

**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	:	
East Dunkard Water Authority’s assets,	:	
properties and rights related to its water	:	A-2024-3049759
system to Pennsylvania-American Water	:	
Company, and (2) the right of	:	
Pennsylvania-American Water Company	:	
to begin to offer or furnish water service	:	
to the public in Dunkard, and portions of	:	
Monongahela, Greene, Cumberland,	:	
Perry, and Whiteley Townships, all in	:	
Greene County, Pennsylvania	:	

**RECOMMENDED DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Decision recommends the Pennsylvania Public Utility Commission approve, with one modification, the Joint Petition for Approval of Unanimous Settlement of All Issues (the Settlement) dated December 3, 2024, to be effective upon order of the Commission, because the Settlement is in the public interest. The Joint Petitioners agree the Settlement resolves all issues arising under Sections 1102 and 507 of the Public Utility Code, 66 Pa.C.S. §§ 1102 and 507, and should be approved with a single

modification which requires Pennsylvania-American Water Company to propose a nonzero qualified private fire hydrant rate for the East Dunkard Water Authority service territory in the first base rate case following the closing in the Transaction

### HISTORY OF THE PROCEEDINGS

On June 21, 2024, Pennsylvania-American Water Company (“PAWC,” “Applicant” or “the Company”) filed an Application (“Application”) at Docket No. A-2024-3049759 to issue such Orders, Certificates of Public Convenience and other such relief as necessary to evidence its approval under Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa.C.S. § 1102(a), of (1) the transfer, by sale, of substantially all of the assets, properties and rights of the East Dunkard Water Authority (“EDWA”) owned and used in connection with operating and maintaining the water system, to PAWC, and (2) PAWC’s right to offer, render, furnish and supply water service in the areas served by EDWA including Dunkard Township, and portions of Cumberland, Greene, Monongahela, Perry and Whiteley Townships, all in Greene County, Pennsylvania.

Furthermore, PAWC requested pursuant to Code Section 507, 66 Pa.C.S. § 507, the issuance of Certificates of Filing for approvals for the following agreement, as amended between PAWC and a municipal corporation: Asset Purchase Agreement By and Between the East Dunkard Water Authority as Seller, and PAWC Water Company, as Buyer, Dated as of July 23, 2023, including the First Amendment dated as of November 3, 2023 and Second Amendment dated as of January 25, 2024 and the associated *pro forma* tariff supplement.

On July 2, 2024, PAWC filed an Amended Application at Docket No. A-2024-3049759 amending Appendices A and R of the June 21, 2024 Original Application.

Notice was published in the *Pennsylvania Bulletin* on July 6, 2024, with a deadline of July 22, 2024, for protests and interventions. 54 Pa.B. 3862 (Jul. 6, 2024).

On June 28, 2024, Rebecca Lyttle, Esq. filed a Notice of Appearance in this proceeding on behalf of the Office of Small Business Advocate (“OSBA”). OSBA then filed a Protest, Notice of Intervention, Public Statement and Verification on July 10, 2024. On July 15, 2024, OSBA filed an Amended Protest and Verification.

On July 22, 2024, Christine Maloni Hoover, Esq. filed a Notice of Intervention and Public Statement on behalf of the Office of Consumer Advocate (“OCA”).

On July 22, 2024, PAWC filed its Proof of Publication showing that the Public Notice regarding this acquisition was published in the Observer-Reporter in Green County, Pennsylvania and that all the surrounding municipalities, water and wastewater utilities within a mile of the proposed service territory were served the Application and Amended Application.

On July 23, 2024, an Initial Telephone Prehearing Conference Notice was issued scheduling a prehearing conference for August 6, 2024, at 2:00 pm and assigning the matter to me. A Prehearing Conference Order was also entered the same day, directing the parties to file and serve a Prehearing Memorandum by noon on August 2, 2024.

In accordance with the July 23, 2024 Order, Prehearing Conference Memoranda were filed by PAWC, OCA and OSBA.

The prehearing conference was conducted as scheduled on August 6, 2024, with Deputy Chief Administrative Law Judge Christopher Pell (“D.C. ALJ Pell”)

presiding in my absence. During the conference, the parties requested, and D.C. ALJ Pell approved a 30-day period during which the parties would forgo establishing a litigation schedule in favor of pursuing informal discovery and settlement negotiations. The parties committed to providing a status report in 30 days.

A timely status report was provided via email on September 6, 2024, in which counsel for the parties informed me that PAWC, OCA and OSBA have been actively engaging in informal discovery and settlement negotiations, and that they do not find it is necessary at this time to establish a litigation schedule. They asked to provide another status update in 30 days. Their request was granted in an email dated September 9, 2024. A Prehearing Order issued on September 19, 2024, memorialized this ruling and ordered the parties to submit a status report to the undersigned presiding officer every 30 days, beginning on October 7, 2024, until they were ready to propose a litigation schedule in this matter or reach a resolution of the issues raised in the Application.

By email dated October 10, 2024, counsel for the parties informed me that PAWC, OCA and OSBA had reached an agreement-in-principle to settle all issues in the proceeding.

On December 3, 2024, EDWA filed a Petition to Intervene, which is unopposed.

Also on December 3, 2024, PAWC, EDWA, OCA and OSBA (collectively, the Joint Petitioners) filed a Joint Petition for Approval of Unanimous Settlement of All Issues (Joint Petition or Settlement) and requested that the Commission approve the Settlement without modification. Considering that the Stipulating Parties reached a Settlement prior to the introduction of any testimony in this matter, and in view of the need for substantial evidence supporting the decision of the presiding officer and the

Commission, the Joint Petitioners filed a Joint Stipulation of Facts (“Stipulation”) contemporaneously with the Settlement.

The record in this case closed on December 3, 2024, when the Joint Petition was submitted. For the reasons discussed below, the settlement will be recommended for approval in its entirety with a single modification concerning the qualified private fire hydrant rate for the East Dunkard Water Authority service territory

### TERMS OF THE SETTLEMENT

The Settlement is a 15-page document containing 21 numbered paragraphs, with six numbered paragraphs in its Request for Relief. Attached to the Settlement are Attachments A through C, which include Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs. Attachments D through F are the Joint Statement in Support of PAWC and EDWA, the Statement in Support of OSBA and the Statement in Support of OCA, respectively. The essential terms of Settlement are contained in Paragraphs 2 through 21, which are quoted *in verbatim* below:

The Joint Petitioners agree as follows:

**A. Approval of Application**

2. The Joint Petitioners agree that the Commission should approve (a) PAWC’s acquisition of the water system assets (the “System”) currently owned by EDWA, and (b) PAWC’s right to begin to offer, render, furnish or supply water service in the areas served by the System, as well as any other approvals or certificates necessary for the transaction, subject to approval of all of the following conditions and without modification.

**B. Tariff**

3. The *pro forma* water tariff supplement attached to the Application as Appendix B 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 water service, as reflected in PAWC's prevailing water tariff, upon Closing.

**C. Distribution System Improvement Charge (“DSIC”)**

4. The DSIC provisions of PAWC's effective water tariff will apply to customers in the System no later than the first base rate case in which the System is included. Additionally, PAWC will not seek to recover investments in the System in its DSIC until PAWC applies the DSIC to System customers.

**D. Rates**

5. Post-Closing, the Pennsylvania Infrastructure Investment Authority (“PENNVEST”) loan surcharge on EDWA bills shall be removed and rolled into base rates as provided for in PAWC's *pro forma* tariff supplement. If PAWC assumes the PENNVEST loan, that loan shall be treated as PAWC treats other current debt, *i.e.*, not as a surcharge.

