

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ELIZABETH BOROUGH MUNICIPAL AUTHORITY’S RESPONSE TO FORWARD  
TOWNSHIP’S OBJECTION TO SETTLEMENT**

AND NOW COMES, the Elizabeth Borough Municipal Authority (“EBMA”), pursuant to the Prehearing Conference Order dated June 9, 2025 and further Administrative Law Judge Order of July 8, 2025, to file this Reply to Forward Township’s (“Forward”) Objections to the Joint Petition for Approval of Non-Unanimous Settlement submitted by Pennsylvania-American Water Company (“PAWC”), Pennsylvania Office of Consumer Advocate (“OCA”), Commission’s Bureau of Investigation and Enforcement (“I&E”) and EBMA (collectively, the “Joint Petitioners”).

**I. COUNTER STATEMENT OF THE CASE.**

This matter involves PAWC’s Application (the “Application”) requesting the Pennsylvania Public Utility Commission (“Commission”) approve PAWC’s acquisition of the assets of EBMA (the “Transaction”) related to EBMA’s wastewater collection and treatment system (“System”). The Transaction has been modified by a Settlement between the Joint Petitioners. The Office of Small Business Advocate (“OSBA”) did not participate in the Settlement but did file a letter

conveying that it does not oppose the Joint Petition because it “did not identify any aspects of the issues set forth above that were unjust or unreasonable to small business customers.” *Steven C. Gray Letter*, July 3, 2025.

The Commission encourages the resolution of contested proceedings through settlement. *See* 52 Pa. Code § 5.231(a). In determining the acceptability of a settlement or partial settlement, the Commission will look to whether the settlement and its terms are in the public interest. *Warner v. GTE N., Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (*Warner*); *Pa. Pub. Util. Comm’n. v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991). The Joint Petitioners share the burden of proof to show that the terms and conditions of the settlement are in the public interest. 66 Pa.C.S.A. § 332(a). The Joint Petitioners must carry their burden by establishing a preponderance of the evidence. *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).

Despite the overwhelming record evidence and the Commission’s policy favoring settlements, Forward contends that the Transaction, as modified by the Settlement, is not in the public interest. It argues that the Transaction will not affirmatively promote the service, accommodation, convenience, or safety of the public in any substantial way. However, Forward’s arguments rely on facts not included in the evidentiary record and reflect a distorted interpretation of the evidence that is of record. Moreover, Forward’s analysis lacks any contention disputing the various evidence that the Joint Petitioners point to establishing a public benefit. In contrast, a fair and objective review of the record reveals that the Transaction, as modified by the Settlement, will substantially benefit the public—a conclusion with which all Joint Petitioners agree.

For the reasons that follow, Forward’s contentions should be outright rejected because of its application of the record to the appropriate precedents.

## II. COUNTER ARGUMENT

### 1. The Transaction as modified by the Settlement substantially benefits the public, EBMA current customers, and/or PAWC customers:

#### i. Introduction

A review of the Joint Settlement and the Joint Petitioners' Statements in Support, supported by record evidence, leads to the conclusion that the Transaction, as modified by the Settlement, overwhelmingly provides substantial affirmative public benefits that outweigh any potential harms. As detailed in EBMA's Statement in Support, which is incorporated herein by reference, EBMA is a struggling municipal authority lacking the technical capacity to operate effectively and has failed to complete the required environmental compliance activities for over two decades. The record further demonstrates that PAWC possesses the technical expertise necessary to significantly improve the System and sewage treatment services, thereby addressing and alleviating the environmental concerns currently facing EBMA.

Forward invokes the old adage, "if it ain't broke, don't fix it," suggesting that the System is functioning properly due to a lack of public complaints. However, the record evidence contradicts this assertion. The System has met the Pennsylvania Department of Environmental Protection's ("PADEP") definition of being both hydraulically and organically overloaded within the past five years. It is experiencing an average of 242 Combined Sewer Overflows ("CSOs") annually, has been cited for multiple environmental regulatory violations, and is more than two decades behind on implementing its plan to address these issues. *PAWC Statement No. 2, Direct Testimony of Daniel J. Hufton*, p. 9, 18-19, 20.

