

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

**POST HEARING BRIEF AND
OBJECTION TO SETTLEMENT**

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
301 Smithfield Street
Pittsburgh, PA 15222
412-232-0334
man@nernberg.com
dmn@nernberg.com

Firm No. 331

TABLE OF CONTENTS

I. STATEMENT OF THE CASE:.....	1
Introduction.....	1
A. Relevant Procedural History	4
B. Overview of the Proposed Transaction.....	5
C. Burden of Proof.....	6
II. SUMMARY OF ARGUMENT	6
Argument	6
1. The proposed transaction does not substantially benefit the public, EBMA current customers and/or PAWC customers	6
i. Introduction.....	6
ii. The public would be harmed by the transaction as rates would substantially increase	7
iii. The Only Beneficiary is EBMA.....	8
v. The other stated benefits to current EBMA ratepayers in the APA are not sufficient to outweigh the harm to the public	12
a. Introduction.....	12
b. Application Paragraph 37(a-d): Existing Customers will Enjoy Benefits the same as the Public at Large, Economies of Scale and Cost Sharing	12
c. 37(f-h and j): Improved Customer Services/security.....	13
d. 37(k): Public Meetings were Well Received	13
e. PAWC Will Not Hire All EBMA Employees	14
vi. Forward residents did not receive notice	14
2. EBMA must either pay over funds to Forward upon the sale or the application and settlement must be denied: Distribution of proceeds of sale and 53 Pa.C.S. 5612.....	14

3. Alternatively, if approved, the rate base and appraisal should be lowered significantly..... 15

III. CONCLUSIONS AND REQUESTED RELIEF 16

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Pennsylvania Court Cases

Cicero v. Pa. PUC, 300 A.3d 1106 (Pa. Commw. 2023) passim

City of York v. Pa. PUC, 295 A.2d 825 (Pa. 1972) 6

Forward Township v. Elizabeth Borough, No. 1436 CD 2024 (Pa. Commw. July 16, 2024) 10

McCloskey v. Pa. PUC, 195 A.3d 1055 (Pa. Commw. 2018) 1, 6

Pennsylvania Public Utility Commission Cases

Application of Aqua Pennsylvania Wastewater, Inc. for the Acquisition of the Wastewater Assets of Willistown Twp., Docket No. A-2021-3027268 (Opinion and Order entered Jul. 8, 2022) 10

Pennsylvania Statutes

53 Pa.C.S. § 5612(a.1) 2, 4, 12, 15

66 Pa.C.S. § 507 4

66 Pa.C.S. § 332(a) 6

66 PA.C.S. § 1102 1, 4, 6

66 Pa.C.S. § 1103 1, 6

66 Pa.C.S. § 1329 4, 5, 6

66 Pa.C.S. § 1329(c) 3, 15

Pennsylvania Regulations

52 Pa. Code § 5.231 6

52 Pa. Code § 69.401 6

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

POST HEARING BRIEF AND OBJECTION TO SETTLEMENT

I. STATEMENT OF THE CASE:

Introduction:

Forward Township (“Forward”) opposes the Application by Pennsylvania-American Water Company (“PAWC”) to purchase Elizabeth Borough Municipal Authority’s (“EBMA”) wastewater facilities, as well as the proposed Joint Petition for Settlement (“Settlement”) as the acquisition sought does not provide a substantial public benefit pursuant to 66 Pa.C.S. § 1102 and the decisional law. *Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Commw. 2023), *McCloskey v. Pa. PUC*, 195 A.3d 1055 (Pa. Commw. 2018).

- The proposed transaction does not provide a substantial public benefit pursuant to 66 Pa.C.S. § 1102, 1103 and *Cicero* and *McCloskey, supra*:

- There will be no cost reduction, immediate or otherwise. By PAWC's admission, residential rates would increase a minimum of 105% and as much as 137% (\$143.40 from \$60.61). PAWC current customer rates would also increase.

- If EBMA retains ownership under the same circumstances, rates would increase to \$114.23 (in a worst case scenario), an increase of 88% (see PAWC's Second Discovery Responses to the OCA 35 and 2-26_A and Page 11 of Appendix A-14-a No. 1 Direct Testimony of Marcus Kohl). Subsequently, it was estimated the increase would be less, to \$112.45, an increase of 85%. See Forward Cross Examination Exhibit 2, Question 10.