6. In PAWC's first base rate case following Closing, PAWC will propose a public fire rate for the EDWA service territory equal to PAWC's statewide public fire rates.

7. 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, the rights of OCA and OSBA to address and make other proposals for System rate base and rates in PAWC's future rate cases, appeals, and remands.

8. Any claim by PAWC to recover transaction and closing costs associated with the acquisition of the System will not include transaction and closing costs incurred by EDWA, provided however that PAWC may seek recovery of any costs incurred as Receiver of EDWA that are not reimbursed from the proceeds of the sale pursuant to the APA (as defined below). The OCA and the OSBA reserve their rights to challenge the reasonableness, prudence and basis for PAWC's transaction and closing cost and

receivership cost claims in the rate filing where they are claimed.

#### **E. Low Income Program Outreach**

9. Within the first billing cycle following Closing, PAWC shall provide a bill insert to System customers regarding PAWC's low-income programs (including but not limited to Bill Discount and Arrearage Management) 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 the contact information for PAWC, the OCA and the OSBA. PAWC, the OCA, and the OSBA agree to discuss the specific language and placement of the contact information after submission of this Settlement but before the finalization of the bill insert.

10. 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 the previous paragraph about the Company's low-income programs and customer payment arrangement programs. The welcome letter will explain how the PENNVEST surcharge is going to be added to the monthly customer charge at the same level (\$17.54 per customer per month) as paid to EDWA. The letter will explain that the PENNVEST surcharge will not be shown as a separate surcharge on the bills after Closing. PAWC agrees to provide the customer letter to the OCA and the OSBA prior to its distribution to the EDWA customers.

#### **F. Approval of Section 507 Agreements**

11. Pursuant to 66 Pa. C.S. § 507, the Commission shall issue Certificates of Filing or approval for the Asset Purchase Agreement By and Between the East Dunkard Water Authority as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of July 23, 2023, including the First Amendment dated as of November 3, 2023, Second Amendment dated as of January 25, 2024, Third Amendment dated June 13, 2024, and a Fourth

Amendment dated as of November 22, 2024 (together, the “APA”).

12. Section 9.1(r) of the APA refers to EDWA’s responsibility regarding a civil penalty that was included in a proposed resolution of a Bureau of Investigation & Enforcement complaint proceeding (Docket No. C-2021-3027615). This complaint case was subsequently dismissed by the Commission. The APA has been revised by PAWC and EDWA, pursuant to the Fourth Amendment referenced above to reflect the dismissal of the Complaint docket that occurred after the execution of the APA.

#### **G. Other Conditions**

13. Prior to PAWC’s first rate case following Closing, PAWC will provide to the OCA and the OSBA a schedule of all capital installed by EDWA using the Community Development Block Grant, by plant account, with the original cost, date of install, calculated accumulated depreciation, and service life. Plant in service funded by grants that are not repaid by EDWA at Closing shall be deducted from the depreciated original cost of the system.

14. EDWA has identified five locations where multiple dwellings are on one meter: two small modular home communities and three single family dwellings with an additional dwelling or modular home on the same parcel. PAWC agrees as follows:

a. PAWC provided the OCA with a schedule that shows what each of the above-referenced customers are currently paying to EDWA and confirms what each customer will pay under the *pro forma* tariff supplement.

b. PAWC agrees that it will provide OCA with a report 90 days after Closing that identifies its proposed solution, including time frames, for the five locations identified where multiple dwellings are on one meter. The report shall include any additional locations with one meter serving multiple dwellings that PAWC has identified after Closing and the solutions for each of those additional locations, if any.

#### **H. Other Necessary Approvals**

15. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the

Pennsylvania Public Utility Code (“Code”) to carry out the transaction contemplated in the Applications in a lawful manner.

### **I. Standard Settlement Conditions**

16. The Settlement is conditioned upon the Commission’s approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the 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 Settlement. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

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

18. The Joint Petitioners acknowledge that the 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 Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

19. To the extent possible, the Joint Petitioners shall jointly prepare and submit Proposed Conclusions of Law and Proposed Ordering Paragraphs. The Joint Petitioners further agree that the facts agreed to in the Stipulation are sufficient to find that the Settlement is in the public interest.

20. Each Petitioner shall prepare a Statement in Support of Settlement setting forth the bases upon which the Petitioner believes the Settlement to be in the public interest.

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

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 9 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.

Settlement pp. 2-7.

#### JOINT STIPULATION OF FACTS

The Joint Petitioners request admission of Joint Stipulation of Facts into the record. The 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 Stipulation. The Joint Petitioners provided the Stipulation with the Settlement with the intention to settle all issues. The Joint 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 Stipulation into the record. The stipulated facts included in Appendix A are included below *in verbatim*.

## FINDINGS OF FACT

### Parties

1. Pennsylvania-American Water Company (“PAWC”) is a subsidiary of American Water Works Company, Inc. (“American Water”). It is the largest regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, engaged in the business of collecting, treating, storing, supplying, distributing, and selling water to the public, and collecting, treating, and disposing of wastewater for the public.

2. East Dunkard Water Authority (“EDWA”) is a municipal authority established on December 6, 2010, under the laws of the Commonwealth of Pennsylvania.

3. PAWC is currently the Receiver of EDWA, as authorized by the Pennsylvania Public Utility Commission (“Commission”) by Order dated November 1, 2023 following a Joint Application by PAWC and the Pennsylvania Department of Environmental Protection (“DEP” or the “Department”) at Docket No. P-2023-3043950 (“PUC Receivership Proceeding”), and upon having been named Receiver by the Commonwealth Court of Pennsylvania (“Commonwealth Court”) by Order dated February 8, 2024, Docket Nos. 557 MD 2022 and 490 ND 2023 (consolidated) (“Commonwealth Court Receivership Proceeding”).

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

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

## **The EDWA Water System**

6. As of June 2024, EDWA furnished water service to approximately 1,492 residential customers, 79 commercial customers and 92 public fire hydrants. A map of its service territory was included in Amended Appendix R of the Application.

7. In 2020, DEP received multiple complaints of poor water quality from customers of EDWA. In October 2020, DEP put EDWA under a Corrective Action Plan (“CAP”) to identify and resolve the issues causing the water quality complaints. Stipulation Exhibit 1.

8. On April 5, 2024, PAWC (as the receiver for East Dunkard) submitted Standard Operating Procedures (“SOPs”) to DEP, with a request to utilize the SOPs in lieu of the 2020 CAP. DEP subsequently terminated the 2020 CAP and directed EDWA to implement the SOPs. Stipulation Exhibit 2.

9. In 2021, the Commission’s Bureau of Investigation and Enforcement (“I&E”) commenced an investigation of, and filed a Complaint against, EDWA. I&E alleged, inter alia, that EDWA was in violation of 66 Pa. C.S. § 1501. Specifically, I&E alleged that EDWA failed to provide adequate, efficient, safe and reasonable service to its customers because it had: discolored/dirty water, no pressure or low pressure, and poor facilities that leaked. On September 26, 2022, EDWA and I&E entered into a settlement agreement in which EDWA agreed to pay a civil penalty of \$325,000 and was directed to improve its facilities. In its Opinion and Order, the Commission dismissed the Complaint and rejected the Settlement Agreement due to lack of jurisdiction and the case was closed.

10. The Parties incorporate by reference the records in the PUC Receivership Proceeding and the Commonwealth Court Receivership Proceeding. These Proceedings demonstrate that EDWA is a troubled system with a long history of water quality issues and environmental non-compliance.

