 residential and 28 commercial customers in Sadsbury Township, Lancaster County.

12. The System receives wastewater treatment under the terms set forth in the service agreements STMA has entered into with (1) Sadsbury Township, Christiana Borough Authority and Borough of Christiana (together, “Christiana”) and (2) Salisbury Township.

## **THE PURCHASE PRICE OF THE SYSTEM**

13. PAWC and STMA have entered into an Asset Purchase Agreement (“APA”) by which PAWC will acquire the System for \$990,000 subject to certain conditions (the “Transaction”), including but not limited to the receipt of all necessary governmental approvals, including approvals from the Commission, the Pennsylvania Department of Environmental Protection (“PaDEP”) and the Township.

14. On August 3, 2023, PAWC filed an Application at Docket No. A-2023-3043058 asking the Commission to approve its acquisition of the System under Sections 507 and 1102(a) of the Public Utility Code, 66 Pa C.S. § 507 and § 1102(a). Furthermore, PAWC is requesting the right to offer or furnish wastewater service to the public in portions of Sadsbury Township, Lancaster County, Pennsylvania.

15. The service agreements STMA entered into with Sadsbury Township and Christiana are attached to the Application as “Appendix B.”

16. The service agreements STMA entered into with Salisbury Township are attached to the Application as “Appendix C.”

17. A map showing the proximities of Sadsbury Township, Christiana Borough, and Salisbury Township is attached to the Application as part of Appendix O.

18. Notice regarding the proposed sale of the System was provided (1) by publication in LNP and Lancaster Online on September 29, 2023 and October 6, 2023, (2) publication in the Pennsylvania Bulletin on August 19, 2023, and (3) as evidenced by the Certificate of Service filed by PAWC on October 10, 2023. Since September 23, 2020, the STMA Board Meeting agendas have listed the proposed sale as an agenda item 13 times.

### **SYSTEM OPERATIONS**

19. STMA currently does not have a building for operations.

20. STMA has no employees; billing and accounting services are outsourced by STMA.

21. STMA does not have complete access to records such as historical data regarding customer accounts, system mapping, and infrastructure condition,

22. PAWC employs many engineers, system operators, and other professionals in close proximity to the System. In managing the System, PAWC can also rely on experts across the footprint of American Water, the largest water and wastewater company in the country.

23. Recordkeeping will improve under the ownership of PAWC, as a PUC-regulated wastewater utility. The ability to have historical data regarding customer accounts and infrastructure will improve service to customers in areas such as dispute resolution, repairs, maintenance, and compliance with state and federal mandates.

24. Prospective customers in the acquired territory will become eligible for PAWC's bona fide service applicant program for existing customers, found in Section M of

PAWC's Wastewater Tariff. PAWC has experience managing growth and attracting development opportunities.

25. As PAWC customers, the acquired customers will have access to PAWC's extended customer service and call service hours, as well as PAWC's customer information and education programs.

26. Current STMA customers may pay their bills through cash or check, mailed to a Post Office box maintained by STMA or, since January 2024, delivered in-person to a member of Sadsbury Township staff. There are no other available means by which an STMA customer may pay for their wastewater service.

27. As PAWC customers, the acquired customers will have additional bill payment options, including continuing the options for in-person payment. There are two zip codes for STMA's service territory. PAWC currently maintains seven in-person payment locations within 15 miles of STMA customers living in zip code 17527, and four for customers living in zip code 17509. PAWC does not charge any fee for in-person payment at these locations.

28. Sadsbury Township does not have a low-income customer assistance program and has no plans to create one.

29. PAWC offers low-income customer assistance programs, including a bill discount program and hardship grant program, and a newly approved arrearage management plan.

30. PAWC does not have an estimate of the number of STMA customers who would be eligible for PAWC's low-income assistance programs.

## **RATES**

31. STMA does not provide any free or unbilled service; all entities receiving wastewater collection service from STMA are billed in accordance with Resolution A3-2020.

32. STMA’s current rates and fees were adopted by resolution dated October 21, 2020 (Resolution A3-2020).

33. STMA charges a “return check fee” of \$25. PAWC’s return check fee is \$20. Otherwise, the STMA fees will be eliminated under PAWC ownership and the PAWC fees will be applicable to the STMA system, as listed below.

<b>Current PAWC Tariff</b>	
Return Check Fee	\$20
Capacity Reservation Fee	\$4,000 Per EDU (when applicable)
Service Line Inspection Fee	\$50
Service Reconnection and Discontinuance Fee	\$30 (Regular Hours) Cost (Non-Regular Hours)
Wastewater Plant, Residential Septage, and Commercial Waste Disposal Fee	Paid by Private Contractors to Dispose of Private Residential Septage and Commercial Wastes

<b>Sadsbury Township Charges per Resolution A3-2020</b>	
Return Check Fee	\$25 (in addition to bank fees)
Connection Fee	Actual Cost of Connection
Customer Facilities Fee	Actual Cost of the Meter and Associated Facilities Plus Costs to Inspect the Installation of the Meter and Install the Remote Meter
Tapping Fee	\$2,505 Per EDU for Collection Part \$7,495 Per EDU for Capacity Part
Failure to Notify STMA of Sale of Property Within 45 Days of Sale	\$500
Meter Read Fee	\$200 Per Quarter

34. Current PAWC wastewater Rate Zone 1 unmetered rates per EDU are \$106 per month.

35. STMA’s current, unmetered rates of \$385 per EDU per quarter (the equivalent of \$128.33 per month) include the annual fees for wastewater treatment that are charged

to STMA under its service agreements with (1) Sadsbury Township and Christiana and (2) Salisbury Township.

36. In its pending base rate case at Docket No. R-2023-3043190, PAWC has proposed to (1) continue including the costs for wastewater treatment in base rates and (2) maintain the current flat rate of \$128.33 per EDU per month for customers in the STMA system.

