



June 27, 2025

VIA E-FILING

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Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: Pennsylvania-American Water Company – Wastewater Division Section 1329
Application for the Acquisition of the Elizabeth Borough Municipal Authority
Wastewater System; Docket No. A-2025-3052983**

Joint Petition for Approval of Non-Unanimous Settlement of All Issues

Dear Secretary Homsher:

Enclosed for filing with the Pennsylvania Public Utility Commission (“Commission”) is the Joint Petition for Approval of Non-Unanimous Settlement of All Issues, which has been executed by Pennsylvania-American Water Company, Elizabeth Borough Municipal Authority, the Office of Consumer Advocate and the Commission’s Bureau of Investigation and Enforcement.

Copies have been served as shown on the attached Certificate of Service.

Please contact me if you have any question about the enclosed filing.

Sincerely,

By: David P. Zambito
Counsel for *Pennsylvania-American Water
Company*

DPZ
Enclosures

cc: Administrative Law Judges Erin L. Gannon and Steven K. Haas
Per Certificate of Service
Teresa K. Harrold, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania-American Water Company –	:	
Wastewater Division Section 1329	:	Docket No. A-2025-3052983
Application for the Acquisition of the	:	
Elizabeth Borough Municipal Authority	:	
Wastewater System	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of June, 2025 served a true copy of the foregoing **Joint Petition for Approval of Non-Unanimous Settlement of All Issues** upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL

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Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ADMINISTRATIVE LAW JUDGES
ERIN L. GANNON AND STEVEN K. HAAS**

Pennsylvania-American Water Company – :
Wastewater Division Section 1329 Application : Docket Nos. A-2025-3052983, *et al.*
for the Acquisition of the Elizabeth Borough :
Municipal Authority Wastewater System :

**JOINT PETITION FOR APPROVAL OF
NON-UNANIMOUS SETTLEMENT OF ALL ISSUES**

I. INTRODUCTION

Pennsylvania-American Water Company (“PAWC” or the “Company”), the Elizabeth Borough Municipal Authority (“EBMA”), the Office of Consumer Advocate (“OCA”), and the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), (singularly, a “Petitioner” and, collectively, the “Joint Petitioners”) hereby join in this Joint Petition for Approval of Non-Unanimous Settlement of All Issues (“Settlement”) and respectfully request that the Honorable Administrative Law Judges Erin L. Gannon and Steven K. Haas (the “ALJs”) recommend approval of, and the Commission approve, this Settlement without modification.¹

In support of the Settlement, the Joint Petitioners state the following:

¹ It is the Joint Petitioners’ understanding that Forward Township opposes the Settlement but the Office of Small Business Advocate does not oppose the Settlement.

II. BACKGROUND

1. PAWC and EBMA entered into an Asset Purchase Agreement (the “APA”) dated January 24, 2023, by which PAWC will purchase the wastewater collection and treatment system (the “System”) presently owned by EBMA. PAWC Exhibit MK-1 Appendix A-25.1. PAWC and EBMA entered into a First Amendment to the APA on July 5, 2023. PAWC Exhibit MK-1 Appendix A-25.2.

2. On January 28, 2025, PAWC filed the Application at Docket Nos. A-2025-3052983 *et al.*, asking the Commission to approve PAWC’s acquisition of the System pursuant to 66 Pa. C.S. §§ 507, 1102 and 1329. PAWC Exhibit MK-1. On February 21, 2025, in response to a deficiency letter from the Commission’s Bureau of Technical Utility Services, PAWC submitted several amended appendices to the Application. PAWC Exhibit MK-1R.

3. On February 6, 2025, Steven C. Gray, Esq. and Rebecca Lyttle, Esq., filed their Notices of Appearance on behalf of the OSBA. The OSBA filed its Notice of Intervention on February 20, 2025.

4. On February 18, 2025, Christy M. Appleby, Esq. and Katie Kennedy, Esq., filed their Notices of Appearance on behalf of the OCA. The OCA filed its Protest on February 18, 2025.

5. On February 21, 2025, Michael A. Podskoch, Jr., Esq., filed his Notice of Appearance on behalf of I&E.

6. By correspondence dated March 6, 2025, the Commission notified PAWC that the Application was conditionally accepted. According to that Secretarial Letter, the Commission would finally accept the Application after PAWC complied with certain service and notice requirements. The Secretarial Letter did not set a due date for protests and notices of intervention.

7. On March 21, 2025, PAWC filed a copy of the notice that it intended to distribute to customers, which established a due date of June 3, 2025 for protests and notices of intervention.

8. On April 17, 2025, PAWC notified the Commission that it had complied with the service and notice requirements in the March 6, 2025 Secretarial Letter.

9. On April 21, 2025, Forward Township (“Forward”) filed a Petition to Intervene. On April 23, 2025, Forward filed a Protest.

10. On April 28, 2025, the Commission finally accepted the Application for filing.

11. On May 5, 2025, EBMA filed its Petition to Intervene.

12. On May 10, 2025, notice of the Application’s filing was published in the *Pennsylvania Bulletin*. 55 Pa.B. 3329.

13. On May 12, 2025, the Commission issued the Notice of Prehearing Conference and the ALJs issued their Prehearing Conference Order. The Prehearing Conference was held as scheduled on June 3, 2025.

14. A telephonic public input hearing was held at 6:00 p.m. on June 5, 2025. Eight people testified at the public input hearing.

15. The ALJs issued their Prehearing Order on June 9, 2025. Also on June 9, 2025, the ALJs issued an Order Granting Petition for Protective Order. A corrected Order Granting Petition for Protective Order was issued on June 13, 2025.

16. On June 13, 2025, the ALJs issued an Order Granting Joint Stipulation and Admitting Evidence.

17. On June 16, 2025, the ALJs issued their Order Granting Joint Stipulation and Admitting Pre-Served Testimony and Exhibits.

18. An Evidentiary Hearing was held on June 16, 2025. The Evidentiary Hearing scheduled for June 17, 2025 was cancelled.

III. SETTLEMENT TERMS

The Joint Petitioners agree as follows:

A. Approval of Application

19. The Joint Petitioners agree that the Commission should approve PAWC's acquisition of the wastewater system assets ("System") currently owned by EBMA 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 transactions, subject to approval of all of the following conditions and without modification.

B. Rates

20. The *pro forma* tariff submitted as **Appendix A-12**, including all rates, rules and regulations regarding conditions of PAWC's wastewater service, shall be permitted to become effective immediately upon closing of the transaction ("Closing").

21. 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 a future PAWC proceeding.

22. In the first base rate case that includes System assets:

- a. PAWC will propose to move the System closer to its Rate Zone 2 system-average wastewater rates consistent with principles of gradualism to avoid rate shock.

- b. To avoid rate shock, PAWC will not propose to increase rates for the EBMA zone more than 30% of EBMA's rates in effect at Closing in PAWC's first base rate case in which the System is included. PAWC also will not propose to increase rates for the EBMA zone more than 60% of EBMA's rates in effect at Closing in PAWC's second base rate case in which the System is included.
- c. PAWC may agree to rates other than those proposed for System customers in the context of a settlement of the base rate case.
- d. OCA, I&E and OSBA reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals. The Parties expressly recognize the Commission's ultimate ratemaking authority to set just and reasonable rates and, notwithstanding anything to the contrary contained in this Paragraph 22, may enter into a settlement of the base rate case, whether full or partial and whether unanimous or non-unanimous, on reasonable terms and conditions.

23. In the first base rate case that includes the acquired assets, PAWC will propose to limit any Section 1311(c), 66 Pa. C.S. § 1311(c), shift of a revenue requirement deficiency related to EBMA's operations to no more than is needed to achieve the proposed rates as provided for in paragraph 22.b.

C. Fair Market Value for Ratemaking Rate Base Purposes

24. Joint Petitioners agree that, pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$27,138,703 as the ratemaking rate base for the acquired System.

25. The Joint Petitioners agree that PAWC may record the acquisition at the net value of the assets (*i.e.*, the Commission-approved ratemaking rate base of the acquired assets), consistent with generally accepted accounting principles.

26. Any goodwill resulting from this transaction that is included on the balance sheet of PAWC shall be excluded from its rate base. Therefore, financing costs for the goodwill will not be recovered in rates.

27. The difference between the purchase price and the allowed rate base will not be recovered in rate base nor via amortization from PAWC's existing customers or from EBMA's current customers.

D. Distribution System Improvement Charge

28. PAWC will not include System-related investments in its distribution system improvement charge ("DSIC") until PAWC collects a DSIC from System customers. PAWC shall be permitted to collect a DSIC from System customers upon (i) PAWC's filing of an amended wastewater Long-Term Infrastructure Improvement Plan ("Amended LTIIIP") including the System which does not re-prioritize other existing commitments in other service areas, (ii) the Commission's approval of the Amended LTIIIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement which incorporates the System into PAWC's DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after Commission approval of the Amended LTIIIP. PAWC will file an Amended LTIIIP at the Commission within 270 days of Closing.

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

29. The Joint Petitioners acknowledge that the Application includes a request that (i) PAWC be permitted to accrue Allowance for Funds Used During Construction ("AFUDC") for

post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, and (ii) PAWC be permitted to defer depreciation related to post acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case that includes System assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when these issues are ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's requests.

F. Closing

30. If PAWC and EBMA decide to close on the Transaction in accordance with their respective contractual rights and obligations under the APA, the Closing will not take place sooner than the date of the existence of a final, unappealable order of the Commission approving the Application.

G. Transaction and Closing Costs

31. The Joint Petitioners acknowledge that the Application includes a request that PAWC be permitted to claim transaction and closing costs associated with the acquisition of the System. The Joint Petitioners agree that they will not contest these requests in this proceeding, but they reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of PAWC's request. In a future rate case when these costs are claimed, PAWC agrees that it will clearly set out and identify all transaction and closing costs associated with this matter.

32. The inclusion of outside legal fees, if any, in PAWC’s transaction and closing costs under the APA shall be separately identified in PAWC’s next base rate case, and OCA, I&E, and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such costs.

33. Any claim by PAWC to recover transaction and closing costs associated with the transaction will not include costs incurred by EBMA.

H. Approval of Section 507 Agreements

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

- a. The APA dated January 24, 2023, by and between the Elizabeth Borough Municipal Authority and Pennsylvania-American Water Company (submitted as **Appendix A-24-a.1**);
- b. First Amendment to Asset Purchase Agreement, dated July 5, 2023, by and between the Elizabeth Borough Municipal Authority and Pennsylvania- American Water Company (the “First Amendment”) (submitted as **Appendix A-24-a.2**);
- c. Service Agreement dated January 25, 2000, by and between the Borough of Elizabeth and the Sanitary Authority of Elizabeth Township (submitted as **Appendix A-25.1**);
- d. Fallen Timber Run Watershed Area Interceptor Sewer Project Agreement between the Borough of Elizabeth, Elizabeth Borough Municipal Authority, the Township of Forward, the Township of Elizabeth, and the Sanitary Authority of Elizabeth Township (submitted as **Appendix A-25.2**);

- e. Agreement dated December 15, 1987, by and between the Borough of Elizabeth, Elizabeth Borough Municipal Authority and the Borough of Lincoln (submitted as **Appendix A-25.3**);
- f. Agreement dated November 26, 1957, by and between Borough of Elizabeth, Elizabeth Borough Municipal Authority, the Township of Elizabeth and Sanitary Authority of Elizabeth Township (submitted as **Appendix A- 25.4**);
- g. Agreement dated January 23, 1958, by and between Borough of Elizabeth, Elizabeth Borough Municipal Authority and the Township of Forward (submitted as **Appendix A-25.5**); and,
- h. *Pro Forma* Lease Agreement by and between the Elizabeth Borough Municipal Authority and Pennsylvania-American Water Company (submitted as **Appendix A-25.6**).

I. Cost of Service Studies

35. In the first base rate case that includes the System’s assets, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of the System.

36. In the first base rate case that includes the System’s assets, PAWC will also provide a separate cost of service study for the System.

J. Customer Assistance Programs

37. PAWC agrees to contribute a total of \$100,000 to its Hardship Fund either (1) in installments over the five-year period after Closing, or (2) as a one-time contribution within 60

days after Closing. This funding commitment is in addition to PAWC's funding commitments to the Hardship Fund in its last base rate proceeding at Docket No. R-2023-3043189, *et al.*

38. Immediately after Closing, EBMA's customers will become eligible for all PAWC payment options and customer programs.

39. Within the first billing cycle following Closing, PAWC shall include a bill insert to System customers regarding its low income programs and shall include such information in a welcome letter to System customers. The bill insert and welcome letter 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. PAWC also agrees to ongoing, targeted outreach to its EBMA-area wastewater customers regarding its low income programs.

40. The welcome letter will be sent within the first 30 days of Closing and will also include information about payment options (including low-income programs, eligibility requirements, PAWC contact information) and in-person bill payment locations reasonably proximate to the areas served by the System. The welcome letter shall also include notice language referring customers to PAWC's website (including the link) where a customer can find the rate impact range. Unless PAWC and the OCA agree to work together on a different timeline, within 15 days of a final order in this proceeding, PAWC will provide the OCA with a copy of the draft welcome letter; OCA will provide any suggestions to PAWC within 10 days of receipt; and PAWC, in good faith, will consider incorporation of OCA's suggestions.

41. Every six months for a period of two years following Closing, PAWC will track the number of EBMA's customers that are (1) potentially eligible to enroll in PAWC's customer assistance program ("CAP"); and (2) who are enrolled in PAWC's CAP. PAWC will provide and present this information on a timely basis to the regularly held meetings of PAWC's Customer

Assistance Advisory Group. PAWC will also present this information, as available at the time, in its first base rate case in which the EBMA System is included. The information will be in a format showing the potential eligibility and enrollment data broken down by six-month increments starting from the time of Closing through and until the time of filing the rate case. Potential eligibility will be based on U.S. Census data.

42. Pursuant to the APA, EBMA is to use commercially reasonable efforts to obtain all easements prior to Closing, so that they may be transferred to PAWC at Closing. The APA also requires EBMA to commence condemnation proceedings to obtain all missing easements that it can, prior to Closing. Finally, the APA created a Missing Easement Escrow (funded in the amount of \$2,000 per missing easement) to secure EBMA's obligations concerning easements that were not obtained as of Closing. EBMA is required to diligently pursue the missing easements for two years after Closing. After two years, the portion of the Missing Easement Escrow Fund that compensates EBMA for the missing easements obtained after Closing is to be released to EBMA, with the balance being released to PAWC to compensate it for the missing easements not obtained after Closing.

K. Pennsylvania Infrastructure Investment Authority

43. PAWC will investigate the feasibility of applying for a Pennsylvania Infrastructure Investment Authority ("PENNVEST") grant or loan for all eligible system improvements relating to the Long Term Control Plan and any other upgrade identified in the Company's tentative plan for upgrades to the EBMA System and will agree to share information relating to such investigation with the OCA in PAWC's first base rate case in which the System is included upon request.

L. Other Necessary Approvals

44. 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.

M. Standard Settlement Conditions

45. 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.

46. The 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.

47. 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.

48. The Joint Petitioners have jointly prepared and submitted Proposed Findings of Fact (attached as **Appendix A**), Proposed Conclusions of Law (attached as **Appendix B**), and Proposed Ordering Paragraphs (attached as **Appendix C**). The Joint Petitioners further agree that the facts agreed-to in the Proposed Findings of Fact are sufficient to find that the Settlement is in the public interest.

49. Each Petitioner has prepared a Statement in Support of Settlement setting forth the bases upon which the Petitioner believes the Settlement to be in the public interest (attached as **Appendices D-G**).

50. If the ALJs recommend approval of the Settlement without modification, the Joint Petitioners will waive their rights to file Exceptions.

IV. REQUEST FOR RELIEF

WHEREFORE, Pennsylvania-American Water Company, the Elizabeth Borough Municipal Authority, the Office of Consumer Advocate, and the Bureau of Investigation and Enforcement, by their respective counsel, respectfully request that:

(a) The Honorable Administrative Law Judges Erin L. Gannon and Steven K. Haas recommend approval of, and the Commission approve, this Joint Petition for Non-Unanimous Settlement of All Issues as submitted, including all terms and conditions thereof, without modification.

(b) The Commission approve the Application filed by PAWC in this matter on January 28, 2025, as amended, and as further amended by the Settlement.

(c) The Commission issue Certificates of Public Convenience under 66 Pa. C.S. § 1102(a) and 1103(a) evidencing Commission approval of (i) the transfer, by sale, of substantially all of the assets, properties and rights related to the System owned by EBMA to PAWC, and (ii) the right of PAWC to begin to offer, render, furnish and supply wastewater service in the areas served by the System owned by EBMA.

(d) The Commission permit PAWC to issue compliance tariff supplements, consistent with **Appendix A-12**, including all rates, rules and regulations regarding conditions of PAWC's wastewater service, to become effective immediately upon Closing.

[Signatures appear on next page.]

Respectfully submitted,

Michael Podskoch

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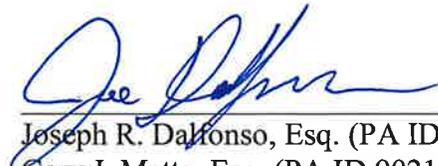
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Counsel for *Elizabeth Township Municipal Authority*

LIST OF APPENDICES

- A. Proposed Findings of Fact
- B. Proposed Conclusions of Law
- C. Proposed Ordering Paragraphs
- D. Statement in Support of Pennsylvania-American Water Company
- E. Statement in Support of the Elizabeth Borough Municipal Authority
- F. Statement in Support of the Bureau of Investigation and Enforcement
- G. Statement in Support of the Office of Consumer Advocate

Appendix A
Proposed Findings of Fact

The Parties

1. Pennsylvania-American Water Company (“PAWC”), a subsidiary of American Water Works Company, Inc. (“American Water”), is the largest investor-owned water and wastewater utility in the Commonwealth of Pennsylvania. PAWC St. No. 1 pp. 16, 25-26. As of December 31, 2024, PAWC furnished wastewater service to approximately 114,915 direct and bulk customers in Pennsylvania. As of December 31, 2024, PAWC furnished water service to approximately 687,608 customers in Pennsylvania. PAWC St. No. 1 p. 18.
2. Elizabeth Borough Municipal Authority (“EBMA”) is a municipal authority created pursuant to the Municipality Authorities Act of 1945. It was incorporated on December 29, 1949 by Elizabeth Borough. EBMA St. No. 1 p. 3.
3. The Bureau of Investigation and Enforcement (“I&E”) serves as the prosecutory bureau for the Pennsylvania Public Utility Commission (“Commission”) for purposes of representing the public interest in rate and other proceedings. I&E St. No. 1 p. 1; *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered Aug. 11, 2011).
4. The Office of Small Business Advocate (“OSBA”) is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

5. The Office of Consumer Advocate (“OCA”) is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.
6. Forward Township (“Forward”) is a township in Allegheny County, Pennsylvania. Forward is a customer of EBMA. EBMA St. No. 1 p. 2.

Elizabeth Borough, EBMA and the Wastewater System

7. Elizabeth Borough (the “Borough”) is located in Allegheny County on the east bank of the Monongahela River, about 15 miles upstream of Pittsburgh. EBMA St. No. 1 p. 4.
8. EBMA owns and operates the System, which is comprised of a combined sewer collection and conveyance network serving Elizabeth Borough and a wastewater treatment plant serving the Borough, Elizabeth Township, Forward Township and Lincoln Borough. PAWC St. No. 2 p. 3; EBMA St. No. 1 p. 2.
9. Elizabeth Township, Forward Township and Lincoln Borough receive treatment services from EBMA pursuant to bulk service agreements between EBMA and each municipality. PAWC St. No. 2 p. 3; EBMA St. No. 1 p. 2.
10. As of December 31, 2024, the System furnished wastewater services to approximately 672 direct customers and about 1,504 indirect customers. PAWC St. No. 1 p. 18; I&E St. No. 2 p. 5.
11. EBMA is operated by one administrative employee, two facility workers and a part-time operator. EBMA St. No. 1 p. 3.
12. The System’s treatment works are currently in hydraulic and organic overload, resulting in numerous combined sewer overflow events that occur annually at the System’s five combined sewer outfall/regulator structures. For the five years ending 2023, EBMA

- reported an average of 242 sewer overflow events per year where untreated sewage was discharged into the Monongahela River. PAWC St. No. 2 p. 9.
13. A Long-Term Control Plan (“LTCP”) was developed in 2004. DEP found the plan inadequate and did not approve it. In 2012, DEP required EBMA to address technical issues and re-submit the plan. PAWC St. No. 2 p. 19.
 14. In 2014, DEP and the Allegheny County Department of Health required EBMA to submit a System Characterization, Monitoring and Modeling Report for the LTCP. This report was submitted in November 2014. This plan was conditionally approved in January 2015. PAWC St. No. 2 p. 19.
 15. In July 2017, EBMA submitted a revised LTCP. Revisions were made in March 2018. DEP approved the LTCP in July, 2018. PAWC St. No. 2 p. 19.
 16. In December 2020, EBMA’s engineer asked DEP to reset the compliance deadlines in the LTCP, but DEP has not responded in writing. EBMA failed to comply with the proposed reset schedule. PAWC St. No. 2 p. 19.
 17. The LTCP requires extensive expansion and improvements to the collection system and treatment plant to provide long-term capacity for customers. PAWC St. No. 2 pp. 9, 15.
 18. EBMA completed the first project in the LTCP in 2021. EBMA has fallen six years behind schedule in meeting the original LTCP implementation dates. As a result, the remaining improvement projects will be significantly more expensive than originally estimated (\$24.6 million to complete the remaining projects). PAWC St. No. 1 p. 10.
 19. In each of the last three annual inspections conducted by the Allegheny County Health Department, EBMA has been cited for exceeding permitted effluent limits for fecal

coliform bacteria and for missing/damaged air diffusers in the aeration basins. PAWC St. No. 2 p.20.

