

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

FORWARD TOWNSHIP,

A-2025-3052983

Petitioner,

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

**PROTEST OF FORWARD
TOWNSHIP**

Filed on behalf of:
Forward Township, Petitioner.

Counsel of Record for this
Party:

Maurice A. Nernberg
Pa. I.D. No. 00127
David M. Nernberg
Pa. I.D. No. 205631

Maurice A. Nernberg & Associates
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Firm No. 331

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

FORWARD TOWNSHIP,
Petitioner,

A-2025-3052983

RE: Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code, 66 Pa C.S. § § 1102(a) and 1329, for approval of:(1) the transfer, by sale, to Pennsylvania-American Water Company, of substantially all of the assets, properties and rights related to the wastewater treatment plant and collection system owned and operated by the Elizabeth Borough Municipal Authority, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the Borough of Elizabeth, Allegheny County, Pennsylvania /
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PROTEST OF FORWARD TOWNSHIP

Introduction:

Forward Township (“Forward”) files a Protest in this matter pursuant to the provisions of the Rules of Practice and Procedure of the Public Utility Commission (“PUC” or “Commission”), 52 Pa. Code 5.51-5.53, and Chapter 11 and Section 1329 of the Public Utility Code, 66 Pa. C.S. Section 1101, et seq. and 66 Pa. C.S. 1329.

Pennsylvania-American Water Company (“PAWC”) requests the Commission: (1) approve the acquisition of the wastewater system assets, pursuant to 66 Pa. C.S. 1102 and 1103, owned by Elizabeth Borough Municipal Authority (“EBMA”) as a means to allow EBMA to strip the accumulated cash from EBMA and distribute it to the Borough of Elizabeth (“Elizabeth Borough”); (2) approve the right of PAWC to provide wastewater services in Elizabeth Borough, and related points of service in portions of the Boroughs of Lincoln (“Lincoln”), and the

Townships of Forward (“Forward”) and Elizabeth (“Elizabeth”) in Allegheny County Pennsylvania; (3) include, in its order approving the acquisition, the ratemaking base of the acquired assets as determined under Section 1329(c)(2) of the Public Utility Code; and (4) authorize PAWC to recover all expenses of operation and acquisition from ratepayers, essentially making up for EBMA’s stripping of funds through this transaction. PAWC also requested approval of the inequitable Asset Purchase Agreement (“APA”) dated January 24, 2023 as well as other municipal agreements pursuant to Section 507 of the Public Utility Code, and requested that the Commission issue an Order and Certificate of Public Convenience approving and addressing the matters requested in the Application.

Despite a huge trove of documents, appraisals and contentions, it is beyond the purview of any doubt that this entire transaction is being orchestrated by EBMA’s desire to strip the accumulated cash provided by all ratepayers and transfer it to Elizabeth Borough. It is PAWC’s opportunity to acquire a well-functioning water system with room to grow the rates and thus the profits. Nothing in this transaction is designed to provide benefits to the public or the ratepayers (other than the incidental benefit to Elizabeth residents as Elizabeth will be the beneficiary of funds accumulated over the years from all ratepayers).

Substantial reserves were accumulated over the years. Instead of proposing to use (or, transfer) those funds to maintain and improve they systems, EBMA proposed to just take them. Apparently, PAWC does not mind that it is taking over a system with no reserves; it will simply rebuild the reserves and the funds needed for capital improvements by having the ratepayers pay again. If PAWC and EBMA were truly interested in benefitting the public, the sale would include the reserve cash.

Indicative of the driving force of greed is that EBMC offered Forward and Elizabeth a total of \$3.5 million if they would sign off and support the transaction, but nothing if they did not. The balance of funds remaining would ultimately go to Elizabeth Borough as EBMA would dissolve upon the sale. Although not provided with sufficient information, it is believed and thus averred that the balance for Elizabeth Borough would total over \$8 million of ratepayer funds. Other participants in the EBMA system accepted the payoffs to join in the transaction, upon threat of being paid nothing if they did not participate. And, as matters now stand, EBMA informed Forward it will receive nothing since it is opposing this transaction. Can it be conceivably said with any credibility that this transaction is for the benefit of the public when it's approval results from blackmail?