37. The annual fees and charges assessed to STMA pursuant to the service agreements with (1) Sadsbury Township and Christiana and (2) Salisbury Township vary by year:

	<b>2022</b>	<b>2021</b>	<b>2020</b>
<b>Christiana</b>	\$82,195.51	\$61,909.66	\$132,642.53
<b>Salisbury</b>	\$30,733.31	\$20,805.07	\$47,830.01
<b>Total</b>	\$112,928.82	\$82,714.73	\$180,472.54

38. The Agreement between Salisbury Township and STMA states that prior to October 31 of each year, Salisbury Township will advise STMA of any proposed maintenance, repairs, or replacement of Salisbury Township facilities that may impact calculation of the service fee and charges. Application, App. C, p. 25, ¶ 4.2(f). Neither PAWC nor STMA have been informed of any plans by Salisbury Township that will impact calculation of the service fee and charges for 2023 or subsequent years.

39. The STMA system has no history of PaDEP violations.

40. At the time the Application was filed, STMA did not have a Water Quality Management [(WQM)] permit for its Pumping Stations #1 or #2, which forward flows to the Christiana Borough Sewage Treatment Plant. STMA submitted two applications to PaDEP in July 2023, requesting WQM permits for each pumping station. WQM permits were issued for each pumping station on December 29, 2023.

## PAWC'S PLAN FOR IMPROVEMENTS TO THE SYSTEM

41. Based on current information, the existing STMA facilities are in [a] condition to provide adequate service.

42. PAWC plans the following improvements to the STMA system for the first six years of ownership:

- For Years 1 and 2, improvements include conducting a condition based assessment/Geographic Information System ("GIS") survey of the collection system, installing safety and security improvements, installing Supervisory Control and Data Acquisition ("SCADA") improvements, and performing pump replacement.
- Planned improvements for all six years include constructing wastewater Distribution System Improvement Charge ("DSIC") projects consistent with the condition-based assessment and PAWC's Long-Term Infrastructure Improvement Plan ("LTIIIP"), installing new mains and laterals, replacing valves, and manholes.

43. The above-listed investments are not planned or contemplated by STMA, further, STMA does not have the funding to pursue them.

44. Projected costs for PAWC's planned investment for the first six years of ownership total \$1,531,000.

45. Appendix F to the Application references long-term debt of \$1,058,000. STMA incurred that debt to initially install its System and has refinanced the debt many times.

46. PAWC has performed an analysis of the original cost and accumulated depreciation of the STMA system, which shows the depreciated original cost of the assets is \$1,935,612, or \$945,612 more than the purchase price. After closing, PAWC will file with the Commission an original cost study to reflect the original cost and accumulated depreciation as of the closing date.

## **RATES AFTER CLOSING**

47. In its pending base rate case at Docket No. R-2023-3043190, PAWC has proposed a negative utility plant acquisition adjustment that will be recorded as a regulatory liability for the STMA acquisition. PAWC proposes to amortize over 10 years the difference between the \$990,000 purchase price and the depreciated cost of the assets as an addition to income, which offsets expenses included in revenue requirement.

48. Based on the purchase price of the System, the average purchase price per existing customer for the STMA is \$3,944.

49. The average net plant in service per existing PAWC wastewater customer as of December 31, 2023, based on projections in PAWC's last base rate case at Docket No. R-2022-3031673, is \$12,271.

50. Based on the purchase price of the system and projected capital investment, PAWC estimates that the System will have an annual revenue sufficiency of \$43,000 in excess of cost of service.

## **DISCUSSION**

The Commission encourages parties in contested on-the-record proceedings to settle cases.<sup>3</sup> Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

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<sup>3</sup> See 52 Pa. Code § 5.231(a). The results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

By definition, a “settlement” reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.<sup>4</sup> In their supporting statements, the Joint Petitioners concluded this Settlement resolved all contested issues in this case sufficiently to balance the interests of the parties, the ratepayers impacted and the public interest. Because the Joint Petitioners believe the Amended Settlement is consistent with the requirements of the Public Utility Code, they request approval of the Amended Settlement and assert this Amended Settlement is just and reasonable and in the public interest.

### PAWC’S STATEMENT IN SUPPORT

#### **1. Fitness**

PAWC acknowledges that, as the applicant herein, it must demonstrate it is technically, financially, and legally fit to own and operate the System.<sup>5</sup> PAWC asserts, as a certificated public utility, it enjoys a rebuttable presumption that it already possesses the requisite fitness.<sup>6</sup> PAWC further notes no party herein challenged PAWC’s fitness. Therefore, PAWC contends the ALJ and the Commission should find that PAWC is technically, financially and legally fit to run and operate the System, and approve the Amended Settlement without modification.

#### **2. Public Benefit**

PAWC contends the acquisition will benefit all impacted stakeholder groups, especially with the conditions outlined in the Amended Settlement. PAWC asserts the acquisition will also benefit members of the public-at-large because its acquisition of the System will promote

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<sup>4</sup> *Pa. Pub. Util. Comm’n v. CS Water and Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

<sup>5</sup> *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm’n*, 502 A.2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240 (Pa. Super. 1958).

<sup>6</sup> *South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308 (Pa. Cmwlth. 1992).

the Commission’s policy favoring regionalization and consolidation of water and wastewater systems.<sup>7</sup>

PAWC further asserts the acquisition will benefit STMA and STMA’s existing customers similar to how the proposed acquisition will benefit all other members of the public-at-large. PAWC contends the benefit to STMA is that its governing board desires to exit the business of managing a sewer system and the proposed acquisition facilitates this goal.<sup>8</sup> In addition, the benefit to STMA’s existing customers is that: (1) the System will become a Commission-regulated utility with protections provided to customers by the Public Utility Code, the Commission, BIE, OCA, and OSBA; (2) customers will have access to PAWC’s proven and enhanced customer service, including customer assistance programs, a customer dispute resolution process, extended call hours, additional bill payment options, and enhanced customer information and education programs;<sup>9</sup> (3) existing customers would become eligible for PAWC’s *bona fide* service applicant program;<sup>10</sup> (4) planned improvements totaling \$1,531,000 over the next six years;<sup>11</sup> (5) PAWC possesses a broader range of engineering and professional experience when managing a water/wastewater system similar to STMA, as well as improved recordkeeping and maintenance of historical data records concerning customer accounts, system mapping, and infrastructure condition;<sup>12</sup> and (6) the proposed acquisition would promote the public policy goal of improving and maintaining public infrastructure.