20. In 2023, the ACHD found there is no certified Operator in Responsible Charge for the facility as required by DEP regulations. PAWC St. No. 2 p.20.

The Sale Process

21. EBMA decided to sell the System to avoid significant future costs, eliminate existing debt and make infrastructure improvements. PAWC St. No. 1 p. 9; EBMA St. No. 1 p. 7.
22. EBMA used a bid process to sell the System. EBMA St. No. 1 pp. 7-8.
23. PAWC submitted a bid on July 12, 2022, which was the highest bid on the System. PAWC St. No. 1 pp. 11-12.
24. EBMA and PAWC negotiated the APA, which was signed in January 2023. PAWC St. No. 1 pp. 11-12.
25. EBMA held three public meetings to address, evaluate and approve the Transaction. These meetings provided an opportunity for public comment, but no member of the public commented. PAWC St. No. 1 p. 12; EBMA St. No. 1 p. 8.

The Transaction

26. PAWC will purchase substantially all assets, properties and rights that EBMA owns and uses in connection with the System. PAWC St. No. 1 p. 12.
27. The purchase price of the System was \$28,000,000. PAWC St. No. 1 p. 14.
28. Closing will occur after the receipt of all necessary approvals, including Commission approval. PAWC St. No. 1 p. 13.

29. Upon Closing, PAWC will begin rendering wastewater services to EBMA's current customers and EBMA will permanently discontinue providing wastewater service to the public. PAWC St. No. 1 p. 13.
30. EBMA plans to dissolve on or shortly after Closing. PAWC St. No. 1 p. 14; EBMA St. No. 1 p. 3.
31. Items that will not be acquired by PAWC include the Retained Wastewater Treatment Plant Assets (the non-moving structural portion of the DUPERON® FLEXRAKE® FPFS Full Penetration Fine Screen unit consisting of the base, vertical supports, and back/side plates). This asset will be leased to PAWC. PAWC St. No. 1 p. 13.
32. PAWC and EBMA will jointly request that DEP and the EPA confirm that the APA's arrangement will allow the wastewater treatment plant to continue to be classified as a Publicly Owned Treatment Works for purposes of the "domestic sewage exclusion" in 40 CFR § 261.4(a)(1) and the Resource Conservation and Recovery Act of 1976. PAWC St. No. 2 pp. 4-5.
33. EBMA will place \$1,120,000 in escrow to cover any claims or damages of any PAWC Indemnified Party for a period of up to two years after Closing. PAWC St. No. 1 p. 14.
34. EBMA will fund an easement escrow fund in the amount of \$2,000 for each missing easement. PAWC St. No. 1 p. 15.
35. As part of the Transaction, PAWC will negotiate a Consent Order and Agreement ("COA") with DEP to establish a new compliance schedule for the LTCP. PAWC will then assume responsibility for implementing the LTCP. PAWC St. No. 2 p. 21.

The Application

36. PAWC and EBMA elected to use the valuation methodology in Section 1329 of the Pennsylvania Public Utility Code. This methodology provides that the ratemaking rate base for the System be based on the lesser of: (1) the average of two UVE appraisals, or (2) the purchase price. In this case, the purchase price is lesser than the average of the two UVE appraisals. PAWC St. No. 3 p. 6; PAWC St. No. 1 pp. 6-7.
37. PAWC and EBMA hired LSSE Civil Engineers and Surveyors to complete the “Engineering Assessment Study of the Physical Assets of the Elizabeth Borough Municipal Authority.” PAWC Exhibit MK-1 (Appendix A-15-a).
38. PAWC retained Weinert Appraisal and Depreciation Services, LLC (“WADS”) to perform an appraisal of the System. PAWC St. No. 4 p. 1.
39. WADS is registered with the Commission as a utility valuation expert. WADS performed its appraisal in accordance with the Uniform Standards of Professional Appraisal Practice. PAWC St. No. 4 p. 1.
40. The results of WADS’ appraisal are as shown below:

Approach	Indicated Value	Weight	Weighted Value
Cost	\$30,657,221	33.33%	\$10,219,074
Income	\$28,344,391	33.33%	\$9,448,130
Market	\$27,221,430	33.33%	\$9,073,810
Appraisal Conclusion			\$28,741,014

PAWC St. No. 4 p.3.

41. EBMA retained Gannett Fleming Valuation and Rate Consultants, LLC (“Gannett Fleming”) to perform an appraisal of the System. EBMA St. No. 2 pp. 2-3.

42. Gannett Fleming is registered with the Commission as a utility valuation expert. Gannett Fleming performed its appraisal in accordance with the Uniform Standards of Professional Appraisal Practice. EBMA St. No. 2 pp. 2-3, 10-11.

43. The results of Gannett Fleming’s appraisal are as shown below:

Approach	Indicated Value	Weight	Weighted Value
Cost	\$28,371,029	33.33%	\$9,457,010
Income	\$27,678,195	33.33%	\$9,226,065
Market	\$28,359,361	33.33%	\$9,453,120
Appraisal Conclusion			\$28,136,195

EBMA St. No. 2 p. 12.

44. In its Application and Direct Testimony, PAWC indicated that it would not object to a ratemaking rate base for the System of \$27,971,178, based on the depreciated original cost of the System times the Reasonableness Review Ratio (“RRR”) of 1.68, pursuant to the Commission’s Final Supplemental Implementation Order entered July 2, 2024 at Docket No. M-2016-2543193 and the *Report on the Reasonableness Review Ratio For the Year Ended 12.31.23* dated August 2, 2024 at Docket No. M-2024-3050303. PAWC Exhibit MK-1 (Application ¶ 49); PAWC St. No. 3 p. 6; PAWC St. No. 1 pp. 6-7.

45. I&E witness Zachari Walker recommended a reduction of \$832,475 in the ratemaking rate base of \$27,138,703 using the most recent reasonableness review ratio published on December 31, 2024 of 1.63. I&E St. 1 at 6; I&E St. 1-SR at 2. The result represents a ratemaking rate base of \$27,138,703 (\$16,649,511 x 1.63), or a reduction of \$832,475 (\$27,917,178 - \$27,138,703) to PAWC’s calculated ratemaking rate base. *Id.*

46. OCA witness David Garrett recommended a reduction of the ratemaking rate case to \$22,100,000. OCA St. 1 at 35.

PAWC's Fitness

47. PAWC is a Commission-regulated public utility with a history of complying with the Pennsylvania Public Utility Code (“Code”) and other applicable laws, including environmental laws. PAWC has had no material issues in complying with the Pennsylvania Public Utility Code, the Clean Streams Law, or other regulatory requirements. PAWC St. No. 2 p. 26.
48. There are no pending legal proceedings that suggest PAWC is not legally fit to provide service to System customers. PAWC St. No. 1 p. 25.
49. PAWC had total assets of about \$7.3 billion as of December 31, 2023. PAWC had operating income of approximately \$465 million and net income of approximately \$300 million for the 12 months ending December 31, 2023. PAWC St. No. 3 p. 3; PAWC St. No. 1 p. 25.
50. PAWC has a \$495 million line of credit through American Water Capital Corp. (“AWCC”). PAWC St. No. 3 p.4.
51. PAWC obtains long-term debt financing through AWCC at favorable interest rates and payment terms. It also uses low-cost financing through the Pennsylvania Infrastructure Investment Authority (“PENNVEST”) when applicable. PAWC St. No. 3 pp. 4-5.
52. PAWC carries a corporate credit rating of “A3” from Moody’s Investors Services and an “A” rating from Standard and Poor’s Rating Services. PAWC St. No. 3 p. 4.
53. PAWC may obtain additional equity investment through American Water. PAWC St. No. 3 p. 5.
54. PAWC does not anticipate that the acquisition of the System or investment commitments in the System will have a negative impact on PAWC’s cash flows, credit ratings or access

to capital and therefore will not deteriorate in any manner PAWC's ability to continue to provide safe, adequate, and reasonable service to its existing customers at just and reasonable rates. PAWC St. No. 3 p. 5.

55. PAWC currently employs about 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 St. No. 1 pp. 16-17; PAWC St. No. 2 p.24.
56. PAWC has extensive experience in the operation of wastewater collection and treatment systems, including specific experience with the types of treatment technologies employed in the System. PAWC St. No. 1 pp. 18-19.
57. PAWC has successfully addressed DEP and EPA compliance orders requiring operational improvements and substantial capital investments in several recent wastewater acquisitions. PAWC St. No. 2 p.25.

Rate Impact

58. OCA witness DeMarco recommended that PAWC should consider rate gradualism for EBMA customers in order to avoid "rate shock" when increasing the rates of acquired customers during their next base rate case. OCA St. 1 at 30.

Post-Closing Operation of the System

59. After Closing, the System will be operated as a stand-alone system. It will be an operating district in PAWC's Southwest Area operations. PAWC St. No. 2 p. 12.

60. Employees in PAWC's water and wastewater departments serving the same territory will support each other when appropriate and necessary. They will also be supported by all operations and employees in PAWC and in the broader American Water system. PAWC St. No. 2 p. 12.
61. PAWC has a five-year capital plan that calls for investing \$25.9 million in the System. The majority of these costs are related to improvements under the LTCP. PAWC St. No. 2 p. 13 and PAWC Exhibit DJH-2.
62. I&E witness Ethan Cline recommended that an amended Long-Term Infrastructure Improvement Plan ("LTIIP") be filed within 180 days of the closing of the transaction. I&E St. 2 at 2.
63. OCA witness Nicholas DeMarco recommended that an amended LTIIP be filed within 90 days of the closing of the transaction. OCA St. 1 at 27.

Customer Notice

64. PAWC provided notice of the acquisition to existing PAWC water and wastewater customers and to EBMA customers. PAWC St. No. 3 p. 10.
65. The customer notice contained a non-binding estimate of the impact of the Transaction on EBMA customers (a potential increase of 105.0%), on PAWC's existing wastewater customers (a potential increase of 1.1%) and on PAWC's existing water customers (a potential increase of 0.2%). PAWC St. No. 3 pp. 11-13.

Affirmative Benefits of a Substantial Nature

66. A physical interconnection between water/wastewater systems is not necessary to promote regionalization and consolidation. Systems located near each other can share equipment

- and staff, and can share cost savings from the additional purchasing power of a larger enterprise. PAWC St. No. 1R p. 5.
67. EBMA's wastewater treatment plant is located about 7 miles from PAWC's McKeesport Wastewater Treatment Plant. PAWC St. No 1 pp. 22-23.
 68. EBMA has been cited for not having a responsible operator. The lack of a responsible operator demonstrates EBMA's lack of technical fitness. PAWC St. No. 2-R p. 3.
 69. The fact that the LTCP is stalled and years away from completion further demonstrates EBMA's lack of technical fitness. PAWC St. No. 2-R p. 3.
 70. EBMA lacks the financial or technical capability of completing the LTCP. OCA 1SR p. 6.
 71. PAWC will implement the LTCP. PAWC St. No. 1 p. 11.
 72. Customers of EBMA and PAWC will benefit from reducing CSOs because it will improve local water quality and the water quality of downstream drinking water intakes, including PAWC's Pittsburgh drinking water system intake. PAWC St. No. 1 p. 19.
 73. DEP recommended an Industrial Pretreatment Program for the System. PAWC intends to develop and implement an Industrial Pretreatment Program in a future base rate case if necessary. PAWC St. No. 1 p. 19.
 74. By selling the System, EBMA alleviates burdens such as the responsibility for complying with increasingly stringent environmental requirements. EBMA St. No. 1 p. 4. EBMA is also freed from the responsibility and expense of completing the LTCP. EBMA St. No. 1 p. 7.
 75. EBMA will receive \$28,000,000 in proceeds from the Transaction. EBMA St. No. 1 p. 3.

76. Upon Closing, the Authority will be dissolved, outstanding debt will be satisfied and all remaining assets will be conveyed to the Borough. EBMA St. No. 1 p. 3.
77. The Borough will use the money for public purposes. EBMA St. No. 1 p. 3. The Borough's main objective is to stabilize its finances to avoid more cuts to public services while avoiding the increase of real estate taxes. EBMA St. No. 1 p. 6.
78. The Transaction will eliminate EBMA's long term debt liability (\$12,800,000), saving thousands of dollars in public monies. PAWC St. No. 1 p. 11.
79. All EBMA employees involved in the operation of the System will be offered employment with PAWC, subject to PAWC's existing hiring policies and procedures. PAWC St. No. 1 p. 11.
80. PAWC will implement EBMA's rates in effect as of Closing. PAWC St. No. 1 p. 15; PAWC St. No. 3 p. 8. EBMA's customers will be subject to PAWC's prevailing wastewater tariff with respect to miscellaneous fees and charges and rules and regulations for wastewater service. PAWC St. No. 1 p. 15; PAWC St. No. 3 p.8.
81. If the Transaction does not close, EBMA would need to increase its monthly bill for an average residential customer utilizing 3,000 gallons to approximately \$114.23. EBMA St. No. 1 pp. 9-10. In contrast, PAWC's current average month combined sewer system bill for residential customers utilizing 3,000 gallons is \$98.36. PAWC St. No. 3 p. 12.
82. PAWC expects to propose to move EBMA's customers toward consolidated rates in future base rate cases. Subject to Commission approval, PAWC anticipates allocating a portion of its wastewater revenue requirement to the combined water and wastewater customer base, as permitted by 66 Pa. C.S. § 1311(c). PAWC St. No. 3 p. 9.

83. After Closing, EBMA's low-income customers will have access to PAWC's customer assistance programs. PAWC St. No. 1 p. 10.
84. PAWC offers two customer assistance programs for wastewater customers: (1) grants of up to \$500 per year, and (2) a tiered discount on total wastewater charges based on income levels. PAWC also offers payment arrangements and budget billing. EBMA has no low-income customer service assistance program, nor any income-based repayment options. PAWC St. No. 2 p. 38; PAWC St. No. 3 pp. 13-14.
85. EBMA customers who are PAWC water customers and are already enrolled in PAWC's Bill Discount Program for their water service will automatically be enrolled in the program for their wastewater service. PAWC St. No. 3-R pp 5-6.
86. OCA witness DeMarco recommended that "PAWC should provide a letter to the acquired customers that provides information regarding its low-income programs, including a description of the available programs, eligibility and requirements, and PAWC's contact information." OCA St. 1 at 23.
87. Mr. DeMarco recommended that the letter should be sent within 30 days after closing so that eligible customers can benefit from the programs as soon as possible and, importantly, before rates are increased. OCA St. 1 at 23.
88. OCA witness DeMarco also recommended that PAWC should include the same information regarding low-income programs in bills sent to Elizabeth Borough customers within 90 days after closing. OCA St. 1 at 23.
89. Mr. DeMarco recommended that PAWC should report the number of eligible customers from the former Elizabeth Borough service area who are enrolled in PAWC's CAP. The

report should be provided to the Commission and to the parties every six months until the conclusion of PAWC's next base rate case. OCA St. 1 at 23.

90. OCA witness DeMarco also recommended if the Commission were to approve the transaction, it should be conditioned on the requirement that PAWC make an annual contribution of \$70,000 to the hardship fund for five years following closing. OCA St. 1 at 24.
91. Mr. DeMarco recommended that these hardship fund contributions should not be included in rates and that all unspent funds at the end of the program year should be rolled over and added to the budget for the hardship grant program in the following year(s). OCA St. 1 at 24.
92. PAWC will bring economies of scale to the System that EBMA cannot achieve on its own. For example, PAWC's size enables it to obtain supplies at favorable prices and PAWC can move equipment around its system whereas EBMA must buy or lease equipment. PAWC St. No. 1 pp. 23-24.
93. PAWC provides water service to much of EBMA's service territory. PAWC St. No. 2 p. 10. If the Transaction is approved, customers will only get one bill for their water/wastewater service. PAWC St. No. 1 p. 19; EBMA St. No. 1 p. 11.
94. Synergies between the water and sewer infrastructure networks will benefit customers and the general public. For example, water and wastewater projects can be better coordinated to improve efficiency. PAWC St. No. 2 p. 26, PAWC St. No. 1 p. 23.
95. PAWC is subject to the Commission, whereas EBMA is not. PAWC is therefore statutorily required to provide safe, adequate service at just and reasonable rates. PAWC St. No. 1 p. 20.

96. The OCA and the OSBA can assist customers of PAWC. They cannot assist customers of municipal authorities. PAWC St. No. 2 p. 41.
97. The Transaction will improve the operation of the System due to the strong staffing numbers and expertise that PAWC provides. PAWC will be better suited to engaging System customers because it has a large team that is devoted to customer service, while EBMA has an administrative staff of one. When compared to the two facility employees EBMA currently employs, PAWC is better able to quickly solve multiple issues that threaten environmental compliance that can range from identifying broken sewers to treatment facilities breakdowns. EBMA St. No. 1 p. 10.
98. PAWC's customer call center is available for routine customer interactions from 7:00a.m. to 7:00 p.m. Monday-Friday and 24/7/365 for emergencies. PAWC also has field service crews available for 24/7/365. EBMA's regular business hours are 8 a.m. – 4:00 p.m. Monday through Friday. After 4:00 p.m. or on weekends, EBMA's customers are instructed to contact the police. PAWC St. No. 2 p.31.
99. PAWC has cyber and physical security plans, emergency response plans and a business continuity plan. EBMA does not have similar plans in place. PAWC St. No. 2 p. 30.
100. PAWC is a member in good standing of the Pennsylvania Water/Wastewater Agency Response Network ("PaWARN"), whereas EBMA is not a member of PaWARN.
101. With regard to compliance with the requirements of the "One Call" system, PAWC achieved a 100 percent ticket completion rate in 2024. EBMA has a 61 percent completion rate in 2022. This relatively low completion rate is not just a compliance issue, it is a public safety issue because it could lead to more strikes on public utility assets. PAWC St. No. 2.

102. The Transaction will have no immediate rate impact on PAWC's existing customers. Any impacts on the rates of PAWC's existing water and wastewater customers would occur only after a Commission decision in a base rate proceeding. PAWC St. No. 3 p. 9.
103. In the long term, the Transaction will benefit PAWC's existing wastewater customers by expanding PAWC's customer base, allowing the costs of operating PAWC's system to be spread among a greater number of customers. PAWC St. No. 1 p. 21.

Section 507 Agreements

104. PAWC seeks Commission approval of the APA, the First Amendment to the Amended APA, and six other contracts with municipalities (including a *pro forma* lease for the Retained Asset). Commission approval of these contracts is necessary for PAWC, after Closing, to provide wastewater service to the public as EBMA has done. PAWC St. No. 1 p. 28.

Appendix B

Proposed Conclusions of Law

1. The Commission has jurisdiction over the subject matter of, and the parties to, these application proceedings. 66 Pa. C.S. §§ 1102, 1103 and 1329.
2. Pennsylvania-American Water Company (PAWC”) has the burden of proof in these proceedings. 66 Pa. C.S § 332(a).
3. Commission policy promotes settlements. 52 Pa. Code § 5.231.
4. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. 52 Pa. Code § 69.401.
5. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *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 & Sewer Assocs.*, 74 Pa. PUC 767 (1991). The instant settlement is in the public interest.
6. 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) (“Procedure to obtain certificates of public convenience”).
7. A certificate of public convenience is required for “any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized” 66 Pa. C.S. § 1102(a)(1).

8. A certificate of public convenience is required for “any public utility . . . to acquire from . . . any person or corporation, including a municipal corporation, by any method or device whatsoever . . . the title to, or possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(3).

9. An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958). PAWC has demonstrated that it is technically, financially and legally fit.

10. The fitness of a currently certificated public utility is presumed. *See e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

11. An applicant for a certificate of public convenience must demonstrate that the transaction 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*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

12. The affirmative public benefit test is a “net benefits assessment.” This requires a showing that, on net, the public is better off because of the transaction than it would have been in the absence of the transaction. *Cicero v. Pa. Pub. Util. Comm’n*, 300 A3d 1106 (Pa. Cmwlth. 2023), *pet. for alloc. granted* 47-49 MAP 2024. Where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction. *Id.*

13. The Commission must consider environmental impacts when adjudicating cases. *Township of Marple v. Pa. Pub. Util Comm'n*, 319 C.D. 2022 (Pa. Cmwlth. 2023) (citing the Environmental Rights Amendment, PA. CONST. art. I, § 27).

14. In granting a certificate of public convenience, the Commission may impose such conditions as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).