- Any lack of progress in performing the Long Term Control Plan ("LTCP") and overflow sewage events is self-inflicted. EBMA has made no effort to perform LTCP infrastructure work or borrow funds since it began exploring the Asset Purchase Agreement ("APA") (2021) and any delay is by choice. EBMA Direct Guffey P. 7-8 and Cross P. 169-170. See Proposed Finding of Fact 18 in the Settlement noting the last work in 2021 pursuant to the LTCP. There are no public complaints in the record as to service issues. EBMA has violated 53 Pa.C.S. § 5612(a.1)(a) by failing to utilize funds properly. Instead of using the funds for the benefit of the ratepayers, EBMA hoarded them to generate a bigger payout for itself.

- The transaction does not promote regionalization as Forward will still own and maintain its own system and, essentially, become a collection vehicle for PAWC. See Appendix A 25-5 to the Application. If regionalization, per se, was the goal of the PUC, no acquisition would be denied, as it is normal for a larger entity to acquire a smaller one. Regionalization is only a goal when it is shown to benefit the public.

- Neither the Application or Settlement state specifically how greater financial resources will benefit the customers where rates will increase more than if EBMA retained ownership.
- The only beneficiary is Elizabeth Borough. Elizabeth Borough seeks to obtain the EBMA equity in cash as a bailout on the backs of ratepayers, who are not citizens of the Borough, and the public. By choosing to not borrow or perform work on the LTCP since 2021, Elizabeth Borough has manufactured the claim that PAWC is somehow better positioned.
- The base rate proposal in both the Application and Agreement are improperly inflated.
 - Evidence of EBMA and Elizabeth Borough's desire to benefit themselves and not the public is clear. EBMA committed to paying \$3.5 million to Elizabeth Township upon closing (Cross Exhibits 4 and 5). EBMA and Elizabeth Borough's representative, Timothy Guffey, testified that neither Elizabeth Township nor Forward had any interest in EBMA facilities and that their approval and assent was not necessary. Cross Exhibits 4 and 5 and Cross Examination Testimony P. 179-180. The payout demonstrates an inflation of value. As a lagniappe if it consented, EBMA offered Forward a share of the proceeds, representing less than it contributed but, without its consent, withheld that from Forward.
 - If the Sale is approved pursuant to the Settlement or Agreement, the PUC must value the ratemaking base pursuant to 66 Pa.C.S. § 1329(c)(2) at the lesser of the purchase price negotiated or the fair market value of EBMA and to do so must consider the evidence of record which demonstrates a ratemaking base of \$22.1 Million. (Note, Forward does not consent to the sale under these terms).

- There is no evidence Forward Ratepayers received personal notice of the application or opportunity for public comment. While the Township did, it is merely the collection arm. (Forward Cross Exhibit 3, Question 2).

- Forward is entitled to payment pursuant to 53 Pa.C.S. 5612(a.1)(a).

A. Relevant Procedural History

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

- On January 28, 2025, PAWC filed the Application at Docket Nos. A-2025-3052983 et al., asking the Commission to approve PAWC’s acquisition of the System pursuant to 66 Pa.C.S. §§ 507, 1102 and 1329. (PAWC Exhibit MK-1). PAWC submitted several amended appendices to the Application. (PAWC Exhibit MK-1R).

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

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

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

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

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

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

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

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

- At the evidentiary hearing it was ordered that in the event of a non-unanimous settlement, it be filed on or before June 27, 2025 and any objections thereto, as well as main brief issues, be filed on or before July 8, 2025, and any reply to said objections and main brief be filed on or before July 18, 2025.

- The Parties filed all documentary records as part of the record for this matter.

- July 27, 2025 PAWC, EBMA, the OCA, and I&E entered into a non-unanimous Settlement whereby they filed a Joint petition to approve the Agreement and Transaction pursuant to the terms therein.

B. Overview of the Proposed Transaction

PAWC proposes to purchase the EBMA wastewater facilities for \$28 Million. Through the Application/Settlement, the Joint Petitioners propose, pursuant to 1329, to utilize a rate base of \$27,138,703.00. In the Application, PAWC proposed a rate base of \$27,971,178 (average appreciated original cost multiplied by the RRR, Application, 49-50). The main difference between the Settlement and Application are that the rate increases are slightly delayed for two years (up to 60% with room for adjustment during that period).