PAWC further asserts the Amended Settlement contains additional public benefits for STMA’s existing customers, in that it requires PAWC to provide information to STMA’s customers regarding its low-income programs within 30 days of PAWC’s ownership of the System

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<sup>7</sup> Application, ¶¶ 22.b and 22.e.

<sup>8</sup> Amended Stipulation, Appendix A, ¶ 13.

<sup>9</sup> Amended Stipulation, Appendix A, ¶¶ 25-29.

<sup>10</sup> See Section M of PAWC’s Wastewater Tariff; see also Amended Stipulation, Appendix A, ¶ 24.

<sup>11</sup> PAWC asserts these investments would not occur if STMA remained the owner of the System because STMA does not have the funding to pursue these projects. Amended Stipulation, Appendix A, ¶¶ 42-44.

<sup>12</sup> Amended Stipulation, Appendix A, ¶¶ 21-23.

and requires PAWC to pass through to customers any difference between the depreciated original cost of the System and the purchase price as an addition to income that offsets expenses included in revenue requirement.<sup>13</sup>

Similarly, PAWC contends the proposed acquisition would benefit its own existing wastewater customers as it benefits all other members of the public-at-large and some specific benefits for PAWC's existing customers would be: (1) the proposed acquisition, if approved, would have no immediate impact on the rates paid by PAWC's existing customers;<sup>14</sup> and (2) the proposed acquisition, if approved, would add new customers to PAWC's customer base, who can share the cost of operating the entire PAWC system, thereby stabilizing or reducing per-customer costs over the long term.<sup>15</sup> In short, PAWC asserts the proposed acquisition, as modified by the terms and conditions in the Amended Settlement, has affirmative public benefits of a substantial nature for every impacted group, and these benefits outweigh any alleged detriments. Accordingly, PAWC contends the Commission should find the Amended Settlement affirmatively promotes the service, accommodation, convenience, or safety of the public in some substantial way, and approve the proposed acquisition.

### **3. Rates**

In terms of rates, PAWC contends the Amended Settlement is in the public interest because the Amended Settlement reserves the right of the other Joint Petitioners to address and make other proposals for System rates in PAWC's pending and future rate cases.<sup>16</sup> PAWC avers its current wastewater Rate Zone 1 unmetered rates per EDU are \$106 a month, while STMA's current, unmetered rates are \$385 per EDU per quarter (or \$128.33 per month).<sup>17</sup> PAWC points out it has

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<sup>13</sup> Amended Settlement ¶¶ 14, 17-18.

<sup>14</sup> Application, ¶ 23.

<sup>15</sup> Application, ¶ 21. PAWC asserts the average purchase price per existing customer for STMA is \$3,944, based on the purchase price for the System. Amended Stipulation, Appendix A, ¶ 48.

<sup>16</sup> Amended Settlement, ¶ 13.

<sup>17</sup> Amended Stipulation, Appendix A, ¶¶ 34-35.

proposed in its pending base rate case (at Docket No. R-2023-3043190) that it will: (1) maintain the current flat rate of \$128.33 per EDU per month for customers in the STMA System; and (2) continue to include the costs for wastewater treatment in base rates.<sup>18</sup> Furthermore, PAWC notes the Amended Settlement commits PAWC to pass through to customers the difference between the purchase price and the depreciated original cost of the System as an addition to income, which offsets expenses included in revenue requirement.<sup>19</sup>

#### **4. Distribution System Improvement Charge**

PAWC contends the proposed acquisition, with the modifications included in the Amended Settlement, is in the public interest because the Amended Settlement includes consumer safeguards. PAWC acknowledges that a utility must submit a long-term infrastructure investment plan (LTIP) and receive approval from the Commission before a utility can qualify for a distribution system improvement charge (DSIC) recovery. PAWC points out the Commission previously approved PAWC's most recent wastewater LTIP (at Docket No. P-2023-3038874), which proceeding did not include the System. In addition, PAWC points out the Amended Settlement prohibits it from including System-related investments in its DSIC until it collects the DSIC from System customers. PAWC asserts this prohibition protects existing PAWC customers from fully funding System-related improvements.<sup>20</sup> In addition to these protections, PAWC asserts the Amended Settlement additionally prohibits PAWC from collecting a DSIC from System customers until PAWC files a compliance tariff supplement that incorporates the System into PAWC's DSIC tariff. PAWC further notes the Amended Settlement established a deadline for PAWC to file the compliance tariff supplement. In summary, PAWC contends the proposed acquisition, as modified by the DSIC provisions in the Amended Settlement, is reasonable, in the public interest and should be approved.

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<sup>18</sup> Amended Stipulation, Appendix A, ¶ 36.

<sup>19</sup> Amended Settlement, ¶ 14.

<sup>20</sup> Amended Settlement, ¶ 12.

## **5. Transaction and Closing Costs**

PAWC contends the Amended Settlement is in the public interest because the Amended Settlement reserves the right of OCA to litigate its positions regarding the reasonableness, prudence, and basis for PAWC's transaction and closing cost claims fully in the rate case where these costs are claimed.<sup>21</sup> Further, PAWC contends the Amended Settlement specifies PAWC will not make any claim to recover transaction and closing costs that include costs incurred by STMA.<sup>22</sup>

## **6. Section 507 Approvals**

Section 507 of the Code<sup>23</sup> requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariff rates) be filed with the Commission at least 30 days before the effective date of the contract. The Commission approves the contract by issuing a certificate of filing, unless it decides to institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract.

PAWC notes it seeks the Commission's approval of the Asset Purchase Agreement through this Application, as well as service agreements with Christiana Borough Authority, the Borough of Christiana and the Township of Salisbury, which PAWC will assume at closing. PAWC contends the Commission's approval of these agreements is necessary for PAWC to continue to provide service to all customers presently served by the System.

In summary, PAWC contends the Amended Settlement is in the public interest because it establishes that no Joint Petitioner objects to the Commission's approval of these agreements pursuant to Section 507. Accordingly, PAWC requests the Commission should issue a Certificate of Filing for, or otherwise approve, the APA and the service agreements.

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<sup>21</sup> Amended Settlement, ¶ 16.

<sup>22</sup> Amended Settlement, ¶ 16.

<sup>23</sup> 66 Pa.C.S. § 507.

