



July 11, 2019

VIA E-FILING

Jonathan P. Nase

Direct Phone 717-773-4191

Direct Fax 215-372-2340

jnase@cozen.com

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

Re: Application of Pennsylvania-American Water Company under Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of Wastewater System Assets of Exeter Township; Docket Nos. A-2018-3004933 et al.

JOINT PETITION FOR APPROVAL OF PARTIAL SETTLEMENT

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the original of the **Joint Petition for Approval of Partial Settlement ("Settlement") between Pennsylvania-American Water Company, the Office of Consumer Advocate, the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission, and the Township of Exeter** (together, the "Signatories"). By the Settlement, the Signatories resolve all but one of the issues arising in connection with this proceeding.

Copies of the Settlement are being served on the Presiding Officer, Administrative Law Judge Andrew M. Calvelli, and on all parties, as indicated on the enclosed Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please direct them to me.

Sincerely,

COZEN O'CONNOR

By: Jonathan P. Nase

Counsel for *Pennsylvania-American Water Company*

JPN:kmg

Enclosures

cc: Honorable Andrew M. Calvelli
Per Certificate of Service
Susan Simms Marsh, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Sections 507, 1102 and 1329 of the : Docket No. A-2018-3004933 *et al.*
Public Utility Code for Approval of its Acquisition of :
wastewater system assets of Exeter Township :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the **Joint Petition for Approval of Partial Settlement between Pennsylvania-American Water Company, the Office of Consumer Advocate, the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission, and the Township of Exeter**, 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 AND FIRST CLASS MAIL

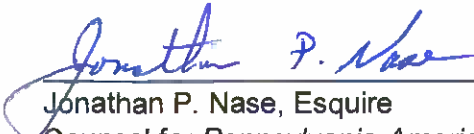
Samuel Cortes, Esq.
Fox Rothschild LLP
747 Constitution Drive
Suite 100
Exton, PA 19341
E-mail: scortes@foxrothschild.com
Counsel for *Exeter Township*

Barnett Satinsky, Esq.
Fox Rothschild LLP
2000 Market Street, 20th Floor
Philadelphia, PA 19103-3222
E-mail: bsatinsky@foxrothschild.com
Counsel for *Exeter Township*

Erika McLain, Esq.
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17120
E-mail: ermclain@pa.gov
Counsel for *Bureau of Investigation & Enforcement*

Christine Maloni Hoover, Esq.
Harrison W. Breitman, Esq.
Erin L. Gannon, Esq.
Ashley E. Everette, Consultant
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
E-mail: choover@paoca.org
E-mail: HBreitman@paoca.org
E-mail: EGannon@paoca.org
E-mail: AEverette@paoca.org
Counsel for *Office of Consumer Advocate*

Joan E. London, Esq.
Kozloff Stoudt
2640 Westview Drive
Wyomissing, PA 19610
E-mail: jlondon@kozloffstoudt.com
Counsel for *Borough of St. Lawrence, Berks
County, PA*


Jonathan P. Nase, Esquire
Counsel for *Pennsylvania-American Water Company*

Date: July 11, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Andrew M. Calvelli

Application of Pennsylvania-American Water :
Company under Section 507, 1102 and 1329 of the : Docket Nos. A-2018-3004933 *et al.*
Public Utility Code for Approval of its Acquisition :
Of Wastewater System Assets of Exeter Township :

**JOINT PETITION FOR APPROVAL OF
PARTIAL SETTLEMENT**

I. INTRODUCTION

Pennsylvania-American Water Company (“PAWC” or “Company”), the Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission (“I&E”), and the Township of Exeter (“Exeter”) (singularly, a “Joint Petitioner” and collectively, the “Joint Petitioners”) hereby join in this “Joint Petition for Approval of Partial Settlement” (“Settlement”)¹ and respectfully request that the Honorable Administrative Law Judge Andrew M. Calvelli (the “ALJ”) recommend approval of, and the Pennsylvania Public Utility Commission (“Commission”) approve, this Settlement without modification. The Settlement resolves all issues in this proceeding except St. Lawrence’s claims against Exeter concerning its debt service payments relating to the Exeter wastewater treatment plant. The Parties will address that issue in their briefs.

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

¹ The Borough of St. Lawrence (“St. Lawrence”), which intervened in this case, does not oppose the Settlement. St. Lawrence, PAWC, OCA, I&E and Exeter are referred to individually as a “Party” and collectively as the “Parties.”

II. BACKGROUND

1. PAWC and Exeter entered into an asset purchase agreement dated as of May 29, 2018 (“Asset Purchase Agreement”) by which PAWC will purchase the wastewater system (the “System”) presently owned by Exeter (the “Transaction”).

2. On September 25, 2018, PAWC filed the instant application (“Application”) asking the Commission to approve the Transaction pursuant to Sections 1102 and 1329 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. §§ 1102 and 1329.

3. By Secretarial Letter dated October 1, 2018, the Commission notified PAWC that the September 25, 2018 Application was not accepted for filing purposes because, in the opinion of Commission staff, the Application was incomplete.

4. On December 5, 2018, PAWC filed an Amended Application with the Commission (for ease of reference, the September 25, 2018 Application and the December 5, 2018 Amended Application will be referred to collectively herein as the “Application”).

5. On December 10, 2018, Exeter filed an Application pursuant to Section 1102(a) of the Code requesting that the Commission issue a Certificate of Public Convenience *Nunc Pro Tunc*, for Exeter to offer, furnish, render, and supply wastewater service to the public in certain portions of Lower Alsace Township, Berks County, Pennsylvania. *In re: Application of Exeter Township for Certificate of Public Convenience to Offer, Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions of Lower Alsace Township, Berks County, Pennsylvania*, Docket No. A-2018-3006505 (“Exeter/Lower Alsace Application”).

6. By e-mail of December 12, 2018, the Commission’s Bureau of Technical Utility Services (“TUS”) notified PAWC that it believed certain items were missing from the Application.

7. On December 17, 2018, PAWC provided the information that TUS requested.

8. By Secretarial Letter dated December 19, 2018, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Application until PAWC complied with certain customer notice requirements.

9. On December 14, 2018, the OCA filed a Petition to Reject or Hold in Abeyance Acceptance of the Application (“OCA’s Petition to Reject or Hold in Abeyance”). PAWC filed an Answer on December 17, 2018.

10. On December 20, 2018, I&E filed a Motion to Reject or Hold in Abeyance Pennsylvania-American Water Company’s Amended Application (“I&E’s Motion to Reject or Hold in Abeyance”). PAWC filed an Answer on December 26, 2018.

11. On December 28, 2018, Exeter filed a Petition to Intervene.

12. On January 7, 2019, St. Lawrence filed a Petition to Intervene.

13. On January 9, 2019, Exeter filed an Answer to I&E’s Motion to Reject or Hold in Abeyance.

14. On January 14, 2019, St. Lawrence filed the “Response of Intervenor, Borough of St. Lawrence to Application for Certificate of Public Convenience and Application for Approval of Transfer.”

15. The OCA filed a Protest and Public Statement on January 14, 2019, and a Petition for Stay on that same date. PAWC filed an Answer to the Petition for Stay on January 16, 2019, and Exeter filed an Answer to the Petition for Stay on February 4, 2019.

16. On February 8, 2019, the Commission issued the following four Secretarial Letters:

a. One addressed to the OCA indicating that the documents it filed on December 14, 2018 and January 14, 2019 were filed at an inactive docket, and would be addressed if the docket became active;

b. One addressed to I&E indicating that the document it filed on December 20, 2018 was filed at an inactive docket, and would be addressed if the docket became active;

c. One addressed to Exeter indicating that the documents it filed on January 9 and February 4, 2019 were filed at an inactive docket, and would be addressed if the docket became active; and

d. One addressed to PAWC indicating that its filings of December 17, 2018, December 26, 2018, and January 16, 2019 were filed at an inactive docket, and would be addressed if the docket became active.

17. On February 13, 2019, I&E filed a formal complaint against Exeter relating to alleged *de facto* service in Lower Alsace Township. *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Exeter Township*, Docket No. C-2019-3007920.

18. On March 8, 2019, PAWC notified the Commission that PAWC would shortly begin giving the required customer notices. On April 15, 2019, PAWC filed a verification stating that it had complied with all required customer notices.

19. On April 16, 2019, the Commission issued a Secretarial Letter accepting the Amended Application for filing.

20. PAWC subsequently provided notice of the Application to certain municipalities, water and wastewater utilities, and state agencies.

21. On April 27, 2019, notice of the Amended Application was published in the *Pennsylvania Bulletin*, with a deadline of May 14, 2019 for filing Protests or Petitions to Intervene. 49 Pa. B. 2099. No additional Protests or Petitions to Intervene were filed.

22. The ALJ issued his Prehearing Conference Order on April 22, 2019 which, among other things, modified the Commission's discovery rules for this proceeding.

23. A Prehearing Conference was held before the ALJ on May 17, 2019, and the ALJ subsequently issued his Scheduling Order which, among other things, established the litigation schedule for this proceeding. Significantly, the last public meeting of the Commission before the expiration of the six-month statutory deadline for this case (October 16, 2019) is October 3, 2019.

24. An Order Granting Petition for a Protective Order was issued on June 4, 2019.

25. On June 12, 2019, PAWC, Exeter, OCA and I&E submitted a Joint Petition for Approval of Settlement of All Issues regarding the Exeter/Lower Alsace Application.

26. By e-mail of June 28, 2019, the Parties informed the ALJ that they had reached a settlement of all issues except St. Lawrence's claims against Exeter concerning its debt service payments relating to the Exeter wastewater treatment plant.

27. A hearing was held before the ALJ on June 28, 2019.

III. SETTLEMENT TERMS

The Joint Petitioners agree as follows:

A. Approval of Application

28. The Application shall, subject to the other terms and conditions contained in the Settlement, be approved as being in the public interest and the Commission shall issue such Certificates of Public Convenience as may be necessary to evidence its approval pursuant to 66 Pa.

C.S. § 1102(a) of (i) the transfer, by sale, of substantially all of Exeter's assets, properties and rights related to its wastewater collection and treatment facilities to PAWC as provided in the Application, and (ii) PAWC's right to begin to offer, render, furnish or supply wastewater service to the public in the areas served by Exeter as indicated in the Application. The Commission's approval of the Settlement is conditioned on the Commission's approval of the settlement regarding the Exeter/Lower Alsace Application.²

B. Tariff

29. The *pro forma* tariff supplement attached to the Application as **Appendix A-13 (REV)**, including all rates, rules and regulations regarding conditions of PAWC's wastewater service as revised therein, shall be permitted to become effective immediately upon closing of the Transaction.

C. Fair Market Value for Ratemaking Rate Base Purposes

30. Pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$92,000,000 for ratemaking rate base purposes based on a modified purchase price of \$93,500,000 for the acquired assets. Commission approval of the Transaction shall be conditioned upon PAWC's filing of a Second Amendment to the Asset Purchase Agreement that adjusts the purchase price to \$93,500,000.

31. The Parties agree that any adjustment to the fair market value rate base reflects a compromise of the various positions of the Parties. The Parties reserve the right to present adjustments and oppose adjustments to Utility Valuation Expert ("UVE") appraisals in future cases. The Parties further agree however, for the purposes of this proceeding, that the following adjustments are explicitly accepted by the Parties:

² Under the proposed Exeter/Lower Alsace Settlement, Exeter's service in Lower Alsace will be abandoned upon closing of the Transaction.

(a) Cost Approach: The cost of land will not be increased by a consumer price index when calculating the reproduction cost of land.

(b) Market Approach:

(i) If “comparable acquisitions” are used in determining market value, the proxy group will not be limited to only companies which engage in Pennsylvania fair market value acquisitions; the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order;

(ii) The comparable group rate base amounts will not be adjusted for theoretical contributions; and,

(iii) When comparing metrics for municipalities in completed Section 1329 acquisitions, capital assets less depreciation value from the municipality’s financial statements will not be used.

D. Rates

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

33. In the first base rate case that includes Exeter wastewater system assets, PAWC will also provide a separate cost of service study for the Exeter System.

34. Except as explicitly stated herein, nothing contained in the Settlement 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 base rate proceeding.

35. PAWC agrees that it will propose to move Exeter wastewater rates to Exeter’s cost of service in the first base rate case that includes Exeter wastewater system assets unless such

increase is more than 1.8 times current rates; provided, however, that PAWC will not be obligated to propose Exeter wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. The Joint Petitioners acknowledge, however, that PAWC may agree to rates other than those proposed for Exeter customers in the context of a settlement of the base rate case.

E. Inflow and Infiltration Study

36. Within six months after closing of the transaction, PAWC will start an Infiltration and Inflow ("I&I") study for the Exeter System and provide the results of said study, upon completion, to all Parties to this proceeding. All Parties reserve the right to challenge the recovery of costs related to I&I, including the cost of the study, in subsequent rate proceedings.

F. Low Income Program Outreach

37. Within the first 90 days of PAWC's ownership of the Exeter System, PAWC shall include a bill insert to the Exeter-area customers regarding its low income programs and shall include such information in a welcome letter to Exeter-area 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.

G. Distribution System Improvement Charge

38. If PAWC proposes to modify its Long-Term Infrastructure Improvement Plan ("LTIIP") to include the Exeter System, PAWC will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. Upon approval by the Commission of such modification to its LTIIP, PAWC shall be permitted to collect a distribution system improvement charge ("DSIC") related to the Exeter System prior to the first base rate case in which the Exeter assets are incorporated into rate base.

H. Accrual of Allowance for Funds Used During Construction

39. The Joint Petitioners acknowledge that the Application includes a request that 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. Any claim for AFUDC related to post-acquisition improvements not recovered through the DSIC will be addressed in PAWC’s first base rate case which includes Exeter wastewater system assets. The Joint Petitioners 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.

I. Deferral of Depreciation for Post-Acquisition Improvements

40. The Joint Petitioners acknowledge that the Application includes a request that PAWC be permitted to defer depreciation related to post acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Any claim for 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 which includes Exeter wastewater system assets. The Joint Petitioners 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.

J. Transaction and Closing Costs

41. The Joint Petitioners acknowledge that the Application includes a request that PAWC be permitted to claim transaction and closing costs associated with the Transaction. The Joint Petitioners agree that they will not contest this request 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.

K. Customer Notice

42. The Joint Petitioners agree that PAWC shall mail the notice attached hereto as **Attachment A** to existing customers of Exeter notifying them of the Settlement concurrently with the filing of this Joint Petition. The Joint Petitioners agree that such notice of settlement provides existing customers of Exeter with adequate notice and opportunity to be heard on this proposed Settlement.

L. Approval of Section 507 Agreements

43. The Joint Petitioners agree that the Commission shall issue a Certificate of Filing or approvals, pursuant to 66 Pa. C.S. § 507, for the following agreements between PAWC and a municipal corporation:³

(a) Asset Purchase Agreement between Township of Exeter (as Seller) and Pennsylvania-American Water Company (as Buyer), dated as of May 29, 2018 (attached to Application as **Appendix A-24-a**), the First Amendment to Asset Purchase Agreement (attached to the Application as **Appendix A-24-a REV**), and the Second Amendment to the Asset Purchase Agreement (reflecting revised purchase price per settlement);

(b) Intermunicipal Agreement, dated as of December 11, 1996, between Exeter Township, Berks County, Authority and Exeter Township, on the one hand, and the Township of Alsace, on the other hand, with the First and Second Amendments thereto (attached to Application in **Appendix B-1 (REV)**⁴);

³ The OCA does not join in this paragraph but does not oppose PAWC's request.