C. Burden of Proof

PAWC and Petitioners bear the burden of proof, by a preponderance of the evidence, of all aspects of their request for certificate of public convenience. In particular, they must prove the transaction would provide a substantial net public benefit and the value of the base rate comports with the statute. 66 Pa.C.S. § 332(a), 1102, 1103, *City of York v. Pa. PUC*, 295 A.2d 825 (Pa. 1972), *Cicero*, and *McCloskey*, *supra*. While Settlement is preferred by the Commission, it does not alter the burden of proof required. 52 Pa. Code § 5.231 and 52 Pa. Code § 69.401.

II. SUMMARY OF ARGUMENT

The proposed transaction does not provide a substantial public benefit pursuant to 66 Pa.C.S. § 1102 and 1103, and the proposed base rate pursuant to section 1329 is improper.

Argument

1. The proposed transaction does not substantially benefit the public, EBMA current customers, and/or PAWC customers:

- i. Introduction:

PAWC cannot establish by a preponderance of the evidence “substantial affirmative public benefits that outweigh the acknowledged harms” that would result from the acquisition. *Cicero*, *supra* at 1120. It is incumbent upon PAWC and Petitioners to establish substantial benefits will “flow to” the ratepayers. *Cicero*, *supra* at 1064. The impact on rates of both EBMA and PAWC ratepayers is a harm that cannot be offset. *Cicero* at 1064-1066.¹ Further, any benefit is contrived by EBMA’s intentional non-performance of the LTCP while negotiating this transaction.

¹ With regard to the proposed Settlement, no balancing test can be performed pursuant to 1102 if it puts off any rate analysis until the first-rate request by PAWC (which the Petition does). *Cicero* at 1067.

Pursuant to the Petition/Application, residential rates could increase 137%. Whereas, if EBMA retained ownership under the same circumstances, rates would increase 85%. (See Forward Cross Examination Exhibit 2 Question 10).

EBMA is operating and there are no public complaints of record. EBMA is well positioned with ability, equity, and rate collection to perform any work necessary for the system. It has stated that the only barrier to any compliance is cost. EBMA can borrow the funds just as PAWC intends but at a lower cost to ratepayers overall. It has simply decided not to, obviously because any unspent funds will go to Elizabeth Borough, who is orchestrating the acquisition. Any negative sewage events are a result of EBMA's intentional inaction.

The old adage, "if it ain't broke, don't fix it" applies. EBMA has an operating system at an affordable rate but decided a sale would benefit Elizabeth Borough by infusing cash and stopped performing its duties. Tim Guffey, EBMA's chief witness, is the chairman of the EBMA Board of Directors and president of Elizabeth Borough's Counsel (Cross Exhibit 3 Question 1 and EBMA Direct Page 2) and Elizabeth Borough's Mayor (Mayor Boucher) is also a member of EBMA (Public Input Hearing Transcript P. 43). There is a clear conflict, and the members are attempting to manufacture an issue to benefit Elizabeth Borough. The Application and Settlement should be denied and EBMA should continue its operation.

- ii. The public would be harmed by the transaction as rates would substantially increase:

PAWC and EBMA admit that residential rates could increase to \$143.40 from \$60.61, (137%), or more. (See Forward Cross Exhibit 1, Response to Interrogatory 30 and 2-26 incorporated into the Response). Conservatively, rates would most certainly increase a minimum of 105%. (See Appendix 18-d referenced by the direct testimony of PAWC witness Stacy Gress,

P. 14).² Whereas, if EBMA retained ownership under the same circumstances, rates could increase to \$112.45 (85%). (See Forward Cross Examination Exhibit 2 Question 10).³ Any increase by EBMA would only occur when borrowing took place (likely over time). See Forward Cross Examination Exhibit 2, Question 11.

The transaction would also result higher rates for current PAWC customers of up to 1.1%. (Appendix 18-d referenced by the direct testimony of Stacy Gress, P. 14). The OCA acknowledged that PAWC will have to raise rates more than EBMA if it retained ownership in their Statement 2, Page 10.