15. For an acquisition in which a municipal corporation and the acquiring public utility agree to use the valuation procedure delineated in 66 Pa. C.S. § 1329, the ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the parties or the fair market value of the selling utility. 66 Pa. C.S. § 1329(c)(2).

16. “Fair market value” is defined as “the average of the two utility valuation expert appraisals conducted under subsection (a)(2).” 66 Pa. C.S. § 1329(g).

17. For an acquisition in which a municipal corporation and the acquiring public utility agree to use the valuation procedure delineated in 66 Pa. C.S. § 1329, the application is to contain a tariff equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition. 66 Pa. C.S. § 1329(d)(1)(v).

18. During the period that the *pro forma* tariff supplement is in effect, an acquiring public utility may collect a DSIC, as approved by the Commission. 66 Pa. C.S. § 1329(d)(4).

19. A wastewater utility must submit a long-term infrastructure improvement plan to, and receive approval from, the Commission prior to collecting a DSIC. Implementation of Act 11 of 2012, Docket No. M-2012-2293611 (*Final Implementation Order* entered August 2, 2012).

20. Section 1329 permits an acquiring public utility’s post-acquisition improvements, which are not included in a DSIC, to accrue allowance for funds used during construction after the date the cost was incurred until the asset has been in service for a period of

four years or until the asset is included in the acquiring public utility's next base rate case, whichever is earlier. 66 Pa. C.S. § 1329(f)(1).

21. Section 1329 permits an acquiring public utility to defer depreciation on post-acquisition improvements, which are not included in a DSIC. 66 Pa. C.S. § 1329(f)(2).

22. Section 1329 permits an acquiring public utility to include transaction and closing costs in its rate base, during its next base rate proceeding. 66 Pa. C.S. § 1329(d)(2). The Commission will not approve these costs during the 1329 proceeding. *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016).

23. A contract between a municipality and a public utility (other than a contract to furnish service at regular tariff rates) must be filed with the Commission at least 30 days before the effective date of the contract. The Commission may approve it by issuing a certificate of filing or institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. 66 Pa. C.S. § 507.

24. The settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification.

Appendix C

Proposed Ordering Paragraphs

(a) That the Honorable Administrative Law Judges Erin L. Gannon and Steven K. Haas recommend approval of, and the Commission approve, this Joint Petition for Unanimous/Nonunanimous Settlement of All Issues as submitted, including all terms and conditions thereof (described below), without modification.

(b) That the Commission approve the Application filed by PAWC in this matter on January 28, 2025, as amended, and as further amended by the Settlement.

(c) That the Commission issue Certificates of Public Convenience under 66 Pa. C.S. § 1102(a) and 1103(a) evidencing Commission approval of (i) the transfer, by sale, of substantially all of the assets, properties and rights related to the System owned by EBMA to PAWC, and (ii) the right of PAWC to begin to offer, render, furnish and supply wastewater service in the areas served by the System owned by EBMA.

(d) That the Commission permit PAWC to issue compliance tariff supplements, consistent with **Appendix A-12**, including all rates, rules and regulations regarding conditions of PAWC's wastewater service, to become effective immediately upon Closing.

(e) That, in the first base rate case that includes System assets::

1. PAWC will propose to move the System closer to PAWC's Rate Zone 2 system-average wastewater rates consistent with principles of gradualism to avoid rate shock.

2. PAWC will not propose to increase rates for the EBMA zone more than 30% of EBMA's rates in effect at Closing in PAWC's first base rate case in which the System is included. PAWC also will not propose to increase rates for the EBMA zone more than 60% of

EBMA's rates in effect at Closing in PAWC's second base rate case in which the System is included.

3. PAWC may agree to rates other than those proposed for System customers in the context of a settlement of the base rate case.

4. The OCA, I&E and OSBA reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals. The Commission has ultimate ratemaking authority to set just and reasonable rates and, notwithstanding anything to the contrary contained in this Paragraph (e), the Parties may enter into a settlement of the base rate case, whether full or partial and whether unanimous or non-unanimous, on reasonable terms and conditions.

5. PAWC will propose to limit any Section 1311(c), 66 Pa. C.S. § 1311(c), shift of a revenue requirement deficiency related to EBMA's operations to no more than is needed to achieve the proposed rates as provided for in Paragraph (e)(2).

(f) That PAWC will use \$27,138,703 as the ratemaking rate base for the acquired System.

(g) That PAWC may record the acquisition at the net value of the assets (*i.e.*, the Commission-approved ratemaking rate base of the acquired assets), consistent with generally accepted accounting principles.

(h) That any goodwill resulting from this transaction that is included on the balance sheet of PAWC shall be excluded from its rate base. Therefore, financing costs for the goodwill will not be recovered in rates.

(i) That the difference between the purchase price and the allowed rate base will not be recovered in rate base nor via amortization from PAWC's existing customers or from EBMA's current customers.

(j) That PAWC will not include System-related investments in its DSIC until PAWC collects a DSIC from System customers. PAWC may collect a DSIC from System customers upon (i) PAWC's filing of an amended wastewater Long-Term Infrastructure Improvement Plan ("Amended LTIIP") including the System which does not re-prioritize other existing commitments in other service areas, (ii) the Commission's approval of the Amended LTIIP, as may be modified in the discretion of the Commission, and (iii) PAWC's filing of a compliance tariff supplement which incorporates the System into PAWC's DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after Commission approval of the Amended LTIIP. PAWC will file an Amended LTIIP at the Commission within 270 days of Closing.

(k) That the Application includes a request that (i) PAWC be permitted to accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, and (ii) PAWC be permitted to defer depreciation related to post acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC's first base rate case that includes System assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when these issues are ripe for review.

(l) That, if PAWC and EBMA decide to close on the Transaction in accordance with their respective contractual rights and obligations under the APA, the closing will not take place sooner than the date of the existence of a final, unappealable order of the Commission approving the Application.

(m) That the Application includes a request that PAWC be permitted to claim transaction and closing costs associated with the acquisition of the System. The Joint Petitioners do not contest these requests in this proceeding, but they reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. In a future rate case when these costs are claimed, PAWC will clearly set out and identify all transaction and closing costs associated with this matter.

(n) That outside legal fees, if any, included in PAWC's transaction and closing costs under the APA shall be separately identified in PAWC's next base rate case, and OCA, I&E, and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such costs.

(o) That any claim by PAWC to recover transaction and closing costs associated with the transaction will not include costs incurred by EBMA.

(p) That the Commission issue Certificates of Filing or approval pursuant to 66 Pa. C.S. § 507 for:

1. The APA dated January 24, 2023, by and between the Elizabeth Borough Municipal Authority and Pennsylvania-American Water Company;
2. First Amendment to Asset Purchase Agreement, dated July 5, 2023, by and between the Elizabeth Borough Municipal Authority and Pennsylvania- American Water Company (the "First Amendment");
3. Service Agreement dated January 25, 2000, by and between the Borough of Elizabeth and the Sanitary Authority of Elizabeth Township;
4. Fallen Timber Run Watershed Area Interceptor Sewer Project Agreement between the Borough of Elizabeth, Elizabeth Borough Municipal

Authority, the Township of Forward, the Township of Elizabeth, and the Sanitary Authority of Elizabeth Township;

5. Agreement dated December 15, 1987, by and between the Borough of Elizabeth, Elizabeth Borough Municipal Authority and the Borough of Lincoln;
6. Agreement dated November 26, 1957, by and between Borough of Elizabeth, Elizabeth Borough Municipal Authority, the Township of Elizabeth and Sanitary Authority of Elizabeth Township;
7. Agreement dated January 23, 1958, by and between Borough of Elizabeth, Elizabeth Borough Municipal Authority and the Township of Forward; and
8. *Pro Forma* Lease Agreement by and between the Elizabeth Borough Municipal Authority and Pennsylvania-American Water Company.

(q) That, in the first base rate case that includes the System's assets, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of the System.

(r) That, in the first base rate case that includes the System's assets, PAWC will also provide a separate cost of service study for the System.

(s) That PAWC, pursuant to its voluntary settlement commitment, contribute a total of \$100,000 to its Hardship Fund either (1) in installments over the five-year period after Closing, or (2) as a one-time contribution within 60 days after Closing. This contribution is in addition to PAWC's funding commitments to the Hardship Fund in its last base rate proceeding at Docket No. R-2023-3043189, *et al.*

(t) That, immediately after closing, EBMA's customers will become eligible for all PAWC payment options and customer programs.

(u) That, within the first billing cycle following Closing, PAWC shall include a bill insert to System customers regarding its low income programs and shall include such information in a welcome letter to System customers. The bill insert and welcome letter 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. PAWC will also conduct ongoing, targeted outreach to its EBMA-area wastewater customers regarding its low income programs.

(v) That the welcome letter will be sent within the first 30 days of Closing and will also include information about payment options (including low-income programs, eligibility requirements, PAWC contact information) and in-person bill payment locations reasonably proximate to the areas served by the System. The welcome letter shall also include notice language referring customers to PAWC's website (including the link) where a customer can find the rate impact range. Unless PAWC and the OCA agree to work together on a different timeline, within 15 days of a final order in this proceeding, PAWC will provide the OCA with a copy of the draft welcome letter; OCA will provide any suggestions to PAWC within 10 days of receipt; and PAWC, in good faith, will consider incorporation of OCA's suggestions.

(w) That, every six months for a period of two years following Closing, PAWC will track the number of EBMA's customers that are (1) potentially eligible to enroll in PAWC's CAP; and (2) who are enrolled in PAWC's CAP. PAWC will provide and present this information on a timely basis to the regularly held meetings of PAWC's Customer Assistance Advisory Group. PAWC will also present this information, as available at the time, in its first base rate case in which the EBMA System is included. The information will be in a format showing the potential

eligibility and enrollment data broken down by six-month increments starting from the time of Closing through and until the time of filing the rate case. Potential eligibility will be based on U.S. Census data.

(x) That, pursuant to the APA, EBMA is to use commercially reasonable efforts to obtain all easements prior to Closing, so that they may be transferred to PAWC at Closing. The APA also requires EBMA to commence condemnation proceedings to obtain all missing easements that it can, prior to Closing. Finally, the APA created a Missing Easement Escrow (funded in the amount of \$2,000 per missing easement) to secure EBMA's obligations concerning easements that were not obtained as of Closing. EBMA is required to diligently pursue the missing easements for two years after Closing. After two years, the portion of the Missing Easement Escrow Fund that compensates EBMA for the missing easements obtained after Closing is to be released to EBMA, with the balance being released to PAWC to compensate it for the missing easements not obtained after Closing.

(y) That PAWC will investigate the feasibility of applying for a PENNVEST grant or loan for all eligible system improvements relating to the Long Term Control Plan and any other upgrade identified in the Company's tentative plan for upgrades to the EBMA System and will agree to share information relating to such investigation with the OCA in PAWC's first base rate case in which the System is included upon request.

(z) 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 a lawful manner.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ADMINISTRATIVE LAW JUDGES
ERIN L. GANNON AND STEVEN K. HAAS**

Pennsylvania-American Water Company – :
Wastewater Division Section 1329 Application : Docket Nos. A-2025-3052983, *et al*
for the Acquisition of the Elizabeth Borough :
Municipal Authority Wastewater System :

**STATEMENT IN SUPPORT OF
PENNSYLVANIA-AMERICAN WATER COMPANY**

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Dated: June 27, 2025

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Pennsylvania-American Water Company (“PAWC” or the “Company”) files this Statement in Support of the Joint Petition for Approval of Non-Unanimous Settlement of All Issues (“Settlement”) entered into by: PAWC; the Elizabeth Borough Municipal Authority (“EBMA”); the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”); and the Office of Consumer Advocate (“OCA”) (singularly, a “Petitioner” and collectively, the “Joint Petitioners”).¹ PAWC respectfully requests that the Honorable Administrative Law Judges Erin L. Gannon and Steven K. Haas (the “ALJs”) recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

I. INTRODUCTION

The Settlement pertains to the application (the “Application”) filed by PAWC pursuant to Sections 507, 1102(a), 1103 and 1329 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. §§ 507, 1102(a), 1103 and 1329, requesting (among other things) that the Commission issue Certificates of Public Convenience for PAWC’s acquisition of the wastewater collection and treatment system (the “System”) owned and operated by EBMA (the “Transaction”), and to set the fair market value of the acquisition for rate-base ratemaking purposes.

The Settlement resolves all issues raised by the Joint Petitioners. Considering the diverse interests of the Joint Petitioners and the active roles that each has taken in this proceeding, this fact is itself strong evidence that the Settlement is reasonable and in the public interest. The Settlement was achieved through the hard work and perseverance of the Joint Petitioners. The Joint Petitioners have repeatedly demonstrated their good faith and willingness to cooperate to resolve

¹ Forward Township opposes the Settlement. The Office of Small Business Advocate does not oppose the Settlement.

this case within the six-month deadline mandated by the General Assembly in Section 1329 of the Code, 66 Pa. C.S. § 1329.

It should be noted that the Joint Petitioners, 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 the issues. The Joint Petitioners, their counsel and experts fully explored the issues in this case and reached a carefully balanced compromise of the interests of the Joint Petitioners that satisfies the various requirements of the Code.

For the reasons discussed in detail below, the Settlement is in the public interest and should be approved.

II. PROCEDURAL BACKGROUND

PAWC incorporates by reference Paragraphs 1-19 of the Settlement.

III. THE TRANSACTION

A. LEGAL STANDARDS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *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).

B. RECORD EVIDENCE OF PUBLIC BENEFITS

The Settlement requests that the Commission approve the Application. Settlement ¶ 20. Among other things, the Application seeks certificates of public convenience (“Certificates”) pursuant to 66 Pa. C.S. § 1102(a)(1) and 1102(a)(3). The Commission may issue a Certificate 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). In granting a Certificate, the Commission may impose such conditions as it deems just and reasonable. 66 Pa. C.S. § 1103(a).

Approving the Application, as modified by the Settlement, is in the public interest because it is consistent with Section 1103. Section 1103 requires that the Applicant demonstrate that it is technically, financially, and legally fit to own and operate the System. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958). As a certificated public utility, PAWC enjoys a rebuttable presumption that it possesses the requisite fitness. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). No party attempted to rebut the presumption that PAWC is legally, technically and financially fit.²

In addition, Section 1103 requires that the Applicant demonstrate that the Transaction and PAWC’s ownership/operation of the System 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). An acquisition provides an affirmative public benefit if the benefits of the transaction outweigh the adverse impacts of the transaction. *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950. The affirmative public benefit

² Nevertheless, PAWC introduced extensive evidence of its legal, technical and financial fitness. *See, e.g.*, PAWC St. No. 1 pp. 16-18, 24-26; PAWC St. No. 2 pp. 10-14, 23-27; and PAWC St. No. 3 pp. 3-5.

test is a “net benefits assessment.” Where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction. *Cicero v. Pa. Pub. Util. Comm’n*, 300 A.3d 1106 (Pa. Cmwlth. 2023), *pet. for alloc. granted* 47-49 MAP 2024. When looking at the benefits and detriments of a transaction, the focus of the analysis must be on all affected parties, not merely a particular group or a particular geographic area. *Middletown Tp. v. Pa. Pub. Util. Comm’n*, 482 A.2d 674 (1984).

The record evidence clearly demonstrates that the Transaction affirmatively benefits the public in a substantial way. First, the Transaction achieves the General Assembly’s goals when it enacted Section 1329. PAWC St. No. 1 p. 22. The Commission has recognized that Section 1329 reflects a Legislative determination that fair market value acquisitions of municipal water and wastewater systems further the public interest. *See Implementation of Section 1329 of the Public Utility Code – Tentative Implementation Order*, Docket No. M-2016-2543193 (Order entered Jul. 21, 2016) and *Implementation of Section 1329 of the Public Utility Code – Tentative Supplemental Implementation Order*, Docket No. M-2016-2543193 (Order entered Sept. 20, 2018). *See also, Application of Aqua Pennsylvania Wastewater, Inc. for Approval of the Acquisition of the Wastewater System Assets of the City of Beaver Falls*, Docket No. A-2022-3033138 (Opinion and Order entered June 18, 2025) p. 79.

Second, the Transaction affirmatively benefits the public in a substantial way because it is consistent with the Commission’s policy of promoting regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721(a). The Transaction promotes consolidation because the Transaction will result in one existing wastewater provider acquiring another’s system and the seller will cease to provide service. In this case, the seller will cease to exist because

EBMA will be dissolved at or shortly after closing on the Transaction (“Closing”). PAWC St. No. 1 p. 14; EBMA St. No. 1 p. 3. In addition, the Transaction promotes consolidation because one entity will provide both water and wastewater service in much of EBMA’s service territory. PAWC St. No. 2 p. 10.

The Transaction also promotes regionalization. A physical interconnection between systems is not necessary to promote regionalization; systems located near each other can share equipment and staff and can share cost savings from the additional purchasing power of a larger enterprise. PAWC St. No. 1-R p. 5. EBMA’s wastewater treatment plant is located about seven miles from PAWC’s McKeesport Wastewater Treatment Plant, allowing the systems to share resources. This proximity to an affiliated wastewater system will improve the economic efficiency of both systems. PAWC St. No 1 pp. 22-23.

Third, the Transaction affirmatively benefits the public in a substantial way by promoting the people’s right to a clean environment. In pertinent part, Pennsylvania’s Environmental Rights Amendment (“ERA”), Pa. Const. art. I, § 27, states: “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.” This provision limits the state’s power to act contrary to the people’s right to a clean environment. *Pennsylvania Env’l Defense Foundation v. Comm.*, 161 A.3d 911, 931 (Pa. 2017) (“*PEDF*”). The Transaction implicates this portion of the ERA because EBMA has had environmental challenges for some time that it has been unable to rectify. The Transaction would rectify those challenges by transferring the System to an owner/operator who would address the environmental problems, promoting the people’s right to pure water and the preservation of the natural and esthetic values of the environment.

In each of the last three annual inspections conducted by the Allegheny County Health Department (“ACHD”), EBMA has been cited for exceeding permitted effluent limits for fecal coliform bacteria and for missing/damaged air diffusers in the aeration basins. PAWC St. No. 2 p. 20. Moreover, the System does not have an Industrial Pretreatment Program (“IPP”). The Pennsylvania Department of Environmental Protection (“DEP”) has recommended an IPP for the System. PAWC intends to develop and implement an IPP in a future base rate case, if necessary. PAWC St. No. 1 p. 19.

Additionally, the System’s treatment works are currently in hydraulic and organic overload, resulting in numerous combined sewer overflow (“CSO”) events that occur annually at the System’s combined sewer outfall/regulator structures. For the five years ending 2023, EBMA reported an average of 242 sewer overflow events per year where untreated sewage was discharged into the Monongahela River. PAWC St. No. 2 p. 9.

Federal and state environmental regulatory agencies have long recognized the significant environmental harms caused by CSO discharges. In its 1994 CSO Policy Document,³ the United States Environmental Protection Agency (“EPA”) recognized that CSOs consist of mixtures of domestic sewage, industrial and commercial wastewaters, and stormwater runoff. CSOs can cause exceedances of water quality standards,⁴ They may also pose risks to human health, threaten aquatic life and its habitat, and impair the use and enjoyment of the Nation’s waterways. Similarly, DEP recognizes that CSOs have the potential to carry pollutants to receiving waters, which may impact public health and the environment. PAWC St. No. 2-R pp. 4-5.

³ 59 *Fed. Register* 18688-18698 (Apr. 19, 1994).

⁴ EBMA’s CSOs discharge into the Monongahela River at a point approximately 19.5 miles upstream from PAWC’s Hay Mine Water Treatment Plant, which is used as a source of drinking water for an approximate population of 510,000 people. The untreated sewage discharged from the CSO into the river introduces bacteria, viruses and parasites into the drinking water source of supply, increasing the risk of waterborne illnesses should those pathogens pass through the drinking water treatment process. PAWC St. No. 2-R p. 6.

EBMA developed a Long-Term Control Plan (“LTCP”) in 2004. The LTCP requires extensive expansion and improvements to the collection system and treatment plant to provide long-term capacity for customers. PAWC St. No. 2 pp. 9, 15. DEP initially found the plan inadequate and did not approve it. In 2012, DEP required EBMA to address technical issues and re-submit the plan. PAWC St. No. 2 p. 19. In 2014, DEP and ACHD required EBMA to submit a System Characterization, Monitoring and Modeling Report for the LTCP. This report was submitted in November 2014 and the plan was conditionally approved in January 2015. PAWC St. No. 2 p. 19. In July 2017, EBMA submitted a revised LTCP. Revisions were made in March 2018. DEP approved the revised LTCP in July, 2018. PAWC St. No. 2 p. 19. In December 2020, EBMA’s engineer asked DEP to reset the compliance deadlines in the LTCP, but DEP has not responded in writing. EBMA has failed to comply with the proposed reset schedule. PAWC St. No. 2 p. 19.