## SADSBURY TOWNSHIP'S STATEMENT IN SUPPORT

Sadsbury contends the Amended Settlement proposes the resolution of all issues. Sadsbury asserts this Amended Settlement is in the public interest because Commission approval will minimize litigation and the administrative burden of all parties in addition to furthering the public interest by allowing the acquisition to proceed. Overall, Sadsbury contends the acquisition by PAWC will foster the Commission's stated goal of regionalizing wastewater systems within the Commonwealth. Sadsbury asserts it supports the Amended Settlement and requests the Commission approve the acquisition without modification.

### **1. Standards Under Sections 1102 and 1103**

Sadsbury notes PAWC seeks a Certificate of Public Convenience from the Commission to acquire property used or useful in public service, as required under 66 Pa.C.S. §§ 1102(a)(1) and 1102(a)(3). Sadsbury asserts the Commission should issue a Certificate of Public Convenience when the Commission finds that the granting of such certificate "is necessary or proper, for the service, accommodation, convenience, or safety of the public."<sup>24</sup> Sadsbury contends the Pennsylvania courts have interpreted this provision to require an applicant to show the acquisition will "affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way."<sup>25</sup> More specifically, Sadsbury asserts the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make fact-based determinations (including predicted ones informed by expert judgment) concerning certification matters.

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<sup>24</sup> 66 Pa.C.S. § 1103(a).

<sup>25</sup> See, e.g., *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972) (quoting 66 Pa.C.S. § 1103).

Here, Sadsbury contends Pennsylvania-American not only has the requisite technical, legal, and financial fitness to own and operate the System and serve the acquired customers, but this particular Proposed Transaction will affirmatively benefit the public as set forth in more detail below.

## **2. PAWC’S Fitness to Provide Wastewater Service**

Sadsbury asserts there is no dispute PAWC has the requisite technical, financial and legal fitness to own and operate the System. Sadsbury points out the Commission must determine that PAWC, as the applicant and party receiving the assets and service obligation, is technically, legally, and financially fit, and Sadsbury contends PAWC meets the requirements herein.<sup>26</sup>

## **3. Substantial Affirmative Public Benefits of the Proposed Transaction**

Sadsbury notes PAWC must demonstrate the acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.”<sup>27</sup> Sadsbury submits the proposed acquisition, as well as the Amended Settlement, meet this standard with numerous benefits to current STMA customers. Sadsbury asserts current SMTA customers will experience greater benefits than the same customers would experience if the proposed acquisition was not approved by the Commission.

Sadsbury points out its System serves approximately 233 residential and 28 commercial customers and it currently lacks a building for operations or any employees. Its STMA customers had to pay their wastewater bills by cash or a check mailed to a P.O. box. In addition, Sadsbury notes it outsources all billing and accounting services for wastewater service, and it does not possess complete records with historical data regarding its wastewater customers’ data, the System’s mapping, or infrastructure condition. Lastly, Sadsbury points out it does not have low-

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<sup>26</sup> *Joint Application of Peoples Natural Gas Co. LLC, Peoples TWP LLC, and Equitable Gas Co., LLC*, Docket No. A-2013-2353647 (Opinion and Order entered Nov. 14, 2013).

<sup>27</sup> *See, e.g., City of York*, 295 A.2d at 828 (quoting 66 Pa.C.S. § 1103).

income assistance programs and no plans to create one. Sadsbury admits it currently has no meaningful customer service and/or wastewater operators for wastewater service.

Conversely, Sadsbury avers its customers will enjoy many benefits if the Commission approves the proposed acquisition. If approved, customers will have access to PAWC's wastewater engineers, system operators, and other wastewater professionals who will keep records of customer accounts and the infrastructure. In addition, these professionals will provide much-needed customer service including dispute resolution, customer information and education programs, low-income assistance programs, and expanded bill pay options. Moreover, Sadsbury notes PAWC has indicated it plans to invest \$1,531,000 into improving the System over the next six years, and Sadsbury argues these investments would not occur without the acquisition because Sadsbury lacks the funding to invest into its System.

Sadsbury contends no party disputes PAWC has the requisite technical, legal, and financial fitness to own and operate the System. Sadsbury avers the proposed acquisition, if approved, will provide a substantial public benefit to the System and the current Sadsbury customers. Further, Sadsbury contends the Amended Settlement provides additional benefits to those enumerated, these benefits are substantial affirmative benefits and benefit the public interest.

#### **4. Additional Substantial Affirmative Public Benefits from the Settlement**

Sadsbury contends the Amended Settlement provides for many substantial affirmative benefits, including, but not limited to, the following:

- PAWC's Distribution System Improvement Charge (DSIC) provisions in the current *pro forma* tariff will apply to the acquired STMA customers no later than the first base rate case in which PAWC includes the System. Additionally, PAWC agrees not to seek to recover any System-related investments in its DSIC until PAWC applies the DSIC to System customers.
- The Joint Petitioners have reserved their right to address and make additional proposals for the rates applied to the acquired STMA customers in PAWC's pending and future rate cases.

- Within thirty days of Closing, PAWC agrees to provide a welcome letter to the acquired STMA customers that includes pertinent information including the additional bill payment options, the low-income programs with eligibility requirements, PAWC's contact information, and other customer payment arrangement programs.

In sum, Sadsbury submits that the Amended Settlement adds even more benefits to the public than that which existed in PAWC's application alone.

### OCA'S STATEMENT IN SUPPORT

#### **1. Approval of the Application**

OCA asserts the proposed Amended Settlement provides a reasonable resolution of OCA's concerns, which included whether the acquisition satisfies the criteria for approval;<sup>28</sup> whether conditions should be imposed to ensure the public interest standard is met; whether PAWC would seek an acquisition adjustment under Section 1327; whether the costs of wastewater treatment by the Christiana Borough Authority and the Township of Salisbury are recovered in the Sadsbury Township rates that PAWC proposes to adopt at closing; and how the Company will charge for the costs of treatment.<sup>29</sup> OCA contends the Amended Settlement is supported by 41 stipulated facts, which supplement the Company's filing and help to complete the evidentiary record on which the Commission will evaluate the proposed transaction. With the benefit of this fuller record, OCA avers it supports PAWC's acquisition of Sadsbury Township, as modified and conditioned by the terms of the Amended Settlement.