Without some substantial benefit to the public, the harm cannot be offset.⁴ *Cicero, supra*.

iii. The Only Beneficiary is EBMA:

One need only review the testimony and discovery responses of Mr. Guffey who serves as both the Chairman of EBMA and Council President of Elizabeth Borough conclude that Elizabeth Borough is the primary beneficiary of the proposed sale, not the public. See Cross Examination Transcript P. 165 and Cross Exhibit 3 Question 1. Further, Elizabeth Borough's Mayor (Mayor Boucher) is also a member of EBMA (Public Input Hearing Transcript P. 43). There is a clear conflict and the members are attempting to manufacture an issue to benefit Elizabeth Borough.

Mr. Guffey testified that the benefit will be to Elizabeth Borough through funding infrastructure improvements and helping stabilize its budget and real estate tax base. Guffey Direct P. 4. In fact, the only reasons for the transaction are financial challenges and potential liability to Elizabeth Borough (not EBMA). Guffey Direct P. 5-8, Cross P. 180-181. Benefits other than

² The Petition would provide for rates to rise 60% or more in the first two years and more after.

³ PAWC originally estimated \$114.23. See PAWC's Second Discovery Responses to the OCA 35 and 2-26_A and Page 11 of Appendix A-14-a No. 1 Direct Testimony of Marcus Kohl.

⁴ The public at the Public Input Hearing "PIH" was overwhelmingly against the rate increases: Ms. Cline P. 57 PIH. Mr. Dowden of Elizabeth Borough testified that only Elizabeth Borough would benefit and not the ratepayers. PIH 67-68. Ms. Fisher stated the same. PIH 73-74. Same for Mr. Dichicchis. PIH 83, 96 and 100 and Ms. Pollock, PIH 128-129. It is an Elizabeth Borough payout.

financial are given a page of discussion by Mr. Guffey. (Guffey Direct P. 10-11). PAWC agrees and discusses the same benefit to Elizabeth Borough in its Statement in Support P. 9-10. PAWC also extensively cites Elizabeth Borough's receipt of funds as the "public" benefit, (see PAWC Statement in Support 74-78 Public Benefit Section) when, in reality, it is a public benefit for the Borough residents at the expense of the other ratepayers.

The notices that were transmitted on March 11, 2025 to ratepayers specifically state: "As a result of this transaction, the Borough's tax base will initially be stabilized and thereafter grow into the future, which will permit additional investment by the Borough into the community." Cline Exhibit 1 to PIH. As stated in the following section, EBMA can run the facility and can complete the LTCP work; it has decided not to.⁵ Elizabeth Borough simply seeks to lower its tax burden on the backs of all ratepayers, including its citizens.

Mr. Guffey also testified that EBMA would pay \$3.5 Million from the proceeds to Elizabeth Township pursuant to an agreement (Cross Exhibit 4), while at the same time claiming EBMA owed no duty to Elizabeth or Forward Townships. (Cross Testimony P. 179-180, 182-184, 188-190 and Forward Cross Examination Exhibits 4 and 5). The payment is not to benefit the public, but to bribe Elizabeth Township in supporting this transaction. The funds will ultimately be paid for by the ratepayers and do not constitute a benefit at all.

Finally, although Township would receive funds from the sale, which could be used for other governmental purposes, those funds are available because the System's customers, and potentially Aqua's current customers, will bear the burden of the costs of that acquisition. Holding that a transaction will result in substantial affirmative public benefits because it will provide the same services as already being provided is not a benefit, let alone a substantial affirmative public one as required by statute and our caselaw.

Cicero, supra. at 1119.

⁵ The only other benefit noted by Mr. Guffey was that it would alleviate EBMA of "stringent environmental requirements." Direct at 4. Not that it could not perform the work, but that it did not want to.

The public recognizes this as well. Forward resident Ms. Cline testified at the Public Input Hearing (“PIH”) that only Elizabeth Borough would benefit and claimed Forward should also. (P. 57 PIH). Mr. Dowden of Elizabeth Borough testified that only Elizabeth Borough would benefit and not the ratepayers. (PIH 67-68). Ms. Fisher stated the same. (PIH 73-74). Same for Mr. Dichicchis (of Elizabeth Borough and Forward Township) who also testified and stated in Exhibit 6 to the PIH that Mr. Guffey had a conflict of interest and solely sought to benefit Elizabeth Borough. (PIH 83, 96 and 100 and Ms. Pollock, PIH 128-129).⁶ Elizabeth Borough wants to cash out so badly it is willing to pay more than a quarter of it to Elizabeth Township to grease the wheels.