The record contains conflicting evidence as to why EBMA has not completed the LTCP. *Compare, e.g.,* OCA 1SR p. 6 (EBMA lacks both the financial capacity and the technical fitness to complete the LTCP) with Transcript (“Tr.”) 167-168 (cost is the sole reason for EBMA’s failure to complete the LTCP). The record is clear, however, that EBMA has failed to complete the LTCP. As a result, EBMA continues to pollute Pennsylvania’s environment to the detriment of the people’s right to a clean environment, including pure water.

The record is also clear that, as part of the Transaction, PAWC will negotiate a Consent Order and Agreement (“COA”) with DEP to establish a new compliance schedule for the LTCP. PAWC will then assume responsibility for implementing the LTCP. PAWC St. No. 2 p. 21. Further, the record is clear that PAWC has a five-year capital plan that calls for investing \$25.9 million in the System. The majority of these costs are related to improvements under the LTCP.

PAWC St. No. 2 p. 13 and PAWC Exhibit DJH-2. Finally, the record is clear that PAWC has a track record of successfully addressing DEP and EPA compliance orders requiring operational improvements and substantial capital investments in acquired wastewater systems. PAWC St. No. 2 p. 25.

Approving the Transaction would promote the people's right to a clean environment and pure water because PAWC, unlike EBMA, will eliminate the excessive CSO events that are polluting the Monongahela River. Disapproving the Transaction, in contrast, would ensure that pollution continues for the foreseeable future because there is no reason to believe EBMA will address the System's environmental problems that have existed for years. Promoting the people's constitutional rights is a value that should be given considerable weight in the net benefit analysis.

Fourth, approving the Transaction affirmatively benefits the public in a substantial way because it is consistent with the Commonwealth's role as trustee of the natural resources of the Commonwealth. In pertinent part, the ERA states:

Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

The Supreme Court of Pennsylvania has held that this language creates a public trust, the corpus of which is the Commonwealth's natural resources. *PEDF, supra*, 161 A.3d at 931 n. 22. As trustee, the Commonwealth must act as a fiduciary for the trust's beneficiaries (the people). The Commission must take environmental factors into consideration in its decision-making because the Commonwealth's obligations as trustee are vested in all Commonwealth agencies. *PEDF*, 161 A.3d at 931 n.23.

The Monongahela River is part of the corpus of the trust that the Commonwealth is constitutionally required to protect and maintain. The Commonwealth's large rivers and principal streams, by nature navigable, belong to the Commonwealth. *Beishline v. Comm.*, 234 A.3d 878,

880 (Pa. Cmwlth 2020). *Shrunk v. Schuylkill Navigation Company*, 14 Serg. & Rawle 71, 79 (Pa. 1826) stated that the Monongahela River is one of those large rivers. In addition, the Monongahela River is a navigable river in the Commonwealth. *Monongahela Bridge Co. v. Kirk*, 46 Pa. 112 (Pa. 1863).

As discussed above, EBMA regularly pollutes the Monongahela River. The Transaction would mitigate and ultimately eliminate this pollution because PAWC will implement an LTCP. Approving the Transaction therefore would be consistent with the Commonwealth's role as trustee of the Commonwealth's environmental resources. Disapproving the Transaction, in contrast, would constitute a breach of the Commonwealth's fiduciary duty under the ERA.

Fifth, the Transaction affirmatively benefits the public in a substantial way because it benefits the seller, area municipalities, and their residents. By selling the System, EBMA will avoid significant future costs, including the costs of implementing increasingly strict environmental requirements and implementing the LTCP. EBMA St. No. 1 pp. 4, 7. Instead, EBMA will receive \$28,000,000 from selling the System. EBMA will use these funds to eliminate its existing long term debt (approximately \$12,800,000), thereby saving thousands of dollars in public funds. PAWC St. No. 1 p. 11. EBMA will pay \$2,750,000 of the proceeds to Elizabeth Township. Forward Cross Examination Exhibit 4 p. 2. Elizabeth Township will use those funds to benefit the public in its township as well.

After Closing, EBMA will be dissolved⁵ and any remaining assets will be conveyed to Elizabeth Borough (the "Borough"). EBMA St. No. 1 p. 3. The Borough will use this money for public purposes. EBMA St. No. 1 p. 3. The Borough's main objective is to stabilize its finances

⁵ Significantly, all EBMA employees involved in the operation of the system will be offered employment with PAWC, subject to PAWC's existing hiring policies and procedures. PAWC St. No. 1 p. 11.

to avoid more cuts to public services while avoiding the increase of real estate taxes. EBMA St. No. 1 p. 6.

Sixth, the Transaction affirmatively benefits the public in a substantial way because it benefits PAWC as the buyer of the System. PAWC is acquiring the System at a purchase price less than its value, according to two appraisals by a utility valuation expert (“UVE”). Purchasing the System for less than it is worth is a good deal for PAWC.

The Transaction makes PAWC a larger company. PAWC would acquire about 672 direct customers and 3 bulk customers that, in turn, serve 1,504 indirect customers. PAWC St. No. 1 p. 18. The Transaction also allows PAWC to increase its efficiency. Because the System is near PAWC’s existing McKeesport wastewater system, the two systems can readily share personnel and equipment, allowing both systems to operate more efficiently. PAWC St. No. 2 p. 11; PAWC St. No. 1-R p. 5.⁶ Additionally, because PAWC provides water service to much of EBMA’s service territory, PAWC St. No. 2 p. 10, the Transaction will allow PAWC to better coordinate construction projects and more efficiently repair infrastructure. PAWC St. No. 1 p. 23.

Seventh, the Transaction affirmatively benefits the public in a substantial way because it benefits PAWC’s wastewater customers. It expands PAWC’s wastewater customer base, allowing the costs of operating PAWC’s wastewater system to be shared among more customers. This helps keep rates stable for all PAWC wastewater customers. PAWC St. No. 1 p. 21. The Transaction will have little impact on PAWC’s existing water customers unless the Commission finds, in a

⁶ Additionally, due to the System’s proximity to the McKeesport system, the acquisition would put PAWC in a better position to create significant regionalization and consolidation in the region by acquiring additional nearby systems to interconnect the EBMA System and other future acquired systems with the McKeesport system. PAWC St. No. 2 pp. 12, 17, 23. This result would not be possible if the instant Transaction is disapproved.

future rate case, that it is in the public interest to allocate a portion of the wastewater revenue requirement to water customers. 66 Pa. C.S. § 1311(c).

Eighth, the Transaction affirmatively benefits the public in a substantial way because it benefits EBMA's customers. EBMA's customers benefit in numerous ways, including:

- Customers will receive better service due to PAWC's strong staffing numbers and expertise. PAWC is better suited for engaging System customers because it has a large team devoted to customer service, while EBMA has an administrative staff of one. When compared to the two facility employees EBMA currently employs, PAWC is better able to quickly solve multiple issues that threaten environmental compliance that can range from identifying broken sewers to treatment facility breakdowns. EBMA St. No. 1 p. 10.
- PAWC's customer call center is available for routine customer interactions from 7:00 a.m. to 7:00 p.m. Monday-Friday and 24/7/365 for emergencies. PAWC also has field service crews available 24/7/365. EBMA's regular business hours are 8 a.m. to 4:00 p.m. Monday through Friday. After 4:00 p.m. or on weekends, EBMA's customers are instructed to contact the police. PAWC St. No. 2 p. 31.
- The reduction in CSOs will improve local water quality and the water quality of downstream water intakes, including PAWC's Pittsburgh drinking water system intake. PAWC St. No. 1 p. 19.
- PAWC provides water service to much of EBMA's service territory. If the Transaction is approved, customers will get one bill for their water and wastewater service. PAWC St. No. 1 p. 19; EBMA St. No. 1 p. 11.
- After Closing, EBMA's low-income customers will have access to PAWC's customer assistance programs ("CAPS"). PAWC St. No. 1 p. 10.
- EBMA customers who are PAWC water customers and are already enrolled in PAWC's Bill Discount Program for their water service will automatically be enrolled in the program for their wastewater service. PAWC St. No. 3-R pp. 5-6.
- EBMA is not subject to Commission oversight. PAWC is subject to the Code and is statutorily required to provide reasonable and adequate service at just and reasonable rates. PAWC St. No. 1 p. 20.
- PAWC has cyber and physical security plans, emergency response plans and a business continuity plan. EBMA does not have similar plans in place. PAWC St. No. 2 p. 30.
- PAWC is a member in good standing of the Pennsylvania Water/Wastewater Agency Response Network ("PaWARN"), whereas EBMA is not a member of PaWARN.

The above list of eight significant affirmative public benefits is not intended to be comprehensive. The Transaction benefits the public in many additional ways. For example, PAWC has a much better record than EBMA in complying with the Underground Utility Line Protection Law (the “PA One Call Law”). 73 P.S. §§ 176 *et seq.* PAWC achieved a 100 percent ticket completion rate in 2024. EBMA had a 61 percent completion rate in 2022. This is not just a legal compliance issue; it is a matter of public safety. EBMA’s relatively low completion rate could cause more strikes on public utility assets, leading to unnecessary personal injuries and property damage. PAWC St. No. 2.

The Commission is required to consider, at least in a general way, the impact of the Transaction on rates. *City of York*, 295 A.2d at 829; *see also, McCloskey v. Pa. Pub. Util. Comm’n*, 195 A.3d 1055, 1066 (Pa. Cmwlth. 2018). The Transaction will have no immediate impact on rates. PAWC’s customers’ rates will not be affected by the Transaction until the first base rate case in which the System is included. PAWC St. No. 3 p. 9. Similarly, PAWC will implement EBMA’s rates in effect as of Closing. PAWC St. No. 1 p. 15; PAWC St. No. 3 p. 8. After Closing, EBMA’s customers will be subject to PAWC’s prevailing wastewater tariff with respect to miscellaneous fees and charges and rules and regulations for wastewater service. PAWC St. No. 1 p. 15; PAWC St. No. 3 p. 8.

Future rate increases for EBMA customers will be subject to Commission oversight, which would not be the case if the System remains under EBMA ownership. The Commission is required to set rates that are “just and reasonable,” 66 Pa. C.S. § 1301, and has many tools for achieving this objective that are unavailable to EBMA. For example, 66 Pa. C.S. § 1311(c) permits the Commission to shift some of the costs of PAWC’s wastewater system (including the EBMA System) to PAWC’s water customers if that is in the public interest. This provision would allow

the costs of upgrading and operating the System to be shared with water customers – a rate-making tool that is unavailable to EBMA.

If the Transaction does not close, EBMA would need to increase its monthly bill for an average residential customer utilizing 3,000 gallons to approximately \$114.23. EBMA St. No. 1 pp. 9-10. In contrast, PAWC's current average month combined sewer system bill for residential customers utilizing 3,000 gallons is \$98.36. PAWC St. No. 3 p. 12.

PAWC distributed a customer notice containing a non-binding estimate of the impact of the Transaction on EBMA customers (a potential rate increase of 105.0%). PAWC St. No. 3 pp. 11-13. As discussed in detail below, the Settlement includes provisions that will substantially reduce the potential rate impact of the Transaction for EBMA's customers. Among other things, PAWC will not propose to increase rates for the EBMA zone more than 30% of EBMA's rates at Closing in the first base rate case in which the System is included and will not propose to increase rates for the EBMA zone more than 60% of EBMA's rates in effect at Closing in PAWC's second base rate case in which the System is included. Settlement ¶ 23b.

Rates for PAWC's existing customers will not be affected until the first base rate case in which the System's assets are included, at which time the Commission will set just and reasonable rates. 66 Pa. C.S. § 1301. The customer notice distributed by PAWC contained a non-binding estimate of the rate impact of the Transaction for PAWC's existing wastewater customers (a potential increase of 1.1%) and for PAWC's existing water customers (a potential increase of 0.2%). PAWC St. No. 3 pp. 11-13. These estimates will be impacted by the provisions of the Settlement, discussed below. In any event, these rate impacts should not be considered a detriment of the Transaction because the rate increase flows directly from the valuation methodology contained in Section 1329. The General Assembly must have determined that rate increases due

to the use of that methodology were acceptable as a matter of public policy. In the alternative, even if these rate impacts are considered a detriment of the Transaction, they are more than outweighed by all the benefits of the Transaction, discussed above.

Forward apparently believes the Transaction should be disapproved because Forward will not receive any of the proceeds of the sale. Significantly, no record evidence casts any doubt on EBMA's ownership of and right to sell the System; Forward does not own any EBMA infrastructure. Tr. 194. Forward simply asks the Commission to compel EBMA to hand over some of the proceeds of the sale to Forward. This request should be denied because the Commission has no jurisdiction over the seller's use of the sale proceeds. *Application of Aqua Pennsylvania Wastewater, Inc. for the Acquisition of the Wastewater Assets of Willistown Twp.*, Docket No. A-2021-3027268 (Opinion and Order entered Jul. 8, 2022) p. 69. Forward's argument provides no basis for finding that the Transaction fails the affirmative public benefit test.

Considering all of the above, the evidence of record clearly establishes that the Transaction passes the affirmative public benefit test. The Transaction is therefore in the public interest because it complies with applicable law.

IV. TERMS OF SETTLEMENT ARE IN THE PUBLIC INTEREST AND SHOULD BE APPROVED

A. Tariff and Rates

The Settlement asks the Commission to approve the *pro forma* tariff found at Appendix A-12 of the Application. This request is in the public interest because it is consistent with 66 Pa. C.S. § 1329(d)(1)(v), which requires PAWC to charge rates after Closing that are equal to the seller's existing rates. PAWC will implement EBMA's equivalent dwelling unit ("EDU") allocations until the System has been through a base rate case. PAWC's current tariff provides

that, for customers acquired by the Company through a purchase or acquisition, information on EDUs is available at the Company's website. The EDU allocation for EBMA's customers that will be posted to PAWC's website was introduced into the record at PAWC Exhibit SDG-2. PAWC St. No. 3 p. 8.

Additionally, the Settlement is in the public interest because it limits the rate increases that PAWC will propose for EBMA customers in the first two base rate cases in which the System is included. The customer notice that was distributed when the Application was filed stated that PAWC estimated that rates for EBMA customers would increase by approximately 105%. PAWC St. No. 3 p. 11. In contrast, the Settlement provides that, in the first base rate cases that includes the System, PAWC will propose to move the System closer to PAWC's Rate Zone 2 system-wide average wastewater rates, but will not propose to increase rates more than 30% of EBMA's rates in effect at Closing. Additionally, in the second base rate case that includes the System, PAWC will not propose to increase rates for the EBMA zone more than 60% of EBMA's rates in effect at Closing. Settlement ¶ 23b. These provisions are in the public interest because they provide for rate increases consistent with principles of gradualism to avoid rate shock.

Additionally, to limit the rate impact of the Transaction for PAWC's existing water customers, the Settlement states that in the first base rate case that includes the System, PAWC will limit any shift of a revenue requirement pursuant to 66 Pa. C.S. § 1311(c) to no more than is needed to achieve the proposed rates described above. Settlement ¶ 24.

Furthermore, the Settlement permits PAWC to agree to rates other than those proposed for System customers in the context of a settlement of a base rate case. Settlement ¶ 23c. It also permits any Joint Petitioners to assert any position or raise any issue in a future PAWC base rate proceeding. Settlement ¶ 23d. These provisions are consistent with the Code, consistent with

previous Commission decisions in Section 1329 proceedings, and represent a reasonable compromise among the Joint Petitioners. They are in the public interest and should be approved.

B. Fair Market Value for Ratemaking Rate Base Purposes

PAWC and EBMA agreed to use the procedure in Section 1329 for the Transaction. Section 1329 created a voluntary procedure for valuing a water or wastewater system being sold by a municipality or municipal authority to a public utility or other entity. In that procedure, the buyer and seller each obtain an appraisal of the system by a Commission-approved UVE. The seller's ratemaking rate base is the lesser of: (1) the purchase price agreed-to by the parties, or (2) the fair market value of the selling utility (defined as the average of the two UVE appraisals).⁷ The seller's ratemaking rate base is then incorporated into the rate base of the acquiring public utility during the acquiring public utility's next base rate case.

In this case, the System's purchase price (\$28,000,000, PAWC St. No. 1 p. 7) is lower than the average of the two UVE appraisals ($\$28,741,014 + \$28,136,195 = \$28,438,605$). PAWC St. No. 4 p. 1, EBMA St. No. 2 p. 12. Nevertheless, the Settlement provides that PAWC will use only \$27,138,703 for ratemaking rate base purposes for the System.⁸ Settlement ¶ 25. The Joint Petitioners fully and thoroughly evaluated the UVEs' appraisals through discovery, testimony, and exhibits. The agreed-upon ratemaking rate base of \$27,138,703 is a compromise that is supported by substantial record evidence. This compromise is in the public interest because it results in lower

⁷ During the hearing, Forward's counsel attempted to argue that the manner in which EBMA was spending the proceeds constituted evidence that the System is overvalued. *See, e.g.*, Tr. 169-170. This argument lacks any factual foundation. Two UVEs appraised the System and found that the System is worth more than the purchase price agreed-to by the parties.

⁸ The Settlement provides that PAWC may record the acquisition at the net value of the assets (\$27,138,703), Settlement ¶ 26, which is consistent with prior Commission decisions. *See, e.g., Application of Pennsylvania-American Water Company to Acquire the Wastewater Collection and Treatment System of the York City Sewer Authority*, Docket No. A-2021-3024681 (Opinion and Order entered April 14, 2022). The difference between the purchase price and the allowed rate base will not be recovered in rate base nor via amortization from PAWC's or EBMA's existing customers. Settlement ¶ 28.

rates in the future for all PAWC customers, including but not limited to EBMA's current customers.

C. Distribution System Improvement Charge

Consistent with Section 1329, the Application requested permission for PAWC to collect a distribution system improvement charge ("DSIC") prior to the first base rate case in which the System's plant-in-service is incorporated into PAWC's rate base. Application pp. 3, 19. The Transaction, as modified by the Settlement, is in the public interest because the Settlement includes consumer safeguards. First, the Settlement prohibits PAWC from including System-related investments in its DSIC until it collects the DSIC from System customers. Settlement ¶ 29. This protects existing PAWC customers from fully funding System-related improvements; EBMA customers will need to help pay for those improvements. Second, the Settlement prohibits PAWC from collecting a DSIC from System customers until (a) PAWC files an amended wastewater Long Term Infrastructure Improvement Plan ("LTIIIP") including the System that does not prioritize other existing commitments in other service areas, (b) the Commission approves the Amended LTIIIP, and (c) PAWC files a compliance tariff supplement that incorporates the System into PAWC's DSIC tariff. *Id.* Third, the Settlement requires PAWC to file the Amended LTIIIP at the Commission within 270 days of closing. *Id.* The Transaction, as modified by the DSIC provisions in the Settlement, is reasonable and in the public interest. Therefore, it should be approved.

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

Section 1329(f)(1) of the Code, 66 Pa. C.S. § 1329(f)(1), permits an acquiring public utility to accrue an allowance for funds used during construction ("AFUDC") on post-acquisition improvements that are not included in a DSIC, from the date the cost was incurred until the earlier of the following events: the asset has been in service for four years, or the asset is included in the

acquiring utility's next base rate case. In the Application, PAWC requested permission to accrue AFUDC on post-acquisition improvements that are not included in a DSIC. Application p. 3; PAWC St. No. 1 p. 4. The Settlement makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 30.

Similarly, Section 1329(f)(2) of the Code, 66 Pa. C.S. § 1329(f)(2), permits an acquiring public utility to defer depreciation on its post-acquisition improvements that are not included in a DSIC. In the Application, p. 3, PAWC requested permission to defer depreciation on post-acquisition improvements that are not included in a DSIC. The Settlement makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. Settlement ¶ 30. These provisions are reasonable and in the public interest, and should be approved.

E. Closing

The Settlement prohibits PAWC and EBMA from Closing until the Commission's order approving the Transaction is final and unappealable. Settlement ¶ 31. This provision recognizes that Commission approval of the Transaction is necessary for PAWC and EBMA to Close. Further, PAWC and EBMA commit not to Close until the Commission's order is considered unappealable.

F. Transaction and Closing Costs

Section 1329(d)(1)(iv) of the Code, 66 Pa. C.S. § 1329(d)(1)(iv), permits an acquiring public utility to include, in its next base rate case, a claim for the transaction and closing costs incurred for the acquisition. In *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016) p. 14, the Commission stated that there will be no Commission preapproval of the reasonableness of

recovery of these costs in a Section 1329 proceeding. Out of an abundance of caution, the Settlement acknowledges that PAWC may, in the first base rate case that includes the System, include the transaction and closing costs incurred in this proceeding. Settlement ¶ 32. The Commission will adjudicate the ratemaking treatment of PAWC's claimed transaction and closing costs at that time.

The Settlement makes clear that the other Joint Petitioners do not oppose this request and they reserve their rights to litigate their positions fully in future rate cases. *Id.* In addition, the Settlement makes clear that any claim by PAWC to recover transaction and closing costs (a) will clearly identify all transaction and closing costs, (b) will separately identify any outside counsel legal fees, and (c) will not include any costs incurred by EBMA. Settlement ¶¶ 32-34. These provisions are consistent with several previous Commission decisions approving settlements in Section 1329 acquisitions, are reasonable and in the public interest, and should be approved.