⁴ Exhibit A to the Agreement of 1996 has not been located. The Parties agree that the Commission should approve the agreement in the absence of Exhibit A because the referenced facilities have been installed and are part of the

(c) Leachate Treatment Agreement between Exeter Township and the Chester County Solid Waste Authority, dated December 12, 2016 (attached to Application as **Appendix B-2 (REV) (Corrected)**);

(d) Sewage Treatment and Conveyance Agreement dated June 28, 2019, between Pennsylvania-American Water Company and the Borough of Saint Lawrence (attached to Application in **Appendix B-3 REV-1**);

(e) Agreement dated as of May 8, 2003 between Exeter Township, Berks County, Authority and the Township of Exeter, on the one hand, and St. Lawrence Borough Authority and the Borough of St. Lawrence, Berks County, Pennsylvania, on the other hand (attached to Application in **Appendix B-3-b REV**).

M. Other Provisions

44. PAWC Statement No. 3-R, page 4 line 22 through page 5 line 7 and Exhibit DRK-3-R shall not be admitted into the evidentiary record.

N. Other Necessary Approvals

45. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Code to carry out the Transaction contemplated in the Application in a lawful manner and consistent with the settlement regarding the Exeter/Lower Alsace Application.

O. Standard Settlement Conditions

46. 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 Joint Petitioner may elect to withdraw from the Settlement and may proceed with

existing Exeter system. Exhibit B has not been located. The Parties agree that the Commission should approve the agreement in the absence of Exhibit B because the rates set forth on that exhibit are no longer in effect.

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.

47. The Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceeding, other than St. Lawrence's claims against Exeter concerning its debt service payments relating to the Exeter wastewater treatment plant. 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 Joint Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

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

49. Each Joint Petitioner has prepared a Statement in Support of Settlement (attached as **Attachments B-E**) setting forth the bases upon which the Joint Petitioner believes the Settlement to be fair, just and reasonable and, therefore, in the public interest.

50. If the ALJ recommends 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 Office of Consumer Advocate, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, and the Township of Exeter, by their respective counsel, respectfully request that:

(a) The Honorable Administrative Law Judge Andrew M. Calvelli recommend approval of, and the Commission approve this Joint Petition for Approval of Partial Settlement as submitted, including all terms and conditions thereof, without modification.

(b) The Commission's proceeding at Docket No. A-2018-3004933 be terminated and marked closed.

(c) The Application filed by PAWC on September 25, 2018, as amended, be granted, subject to the following conditions:

(1) The Commission approve the Settlement in *In re: Application of Exeter Township for Certificate of Public Convenience to Offer, Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions of Lower Alsace Township, Berks County, Pennsylvania*, Docket No. A-2018-3006505;

(2) PAWC shall mail the notice attached to the Settlement as **Attachment A** to existing customers of Exeter concurrently with the filing of the Settlement;

(3) PAWC will file a Second Amendment to the Asset Purchase Agreement that adjusts the purchase price to \$93,500,000; and,

(4) PAWC Statement No. 3-R, page 4 line 22 through page 5 line 7, and Exhibit DRK-3-R, are not admitted into the record in this proceeding.

(d) 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 Exeter's assets, properties and rights related to its wastewater system to PAWC as provided in the Application, (ii) PAWC's right to begin to offer, render, furnish or supply wastewater service to the public in the areas served by Exeter as indicated in the Application; and (c) Exeter's abandonment of service in Lower Alsace Township.

(e) The Commission permit PAWC to issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement attached to the Application as **Appendix A-13 (REV)**, to be effective immediately upon closing on the Transaction.

(f) The Commission approve, under 66 Pa. C.S. § 1329(c), a rate base addition of \$92,000,000 associated with the acquisition of the System.

(g) In the first base rate case that includes Exeter wastewater system assets, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of the Exeter System.

(h) In the first base rate case that includes Exeter wastewater system assets, PAWC will provide a separate cost of service study for the Exeter System.

(i) PAWC will propose to move Exeter wastewater rates to Exeter's cost of service in the first base rate case that includes Exeter wastewater system assets unless such increase is more than 1.8 times current rates; provided, however, that PAWC will not be obligated to propose Exeter wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates.

(j) Although the Joint Petitioners reserve the right to present adjustments and oppose adjustments to appraisals in future cases, the Joint Petitioners request that the Commission acknowledge that the Joint Petitioners have accepted the following adjustments for purposes of this proceeding:

(a) Cost Approach: The cost of land will not be increased by a consumer price index when calculating the reproduction cost of land.

(b) Market Approach:

(i) If “comparable acquisitions” are used in determining market value, the proxy group will not be limited to only companies which engage in Pennsylvania fair market value acquisitions; the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order;

(ii) The comparable group rate base amounts will not be adjusted for theoretical contributions; and,

(iii) When comparing metrics for municipalities in completed Section 1329 acquisitions, capital assets less depreciation value from the municipality’s financial statements will not be used.

(k) Within six months after closing of the transaction, PAWC will start an Infiltration and Inflow study for the Exeter System and provide the results of said study, upon completion, to all Parties to this proceeding. All Parties reserve the right to challenge the recovery of costs related to I&I, including the cost of the study, in subsequent rate proceedings.

(l) Within the first 90 days of PAWC’s ownership of the Exeter System, PAWC shall include a bill insert to the Exeter-area customers regarding its low income programs and shall include such information in a welcome letter to Exeter-area 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.

(m) The Commission approve, pursuant to 66 Pa. C.S. § 1329(d), the collection of a distribution system improvement charge related to the Exeter System prior to the first base rate

case in which the Exeter assets are incorporated into rate base, conditioned on PAWC filing and the Commission approving a modified wastewater long term infrastructure improvement plan to include the Exeter System, which does not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas.

(n) With regard to the reprioritization of projects in Annual Asset Optimization plans or other LTIP-related filings, the resolution regarding McKeesport in *Pennsylvania-American Water Company Wastewater Operations Petition for Approval of Modification of Long-Term Infrastructure Improvement Plan*, Docket No. P-2014-2431005, shall also apply to Exeter.

(o) The Commission, pursuant to 66 Pa. C.S. § 1329(f), permit PAWC to accrue an AFUDC. The Commission recognizes that any claims for AFUDC will be addressed in PAWC's first base rate case which includes Exeter wastewater system assets.

(p) The Commission, pursuant to 66 Pa. C.S. § 1329(f), permit PAWC to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Commission recognizes that any claims for recovery of 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 which includes Exeter wastewater system assets.

(q) The Commission, pursuant to 66 Pa. C.S. § 1329(d)(iv), permit PAWC to include, in its next base rate case, a claim for transaction and closing costs related to the acquisition of the Exeter System. The Commission recognizes that the Joint Petitioners reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of PAWC's request.

(r) The Commission issue Certificates of Filing or approval for the following agreements between PAWC and a municipal corporation:

(i) Asset Purchase Agreement between Township of Exeter (as Seller) and Pennsylvania-American Water Company (as Buyer), dated as of May 29, 2018 (attached to Application as **Appendix A-24-a**), the First Amendment to Asset Purchase Agreement (attached to the Application as **Appendix A-24-a REV**), and the Second Amendment to the Asset Purchase Agreement (reflecting revised purchase price per settlement);

(b) Intermunicipal Agreement, dated as of December 11, 1996, between Exeter Township, Berks County, Authority and Exeter Township, on the one hand, and the Township of Alsace, on the other hand, with the First and Second Amendments thereto (attached to Application in **Appendix B-1 (REV)**);

(c) Leachate Treatment Agreement between Exeter Township and the Chester County Solid Waste Authority, dated December 12, 2016 (attached to Application as **Appendix B-2 (REV) (Corrected)**);


(d) Sewage Treatment and Conveyance Agreement dated June 28, 2019, between Pennsylvania-American Water Company and the Borough of Saint Lawrence (attached to Application in **Appendix B-3 REV-1**);

(e) Agreement dated as of May 8, 2003 between Exeter Township, Berks County, Authority and the Township of Exeter, on the one hand, and St. Lawrence Borough Authority and the Borough of St. Lawrence, Berks County, Pennsylvania, on the other hand (attached to Application in **Appendix B-3-b REV**).

(s) The Commission issue any other approvals or certificates appropriate, customary or necessary under the Code to carry out the Transaction contemplated in the Application in a lawful manner.

[Signatures appear on next pages.]

Respectfully submitted,




David P. Zambito, Esq. (PA ID No. 80017)
Jonathan P. Nase, Esq. (PA ID No. 44003)
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
Phone: (717) 703-5892
Fax: (215) 989-4216
Email: dzambito@cozen.com
jnase@cozen.com

Date: 7/11/19

Susan Simms Marsh, Esq. (PA ID No. 44689)
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
Phone: (717) 550-1570
Email: susan.marsh@amwater.com

Counsel for Pennsylvania-American Water Company



Erika L. McLain, Esq. (PA ID No. 320526)
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: (717) 787-8754
Email: ermclain@pa.gov

Date: 7/11/19

Counsel for Bureau of Investigation and Enforcement

Date: _____

Samuel W. Cortes, Esq. (PA ID No. 91494)
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100
P.O. Box 673
Exton, PA 19341
Phone: (610) 458-4966
Fax: (610) 458-7337
Email: scortes@foxrothschild.com

Barnett Satinsky, Esq. (PA ID No. 15767)
Fox Rothschild LLP
2000 Market Street, 20th Floor
Philadelphia, PA 19103
Phone: (215) 299-2088
Fax: (215) 299-2150
Email: bsatinsky@foxrothschild.com

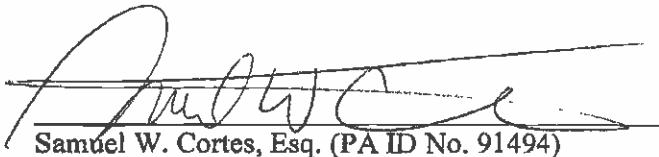
Counsel for *Exeter Township*



Date: July 11, 2019

Christine Maloni Hoover, Esq. (PA ID No. 50026)
Erin L. Gannon, Esq. (PA ID No. 83487)
Harrison W. Breitman, Esq. (PA ID No. 320580)
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Email: CHoover@paoca.org
EGannon@paoca.org
HBreitman@paoca.org

Counsel for *Office of Consumer Advocate*



Date: 7/11/19

Samuel W. Cortes, Esq. (PA ID No. 91494)
Fox Rothschild LLP
Eagleview Corporate Center
747 Constitution Drive, Suite 100
P.O. Box 673
Exton, PA 19341
Phone: (610) 458-4966
Fax: (610) 458-7337
Email: scortes@foxrothschild.com

Barnett Satinsky, Esq. (PA ID No. 15767)
Fox Rothschild LLP
2000 Market Street, 20th Floor
Philadelphia, PA 19103
Phone: (215) 299-2088
Fax: (215) 299-2150
Email: bsatinsky@foxrothschild.com

Counsel for *Exeter Township*

Date: _____

Christine Maloni Hoover, Esq. (PA ID No. 50026)
Erin L. Gannon, Esq. (PA ID No. 83487)
Harrison W. Breitman, Esq. (PA ID No. 320580)
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Email: CHoover@paoca.org
EGannon@paoca.org
HBreitman@paoca.org

Counsel for *Office of Consumer Advocate*

List of Attachments:

- A. Customer Notice of Settlement
- B. Statement in Support of PAWC
- C. Statement in Support of Exeter
- D. Statement in Support of OCA
- E. Statement in Support of I&E

ATTACHMENT A

NOTICE OF PROPOSED JOINT SETTLEMENT OF WASTEWATER ACQUISITION AND RATE BASE ADDITION (Docket No. A-2018-3004933)



Dear Customer:

We are sending this notice to you, as an Exeter Township customer, to advise you of a Joint Petition for Settlement (Settlement) filed with the Public Utility Commission (PUC) regarding the application of Pennsylvania-American Water Co. for approval to acquire the Exeter Township wastewater system assets. The proposed Settlement has been agreed to by Pennsylvania-American, Exeter Township, the PUC's Bureau of Investigation and Enforcement, and the Office of Consumer Advocate to resolve the issues raised in this case. The Borough of St. Lawrence, an intervenor in the case, does not oppose the settlement. **If you have any comments regarding the Settlement, you must submit them to the Secretary of the PUC and Administrative Law Judge Andrew M. Calvelli, postmarked no later than July 22, 2019.**

On July 11, 2019, the parties filed the proposed Settlement with the PUC and served a copy of the proposed Settlement on Judge Calvelli. The Settlement and supporting documents are available on our website at the following web address:

www.pennsylvaniaamwater.com/exetersettlement

If, however, you would like a paper copy, please contact Pennsylvania-American's Customer Advocacy Group at (717) 550-1606 and one will be provided to you.

This brief summary of some of the points of the Settlement is provided for your convenience. However, we encourage you to please review the Settlement in its entirety. The Settlement, if approved, would do the following:

- Allow Pennsylvania-American to acquire the Exeter Township wastewater system assets and begin to supply wastewater service in the areas served by Exeter Township.
- Allow Pennsylvania-American to add \$92 million to its rate base pursuant to 66 Pa. C.S. § 1329. A utility's rate base is the value of property used by the utility to provide service to its customers and is one of many components used to establish customer rates. Pennsylvania-American's original request was a rate base addition of \$96 million.
- **Your current wastewater rates will not change until the conclusion of Pennsylvania-American's next base rate case, no earlier than January 1, 2021.**
- In Pennsylvania-American's first base rate case following the closing of this transaction, it will propose to move Exeter customer rates to cost of service, 1.8 times current Exeter customer rates, or Pennsylvania-American's Rate Zone 1 (system-average) rates, whichever is lowest.

Rate Class	Average Usage	Average Monthly* Bill at Current Rates	Potential Average Monthly Bill	Potential Increase
Residential	3,630 gal/month	\$44.33	\$71.06	\$26.73
Commercial	22,000 gal/month	\$267.76	\$368.74	\$100.98
Industrial	476,000 gal/month	\$5,261.76	\$7,268.42	\$2,006.66

* Exeter Township customers are billed quarterly. As Pennsylvania-American customers, all customers will be billed monthly.

These amounts could change and will depend on the actual rate increase approved by the PUC and how the PUC chooses to apportion any increase among different types of utility service, rate zones and classes of customers and the period of time over which such rate increases could occur.

ACTIONS YOU CAN TAKE

1. You may support the proposed Settlement. To do so, please send a letter to the Secretary of the Commission with a copy to Judge Calvelli postmarked no later than July 22, 2019.
2. You may object to the proposed Settlement. To do so, please send a letter to the Secretary of the Commission with a copy to Judge Calvelli postmarked no later than July 22, 2019.
3. You may choose to do nothing.