11. DEP sent EDWA thirteen Notices of Violation between August 2021 and August 2022. Stipulation Exhibit 3.

12. In early 2022, EDWA had to issue boil water advisories to customers on two occasions due to treatment breakdowns at the plant. After repeated failures of EDWA to correct the problems at the plant, DEP issued an Administrative Order dated August 25, 2022. This Order required EDWA to correct numerous “significant deficiencies” in EDWA’s operations. Stipulation Exhibit 4.

13. EDWA repeatedly failed to meet the compliance deadlines in the Administrative Order and several Field Orders issued by DEP. On December 15, 2022, the Commonwealth Court issued an Order requiring EDWA to take certain corrective actions outlined in the Administrative Order.

14. In late October 2023, EDWA’s water treatment plant was not able to produce potable water for several days. Storage reserves in the distribution system eventually were depleted and customers were without water for multiple days. When the issue was resolved and the System restored to capacity, customers were subject to a boil water advisory for over a month.

15. PAWC assumed operations of the System as Receiver on February 9, 2024, and has been operating the System on a continuous basis ever since. PAWC has made numerous short-term improvements to the System and its operations, as outlined in its Status Reports filed at Docket No. P-2023-3043950.

### **The Transaction**

16. On July 23, 2023, PAWC and EDWA entered into an Asset Purchase Agreement to transfer all the assets, properties and rights of EDWA’s System (other than the Excluded Assets) to PAWC (the “Transaction”). That agreement was subsequently amended (as amended, the “APA”). The July 23, 2023 agreement, the First

Amendment dated November 3, 2023, the Second Amendment dated January 25, 2024, and the Third Amendment dated June 13, 2024 were attached to the Application as Amended Appendix A. The Fourth Amendment dated as of November 22, 2024 is attached as Stipulation Exhibit 5.

17. The purchase price for the System is \$5,000,000.

18. The Transaction was negotiated at arm's length; PAWC and EDWA are not affiliated with each other.

19. The depreciated original cost of the System is estimated to be approximately \$6,000,000.

#### **PAWC's Legal Fitness**

20. PAWC has a good history of complying with the Code and other applicable laws, including environmental laws. There are no pending legal proceedings that would suggest that PAWC is not legally fit to provide service to customers of the System.

#### **PAWC's Financial Fitness**

21. PAWC has a long-demonstrated history of financial stability. PAWC had total assets of approximately \$7.3 billion as of December 31, 2023. Application Appendix H. PAWC had net income of approximately \$300 million for the 12 months ending December 31, 2023. Application Appendix J. PAWC has the financial stability and wherewithal to acquire the System and operate it in the public interest.

#### **PAWC's Technical Fitness**

22. As of May 31, 2024, PAWC furnished service to approximately 685,242 water customers and 98,033 wastewater customers in Pennsylvania. A map of PAWC's current service territory is included in Application Appendix C.

23. PAWC does not presently provide wastewater service to any of the System's water customers.

24. PAWC currently employs approximately 1,150 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, materials management, risk management, human resources, legal, accounting, and customer service. PAWC has the expertise, the record of environmental compliance, the commitment to invest in necessary capital improvements and resources, and the experienced managerial and operating personnel necessary to provide safe and reliable water service to the residents of the service area.

25. A 50-person team of American Water corporate engineers has handled a wide variety of system assessments, treatment process evaluations and design reviews for water and wastewater treatment systems in order to improve operations and prioritize capital improvements.

26. PAWC is experienced in undertaking and completing water and wastewater system acquisitions with public and private sector owners and successfully integrating those assets into its business operations. Recent examples include: Winola Water Company, Delaware Sewer Company, Clean Treatment Sewage Company, Nittany Water Company, Wildcat Park Corporation, and Sewer Authority of the City of Scranton. In all these examples, PAWC quickly improved the reliability and safety of those systems by investing the necessary capital to move the systems toward regulatory compliance.

### **Impacts of the Transaction**

27. EDWA's water assets will be operated and managed as a satellite system from PAWC's nearby Uniontown Operations District.

28. The integration of EDWA's System into PAWC's existing operations creates opportunities for functional and operational consolidation, and associated efficiencies and cost savings. Efficiencies will result from shared supervisory staff, equipment and back-office support, as well as lower costs from vendors through leveraged purchasing power.

29. EDWA will wind up operations and will eventually be dissolved following closing on the Transaction (the "Closing").

30. The APA contemplates that, if a balance remains on EDWA's loan from the Pennsylvania Infrastructure Investment Authority ("PENNVEST") at Closing, the balance will be paid from the proceeds of the purchase price. PAWC is currently evaluating whether the PENNVEST loan can be assigned and transferred to PAWC at Closing for the outstanding amount of the loan. If such a transfer is possible, an adjustment or reduction in purchase price will be required and the purchase price reduction will be allocated to pay the balance on the PENNVEST loan.

31. Pursuant to a Subrecipient Agreement between EDWA and Greene County, EDWA received a Community Development Block Grant ("CDBG") of \$1,939,341, which is being used for several projects. PAWC does not believe it can receive assignment of the CDBG. Under the Subrecipient Agreement, if, after all or any part of the funds has been paid, and EDWA decides to terminate or alter the activities, Greene County can, in its sole discretion, require repayment or redirection of the funds theretofore paid. If Greene County exercises its discretion to require repayment of the funds, the sale proceeds would be used for repayment.

32. The Transaction will make EDWA's customers part of a system with a large customer base, allowing them to share the costs of improving and operating the System with many other customers, thereby stabilizing or reducing per-customer costs over the long term.

33. PAWC will adopt EDWA's existing rates at closing. As a result, the Transaction will have no immediate impact on the rates for service to EDWA's existing customers (except as discussed in the following paragraph). Rates to EDWA's existing customers will not increase until PAWC files a base rate case that includes the System. At this time, it is unknown when PAWC will file that base rate case.

34. EDWA identified five locations where multiple dwellings are on one meter: two small modular home communities and three single family dwellings with an additional dwelling or modular home on the same parcel. A schedule that shows what each of the above-referenced customers are currently paying to EDWA, and that confirms what each customer will pay under the pro forma tariff supplement, is attached as Stipulation Exhibit 6.

35. PAWC prepared a five-year capital plan for EDWA. The budget estimate for investment projects was \$6,862,888 and the budget estimate for recurring projects was \$9,333,275 for a total of \$16,196,163 over five years. Stipulation Exhibit 7.

36. PAWC also prepared a System Evaluation and Improvements Plan dated July 22, 2024, listing projects to be initiated or completed during PAWC's Receivership and projects to be initiated or completed after closing on the Transaction. This Plan was filed at Docket No. P-2023-3043950. It is attached as Stipulation Exhibit 8.

37. PAWC will make multiple safety improvements to the System, including but not limited to:

- Providing employees with an overall work safety environment that is compliant with OSHA regulations.
- Providing employees with appropriate personal protection equipment and safety training.
- Providing liquid chemical secondary containment, venting pipes, labeling and registration meeting DEP standards.
- Providing chlorine gas feed system modifications to meet DEP standards.

- Ultimately eliminating the use of toxic chlorine gas and the hazards presented to employees and the local community.
- Providing a potable water supply for in-plant use that meets DEP disinfection standards.
- Remediating slip/fall hazards, including poor housekeeping, missing handrails on stairs, improper work platforms, missing life rings and rescue hooks, missing kick plates/toe guards, inadequate lighting, and unpassable vehicular access roads.
- Providing labeling of confined spaces and equipment/training for hazardous atmosphere testing.
- Providing electrical/mechanical safety improvements, including arc flash labeling, replacement of faulty outlets, installation of guards on rotating parts, and installation of electrical shock protection mats.
- Providing safe vehicles meeting Pennsylvania inspection requirements.
- Providing safety management best practices, including emergency evacuation plans, pre-job safety tailgate talks, and near miss reporting.