PAWC and EBMA claim that the agreement between EBMA, Elizabeth Borough and Elizabeth Township has no relevancy and cite *Application of Aqua Pennsylvania Wastewater, Inc. for the Acquisition of the Wastewater Assets of Willistown Twp.*, Docket No. A-2021-3027268 (Opinion and Order entered Jul. 8, 2022) p. 69. However, both PAWC and EBMA cite the use of the proceeds as a public benefit, putting it at issue. The payment itself will actually reduce the public benefit to Elizabeth Borough as EBMA proposes to strip over 25% of the equity and pay it over to Elizabeth Township for nothing.

- iv. EBMA can properly operate the system but has chosen not to. Thus, PAWC does not provide a benefit to EBMA that EBMA cannot provide itself. By purposefully failing to expend funds for the system during negotiations and this process, EBMA violates 53 Pa.C.S. 5312(a.1)(1). The Application and Settlement should be denied:

EBMA has not performed any LTCP work since entering into these negotiations in 2021. (Guffey Direct P. 7-8 and Cross Exhibit, Question 35).⁷ Mr. Guffey testified the only reason for

⁶ While Lincoln Borough has not joined in this proceeding, it has joined in of Forward Township’s brief opposing the transaction before the Commonwealth Court at 1436 CD 2024 (this is a publicly filed document and this tribunal may take judicial notice).

⁷ The LTCP are the only required improvements. See PAWC Joint Petition Proposed Finding of Fact 17.

not completing the LTCP is cost. (Cross Page 166-168 and Cross Exhibit 2, Question 35). EBMA has been able to manage the operations. (Cross Page 167-168). EBMA can obtain loans. (Cross 169-170 and Cross Exhibit 2, Question 10-11). EBMA is not under any Corrective Action Plan nor is there any connection moratorium (PAWC Statement 2 page 20 and OCA Statement 1, Page 5). EBMA is fit to operate and improve the system in compliance with all government mandates. (PAWC Statement 2, Page 10). It can operate. In fact, the last work performed by EBMA was pursuant to the LTCP in 2021; it has simply chosen not to perform any further work. (PAWC Joint Petition 18).⁸ This is an orchestration between the EBMA Board and Elizabeth Borough to take EBMA's equity for Elizabeth Borough's use.

The public agrees with Mr. Guffey that the system is run properly. See the testimony of Ms. Cline at PIH 58 and Mr. Dechicchis at PIH 108. Mr. Dechicchis also testified through his Exhibit 6 (Exhibit 6 to PIH number 4) that EBMA is being run by competent engineers. While PAWC's testimony is that EBMA has not properly managed the system by failing to complete the LTCP, there is no evidence that EBMA has put forth any effort to do so. Instead, EBMA opts to sell. And, EBMA's own witness testified that cost, not ability was the main factor (but that it could obtain loans, Cross 169-170 and Cross Exhibit 2, Question 10-11). EBMA is not alone in requiring loans for the LTCP. PAWC would also have to borrow money.

The foregoing establishes that EBMA can competently perform the work necessary for the LTCP at a lesser burden on the public than PAWC. The residents receive no benefit from alleged PAWC expertise or experience in operations (EBMA has been doing this since the 1950's). Thus, those benefits should not be considered to offset the harm; "that a transaction will result in

⁸ Mr. Guffey did testify in his Rebuttal Statement that EBMA lacked technical knowhow. EBMA Rebuttal Guffey P. 2-3. However, on his Cross he testified that they were able to hire outside engineers to perform necessary work and, in response to the discovery cited above, cited only cost as a barrier. See Cross Examination Transcript P. 165 and Cross Exhibit 3 Question 1.

substantial affirmative public benefits because it will provide the same services as already being provided is not a benefit.” *Cicero, supra.*⁹¹⁰

Furthermore, this begs the question, since EBMA could perform the LTCP work but has not, what has EBMA been doing with the funds on hand, nearly \$14 Million in equity? EBMA is required by 53 PA.C.S. § 5612(a.1)(1) to utilize funds only for its mission and purpose. In this case “to construct ... a sewage treatment plant, interceptor sewers and additional collection sewers, if desirable, and to lease such Sewer System to the Borough for operation (see EBMA Articles of Incorporation).”