OCA asserts there are some ways in which service for Sadsbury Township customers may improve under PAWC's ownership and provided five examples. Those examples of potential improvement include: (1) improved recordkeeping with positive improvements with dispute

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<sup>28</sup> The criteria are pursuant to Section 1103(a) of the Public Utility Code and *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825 (Pa. 1973).

<sup>29</sup> OCA Protest at 2-4.

resolution, repairs, maintenance and regulatory compliance;<sup>30</sup> (2) additional bill payment options;<sup>31</sup> (3) previously unanticipated improvements including a condition-based assessment/Geographic Information System survey of the collection system, installing safety and security improvements, installing Supervisory Control and Data Acquisition improvements, performing pump replacement, installing new mains and laterals, and replacing valves and manholes;<sup>32</sup> (4) the annual revenue sufficiency after the sale will be greater than the cost of service due to the depreciated original cost of assets being greater than the purchase price and due to the current rates which are higher than PAWC's current wastewater Rate Zone 1 rates;<sup>33</sup> and (5) the acquisition may have a downward impact on the cost for serving all customers, even though the number of customers acquired is small (251) in comparison to the number of existing wastewater customers (97,585).<sup>34</sup>

## 2. Tariff, Settlement

OCA notes PAWC proposes in the Amended Settlement ¶ 11 to adopt Sadsbury Township's current base rates for service and contends its (PAWC) own miscellaneous fees and charges will replace or eliminate those fees/charges currently charged by Sadsbury Township. OCA points out that current Sadsbury Township customers likely will benefit from a lower return check fee, the elimination of tapping fees (\$2,505 per EDU for collection and \$7,495 per EDU for capacity) and lower meter read fees (\$200 per quarter).<sup>35</sup>

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<sup>30</sup> Amended Stipulation ¶¶ 21, 23.

<sup>31</sup> Amended Stipulation ¶¶ 26, 27.

<sup>32</sup> Amended Stipulation ¶¶ 42, 43.

<sup>33</sup> Amended Stipulation ¶¶ 34-36.

<sup>34</sup> Application ¶¶ 6, 7; Amended Stipulation ¶¶ 48, 49.

<sup>35</sup> Amended Stipulation ¶¶ 33, 35.

### **3. DSIC and LTIP**

OCA notes PAWC agrees to apply its DSIC tariff provisions to Sadsbury Township in its first base rate case incorporating the Sadsbury Township system. Further, PAWC agrees it will not include investments related to the Sadsbury Township system in its DSIC until PAWC applies the DSIC to those customers. OCA contends this requirement protects PAWC's existing customers by helping to ensure that they will not pay for projects in the Sadsbury Township service area through their DSIC rates until Sadsbury Township customers are contributing toward the costs.

### **4. Rates**

OCA contends PAWC's commitment to recover costs incurred for wastewater treatment is another important term of the Settlement, because the Sadsbury Township system is a collection-only system. OCA notes PAWC's analysis showed the depreciated original cost of the system is \$1,935,612, which cost is \$945,612 more than the purchase price,<sup>36</sup> and further notes PAWC agreed to not seek an adjustment under Section 1327. OCA opines this agreement means the amortized benefit of the purchase price which is lower than the depreciated original cost will flow to ratepayers, and the addition to income will offset expenses included in revenue requirement.

OCA asserts PAWC's commitment to recover costs incurred for wastewater treatment is another important term of Settlement. OCA points out PAWC agrees to take on the existing Sadsbury Township agreement for treatment service with the Borough of Christiana, the Christiana Borough Authority and the Township of Sadsbury, as well as the Sadsbury Township Municipal Authority's agreement for treatment service with the Township of Salisbury. OCA contends PAWC agrees to seek to recover those fees and charges as Operation and Maintenance expenses to be recovered in PAWC base rates. OCA asserts this form of recovery is consistent with how PAWC recovers wastewater treatment costs for its existing collection-only systems and would keep those costs subject to Commission oversight and approval of the justness and reasonableness of the costs passed on to customers in base rates, versus the alternative of passing through rates set by a non-regulated entity. OCA contends this arrangement allows for low-income customers to

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<sup>36</sup> Amended Stipulation ¶ 46.

receive customer assistance for the entirety of the wastewater bill, and not be limited to this assistance for only collection.

OCA points out it reserves within the Amended Settlement its right to make other proposals for rates for the Sadsbury Township system in PAWC's pending and future base rate proceedings. OCA asserts this reserved right is an essential flexibility for OCA to consider what rates are just, reasonable, and duly consider cost of service and affordability for those customers. Further, OCA notes PAWC agrees to not claim transaction and closing costs incurred by Sadsbury Township in any claim to recover transaction and closing costs for the system, which reduces the total expenses that existing and acquired customers will have to pay for the acquisition. In addition, OCA notes it has reserved its ability to challenge PAWC's claimed transaction and closing costs, which is in the public interest because it allows for a full review of the transaction and closing costs when a claim is made.

## **5. Low-Income Program Outreach**

OCA notes current Sadsbury Township customers do not have access to programs to assist low-income customers to pay their monthly wastewater bills, but PAWC has programs for low-income bill discounts, hardship grants, and has proposed arrearage management. OCA points out PAWC agrees to provide Sadsbury Township customers with a bill insert providing information regarding its customer assistance programs and eligibility requirements for the programs and, within 30 days of the sale, PAWC will send a welcome letter containing information about customer assistance programs, bill payment options and locations for in-person payments. OCA further points out PAWC currently maintains seven in-person payment locations within 15 miles of customers living in the Sadsbury Township service area and there is no charge or fee for in-person payments at these locations. OCA asserts PAWC's commitment to provide this important information timely to Sadsbury Township customers is in the public interest.

## DISCUSSION

The Settlement pertains to the Application filed by PAWC, pursuant to Section 1102(a) of the Pennsylvania Public Utility Code,<sup>37</sup> requesting the Commission issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights of Sadsbury, related to Sadsbury's wastewater collection and conveyance system. PAWC contends the Amended Settlement, if approved, will resolve the issues raised in this proceeding, is in the best interest of the Township of Sadsbury, the STMA, existing STMA customers, PAWC, existing PAWC customers, and the public-at-large, as well as being in the public interest.