38. The Transaction will have no immediate effect on rates for service to PAWC's existing water customers. Rates to PAWC's existing water customers will not increase until PAWC files a base rate case that includes the System. At this time, it is unknown when PAWC will file that base rate case.

39. The Transaction will expand PAWC's customer base, allowing the costs of operating and improving PAWC's system to be shared with a greater number of customers.

40. The balance of any sale proceeds after outstanding indebtedness is paid will be held in escrow for the purposes of covering pre-Closing claims against EDWA, any PAWC indemnity claims, and PAWC's receivership costs, to be

disbursed in the priority as provided for in the Second Amendment.

Stipulation App. A.

### LEGAL STANDARDS

In this case, the Applicant requests approval of: (1) the transfer, by sale, of substantially all of the assets, properties and rights of the EDWA owned and used in connection with operating and maintaining the water system, to PAWC, and (2) PAWC's right to offer, render, furnish and supply water service in the areas served by EDWA including Dunkard Township, and portions of Cumberland, Greene, Monongahela, Perry and Whiteley Townships, all in Greene County, Pennsylvania.

Furthermore, PAWC requested pursuant to Code Section 507, 66 Pa.C.S. § 507, the issuance of Certificates of Filing for approvals for the following agreement, as amended between PAWC and a municipal corporation: Asset Purchase Agreement By and Between the East Dunkard Water Authority as Seller, and PAWC Water Company, as Buyer, Dated as of July 23, 2023, including the First Amendment dated as of November 3, 2023 and Second Amendment dated as of January 25, 2024 and the associated *pro forma* tariff supplement. Accordingly, PAWC has the burden of proof. 66 Pa.C.S. § 332.

The acquisition of substantially all of the assets, properties and rights of the EDWA by PAWC requires the approval of the Commission as evidenced by its issuance of a certificate of public convenience. 66 Pa.C.S. § 1102(a)(3). Before the Commission may issue a certificate of public convenience it must find that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1102(a). That is, PAWC must demonstrate that the proposed acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. Pub. Util. Comm'n*,

295 A.2d 825, 828 (Pa. 1972). In determining whether the acquisition or merger is in the public interest:

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

Even where the Commission finds sufficient public benefit to conclude that the granting of a certificate of public convenience is necessary or proper for the service, accommodation, convenience, or safety of the public without imposing any conditions, the Commission nevertheless has discretion to impose conditions which it deems to be just and reasonable. 66 Pa.C.S. §1103(a). In an acquisition context, when the Commission considers the public interest, it is contemplated that the benefits and detriments of the acquisition will be measured as they impact on all affected parties and not merely on one particular group or geographic subdivision. *Middletown Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674 (Pa. Cmwlth. 1984).

Additionally, pursuant to Section 1103 of the Code, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from the EDWA. *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). As a certificated public utility, there is a rebuttable presumption that PAWC possesses the requisite fitness. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308 (Pa. Cmwlth. 1992).

PAWC also seeks approval of an APA and other connected agreements pursuant to Section 507 of the Public Utility Code. 66 Pa.C.S. § 507. Section 507 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. Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission grants its approval. Section 507 is a filing requirement and does not require service of the filing on any potentially interested parties.

The Commission encourages parties in contested on-the-record proceedings to settle cases. *See* 52 Pa. Code § 5.231. 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.

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. *Pa. Pub. Util. Comm'n v. CS Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991). *See also Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

## DISCUSSION OF THE SETTLEMENT

In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves the contested issues in this case, fairly balances the interests of PAWC, EDWA and their ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

After full consideration of the terms of the Settlement and the statements in support, I recommend that the Commission adopt the proposed Settlement with a single modification concerning the qualified private fire hydrant rate for the East Dunkard Water Authority service territory. Not every issue was of equal concern to every party. Accordingly, each of the Joint Petitioners' statements in support did not address each and every aspect of the Settlement.

### **A. Sections 1102 and 1103 Approvals**

#### **1. Legal, Technical and Financial Fitness**

Although PAWC is presumed to be fit, the Stipulation addresses PAWC's fitness to own and operate the System. With regard to PAWC's legal fitness, the Stipulating Parties agree that PAWC has a good history of complying with the Code and other applicable laws, including environmental laws. There are also no pending legal proceedings that would suggest that PAWC is not legally fit to provide service to customers of the System. Stipulation ¶ 20.

With regard to PAWC's financial fitness, the Stipulating Parties agree that PAWC has a long-demonstrated history of financial stability. PAWC had total assets of approximately \$7.3 billion as of December 31, 2023. Application Appendix H. PAWC had net income of approximately \$300 million for the 12 months ending December 31,

2023. PAWC has the financial stability and resources to acquire the System and operate it in the public interest. Stipulation ¶ 21.

With regard to PAWC's technical fitness, PAWC has been acting as the Receiver for EDWA pursuant to orders of the Commission and the Commonwealth Court. As a result, PAWC is very familiar with the System and its needs.

In addition, the Stipulating Parties agree that, as of May 31, 2024, PAWC furnished service to approximately 685,242 water customers and 98,033 wastewater customers in Pennsylvania. PAWC, however, does not presently provide wastewater service to any of the System's water customers. Stipulation ¶¶ 22-23.

The Stipulating Parties also agree that PAWC currently employs approximately 1,150 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, materials management, risk management, human resources, legal, accounting, and customer service. In addition, a 50-person team of American Water corporate engineers has handled a wide variety of system assessments, treatment process evaluations and design reviews for water and wastewater treatment systems in order to improve operations and prioritize capital improvements. PAWC has the expertise, the record of environmental compliance, the commitment to invest in necessary capital improvements and resources, and the experienced managerial and operating personnel necessary to provide safe and reliable water service to the residents of the service area. Stipulation ¶¶ 24-25.

Finally, the Stipulating Parties agree that PAWC is experienced in undertaking and completing water and wastewater system acquisitions with public and private sector owners and successfully integrating those assets into its business

operations. Recent examples include: Winola Water Company, Delaware Sewer Company, Clean Treatment Sewage Company, Nittany Water Company, Wildcat Park Corporation, and Sewer Authority of the City of Scranton. In all these examples, PAWC quickly improved the reliability and safety of those systems by investing the necessary capital to move the systems toward regulatory compliance. Stipulation ¶ 26.

## **2. Affirmative Public Benefits**

The Joint Petitioners have agreed that it is appropriate for the Commission to grant PAWC a certificate of public convenience to acquire the assets of EDWA and to begin to render public utility service to its customers. OCA and OSBA did not discuss the issue in their Statements in Support.

### **a. Benefits to the Public-At-Large**

The Joint Petitioners agree that EDWA has a long history of water quality issues and environmental non-compliance. Stipulation ¶ 10. In 2020, EDWA became subject to a Corrective Action Plan with the Department due to multiple complaints from consumers about poor water quality. Stipulation ¶ 7. The Commission's I&E filed a Complaint against EDWA alleging that EDWA was in violation of 66 Pa.C.S. § 1501 because of discolored/dirty water, no or low pressure, and poor facilities that leaked. I&E and EDWA reached a settlement, but the Commission rejected it due to lack of jurisdiction. Stipulation ¶ 9.

DEP sent thirteen Notices of Violation to EDWA between August 2021 and August 2022. DEP issued an Administrative Order to EDWA in August 2022 requiring EDWA to correct numerous "significant deficiencies" in its operations, but EDWA repeatedly failed to meet the compliance deadlines in the Administrative Order. Stipulation ¶¶ 11-13.

In late October 2023, EDWA's water treatment plant was not able to produce potable water for several days. Storage reserves in the distribution system eventually were depleted and customers were without water for multiple days. When the issue was resolved and the System restored to capacity, customers were subject to a boil water advisory for over a month. Stipulation ¶ 14.