Your letter of support or objection should include the PUC docket number A-2018-3004933 and must be postmarked no later than July 22, 2019 and sent to the Commission's Secretary, with a copy to Judge Calvelli. The Secretary's address is:

- The Secretary's address is: Secretary's Bureau, Pennsylvania Public Utility Commission, Commonwealth Keystone Bldg., 400 North Street, Harrisburg, PA 17120
- The Judge's address is: Honorable Andrew M. Calvelli, Office of Administrative Law Judge, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120

The documents filed in support of the application are available on the PUC's website at www.puc.pa.gov, for inspection and copying at the Office of the Secretary of the PUC between 8 a.m. and 4:30 p.m., Monday through Friday, and at Pennsylvania-American's offices at 852 Wesley Drive, Mechanicsburg, PA 17055. For more information, please feel free to contact Pennsylvania-American's Customer Advocacy Group at (717) 550-1606 or the PA Office of Consumer Advocate toll-free at 1-800-684-6560.

ATTACHMENT B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Andrew M. Calvelli

Application of Pennsylvania-American Water :
Company under Sections 507, 1102 and 1329 of the : Docket Nos. A-2018-3004933 *et al.*
Public Utility Code for Approval of its Acquisition :
Of Wastewater System Assets of Exeter Township :

**STATEMENT OF PENNSYLVANIA-AMERICAN WATER
COMPANY IN SUPPORT OF JOINT PETITION FOR
APPROVAL OF PARTIAL SETTLEMENT**

Pennsylvania-American Water Company (“PAWC”) files this Statement in Support of the Joint Petition for Approval of Partial Settlement (“Settlement”) entered into by PAWC, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and the Township of Exeter (“Exeter”) (hereinafter, collectively, the “Joint Petitioners”) in the above-captioned proceeding.¹ PAWC respectfully requests that the Honorable Administrative Law Judge Andrew M. Calvelli (the “ALJ”) recommend approval of, and that the Pennsylvania Public Utility Commission (“Commission”) approve, the Settlement, including all terms and conditions thereof, without modification.

¹ The Borough of St. Lawrence (“St. Lawrence”), which intervened in this case, does not oppose the Settlement. St. Lawrence, PAWC, OCA, I&E and Exeter are referred to individually as a “Party” and collectively as the “Parties.”

I. INTRODUCTION

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 October 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

The instant Settlement pertains to the application (“Application”) filed by PAWC pursuant to Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a), and Section 1329 of the Code, 66 Pa. C.S. § 1329, requesting (among other things) that the Commission issue Certificates of Public Convenience to PAWC for the transfer to PAWC, by sale, of substantially all of the assets, properties and rights of Exeter (the “Transaction”), related to Exeter’s wastewater collection and treatment system (the “System”), and to set the fair market value of the acquisition for rate-base ratemaking purposes.

The Settlement, if approved, will resolve all but one of the issues raised in this proceeding. The only issue remaining for litigation is St. Lawrence’s claim against Exeter concerning St. Lawrence’s debt service payments relating to the Exeter wastewater treatment plant. Transcript (“Tr.”) 16-17. The Parties will address that issue in their briefs.

The Settlement is in the best interest of Exeter and its existing customers, PAWC and its existing customers, and the public-at-large. It is in the public interest and, accordingly, should be approved.

As an initial matter, the fact that the Settlement resolves all but one of the many issues in this proceeding is, in and of itself, strong evidence that the Settlement is reasonable and in the public interest – particularly given the diverse interests of the Joint Petitioners and the active roles that each has taken in this proceeding. The Settlement was achieved through the hard work and perseverance of the Joint Petitioners. They have repeatedly demonstrated their good faith and willingness to cooperate to resolve this complex case within the six-month deadline mandated by the General Assembly in Section 1329 of the Code, 66 Pa. C.S. § 1329. Through the collaborative efforts of the Joint Petitioners and effective case management by the ALJ, the Application is in a position to be decided by the Commission in less than six months -- demonstrating that the timeline set forth by the General Assembly in Section 1329 can indeed work effectively.

It should be noted that the Joint Petitioners, and their counsel and experts, have considerable experience in acquisition proceedings. Their knowledge, experience and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus on the issues. The Joint Petitioners, their counsel and experts fully explored all the issues in this case.

The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners and satisfies the various requirements of the Code. For these reasons, and the reasons set forth below, the Settlement is in the public interest and should be approved without modification.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

The Joint Petitioners have agreed to a settlement of all but one of the many issues in this proceeding. This includes issues arising under Sections 1103(a), 1329 and 507 of the Code. 66

Pa. C.S. §§ 1103(a), 1329, and 507. The following sections explain why PAWC believes the settlement is in the public interest and should be approved. In addition, for the convenience of the ALJ, PAWC has attached to this Statement in Support its Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs – noting that they have not been negotiated with or otherwise agreed-to by the other Joint Petitioners.

A. Section 1103 Approvals

1. Fitness

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. 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.² *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). Although no party challenged PAWC's fitness, PAWC introduced extensive evidence demonstrating its technical, financial, and legal fitness.

With respect to technical fitness, PAWC is the Commonwealth's largest water and wastewater provider. It furnishes service to more than 400 communities in 36 counties, serving a combined population in excess of 2,400,000. PAWC St. No. 1 REV-A p. 13. PAWC employs approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations. *Id.* In addition, as a subsidiary of American Water Works Company, Inc. ("American Water"), PAWC has available to it additional highly-trained professionals with expertise in specialized areas. These operations and process experts have deep experience in the operation and

² Similarly, PAWC enjoys a presumption of a continuing public need for service because public utility service is already being provided in the service territory. *Re Glenn Yeager et al.*, 49 Pa. P.U.C. 138 (1975). No party has contested the continued need for wastewater collection and treatment service in Exeter.

maintenance of different types of wastewater technologies. PAWC St. No. 3 pp. 9-11. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes and infrastructure. PAWC has funded more than \$1 billion in infrastructure investment in the past five years. *Id.* p. 11.

With respect to legal fitness, PAWC has a record of environmental compliance, a commitment to invest in necessary capital improvements and resources, and the experienced managerial and operating personnel necessary to provide safe and reliable sewer service to the existing customers of Exeter. PAWC has a good compliance history with the Commission and there are currently no legal proceedings that would suggest that PAWC is not legally fit to provide service in Exeter. PAWC St. No. 1 REV-A p. 18; PAWC St. No. 3 pp. 9-11.

With respect to financial fitness, PAWC had total assets of approximately \$4.6 billion in 2017. In addition, it had a net income of approximately \$161 million for the 12 months ending December 31, 2017. PAWC St. No. 4 p. 4. In addition to positive operating cash flows, PAWC may obtain financing through a \$400 million line of credit, long term debt financing, and/or equity investments. *Id.*

2. Public Benefit

PAWC must demonstrate that the Transaction and PAWC's ownership/operation of the Exeter 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*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). An acquisition provides an affirmative 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. 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 Township v. Pa. Pub. Util. Comm'n*, 85 Pa. Cmwlth. 191, 482 A.2d 674 (1984).

The Transaction, with the conditions described in the Settlement, benefits all of the stakeholder groups impacted by the Transaction: the public-at large, the municipality of Exeter, the existing customers of Exeter's System, and the existing customers of PAWC.

The Transaction benefits members of the public-at-large in that the Transaction promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems. 52 Pa. Code § 69.721(a); PAWC St. No. 1 REV-A p. 16. In addition, the Transaction benefits members of the public-at-large by promoting the public policy goals embodied in Section 1329, PAWC St. No. 1 REV-A p. 17

The Transaction also benefits the public-at-large due to its environmental benefits. PAWC introduced evidence of several environmental violations at the System in recent years, one of which resulted in a Notice of Violation from the Pennsylvania Department of Environmental Protection ("DEP"). PAWC St. No. 3-R p. 5. PAWC, in contrast, has a good record of compliance with environmental laws and regulations. *Id.*

As long as these environmental deficiencies are present in the System, their impact will not be limited to the Exeter area. In this regard, Article I, Section 27 of the Pennsylvania Constitution 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. 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.

PA. CONST. Art. I, § 27 ("Environmental Rights Amendment"). The record evidence in this proceeding unquestionably demonstrates that PAWC is better able to make the necessary

improvements to the System to protect Pennsylvania’s “pure water” and the “natural, scenic, historic and esthetic values of the environment.” This is partly due to PAWC’s having greater financial resources than Exeter. PAWC has a better credit rating than Exeter and has access to equity markets that are unavailable to Exeter. PAWC St. No. 4 pp. 4-5. PAWC is also in a better technical position than Exeter to make the necessary improvements and operate the System going forward due to its greater expertise in wastewater operations. PAWC St. No. 3 pp. 8-9; PAWC St. No. 3-R pp. 4-5. There is an over-arching public interest (*i.e.*, “for the benefit of all the people”) in correcting the System’s environmental deficiencies as promptly and efficiently as possible. Approval of the Transaction would be consistent with the Commission’s obligation under the Environmental Rights Amendment.³

The Settlement contains additional benefits for the public-at-large because it is part of a package that resolves several pieces of related litigation. After PAWC filed the September 25, 2018 Application, Commission staff advised PAWC and Exeter that the Application would not be accepted for filing until Exeter filed an application for a Certificate of Public Convenience to serve a small portion of Lower Alsace Township. Exeter subsequently filed the requested application. *In re: Application of Exeter Township for Certificate of Public Convenience to Offer, Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions of Lower Alsace Township, Berks County, Pennsylvania*, Docket No. A-2018-3006505. A settlement is currently pending in that matter (the “Exeter/Lower Alsace Settlement”), which would resolve both that application proceeding and a related complaint proceeding filed by I&E against Exeter.

³ “[T]he Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties.” *Pa. Environmental Defense Foundation v. Cmwlth. of Pa.*, No. 10 MAP 2015 (Pa., Slip Op. issued Jun. 20, 2017), p. 32 (*citing Robinson Twp. v. Cmwlth. of Pa.*, 83 A.3d 901, 957 (Pa. 2013)).

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Exeter Township, Docket No. C-2019-3007920.

The instant Settlement is conditioned upon the Commission's approval of the Exeter/Lower Alsace Settlement, because the latter proceeding would establish Exeter's rates in the portion of Lower Alsace currently served by Exeter. Section 1329 requires the public utility purchasing a municipal wastewater system to adopt the rates charged by the selling entity at the time of the acquisition. 66 Pa. C.S. § 1329(d)(1)(v). By resolving all three pieces of litigation, the instant Settlement and the Exeter/Lower Alsace Settlement are in the public interest because they conserve the resources of the Parties and the Commission and ensure a consistent resolution of related proceedings.

In addition to benefiting the public-at-large, the Transaction benefits Exeter Township. Among other things, the Transaction will provide the following benefits to Exeter:

- Exeter will receive the purchase price of \$93,500,000, which it will use for public purposes such as: fully funding all Township pension plans, defeasing all sewer debt, funding storm sewer improvements and an equipment replacement program; and providing matching funds for State and Federal grants, Exeter St. No. 1 p. 2;
- Exeter will no longer be responsible for complying with increasingly stringent environmental regulations concerning wastewater, *id.*; and,
- Exeter will be free to focus on core functions of local government, such as police, fire, highways, code enforcement and parks and recreation, *id.* p. 5.

The Transaction benefits Exeter's existing customers in the same way that it benefits all other members of the public-at-large. In addition, the Transaction has specific benefits for Exeter's existing customers, including but not limited to the following:

- The System will become a Commission-regulated utility, and its customers will gain the protection of the Code, the Commission, I&E, OCA, and the Office of Small Business Advocate, PAWC St. No. 2 pp. 16-17;
- Customers will have access to PAWC's proven and enhanced customer service, including its customer assistance program (H2O Help to Others) and customer dispute resolution process, PAWC St. No. 2 pp. 13-15;

- PAWC plans to implement improvements to the wastewater system, including improvements to address existing environmental issues, PAWC St. No. 3-R pp. 4-5; and,
- Exeter's customers will become part of a system with a larger customer base, adding more customers to share future infrastructure investment costs, PAWC St. No. 1-REV-A p. 17.

The Settlement contains additional public benefits for Exeter's existing customers. It requires PAWC to provide information to Exeter's customers regarding PAWC's low-income programs within 90 days of PAWC's ownership of the System. Settlement ¶ 37. It also requires PAWC to conduct an inflow and infiltration study of the System. Settlement ¶ 36. PAWC's due diligence included a consideration of inflow and infiltration issues and the Exeter System was not deemed to have significant I&I issues. PAWC St. No. 3-R, p. 2. Nevertheless, no formal inflow and infiltration study of the System has been completed since the 1960s. I&E St. No. 1 p. 13. This provision of the Settlement is in the public interest because it ensures a full vetting of the issue.

The Transaction benefits PAWC's existing wastewater customers in the same way that it benefits all other members of the public-at-large. In addition, the Transaction has specific benefits for PAWC's existing wastewater customers, including but not limited to the following:

- In the long term, the Transaction will benefit PAWC's existing wastewater customers because it will add new customers to PAWC's wastewater customer base, who can share the cost of operating the entire PAWC wastewater system, PAWC St. No. 1 REV-A p. 17;
- In the short term, the Transaction will have no immediate impact on the rates paid by PAWC's existing customers, *id.*; and
- PAWC can use Exeter's facilities to save costs in other portions of PAWC's system (e.g., PAWC can use the existing sludge processing drying system at the Exeter wastewater plant to reduce operating costs by \$100,000 at the Coatesville and Shady Lane facilities, and may be able to use the residual handling facilities at Exeter to avoid a \$6 million capital expense at its Coatesville operations), PAWC St. No. 3-R p. 6.

Finally, the Transaction benefits PAWC's existing *water* customers in the same way that it benefits all other members of the public-at-large. It will not result in an increase in rates for

these customers pursuant to 66 Pa. C.S. § 1311(c) unless, in a future rate case, the Commission determines that an allocation of PAWC's wastewater requirement to water customers is "in the public interest."

The Settlement provides further benefits to PAWC's existing water and wastewater customers. The Settlement requires PAWC, in its next base rate case, to move Exeter's customers toward their cost of service, Settlement ¶ 35, limiting any potential subsidization of Exeter's customers by PAWC's existing water and wastewater customers. The Settlement nevertheless contains certain limitations on the proposed rate increase to Exeter customers in order to ensure gradualism; namely, the Settlement limits the proposed rate increase to no more than 1.8 times the Exeter customers' initial rate or PAWC's proposed Rate Zone 1 system-average rates, whichever is lower. Along these lines, the Commission should note that the Settlement expressly does not preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC base rate proceeding. Settlement ¶ 34. This provision allows PAWC, in the context of its next base rate case, to propose the use of Act 11 of 2012 to spread a portion of the Exeter wastewater revenue requirement to PAWC's water revenue requirement. Further, the Settlement contains no provision purporting to restrict the Commission's ultimate ratemaking authority to set "just and reasonable" rates:

In short, as modified by the terms and conditions in the Settlement, the Transaction has affirmative public benefits of a substantial nature for every impacted group. These benefits clearly outweigh any alleged detriments. Accordingly, the ALJ and the Commission should find that the Settlement is in the public interest.

3. Cost of Service Studies

In the interest of resolving this case and based on the unique circumstances of this case, PAWC will submit two cost of service studies in its next base rate case: (a) a cost of service study that removes all costs and revenues associated with the operation of the Exeter System; and (b) a cost of service study for the Exeter System. Settlement ¶¶ 32-33. Under the Settlement, PAWC's obligation to prepare cost of service studies extends only to its next base rate case. In this way, unnecessary cost of service studies can be avoided in subsequent rate cases. Accordingly, the ALJ and the Commission should find that the Settlement is in the public interest.