The Joint Petitioners are correct to assert that Commission policy promotes settlements, pursuant to 52 Pa. Code § 5.231. The Commission has long recognized that settlements lessen the time and expense expended to litigate a case while simultaneously conserving administrative resources. Most often, settlement results are preferable to those results that may be achieved at the conclusion of a fully litigated proceeding.<sup>38</sup> However, before accepting a settlement, the Commission first must determine if the proposed terms and conditions are in the public interest and benefit the public interest.<sup>39</sup>

Applicant made a point in its Amended Statement in Support that the Commission should find a public benefit because the parties were able to reach a settlement on all issues and the representatives involved have considerable experience with the acquisition process. Specifically, PAWC contends:

[T]he fact that the Amended Settlement resolves all issues is, in and of itself, strong evidence that the Amended Settlement is reasonable and in the public interest – particularly given the diverse interests of the Joint Petitioners and the active role that they have taken in this proceeding. The Amended Settlement

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<sup>37</sup> 66 Pa.C.S. §1102(a).

<sup>38</sup> 52 Pa. Code § 69.401.

<sup>39</sup> *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

was achieved through the hard work and perseverance of the Joint Petitioners. They have repeatedly demonstrated their good faith and willingness to cooperate to resolve this case. It should be noted that the Joint Petitioners, and their counsel and experts, have considerable experience in acquisition proceedings. Their knowledge, experience and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus on all the issues. The Joint Petitioners, their counsel and experts fully explored all the issues in this case.<sup>[40]</sup>

PAWC's assertions in support of the Amended Settlement were given little weight when rendering this Recommendation. An agreement between an acquiring utility, a selling utility and one statutory advocate (OCA) is evidence that a settlement might be in the public interest, however, those three types of entities are not responsible for the entirety of interests that exist herein and none are charged with finding or determining if the public interest will benefit from a transaction.<sup>41</sup> The Commission itself is the arbiter for determining if the transaction herein – the acquisition of STMA by PAWC – benefits the public interest. Accordingly, the Joint Petitioners must prove by substantial evidence, in conjunction with the evidence submitted in the Amended Joint Stipulation, that the public interest will benefit if the Commission grants the request herein by some means other than the facts the parties agree and have considerable experience in acquisition proceedings.

### Application

While it is true PAWC, as an applicant, must demonstrate it possesses technical, financial, and legal fitness to own and operate STMA's collection system, PAWC does enjoy and benefit from a rebuttable presumption as a certificated public utility – that it already possesses the requisite fitness. No party challenged PAWC's fitness. Based on the evidence presented and the

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<sup>40</sup> PAWC Statement in Support, Amended Settlement Attachment 1, p. 3.

<sup>41</sup> In addition, it should be noted one statutory advocate (OSBA) and the Commission's Bureau of Investigation and Enforcement did not join in the Amended Settlement. Both entities are responsible for looking out for other interested parties but, collectively with the others, do not comprise the entirety of possible interests or the public interest specifically.

power of the presumption in its favor, the presiding officer recommends the Commission find PAWC established it is technically, financially and legally fit to run and operate the System.

### Tariff

In the Amended Settlement, PAWC proposes to adopt STMA's current base rates for service. In addition, PAWC contends its miscellaneous fees and charges will replace or eliminate those same fees and charges currently charged by STMA. Lower return check fees and lower meter read fees, coupled with the elimination of tapping fees, should be a benefit realized by existing STMA customers if the Application is approved. In total, the presiding officer agrees with the Joint Petitioners that existing STMA customers will benefit from the proposed tariff changes, with rate stability for service that will be improved over current service.

### Distribution System Improvement Charge

Under the terms in the Amended Settlement, PAWC agrees to apply its DSIC tariff provisions to STMA in the first base rate case where PAWC incorporates the STMA system into its base rate. Further, PAWC agrees it will not include investments related to the STMA system in its DSIC until PAWC applies the DSIC to those customers. The presiding officer agrees with the statements of the parties that this provision will benefit PAWC's existing customers who will not have to pay for projects in the STMA service area through PAWC's DSIC rates until the existing STMA customers start contributing toward the costs of improvements.

### Rates

The presiding officer agrees with the Joint Petitioners that this Amended Settlement benefits from PAWC's commitment to recover costs incurred for wastewater treatment without seeking an adjustment under Section 1327. PAWC's analysis proved the depreciated original cost of the STMA system, which is a collection-only system, exceeds the purchase price by almost \$1 million.<sup>42</sup> These stipulated-to facts show the amortized benefit of the purchase price, which is lower

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<sup>42</sup> Amended Stipulation ¶ 46.

than the depreciated original cost, will flow to ratepayers, and the addition to income will offset expenses included in revenue requirement.

In addition, it is noted PAWC has agreed to recover wastewater treatment costs by accepting the existing STMA agreements for treatment service with the Borough of Christiana, the Christiana Borough Authority and the Township of Sadsbury. PAWC agrees to accept the treatment service agreement between STMA and the Township of Salisbury, and PAWC proposes to seek recovery of these fees and charges as Operation and Maintenance expenses which PAWC will recover in its base rates. The presiding officer agrees with OCA's assertions that these provisions in the Amended Settlement are consistent with how PAWC recovers wastewater treatment costs for its existing collection-only systems. Further, this recovery provision keeps these costs subject to Commission oversight which will ensure the justness and reasonableness of the costs passed on to customers in base rates.

This provision benefits the customers more than if PAWC had passed through treatment rates set by a non-regulated entity and will make it possible for low-income customers to receive customer assistance over the entire wastewater bill, instead of only being limited to assistance over the collection costs. The presiding officer notes PAWC agrees in the Amended Settlement not to claim transaction and closing costs incurred by Sadsbury Township in any claim to recover transaction and closing costs for the system. This provision will reduce the total expenses that existing and acquired customers must pay for the acquisition of this system. Lastly, the Amended Settlement expressly reserves to OCA the right to litigate its positions regarding the reasonableness, prudence, and basis for PAWC's transaction and closing cost claims fully in the rate case where these costs are claimed.