That said, the effect of the proposed purchase and sale would be for Elizabeth Borough to reap a significant "bonus" of what is believed to be in excess of \$8 Million from the ratepayers of all of the communities, funds that were intended to be utilized in the maintenance, improvement, repair and operation of the facilities leaving PAWC to position itself for rate increases. It is a win-win for PAWC, Elizabeth Borough and EBMA and a lose – lose for all of the customers and Forward. Not to mention that the distribution is inequitable in that the ratepayers who contributed the most (Forward), will get the least in the proposal.

Forward requests that PAWC's application be rejected.

It is believed and thus averred that discovery will support the position of Forward.

Forward also joins in the Protest of the Office of Consumer Advocate.

1. Protestor is Forward Township ("Forward") a Pennsylvania municipality.
2. Protestor joins in and incorporates the Protest of the Office of the Consumer Advocate filed in this docket, A-2025-3052983.

3. Forward on behalf of itself and its resident rate payors has standing to protest PAWC's Application. Forward has also petitioned to intervene in this proceeding.

4. Exhibit "A" hereto is a complaint filed in the Court of Common Pleas of Allegheny County (dismissed on preliminary objections and on appeal before the Commonwealth Court of Pennsylvania) which is fully incorporated herein. The original complaint's exhibits have been omitted.

5. Based upon the foregoing, the Application would lead to a stripping of equity from the system, an inequitable distribution of the payment amount and higher costs to all in order to continue the operation of a system that is currently operating effectively.

6. The lack of objection by other participants in the system should not be considered as supporting the sale due to the use of blackmail to secure their silence.

7. If the Application is approved, it is requested that the proposed Asset Purchase Agreement be rejected or otherwise reformed so as to treat Forward and all ratepayers equitably.

Respectfully submitted,

MAURICE A. NERNBERG & ASSOCIATES

Date: 04/23/25

By: 
David M. Nernberg
Pa. I.D. No. 205631
*Counsel for Complainant, Forward
Township*

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

FORWARD TOWNSHIP,

Complainant,

v.

ELIZABETH BOROUGH
MUNICIPAL AUTHORITY,
ELIZABETH TOWNSHIP, ELIZABETH
BOROUGH, LINCOLN BOROUGH
and PENNSYLVANIA AMERICAN
WATER COMPANY,

Defendants.

Case No. GD-23-09235

JURY TRIAL DEMANDED

COMPLAINT FOR
DECLARATORY JUDGMENT

Filed on behalf of:
Forward Township, Complainant.

Counsel of Record for this
Party:

Maurice A. Nernberg
Pa.I.D. No. 00127

Maurice A. Nernberg & Associates
301 Smithfield Street
Pittsburgh, PA 15222
412-232-0334
man@nernberg.com

Firm No. 331

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21 July 2023
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GD-23-005235

DEPT OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

2023 JUL 31 PM 3: 26

FILED



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

FORWARD TOWNSHIP,

Case No.

Complainant,

v.

JURY TRIAL DEMANDED

ELIZABETH BOROUGH
MUNICIPAL AUTHORITY,
ELIZABETH TOWNSHIP, ELIZABETH
BOROUGH, LINCOLN BOROUGH
and PENNSYLVANIA AMERICAN
WATER COMPANY,

Defendants.

NOTICE TO DEFEND

TO: Elizabeth Township
522 Rock Run Road
Elizabeth, PA 15037

Elizabeth Borough
121 North 2nd Ave.
Elizabeth, PA 15037

Pennsylvania American Water
852 Wesley Drive
Mechanicsburg, PA 17055

Lincoln Borough
45 Abe's Way
Elizabeth, PA 15037

Elizabeth Borough Municipal Authority
1 Locust Street
Elizabeth, PA 15307

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed against you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service
Allegheny County Bar Association
11th Floor, Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone: (412) 261-5555

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

FORWARD TOWNSHIP,

Case No.

Complainant,

v.