B. Section 1329 Approvals

1. Customer Notice

Before the Application was accepted for filing purposes, PAWC provided notice of the Application to Exeter's existing wastewater customers and to PAWC's existing water and wastewater customers. The adequacy of this notice was discussed in the testimony introduced in this proceeding. *See, e.g.*, PAWC St. No. 4-R p. 13; OCA St. No. 1 pp. 9-15. PAWC respectfully submits that the Settlement represents an agreement by the Joint Petitioners that PAWC's notice was sufficient to meet the requirements established by the Commission in *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Supplemental Implementation Order entered February 28, 2019) and by the Commonwealth Court of Pennsylvania in *McCloskey v. Pa. Pub. Util. Comm'n*, 1624 CD 2017 (Pa. Cmwlth. 2018), *pet. for alloc. denied*, 743 MAL 2018 (April 23, 2019) (*New Garden*).

In addition, the Settlement provides that PAWC will provide notice of the Settlement to Exeter's existing customers concurrently with the filing of the Settlement. Settlement ¶ 42. Such notice of the Settlement ensures that existing customers of Exeter were provided with adequate

notice and opportunity to be heard regarding the Transaction. Although this notice was not required by prior Commission or court decisions, the Joint Petitioners agreed to the additional notice, for purposes of settlement of this proceeding (one of the first involving the Commission's new Section 1329 customer notice requirements and one in which OCA questioned the adequacy of the initial customer notice). PAWC notes that the Settlement contains no similar commitment by PAWC for customer notice of settlements in future Section 1329 proceedings.

These agreements regarding customer notice are in the public interest because the additional notice removes any doubt regarding the adequacy of notice to Exeter customers. Consequently, the Settlement should be approved.

2. Ratemaking Rate Base

PAWC and Exeter agreed to use the procedure set forth 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 the seller each obtain an appraisal of the system by a Commission-approved utility valuation expert ("UVE"). The ratemaking rate base of the selling utility 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 UVEs' appraisals). The ratemaking rate base of the selling utility is then incorporated into the rate base of the acquiring public utility during the acquiring public utility's next base rate case.

In the Settlement, the Joint Petitioners compromised on certain adjustments in the UVEs' appraisals. The Joint Petitioners also agreed that \$92,000,000 (rather than the \$96,000,000 original purchase price) will go into PAWC's rate base in its next rate case due to the acquisition of the System. The Settlement should be adopted because it produces a result that is preferable, in the

eyes of each of the Joint Petitioners, to what could have resulted from litigation -- including the possibility of appeals and the attendant delay to closing of the Transaction that would have occurred. Moreover, the agreed-upon ratemaking rate base of \$92,000,000 is well within the range of litigation positions of the Joint Petitioners and, accordingly, is supported by substantial record evidence.⁴

Through discovery and the development of the evidentiary record, the Joint Petitioners fully evaluated whether the UVEs abused their discretion under the Uniform Standards of Professional Appraisal Practice (“USPAP”), relied on inaccurate facts, or committed errors of law. The Commission should recognize that PAWC’s agreement to a rate base of \$92,000,000 is not an acknowledgment that the UVEs’ appraisals were in any way flawed or that non-appraisers should be allowed to pick apart appraisals in a selective manner to drive down the fair market value rate base. PAWC’s agreement to the lower rate base is truly a compromise in order to avoid potential appeals that would have delayed closing on the Transaction for a year or more. PAWC hopes that, through this Settlement and settlements in other Section 1329 proceedings, the issues upon which OCA and other parties can threaten appeals are limited such that cases are decided based on a clear scope and standard of review of UVE appraisals – rather than the risk of an appeal that would derail a transaction and thwart the intent of the Legislature to have a streamlined Section 1329 acquisition process.

In reaching this agreement on the ratemaking rate base, the Joint Petitioners fully took into account the rate impact of the Transaction as required by *New Garden*. The evidence of record

⁴ PAWC and Exeter introduced evidence supporting a ratemaking rate base of \$96,000,000, *i.e.*, the lower of the purchase price (\$96,000,000) and the average of the two UVE appraisals (\$101,817,204 + \$101,576,000 = \$101,696,602). PAWC St. No. 5 p. 26; Exeter St. No. 4 p. 19. OCA introduced evidence supporting a ratemaking rate base of \$74,838,964, *i.e.*, the lower of the purchase price of \$96,000,000 and the average of the two UVE appraisals as adjusted by the OCA witnesses (\$74,838,964). OCA St. No. 1S p. 28.

supports a conclusion that the Commission, using the various ratemaking tools available to it, can set rates for PAWC's customers prospectively that are "just and reasonable" under Section 1301 of the Code. *See* PAWC St. No. 4-R pp. 2-11. The Transaction has numerous other affirmative public benefits of a substantial nature. It should not be disapproved based on speculation about future impacts on rates, as the rate impact of the Transaction was thoroughly evaluated through record evidence.

Furthermore, approving the Settlement is in the public interest because the Settlement furthers the legislative intent behind Section 1329. First, the Settlement allows a municipality *who wishes to do so* to monetize an asset for fair market value. Second, by establishing a rate base for the System that is greater than what would have been allowed using traditional ratemaking principles, PAWC is willing to enter into the Transaction. Section 1329 would be ineffective if a willing seller would be unable to find a willing buyer. Finally, the Settlement allows the parties to the Transaction to obtain the necessary Commission approval in a timely manner -- while protecting the existing customers of the acquiring public utility. The Joint Petitioners' negotiated result is in the public interest and should be approved by the ALJ and the Commission.

3. Rates

Section 1329(d)(1)(v) of the Code requires an application to contain a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition, together with a rate stabilization plan, if applicable to the acquisition. None of the Joint Petitioners have argued that the Asset Purchase Agreement includes a rate stabilization plan. Consequently, the Settlement does not address this requirement.

In terms of rates, the Settlement is in the public interest because it would ensure that PAWC will charge rates after closing that are equal to Exeter's existing rates -- including the rates charged

by Exeter in Lower Alsace Township, which would be established by the Commission's approval of the Exeter/Lower Alsace Settlement. Consequently, the Settlement should be approved.

4. Distribution System Improvement Charge

Section 1329(d)(4) of the Code permits an acquiring public utility to collect a distribution system improvement charge ("DSIC") from the date of closing on the Transaction until new rates are approved in the utility's next base rate case. In order to qualify for DSIC recovery, a utility must submit a long term infrastructure investment plan ("LTIIP") to, and receive approval from, the Commission.

PAWC has previously received Commission approval of a wastewater LTIIP plan, and received Commission approval of a DSIC tariff, for other portions of its wastewater system. In its Application, PAWC requested conditional approval to implement a DSIC for the Exeter service territory. Application ¶ 2. Pursuant to the Settlement, PAWC may file an amended LTIIP for the Exeter service territory. Following Commission approval of that amended LTIIP, PAWC could make a tariff supplement compliance filing, which would include the Exeter service territory in PAWC's existing DSIC tariff. Settlement ¶ 38.

The Settlement also includes conditions to ensure that PAWC's amended LTIIP will not re-prioritize existing commitments in other service areas. Settlement ¶ 38. In addition, the Settlement recognizes the Commission's authority to modify PAWC's LTIIP submission. Finally, the Settlement is consistent with the Code and *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Final Implementation Order entered August 2, 2012). For these reasons, the Settlement is in the public interest and should be approved.

5. Accrual of Allowance for Funds Used During Construction

Section 1329(f)(1) of the Code permits an acquiring public utility to accrue 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 a period of four years, or the asset is included in the acquiring utility’s next base rate case. In the Application ¶ 2, PAWC simply requested permission to accrue AFUDC on post-acquisition improvements that are not included in a DSIC. The Settlement is in the public interest because it 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 ¶ 39.

6. Deferred Depreciation

Similarly, Section 1329(f)(2) of the Code permits an acquiring public utility to defer depreciation on its post-acquisition improvements that are not included in a DSIC. In the Application ¶ 2, PAWC simply requested permission to defer depreciation on post-acquisition improvements that are not included in a DSIC. The Settlement is in the public interest because it 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 ¶ 40.

7. Transaction and Closing Costs

Section 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 its next base rate case,

include the transaction and closing costs incurred in this proceeding. The Commission will adjudicate the ratemaking treatment of PAWC's claimed transaction and closing costs at that time. The Settlement is in the public interest because it 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 ¶ 41.

C. Section 507 Approvals

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

In the Application, PAWC sought Commission approval of (i) the APA, as amended; (ii) three agreements between Exeter and area municipalities, which PAWC will assume at closing; and (iii) one agreement between PAWC and St. Lawrence, which will become effective upon closing. Approval of these agreements is necessary for PAWC to continue to provide service to all customers presently served by the System.

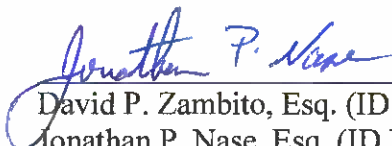
The Settlement is in the public interest because it establishes that none of the other Joint Petitioners objects to the Commission's approval of these agreements pursuant to Section 507. Settlement ¶ 43. It also requires PAWC to file with the Commission, as a compliance filing, the Second Amendment to the Asset Purchase Agreement adjusting the purchase price for the System to \$93,500,000. The Commission should accordingly issue Certificates of Filing for, or otherwise approve, the identified agreements with municipal corporations.

III. CONCLUSION

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a settlement that resolves all but one of the many 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 ALJ and the Commission to approve it without modification.

WHEREFORE, Pennsylvania-American Water Company respectfully requests that the Honorable Administrative Law Judge Andrew M. Calvelli 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.

Respectfully submitted,



David P. Zambito, Esq. (ID No. 80017)
Jonathan P. Nase, Esq. (ID No. 44003)
Cozen O'Connor
17 North Second Street, Suite 1401
Harrisburg, PA 17101
Telephone: 717-703-5892
Facsimile: 215-989-4216
E-mail: dzambito@cozen.com
E-mail: jnase@cozen.com

Susan Simms Marsh, Esq. (ID No. 44689)
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
Telephone: (717) 550-1570
Email: Susan.Marsh@amwater.com

Counsel for *Pennsylvania-American Water Company*

Dated: July 11, 2019

PAWC'S PROPOSED FINDINGS OF FACT

A. Parties

1. PAWC, a subsidiary of American Water Works Company, Inc. ("American Water"), is the largest regulated water and wastewater public utility duly organized and existing under the laws of the Commonwealth of Pennsylvania. It furnishes water and wastewater service to the public in a service territory encompassing more than 400 communities in 36 counties. Overall, PAWC serves a combined population of over 2,400,000 across the Commonwealth. PAWC St. No. 1 REV-A p. 13.

2. As of July 31, 2018, PAWC furnished wastewater services to approximately 65,139 customers in Pennsylvania, inclusive of 59,975 residential customers, 4,927 commercial customers, 33 industrial customers, and 204 other customers. As of July 31, 2018, PAWC furnished water services to 659,687 customers, inclusive of 607,090 residential customers, 45,359 commercial customers, 521 industrial customers, 2,400 municipal customers, 4,295 fire protection customers and 22 sales for resale customers. PAWC St. No. 1 REV-A p. 15.

3. Exeter is a Township of the Second Class organized and existing under the laws of the Commonwealth of Pennsylvania with its offices located at 4975 DeMoss Road, Reading, Pennsylvania. Asset Purchase Agreement p. 1.

4. I&E serves as the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code and Commission Regulations and Orders. *See, Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

5. I&E's analysis in this proceeding is based on its responsibility to represent the public interest. This responsibility requires balancing the interests of ratepayers, the utility company, and the regulated community as a whole. I&E St. No. 1 p. 1.

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

B. The System

7. The System consists of a collection system, which consists of approximately 126 miles of pipe and six pumping stations, and a wastewater treatment plant. PAWC St. No. 3 p. 4.

8. The System currently provides service to 9,015 customers. PAWC St. No. 3 p. 4.

9. The System serves Exeter Township, St. Lawrence Borough, and small portions of Alsace Township and Lower Alsace Township in Berks County, Pennsylvania. PAWC St. No. 3 p. 4.

10. The System is not a municipal separate storm sewer system ("MS4"), nor it is a combined sewer system. PAWC St. No. 3 pp. 4-5.

C. The Transaction and the Asset Purchase Agreement

11. On March 29, 2017, Exeter issued a Request for Bids For the Sale of Wastewater System Township of Exeter, Pennsylvania. PAWC St. No. 1 REV-A p. 9.

12. On July 20, 2017, PAWC submitted a proposal to acquire the Exeter Wastewater Treatment Facilities Assets. PAWC St. No. 1 REV-A p. 9.

13. After subsequent arms-length negotiations, on May 29, 2018, Exeter and PAWC entered into the Asset Purchase Agreement for the sale of substantially all of the assets, properties and rights of Exeter's System at an agreed-upon price. PAWC St. No. 1 REV-A p. 9.

14. On November 26, 2018, Exeter and PAWC entered into the First Amendment to the Asset Purchase Agreement. PAWC St. No. 1 REV-A p. 9.

15. The APA provided for a purchase price of \$96,000,000, but the signatories agreed to use the fair market valuation process of Section 1329 of the Code, 66 Pa. C.S. § 1329. PAWC St. No. 1 REV-A p. 12; APA pp. 9 and 11.

D. The Application and the UVE Appraisals

16. On September 25, 2018, PAWC filed the instant application asking the Commission to approve the Transaction pursuant to Sections 1102 and 1329 of the Code, 66 Pa. C.S. §§ 1102 and 1329.

17. By Secretarial Letter dated October 1, 2018, the Commission notified PAWC that the September 25, 2018 Application was not accepted for filing purposes because, in the opinion of Commission staff, the Application was incomplete.

18. On December 5, 2018, PAWC filed an Amended Application with the Commission (for ease of reference, the September 25, 2018 Application and the December 5, 2018 Amended Application will be referred to collectively herein as the "Application").

19. By e-mail of December 12, 2018, staff from the Bureau of Technical Utility Services ("TUS") notified PAWC that they believed certain items were missing from the Application.

20. On December 17, 2018, PAWC responded to TUS staff's request for additional information.

21. By Secretarial Letter dated December 19, 2018, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to that Secretarial Letter, the Commission would not finally accept the Application until PAWC complied with certain customer notice requirements.

22. On March 8, 2019, PAWC notified the Commission that PAWC would shortly begin giving the required customer notices. These notices included individualized customer notice of the Application, which was sent to each of Exeter's existing customers and each of PAWC's existing water customers and wastewater customers. On April 15, 2019, PAWC filed a verification stating that it had complied with all required customer notices.

23. On April 16, 2019, the Commission issued a Secretarial Letter accepting the Amended Application for filing.

24. Notice of the Application was published in the Pennsylvania Bulletin on April 27, 2019. *49 Pa. Bull.* 2099.

25. PAWC's Application is seeking to utilize the process set forth in 66 Pa. C.S. § 1329, to determine the fair market value of the System assets and the ratemaking rate base of those assets. PAWC St. No. 1 REV-A p. 4.