Despite being presented with this compelling evidence, Forward adopts a dismissive stance, contending that these issues are essentially immaterial. This position is particularly troubling given Forward's role as a municipality charged with protecting the health, safety, and

welfare of Commonwealth residents. Equally concerning is the rationale behind Forward's opposition to the Settlement. Forward asserts, without evidentiary support or any coherent legal theory, that it is a partial equity owner of EBMA and therefore entitled to a share of the Transaction's proceeds. In addition to the deficient support behind its position, and as explained herein, this issue falls outside the Commission's jurisdiction, as it constitutes a contractual dispute between Forward and EBMA.

While Forward may choose to overlook the deficiencies of EBMA that are clearly established in the record, it cannot negate the existence of those facts. The record, in full alignment with the Joint Petitioners, demonstrates that the Transaction, as modified by the Settlement, will provide a substantial affirmative public benefit. As will be shown, Forward's arguments—lacking evidentiary support and grounded in a misapplication of the law—fail to demonstrate otherwise. Accordingly, EBMA respectfully requests that Administrative Law Judges Steven K. Haas and Erin L. Gannon recommend approval of the Application, as modified by the Settlement, and that the Commission approve both without modification.

ii. The public would not be harmed by the Transaction regarding rates.

Forward's primary and seemingly only argument regarding potential public harm pertains to the anticipated rate increases. On the face of its pleading, Forward appears to concede the evidence of record concerning public benefits as identified in the Joint Petition and the accompanying Statements in Support. At a minimum, Forward either elected not to challenge those proposed findings or was unable to do so. In any event, Forward's analysis of the purportedly harmful effects of the rate increases is flawed, as it is inconsistent with the evidence of record.

According to the record evidence, the potential rate impact prior to the Settlement could have been a 105% potential increase from \$60.61 to \$124.25 for a residential customer using an

average of 3,201 gallons of water per month, based upon 100% of the revenue deficiency being included immediately. *PAWC Statement No. 3*, p. 10. Not only has Forward failed to understand the true impact of the potential rate increase but it also fails to realize the true impacts of the Settlement, which was designed to substantially mitigate any harmful impact. The Settling Parties have agreed that PAWC will propose to move ratepayers in the system closer to its Rate Zone 2 system-average wastewater rates, consistent with the principle of gradualism, to avoid rate shock. *Id.*, at ¶ 23(a)-(b). Further, the Joint Petitioners have agreed to use \$27,138,703 as opposed to the agreed upon purchase price of \$28,000,000. *Id.*, at ¶ 25. Therefore, the worst case scenario of a 105% potential increase has been mitigated by the Settlement because overall costs have been reduced and rate gradualism avoids an instant shock to current EBMA customers, including Forward. Further, Forward's reliance on anyone admitting to a rate increase to \$143.40 per month for residential customers misrepresents the evidence of record. Forward incorrectly cites to PAWC's response to Interrogatory Number 30 of the OCA Interrogatories Set 2 when making reference to a potential rate increase. Forward likely meant to cite to PAWC's response to Interrogatory Number 26 of the OCA Set 2 Interrogatories, which refers to attachment OCA-2-26. Stacey D. Gress in her response, explained that "[i]t is important to note that adding one-fifth of the capital reflected in PAWC Exhibit DHJ-2 is a hypothetical depiction of what the impacts of this additional capital would have on rates and *does not represent the Company's expectation of actual rate impacts to EBMA customers.*" *Forward Cross Examination Exhibit 1*, Response to OCA Set 2 Interrogatories No. 26, Attachment OCA-2-26. Accordingly, Forward's analysis of potential harm is based on a hypothetical scenario rather than factual evidence contained in the record.

iii. EBMA is not the only beneficiary of this Transaction.