G. Approval of Section 507 Agreements

Section 507 of the Code, 66 Pa. C.S. § 507, requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariffed rates) be filed with the Commission at least thirty 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.

In this proceeding, PAWC seeks Commission approval, pursuant to Section 507, of:

- The APA dated January 24, 2023, by and between EBMA and PAWC;
- The First Amendment to the APA, dated July 5, 2023, by and between EBMA and PAWC (the "First Amendment");

- Service Agreement dated January 25, 2000, by and between the Borough of Elizabeth and the Sanitary Authority of Elizabeth Township;
- Fallen Timber Run Watershed Area Interceptor Sewer Project Agreement between the Borough of Elizabeth, EBMA, the Township of Forward, the Township of Elizabeth, and the Sanitary Authority of Elizabeth Township;
- Agreement dated December 15, 1987, by and between the Borough of Elizabeth, EBMA and the Borough of Lincoln;
- Agreement dated November 26, 1957, by and between Borough of Elizabeth, EBMA, the Township of Elizabeth and Sanitary Authority of Elizabeth Township;
- and,
- Agreement dated January 23, 1958, by and between Borough of Elizabeth, EBMA and the Township of Forward.

These agreements are necessary to allow PAWC to provide service to the service territory currently served by the System. Consequently, the approval of these agreements is reasonable and in the public interest.

In addition, in this proceeding, PAWC seeks Commission approval of a *pro forma* Lease Agreement by and between EBMA and PAWC. Pursuant to the APA, EBMA will retain the non-moving structural portion of the DUPERON® FLEXRAKE® FPFs Full Penetration Fine Screen unit consisting of the base, vertical supports, and back/side plates. PAWC St. No. 1 p. 13. Pursuant to the *pro forma* Lease Agreement, this asset will be leased to PAWC. This Lease Agreement will allow the wastewater treatment plant to continue to be classified as a Publicly Owned Treatment Works for purposes of the “domestic sewage exclusion” in 40 CFR § 261.4(a)(1) and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.* PAWC St. No. 2 pp. 4-5. If

the treatment plant would cease to qualify as a Publicly Owned Treatment Works, the sewage sludge produced by the plant would be classified as a hazardous waste, increasing the cost to manage and dispose of the sludge. OCA St. No. 1 p. 12. A preliminary, conservative estimate of the annual cost increase to transport and dispose of sewage sludge from the plant as a regulated hazardous waste instead of normal sewage sludge is on the order of \$50,000 per year. PAWC St. No. 2-R p. 7. Under these circumstances, approval of the *pro forma* Lease Agreement is also reasonable and in the public interest.

H. Cost of Service Studies

In the first base rate case that includes the System, PAWC will submit: (a) a cost of service study that removes all costs and revenues associated with the operation of the System; and (b) a cost of service study for the System. Settlement ¶¶ 36 and 37. These provisions are similar to provisions included in several other settlements of Section 1329 proceedings involving PAWC. *See, e.g., Application of Pennsylvania-American Water Company to Acquire the Wastewater Collection and Treatment System of the Butler Area Sewer Authority*, Docket No. A-2022-3037047 (Opinion and Order entered Nov. 16, 2023). They are reasonable and in the public interest, and should be approved.

I. Customer Assistance Programs

In his Direct Testimony, Mr. Hufton stated that the Authority's customers could expect customer enhancements as a result of the Transaction, including enhanced bill payment options and access to PAWC's CAPs. PAWC St. No. 2 pp. 36-38. The Settlement provides that EBMA's customers will become eligible for all PAWC payment options and customer programs immediately after Closing. Settlement ¶ 39. This provision is in the public interest because it ensures that the Transaction will have the promised benefits.

In its Direct Testimony, OCA expressed concern that low-income customers might not take advantage of PAWC's CAP because they may not know about it. OCA St. No. 1 pp. 23-24; OCA St. No. 1 pp. 23-24; OCA St. 1SR p. 9. The Settlement addresses this concern by requiring that PAWC (a) provide a bill insert to System customers about PAWC's low income programs in the first billing cycle following closing, and (b) a welcome letter including similar information.⁹ Settlement ¶ 40. The Settlement also requires that PAWC provide ongoing, targeted outreach to PAWC's EBMA-area wastewater customers regarding PAWC's CAP. *Id.* These provisions are in the public interest because they will help ensure that those customers who are eligible for assistance know about programs that might benefit them.

Additionally, OCA's Direct and Rebuttal Testimony recommended a reporting requirement to help determine whether EBMA's low-income customers are in fact participating in PAWC's low-income programs. OCA St. No. 1 p. 23; OCA St. 1SR p. 9. The Settlement provides that, for the first two years after Closing, PAWC will track the number of EBMA's customers that are potentially eligible for PAWC's CAP and the number of EBMA's customers who are actually enrolled in PAWC's CAP. This information will be presented semi-annually to PAWC's Customer Assistance Advisory Group. This information, as available at the time, will also be presented in PAWC's first base rate case that includes the EBMA System. Settlement ¶ 42. This provision is in the public interest because it will give the Customer Assistance Advisory Group information for measuring the extent to which low income customers of acquired systems actually take advantage of the programs that are available to them and discussing whether the Company should take additional steps to reach these customers.

⁹ The welcome letter will also include information about payment options and information referring customers to PAWC's website where a customer can find information about the Transaction's rate impact. Settlement ¶ 41.

PAWC has a Hardship Fund to which it currently contributes a minimum of \$1,450,000 annually. PAWC St. No. 3-R p. 9. Among other things, this fund provides grants to low-income water and wastewater customers. PAWC St. No. 2 p. 38. In the Settlement, PAWC agrees to contribute an additional \$100,000 to this fund, either as a one-time contribution within 60 days after Closing or in installments over a five-year period. Settlement ¶ 38. This provision is in the public interest because it will assist all PAWC low-income customers, including PAWC's new System customers.

Finally, the Settlement's section on PAWC's CAP includes a paragraph discussing easements, which was a contested issue in this proceeding. The Settlement simply acknowledges provisions in the APA regarding easements. For example, the APA requires EBMA to attempt to obtain all easement prior to or after Closing and requires EBMA to create a Missing Easement Escrow Fund, which will be funded in the amount of \$2,000 per missing easement. Settlement ¶ 43. These provisions are reasonable and in the public interest because the APA adequately protects consumers from incurring the cost of obtaining easements after Closing on the Transaction.

J. Pennsylvania Infrastructure Investment Authority

In its testimony, OCA recommended that PAWC investigate the possibility of obtaining grants and/or low-interest loans from the Pennsylvania Infrastructure Investment Authority ("PENNVEST") to mitigate the costs of completing the LTCP and other System upgrades. OCA St. No. 1 pp. 10, 30. The Settlement provides that PAWC will investigate the possibility of obtaining PENNVEST funding and will share information about that investigation with OCA in the first base rate case in which the System is included. Settlement ¶ 44. This provision is in the public interest because it encourages the Company to seek grants and low-interest financing without improperly limiting PAWC's discretion to evaluate all reasonable funding opportunities.

K. Other Necessary Approvals

The Joint Petitioners believe that they have requested all necessary approvals from the Commission. Nevertheless, as a safeguard, the Settlement includes a customary “safety valve” provision requesting that the Commission grant any necessary approvals that the Joint Petitioners might have inadvertently overlooked. Settlement ¶ 45. This provision is reasonable and in the public interest and should be approved.

L. Standard Settlement Conditions

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. In such event, the Settlement shall be void and of no effect. The Joint Petitioners acknowledge and agree that the Settlement, if approved, will have the same force and effect as if the Joint Petitioners had fully litigated this proceeding. Settlement ¶ 46.

This provision is standard in settlements in Commission proceedings. It protects all of the Joint Petitioners by allowing them to withdraw from the Settlement if the Commission modifies the Settlement in a way they find unacceptable. This provision makes parties to a Commission proceeding more willing to settle than they otherwise might be. It is therefore in the public interest and should be approved.

V. CONCLUSION

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a settlement that resolves all of the issues in this proceeding in a fair and equitable manner. The Settlement is the result of detailed examination of the Transaction, discovery responses, evidence that was entered into the record, and extensive settlement negotiations. A fair

and reasonable compromise has been achieved in this case. PAWC fully supports the Settlement and urges the ALJs and the Commission to approve it without modification.

WHEREFORE, Pennsylvania-American Water Company respectfully requests that the Honorable Administrative Law Judges Erin L. Gannon and Steven K. Haas recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification, and enter an order consistent with the Settlement (including the Proposed Ordering Paragraphs) and the specific paragraphs set forth in the Settlement's "Request for Relief."

Respectfully submitted,



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Water Company*

June 27, 2025

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water :
 Company under Sections 1102(a) and 1329 of the :
 Pennsylvania Public Utility Code, 66 Pa C.S. §§ 1102(a) : Docket No.: A-2025-3052983
 and 1329, for approval of (1) the transfer, by sale, to :
 Pennsylvania-American Water Company, of substantially :
 all of the assets, properties and rights related to the :
 wastewater treatment plant and collection system owned :
 and operated by the Elizabeth Borough Municipal :
 Authority, (2) the rights of Pennsylvania-American Water :
 Company to begin to offer or furnish wastewater service :
 to the public in the Borough of Elizabeth, and portions of :
 the Borough of Lincoln, and the Townships of Elizabeth :
 and Forward, in Allegheny County. :

**STATEMENT OF THE ELIZABETH BOROUGH MUNICIPAL AUTHORITY
IN SUPPORT OF THE JOINT PETITION FOR APPROVAL
OF UNANIMOUS/NON-UNANIMOUS SETTLEMENT OF ALL ISSUES.**

To Administrative Law Judges Gannon and Haas:

The Elizabeth Borough Municipal Authority (“EBMA”) submits this Statement in Support of the Joint Petition for Approval of Non-Unanimous Settlement (“Settlement”) filed with the Pennsylvania Public Utility Commission (“Commission”) by Pennsylvania-American Water Company (“PAWC”), on behalf of PAWC, EBMA, the Pennsylvania Office of Consumer Advocate (“OCA”), and the Commission’s Bureau of Investigation and Enforcement (“I&E”) (collectively, the “Joint Petitioners”)¹.

¹ Forward Township opposes the Settlement. The Office of Small Business Advocate does not oppose the Settlement.

I. INTRODUCTION

This proceeding concerns PAWC's application for approval to acquire the EBMA wastewater collection and treatment system (the "System"), pursuant to Sections 507, 1102, and 1329 of the Pennsylvania Public Utility Code, 66 Pa.C.S.A. §§ 507, 1102, and 1329. On June 27, 2025, the Joint Petitioners filed a Non-Unanimous Settlement proposing a resolution of all issues in this proceeding. EBMA supports the Settlement and respectfully requests that Administrative Law Judges Steven K. Haas and Erin L. Gannon recommend approval of the application, as modified by the Settlement, and that the Commission approve both without modification.

II. PROCEDURAL BACKGROUND

PAWC and EBMA entered into an Asset Purchase Agreement ("APA") dated January 24, 2023, wherein PAWC will purchase the EBMA System. PAWC and EBMA entered into the First Amendment to the APA on July 5, 2023. On January 28, 2025, PAWC filed its application at Docket Nos. A-2025-3052983, *et al.*, asking the Commission to approve the acquisition of the EBMA System. On February 21, 2025, PAWC submitted amended appendices to the Application, after receiving a deficiency letter from the Commission's Bureau of Technical Utility Services. On March 6, 2025, the Commission conditionally accepted the PAWC Application. On April 28, 2025, the Commission finally accepted the Application for filing and assigned Administrative Law Judges Erin L. Gannon and Steven K. Hass to preside over the matter. EBMA filed its Petition to Intervene on May 5, 2025. A public input hearing was held on June 5, 2025. Evidentiary Hearings were held on June 16, 2025.

III. THE TRANSACTION

A. Legal Standards

Pursuant to the Commission's regulations, it is the stated policy to encourage the resolution of contested proceedings through settlement. *See* 52 Pa. Code § 5.231(a). The Commission has further expressed that "the results achieved from a negotiated settlement or stipulation, or both, 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. Settlements reduce the time and expense associated with litigation and, as such, provide direct benefits to all interested parties.

The Commission has held that "[a] settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case." *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2015-2468056, (Order entered December 3, 2015), at 6-7. The Commission has further determined that

Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yielding significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Application of Pennsylvania-Am. Water Co. No. A-2020-3019859, 2021 WL 5052036, at *37 (Pa.P.U.C., 2021).

In determining the acceptability of a settlement or partial settlement, the Commission will look to whether the settlement and its terms are in the public interest. *Warner v. GTE N., Inc.*, Docket No. C00902815 (Opinion and Order entered April 1, 1996) (*Warner*); *Pa. Pub. Util. Comm'n. v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991).

Further, to approve the transaction, the Commission must determine whether the transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pennsylvania Public Util. Comm’n.*, 295 A.2d 825, 828 (Pa. 1972). An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts. *Application of CMV Sewage Co., Inc.*, 2008 WL 5786553 (Pa. P.U.C. 2008). The affirmative benefits test is a net benefits assessment and where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided to support approving the transaction. *Cicero v. Pa. Pub. Util. Comm’n.*, 300 A.3d 1106, 1119 (Pa. Commw. Ct. 2023), *pet. for alloc. granted* 47-49 MAP 2024. When looking at the benefits and harms, the focus of the analysis must be on all affected parties and not merely a particular group or geographic area. *Middletown Township v. Pa. Pub. Util. Comm’n.*, 482 A.2d 674 (Pa. Commw. Ct. 1984).

For the following reasons, this Transaction, as modified by the Settlement, benefits all the interested parties.

B. Record Evidence of Public Benefits

The record contains substantial evidence demonstrating that the Proposed Transaction, as modified by the Settlement, will confer significant public benefits. The Settlement represents a balanced compromise among the Joint Petitioners and satisfies the applicable requirements of the Pennsylvania Public Utility Code (the “Code”). The Transaction, as modified, provides tangible benefits to EBMA, its existing customers, PAWC, PAWC’s existing customers, and the general public. As discussed further below, the net benefits of the Transaction support its approval and are materially distinct from the level of service and benefits currently provided by EBMA to its customers.

First, because the Settlement asks the Commission to approve the Application, pursuant to Section 1103 of the Code, PAWC must demonstrate that it is technically, financially and legally fit to own and operate the system. *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n.*, 502 A.2d 762, 764 (Pa. Commw. Ct. 1985). Here, PAWC meets this standard and in doing so, the ownership and operation of the EBMA System by PAWC is a substantial public benefit in and of itself.

The record evidence demonstrates that a substantial public benefit will result from PAWC's superior legal, technical, and financial fitness—an issue that was undisputed during these proceedings. PAWC has established its legal fitness by demonstrating consistent compliance with the Code, Commission regulations, and Commission orders. See *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982). PAWC is a Commission-regulated utility with a strong compliance history and no pending legal proceedings that would call into question its legal fitness to provide service. *PAWC Statement No. 1, Direct Testimony of Marcus Kohl*, pp. 24–25.

PAWC has also demonstrated that it possesses the financial resources necessary to provide reliable service to EBMA's customers. See *Hassman, supra*. PAWC is the largest water and wastewater utility in Pennsylvania and has a longstanding record of financial stability before the Commission. As of December 31, 2023, PAWC reported total assets of \$7.3 billion, operating income of \$465 million, and net income of \$300 million. *PAWC Statement No. 1*, at 25; Appendix D, Appendix F; *PAWC Statement No. 3, Direct Testimony of Stacey D. Gress*, pp. 3–4. As a result of its strong financial performance, PAWC is able to secure favorable financing and attract equity investments, which will enable it to support the acquisition of the System and fulfill the associated investment commitments necessary to operate, maintain, and improve the assets. *PAWC Statement No. 3*, at 4. PAWC currently has access to a \$495 million line of credit, and its strong credit ratings allow it to obtain long-term debt at favorable interest and repayment terms. *Id.* p. 4–5. Accordingly,

the record contains undisputed evidence that PAWC is financially fit to acquire and operate the System.

Finally, there is undisputed evidence that shows that PAWC possesses sufficient staff, facilities and operating skills to provide the proposed service. *Hassman, supra*. PAWC is the largest investor-owned water and wastewater utility in the Commonwealth of Pennsylvania. *PAWC Statement No. 1*, pp. 25-26. It is experienced in undertaking and completing water and wastewater system acquisitions and successfully integrating those assets into its existing business operations. *Id.*, p. 26. PAWC is often called upon by the Commission to step in and resolve troubled water and wastewater systems, to resolve compliance issues, and provide the high standard of service that its customers expect and deserve. *Id.*, p 26.

There is no dispute that PAWC is legally, technically, and financially fit to provide wastewater service to the customers of the EBMA System. The record evidence clearly demonstrates that PAWC's operation of the System, consistent with its established capabilities, will confer substantial public benefits to both EBMA customers and the public at large.

Second, because PAWC will be able to apply its superior operational capabilities to the System, the record supports a finding of an affirmative public benefit through improved System operations. Elizabeth Borough, Forward Township, Elizabeth Township, and Lincoln Borough will all reap the benefits of an improved system. The Transaction will improve the operation of the System due to the strong staffing numbers and expertise that PAWC possessed. PAWC will be better suited to engaging System customers because it has a large team that is devoted to customer service. PAWC is better able to quickly solve multiple issues that threaten environmental compliance that can range from identifying broken sewers to treatment facilities breakdowns.

EBMA initially explored the potential sale of its System in response to increasingly stringent environmental regulations and the need to implement its Long Term Control Plan (“LTCP”). *EBMA Statement No. 1, Direct Testimony of Timothy Guffey*, p. 6. EBMA believes that PAWC’s operational and technical expertise will significantly enhance the System’s performance and provide greater benefits to EBMA customers. *Id.* at 6–7. EBMA estimates that completing the LTCP will require an investment of approximately \$24.6 million, which would result in customer rates rising up to \$114.23 per month and further strain EBMA’s limited technical resources. *EBMA Statement No. 1-R, Rebuttal Testimony of Timothy Guffey*, pp. 2–3.

EBMA also does not have the manpower to implement and operate an expanded System. EBMA is governed by a five-member volunteer board, operates without a general manager, employs only two staff members, and relies on a third-party contractor for system operations. *Id.*, p 2. This limited technical capacity constrains EBMA’s ability to operate and modernize the System effectively. *Id.* If this Transaction is not approved, EBMA would be forced to supplement its staff through new hires, that will add to EBMA’s bottom line, and increase rates further. *Id.* Thus, EBMA is faced with an insurmountable task under its ownership – remedying an old system to comply with environmental regulations all while expanding it at great cost to its customers.

EBMA has a documented history of environmental compliance issues, primarily due to excessive combined sewer overflows (“CSOs”) resulting from significant inflow and infiltration caused by defects and aging infrastructure within the collection system. *PAWC Statement No. 2, Direct Testimony of Daniel J. Hufton*, p. 9. The System has met the Pennsylvania Department of Environmental Protection’s (“PADEP”) definition of being both hydraulically and organically overloaded during the past five years. *Id.* During this period, EBMA experienced an average of

242 CSO events per year, meaning untreated wastewater has been excessively bypassing the EBMA treatment facility and is discharged into the Monongahela river. *Id.*

EBMA is also behind in implementing its LTCP, which requires the elimination or capture and treatment of 85% of CSOs by volume. *PAWC Statement No. 2*, p. 19. EBMA began formulating its LTCP in 2004, however, PADEP determined that the initial submission was inadequate. *Id.* p. 18. The LTCP was not conditionally approved until January 15, 2015. *Id.* pp. 18–19. It was subsequently revised in July 2017 and approved by PADEP in July 2018. *Id.* p. 19. Despite these approvals, EBMA has failed to meet any of its implementation deadlines, including the initial requirement to complete an updated Act 537 Plan. *Id.* Notably, on December 17, 2020, EBMA’s engineer submitted a request to PADEP seeking an extension of the LTCP implementation schedule. *Id.* Although PADEP has not responded to this request, EBMA remains behind schedule, even under the proposed extension. *Id.*

EBMA has also been cited for multiple environmental regulatory violations, including during each of the last three annual inspections conducted by the Allegheny County Health Department (“ACHD”). *PAWC Statement No. 2*, p. 20. During inspections conducted in 2022, 2023, and 2024, ACHD cited EBMA for exceeding permitted effluent limits for fecal coliform bacteria and for missing and/or damaged air diffusers in the aeration basin. *Id.* In August 2023, ACHD found that there was no certified operator in charge for the facility as required by the regulations and that the facility is old and in need of upgrades. *Id.*

To correct these issues PAWC is proposing to negotiate a Consent Order and Agreement with PADEP which will establish a new compliance schedule to complete the LTCP expansion and improvement project. *Id.*, p. 21. As part of this effort, PAWC is proposing a five-year capital plan

to not only complete the LTCP, but it will also replace the System's aging infrastructure, including areas of the collection system that have unacceptably high rates of inflow and infiltration. *Id.*

Therefore, with respect to the System itself, the record contains overwhelming evidence of substantial public benefit if the Proposed Transaction, as modified by the Settlement, is approved. These benefits are substantially greater than those currently provided by EBMA to its customers. PAWC has committed to completing the LTCP and improving environmental performance within five years—an objective that EBMA has failed to initiate over the past twenty years. Based on this record evidence, the Office of Consumer Advocate (“OCA”) agrees that EBMA lacks the technical fitness to complete the LTCP, even if adequate funding were available. *OCA Statement No. ISR, Surrebuttal Testimony of Nicholas DeMarco*, p. 6.