26. As required by Section 1329, PAWC and Exeter jointly retained the services of Gannett Fleming to complete the Township of Exeter Wastewater System Engineering Assessment and Original Cost. PAWC Exhibit BJK-1 Appendix A-15-a.

27. As required by Section 1329, the Application included the appraisals of PAWC's UVE and Exeter's UVE. PAWC Exhibit BJK-1 Appendix A-5.

28. PAWC retained the services of AUS to complete an appraisal of the System. PAWC St. No. 5 p. 6.

29. AUS is registered as a utility valuation expert with the PUC. PAWC St. No. 5 p. 7.

30. AUS issued a fair market valuation report dated September 1, 2018. PAWC St. No. 5 p. 6.

31. AUS's fair market value report utilized the cost approach, the income approach, and the market approach. AUS filed a verification that states the fair market report was prepared in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). PAWC St. No. 5 pp. 15-6; PAWC Exhibit BJG-1 Appendix A-7.

32. AUS's fair market value report concluded that the value of the Exeter System was \$101,817,204. PAWC St. No. 5 p. 20.

33. Exeter retained the services of Gannett Fleming to complete an appraisal of the System. Exeter St. No. 2 p. 3.

34. Gannett Fleming is registered as a utility valuation expert with the PUC. Exeter St. No. 2 p. 4.

35. Gannett Fleming issued a fair market valuation of the System as of April 30, 2018. Exeter St. No. 2 p. 10.

36. Gannett Fleming's fair market value report utilized the cost approach, the income approach, and the market approach. Gannett Fleming filed a verification that states the report was prepared in compliance with USPAP. Exeter St. No. 2 pp. 8-9; PAWC Exhibit BJG-1 Appendix A-7.

37. Gannett Fleming's fair market value report concluded that the value of the Exeter System was \$104,120,000 (rounded). Exeter St. No. 2 p. 10.

38. A spreadsheet error was discovered in Gannett Fleming's fair market value report during this proceeding. Consequently, Gannett Fleming's fair market value report was revised to conclude that the value of the Exeter System was \$101,576,000. Exeter St. No. 4 p. 19.

E. PAWC's Financial Fitness

39. No party to this proceeding challenged PAWC's financial fitness to own and operate the System.

40. PAWC had total assets of approximately \$4.6 billion, and annual revenues of \$661 million, for 2017. PAWC St. No. 4 p. 4.

41. For 2017, PAWC had operating income of approximately \$346 million and net income of approximately \$161 million. PAWC St. No. 4 p. 4.

42. In addition to generating positive operating cash flows, PAWC may also obtain financing through: (i) equity investments, (ii) a \$400 million line of credit through American Water Capital Corp. ("AWCC"); and (iii) long term debt financing at favorable rates from AWCC, the Pennsylvania Infrastructure Investment Authority and the Pennsylvania Economic Development Financing Authority. PAWC St. No. 4 p. 4.

43. PAWC is a financially-sound business that can financially support the acquisition of the System as well as the ongoing operating and investment commitments that will be required to operate, maintain and improve those assets in serving the public. PAWC St. No. 4 p. 5.

44. Given its size, access to capital and its recognized strengths in system planning, capital budgeting and construction management, PAWC is well-positioned from a financial

perspective to ensure that high quality wastewater service meeting all federal and state requirements is provided to Exeter's customers and maintained for PAWC's existing customers. PAWC St. No. 4 p. 3.

45. PAWC does not anticipate that the acquisition of the Exeter System will have a negative impact on PAWC's cash flows, credit ratings or access to capital. Therefore, the Transaction 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. 4 p. 3.

46. PAWC will initially fund the Transaction with short-term debt and will later replace it with a combination of long-term debt and equity capital. PAWC St. No. 4 p. 5.

F. PAWC's Technical Fitness

47. No party to this proceeding challenged PAWC's technical fitness to own and operate the System.

48. PAWC currently employs approximately 1,100 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, material management, risk management, human resources, legal, accounting and customer service. PAWC St. No. 1 REV-A p. 14; PAWC St. No. 2 p. 4.

49. As a subsidiary of American Water, PAWC has available to it additional resources of highly trained professionals who have expertise in various specialized areas. These operations and process experts have deep experience in the operation and maintenance of every possible type

of wastewater treatment technology, as well as the experience available to support PAWC's operations staff and facilities. PAWC St. No. 3 p. 10.

50. PAWC is currently the water provider within Exeter Township and Amity Township in Berks County and the community of The Golden Oaks in Ruscombmanor Township, Berks County. PAWC's Glen Alsace operations office is located less than one mile from the Exeter wastewater treatment plant and houses both the local operations team and operations support staff. PAWC St. No. 2 p. 5.

51. The Exeter System initially will be operated as a stand-alone system within PAWC's Southeast Area Operations, but it will have the support of PAWC's surrounding operations as well as PAWC's operations throughout the Commonwealth and American Water's nationwide resources. PAWC St. No. 2 p. 7.

G. PAWC's Legal Fitness

52. No party to this proceeding challenged PAWC's legal fitness to own and operate the System.

53. PAWC is a Commission-regulated public utility with a good compliance history. PAWC St. No. 1 REV-A p. 18.

54. There are no pending legal proceedings that would suggest that PAWC is not legally fit to provide service to Exeter customers. PAWC St. No. 1 REV-A p. 18.

55. PAWC has the expertise, the record of environmental compliance, the commitment to invest in necessary capital improvements and resources, and experienced managerial and operating personnel necessary to provide safe and reliable sewer services to the residents of Exeter and surrounding areas. PAWC St. No. 1 REV-A p. 14.

H. Benefits of the Transaction and the Settlement

56. Given its size, access to capital, and strengths in planning, capital budgeting and construction management, PAWC is well-positioned to ensure that high quality wastewater service meeting all applicable state and federal regulatory requirements continues to be provided to Exeter's customers. PAWC St. No. 1 REV-A p. 16.

57. PAWC is subject to the jurisdiction of the Commission and must comply with the Code, the Commission's Regulations and Orders. Exeter is not regulated by the Commission and does not need to comply with the Code, the Commission's Regulations or Orders. PAWC St. No. 1-R p. 3; PAWC St. No. 2 pp. 16-17.

58. Exeter's current customers will benefit from PAWC's enhanced and proven customer service. This includes additional bill payment options, extended customer service and call center hours, enhanced customer information and education programs, and access to PAWC's customer assistance program. PAWC St. No. 1 REV-A p. 16; PAWC St. No. 2 pp. 13-15.

59. Customers can reach PAWC via e-mail and can manage their account on-line. In addition, PAWC offers emergency support 24 hours a day, seven days a week. PAWC St. No. 2 p. 14.

60. PAWC's customers can pay bills by mail, on-line, by e-check or electronic funds transfer, in person at multiple authorized payment locations across the state, and over the phone with a debit or credit card. PAWC St. No. 2 p. 14.

61. As customers of PAWC, Exeter's existing customers will have access to PAWC's customer assistance program, "H2O Help to Others Program." For wastewater customers, this

program offers grants of up to \$500 per year and a 15% discount on total wastewater charges, in addition to a water saving kit. PAWC St. No. 2 p. 15.

62. The Transaction will have no immediate rate impact on PAWC's existing customers. PAWC St. No. 1 REV-A p. 17.

63. In the long-term, the Transaction will help PAWC keep rates reasonable for all of its customers. Through its expertise in wastewater management and the leveraging of economies of scale, PAWC will – over time – be able to improve efficiencies and lower or slow the increase in the cost of operating the System. PAWC St. No. 4 p. 9-10.

64. By adding additional connections to the entire PAWC system, there are more customers to share future infrastructure investment costs, which promotes stable rates across the entire PAWC system. Customers who benefit from near-term improvements will one day help pay for improvements on behalf of other customers on other parts of the PAWC system. Being able to spread the costs of investing in and maintaining public wastewater systems over a growing customer base, particularly in a time of increased environmental requirements, is essential to the continued success of wastewater systems and maintaining reasonable rates for customers. PAWC St. No. 1 REV-A p. 17.

65. PAWC can use Exeter's facilities to save costs in other portions of PAWC's system (e.g., PAWC can use the existing sludge processing drying system at the Exeter wastewater plant to reduce operating costs by \$100,000 at the Coatesville and Shady Lane facilities, and may be able to use the residual handling facilities at Exeter to avoid a \$6 million capital expense at its Coatesville operations), PAWC St. No. 3-R p. 6.

66. Exeter had eight sanitary sewer overflows, eight unpermitted discharges of raw sewage and numerous other environmental violations over the past five years. PAWC St. No. 3-R p. 5.

67. In addition, Exeter had an overflow incident at its wastewater treatment plant's influent pump station that resulted in a Notice of Violation dated October 22, 2018. PAWC St. No. 3-R p. 5.

68. PAWC has no outstanding environmental complaints relative to its more extensive wastewater operations. PAWC St. No. 3-R p. 5.

69. After closing on the Transaction, PAWC plans to implement safety, security, supervisory control and data acquisition ("SCADA"), electrical and arc flash improvements. PAWC also plans to implement disinfection system improvements and treatment plant equipment and building structures improvements. PAWC will also complete an infiltration/inflow study and will make targeted collection system main replacements based on the infiltration and inflow study. PAWC St. No. 3 p. 7.

70. PAWC's ten year capital plan for the Exeter system is currently estimated at \$30.1 million. PAWC St. No. 3 p. 7.

71. PAWC can draw upon a much broader range of engineering and operational experience, as well as deeper financial resources, than can Exeter to address any environmental compliance challenges of the System. PAWC St. No. 3 p. 9.

72. PAWC has an ongoing program of capital investment focused on systematically replacing and adding new pipes, treatment and pumping facilities, and other water and wastewater infrastructure. PAWC has funded more than \$1 billion in capital construction over the past five

years with expenditures expected to total \$275 million to \$300 million per year for the next five years. PAWC St. No. 3 p. 11.

73. The Settlement requires PAWC to conduct an inflow and infiltration study of the System. Settlement ¶ 36. PAWC's due diligence included a consideration of inflow and infiltration issues and the Exeter System was not deemed to have significant I&I issues. PAWC St. No. 3-R, p. 2. Nevertheless, no formal inflow and infiltration study of the System has been completed since the 1960s. I&E St. No. 1 p. 13.

74. The Settlement requires PAWC to provide notice of the Settlement to each existing customer of the Exeter System. This notice includes information about the proposed Settlement and the customers' right to submit comments on the Settlement to the Commission and the ALJ. Settlement ¶ 42, Attachment A.

I. Ratemaking Rate Base

75. PAWC and Exeter proposed a ratemaking rate base of \$96,000,000, based on the agreed-to purchase price of \$96,000,000. This amount was less than the average of the two UVE appraisals, even after Gannett Fleming's appraisal was adjusted during this litigation ($\$101,817,204 + \$101,576,000 = \$101,696,602$). PAWC St. No. 4-R p. 2; PAWC St. No. 5 p. 20; Exeter St. No. 4 p. 19.

76. The OCA challenged, and proposed adjustments to, the appraisals of AUS and Gannett Fleming in this proceeding. The OCA's proposed adjustments would have reduced the average of the two UVE appraisals below the agreed-to purchase price of \$96,000,000. OCA St. No. 1, OCA St. No. 2, OCA St. No. 1S, and OCA St. No. 2S.

77. The rate base agreed-to by the Joint Petitioners in the Settlement is \$92,000,000, based on a modified purchase price of \$93,500,000. Settlement ¶ 30.

78. The rate base agreed-to by the Joint Petitioners is within the range of the Joint Petitioners' litigation positions. PAWC St. No. 4-R p. 2; OCA St. No. 1S p. 28.

J. Rate Stabilization Plan

79. The Asset Purchase Agreement between PAWC and Exeter does not contain a "rate stabilization plan" as defined by 66 Pa. C.S. § 1329(g). PAWC St. No. 4 p. 8.

K. DSIC, AFUDC, Deferred Depreciation and Transaction and Closing Costs

80. PAWC requested authority from the Commission to approve the collection of a DSIC related to the Exeter System in the future, prior to the first base rate case in which the System plant-in-service is incorporated into rate base. PAWC St. No. 4 p. 9.

81. PAWC would not begin charging a DSIC until the eligible System plant is approved by the Commission in a modified Long-Term Infrastructure Improvement Plan for wastewater. Settlement ¶ 38.

82. PAWC's modified Long-Term Infrastructure Improvement Plan for wastewater will not reprioritize other existing capital improvements that PAWC has already committed to undertake in other service areas. Settlement ¶ 38.

83. PAWC has committed to make post-acquisition improvements in the Exeter System. As such, PAWC will likely accrue allowance for funds used during construction for post-acquisition improvements. PAWC St. No. 4 p. 11.

84. PAWC also intends to defer depreciation on non-DSIC-eligible post-acquisition improvements for book and ratemaking purposes. PAWC St. No. 4 p. 11.

85. Transaction and closing costs that PAWC may seek to recover include the UVE's appraisal fee, the buyer's share of the costs related to the engineer's assessment, and the buyer's closing costs, including reasonable attorney fees. PAWC is unable to determine the exact extent of transaction and closing costs at this time. In its Application, PAWC estimated the anticipated range of transaction and closing costs as \$1,100,000 to \$1,300,000. PAWC St. No. 4 pp. 6-7; PAWC Exhibit BJJ-1 Appendix A-12.

86. Any transaction and closing costs that PAWC seeks to claim are not properly reviewed, and cannot be approved, in this Section 1329 proceeding. Instead, PAWC's transaction and closing costs are properly reviewed in its next base rate case that follows the acquisition, and they will be subject to the preponderance of evidence standard in that review. PAWC St. No 4 p. 6; *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016) p. 14.

L. Rates

87. As required by Section 1329, PAWC included a *pro forma* tariff supplement in its Application. PAWC Exhibit BJJ-1, Appendix A-13.

88. After PAWC filed the Application, Exeter filed its Application for a Certificate of Public Convenience *nunc pro tunc* to serve 29 customers in Lower Alsace Township. *In re: Application of Exeter Township for Certificate of Public Convenience to Offer, Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions of Lower Alsace Township, Berks County, Pennsylvania*, Docket No. A-2018-3006505 ("Exeter/Lower Alsace Application").

89. A settlement of all issues is presently pending before the Commission in the Exeter/Lower Alsace Application. Among other things, this settlement would establish Exeter's rates in Lower Alsace Township.

90. The Settlement in the instant Application is conditioned on the Commission's approval of the settlement regarding the Exeter/Lower Alsace Application. Settlement ¶ 28.

91. Upon closing of the Transaction, PAWC will adopt Exeter's current customer charge and consumption charge then in effect (including in Lower Alsace Township). The current consumption charge utilized by Exeter is a rate per thousand gallons. Under PAWC ownership, the usage rate will be converted to a usage rate per hundred gallons, thereby corresponding to how all other PAWC customers are billed. PAWC St. No. 4 p. 7.

92. After PAWC closes on the Transaction, System customers will be subject to PAWC's prevailing wastewater tariff on file with the Commission with respect to all rates other than the customer charge and consumption charge, including capacity reservation fees, reconnection fees and the like, as well as non-rate related terms and conditions of service. PAWC St. No. 4 p. 7.

93. Exeter's customers are currently billed quarterly. As PAWC customers, all Exeter customers will be billed monthly. PAWC St. No. 4 p. 8.