The Joint Petitioners also agree that as the Receiver, PAWC has made improvements to the System. Stipulation ¶ 15. In contrast to EDWA, PAWC has a good history of compliance with environmental laws. Stipulation ¶ 20. PAWC is experienced in undertaking and completing water and wastewater system acquisitions with public and private sector owners and successfully integrating those assets into its business operations. Recent examples include: Winola Water Company, Delaware Sewer Company, Clean Treatment Sewage Company, Nittany Water Company, Wildcat Park Corporation, and Sewer Authority of the City of Scranton. In all these examples, PAWC quickly improved the reliability and safety of those systems by investing the necessary capital to move the systems toward regulatory compliance. Stipulation ¶ 26.

In view of the above, PAWC and EDWA argue that the Transaction benefits the public-at-large and support it for promoting the people's right to clean, potable water and a clean environment. *See* PAWC-EDWA Joint St. in Supp. at 7. They add that the Acquisition will also benefit members of the public-at-large by promoting the Commission's policy favoring regionalization and consolidation of water and wastewater systems. After Closing, the System will be managed as a satellite system from PAWC's nearby Uniontown Operations District. PAWC and EDWA note that this will create opportunities for functional and operational consolidation, associated efficiencies and cost savings which will result from shared supervisory staff, equipment and back-office support, as well as through leveraged purchasing power. *See* PAWC-EDWA Joint St. in Supp. at 8-9. Lastly, PAWC and EDWA aver that the proposed Transaction has no

material detriments and conclude that it produces a net benefit for the public-at-large. *See* PAWC-EDWA Joint St. in Supp. at 9.

**b. Benefits for EDWA**

PAWC and EDWA agree that the Transaction benefits EDWA because it will receive \$5,000,000 from the sale of the System. *See* PAWC-EDWA Joint St. in Supp. at 9. EDWA will wind up operations and will eventually be dissolved following Closing. Stipulation ¶ 29.

The APA contemplates that, if a balance remains on EDWA’s loan from the Pennsylvania Infrastructure Investment Authority (“PENNVEST”) at Closing, the balance will be paid from the proceeds of the purchase price. In their Joint Statement in Support, PAWC and EDWA explain that PAWC is currently evaluating whether the PENNVEST loan can be assigned and transferred to PAWC at Closing for the outstanding amount of the loan. PAWC-EDWA Joint St. in Supp. at 9. If such a transfer is possible, an adjustment or reduction in purchase price will be required and a purchase price reduction will be allocated to pay the balance on the PENNVEST loan. Stipulation ¶ 30.

Additionally, EDWA received a CDBG of \$1,939,341 pursuant to a Subrecipient Agreement between EDWA and Greene County. PAWC does not believe it can receive assignment of the CDBG. Under the Subrecipient Agreement, if, after all or any part of the funds has been paid, and EDWA decides to terminate or alter the activities, Greene County can, in its sole discretion, require repayment or redirection of the funds theretofore paid. If Greene County exercises its discretion to require repayment of the funds, the sale proceeds would be used for repayment. Stipulation ¶ 31.

In addition, the balance of any sale proceeds after outstanding indebtedness is paid will be held in escrow for the purpose of covering pre-Closing claims against EDWA, any PAWC indemnity claims, and PAWC's receivership costs, to be disbursed in the priority as provided for in the Second Amendment to the APA. Stipulation ¶40.

PAWC and EDWA maintain that the terms of the Transaction, as listed above, benefit EDWA. They add that, in the absence of any material detriment, the Transaction produces a net benefit for EDWA. PAWC-EDWA Joint St. in Supp. at 10.

**c. Benefits for EDWA's Customers**

Because EDWA's customers are members of the public-at-large, PAWC and EDWA believe that they will experience the same net benefits from the Transaction as other members of the public. In their Joint Statement in Support, they highlight the environmental benefits of the Transaction which are important for EDWA's customers who need clean and reliable drinking water in their community. *See* PAWC-EDWA Joint St. in Supp. at 10.

PAWC and EDWA note that prior to the appointment of a receiver, EDWA was not providing reasonable and adequate service to consumers. Absent a sale, EDWA does not have the capacity to provide safe, reasonable, and efficient service in the future. They agree that as Receiver, PAWC has already made many improvements to EDWA's facilities. Stipulation ¶ 15; Status Reports filed at Docket No. P-2023-3043950. These improvements have improved water service to EDWA's customers and PAWC has committed to continue improving the System after Closing. *See* PAWC-EDWA Joint St. in Supp. at 10-11.

Consequently, PAWC and EDWA argue that the Transaction will result in EDWA's customers receiving better water service. *See* PAWC-EDWA Joint St. in Supp.

at 11. They note that in 2022, PAWC prepared a five-year capital plan for EDWA. The budget estimate for investment projects was \$6,862,888 and the budget estimate for recurring projects was \$9,333,275 for a total of \$16,196,163 over five years. In addition, PAWC prepared a System Evaluation and Improvements Plan dated July 22, 2024, listing projects to be initiated or completed during PAWC's Receivership and projects to be initiated or completed after Closing on the Transaction. *See* PAWC-EDWA Joint St. in Supp. at 11.

Next, PAWC and EDWA argue that EDWA's customers will also benefit by the Acquisition which will bring their water service under the regulatory oversight of the Commission. Citing to 66 Pa.C.S. §§ 1301, 1501, they point out that, under the Pennsylvania Public Utility Code, PAWC is required to provide all its customers with adequate, efficient, safe and reliable service at just and reasonable rates. In contrast, EDWA as a municipal authority has no such regulatory oversight. If an EDWA customer is dissatisfied with the rates or service of EDWA, the customer currently must seek redress in a civil court. *See* PAWC-EDWA Joint St. in Supp. at 11.

In addition, both PAWC and EDWA believe that the Transaction will benefit EDWA's customers by making them part of a system with a large customer base, allowing them to share the costs of improving and operating the System with many other customers. This will stabilize or reduce per-customer costs over the long term. They note that the System currently has a customer base of 1,492 residential customers, 79 commercial customers and 92 public fire hydrants. Additionally, PAWC's system currently serves approximately 685,242 water customers and 98,033 wastewater customers in Pennsylvania. *See* PAWC-EDWA Joint St. in Supp. at 11.

Lastly, PAWC and EDWA explain that the Transaction will have no immediate impact on the rates for service to EDWA's existing customers as PAWC will generally adopt EDWA's existing rates at Closing. Rates to EDWA's existing customers

will not increase until PAWC files a base rate case that includes the System. *See* PAWC-EDWA Joint St. in Supp. at 11-12.

Noting that the Transaction has no material detriments for EDWA's customers, PWCA and EDWA conclude that the Transaction produces a net benefit for EDWA's existing customers. *See* PAWC-EDWA Joint St. in Supp. at 12.

**d. Benefits for PAWC**

Next, PAWC and EDWA argue that the Transaction will benefit PAWC because it will grow its business by purchasing the System for less than its depreciated original cost. *See* PAWC-EDWA Joint St. in Supp. at 12. They note that PAWC will acquire an additional 1,571 residential and commercial customers, making it a larger, more financially stable company. They acknowledge that PAWC will need to invest in capital improvements in the System, but argue that due to PAWC's financial position, those investments will not jeopardize PAWC's ability to continue to provide adequate, efficient, safe and reasonable water and wastewater services to its customers. *See* PAWC-EDWA Joint St. in Supp. at 12.

Noting that the Transaction has no material detriments for EDWA's customers, PWCA and EDWA conclude that the Transaction yields a net benefit for PAWC. *See* PAWC-EDWA Joint St. in Supp. at 12.