JURY TRIAL DEMANDED

ELIZABETH BOROUGH
MUNICIPAL AUTHORITY,
ELIZABETH TOWNSHIP, ELIZABETH
BOROUGH, LINCOLN BOROUGH
and PENNSYLVANIA AMERICAN
WATER COMPANY,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

1. Complainant is Forward Township, a Pennsylvania municipality.
2. Defendant is the Elizabeth Borough Municipal Authority (“EBMA”), which was incorporated on January 12, 1950, under the Municipality Authorities Act¹ to provide wastewater treatment. It is a public utility as defined by the Public Utility Code, 65 Pa. C.S. §102.
3. Recently, Forward Township learned that EBMA was negotiating for the sale and leasing of its treatment facilities to PAWC. Subsequently, Forward Township was provided a copy of an executed agreement for the sale (Exhibit A hereto).
4. The Pennsylvania Public Utility Commission (“PUC”) expressly informed the parties it does not have jurisdiction over this matter, and therefore, it is being filed with this Court.
5. EBMA is providing wastewater services for Elizabeth Borough, Elizabeth Township, Forward Township, and Lincoln Borough pursuant to various agreements;

¹ 56 Pa. C.S. § 5601.

specifically, relevant is the agreement to provide services to Forward Township dated January 23, 1958, Exhibit B hereto.

6. According to Exhibit A, Schedule 4.1(k), the Exhibit B agreement between EBMA and Forward Township is not being assigned to PWSA. It is believed and thus averred that discovery will disclose that it was not assigned as an attempt to avoid any obligation of notice to Forward Township as retaliation for Forward Township not consenting to the sale.

7. Under the January 23, 1958 agreement, EBMA has an obligation to provide service to Forward Township. There is no indication that EBMA disclosed that to PAWC or that PAWC is undertaking to service Forward Township in the future.

8. Defendants, Elizabeth Township, Elizabeth Borough, Lincoln Borough, and Pennsylvania American Water Company ("PAWC") are joined in this action due to the likelihood that they are necessary parties to any adjudication of this declaratory judgment action.

9. The essential terms of the transaction pursuant to Exhibit A are that EBMA will sell and lease various facilities to PAWC, who will take over some of the operations formerly run by EBMA. PAWC will pay EBMA a sum of approximately \$28 million, subject to adjustments for the facilities and lease.

10. Approximately \$14 million of the proceeds will be utilized to pay existing obligations secured by the facilities being sold. Of the balance, approximately \$14 million, EBMA proposed that it pay \$3.5 million of the remaining proceeds to Elizabeth Township and distribute the balance, approximately \$10.5 million, to Elizabeth Borough.

11. Elizabeth Township and Forward Township provide approximately 70% of the revenue received by EBMA for its services.

12. Forward Township owns lines located within the Township that are not owned by EBMA and bills its residents for the same. Those lines are subject to certain PENNVEST Loans.

13. Over the years, usage fees have been paid by customers in each of the affected municipalities. Those fees include a component for service maintenance and debt obligations. The debt obligations were incurred to build/acquire the system by EBMA.

14. The user fees also include a component for capital improvement and replacement, all of which goes into the equity build.

15. The excess of \$14 million represents the equity built from the user fees.

16. If EMBA takes the equity build and distributes the majority of it to Elizabeth Borough, PAWC, the acquirer, will have \$28 million to service and will necessarily have to raise user fees to pay for the equity build to which all users contributed, with the major benefit going to Elizabeth Borough through the unequal and inequitable distribution of the proceeds from the sale/lease.

17. The agreement between EBMA and PAWC is unfair to the residents of the communities who contributed to the equity build in EBMA and will result in unreasonable and inequitable benefits to EBMA and Elizabeth Borough at the expense of residents of the other serviced communities.

18. Forward Township has not been provided with any evidence that the sale to PAWC will benefit those currently being served; rather, it will provide Elizabeth Borough with a windfall.

19. Plaintiff does not object to a sale of the facilities if it is shown that it will be of benefit to all of those being serviced, but no such information has been provided.

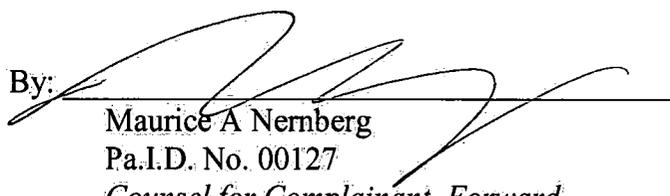
20. EBMA and Elizabeth Borough will be unjustly enriched if the sale is concluded along the lines indicated.