The record evidence demonstrates that PAWC ownership of the System will provide an almost immediate resolution to the System's operational deficiencies. In essence, this Transaction will avoid any unnecessary pitfalls of greater noncompliance of the System of a nature that could pose a threat to the health, safety and welfare of the public.

Third, the record demonstrates that the Proposed Transaction, as modified by the Settlement, will provide substantial benefits to residents served by the EBMA System as well as to the broader public throughout the Commonwealth. As discussed above, PAWC's superior technical capabilities will enable the System to operate more efficiently and in greater compliance with environmental standards. It is a reasonable and logical conclusion that the prompt mitigation of untreated sewage discharges into a Commonwealth waterway constitutes a significant public benefit—not only for the immediate stakeholders, but for all residents of the Commonwealth.

The Commonwealth's Environmental Rights Amendment provides that “[t]he people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic

values of the environment.” Pa. Const. art. I, § 27. In *Township of Marple v. Pennsylvania Public Utility Commission*, the Commonwealth Court held that the Commission must consider the environmental impacts of proposed projects in light of Article I, Section 27 before rendering a decision. *Township of Marple v. Pa. Pub. Util. Comm’n.*, 294 A.3d 965 (Pa. Commw. Ct. 2024). As detailed above, the Proposed Transaction, as modified by the Settlement, aligns with these constitutional environmental goals. PAWC is positioned to complete the LTCP effectively, something EBMA has struggled to achieve for over two decades.

The Transaction also serves the public interest by advancing the Commission’s policy favoring the regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721(a). PAWC currently provides water service to many of EBMA’s wastewater customers. *PAWC Statement No. 1*, p. 16. Upon closing of the Transaction, PAWC’s Elizabeth Borough Water System employees will report to the same management and support teams that oversee PAWC’s McKeesport wastewater operations. p. 22. Given that the McKeesport facility is located only seven miles from the EBMA System, this structure will provide dual operational support for both systems. *Id.* Additionally, PAWC will be able to leverage its broader engineering and operational expertise across its statewide service territory. *Id.* The combination of these attributes will enhance the coordination of repairs and construction activities throughout the region and promote economies of scale. *Id.* pp. 22–24.

Therefore, the record evidence demonstrates that the Proposed Transaction will benefit the public-at-large, as PAWC is better positioned to operate the System in a more environmentally efficient and compliant manner than EBMA. Moreover, PAWC’s operation of the System aligns with the Commission’s policy objectives promoting regionalization and system consolidation. The

record supports the conclusion that these attributes will result in a significantly higher level of service than what EBMA currently provides or is capable of providing in the future.

Fourth, the Transaction also benefits EBMA and the Borough of Elizabeth (“Borough”). Borough residents will benefit from the planned improvements to the System, as described above, as well as from the resulting environmental enhancements following completion of the LTCP. The EBMA Board of Directors, after considering the concerns of their constituents, concluded that the cost and complexity of operating and expanding the System would be more effectively managed by an experienced utility provider. In addition to acquiring the System, PAWC has committed to offering employment to existing EBMA personnel. *PAWC Statement No. 1*, p. 11. Moreover, low-income residents of the Borough will gain access to PAWC’s customer assistance programs—resources that EBMA does not have the capacity to provide. *Id.* p. 10. PAWC’s Customer Service call center is available on a 24/7 basis. *Id.*, *PAWC Statement No. 2*, pp. 31, 36. PAWC also intends on educating customers near the closing date to explain billing options and the change in ownership. *Id.*, p. 35.

Another significant benefit to the Borough is the opportunity to promote local infrastructure improvements using the proceeds from the Transaction. *EBMA Statement No. 1*, pp. 3–4. Both the Borough and EBMA have expressed concern over the financial burden of expanding the treatment plant, which will require rate increases for customers. However, as a result of this Transaction, the Borough will be able to eliminate all existing sewer debt and relieve itself of the growing responsibilities associated with increasingly stringent environmental regulations. *Id.* p. 4.

The proceeds from the Transaction will enable the Borough to fund stormwater maintenance projects and provide matching funds for governmental grant opportunities. *Id.* These benefits are two-fold: as discussed above, the System will be improved more efficiently under

PAWC's operation, and the Borough will be able to stabilize its real estate tax base by funding capital improvements without raising tax rates. *Id.* The Borough anticipates that the proceeds will have a lasting impact by supporting long-term infrastructure improvements. *Id.*

Scott Craighead, the Borough Manager ("Mr. Craighead"), testified at the Public Input Hearing regarding the Borough's plans for the proceeds of the Transaction. *See Telephonic Public Input Hearing*, June 5, 2025, pp. 135–146. Mr. Craighead explained that upon his hiring in 2022, the Borough completed a Strategic Management Planning Grant through the Pennsylvania Department of Community and Economic Development. *Id.*, pp. 136:12–19. As a result, a Strategic Management Plan was developed, which included a recommendation that the Borough evaluate all of its assets, including EBMA. *Id.*, pp. 136:15–138:7. Mr. Craighead testified that the Transaction aligns with the objectives of the Strategic Management Plan and emphasized that the proceeds should not be viewed as a mere windfall, as doing so would be financially irresponsible. *Id.*, p. 138:11–20. He further recommended that the proceeds be invested in a manner that would allow the Borough to use the interest income to fund future capital improvements. *Id.*, pp. 139:8–19; 140:10–16.

Therefore, this Transaction alleviates an ongoing operational problem, which was going to cost Elizabeth Borough more in sewage rates, and it will turn into a substantial, long term and financially responsible capital improvement program.

IV. TERMS OF SETTLEMENT ARE IN THE PUBLIC INTEREST AND SHOULD BE APPROVED

The Joint Petitioners have engaged in discovery, and have thoroughly analyzed each other's respective positions and have determined that the Settlement is in their best interest. Based on the following, the terms of the Settlement should be approved by the Commission because it is consistent with its policy on Settlements and the terms are in the public interest.

A. Tariff and Rates

The terms of the Settlement concerning rates are in the public interest because PAWC will charge rates after the Closing that are equal to EBMA's existing rates. See 66 Pa.C.S. § 1329(d)(1)(v). The Settling Parties have agreed to allow the *Pro Forma* tariff, submitted as Appendix A-12 of the Application, to become effective immediately following the Closing of the Transaction. *Joint Petition for Approval of Unanimous/Non-Unanimous Settlement of All Issues*, ¶ 21. Furthermore, the Settling Parties have agreed that PAWC will propose to move ratepayers in the system closer to its Rate Zone 2 system-average wastewater rates, consistent with the principle of gradualism, to avoid rate shock. *Id.*, ¶ 23(a). To that end, PAWC has agreed to mitigate rate shock by proposing not to increase rates within the EBMA zone by more than 30% in its first base rate case, and by no more than 60% in its second base rate case. *Id.*, ¶ 23(b).

This approach is customer-oriented and fully negotiated to avoid rate shock for EBMA customers. It stands in stark contrast to the proposal PAWC included in its Application, which estimated that rates for EBMA customers could increase by as much as 105%. *Application*, Appendix A-18-d, p. 3 of 4. The gradual approach adopted in the Settlement represents a reasonable compromise among the Joint Petitioners and is consistent with the Public Utility Code and prior Commission decisions under Section 1329. Considering the totality of the circumstances, the rate provisions set forth in the Settlement are in the public interest and should be approved by the Commission.

B. Fair Market Value for Ratemaking Purposes

Here, the Settlement terms concerning fair market value for ratemaking base rate purposes of \$27,138,703 is in the public interest because it is less than the ratemaking base rate of the selling

utility and equal to the value based upon the application of the Commission's Reasonableness Review Ratio effective for 2025.

PAWC and EBMA agreed to use the procedure set forth in Section 1329 for the Transaction. Each obtained an appraisal of the system by a Commission approved utility valuation expert ("UVE"). The ratemaking base rate of the selling utility is the lesser of the purchase price agreed to by the parties or the fair market value of the selling utility based upon the average of the two UVE appraisals. The ratemaking base rate is then incorporated into the rate base of the acquiring public utility during the next base rate case. Here, the ratemaking base rate is \$28,000,000, the purchase price because it is less than the average of the two UVE appraisals. ($\$28,741,014^2 + \$28,136,195^3 / 2 = \$28,438,604$). The value under the RRR analysis would be \$27,971,198 utilizing the RRR of 1.68 for 2024. *PAWC Statement No. 3*, p. 6. However, when considering the RRR for 2025, the value of the System would equal \$27,138,703. (Average Depreciated Cost of UVEs: $\$16,649,511^4 \times 1.63 = \$27,138,702.93$).

Thus, the base rate settlement terms meet the Commission's current regulations, and therefore, are in the public interest. The Joint Petitioners fully and thoroughly evaluated the UVE appraisals at issue in this matter. Based on this analysis, and considering all the relevant factors, including the Commission's recent RRR analysis, the Joint Petitioners determined that \$27,138,703 is supported by the record evidence. This settlement is in the public interest because it will result in lower rates in the future, for EBMA customers, and all PAWC customers.

² *PAWC Statement No. 4, Direct Testimony of Jerome C. Weinert*, p.4.

³ *EBMA Statement No. 2, Direct Testimony of Harold Walker, III*, p. 12.

⁴ *PAWC Statement No. 3*, p. 6.

C. Distribution System Improvement Charges

EBMA takes no position on the issue, but understands that the terms were negotiated between PAWC, OCA, I&E, and thus, understands that through the negotiation process, the agreed upon terms were focused on benefiting the public.

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

EBMA takes no position on the issue, but understands that the terms were negotiated between PAWC, OCA, I&E, and thus, understands that through the negotiation process, the agreed upon terms were focused on benefiting the public.

E. Closing

EBMA takes no position on the issue, but understands that the terms were negotiated between PAWC, OCA, I&E, and thus, understands that through the negotiation process, the agreed upon terms were focused on benefiting the public.

F. Transaction and Closing Costs

EBMA takes no position on the issue, but understands that the terms were negotiated between PAWC, OCA, I&E, and thus, understands that through the negotiation process, the agreed upon terms were focused on benefiting the public.

G. Approval of Section 507 Agreements

EBMA takes no position on the issue, but understands that the terms were negotiated between PAWC, OCA, I&E, and thus, understands that through the negotiation process, the agreed upon terms were focused on benefiting the public.

H. Cost of Service Studies

EBMA takes no position on the issue, but understands that the terms were negotiated between PAWC, OCA, I&E, and thus, understands that through the negotiation process, the agreed upon terms were focused on benefiting the public.

I. Customer Assistance Program

EBMA takes no position on the issue, but understands that the terms were negotiated between PAWC, OCA, I&E, and thus, understands that through the negotiation process, the agreed upon terms were focused on benefiting the public.

J. Pennsylvania Infrastructure Investment Authority

EBMA takes no position on the issue, but understands that the terms were negotiated between PAWC, OCA, I&E, and thus, understands that through the negotiation process, the agreed upon terms were focused on benefiting the public.

K. Other Necessary Approvals

EBMA takes no position on the issue, but understands that the terms were negotiated between PAWC, OCA, I&E, and thus, understands that through the negotiation process, the agreed upon terms were focused on benefiting the public.

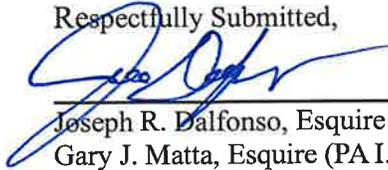
V. CONCLUSION

The Joint Petitioners have approached this proceeding with a spirit of cooperation and a commitment to the open exchange of information. Through this collaborative process, they were able to thoroughly evaluate each other's positions and reach a settlement that resolves all issues among the Joint Petitioners in this proceeding. Following an extensive and detailed examination of the Application, discovery responses, and the evidentiary record, the Joint Petitioners entered into settlement negotiations with a full understanding of their respective positions. The result is a

fair and reasonable compromise that accounts for the public benefits expected to result from the Transaction while mitigating any potential harm. EBMA fully supports the Settlement and respectfully urges the Administrative Law Judges and the Commission to approve it without modification.

Dated: June 27, 2025

Respectfully Submitted,



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American Water Company (“PAWC” or “Company”), the Elizabeth Borough Municipal Authority (“EBMA”), and the Office of Consumer Advocate (“OCA”) (collectively the “Joint Petitioners”).¹ Following extensive review of the Company’s Application and discovery responses, and participation in numerous settlement conferences, I&E is of the opinion that the terms and conditions of the Joint Petition are in the public interest. Accordingly, I&E recommends that the Administrative Law Judges and the Commission approve the Settlement in its entirety.

II. PROCEDURAL HISTORY

On January 28, 2025, Pennsylvania-American Water Company filed its Application pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”) seeking to acquire the wastewater system assets (the “System”) of the Elizabeth Borough Municipal Authority.

On February 6, 2025, the Office of Small Business Advocate (“OSBA”) filed its Notice of Appearance. On February 18, 2025, OCA filed its Notice of Appearance and Protest. On February 20, 2025, OSBA filed its Notice of Intervention. On February 21, 2025, I&E filed its Notice of Appearance. On April 21, 2025, Forward Township (“Forward”) filed a Petition to Intervene. On April 23, 2025, Forward Township filed a Protest.² On May 5, 2025, EBMA filed a Petition to Intervene which was subsequently granted. On May 14, 2025, Forward Township filed a Revised Protest and a Revised Petition to Intervene.

¹ Forward opposes the Settlement. OSBA has not indicated its position regarding the Settlement.

² As Forward filed a Protest as well as a Petition to Intervene, it was discussed and determined at the prehearing conference held on June 3, 2025 that it was not necessary to grant its intervention.

By way of a Secretarial Letter dated April 28, 2025, the Commission informed PAWC that its Application was accepted for filing. On May 10, 2025, the Commission published notice of PAWC's Application in the Pennsylvania Bulletin. The case was assigned to the Office of Administrative Law Judge for the prompt scheduling of such hearings as may be necessary culminating in the issuance of a Recommended Decision.

A telephonic Prehearing Conference was held on June 3, 2025 before Administrative Law Judges ("ALJs") Erin L. Gannon and Steven K. Haas during which a procedural schedule was established and evidentiary hearings were scheduled on June 16-17, 2025. A telephonic public input hearing was held on June 5, 2025.

On June 13, 2025, the parties filed a Joint Stipulation for the Admission of Pre-Served Testimony and Exhibits.³ An evidentiary hearing was held on June 16, 2025 in Harrisburg wherein the Joint Stipulation was granted and the parties' written testimonies and exhibits were entered into the record.⁴ I&E submitted the following:

- I&E Statement No. 1 – Direct Testimony of Zachari Walker
- I&E Statement No. 2 – Direct Testimony of Ethan H. Cline
- I&E Statement No. 1-SR – Surrebuttal Testimony of Zachari Walker
- I&E Statement No. 2-SR – Surrebuttal Testimony of Ethan H. Cline

The hearing on June 17, 2025 was cancelled.

³ On June 12, 2025, PAWC and Forward filed a Joint Stipulation for the Admission of Evidence requesting the admission of PAWC's Answers to the Interrogatories of the Office of Consumer Advocate to PAWC - Set 2, Nos. 26-35 (including Attachments OCA- 2-26, OCA 2-29, and OCA 2-35) (with verifications) into the record. On June 13, 2025, an Order was issued granting the Joint Stipulation.

⁴ An Order Granting the Joint Stipulation for the Admission of Pre-Served Testimony and Exhibits was issued on June 16, 2025.

III. THE TRANSACTION

A. LEGAL STANDARDS

The Public Utility Code requires that the Commission issue a Certificate of Public Convenience (“CPC”) as a prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests.⁵ The standards for the issuance of a CPC are set forth in Sections 1102 and 1103 of the Code.⁶ A CPC shall be granted “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”⁷ To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a CPC as it may deem to be just and reasonable.⁸

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 EBMA.⁹ The record supports the findings that PAWC is technically, legally, and financially fit to acquire the EBMA System, and no party has refuted those claims.

Section 1329 of the Code prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition.¹⁰ Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-

⁵ 66 Pa. C.S. § 1102(a).

⁶ 66 Pa. C.S. §§ 1102, 1103.

⁷ 66 Pa. C.S. § 1103(a).

⁸ *Id.*

⁹ *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Commw. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

¹⁰ 66 Pa. C.S. § 1329.

owned water or wastewater utility under the Commission’s jurisdiction.¹¹ It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts.¹² Notably, a Commission Order approving a transaction under Section 1329 is permitted to include “[a]dditional conditions of approval.”¹³

I&E serves as the Commission’s prosecutory bureau for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge.¹⁴ By representing the public interest in acquisition proceedings before the Commission, I&E works to balance the interests of customers, utilities, and the regulated community as a whole to ensure that an acquisition does not result in unreasonable rates or unreliable service.¹⁵ In negotiated settlements, it is incumbent upon I&E to identify how amicable resolution of any such proceeding may benefit the public interest and to ensure that the public interest is served.

“The prime determinant in the consideration of a proposed Settlement is whether the settlement is in the public interest.”¹⁶ The Commission has recognized that a

¹¹ *Id.*

¹² *Id.*

¹³ 66 Pa. C.S. § 1329 (d)(3)(ii); *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code For approval of its Acquisition of the Wastewater System Assets of New Garden Township*, Docket No. A-2016-2580061, p. 69 (Order Entered June 29, 2017).

¹⁴ *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852, p. 5 (Order Entered August 11, 2011).

¹⁵ See 66 Pa. C.S. §§ 1301(a), 1304.

¹⁶ *Pa. PUC v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.”¹⁷

Commission policy encourages settlements because, in the Commission’s judgment, the results achieved from a negotiated settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding.¹⁸

Subject to all of terms and conditions of the Settlement, I&E opines that PAWC’s Application should be approved and recommends that the Commission should issue PAWC a Certificate of Public Convenience pursuant to 66 Pa. C.S. §1102(a).

B. RECORD EVIDENCE OF PUBLIC BENEFITS

The Pennsylvania Supreme Court has held that an applicant for a Certificate of Public Convenience must demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.”¹⁹ Additionally, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties” including existing customers.²⁰

PAWC’s acquisition of the EBMA System will provide affirmative public benefits. The affirmative public benefits are fully set forth in PAWC’s testimony, and include, *inter alia*, furthering the goal of regionalizing water systems, the benefits of better management practices, economies of scale, and the resulting greater consumer,

¹⁷ *Pa PUC v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

¹⁸ *See* 52 Pa. Code §§ 5.231(a), 69.401.

¹⁹ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (Pa. 1972).

²⁰ *Middletown Twp. v. Pa. PUC*, 482 A.2d 674, 682 (Pa. Commw. 1984).

environmental, and economic benefits. Importantly, through the Settlement, the value of the public benefits will be better realized because the Settlement contains numerous terms to protect PAWC's ratepayers, both existing and those who will become PAWC's ratepayers through this transaction. The Settlement will also ensure that PAWC's ratepayers receive the benefit of the bargain that PAWC negotiated without being subject to protracted and expensive litigation. Accordingly, through this Settlement, I&E's identified concerns have been addressed and I&E opines that PAWC's Application, as modified by the Joint Petition, now meets the requisite standards for approval.

IV. TERMS OF SETTLEMENT ARE IN THE PUBLIC INTEREST AND SHOULD BE APPROVED

A. Tariff and Rates (Joint Petition ¶¶ III.B.21-24)

Pursuant to the Settlement, the Joint Petitioners have agreed that the *pro forma* tariff, which is attached to the Settlement as Exhibit A-12, shall be permitted to become effective immediately upon closing of the transaction. Accordingly, the *pro forma* tariff will accurately include all rates, rules, and regulations regarding the conditions of PAWC's wastewater service, and I&E submits that this full and accurate disclosure of rates is in the public interest.

B. Fair Market Value for Ratemaking Rate Base Purposes (Joint Petition ¶¶ III.C.25-28)

The Joint Petitioners agree that, pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$27,138,703 as the ratemaking rate base for the acquired System.

PAWC was seeking to use \$28,000,000 as the ratemaking rate base based on the negotiated purchase price and fair market valuations.²¹ I&E witness Zachari Walker recommended in direct testimony that if the Commission approved the Application, that PAWC use a ratemaking rate base of \$27,138,703 based on the Commission’s Reasonableness Review Ratio (“RRR”) of 1.63 published on December 31, 2024.²² PAWC witness Marcus Kohl stated in rebuttal testimony that the RRR should not be applied retroactively to acquisitions in which an Asset Purchase Agreement (“APA”) was executed prior to the adoption of the Final Supplemental Implementation Order (“2024 FSIO”) and further asserted that PAWC was not willing to agree to recording the lesser book value as calculated using the most recent RRR of 1.63 because the substance of the 2024 FSIO was unknown to the parties at the time the purchase price was negotiated.²³ Mr. Walker stated in surrebuttal testimony that employing the most recent RRR of 1.63 most accurately estimates the EBMA System’s current value that is appropriate to be recorded by PAWC as rate base for ratemaking purposes.²⁴

PAWC’s acceptance of I&E’s recommended ratemaking rate base amount of \$27,138,703 based on the most recent RRR published prior to the filing of PAWC’s Application results in a reasonable transaction price and is in the public interest.