**e. Benefits for PAWC's Existing Water Customers**

PAWC and EDWA argue that the Transaction will also be beneficial for the other group of stakeholders: PAWC's existing water customers. They are members of the public-at-large and will experience the same net benefits from the Transaction as other members of the public. Additionally, PAWC and EDWA point out that PAWC's

existing water customers will benefit from the Transaction as it will make PAWC a larger, financially stronger and more stable company. Relatedly, the Transaction will expand PAWC's water customer base, allowing the costs of operating and improving PAWC's system to be shared with a greater number of customers. *See PAWC-EDWA Joint St. in Supp. at 13.*

Finally, PAWC and EDWA maintain that the Transaction will have no immediate effect on rates for service to PAWC's existing water customers. Rates to PAWC's existing water customers will not increase until PAWC files a base rate case that includes the System. Noting that the Transaction has no material detriments for PAWC's existing water customers, PWCA and EDWA conclude that the Transaction produces a net benefit for them. *See PAWC-EDWA Joint St. in Supp. at 13.*

**f. Benefits for PAWC's Wastewater Customers**

Similar to their argument regarding PAWC's existing water customers, PAWC and EDWA maintain that PAWC's existing wastewater customers will receive substantial benefits from the Transaction. Not only will PAWC's existing wastewater customers experience the same net benefits from the Transaction as other members of the public-at-large, but they will also benefit from a larger, financially stronger and more stable PAWC. PAWC and EDWA agree that PAWC's customers are the ultimate beneficiaries of these improvements. *See PAWC-EDWA Joint St. in Supp. at 13.*

PAWC and EDWA explain that the Transaction will have no immediate effect on rates for service to PAWC's existing wastewater customers. They argue that, by adding more water customers to PAWC's system, the Transaction should help keep rates stable for PAWC's wastewater customers because a portion of the wastewater revenue requirement can be spread among more water customers. Noting that the Transaction has no material detriments for PAWC's wastewater customers, PAWC and

EDWA conclude that the Transaction produces a net benefit for them. *See* PAWC-EDWA Joint St. in Supp. at 13-14.

In summary of their joint position on the impact of the Transaction on the public, PAWC and EDWA aver that the Transaction affirmatively benefits the public in a substantial way. They argue that, for each of the major stakeholder groups, the Transaction benefits outweigh its detriments. Therefore, they propose that the Commission find the Transaction affirmatively benefits the public in a substantial way. *See* PAWC-EDWA Joint St. in Supp. at 14.

## **B. Tariff**

The Application requested that the Commission approve the *pro forma* tariff attached to the Application as Appendix B. The Settlement reiterates that request. Settlement ¶ 3.

In the Application, PAWC represented that it would adopt EDWA's existing rates for water service at the time of Closing. Application ¶ 25. As a result, the Transaction will have no immediate impact on the rates for service to EDWA's existing customers (except as discussed below). Application ¶ 24.

Immediately after Closing, EDWA's customers will be subject to PAWC's prevailing water tariff on file with, and approved by, the Commission with respect to miscellaneous fees and charges, as well as non-rate related terms and conditions of service. Application ¶ 25; Settlement ¶ 3. In addition, rates for EDWA's existing customers will not increase until PAWC files a base rate case that includes the System. Stipulation ¶ 33.

In their Joint Statement in Support, PAWC and EDWA state that these provisions ensure that rates will remain stable for EDWA's existing customers. They support said provisions as reasonable and in the public interest. *See* PAWC-EDWA Joint St. in Supp. at 15.

### **C. Distribution System Improvement Charge**

PAWC has a distribution system improvement charge ("DSIC") for its water system. The Settlement provides that the DSIC provisions of PAWC's effective water tariff will apply to customers in the System no later than the first base rate case in which the System is included. Additionally, PAWC will not seek to recover investments in the System in its DSIC until PAWC applies the DSIC to System customers. Settlement ¶ 4. PAWC and EDWA maintain that these provisions are in the public interest because they protect PAWC's existing customers from paying for investments in the System before System customers become subject to the DSIC. PAWC and EDWA also suggest these provisions are in the public interest because they ensure that the System will become subject to the DSIC promptly. PAWC-EDWA Joint St. in Supp. at 16. OCA also agrees that the provisions of Paragraph 4 of the Settlement protect PAWC's existing customers by helping to ensure that they will not pay for projects in the EDWA service area through their DSIC rates until EDWA customers are contributing toward the costs. OCA St. in Supp. at 6.

### **D. Rates**

According to PAWC and EDWA, the Transaction will have no immediate impact on the rates for service to EDWA's existing customers because PAWC will adopt EDWA's existing rates at closing. Post-Closing, the PENNVEST surcharge on EDWA bills will be removed and rolled into base rates, as shown in PAWC's *pro forma* tariff supplement. PAWC and EDWA argue that this provision is reasonable and in the public

interest. If PAWC does not assume the PENNVEST loan, there is no reason to have a PENNVEST surcharge. However, if PAWC assumes the PENNVEST loan, PAWC will treat that loan as it treats its other debt. PAWC-EDWA Joint St. in Supp. at 16.

OCA agrees with PAWC and EDWA. It notes that the PENNVEST loan surcharge currently appears as a \$17.54 charge on EDWA customers' monthly bills. Upon closing, the PENNVEST surcharge will be part of the customer charge that the EDWA customers pay to PAWC. OCA St. in Supp. at 4. OCA and OSBA both support the Settlement provision which requires that, in the event PAWC assumes the PENNVEST loan, it treats the PENNVEST loan as it treats its other current debt, and not as a surcharge. OCA St. in Supp. at 4; OSBA St. in Supp. at 3. According to OCA, the effect of this provision would reduce PAWC's cost of debt going forward after the first rate case in which EDWA customers are included. OCA St. in Supp. at 4. OCA and OSBA find this provision to be just and reasonable. OCA St. in Supp. at 4; OSBA St. in Supp. at 3.

Additionally, in the first base rate case that includes the System, PAWC will propose a public fire rate for the EDWA service territory that is equal to PAWC's statewide public fire rates. Settlement ¶ 6. PAWC and EDWA support this provision as reasonable because it will keep PAWC's public fire rates uniform state-wide. PAWC and EDWA Joint St. in Supp. at 16. OCA notes that there are no current public fire rates charged in the EDWA system and supports the provision of Paragraph 6 of the Settlement, arguing that it will ensure that EDWA public fire customers pay up to 25% of the cost for the service provided, thus reducing the amount of the costs to be carried by other PAWC water customers. OCA St. in Supp. at 4. OSBA joins PAWC, EDWA, and OCA in finding this provision to be just and reasonable. OCA St. in Supp. at 4.

Also in the first base rate case that includes the System, PAWC may make a claim to recover transaction and closing costs associated with the acquisition of the

System; however, this claim will not include transaction and closing costs incurred by EDWA. In addition, PAWC may seek recovery of the costs it incurred as Receiver of EDWA that are not reimbursed from the proceeds of the sale. Settlement ¶ 8. PAWC and EDWA support these provisions as they permit PAWC claim costs that it incurred while serving as the Receiver of, and in purchasing, the System.

OCA and OSBA too support the provisions of Paragraph 8 of the Settlement. OCA, in particular, argues that PAWC's commitment to exclude the Transaction and closing costs incurred by EDWA from any claim to recover Transaction and closing costs associated with the Acquisition of the System reduces the total expenses that existing and acquired customers will have to pay for the Acquisition. OCA St. in Supp. 4. The provisions of Paragraph 8 of the Settlement are important to OCA as they preserve OCA's ability to challenge PAWC's claimed transaction and closing costs in future rate cases. *Id.* OCA and OSBA argue that these provisions are in the public interest because they allow for a full review of the Transaction and closing costs when a claim is made. OCA St. in Supp. 5; OSBA St. in Supp. at 4.