A full review of the record evidence makes it clear that Forward Township either failed to conduct such a review or misunderstood its contents when it asserted that EBMA is the sole beneficiary of the Transaction. In fact, EBMA, PAWC, and I&E each identified and conveyed substantial public benefits in their respective Statements in Support.

Forward focuses solely on the benefits that EBMA and Elizabeth Borough may realize from the Transaction, while disregarding the broader public benefits. However, as demonstrated in the various Statements in Support, the record contains substantial evidence that the Transaction, as modified by the Settlement, will benefit the public at large. Notably, Forward does not challenge the record evidence supporting these public benefits. Accordingly, EBMA maintains that Forward has presented no evidence to refute the public benefits established in the record. These benefits, therefore, remain uncontested. PAWC identified supporting evidence in its Statement in Support at pages 3 through 14. *See PAWC Statement in Support, pp. 3–14.* EBMA cited supporting evidence on pages 4 through 12 of its Statement in Support. *See EBMA Statement in Support, pp. 4–12.* I&E referenced supporting evidence on pages 6 through 7. *See I&E Statement in Support, pp. 6–7.* The OCA also identified public benefits on page 7 of its Statement in Support. *See OCA Statement in Support, p. 7.*

Forward's analysis of the record evidence, including testimony from the public input hearing, amounts to a claim that it will not receive a financial benefit from the Transaction as modified by the Settlement. Notably, Forward does not assert that any financial benefit conferred upon EBMA is itself harmful. Even if Forward's arguments could be construed as suggesting that EBMA's financial gain is detrimental to Forward, such a position reflects an improper framework for evaluating the Transaction. *See Middletown Township v. Pa. Pub. Util. Comm'n.*, 482 A.2d 674

(Pa. Commw. Ct. 1984) (holding that when looking at the benefits and harms, the focus of the analysis must be on all affected parties and not merely a particular group or geographic area). Forward's attempt to portray the Transaction, as modified by the Settlement, as failing to meet the net public benefits standard based solely on its own lack of benefit must therefore be rejected.

Additionally, Forward challenges the Transaction as modified by the Settlement by questioning EBMA's intended use of the sale proceeds. Forward takes this position despite not disclosing any evidentiary or legal support that it is an equity owner in the EBMA system. There is no evidence in the record suggesting that Forward owns any portion of EBMA's infrastructure. When asked directly whether Forward owns any EBMA infrastructure, EBMA Chairman Timothy Guffey responded, "They do not." *In-Person Evidentiary Hearing, June 16, 2025*, Tr. 194:16–18. This testimony is uncontroverted. Furthermore, the issue of how EBMA uses the proceeds from the Transaction is outside the jurisdiction of the Commission. *See Application of Aqua Pennsylvania Wastewater, Inc. for the Acquisition of the Wastewater Assets of Willistown Township, Docket No. A-2021-3027268* (Opinion and Order entered July 8, 2022), p. 69 (holding that the Commission lacks jurisdiction over the seller's use of sale proceeds).

Thus, Forward's argument concerning EBMA beneficiary of the Transaction fails to show how this Transaction as modified by the Settlement fails to affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.

- iv. The record evidence supports the conclusion that EBMA does not have the technical fitness and ability. The benefits of the Transaction differ substantially from what EBMA provides. EBMA is compliant with the Municipality Authorities Act.

Next, Forward challenges the Transaction as modified by the Settlement by asserting that EBMA is technically fit to operate its system—including completing a necessary Long-Term Control Plan—and that no additional benefits would result from PAWC's operation. Consistent

with its broader approach to opposing the Transaction, Forward disregards the record evidence and fails to contest the substantial public benefits identified by the Joint Petitioners. In short, Forward has once again failed to demonstrate that the Joint Petitioners have not met their burden of proving that the proposed terms are in the public interest.