EBMA has been hoarding the funds for a payout. EBMA has manufactured a problem in search of a solution. Those funds must be used for their intended purpose, and they have not. The Application and Petition should be denied and EBMA should begin to utilize the accumulated funds for their intended purpose.

v. The other stated benefits to current EBMA ratepayers in the APA are not sufficient to outweigh the harm to the public:

a. Introduction:

The Application, Settlement Petition, and Statements in Support allege other public benefits of the transaction. They are not sufficient to outweigh the harm of extreme rate increases.

b. Application Paragraph 37(a-d): Existing Customers will Enjoy Benefits the same as the Public at Large, Economies of Scale and Cost Sharing:

PAWC alleges that EBMA ratepayers will benefit from regionalization. However, Forward is a ratepayer and still manages its own system that feeds into EBMA facilities. PAWC is not

⁹ PAWC has testified on Direct and Mr. Guffey in his Rebuttal that there are some technical deficiencies, however, those are surface allegations as the foregoing cited testimony of Mr. Guffey is that EBMA can perform the work and rates would be lower than if acquired by PAWC.

¹⁰ In Pages 5 and 7 of EBMA’s Statement in Support it cites PAWC superior capabilities and that EBMA lacks manpower, however, there are no facts of record in support of these allegations.

acquiring that system. Further, while it is a legislative goal to encourage regionalization, PAWC has not iterated how it will help current ratepayers. (Application 35(a-b)). PAWC direct testimony does allege greater economies of scale and purchasing power, but rates will still rise more than if EBMA retained ownership.

As far as environmental compliance and the LTCP benefits, EBMA has the ability but has chosen not to in pursuit of this sale since 2021. Guffey Direct P. 5.

c. 37(f-h and j): Improved Customer Services/security:

EBMA and PAWC have touted that PAWC will offer improved customer service and security. There is no evidence of record that EBMA's customer service or security are lacking. In EBMA, Statement in Support of the Petition Page 11, it states it does not have capacity to provide customer assistance and cites PAWC Statement 1, Page 10 to support the assertion. However, all PAWC's statement says is that EBMA customers will have access to PAWC support. It does not state that EBMA is unable to provide quality customer assistance. There are no public complaints of record regarding service.

d. 37(k): Public Meetings were Well Received:

The testimony was that no ratepayers attended the public meeting. However, as was discussed above, the Public Input Hearing was attended and those in attendance overwhelming opposed the transaction. The only two individuals who approved it were Elizabeth Borough's Mayor Boucher, who is also on the board of EBMA (PIH 43), and Mr. Craighead, an employee of Elizabeth Borough who purported to testify on behalf of the Borough (and not himself) (PIH 136). If so, then he is just repeating that Elizabeth Borough wants the money, which we already know. The evidence is that the public opposes.

e. PAWC Will Not Hire All EBMA Employees:

PAWC and EBMA cite as a benefit that upon the transaction taking place PAWC will employ all EBMA current employees. (Paragraph 79 of the Joint Petition and Page 3 of EBMA Statement in Support thereof). EBMA has 4 employees. “[T]he Authority is operated by one administrative employee, two facility workers, and a part-time operator.” (EBMA Direct Testimony Page 3). PAWC has stated it will only hire two of the Employees (the facility workers involved in systems operations, PAWC Direct Page 11).

vi. Forward residents did not receive notice:

In its Application and direct testimony PAWC admits it sent notice to EBMA customers. (Application, Paragraph 53). While Forward Township is a customer (see 1958 Agreement, Appendix A-25.5 to the Application), its residents do not receive a bill from EBMA. Publishing notice is not sufficient and Forward Residents who pay for EBMA wastewater should have been provided notice of the Application and various public input hearings.

2. EBMA must either pay over funds to Forward upon the sale or the application and settlement must be denied: Distribution of proceeds of sale and 53 Pa.C.S. 5612:

Forward Township is a ratepayer of EBMA and has been since it entered an Agreement with EBMA in 1958. (See Appendix A-25.5 to the Application). Pursuant to that Agreement, Forward has collected fees from its residents, and, between 2019 and the present, Forward has accounted for roughly 21% of EBMA’s operating revenues. (See Cross Exhibit 7 and Mr. Guffey’s Cross Testimony Page 173-174 and Forward Cross Exhibit 3, Question 2). As such, Forward has contributed the same to EBMA’s equity. EBMA proposes to distribute or otherwise utilize that equity (funds received from the sale) for purposes other than a service or project related to EBMA’s mission and authority as set forth in its creation documents establishing the authority.