WHEREFORE, it is prayed that relief be granted to Forward Township by a declaration that (1) the Agreement between EBMA and PAWC, Exhibit A, is unfair and unreasonable and that EBMA and Elizabeth Borough will be unjustly enriched unless the proceeds are distributed in a manner fair to all user communities, (2) that the contract, Exhibit A be amended to provide for (a) all outstanding debt of EBMC with the balance to be distributed proportionately to each of the communities in an amount equal to the proportion of usage fees paid by each of them or applied to reduce future fees, (b) require that Exhibit A be amended to clarify the services to be provided going forward and the effect upon the services that are being performed by Forward Township for its residents (unless it is determined to be in the best interests of all for PAWC to also acquire Forward Township facilities, (c) that all legal fees and expenses incurred by Forward Township be similarly allocated among all the communities and (d) such other relief, legal and equitable as may be just.

Respectfully submitted,

MAURICE A. NERNBERG & ASSOCIATES

Date: July 26, 2023

By: 

Maurice A Nernberg

Pa.I.D. No. 00127

*Counsel for Complainant, Forward
Township*

VERIFICATION

I, Tom DeRosa, hereby verify that the statements made in this
Complaint for Declaratory Judgment are true and correct to the best of my knowledge,
information and belief. I understand that false statements herein are made subject to the penalties
of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: 7/26/2023

Tom DeRosa
Forward Township

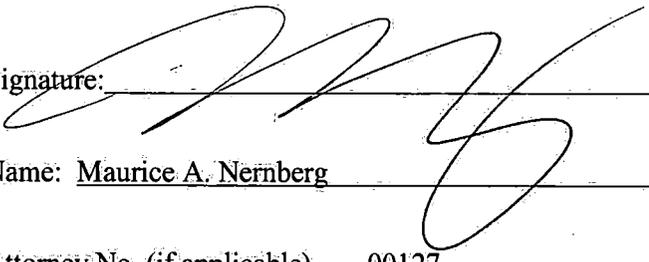
By: CHAIRMAN - FORWARD TOWNSHIP

Its: TDR

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Maurice A. Nernberg, Esq.

Signature:  _____

Name: Maurice A. Nernberg

Attorney No. (if applicable) 00127

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Allegheny County

For Prothonotary Use Only:	
Docket No:	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition <input type="checkbox"/> Transfer from Another Jurisdiction <input type="checkbox"/> Declaration of Taking			
Lead Plaintiff's Name: <u>Forward Township</u>		Lead Defendant's Name: <u>Elizabeth Borough Municipal Auth. et al</u>	
Are money damages requested? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Dollar Amount Requested: (check one) <input type="checkbox"/> within arbitration limits. <input checked="" type="checkbox"/> outside arbitration limits	
Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name of Plaintiff/Appellant's Attorney: <u>Maurice A. Nernberg</u> <input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)			

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

CONTRACT (do not include Judgments)

Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other _____
 Employment Dispute: Discrimination
 Employment Dispute: Other _____
 Other: _____

CIVIL APPEALS

Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other _____
 Zoning Board
 Other: _____

MASS TORT

Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: _____

REAL PROPERTY

Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other: _____

MISCELLANEOUS

Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other: _____

PROFESSIONAL LIABILITY

Dental
 Legal
 Medical
 Other Professional: _____

CERTIFICATE OF SERVICE

I, David M. Nernberg, hereby certify that a true and correct copy of the within **Protest of Forward Township** was served upon all parties to the within matter, this date, via email and first-class mail, addressed as follows:

Via email and first-class mail:

The Honorable Charles E. Rainey, Jr.
Chief Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
CRainey@PA.gov

Darryl Lawrence
Interim Acting Consumer Advocate
PA Office of Consumer Advocate
Forum Place
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DLawrence@paoca.org

Teresa K. Harrold
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DZambito@Cozen.com
JNase@Cozen.com

Date: 04/23/05



David M. Nernberg, Esq.