²¹ PAWC Appendix A-11.

²² I&E Statement No. 1, p. 6 (citing Commission Report on the Reasonableness Review Ratio for the Year Ended 12.31.2024 to Approximate Market Value in Section 1329 Proceedings, Docket No. M-2024-3050303, p. 6.)).

²³ PAWC Statement No. 1-R, p. 4.

²⁴ I&E Statement No. 1-SR, p. 4.

C. Distribution System Improvement Charge (“DSIC”) (Joint Petition ¶ III.D.29)

Pursuant to the terms of the Settlement, PAWC will not include System-related investments in its DSIC until PAWC collects a DSIC from System customers. PAWC shall be permitted to collect a DSIC from System customers upon (i) PAWC’s filing of an amended wastewater Long-Term Infrastructure Improvement Plan (“Amended LTIIIP”) including the System which does not re-prioritize other existing commitments in other service areas, (ii) the Commission’s approval of the Amended LTIIIP, as may be modified in the discretion of the Commission, and (iii) PAWC’s filing of a compliance tariff supplement which incorporates the System into PAWC’s DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after Commission approval of the Amended LTIIIP. PAWC will file an Amended LTIIIP at the Commission within 270 days of Closing.

I&E’s investigation yielded no concerns regarding PAWC’s request for approval to collect a DSIC as permitted under Section 1329, as this request appeared to simply memorialize PAWC’s intention to employ certain provisions of Section 1329. Nonetheless, I&E reserves the right to address these issues in future proceedings, including base rate, LTIIIP, and DSIC proceedings, when additional information and facts are available and when these issues are ripe for review. While I&E still reserves its rights, I&E nevertheless agrees that this term serves the public interest because PAWC has agreed that existing commitments will not be re-prioritized as a result of this term. Acquired EBMA customers will benefit from improved wastewater infrastructure,

therefore promoting safer and more reliable service. As such, I&E supports this term as being in the public interest.

PAWC witness Kohl stated in direct testimony that EBMA's customers will not be charged PAWC's DSIC prior to the first revision of PAWC's LTIP after closing or the effective date of PAWC's next Commission-approved base rate increase, whichever is sooner.²⁵ I&E witness Ethan Cline recommended in direct testimony that PAWC file its Amended LTIP including EBMA and apply the DSIC to the acquired EBMA customers within 180 days of closing, thereby reducing the delay and maximizing the claimed benefit to existing customers of spreading future infrastructure investment costs across the larger customer base.²⁶ PAWC witness Stacey D. Gress stated in rebuttal testimony that a single acquisition should not automatically require an LTIP modification especially when considering the size of the EBMA system.²⁷ Mr. Cline recommended in surrebuttal testimony that the newly acquired EBMA customers be charged a DSIC within 180 days of closing regardless of whether an Amended LTIP is filed.²⁸

PAWC's agreement to file an Amended LTIP within 270 days of closing is a reasonable compromise of PAWC's and I&E's positions and therefore in the public interest.

²⁵ PAWC Statement No. 1, p. 15.

²⁶ I&E Statement No. 2, p. 7.

²⁷ PAWC Statement No. 3-R, p. 2.

²⁸ I&E Statement No. 2-SR, p. 3.

D. Claims for Allowance for Funds Used During Construction (“AFUDC”) and Deferred Depreciation (Joint Petition ¶ III.E.30)

The Joint Petitioners acknowledge that the Application includes a request that (i) PAWC be permitted to accrue AFUDC for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, and (ii) PAWC be permitted to defer depreciation related to post acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in PAWC’s first base rate case that includes System assets. The Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when these issues are ripe for review. The Joint Petitioners’ assent to this term should not be construed to operate as their preapproval of PAWC’s requests.

I&E supports this term because while it recognizes the potential for PAWC to invoke portions of Section 1329 related to post-acquisition projects,²⁹ it also empowers parties to review PAWC’s proposed treatment of those projects in a future base rate case. Preserving the ability to litigate any of PAWC’s proposed AFUDC and deferred depreciation treatment protects the public interest by ensuring that interested parties are not hindered in developing a full and complete record for the Commission on this issue when additional information is available and ratemaking issues are ripe for determination.

²⁹ 66 Pa. C.S. § 1329(f).

E. Closing (Joint Petition ¶ III.F.31)

Consistent with I&E's position that, subject to the terms and conditions of the Settlement, PAWC's Application meets the requisite standards necessary for approval, I&E supports the Settlement's provision that closing will not take place sooner than the date of the existence of a final, unappealable order of the Commission approving the Application is appropriate and warranted.

F. Transaction and Closing Costs (Joint Petition ¶ III.G.32-34)

I&E submits that PAWC's commitment to separately identify any legal fees included in its transaction and closing costs pursuant to the APA between PAWC and EBMA is consistent with ensuring that PAWC will only be permitted to recover prudently incurred costs from ratepayers. These terms are in the public interest because they protect ratepayers from paying unwarranted costs and promote rate affordability. Additionally, this term also ensures that I&E will be able to challenge the basis of any claimed EBMA legal fees, meaning that I&E has not forfeited its position that Section 1329 does not permit the acquiring utility to recover the seller's transaction and closing costs. Through this term, the public interest is protected because I&E has preserved its ability to challenge the permissibility of any claims that PAWC may make for legal fees in its next base rate case, which is consistent with I&E's obligation to enforce the Code.

Furthermore, as a condition of this portion of the Settlement, PAWC agreed that if it ever does make a claim for any legal fees in a future base rate case, it will separately identify those fees. From I&E's perspective, the separate identification of any such fees is important in that it ensures that I&E, other interested parties, and the Commission will

easily be able to identify any portion of claimed fees. It is imperative that any claimed fees are readily identified to ease the administrative burden of uncovering this information when PAWC files its next rate case, which may be several years from now and be complicated by the complexity of the resulting rate investigation. Accordingly, these combined commitments will protect PAWC's ratepayers from bearing the burden of EBMA's legal fees.

G. Approval of Section 507 Agreements (Joint Petition ¶ III.H.35)

PAWC's request to assume enumerated municipal contracts currently held by EBMA is subject to review under Section 507 of the Code. Under Section 507, other than contracts to furnish service at tariffed rates, any contract between a public utility and a municipal corporation must be filed with the Commission at least 30 days prior to its effective date to be valid.³⁰ Upon receipt of the filing, and prior to the effective date of the contracts, the Commission may institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract.³¹ If the Commission decides to institute such proceedings, the contracts at issue will not become effective until the Commission grants its approval.³² I&E supports this provision as the Commission's approval of these contracts is necessary for PAWC to provide wastewater service to EBMA's customers.

³⁰ 66 Pa. C.S. § 507.

³¹ *Id.*

³² *Id.*

H. Cost of Service Studies (Joint Petition ¶¶ III.I.36-37)

Pursuant to the terms of the Settlement, in the first base rate case that includes the System's assets, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of the System. In the first base rate case that includes the System's assets, PAWC will also provide a separate cost of service study for the System.

I&E submits that the cost of service study will protect PAWC, its customers, the parties to this proceeding and the Commission. Specifically, the results of the cost of service study that PAWC has committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. The cost of service study will benefit PAWC's ratepayers as well, because if PAWC's Application is approved, PAWC's existing customers will bear the rate impact. However, without a cost of service study, the Commission's ability to evaluate the rate impact of the acquisition upon existing PAWC customers and its options of addressing that impact to provide any appropriate relief to existing customers could be compromised. Therefore, I&E supports this term as being in the public interest.

I. Customer Assistance Programs (Joint Petition ¶¶ III.J.38-43)

Although I&E did not take a position on these issues during this proceeding, I&E nonetheless supports these terms. Ensuring that low-income customers are aware of available opportunities for financial assistance is in the public interest because it will better facilitate these customers' access to wastewater service. Increasing access to

wastewater service is consistent with the Code’s policy to ensure that service remains available to all customers on reasonable terms and conditions.³³

J. Pennsylvania Infrastructure Investment Authority (“PENNVEST”) (Joint Petition ¶ III.K.44)

I&E supports the Settlement’s provision that PAWC will investigate the feasibility of applying for a PENNVEST grant or loan for upgrades to the EBMA System as being in the public interest.

K. Other Necessary Approvals (Joint Petition ¶ III.L.45)

Consistent with I&E’s position that, subject to the terms and conditions of the Settlement, PAWC’s Application meets the requisite standards necessary for approval, I&E supports the Settlement’s provision that issuance of any necessary approvals or certificates necessary to carry out the transaction is appropriate and warranted.

L. Standard Settlement Conditions (Joint Petition ¶¶ III.M.46-51)

I&E’s agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation or the continuation of this litigation in the event the Settlement is rejected by the Commission or otherwise properly withdrawn by any of the Joint Petitioners.

If the ALJs recommends that the Commission adopt the Settlement as proposed, I&E has agreed to waive the right to file Exceptions. However, I&E has not waived its right to file Exceptions with respect to any modifications to the terms and conditions of the Settlement, or any additional matters, that may be proposed by the ALJs in the

³³ 66 Pa. C.S. § 1402(3).

Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed by any party to this proceeding.

The Settlement is also conditioned upon the Commission's approval of all terms and conditions contained therein, and should the Commission fail to approve or otherwise modify the terms and conditions of the Settlement, the Joint Petition may be withdrawn by I&E or any of the signatories.

V. CONCLUSION

I&E represents that all issues raised in testimony have been satisfactorily resolved through discovery and discussions with the Company or are incorporated or considered in the resolution proposed in the Settlement. This Settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences. The Joint Petitioners have carefully discussed and negotiated all issues raised in this proceeding, and specifically those addressed and resolved in this Settlement. Further line-by-line identification of the ultimate resolution of the disputed issues beyond those presented in the Settlement is not necessary as I&E represents that the Settlement maintains the proper balance of the interests of all parties. I&E is satisfied that no further action is necessary and considers its investigation of this Section 1329 proceeding complete.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the Joint Petition for Non-Unanimous Settlement as being in the public interest and respectfully requests that Administrative Law Judges Erin L. Gannon

and Steven K. Haas recommend, and the Commission subsequently approve, the foregoing Settlement, including all terms and conditions contained therein.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael Podskoch".

Michael A. Podskoch, Jr.
Prosecutor
PA Attorney ID No. 330132

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Dated: June 27, 2025

I. INTRODUCTION

On January 28, 2025, Pennsylvania-American Water Company (PAWC or Company) filed an Application requesting that the Commission: (1) approve consistent with the provisions of 66 Pa. C.S Sections 1102 and 1103, the acquisition of the wastewater system assets owned by Elizabeth Borough Municipal Authority (EBMA); (2) approve the right of PAWC to provide wastewater service in the Borough of Elizabeth, and portions of the Borough of Lincoln, and the Townships of Elizabeth and Forward, in Allegheny County, Pennsylvania; (3) include, in its Order approving the acquisition, the ratemaking rate base of the acquired Assets as determined under Section 1329(c)(2) of the Public Utility Code; and (4) authorize PAWC to recover a distribution system improvement charge, accrue Allowance for Funds Used During Construction and defer depreciation related to/for post-acquisition improvements not recovered through the distribution system improvement charge, and include, in its next base rate case, a claim for transaction and closing costs. Application ¶¶ 1-2. PAWC also requests approval of the Asset Purchase Agreement (APA) dated January 24, 2023, as well as other municipal agreements pursuant to Section 507 of the Public Utility Code, and requests that the Commission issue an Order and Certificate of Public Convenience approving and addressing the items requested in this Application. *Id.* at ¶¶ 3; PAWC Exh. MK-1, App. A-25.2.

As of December 31, 2024, PAWC furnished wastewater service to approximately 114,915 direct and bulk customers and water service to approximately 687,608 customers in Pennsylvania. PAWC St. 1 at 18. As of December 31, 2024, EBMA furnished wastewater services to approximately 672 direct customers and about 1,504 indirect customers. PAWC St. No. 1 at 18; I&E St. 2 at 5.

For the reasons set forth below, the Office of Consumer Advocate submits that the Settlement should be approved as in the public interest.

II. PROCEDURAL BACKGROUND

On February 18, 2025, the OCA filed its Protest, Public Statement and Notice of Appearance.

On February 20, 2025, the Office of Small Business Advocate (OSBA) also filed its Protest, Notice of Intervention, Public Statement, and Notice of Appearance.

On February 21, 2025, the Bureau of Investigation and Enforcement (I&E) filed its Notice of Appearance.

On April 21, 2025, Forward Township filed its Petition to Intervention, and on April 23, 2025, Forward Township filed its Protest in the matter.

On April 28, 2025, the Commission issued a Secretarial Letter that accepted for filing the Company's Application. The Application was published in the May 10, 2025, *Pennsylvania Bulletin* and the Commission set a protest or petition to intervene deadline of May 30, 2025. 55 Pa.B. 3329.

On May 5, 2025, EBMA filed its Petition to Intervene.

On May 12, 2025, the ALJs issued their Prehearing Conference Order setting forth a Prehearing Conference to be held on Tuesday, June 3, 2025, at 10 a.m., and requiring that Prehearing Conference Memorandums be filed by noon on Monday, June 2, 2025. The Prehearing Conference Order also set forth shortened discovery modifications that were applicable to discovery issued on or after May 12, 2025.

On May 19, 2025, the Commission issued a Public Input Hearing Notice.

On May 21, 2025, Forward Township filed a motion to dismiss PAWC's objections to discovery, and on May 23, 2025, withdrew that motion.

Also, on May 23, 2025, Forward Township withdrew its motion to dismiss EBMA's objections to Forward Township's Discovery.

On June 2, 2025, the Office of Consumer Advocate (OCA) submitted a prehearing memorandum. Also on June 2, 2025, The Office of Small Business Advocate (OSBA) submitted a prehearing memorandum.

On June 3, 2025, Forward Township, PAWC, and the Bureau of Investigation and Enforcement (I&E) all submitted a prehearing memorandum.

On June 3, 2025, at 10:00 a.m., the Commission held an initial call-in telephonic prehearing conference.

On June 3, 2025, the OCA submitted the Direct Testimony of Nicholas A. DeMarco (OCA St. 1) and David J. Garrett (OCA St. 2). I&E also submitted Direct Testimony on the same date.

On June 4, 2025, PAWC filed a Petition for Protective Order, and on June 9, 2025, that Order was granted by the Commission.

On June 5, 2025, at 6 p.m., the Commission held a telephonic Public Input Hearing. Eight people testified at the Public Input Hearing.

On June 9, 2025, PAWC and Elizabeth Borough Municipal Authority submitted Rebuttal Testimony.

On June 9, 2025, the Commission issued a Prehearing Order, and also issued an Order Granting Petition for Protective Order. A further corrected Order Granting Petition for Protective Order was issued on June 13, 2025.

On June 11, 2025, EBMA submitted the Supplemental Rebuttal Testimony of Timothy Guffey.

On June 12, 2025, the OCA submitted the Surrebuttal Testimony of Nicholas A. DeMarco (OCA St. 1SR) and David J. Garrett (OCA St. 2SR), and I&E submitted Surrebuttal Testimony on the same date.

The ALJs issued an Order Granting Joint Stipulation and Admitting Evidence on June 13, 2025, and on June 16, 2025, the ALJs issued their Order Granting Joint Stipulation and Admitting Pre-Served Testimony.

An evidentiary hearing was held on June 16, 2025, including the cross-examination of EBMA witness Timothy Guffey. The evidentiary hearing scheduled for June 17, 2025, was cancelled.

III. THE TRANSACTION

A. LEGAL STANDARDS

The Commission's policy promotes settlements. 52 Pa. Code §§ 5.231, 69.401. In order to approve a Settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. Philadelphia Electric Company*, 60 Pa. P.U.C. 1, 22 (1985); *Pa. PUC v. City of Bethlehem – Water Dept.*, Docket No. R-2020-3020256 (Order entered April 15, 2021) (*City of Bethlehem*) at 13 (citing *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) (*CS Water and Sewer*)). “It is the Commission’s duty to determine the public interest and to protect the rights of the public.” *Duquesne Light Co. v. Pa. PUC*, 715 A.2d 540, 546 (Pa. Cmwlth. Ct. 1998) (citations omitted). The Commission recognizes that settlements represent “a

compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.” *CS Water and Sewer*, 74 Pa. P.U.C. at 771.

In order to approve the Settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *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 & Sewer Assocs.*, 74 Pa. PUC 767 (1991). Consistent with the Commission’s other statutory responsibilities, the Commission must determine the public interest with “due consideration to the interests of consumers.” 71 P.S. § 309-5 (2).

Proponents of an order bear the burden of proof. 66 Pa.C.S. § 332(a). Because the Joint Petitioners request that the Commission enter an order adopting the settlement without modification, they share the burden of proof to show that the terms and conditions of the settlement are in the public interest. 66 Pa.C.S. § 332(a); *City of Bethlehem* at 13. It is well-established that the “degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence.” *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. Ct. 1990) (*Lansberry*). For a Commission decision to be supported by substantial evidence, it must be supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Dutchland Tours, Inc. v. Pa. PUC*, 337 A.2d 922, 925 (Pa. Cmwlth. 1975) (*Dutchland*). The evidence must be substantial and legally credible, not mere “suspicion” or a “scintilla” of evidence. *Lansberry*, 578 A.2d at 602.

For the reasons set forth below, the Office of Consumer Advocate submits that the proposed acquisition is in the public interest and should be approved.

B. RECORD EVIDENCE OF PUBLIC BENEFITS

The OCA submits that the Settlement is supported by substantial evidence, in the public interest, and should be approved without modification. The terms and conditions of the proposed Settlement provide a reasonable resolution of the issues raised by the OCA in its testimony, including the ratemaking rate base to be incorporated into PAWC's revenue requirement, the rate impact for existing PAWC customers and the acquired customers, PAWC's rate gradualism plan, PAWC's application of the Distribution System Improvement Charge (DSIC) to acquired customers, the treatment of post-acquisition infrastructure improvements, transaction and closing costs, PAWC's contribution to its Hardship Fund, PAWC's tracking of potential low-income EBMA customers, and PAWC's outreach and assistance to potential low-income customers, as discussed below.

OCA witness Nicholas DeMarco accepted the assertions of PAWC witness Hufton and EBMA witness Guffey and public input hearing witnesses Mayor Barry Boucher and Scott Craighead that the Authority lacked technical fitness and ability to complete the requirements of the directives and improvements in the DEP's Long Term Control Plan. *See* OCA St. 1-SR at 6-7. PAWC St. 2-R at 2-6; EBMA St. 1-R at 2-3; Tr. 44-50, 136-143. As Mr. DeMarco testified:

[t]he testimony presented by the witnesses shows that even if EBMA had the funding to implement the LTCP plan they would not have the necessary technical expertise on staff to adequately run and maintain the system. If EBMA had even more funding available consideration could be given to hiring additional contractors but that is not option in this case.

OCA St. 1-SR at 6.

For the reasons set forth below, the record evidence supports the public benefits of the transaction.

IV. THE TERMS OF THE SETTLEMENT ARE IN THE PUBLIC INTEREST AND SHOULD BE APPROVED

A. Tariff and Rates

In the first base rate case that includes the System PAWC will propose a rate gradualism plan for all EBMA's customers to pay their full cost of service over time and to move the System closer to the Rate Zone 2 system-average wastewater rates consistent with the principles of gradualism in order to avoid rate shock. Settlement at ¶ 23(a). In order to avoid rate shock, PAWC will not propose to move the EBMA rate zone to more than 30% of EBMA's rates in effect at Closing in PAWC's first base rate proceeding in which the System is included. Settlement at 23(b). The Settlement provides that in the second base rate proceeding following Closing, PAWC will not propose to increase rates for the EMBA zone more than 60% of EBMA's rates in effect at Closing. Settlement at ¶ 23(c).

The parties also acknowledge that absent this settlement, if the parties fully litigated this proceeding, the noticed average residential customer bill using 3,201 gallons a month would increase by \$63.52 or by 104.8% or to \$124.25 a month if 100% of the year 1 revenue deficiency is included. OCA St. 1 at 18. The notice provided to PAWC customers, based on an average usage of 3,201 gallons/month, the average bill for the current PAWC wastewater customers could increase by \$1.21 or 1.1% a month, while the average PAWC water customer's bill could increase by \$0.16/month, or by 0.2%. OCA St. 1 at 19. Additionally, the Settlement provides that, the first base rate case that includes the System, PAWC will propose to limit any Section 1311(c) shift of the revenue requirement deficiency related to EBMA's operations to no more than is needed to achieve the rate limit noted above. Settlement at ¶ 34. As stated above, in the OCA's view, the Settlement provides mitigation of the rate impact of the transaction for existing PAWC customers

and the acquired EBMA customers by reducing overall costs (Settlement at ¶¶ 25-28) while simultaneously establishing a rate gradualism outcome for EBMA's customers that is overall consistent with the OCA's litigation in this matter.