#### Low Income Program Outreach

The evidence presented shows existing STMA customers do not have access to programs to assist low-income customers to pay monthly wastewater bills. However, PAWC has programs for low-income bill discounts, hardship grants, and is proposing arrearage management as part of the Amended Settlement. PAWC agrees to provide existing STMA customers with a bill

insert providing information regarding its customer assistance programs and eligibility requirements. Further, within 30 days of the sale, PAWC agrees to send a welcome letter containing information about customer assistance programs, bill payment options and locations for in-person payments. The evidence presented shows PAWC currently maintains seven in-person payment locations within fifteen miles of customers living in the Sadsbury Township service area and PAWC does not impose a charge or fee for in-person payments. Giving existing STMA customers access to low income programs will benefit those customers and benefit the public at large by easing the financial strain on lower income consumers. Easing the access to low income programs and increasing the access to PAWC will benefit the existing STMA customers and the public interest.

#### Section 507 Approval

Pursuant to 66 Pa.C.S. § 507, contracts between a public utility and a municipality must be filed with and reviewed by the Commission. After the Commission determines the contract is reasonable, legal and does not have any invalidating provision, the Commission may approve the contract. PAWC has entered into an Asset Purchase Agreement with STMA for which PAWC seeks Commission approval. In addition, PAWC seeks approval for service agreements entered into between STMA with the Christiana Borough Authority, the Borough of Christiana and the Township of Salisbury, which PAWC proposes to assume if the acquisition is approved. PAWC asserts herein that the various agreements must be approved if PAWC is to continue to provide service to the customers currently served by STMA. In support of this request, PAWC asserts the parties do not object.

The presiding officer notes a justification that public benefits will accrue from a settlement based solely on consensus among the parties is insufficient by itself to meet the requirement that a settlement provide a public benefit. More is needed than a lack of objection from the other parties. These agreements for which PAWC seeks approval under 66 Pa.C.S. § 507 are agreements which provide for PAWC's acquisition of the system (in the case of the Asset Purchase Agreement) and which provide for how PAWC (as a proposed owner of the collection system) will

interact with the local municipal entities, including a recitation of rights and duties for the respective parties.

These agreements are the “meat and potatoes” of how PAWC will interact with the existing STMA customers and the local municipal entities. As such, the justification for this Amended Settlement provision relies heavily on whether the Application should be approved. If the Application is approved, the Section 507 approvals are needed to effectuate the purchase and define the rights and duties of the various entities going forward. As such, the approvals under Section 507 are necessary, and the presiding officer recommends the Commission approve these agreements because these agreements are reasonable, legal and do not have any invalidating provisions.

### Conclusion

The Joint Petitioners submit that the Amended Settlement is fair, just, reasonable and in the public interest. This Amended Settlement resulted after the Joint Petitioners, with OSBA, engaged in discovery and discussion. Upon reviewing the terms and conditions of the Amended Settlement, and the Statements in Support offered by PAWC, STMA and OCA, I agree with the Joint Petitioners. The existing STMA customers will benefit from increased service in the absence of a rate hike. Existing PAWC customers will benefit from an acquisition that adds customers without increasing rates due to the lower purchase price. Sadsbury Township will benefit because the System will be run more efficiently with increased service but without an increase in the cost of service.

The presiding officer recommends the Commission should be persuaded by the assertions of the Joint Petitioners. The Amended Settlement provides a reasonable resolution of various concerns, including whether the stipulated-to facts support the Amended Settlement, whether the various concerns of affected entities are balanced and whether the public interest will benefit more than it might prove to be a detriment. In addition, it is noted the Joint Petitioners support the Amended Settlement through the original filing, through 50 stipulated facts, and with the proposed tariff included with the Amended Settlement. Further, the active parties agree the Application should be granted because it benefits the public interest.

The presiding officer agrees that this acquisition should benefit the existing STMA customers by providing improvements, including improvements to recordkeeping, repairs, maintenance, regulatory compliance, payment options, facility upgrades and the addition of various assessment and mapping tools to improve safety, responsiveness and security. Further, the evidence presented is sufficient to show the cost of service under PAWC's ownership should be less after the sale than the annual revenue sufficiency because the depreciated original cost of assets exceeds the proposed purchase price. In addition, the existing rates exceed PAWC's current wastewater Rate Zone 1 rates. Lastly, the Joint Petitioners provided convincing evidence that the acquisition should produce a downward impact on the cost to serve all customers. Accordingly, the presiding officer recommends the Commission approve the Application, as a fair, just and reasonable resolution of this proceeding.

#### CONCLUSIONS OF LAW

1. Commission approval, as evidenced by a certificate of public convenience and necessity, is required before a proposed public utility can begin to offer, render, furnish, or supply service within the Commonwealth. 66 Pa.C.S. § 1101.

2. A public utility must receive Commission approval before "begin[ning] to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized by" a certificate of public convenience or an unregistered right, power or privilege preserved by Section 103 of the Public Utility Code. 66 Pa.C.S. § 1102(a)(1).

3. Under Sections 1102 and 1103 of the Public Utility Code, the entity acquiring public utility assets must be legally, technically, and financially fit. *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958).

4. The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a).

5. A certificate of public convenience is necessary and proper if the Commission finds that the transfer of assets will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825 (Pa. 1972).

6. Pennsylvania-American Water Company is legally, technically, and financially fit to own and operate the Sadsbury Township Municipal Authority’s assets and to provide wastewater collection and conveyance service to the public in portions of Sadsbury Township, Lancaster County, Pennsylvania. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308 (Pa. Cmwlth. 1992); *Application of Aqua Pa. Wastewater, Inc.*, 2017 Pa.P.U.C. LEXIS 163 (Order entered June 29, 2017).

7. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm’n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

8. The Amended Joint Petition for Approval of Unanimous Settlement of All Issues, as submitted by Pennsylvania-American Water Company, the Sadsbury Township Municipal Authority and the Office of Consumer Advocate, is just, reasonable and in the public interest, and should be approved as submitted, without modification. *Lloyd v. Pa. Pub. Util. Comm’n*, 904 A.2d 1010 (Pa. Cmwlth. 2006).