M. Municipal Agreements

94. In the Application, PAWC requested that the Commission approve the Asset Purchase Agreement and the First Amendment to the Asset Purchase Agreement. In addition, the Settlement is conditioned on PAWC filing the Second Amendment to the Asset Purchase Agreement (adjusting the purchase price to \$92,000,000), and the Settlement requests that the

Commission approve the Second Amendment to the Asset Purchase Agreement. Settlement ¶¶ 30 and 43(a).

95. As part of the Transaction, three agreements will be assigned to and assumed by PAWC: an Intermunicipal Agreement with Alsace Township, a Leachate Treatment Agreement with the Chester County Solid Waste Authority, and a May 8, 2003 Agreement with the Borough of St. Lawrence. PAWC Exhibit BJK-1, Appendices B-1 (REV), B-2 (REV) (Corrected) and B-3-b REV.

96. In addition, PAWC has entered into a Sewage Treatment & Conveyance Agreement with the Borough of St. Lawrence, which will be effective upon closing on the Transaction. Exhibit BJK-1 Appendix B-3 REV-1.

97. The contracts described in Findings of Fact 94-96 are reasonable and necessary in order to provide continued service in Exeter's existing service territory. PAWC St. No. 1 REV-A pp. 17-18 and 20.

PAWC'S PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this application proceeding. 66 Pa. C.S. §§ 1102, 1103, 1329.

2. Commission policy promotes settlement. *See* 52 Pa. Code § 5.231.

3. 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. *See* 52 Pa. Code § 69.401.

4. 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).

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

6. 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).

7. 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).

8. 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 Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958).

9. 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).

10. Financial fitness means that the applicant should possess the financial resources to provide the proposed service. *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982).

11. Technical fitness means that the applicant should have sufficient staff, facilities and operating skills to provide the proposed service. *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982); *Merz White Ways Tours v. Pa. Pub. Util. Comm'n*, 201 A.2d 446 (Pa. Super. 1964).

12. Legal fitness means that the applicant has a propensity to obey the Code and the Commission's regulations. *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982).

13. PAWC has carried its burden of establishing that it is financially, technically, and legally fit to own and operate the Exeter System.

14. 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").

15. 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).

16. PAWC has carried its burden of demonstrating that the Transaction will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

17. 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).

18. 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).

19. A rate stabilization plan is defined as “A plan that will hold rates constant or phase rates in over a period of time after the next base rate case.” 66 Pa. C.S. § 1329(g).

20. Section 1329(d)(5) permits a public utility acquiring a municipal wastewater system to collect a distribution system improvement charge prior to the first base rate case in which the municipal system is included in its rate base. In the instant case, this permission is conditioned on (i) PAWC’s filing of an amended LTIIP that does not reprioritize 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 that incorporates Exeter into its existing DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the Amended LTIIP. Settlement ¶ 38.

21. 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).

22. 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).

23. Section 1329 permits an acquiring public utility to include transaction and closing costs in its rate base in its next base rate case. 66 Pa. C.S. § 1329(d)(2). Transaction and closing costs include the UVE's appraisal fee, the buyer's share of the costs related to the engineer's assessment, and the buyer's closing costs, including reasonable attorney fees. These costs are properly reviewed in PAWC's next base rate case that follows the acquisition; 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) p. 14.

27. The \$92,000,000 ratemaking rate base in the Settlement is in the public interest, considering the provisions of Section 1329 and the Commission's ability to set just and reasonable rates prospectively pursuant to 66 Pa. C.S. § 1301.

28. PAWC's notice of the Application to Exeter's existing customers and PAWC's existing water and wastewater customers were sufficient to meet the requirements established by the Commission in *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Supplemental Implementation Order entered February 28, 2019) and by the Commonwealth Court of Pennsylvania in *McCloskey v. Pa. Pub. Util. Comm'n*, 1624 CD 2017 (Pa. Cmwlth. 2018), *pet. for alloc. denied*, 743 MAL 2018 (April 23, 2019) (*New Garden*).

29. The notice of the Settlement to Exeter's existing customers, attached to the Settlement as **Attachment A**, provides existing customers of Exeter with adequate notice and opportunity to be heard on the proposed Settlement.

30. 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.

PAWC'S PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

(a) That the Joint Petition for Approval of Partial Settlement filed by Pennsylvania-American Water Company, the Office of Consumer Advocate, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, and the Township of Exeter, on July 11, 2019 at Docket No. A-2018-3004933, including all terms and conditions thereof, is approved, without modification.

(b) That the Commission's proceeding at Docket No. A-2018-3004933 be terminated and marked closed.

(c) That the Application filed by PAWC on September 25, 2018, as amended, be granted, subject to the following conditions:

(1) That the Commission approve the Settlement in *In re: Application of Exeter Township for Certificate of Public Convenience to Offer, Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions of Lower Alsace Township, Berks County, Pennsylvania*, Docket No. A-2018-3006505;

(2) That PAWC mail the notice attached to the Settlement as **Attachment A** to existing customers of Exeter concurrently with the filing of the Settlement;

(3) That PAWC file a Second Amendment to the Asset Purchase Agreement that adjusts the purchase price to \$93,500,000; and,

(4) That PAWC Statement No. 3-R, page 4 line 22 through page 5 line 7, and Exhibit DRK-3-R, are not admitted into the record in this proceeding.

(d) That the Commission's Secretary's Bureau shall 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 Exeter's assets, properties and rights related to its wastewater system to PAWC as provided in the Application, (ii) PAWC's right to begin to offer, render, furnish or supply wastewater service to the public in the areas served by Exeter as indicated in the Application; and (c) Exeter's abandonment of service in Lower Alsace Township.

(e) That PAWC, upon closing of the Transaction, shall issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement attached to the Application as **Appendix A-13 (REV)**, to be effective on the date of issuance.

(f) That the Commission approves, pursuant to 66 Pa. C.S. § 1329(c), a rate base addition of \$92,000,000 associated with the acquisition of the System.

(g) That in the first base rate case that includes Exeter wastewater system assets, PAWC shall submit a cost of service study that removes all costs and revenues associated with the operation of the Exeter System.

(h) That in the first base rate case that includes Exeter wastewater system assets, PAWC shall provide a separate cost of service study for the Exeter System.

(i) That PAWC shall propose to move Exeter wastewater rates to Exeter's cost of service in the first base rate case that includes Exeter wastewater system assets unless such increase is more than 1.8 times current rates; provided, however, that PAWC will not be obligated to propose Exeter wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates.

(j) That, although the Commission acknowledges that the Joint Petitioners reserve the right to present adjustments and oppose adjustments to appraisals in future cases, the Commission

acknowledges that the Joint Petitioners have accepted the following adjustments for purposes of this proceeding:

(1) Cost Approach: The cost of land will not be increased by a consumer price index when calculating the reproduction cost of land.

(2) Market Approach:

(i) If “comparable acquisitions” are used in determining market value, the proxy group will not be limited to only companies which engage in Pennsylvania fair market value acquisitions; the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order;

(ii) The comparable group rate base amounts will not be adjusted for theoretical contributions; and,

(iii) When comparing metrics for municipalities in completed Section 1329 acquisitions, capital assets less depreciation value from the municipality’s financial statements will not be used.

(k) That, within six months after closing of the transaction, PAWC shall start an Infiltration and Inflow study for the Exeter System and provide the results of said study, upon completion, to all Parties to this proceeding. All Parties reserve the right to challenge the recovery of costs related to inflow and infiltration, including the cost of the study, in subsequent rate proceedings.

(l) That, within the first 90 days of PAWC’s ownership of the Exeter System, PAWC shall include a bill insert to the Exeter-area customers regarding its low income programs and shall include such information in a welcome letter to Exeter-area 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.

(m) That PAWC, pursuant to 66 Pa. C.S. § 1329(d), may collect a distribution system improvement charge related to the Exeter System prior to the first base rate case in which the System plant-in-service is incorporated into rate base, subject to the following conditions:

(1) PAWC files an amended wastewater long term infrastructure investment plan incorporating the Exeter area, which does not re-prioritize other existing commitments in other service areas;

(2) the Commission approves the amended wastewater long term infrastructure improvement plan incorporating the Exeter area, as may be modified in the discretion of the Commission; and

(3) PAWC files a compliance tariff supplement which incorporates Exeter into its existing DSIC tariff, including all customer safeguards applicable thereto, after Commission approval of the amended long term infrastructure improvement plan.

(n) That PAWC, pursuant to 66 Pa. C.S. § 1329(f), may accrue allowance for funds used during construction for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Commission recognizes that the Joint Petitioners reserve their rights to litigate their positions fully in the first base rate case which includes Exeter wastewater system assets and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of PAWC's request.

(o) That PAWC, pursuant to 66 Pa. C.S. § 1329(f), may defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. The Commission recognizes that the Joint Petitioners reserve their rights to litigate their positions

fully in the first base rate case which includes Exeter wastewater system assets and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of PAWC's request.

(p) That PAWC, pursuant to 66 Pa. C.S. § 1329(d)(iv), may include, in its next base rate case, a claim for transaction and closing costs related to the acquisition of the Exeter System. The Commission recognizes that the Joint Petitioners reserve their rights to litigate their positions fully in that base rate case and does not construe the Joint Petitioners' assent to this term to operate as their preapproval of PAWC's request.

(q) That the Commission's Secretary's Bureau shall issue Certificates of Filing or approval for the following agreements between PAWC and a municipal corporation:

(i) Asset Purchase Agreement between Township of Exeter (as Seller) and Pennsylvania-American Water Company (as Buyer), dated as of May 29, 2018 (attached to the Application as **Appendix A-24-a**), the First Amendment to Asset Purchase Agreement (attached to the Application as **Appendix A-24-a REV**), and the Second Amendment to the Asset Purchase Agreement (reflecting revised purchase price per settlement);

(ii) Intermunicipal Agreement, dated as of December 11, 1996, between Exeter Township, Berks County, Authority and Exeter Township, on the one hand, and the Township of Alsace, on the other hand, with the First and Second Amendments thereto (attached to Application in **Appendix B-1 (REV)**);

(iii) Leachate Treatment Agreement between Exeter Township and the Chester County Solid Waste Authority, dated December 12, 2016 (attached to Application as **Appendix B-2 (REV) (Corrected)**);

(iv) Sewage Treatment and Conveyance Agreement dated June 28, 2019, between Pennsylvania-American Water Company and the Borough of Saint Lawrence (attached to Application as **Appendix B-3 REV-1**);

(v) Agreement dated as of May 8, 2003 between Exeter Township, Berks County, Authority and the Township of Exeter, on the one hand, and St. Lawrence Borough Authority and the Borough of St. Lawrence, Berks County, Pennsylvania, on the other hand (attached to Application as **Appendix B-3-b REV**).

(r) That the Commission issue any and all other approvals or certificates appropriate, customary or necessary under the Code to carry out the Transaction contemplated in the Application in a lawful manner.

ATTACHMENT C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Andrew M. Calvelli

Application of Pennsylvania-American Company Pursuant to Sections 507, 1102, and 1329 of the Public Utility Code for Approval of Its Acquisition of the Wastewater System Assets of Exeter Township : **DOCKET A-2018-3004933**
:
:
:
:
:

**STATEMENT OF EXETER TOWNSHIP IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF PARTIAL
SETTLEMENT**

I. INTRODUCTION

Exeter Township (“Exeter”) hereby files this Statement in Support of the Joint Petition for Approval of Partial Settlement (“Settlement”) entered into by Exeter, Pennsylvania-American Water Company (“PAWC”), the Office of Consumer Advocate (“OCA”), and the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission (“I&E”) (hereinafter, collectively the “Joint Petitioners”) in the above-captioned proceeding.¹ Exeter respectfully requests that the Honorable Administrative Law Judge Andrew M. Calvelli recommend approval of, and that the Pennsylvania Public Utility Commission (“Commission”) subsequently approve, the Settlement, including all terms and conditions thereof, expeditiously and without modification.

As Exeter will discuss in greater length herein, the Settlement is in the best interest of Exeter and its existing customers and otherwise benefits the public interest. The fact that the Joint

¹ The Borough of St. Lawrence, an intervenor in this proceeding, does not oppose or otherwise object to the Settlement.

Petitioners all support the Settlement despite possessing diverse interests constitutes strong evidence that the Settlement is reasonable and in the public interest. Settlement benefits the public interest by reducing the costs the Joint Petitioners would otherwise be forced to expend in litigation, while also conserving limited administrative resources. Additionally, the Commission has previously observed that results reached through settlement are often preferable to the results following a fully-litigated proceeding. *See* 52 Pa. Code § 69.401. For this reason, Commission policy promotes settlements. *See* 52 Pa. Code § 5.231.

For these reasons, as well as those set forth in more detail below, Exeter asks that the Settlement be approved without modification.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Settlement, if approved, will resolve this proceeding, which pertains to the sale of substantially all of the assets comprising Exeter’s sewer system to PAWC in accordance with 66 Pa. C.S. § 1329 (the “Application”). By way of background, PAWC filed the Application seeking the approval of the sale of Exeter’s wastewater system (“System”) to PAWC (“1329 Application”). The Board of Supervisors of Exeter (“Board”) agreed to sell the System to PAWC (the “Transaction”) following the preparation of a heavily negotiated Asset Purchase Agreement (“APA”).² The Board reached this decision believing it to be in the best interest of the residents of Exeter. The System is an asset owned by the public, and Exeter must promote the best interests of its constituents.

² PAWC and Exeter voluntarily agreed to utilize the process set forth in Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, to determine the fair market value of the System assets.

The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners. For these reasons and the reasons set forth below, the Settlement is in the public interest and should be approved expeditiously and without modification.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED WITHOUT MODIFICATION

The Commission must determine that the proposed settlement terms and conditions are in the public interest prior to approving the Settlement. *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).

Approval of the Settlement, and, as a result, the Application, will result in substantial benefits to the public. Specifically, approving the Settlement and Application will ensure continued and enhanced sewer service to the residents of Exeter and Lower Alsace Township, and St. Lawrence Borough, who require sewer service. It is undisputed that PAWC is technically, legally, and financially fit to acquire the System.

Furthermore, the Transaction allows Exeter to maintain real estate taxes at current levels for the next decade once the sale of the System is finalized. It also allows for eliminating the unfunded liability in Exeter's pension plans, and OPEB plan, as well as funding storm sewer improvements and equipment replacement expenses, which will have a significant positive impact on Exeter's General Fund.

In addition, when realized, the institution of a homestead exemption for Exeter residents in the amount of \$50,000 on real estate taxes would become effective for the 2020 fiscal year. An analysis of the impact of the homestead exemption for Exeter residents indicates that 11.9 percent of Exeter's households would pay no Exeter real estate taxes. This would have a significant positive impact on the lowest socioeconomic strata in Exeter.

Exeter has grant applications pending with PennDOT, DCED, DEP, and DCNR for grants for infrastructure improvements. The Grant applications are in excess of \$5,000,000 and will require a local match in excess of \$1,000,000. The anticipated proceeds from the sale have enabled Exeter to submit these applications. The infrastructure improvements that are the subject of the grant applications support Exeter's economic development strategy, as well as provide improvements to Exeter's park systems and stormwater management system.