In the Settlement, all parties reserve the right to challenge any rates proposed by PAWC in any future base rate cases. Settlement at ¶ 23(d). All parties also recognize the Commission's ultimate ratemaking authority to set just and reasonable rates, and that the parties may enter into a settlement in the base rate proceedings on reasonable terms and conditions. *Id.*

Furthermore, as discussed below, in Paragraph 32, the parties agree that in the first base rate case filed after the closing of the transaction in which PAWC makes a claim for the System in rate base, PAWC will file a cost of service study that removes all costs and revenues associated with the operation of EBMA's system. Settlement at ¶ 32. These settlement terms will provide a means for the parties to use the cost-of-service data to set rates for those customers that differ, as appropriate, from rates established for other wastewater customers. This will help to mitigate the potential level of subsidy by PAWC's other customers and applies the ratemaking principle of gradualism to rates set for customers in the EBMA service area.

B. Fair Market Value for Ratemaking Rate Base Purposes

Based upon the appraisals of Gannett Fleming and WADS presented by PAWC and EBMA (\$28.1 million and \$28.7 million, respectively), PAWC sought a \$28,000,000 rate base. Application, App. A-11; OCA St. 2 at 2.

OCA's witness, David Garrett, recommended that a reasonable adjustment to Gannett Fleming's appraisal resulted in a weighted average FMV of \$22.1 million. OCA St. 2 at 4. Applying reasonable adjustments to WADS' appraisal results in a weighted average FMV of \$22.1 million. OCA St. 2 at 5. OCA witness Garrett recommended that the Commission authorize a

ratemaking rate base in the amount of \$22,100,000 pursuant to Section 1329(c)(2) of the Public Utility Code. OCA St. 2 at 6.

I&E witness Zachari Walker recommended the following:

[i]f the Commission approves PAWC's application, I recommend the ratemaking rate base to be recorded on PAWC's books be determined based on the RRR published on December 31, 2024, of 1.63. The result represents a ratemaking rate base \$27,138,703 ($\$16,649,511 \times 1.63$), or a reduction of \$832,475 ($\$27,917,178 - \$27,138,703$) to PAWC's calculated ratemaking rate base cited above. My recommended calculated rate base uses the most recent RRR published prior to the filing of PAWC's application to acquire EBMA.

I&E St. 1 at 6.

The Joint Petitioners have agreed to use \$27,138,703 as the ratemaking rate case for the acquired system or approximately \$832,475 less than requested in the Application. Settlement at ¶ 25. In the OCA's view, the Settlement's \$27.1 million ratemaking rate base represents an amount that is within the range of possible outcomes in a Commission final order in the event of full litigation of the case based on substantial record evidence. At the same time, the Settlement provides mitigation of the rate impact of the transaction for existing PAWC customers and the acquired EBMA customers by reducing overall costs. (Settlement at ¶¶ 25-28) while simultaneously establishing a rate gradualism outcome that is consistent with the OCA's litigation position in this matter. Settlement at ¶¶ 23-24.

The proposed resolution is consistent with the Commission's Reasonableness Review Ratio (RRR) guidance, even though it may not necessarily apply to this proceeding. Under the Commission's *Final Supplemental Implementation Order (FSIO)*, the Commission stated that "in considering the RRR in a particular proceeding, we clarify that we will look to the RRR that was in place at the time the selling utility and acquiring utility executed an APA." *Valuation of Acquired Municipal Water and Wastewater Systems- Act 12 of 2016 Implementation, Final*

Supplemental Implementation Order, Docket No. M-2016-2543193, Order at 106 (July 2, 2024)(*FSIO Order*). Here, the Asset Purchase Agreement was executed by PAWC and EMBA on January 24, 2023. However, the final Application was not filed until January 28, 2025. The parties have agreed to utilize the *FSIO Order* as a metric for determining the ratemaking rate base for the acquired system.

PAWC and EBMA proposed a purchase price of \$28,000,000 in their APA and in their Application in this case. PAWC St. 1 at 14. PAWC claimed it does not object if the Commission were to approve only recording \$27,917,178 on its books. Application at ¶¶ 16-17.

The Joint Petitioners have agreed to use \$27,138,703 as the ratemaking rate case for the acquired system. Settlement at ¶ 25. That means that PAWC and EBMA reduced the amount to be included in rate base, or the goodwill by approximately \$832,000. The parties have agreed that PAWC may record the acquisition at the net value of assets (i.e., the Commission-approved ratemaking rate base of the acquired assets), consistent with generally accepted accounting principles. Settlement at ¶ 26. Any goodwill that results from the transactions that is included on the balance sheet shall be excluded from the rate base, and the financing costs for the goodwill shall not be recovered in rates. Settlement at ¶ 27. Goodwill is defined as the difference between the purchase price and the allowed rate base will not be recovered in rate base nor via amortization from PAWC's existing customers or from EBMA's current customers. Settlement at ¶ 28.

Cumulatively, these provisions, along with the rate gradualism provisions in Section A above, will help to protect Pennsylvania customers from the proposed merger. Ratepayers will experience approximately \$832,000 in rate mitigation compared to the \$28,000,000 purchase price. Additionally, the Settlement ensures that both PAWC's rate base and ratemaking capital revenue requirement deficiency related to EBMA's operations is limited to no more than is needed

to achieve the rate limit noted above. As stated above, in the OCA's view, the Settlement provides mitigation of the rate impact of the transaction for existing PAWC customers and the acquired EBMA customers by reducing overall costs, while simultaneously establishing a rate gradualism outcome for the EBMA customers that is overall consistent with the OCA's litigation concerns in this matter. (Settlement at ¶ 23).

Moreover, the Settlement also provides that the parties agree that in the first base rate case filed after the closing of the transaction in which PAWC makes a claim for the System in rate base, PAWC will file a cost of service study that removes all costs and revenues associated with the operation of the City's system. Settlement at ¶¶ 36-37. These Settlement terms will provide a means for the parties to use the cost-of-service data to set rates for those customers that differ, as appropriate, from rates established for other wastewater customers. This will help to mitigate the potential level of subsidy by PAWC's other customers and applies the ratemaking principles of gradualism to rates set for customers in the EBMA service area.

C. Distribution System Improvement Charge

Under the terms of the Settlement, PAWC will not include System-related investments in its Distribution System Improvement Charge (DSIC) until PAWC collects a DSIC from EBMA customer. Settlement at ¶ 29. PAWC shall be permitted to collect a DSIC from System customers upon (i) PAWC's filing of an amended wastewater Long-Term Infrastructure Improvement Plan (Amended LTIIP) including the System which does not re-prioritize other service areas; (ii) the Commission's approval of the Amended LTIIP, as may be modified in the discretion of the Commission; and (iii) PAWC's filing of a compliance tariff supplement that incorporates the System into PAWC's DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after the Commission's approval of the Amended LTIIP.

Settlement at ¶ 29. PAWC will file an Amended LTIP at the Commission within 270 days of Closing. This responds to a concern and recommendations raised by both OCA witness DeMarco and I&E witness Cline regarding the timing of the filing of amended LTIP and the charging of the DSIC to EBMA ratepayers. OCA St. 1 at 26-27; I&E St. 2 at 6-7.

The Settlement places deadlines on when PAWC will file the amendment and when PAWC will file to apply the DSIC to customers of the acquired system. As discussed by OCA witness DeMarco, having the acquired customers pay a DSIC is one small way in which PAWC's existing customers can receive a short-term benefit from the acquisition – by spreading the costs recovered through the DSIC over a larger customer base. OCA St. 1 at 26-27. The deadline for the amended LTIP is a reasonable compromise between OCA's proposed 90 days, I&E's proposed 180 days, and PAWC's proposed 1 year. The Settlement adopts the OCA's recommendation regarding the timing of when the DSIC is charged to EBMA customers, is a reasonable compromise for the filing of an Amended LTIP, and should therefore be approved as in the public interest.

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

The Settlement provides an acknowledgement that the Application includes a request that PAWC be permitted to accrue Allowance for Funds Used During Construction (AFUDC) for post-acquisition improvements that are not recovered through the DSIC for book and ratemaking purposes and to defer depreciation related to its post-acquisition improvements not recovered through the DSIC for ratemaking purposes. Settlement at ¶ 30. Any claims for either the AFUDC for post-acquisition improvements and the deferral of the depreciation will be addressed in PAWC's first base rate proceeding. *Id.* Moreover, the Settlement preserves the rights of the parties to address in future base rate proceedings and that this term should not be construed as a preapproval by the Commission. *Id.*

The OCA did not raise any concerns in its testimony regarding PAWC's request to accrue for AFUDC or deferred depreciation related to post-acquisition improvement costs for book and ratemaking purposes. The Settlement reserves the right of the parties to litigate any concerns in a future rate case where the claims are first made. As all rights are reserved, the OCA agrees that the proposed term is in the public interest and should be approved.

E. Closing

The Settlement provides that "if PAWC and EBMA decide to close on the Transaction in accordance with their respective rights and obligations under the APA, the Closing will not take place sooner than the date of the existence of a final, unappealable order of the Commission approving the Application." Settlement at ¶ 31. The Settlement provision provides for regulatory certainty before the transaction is closed. The regulatory certainty is particularly important should PAWC file a base rate proceeding seeking to incorporate the System into its rates. The OCA submits that this provision should be approved as in the public interest.

F. Transaction and Closing Costs

Section 1329 permits only the transaction and closing costs incurred by the acquiring public utility to be included in the established ratemaking rate base. 66 Pa. C.S. § 1329(d)(1)(iv). PAWC will incur transaction and closing costs of approximately \$1.1 million, which PAWC will claim in its rate base in the base rate case following closing if the proposed acquisition is approved by the Commission and not yet subject to appeal. OCA St. 1 at 24-25.

The OCA recommended that PAWC should be required to separately identify all of its closing costs by cost category, including outside legal fees, when it makes a claim necessary for recovery in its next base rate case. OCA St. 1 at 25. The OCA also recommended that PAWC should be barred from claiming any transaction and closing costs incurred by the seller. OCA St.

1 at 25. The OCA's recommendations regarding transaction and closing costs are necessary to ensure that ratepayers do not pay imprudent and unreasonable transaction and closing costs if the Commission determines to approve PAWC's Application.

Under the Settlement, the parties acknowledge that the Application includes a request that PAWC be permitted to claim transaction and closing costs associated with the acquisition of Elizabeth Borough Municipal Authority. Settlement at ¶ 32. The Settlement Parties agree that they will not contest these requests in this proceeding, but they reserve the right to litigate their positions fully in future rate cases when this issue is ripe for review. *Id.* In a future rate case when these costs are claimed, PAWC agrees that it will clearly set out and identify all transaction and closing costs associated with this matter. *Id.* The Settlement Parties' assent to this term should not be construed to operate as their preapproval of PAWC's request. *Id.* Additionally, the inclusion of outside legal fees, if any, in PAWC's transaction and closing costs under the APA shall be separately identified in PAWC's next base rate case, and all parties shall have the right to challenge the reasonableness, prudence, and basis for such fees. Settlement at ¶ 33. Any claim made by PAWC to recover transaction and closing costs associated with the transaction will not include costs incurred by the Authority. Settlement at ¶ 34.

The Settlement adopts the OCA's recommendation. As such, these Settlement provisions are in the public interest and should be adopted by the Commission.

G. Approval of Section 507 Agreements

The Settlement provides that the listed Section 507 agreements should be approved. Settlement at ¶ 35(a)-(h). OCA witness DeMarco only raised one concern related to the approval of the Section 507 agreements regarding the *Pro Forma* Lease Agreement by and between the Elizabeth Borough Municipal Authority and Pennsylvania-American Water Company (submitted

as **Appendix A-25.6**). Settlement at ¶ 35(h). OCA witness DeMarco raised a question regarding the lease agreement for the DUPERON® FLEXRAKE® FPFS Full Penetration Fine Screen unit (Screen Unit) and how it will be treated in this transaction. OCA St. 1 at 13. Under the Application, Elizabeth Borough will retain ownership of the non-moving structural portion of the Screen Unit after closing of the transaction and PAWC will lease this portion of the Screen Unit from the Borough. PAWC St. 1 at 13-14; OCA St. 1 at 13. As discussed in the testimony of Mr. DeMarco:

the Authority is retaining ownership of the non-moving structural portion of the fine screen unit so that the wastewater treatment plant will continue to be classified as a Publicly Owned Treatment Works for purposes of the “domestic sewage exclusion” contained in 40 C.F.R. 261.4(a)(1) and the Resource Conservation and Recovery Act (RCRA) of 1976. Absent this classification, the treatment residuals (sewage sludge) produced from the sewage treatment plant under PAWC’s ownership would be classified as hazardous waste under USEPA’s “mixture rule” (40 C.F.R 261.3(a)(2)(iv)) and “derived-from rule” (40 C.F.R 261.(c)(2)(i)). This would considerably increase the cost to manage and dispose of the sewage sludge, resulting in higher cost of service to PAWC and ultimately higher rates for customers.

OCA St. 1 at 12.

The Company’s explanation of the reasons for the lease agreement addressed the OCA’s concerns. The OCA agrees that this proposed lease agreement should be approved as in the public interest. The OCA did not raise any concerns with respect to any of the other proposed 507 agreements.

H. Cost of Service Studies

In this proceeding, the OCA identified the need for PAWC to provide, in the first base rate case in which it includes Elizabeth Borough Municipal Authority assets in rate base, a cost-of-service study that removes all costs and revenues associated with the operations of the EBMA wastewater system. OCA St. 1 at 26. OCA’s recommendation was made because, if adopted, it

provides the necessary information needed to establish rates that reflect the costs of the EBMA system in PAWC's next rate case. *Id.*

The Settlement adopts the OCA's recommendation. In the first base rate case filed after the closing of the transaction in which PAWC makes a claim for the Acquired Assets in rate case, PAWC will file a cost-of-service study that removes all costs and revenues associated with the operation of the Authority's system and will provide a separate Cost of Service Study (COSS) for the System. Settlement at ¶¶ 36-37. These settlement terms will provide a means for the parties to use the cost-of-service data to set rates for EBMA customers that reflect the cost of service under PAWC ownership, or movement towards the cost of service, and that may differ, as appropriate, from rates established for other water customers. This will help to mitigate the potential level of subsidy by PAWC's other water customers and applies the ratemaking principles of gradualism to rates set for customers in EBMA's service area for existing PAWC customers and the acquired PAWC customers by reducing overall costs.

I. Customer Assistance Programs

1. Low-Income Programs

The Settlement provides several measures to address the needs of low-income customers in EBMA's service territory including additions to the Hardship Fund; immediate eligibility upon Closing to the payment options and CAP; a welcome letter; and tracking of participation in the program. Settlement at ¶¶ 38-41.

The Settlement provides that PAWC agrees to contribute \$100,000 to its Hardship Fund either (1) in installments over the five-year period after Closing, or (2) as a one-time contribution within 60 days after Closing. Settlement at ¶ 38. This funding commitment is in addition to PAWC's funding commitment to the Hardship Fund in PAWC's last base rate proceeding at

Docket No. 2023-3043189, *et al. Id.* The proposal adopts OCA witness DeMarco's recommendation for additional Hardship Funding. The additional funding for the program by PAWC's shareholders will assist customers in need throughout PAWC's service territory, including the acquired EBMA customers. PAWC's commitment to a \$100,000 increase in hardship funding is in the public interest and should be adopted by the Commission.

To ensure that EBMA customers can avail themselves of PAWC's Customer Assistance Program (CAP) programming benefits, the OCA recommended that PAWC provide a letter to acquired customers that provides information regarding its low-income programs, including a description of the available programs, eligibility and requirements, and PAWC's contact information. OCA St. 1 at 23-24. Moreover, the OCA recommended that the welcome letter sent to EBMA ratepayers include notice language referring customers to include a link to PAWC's website where a customer can find the rate impact range. *Id.*

Immediately upon Closing, EBMA customers will become eligible for all PAWC payment options and customer programs. Settlement at ¶ 39. Within the first billing cycle after Closing, PAWC will include a bill insert to System customers about the low-income programs and will include such information in a welcome letter to customers. Settlement at ¶ 40. The bill insert and the welcome letter shall include, at a minimum, a description of the low-income programs, eligibility requirements for the programs, and PAWC's contact information. PAWC will also do targeted outreach to EBMA area wastewater customers regarding its low-income programs. Settlement at ¶ 40. The welcome letter will be sent within the first 30 days of Closing and will also include information about payment options as well as the above-referenced information. The welcome letter will also include the OCA's recommended link where a customer can find the rate impact range. Settlement at ¶ 40. The Settlement provides that unless PAWC and the OCA agree

to work together on a different timeline, within 15 days of a final Order in this proceeding, PAWC will provide the OCA with a copy of the draft welcome letter, and the OCA will provide feedback within 10 days of receipt. Settlement at ¶ 40. PAWC will, in good faith, consider the incorporation of the OCA's recommendations. Settlement at ¶ 40.

The OCA also recommended that PAWC should report the number of eligible customers from the former EBMA service area who are enrolled in PAWC's CAP. OCA St. 1 at 24. The OCA recommended that the report should be provided to the Commission and to the parties every six months until the conclusion of PAWC's next base rate case. *Id.*

The Settlement provides that every 6 months, PAWC will track the number of the Authority's customers that are (1) potentially eligible to enroll in PAWC's CAP; and (2) who are enrolled in PAWC's CAP. Settlement at ¶ 42. PAWC will provide and present this information on a timely basis to the regularly held meetings of PAWC's Customer Assistance Advisory Group. PAWC will also present this information in its next base rate case filing in a format showing the potential eligibility and enrollment data broken down by six-month increments starting from the time of closing through and until the time of filing the rate case. *Id.* Potential eligibility will be based on U.S. Census data. *Id.*

The Settlement adopts many of the OCA's recommendations. The information in the welcome letter will provide important information to the acquired customers as customers will be able to more easily determine the rate impact and will give customers the tools needed to avail themselves of PAWC's programs. The Hardship Fund grant increase will help to provide EBMA customers, and all PAWC customers, with additional funds to assist when in need. The low-income data tracking is a reasonable compromise regarding the issue of tracking low-income customers. Tracking this important information regarding low-income customers will enhance interested

stakeholders' overview of low-income customer participation in PAWC's CAP, increases transparency regarding important metrics, and is in the public interest.

2. Easements

The OCA recommended that, as a condition for approval of the application, the Commission should require that the closing of the transaction shall not be permitted to occur until PAWC acquires all outstanding easements. OCA St. 1 at 29.

Under the APA, EBMA is under an obligation to use commercially reasonable efforts to obtain all easements prior to closing so that they may be transferred to PAWC at closing. Settlement at ¶ 43. The APA also requires EBMA to begin condemnation proceedings to obtain all missing easements that it can prior to closing. *Id.* Finally, the APA also created a Missing Easement Escrow funded in the amount of \$200 per missing easement in order to secure EBMA's obligations to the easements are obtained prior to closing. EBMA is required to pursue the missing easements for two years after closing. After two years, the portion of the Missing Easement Escrow Fund that compensates EBMA for the missing easements will be released to PAWC to compensate for the missing easements not obtained after closing. *Id.*

The OCA submits that the Settlement is a reasonable resolution of the OCA's concerns regarding the easements. The OCA believes that the provision provides reasonable protections to ensure that ratepayers are not paying for missing easements in rates. This Settlement provision is a reasonable approach towards any potentially missing easements in this proceeding and is in the public interest.

J. Pennsylvania Infrastructure Investment Authority

The Settlement provides that PAWC will investigate the feasibility of applying for a Pennsylvania Infrastructure Investment Authority (PENNVEST) grant or loan for all eligible

system improvements relating to the Long-Term Control Plan and any other upgrades identified in PAWC's tentative plan. Settlement at ¶ 44. Paragraph 44 adopts OCA witness DeMarco's recommendation. As Mr. DeMarco testified, PENNVEST funding will help to offset the cost of the purchase price and the cost of infrastructure improvement to the benefit of current and future ratepayers. OCA St. 1 at 10. The OCA submits that as it will help to lower the overall costs to ratepayers, the provision is in the public interest and should be approved.

K. Other Necessary Approvals

The Settlement also provides that "the Commission shall issue any other appropriate or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the transaction contemplated in the Application in a lawful manner." Settlement at ¶ 45. To the extent necessary to facilitate the execution of the Settlement agreement, the OCA agrees that this condition is in the public interest when considered in totality with the Settlement and should be approved.

L. Standard Settlement Conditions

The Settlement also includes the standard settlement conditions for approval. The Settlement is conditioned upon approval without modification and all parties reserve their respective rights should the Commission modify the Settlement. Settlement at ¶¶ 46-51. The Settlement also includes Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs as Appendices A-C. Settlement at ¶ 49, App. A-C. The OCA submits that the conditions are in the public interest and should be approved.

IV. CONCLUSION

For the foregoing reasons, the Office of Consumer submits that the terms and conditions of the Settlement should be approved as in the public interest.

Respectfully Submitted,

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