#### **E. Low Income Program Outreach**

The Settlement requires PAWC to provide information to EDWA's customers about PAWC's low-income program. Specifically, within the first billing cycle following Closing, PAWC is required to provide a bill insert to System customers regarding PAWC's low-income programs and customer payment arrangement programs. Settlement ¶ 9. Additionally, within the first 30 days of Closing, PAWC is required to provide a welcome letter to System customers. The Settlement includes detailed provisions about the information to be included in the welcome letter. Settlement ¶ 10.

PAWC and EDWA argue that these provisions are in the public interest because the existing customers of EDWA should be made aware of the low-income

assistance programs that are now available to them. PAWC-EDWA Joint St. in Supp. at 17. OCA and OSBA support these provisions as just and reasonable, noting that the bill insert and the welcome letter will provide important information to the EDWA customers regarding PAWC's programs and payment options, and will include the contact information for the OCA and OSBA. OCA St. in Supp. at 5-6; OSBA St. in Supp. at 4-5. OCA in particular draws attention to PAWC's commitment to provide this important information to EDWA customers in a timely fashion, arguing that the existence of PAWC's low-income assistance programs and payment option can only provide a benefit if the customers know about them. OCA St. in Supp. at 5.

#### **F. Approval of Section 507 Agreements**

In Paragraph 2 of the Application, PAWC asked the Commission to issue Certificates of Filing or approval for the Asset Purchase Agreement By and Between the East Dunkard Water Authority as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of July 23, 2023, including the First Amendment dated as of November 3, 2023, the Second Amendment dated as of January 25, 2024, the Third Amendment dated June 13, 2024, and a Fourth Amendment dated as of November 22, 2024 (together, the "APA"). In Paragraph 11 of the Settlement, the Joint Petitioners agree that the Commission should issue the requested Certificates of Filing or Approval.

In their Joint Statement in Support, PAWC and EDWA aver that Commission approval of the APA is necessary pursuant to 66 Pa.C.S. § 507. PAWC-EDWA Joint St. in Supp. at 16. In its own Statement in Support, OSBA states that the approval of the APA is just and reasonable. OSBA St. in Supp. at 5.

## G. Other Conditions

EDWA received a Community Development Block Grant (CDBG) of \$1,939,341 pursuant to an agreement between EDWA and Greene County. Stipulation ¶ 31. The CDBG is being used for several projects. It is not expected that PAWC will receive assignment of the CDBG. *Id.* As set forth in the Stipulation, Greene County can, in its sole discretion, require repayment or redirection of the funds paid to EDWA. *Id.* Paragraph 13 of the Settlement provides that prior to PAWC's first rate case following closing, PAWC will provide a schedule of all capital installed by EDWA using the CDBG, by plant account, with the original cost, date of installation, calculated accumulated depreciation and service life. According to PAWC and EDWA, this provision is reasonable because this information will assist OCA and OSBA in preparing their positions in the first rate case following Closing. PAWC-EDWA Joint St. in Supp. at 15-16. OCA agrees with them, and notes that, to the extent there is plant in service funded by the CDBG, it shall be deducted from the depreciated original cost of the system. OCA St. in Supp. at 6. In OCA's view, this provision will enable the review of the utility plant and should resolve a potential ratemaking issue in the next rate case. *Id.* OSBA joins the other parties in finding the terms of Paragraph 13 to be just and reasonable. OSBA St. in Supp. at 5.

The Settlement also includes reporting requirements for PAWC. During the informal discovery in this case, EDWA identified five locations where multiple dwellings are on one meter. Settlement ¶ 14. There are two small modular home communities and three single family dwellings on the same parcel. Stipulation ¶ 34. To clarify how PAWC will bill these existing locations, PAWC provided a schedule that shows what each of these customers are currently paying to EDWA and what each customer will pay upon closing. Stipulation ¶ 34; Stipulation Exhibit 6. In Paragraph 14.b, PAWC agrees to provide OCA with a report 90 days after Closing that identifies its proposed solution, including time frames, for the five locations identified where multiple

dwellings are on one meter. The report is to include any additional locations with one meter serving multiple dwellings that PAWC has identified after Closing and the solutions for each of those additional locations, if any. Settlement ¶ 14.b. PAWC and EDWA argue that this provision is reasonable because it provides a reasonable deadline for PAWC to address these situations. PAWC-EDWA Joint St. in Supp. at 15-16.

For its part, OCA believes that Paragraph 14.b of the Settlement will permit OCA to determine whether PAWC is addressing these issues in a reasonable manner. OCA St. in Supp. at 7. OCA also views this provision as a means to compel PAWC to update the list of locations where one meter is serving multiple dwelling as the Company becomes more familiar with the System after Closing. *Id.* Per OCA, these requirements are reasonable and can assist with its review of the resolution of the multiple dwellings on one meter. *Id.* Similarly, OSBA finds the terms of Paragraph 14.b to be just and reasonable. OSBA St. in Supp. at 6.

## **H. Recommendation**

The Joint Petitioners submit that the Settlement is fair, just, reasonable and in the public interest. This Settlement resulted after the Joint Petitioners engaged in discovery and discussion. Upon reviewing the terms and conditions of the Settlement, and the Statements in Support offered by PAWC, EDWA, OCA and OSBA, I agree with the Joint Petitioners. The resulting Transaction produces net benefits for all the major stakeholders to the Transaction: the public-at-large, EDWA as the seller of the System, the existing customers of EDWA, PAWC as the buyer of the System, and the existing water and wastewater customers of PAWC. Consequently, it affirmatively benefits the public in a substantial way. Apart from the environmental benefits for the public at large, the Transaction will make PAWC a larger, financially stronger and more stable company. PAWC's customers will benefit from the expanded customer base that allows the costs of operating and improving PAWC's system to be shared with a greater number of

customers. More importantly, the Transaction will ensure clean and reliable drinking water for the existing EDWA customers, who will benefit from increased service and regulatory oversight, all in the absence of a rate increase.

Regarding rates, the Settlement requires that in the first base rate case that includes the System, PAWC propose a public fire rate for the EDWA service territory that is equal to PAWC's statewide public fire rates. *See* Settlement ¶ 6. I note, however, that the Settlement does not address qualified private fire hydrant rates. In fact, the Settlement and the Joint Stipulation of Facts do not mention qualified private fire hydrant service, indicating that EDWA does not have any qualified private fire hydrant service connections at this time. However, EDWA's current rules and regulations include rules for EDWA's private fire service and does not separately distinguish qualified private fire hydrants from other types of private fire service.

In revised Page 29 of the proposed *pro forma* tariff supplement (Appendix B to the Application), PAWC indicates that the Qualified Private Fire Hydrant rate for EDWA's existing customers will be \$0.00 per month. I find that proposing a \$0.00 rate for Qualified Private Fire Hydrants is appropriate in this proceeding, as the System may have qualified private fire hydrant service connections that PAWC is unaware of, and increasing rates for those EDWA customers shouldn't be done outside of a rate case. However, much like with its public fire rates, PAWC should propose to increase its Qualified Private Fire Hydrant rate to a nonzero rate at its next base rate case. Consequently, I recommend that the Settlement be amended to include provisions for the treatment of the Qualified Private Fire Hydrant rate for EDWA customers at PAWC's next base rate case. 66 Pa.C.S. § 1103(a).