9. The Application of Pennsylvania-American Water Company, as modified by the Amended Joint Petition for Approval of Unanimous Settlement of All Issues, will affirmatively promote the service, accommodation, convenience, or safety of the public, and should be approved.

*City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825 (Pa. 1972); *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Amended Joint Petition for Approval of Unanimous Settlement of All Issues submitted by Pennsylvania-American Water Company, the Sadsbury Township Municipal Authority and the Office of Consumer Advocate filed on May 23, 2024, at Docket No. R-2023-3042058, including all terms and conditions, be approved without modification.

2. That the Application filed by Pennsylvania-American Water Company, on August 3, 2023, be granted, subject to the modifications set forth in the Amended Joint Petition for Approval of Unanimous Settlement of All Issues filed on May 23, 2024, and as modified thereby.

3. That a Certificate of Public Convenience be issued pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(3), evidencing Commission approval of the right of Pennsylvania-American Water Company to acquire the wastewater collection and conveyance system assets of the Sadsbury Township Municipal Authority in Lancaster County, Pennsylvania, and the right of Pennsylvania-American Water Company to begin to offer, render, furnish and supply wastewater service in the areas served by the wastewater collection and conveyance system owned by Sadsbury Township Municipal Authority.

4. That within ten days after closing of the acquisition, Pennsylvania-American Water Company shall file notice of closing of the transaction with the Commission at this docket.

5. That within ten days after closing of the acquisition, Pennsylvania-American Water Company shall file with the Commission at this docket compliance tariff supplements, consistent with the pro forma tariff supplement attached to the Application, filed on August 3, 2023, as Appendix D, including all rates, rules and regulations regarding conditions of the wastewater service to be provided by Pennsylvania-American Water Company, as revised by the Amended Joint Petition for Approval of Settlement of All Issues submitted by Pennsylvania-American Water Company, the Sadsbury Township Municipal Authority and the Office of Consumer Advocate filed at this docket and to become effective immediately upon closing.

6. That the Commission deny permission for Pennsylvania-American Water Company to include Sadsbury Township Municipal Authority-related investments in its Distribution System Improvement Charge until Pennsylvania-American Water Company collects a Distribution System Improvement Charge from Sadsbury Township Municipal Authority customers, and that the Distribution System Improvement Charge provisions of Pennsylvania-American Water Company's effective tariff will apply to Sadsbury Township Municipal Authority customers no later than the first base rate case in which the Sadsbury Township Municipal Authority System assets are included.

7. That the Commission permit Pennsylvania-American Water Company to claim transaction and closing costs associated with the acquisition of the System in its first base rate case that includes the System assets, except that Pennsylvania-American Water Company shall not be permitted to recover transaction and closing costs incurred by Sadsbury Township Municipal Authority. The Commission shall permit the Joint Petitioners to reserve the right to litigate their positions fully in future rate cases when this issue is ripe for review and the assent of the Joint Petitioners to this term will not be construed to operate as a preapproval of Pennsylvania-American Water Company's request.

8. That the Commission, pursuant to 66 Pa.C.S. § 507, issue Certificates of Filing or approvals for the following agreements between Pennsylvania-American Water Company and a municipal corporation:

(a) The Asset Purchase Agreement By and Between the Sadsbury Township Municipal Authority, f/k/a the Sadsbury Township Sewer Authority, and Sadsbury Township, and Pennsylvania-American Water Company, as Buyer, Dated as of January 5, 2023;

(b) Agreement By and Among the Borough of Christiana, Christiana Borough Authority, Sadsbury Township and Sadsbury Township Sewer Authority, Dated as of November 11, 1997, as amended May 23, 2001; and

(c) Agreement By and Among Salisbury Township and Sadsbury Township Sewer Authority, Dated as of June 19, 2001, as amended July 19, 2022.

9. That the Commission direct Pennsylvania-American Water Company, in the first base rate case that includes the Sadsbury Township Municipal Authority's system's assets as follows:

(a) Pennsylvania-American Water Company shall not be permitted to seek a "substantial public interest" exception to the requirement of 66 Pa.C.S. § 1327(e) for this System and Pennsylvania-American Water Company shall pass through to customers any difference between the depreciated original cost of the System and the purchase price as an addition to income that offsets expenses included in revenue requirement.

(b) Pennsylvania-American Water Company shall treat costs incurred for System wastewater treatment, including but not limited to fees and charges pursuant to service agreements with the Borough of Christiana, Christiana Borough Authority, Sadsbury Township and Salisbury Township as Operations and Maintenance expenses to be recovered in Pennsylvania-American Water Company's base rates, subject to Commission review and approval.

(c) Except as explicitly agreed upon in the Settlement, nothing contained in the Settlement or in the Commission's approval of the Application shall preclude any of the parties from asserting any position or raising any issue in other Pennsylvania-American Water Company proceedings. This includes but is not limited to the Office of Consumer Advocate's reservation of rights to address and make other proposals for System rates in

Pennsylvania-American Water Company's pending and future rate cases.

10. That the Commission direct Pennsylvania-American Water Company, within the first billing cycle following Closing, to include a bill insert to System customers regarding its low income programs and customer payment arrangement programs. The bill insert shall include, at a minimum, a description of the available low income programs, eligibility requirements for participation in the programs, and Pennsylvania-American Water Company's contact information.

11. That the Commission direct Pennsylvania-American Water Company to send the welcome letter within the first 30 days of closing and to also include information about payment options (including low income programs, eligibility requirements, customer payment arrangement programs and Pennsylvania-American Water Company contact information), as well as identification of locations where customers can pay in-person for no additional fee, which are reasonably proximate to the areas served by the System.

12. That nothing in the Commission's Order shall be construed as an approval or determination of costs or expenses for the purposes of just or reasonable rates or to exempt Pennsylvania-American Water Company from obtaining all necessary permits, licenses, and approvals from other federal, state, and local government agencies having jurisdiction.

13. That the Commission issue any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the transactions contemplated in the Application in a lawful manner.

14. That upon receipt of notice of closing of the acquisition, the Secretary's Bureau shall mark the proceeding at Docket No. A-2023-3042058 as closed.

Date: August 5, 2024

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/s/  
Katrina L. Dunderdale  
Administrative Law Judge