Finally, PAWC's acquisition of the System fosters the Commission's goal of regionalizing wastewater systems, thereby providing greater environmental and economic benefits to customers. Specifically, PAWC's acquisition of the System promotes continued regionalization of PAWC's operations, which, in turn, permits PAWC to pursue economies of scale and spread costs over a larger customer base for the benefit of all of its ratepayers. PAWC has an exemplary record of environmental compliance, which will improve the operation of the System and deliver benefits to all residents of the Commonwealth.

Significantly, the Settlement resolves this proceeding, with the exception of any contractual disputes that may exist by and between Exeter and St. Lawrence. As discussed in Exeter's Main Brief, such disputes do not provide a reason for imposing any condition on the Commission's approval of the Settlement. To the contrary, the Commission lacks jurisdiction over such a dispute.

For the foregoing reasons, there is substantial record evidence to support the approval of the Settlement without modification.

IV. REQUEST FOR EXPEDITED TREATMENT

Exeter respectfully requests expedited approval of the Settlement. The 1329 Application is subject to a six-month deadline for Commission decision, *see* 66 Pa. C.S. § 1329.

V. **CONCLUSION AND RELIEF REQUESTED**

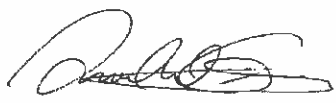
Through cooperative efforts focused on finding common ground, the Joint Petitioners have arrived at an agreement that resolves all issues in the proceeding in a fair and equitable manner. The Settlement is the result of detailed examination of all pertinent facts through discovery, briefing, and extensive settlement negotiations. In doing so, the Joint Petitioners have reached a fair and reasonable compromise, as is evident by the fact that many of the active parties to this proceeding have agreed to the resolution of the issues.

WHEREFORE, Exeter respectfully requests that the Honorable Administrative Law Judge Andrew M. Calvelli recommend approval of, and the Commission approve, the Settlement in its entirety, expeditiously and without modification, and enter an order consistent with the Settlement.

Respectfully submitted,

FOX ROTHSCHILD LLP

Dated: July 11, 2019

By: 
Barnett Satinsky, Esquire
Samuel W. Cortes, Esquire
Attorney ID Nos. 15767; 91494
Attorneys for Applicant, Exeter Township

ATTACHMENT D

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Application of Pennsylvania-American :
Water Company Pursuant to Sections 507, :
1102 and 1329 of the Public Utility Code for : Docket No. A-2018-3004933
Approval of its Acquisition of the :
Wastewater Assets of Exeter Township :

OCA STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL
OF PARTIAL SETTLEMENT

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Partial Settlement (Settlement) respectfully requests that the terms and conditions of the Settlement be approved by the Pennsylvania Public Utility Commission (Commission).

I. INTRODUCTION

On September 25, 2018, Pennsylvania-American Water Company (PAWC or Company) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission (Commission) approval of the acquisition of Exeter Township's (Exeter or Township) sewer system and the right of PAWC to provide wastewater service in the areas served by the Township and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. By Secretarial Letter dated October 1, 2018, the Commission notified PAWC that the Application was not accepted for filing purposes because it was incomplete. On December 5, 2018, PAWC filed an Amended Application to address the issues raised by Commission Staff. On December 10, 2018, Exeter

filed an Application at Docket No. A-2018-3006505 under Section 1102(a) of the Public Utility Code requesting that the Commission issue a Certificate of Public Convenience *Nunc Pro Tunc*, for Exeter to offer, furnish, render, and supply wastewater service in certain portions of Lower Alsace Township, Berks County, Pennsylvania (Exeter/Lower Alsace Application¹). On December 14, 2018, the OCA filed a Petition to Reject or Hold In Abeyance The Application. By Secretarial Letter dated December 19, 2018, the Commission conditionally accepted the Amended Application with a condition requiring individual notice to be provided to PAWC's existing water and wastewater customers and requiring PAWC to ensure that concurrent notice was provided to all current Exeter Township wastewater customers, along with newspaper notice in the Exeter Township area. Upon completion, PAWC was directed to file a verification that the notice has been provided.

The Bureau of Investigation and Enforcement (I&E) filed a Motion to Reject or Hold In Abeyance on December 20, 2018. On December 28, 2018, Exeter filed a Petition to Intervene. On January 4, 2019, the Borough of St. Lawrence filed a Petition to Intervene. The OCA filed a Protest and Public Statement on January 14, 2019 and a Petition for Stay. By Secretarial Letters dated February 8, 2019, the Commission informed OCA and I&E that the docket was inactive and that any motions, petitions and other filings would be addressed at the time the docket becomes active.

On April 15, 2019, PAWC filed a letter, with an attached verification, stating that it had complied with the notice requirements contained in the December 19, 2018 Secretarial Letter. By Secretarial Letter dated April 16, 2019, the Commission informed PAWC that it had accepted the Application for filing.

A prehearing conference was held on May 17, 2019 before Administrative Law Judge

¹ OCA fled a Protest and Public Statement on December 27, 2018.

(ALJ) Andrew M. Calvelli, at which time, *inter alia*, a litigation schedule was adopted. In accordance with that schedule, the OCA and other parties submitted the following testimony:

June 7, 2019 – Direct Testimony

Ashley E. Everette (OCA Statement 1)² and Glenn A. Watkins (OCA Statement 2)

Joseph Kubas (I&E Statement 1)

Robert J. May (St. Lawrence Statement 1) and Kevin Conrad (St. Lawrence Statement 2)

June 18, 2019 – Rebuttal Testimony

Bernard J. Grundusky (PAWC Statement 1-R), David R. Kaufman (PAWC Statement 3-R), Rod P. Nevirauskas (PAWC Statement 4-R) and Jerome C. Weinert (PAWC Statement 5-R)

John Granger and Harold Walker (Exeter Statements)³

June 26, 2019 – Surrebuttal Testimony

Ashley E. Everette (OCA Statement 1S) and Glenn A. Watkins (OCA Statement 2S)

Joseph Kubas (I&E Statement 1-SR)

Robert J. May (St. Lawrence Statement 1)

On June 12, 2019, the OCA, I&E, PAWC, and Exeter submitted a Joint Application for Approval of Settlement of All Issues regarding the Exeter/Lower Alsace Application. On June 28, 2019, the Joint Petitioners notified the Administrative Law Judge that a settlement resolving all issues, except for issues regarding debt service and billing dispute between the Borough of St. Lawrence and PAWC, had been reached. On June 28, 2019, the foregoing testimony was entered into the record at the evidentiary hearing.⁴

² OCA Statement 1 included a Public version and a Confidential version that were served in accordance with the Protective Order adopted in this matter.

³ The Exeter testimony was not marked numerically.

⁴ St. Lawrence witness Conrad's testimony was not submitted into the record at the evidentiary hearing.

II. TERMS AND CONDITIONS OF JOINT PETITION FOR SETTLEMENT

The terms of the proposed Settlement address matters raised by the OCA in its testimony, including: the ratemaking rate base to be incorporated into the acquiring utility's revenue requirement and the rate impact for existing PAWC customers and the acquired customers; the adequacy of and accuracy of customer notices; and the application of the Distribution System Improvement Charge (DSIC) and accounting issues, as follows:

1. Ratemaking Rate Base, Settlement ¶30.

As part of this proceeding, PAWC sought to establish the ratemaking rate base for this acquisition pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329. Based on appraisals presented by PAWC and Exeter, PAWC sought a ratemaking rate base of \$96,000,000, which was less than the average of the two appraisals, which was \$102,968,602. The OCA's recommended adjustments to the appraisals resulted in an average appraisal amount of \$74,838,964. OCA St. 1S at 28. The parties have agreed in the Settlement that the ratemaking rate base should be \$92,000,000. Settlement ¶ 30. This number represents a compromise of the parties' positions and, in the OCA's judgement, represents a result that is within the range of likely outcomes if the case were fully litigated. This provides some mitigation of the rate impact of the transaction for existing PAWC customers and the acquired Exeter Township customers by reducing overall costs.

2. Fair Market Value, Settlement ¶31.

The OCA's witnesses identified a number of adjustments in the Utility Valuation Expert appraisals as well as the use of assumptions and adjustments that were unreasonable or

inconsistent with financial and utility ratemaking practices and the OCA's witnesses recommended corrective adjustments. The proposed Settlement reflects the Parties' explicit acceptance of five of the OCA's adjustments. These five adjustments are:

- (a) Cost approach: The cost of land will not be increased by a consumer price index when calculating the reproduction cost of land;
- (b) Market approach: If "comparable acquisitions" are used in determining market value, the proxy group will not be limited to only companies which engage in Pennsylvania fair market value acquisitions; the proxy group will include all Section 1329 acquisitions for which the Commission has entered a final order;
- (c) The comparable group rate base amounts will not be adjusted for theoretical contributions; and,
- (d) When comparing metrics for municipalities in completed Section 1329 acquisitions, capital assets less depreciation value from the municipality's financial statements will not be used.

These adjustments reflect accepted financial and ratemaking principles and help to improve the reliability of data used in appraisals and the integrity of the result.

3. Cost of Service Study and Rates, Settlement ¶¶32-35.

In this proceeding, the OCA identified the need for a separate cost of service study for the Exeter Township system in the first base rate case in which PAWC includes the Township's assets in rate base. OCA St. 1 at 25. A separate cost of service study will provide information to establish rates that reflect the costs for that system. Id.

The Settlement addresses this issue. Paragraphs 32 and 33 provide that, in its first base rate case following closing in which PAWC includes the Township assets in rate base, PAWC will provide a separate cost of service study for the Exeter Township system and will submit a wastewater cost of service study that removes all costs and revenues associated with the Exeter system. Paragraph 35 provides that, in the same rate case, PAWC will propose to move the

Exeter system to its cost of service (based on the separate cost of service study), unless such increase is more than 1.8 times current rates; provided that such rates do not exceed the proposed Zone 1 wastewater rate.⁵ These settlement terms will provide a means for the parties to use the cost of service data to set rates for the Exeter 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 water and wastewater customers and applies the ratemaking principle of gradualism to rates set for customers in the Exeter service area.

4. Distribution System Improvement Charge (DSIC), Settlement ¶38.

The parties to the proposed Settlement agreed that PAWC may apply the DSIC to customers in the Exeter service area prior to the first base rate case in which the system's plant in service is incorporated into rate base pursuant to 66 Pa. C.S. § 1329(d)(4) if certain conditions are met. Paragraph 38 states that PAWC will revise its Long Term Infrastructure Improvement Plan (LTIIP) to include the Exeter system and related projects before it begins charging the DSIC to those customers. PAWC agrees that the projects for Exeter customers are in addition to the projects already included in its approved LTIIP. This settlement term allows for Exeter customers to begin contributing, up to 7.5% of their total wastewater bill, toward DSIC-eligible capital projects.

Paragraph 38 also provides that, if PAWC seeks to modify its LTIIP to include the Exeter system, PAWC will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. These terms help to ensure that projects

⁵ The current average Exeter rate for a residential customer is \$44.33 per month, based on 3,630 gallons usage. OCA St. 1 at 12. The current average PAWC rate for a residential wastewater customer using 3,630 gallons per month in Zone 1 is \$64.93. OCA St. 1 at 10.

and expenditures already planned for existing PAWC wastewater customers will not be given less priority as a result of the Exeter acquisition.

5. Customer Notice, Settlement ¶42.

During the billing cycle beginning March 11, 2019, PAWC provided one notice to its existing customers and the Exeter customers, which stated that the acquisition of the Exeter system could increase the monthly water bill for a residential customer by \$0.24 and the monthly wastewater bill for a residential customer by \$2.79.⁶ The OCA raised concerns whether the notice provided by PAWC to the Exeter customers was adequate and accurate because:

(1) The calculated rate impact was not based on an Exeter customer bill; it was based on current rates of a current PAWC Zone 1 customer. Exeter's current wastewater rates are \$44.33 per month for 3,630 gallons, as compared to the \$64.93 that PAWC customers currently pay for the same usage. OCA St. 1 at 12.

(2) The calculated rate impact did not reflect PAWC's stated intention to move Exeter's rates toward single-tariff pricing. OCA St. 1 at 12-13.

(3) The notice did not inform customers they had the opportunity to request a public input hearing on the proposed acquisition, pursuant to 52 Pa. Code § 53.45. OCA St. 1 at 14.

The Settlement addresses these issues. Paragraph 42 provides that PAWC will mail a new notice to current Exeter customers on July 11, 2019, which informs them of the proposed Settlement⁷ and the amount by which their bills could increase if, in PAWC's next base rate

⁶ See Pennsylvania-American Water Company's Notice Regarding Beginning to Provide Individualized Customer Notice (March 8, 2019) and Verification of Compliance with Notice Requirements (April 15, 2019).

⁷ The July 11, 2019 notice provides a link to the proposed Settlement, which is posted on PAWC's website at: www.pennsylvaniaamwater.com/exetersettlement. In addition, the July 11, 2019 notice informs Exeter customers of actions they can take in response to the Settlement (support, object or do nothing) and provides phone numbers to contact PAWC and the Office of Consumer Advocate for more information.

case, their rates are moved toward cost of service. Settlement, Attachment A. The notice shows that the bill of an average residential customer paying \$44.33 per month could increase by \$26.73, to \$71.06. Id. This provides more accurate information regarding the level of rate increase that may result from PAWC's acquisition of the Exeter system.

6. Low Income Program Outreach, Settlement ¶37.

PAWC has agreed to provide information about PAWC's low-income programs in a bill insert and in a welcome letter to the Exeter system customers, within 90 days of the closing of the transaction. The information will describe the available programs, eligibility requirements and contact information for PAWC. The OCA submits that this provision is reasonable and will provide timely information that may be helpful to some of the Exeter system customers.

7. Allowance for Funds Used During Construction (AFUDC), Settlement ¶39.

Joint Petitioners reserve their rights to litigate future claims for AFUDC made by PAWC pursuant to Section 1329(f)(1), OCA's assent to this agreement should not be construed to operate as preapproval of PAWC's future requests. This provision preserves all parties' positions in future rate cases.

8. Deferral of Depreciation for Post-Acquisition Improvements, Settlement ¶40.

Joint Petitioners reserve their rights to litigate claims in future rate cases that PAWC may make, pursuant to Section 1329(f)(2), for deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. This provision preserves all parties' positions in future rate cases.

9. Transaction and Closing Costs, Settlement ¶41.

Joint Petitioners reserve their rights to litigate claims in future rate cases that PAWC may make for transaction and closing costs associated with the acquisition. This provision preserves all parties' positions in future rate cases.

III. CONCLUSION

For the foregoing reasons, the Office of Consumer Advocate submits that the terms and conditions of the Settlement should be approved.

Respectfully Submitted,



Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. #320580
E-Mail: HBreitman@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: July 11, 2019

275736

ATTACHMENT E

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American	:	
Water Company Pursuant to	:	
Sections 507, 1102, and 1329 of the	:	Docket No. A-2018-3004933
Public Utility Code for Approval of its	:	
Acquisition of the Wastewater System	:	
Assets of Exeter Township	:	

**BUREAU OF INVESTIGATION AND ENFORCEMENT
STATEMENT IN SUPPORT OF JOINT PETITION FOR APPROVAL
OF SETTLEMENT**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor, Erika L. McLain, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Approval of Settlement (“Joint Petition” or “Settlement”) are in the public interest and represent a fair and just balance of the interests of Pennsylvania-American Water Company (“PAWC”), I&E, the Office of Consumer Advocate (“OCA”), and Exeter Township (“Exeter”), parties to the above-captioned proceeding (collectively, the “Joint Petitioners”).