EBMA has not utilized the funds to pursue the LTCP. EBMA has done nothing but expend funds for this transaction. Not only has EBMA violated 53 Pa.C.S. § 5612(a.1)(1) by failing to utilize funds for their intended purpose (building equity instead of performing necessary LTCP work), it proposes to continue to do so. It will pay those funds to Elizabeth Borough and Elizabeth Township as noted in the Application paragraph 36(a).

53 Pa.C.S. § 5612(a.1)(a) states:

Money of the authority may not be used for any grant, loan or other expenditure for any purpose other than a service or project directly related to the mission or purpose of the authority as set forth in the articles of incorporation or in the resolution or ordinance establishing the authority under section 5603 (relating to method of incorporation)

EBMA's conduct has harmed Forward and other ratepayers. PAWC and EBMA specifically aver that, because of the delay, the LTCP work will be more expensive (See PAWC Proposed Findings of Fact 18 and PAWC St. No. 1, P. 10). Forward is entitled to recoup its equity as damages whether through this transaction, if approved, or otherwise and Forward demands the same.

3. Alternatively, if approved, the rate base and appraisal should be lowered significantly:

The rate base is to be determined as the lesser of the purchase price or the fair market value of the selling utility. 66 Pa. C.S. § 1329(c). EBMA testimony of their expert, Harold Walker, was that the fair market value of the EBMA system is \$28.1 Million (an average). (EBMA Statement 2, Pages 27-29). PAWC's appraiser testified that the fair market value was \$28.7 Million (an average). (PAWC Statement 4, Page 3).

OCA witness David Garrett recommends the rate base be \$22.1 Million. (See OCA Statement 2). This is partly because while PAWC alleges it can perform the LTCP work at a lesser cost than EBMA, but, to cover the purchase and operation, it will have to raise rates considerably

(OCA Statement 2, Page 10). I&E, through Mr. Walker's Statement 1, testified the rate base should be \$27,137,703.

Mr. Garret's rate base of \$22.1 Million should be adopted for the reasons he states therein. Furthermore, by paying out \$3.5 Million to Elizabeth Township, where EBMA admits it does not need their approval or input for this transaction, EBMA admits at the very least that the fair market value is \$3.5 Million less than the purchase price.

III. CONCLUSIONS AND REQUESTED RELIEF:

- 1. The Application and Proposed Settlement if Adopted Do Not Provide a Substantial Public Benefit Sufficient to Outweigh the Harm**
- 2. The Application and Settlement Be Denied**
- 3. If the Application is Approved, the Rate Base Be Adjusted to \$22.1 Million**
- 4. Forward's Equitable Share of Proceeds Be Distributed to It**

Respectfully submitted,

MAURICE A. NERNBERG & ASSOCIATES

Date: 07/08/25

By: 

David M. Nernberg

Pa. I.D. No. 205631

Counsel for Complainant, Forward Township

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

CERTIFICATE OF SERVICE

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

Via email:

Christy M. Appleby
Katie M. Kennedy
PA Office of Consumer Advocate
Forum Place
555 Walnut Street, 5th Floor
Harrisburg, PA 17101
CAappleby@PaOCA.org
KKennedy@PaOCA.org
Counsel for OCA

Michael Podskoch, Jr.
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
MPodskoch@PA.gov
Counsel for I&E

Teresa K. Harrold
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
Teresa.Harrold@AMWater.com

Steven C. Gray
Rebecca Lyttle
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
SGray@PA.gov
ReLyttle@PA.gov
Counsel for OSBA

The Honorable Erin L. Gannon
The Honorable Steven K. Haas
Administrative Law Judges
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
EGannon@PA.gov
StHaas@PA.gov

Date: 07/08/25

David P. Zambito
Jonathan P. Nase
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
DZambito@Cozen.com
JNase@Cozen.com
Counsel for PAWC

Joseph R. Dalfonso
Gary J. Matta
Dodaro, Dalfonso, Matta & Cambest, P.C.
1900 Main Street, Suite 207
Canonsburg, PA 15137
JDalfonso@DDMCLaw.com
GMatta@DDMCLaw.com
Counsel for EBMA



David M. Nernberg, Esq.
Pa. I.D. No. 205631