Despite this modification, I find that viewed in totality, the Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners and satisfies the various requirements of the Code. It shows the diligence and good faith

effort every party expended to arrive at a reasonable, workable arrangement. The fact that the settlement agreement is unopposed is further evidence of its reasonableness. After considering the Joint Petition, including the various agreements described above and the savings achieved by not litigating the case fully, I find the Settlement to be fair, just, reasonable and in the public interest. For these reasons, I recommend that the Settlement be approved by the Commission with the sole modification regarding the qualified private fire hydrant rates.

### 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 substantially all of East Dunkard Water Authority’s assets and to provide wastewater service in the areas served by the East Dunkard Water Authority including Dunkard Township and portions of Cumberland, Greene, Monongahela, Perry, and Whiteley Townships in Greene County PA. *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 Joint Petition for Approval of Unanimous Settlement of All Issues, as submitted by Pennsylvania-American Water Company, the East Dunkard Water Authority, the Office of Consumer Advocate and the Office of Small Business Advocate is just, reasonable and in the public interest, and should be approved with one modification. 66 Pa.C.S. § 1103(a); *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).

9. The Application of Pennsylvania-American Water Company, as modified by the Joint Petition for Approval of Unanimous Settlement of All Issues and this Recommended Decision will affirmatively promote the service, accommodation,

convenience, or safety of the public, and should be approved. 66 Pa.C.S. § 1103(a); *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 Joint Petition for Approval of Unanimous Settlement of All Issues submitted by Pennsylvania-American Water Company, East Dunkard Township, the Office of Consumer Advocate and the Office of Small Business Advocate, filed on December 3, 2024, at Docket No. A-2024-3049759, including all terms and conditions, be approved as modified by this Recommended Decision.

2. That the Application filed by Pennsylvania-American Water Company, on June 21, 2024, as amended, be approved subject to the following terms and conditions:

(a) The distribution system improvement charge provisions of Pennsylvania-American Water Company's effective water tariff will apply to customers in the East Dunkard Water Authority's water system no later than the first base rate case in which the East Dunkard Water Authority's water system is included. Additionally, Pennsylvania-American Water Company will not seek to recover investments in the East Dunkard Water Authority's water system in its distribution system improvement charge until Pennsylvania-American Water

Company applies the distribution system improvement charge to East Dunkard Water Authority's water system customers.

(b) Post-Closing, the PENNVEST loan surcharge on the East Dunkard Water Authority bills shall be removed and rolled into base rates as provided for in Pennsylvania-American Water Company's *pro forma* tariff supplement. If Pennsylvania-American Water Company assumes the PENNVEST loan, that loan shall be treated as Pennsylvania-American Water Company treats other current debt, *i.e.*, not as a surcharge.

(c) In Pennsylvania-American Water Company's first base rate case following closing on the Transaction, Pennsylvania-American Water Company will propose a public fire rate for the East Dunkard Water Authority service territory equal to Pennsylvania-American Water Company's statewide public fire rates.

(d) In Pennsylvania-American Water Company's first base rate case following the closing in the Transaction, Pennsylvania-American Water Company will propose a nonzero qualified private fire hydrant rate for the East Dunkard Water Authority service territory.

(e) Any claim by Pennsylvania-American Water Company to recover transaction and closing costs associated with the acquisition of the East Dunkard Water Authority's water system will not include transaction and closing costs incurred by the East Dunkard Water Authority, provided however that Pennsylvania-American Water Company may seek recovery of any costs incurred as Receiver of the East Dunkard Water Authority that are not reimbursed from the proceeds of the sale pursuant to the Asset Purchase Agreement (as defined herein). The Office of Consumer Advocate and the Office of Small Business Advocate

reserve their rights to challenge the reasonableness, prudence and basis for Pennsylvania-American Water Company's transaction and closing cost and receivership cost claims in the rate filing where they are claimed.

(f) Within the first billing cycle following Closing, Pennsylvania-American Water Company shall provide a bill insert to East Dunkard Water Authority's customers regarding Pennsylvania-American Water Company's low-income programs (including but not limited to Bill Discount and Arrearage Management) 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 the contact information for Pennsylvania-American Water Company, the Office of Consumer Advocate and the Office of Small Business Advocate. Pennsylvania-American Water Company, Office of Consumer Advocate and the Office of Small Business Advocate agree to discuss the specific language and placement of the contact information after submission of this Joint Petition for Approval of Unanimous Settlement of all Issues but before the finalization of the bill insert.

(g) Within the first 30 days of Closing, Pennsylvania-American Water Company shall provide a welcome letter to East Dunkard Water Authority's 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 East Dunkard Water Authority's water system; and provides the information listed in Paragraph (9) of the Settlement about the Company's low-income programs and customer payment arrangement programs. The welcome letter will explain how the PENNVEST surcharge is going to be added to the monthly customer charge at the same level (\$17.54 per customer per month) as paid to the East Dunkard Water Authority. The letter will explain that the PENNVEST surcharge will not be shown as a

separate surcharge on the bills after Closing. Pennsylvania-American Water Company agrees to provide the customer letter to the Office of Consumer Advocate and the Office of Small Business Advocate prior to its distribution to the East Dunkard Water Authority customers.

(h) Prior to Pennsylvania-American Water Company's first rate case following Closing, Pennsylvania-American Water Company will provide to the Office of Consumer Advocate and the Office of Small Business Advocate a schedule of all capital installed by the East Dunkard Water Authority using the Community Development Block Grant, by plant account, with the original cost, date of install, calculated accumulated depreciation, and service life. Plant in service funded by grants that are not repaid by the East Dunkard Water Authority at Closing shall be deducted from the depreciated original cost of the system.

(i) The East Dunkard Water Authority has identified five locations where multiple dwellings are on one meter: two small modular home communities and three single family dwellings with an additional dwelling or modular home on the same parcel. Pennsylvania-American Water Company will provide the Office of Consumer Advocate with a report 90 days after Closing that identifies its proposed solution, including time frames, for the five locations identified where multiple dwellings are on one meter. The report shall include any additional locations with one meter serving multiple dwellings that Pennsylvania-American Water Company has identified after Closing and the solutions for each of those additional locations, if any.

3. That the Application filed by Pennsylvania-American Water Company in this matter on June 21, 2024, as amended by the Settlement and this Recommended Decision, be approved.

4. That the Commission issue Certificates of Public Convenience under 66 Pa.C.S. §§ 1102(a) and § 1103(a) evidencing Commission approval of the transfer, by sale, of substantially all the assets, properties and rights of the East Dunkard Water Authority related to or used in connection with its public drinking water system to Pennsylvania-American Water Company in accordance with the Asset Purchase Agreement (as hereinafter defined).

5. 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.

6. That upon receipt of the notice of closing of the acquisition, a Certificate of Public convenience be issued pursuant to 66 Pa. C.S. § 1102(a)(1) evidencing Commission approval of the right of Pennsylvania American Water Company to offer, render, furnish, and supply water service to the public in Dunkard, and portions of Monongahela, Greene, Cumberland, Perry and Whiteley Townships, all in Greene County, Pennsylvania

7. That, pursuant to 66 Pa.C.S. § 507, a Certificate of Filing or approvals be issued for the Asset Purchase Agreement By and Between the East Dunkard Water Authority as Seller, and Pennsylvania-American Water Company, as Buyer, Dated as of July 23, 2023, the First Amendment dated as of November 3, 2023, the Second Amendment dated as of January 25, 2024, the Third Amendment dated as of June 13, 2024, and the Fourth Amendment dated as of November 22, 2024 (together, the “Asset Purchase Agreement.”)

8. That within ten (10) days of closing on the acquisition, Pennsylvania-American Water Company shall file with the Commission at this docket a compliance tariff consistent with the *pro forma* tariff supplement attached to the