I. BACKGROUND

1. PAWC filed its original Application on September 25, 2018 pursuant to 66 Pa. C.S. §507, §1102, and §1329. The Application requested that the Pennsylvania Public Utility Commission approve the transfer, by sale, of substantially all Exeter Township’s assets, properties and rights related to its wastewater system.

2. On October 1, 2018, by Secretarial Letter, the Commission declined to accept the filing due to incompleteness.
3. On December 5, 2018, PAWC filed its Amended Application with the Commission.
4. The Commission notified PAWC, by Secretarial Letter on December 19, 2018, that its Amended Application had been conditionally accepted for filing.
5. On December 14, 2018, the OCA filed its Petition to Reject or Hold in Abeyance Acceptance of the Application to which PAWC filed its Answer on December 17, 2018.
6. On December 20, 2018, I&E filed its Motion to Reject or Hold in Abeyance Pennsylvania-American Water Company's Amended Application to which PAWC filed its Answer on December 26, 2018.
7. On December 28, 2018, Exeter Township filed a Petition to Intervene and on January 7, 2019, the Borough of St. Lawrence also filed a Petition to Intervene.
8. On January 9, 2019, Exeter Township filed an Answer to I&E's Motion to Reject or Hold in Abeyance PAWC's Amended Application.
9. On January 14, 2019, the OCA filed a Protest, Public Statement, and a Petition for Stay.
10. PAWC filed its Answer to the OCA's Petition for Stay on February 4, 2019.
11. By four Secretarial Letters dated February 8, 2019, the Commission indicated that the Motions, Petitions, and Answers thereto filed previously by I&E, the

OCA, PAWC, and Exeter were filed at an inactive docket and would be addressed if the docket became active.

12. On April 16, 2019, the Commission issued a Secretarial Letter accepting the Amended Application for filing.

13. A Prehearing Conference was held on May 17, 2019 with Administrative Law Judge Andrew M. Calvelli (“ALJ Calvelli”) presiding. At the hearing ALJ Calvelli approved the litigation schedule that was mutually agreed upon by the parties prior to the Prehearing Conference, which provided for the filing of testimony, hearings and briefs as follows:

Other Parties’ Direct Testimony	June 7, 2019
Rebuttal Testimony	June 18, 2019
Surrebuttal Testimony	June 26, 2019
Evidentiary Hearings	June 27-28, 2019
Main Briefs	July 10, 2019
Reply Briefs	July 18, 2019

14. On June 26, 2019, to facilitate the continuation of negotiations, and at the request of all other parties, PAWC’s counsel contacted ALJ Calvelli to request that the hearings on June 27, 2019 be cancelled so that the parties could continue their discussions. Under the request, any necessary evidentiary hearings would commence on June 28, 2019. ALJ Calvelli granted counsels’ request.

15. After continued negotiations, counsel for the parties were successful in reaching a partial settlement in this proceeding. On June 27, 2019, counsel for PAWC informed ALJ Calvelli of the partial settlement.

II. LEGAL STANDARDS

a. Legal Standard for Section 1102 Approval

16. The Code requires that the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interest.¹ The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code. A Certificate of Public Convenience shall be granted “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”² These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.³ Additionally, pursuant to Section 1103, PAWC must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Exeter.⁴ In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”⁵ including existing customers. To ensure that a transaction is in the public interest, the Commission may

¹ 66 Pa. C.S. §1103.

² 66 Pa. C.S. §1103(a).

³ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

⁴ *Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 762, 764 (Pa. Cmmw. 1985); *Warminster Twp. Mun. Auth. V. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

⁵ *Middletown Twp. V. Pa. PUC*, 482 A.2d 674, 682 (Pa. Cmmw. 1984).

impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.⁶

b. Legal Standard for Section 1329 Approval

17. Section 1329 of the Public Utility Code prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission's jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility as the lesser of either the purchase price or the fair market value as established by two independent appraisals conducted by two utility valuation experts. Notably, a Commission Order approving a transaction under Section 1329 is permitted to include "[a]dditional conditions of approval."⁷

c. Legal Standard for Section 507 Approval

18. PAWC's request to assume enumerated municipal contracts currently held by Exeter 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. Upon receipt of the filing, and prior to the effective date of the

⁶ 66 Pa. C.S. §1103(a).

⁷ 66 Pa. C.S. §1329(d)(3)(ii); Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, p. 69 (Order entered June 29, 2017).

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. If this Commission decides to institute such proceedings, the contracts at issue will not become effective until the Commission grants its approval.

III. TERMS AND CONDITIONS OF SETTLEMENT

19. It is the policy of the Commission to encourage settlements.⁸

20. For the reasons discussed herein, I&E maintains that the Settlement meets all the standards necessary to warrant the requisite approvals under Sections 507, 1102, 1103, and 1329 of the Code.

21. The signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the settlement process. As such, the issues raised by the Joint Applicants have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. I&E represents that the Settlement satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, for the reasons articulated below, I&E maintains that the proposed Settlement is in the public interest and requests that the following terms be approved by the ALJ and the Commission without modification:

A. APPROVAL OF THE APPLICATION (Joint Petition ¶ 28)

Subject to all terms of the Settlement, I&E opines that the Application should be approved and recommends that the Commission should issue PAWC a Certificate of

⁸ 52 Pa. Code §5.231.

Public Convenience pursuant to 66 Pa. C.S. 1102(a). PAWC's Application requests permission for it to acquire substantially all Exeter's assets, properties, and rights related to Exeter's wastewater collection and treatment system and to obtain the Certificates of Public Convenience necessary for it to begin to offer wastewater service to the public in the Service Area. In total, through this acquisition, PAWC is seeking to provide service to Exeter's approximately 9,015 customers.⁹ The record supports the findings that PAWC is technically, legally, and financially fit to acquire Exeter Township's wastewater services.

Additionally, pursuant to the terms of this Settlement, PAWC's Application will provide affirmative public benefits. At the outset of this case, I&E recommended that PAWC's Application be approved only upon the condition that it be required to undertake a cost of service study.¹⁰ PAWC has agreed to the cost of service study recommended by I&E, which I&E avers will provide an important tool for parties and the Commission in PAWC's next base rate case, and which will also provide an important protection to PAWC's ratepayers in the future. 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.

⁹ PAWC Application, Appendix A-14, St. No. 1, p. 14.

¹⁰ I&E St. No. 1, p. 28.

B. TARIFF (Joint Petition ¶ 29)

Pursuant to the Settlement, the Joint Petitioners have agreed that the *pro forma* tariff supplement, which is attached to the Application as Appendix A-13 (REV), shall be permitted to become effective immediately upon closing of the transaction. The Joint Petitioners support the *pro forma* tariff supplement, under which Exeter's current rates would be initially adopted. Accordingly, the *pro forma* tariff will accurately include all rates, rules, and regulations regarding the conditions of PAWC's wastewater service, and this full and accurate disclosure of rates is in the public interest.

C. FAIR MARKET VALUE FOR RATEMAKING RATE BASE PURPOSES (Joint Petition ¶¶ 30-31)

At the outset of this case, PAWC requested that the ratemaking rate base value of Exeter's assets be established at \$96 million.¹¹ The \$96 million figure represented the negotiated purchase price between PAWC and Exeter.¹² As part of the Settlement, the Joint Petitioners agreed that PAWC will be permitted to use \$92 million for ratemaking rate base purposes for the acquired assets. This number reflects a compromise between the various positions of the Joint Petitioners and is in the public interest.

The Settlement also provides for certain adjustments that are explicitly accepted by the Parties including adjustments for the cost and market approaches. Although not specifically addressed in I&E's case, I&E nonetheless supports these adjustments.

¹¹ PAWC Application, Appendix A-14, St. No. 1, p. 11.

¹² *Id.*

D. RATES (Joint Petition ¶¶ 32-35)

Pursuant to the Settlement, at the time of its next base rate case, PAWC has agreed to submit a cost of service study that removes all costs and revenues associated with the operation of the Exeter System. PAWC also agrees to provide a separate cost of service study for the Exeter System at the time of the filing of PAWC's next base rate case. I&E fully supports this term which is consistent with its recommendation in this proceeding.

I&E avers that PAWC's commitment to providing the requested cost of service study is in the public interest. 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 PAWC 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. In this case, the cost of service study for the Exeter System would help the Commission determine Exeter's revenue requirement to provide service to its different customer classes, and extend rate making option that may not exist without such a study. Absent the cost of service study, the Commission's ability to evaluate any cost spreading from the perspective of cost causation would be compromised, but pursuant to the Settlement, the study will be available to preserve future ratemaking options.

The Settlement also provides that PAWC will propose to move Exeter wastewater rates to Exeter's cost of service in the first base rate case that includes Exeter wastewater system assets unless such increase is more than 1.8 times current rates and provided that

PAWC will not be obligated to propose Exeter wastewater rates in excess of PAWC's proposed Rate Zone 1 system-average rates. This term is in the public interest because a goal of ratemaking is to charge customers rates equal to the cost to serve those customers. Here, PAWC is proposing to move Exeter customers' rates to Exeter's cost of service but will not increase Exeter's rates more than 1.8 times the current rates which insulates those customers from rate shock.

E. INFLOW AND INFILTRATION STUDY (Joint Petition ¶ 36)

The Settlement provides that PAWC will start an Infiltration and Inflow ("I&I") study for the Exeter System within six months after closing of the transaction. PAWC will provide the results of the study, upon completion, to all Parties to the proceeding. All Parties reserve their right to challenge the recovery of costs related to I&I, including the cost of the study, in subsequent rate proceedings. In his direct testimony, I&E witness Kubas raised concerns regarding the lack of an I&I study being performed on the Exeter system. Specifically, I&E witness Kubas pointed out that I&I levels are a strong indicator of a system's condition. The concerns that I&E has identified regarding I&I has been addressed through the instant Settlement as PAWC has agreed to conduct an I&I study and all parties preserved their ability to challenge the costs related to I&I and the study itself therefore, this term is in the public interest.

F. LOW INCOME PROGRAM OUTREACH (Joint Petition ¶ 37)

Pursuant to the Settlement, PAWC has agreed that within the first 90 days of its ownership of the Exeter System, it will either include a bill insert to Exeter-area customers regarding its low-income programs or include this information in a welcome

letter to Exeter-area customers. In either case, these materials will include a description of the available low-income programs, the eligibility requirements for participation in the programs, and PAWC's contact information.

Although I&E did not take a position on this issue during this proceeding, I&E nonetheless supports this term. 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.¹³

**G. DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (Joint
Petition ¶ 38)**

The Joint Petitioners have agreed that consistent with Section 1329, PAWC shall be permitted to collect a distribution system improvement charge ("DSIC") prior to the first base rate case in which the Exeter assets are incorporated into rate base, subject to certain conditions. These conditions include: (1) PAWC's filing of amended long term infrastructure improvement plan ("LTIIP") to include the Exeter System and (2) PAWC not reprioritizing other existing capital improvements already committed to undertake in other service areas.

I&E took no position 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. However, I&E reserves the right

¹³ 66 Pa. C.S. §1402(3).

to address these issues in future 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 opines that this term serves the public interest because PAWC has agreed that existing commitments will not be reprioritized as a result of this term. With this in mind, Exeter's customers will benefit from improved wastewater infrastructure, promoting safer and more reliable service. At the same time, the improvements already identified and planned for existing PAWC ratepayer will not be jeopardized by PAWC's commitment to Exeter. Therefore, I&E opines that this term is in the public interest.

H. ACCRUAL OF ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION (Joint Petition ¶ 39)

Through the Settlement, the Joint Petitioners acknowledge that PAWC's Application includes a request to accrue allowance for funds used during construction ("AFUDC") for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Although the Joint Petitioners agree that they will not contest this request in this proceeding, they reserve their rights to litigate their positions fully in future rate cases. I&E endorses this term because while it enables PAWC to memorialize its intent to employ certain provisions of Section 1329, it also empowers parties to review PAWC's proposal in a future base rate case. Preserving the ability to litigate the proposed AFUDC 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.

I. DEFERRAL OF DEPRECIATION FOR POST-ACQUISITION IMPROVEMENTS (Joint Petition ¶ 40)

Like the above term, the Joint Petitioners acknowledge that PAWC's Application requests permission to defer depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes. Although the Joint Petitioners agree that they will not contest this request in this proceeding, they reserve their rights to litigate their positions fully in future rate cases. I&E endorses this term because while it enables PAWC to memorialize its intent to employ certain provisions of Section 1329, it also empowers parties to review PAWC's proposal in a future base rate case. Preserving the ability to litigate the proposal to defer depreciation for post-acquisition improvements 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.

J. TRANSACTION AND CLOSING COSTS (Joint Petition ¶ 41)

Joint Petitioners acknowledge that PAWC's Application includes a request to claim transaction and closing costs associated with the Transaction. Although the Joint Petitioners agree that they will not contest this request in this proceeding, they reserve their rights to litigate their positions fully in future rate cases. I&E endorses this term because while it enables PAWC to memorialize its intent to employ certain provisions of Section 1329, it also empowers parties to review PAWC's proposal in a future base rate case. Preserving the ability to litigate the proposal to defer depreciation for post-

acquisition improvements 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.

K. CUSTOMER NOTICE (Joint Petition ¶ 42)

The Settlement provides that PAWC mail the notice attached to the Joint Petition as Attachment A to existing customers of Exeter notifying them of the Settlement concurrently with the filing of the Joint Petition. The notice provides customers with information regarding the Settlement, where they can find additional information, and actions they may choose to take to either support or object the Settlement.

I&E submits that this term is in the public interest, as the transaction will have a direct impact on Exeter customers, they should be afforded the opportunity to weigh in on the proposed Settlement.

L. APPROVAL OF SECTION 507 AGREEMENTS (Joint Petition ¶ 43)

Pursuant to the Settlement, the Joint Petitioners agree that the Commission should issue Certificates of filing or approvals, for the underlying Asset Purchase Agreement for the enumerated municipal agreements appearing in Paragraph 43 of the Settlement. I&E recommends that the Commission approve all the enumerated contracts under Section 507 of the Code.

IV. CONCLUSION

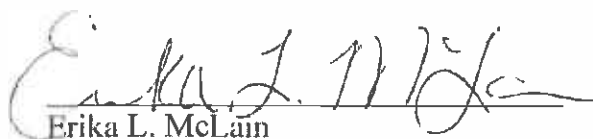
22. Based upon I&E's analysis of the filing, acceptance of this proposed Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense.

23. 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 if the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the instant proceeding.

24. If the ALJ recommends that the Commission adopt the Settlement as proposed, I&E agrees to waive the filing of 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 ALJ in his Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the instant Settlement as being in the public interest and respectfully requests that Administrative Law Judge Andrew M. Calvelli and that the Commission approve the terms and conditions contained in the foregoing Joint Petition for Approval of Partial Settlement without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Erika L. McLain", written over a horizontal line.

Erika L. McLain

Prosecutor

PA Attorney ID No. 320526

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

July 11, 2019