In light of the record, Forward's assertion that EBMA deliberately orchestrated its own technical infeasibility is a gross mischaracterization and a reckless distortion of the comprehensive body of evidence presented to the Commission. The record clearly establishes that EBMA has a longstanding history of environmental compliance challenges, primarily due to excessive combined sewer overflows ("CSOs") caused by significant inflow and infiltration resulting from defects and aging infrastructure within the collection system. *See PAWC Statement No. 2, Direct Testimony of Daniel J. Hufton*, p. 9. The system is both hydraulically and organically overloaded. *Id.* On average, the system experiences approximately 242 CSO events per year, meaning that raw, untreated sewage bypasses the treatment facility and is discharged directly into the Monongahela River. *Id.*

EBMA has been under directive from the Pennsylvania Department of Environmental Protection (PADEP) to reduce CSO events through the development and implementation of a Long-Term Control Plan ("LTCP") since at least 2004. *See PAWC Statement No. 2*, p. 18. Over the course of twenty-one years, EBMA has struggled to meet this mandate. Forward Township has not identified a single piece of evidence suggesting that EBMA has intentionally orchestrated this failure. Rather, Forward's argument rests on a mischaracterization of the testimony. Mr. Guffey, EBMA's Chairman, testified that EBMA is making reasonable efforts to manage the facility. *See In-Person Evidentiary Hearing, June 16, 2025, Tr. 167:10-12*. The LTCP is currently estimated to cost approximately \$24.6 million, which would result in customer rates increasing to \$114.23 per

month. See *EBMA Statement No. 1-R, Rebuttal Testimony of Timothy Guffey*, pp. 2–3. This estimate reflects only construction costs and does not account for the additional expenses associated with staffing an expanded system. *Id.*

Forward attempts to bolster its position by arguing that EBMA is violating the Municipality Authorities Act, 53 Pa.C.S.A. § 5601 et seq. (“MAA”). However, this argument is fundamentally flawed. Under 53 Pa.C.S.A. § 5607(9), the courts of common pleas have exclusive jurisdiction to adjudicate matters involving the service of a municipal authority. As such, Forward’s attempt to raise this issue in this proceeding is procedurally improper. Besides, Forward once again misconstrues the evidence in support of its claim. It alleges that EBMA is violating Section 5612(a.1)(1) of the MAA by failing to use its funds in accordance with its stated mission and purpose. However, EBMA’s articles of incorporation clearly establish that operating the System falls within its authorized purpose. In addition, EBMA possesses the full scope of powers granted under the MAA, including the authority to sell or dispose of property or interests therein. See 53 Pa.C.S.A. § 5607(4). Forward’s final argument that EBMA is “hoarding” \$14 million in equity also lacks any evidentiary support. Forward has failed to cite any portion of the record to substantiate this claim.

Thus, even if the Commission were to credit Forward’s portrayal of the facts, the weight of the evidence overwhelmingly supports approval of the Transaction as modified by the Settlement.

v. The Transaction benefits outweigh any associated harms.

Forward next itemizes a list of public benefits and boldly claims that they do not outweigh the harm of “extreme” rate cases. Forward has not shown any indication that any rate increases would be extreme. As addressed above, in response to Forward’s initial argument concerning rates,

its understanding of how rates will be impacted are misguided and based upon a hypothetical depiction.

First, Forward contends that any potential rate increase is unjustified because PAWC is not acquiring Forward's sewage system and has not demonstrated how economies of scale will benefit the public. This argument once again reflects Forward's disregard for both the record evidence and applicable law. The Transaction, as modified by the Settlement, directly advances the Commission's policy favoring regionalization and consolidation of water and wastewater systems. *See* 52 Pa. Code § 69.721(a). Specifically, the Transaction will result in the consolidation of two wastewater systems, with PAWC acquiring EBMA and EBMA ceasing operations upon closing. *See EBMA Statement No. 1*, p. 3. Additionally, PAWC will become the sole provider of both water and wastewater services within EBMA's service territory. *See PAWC Statement No. 2*, p. 10. PAWC is also positioned to leverage its existing personnel at its McKeesport facility, which is located just seven miles from EBMA, to provide integrated operational support for both systems. *See PAWC Statement No. 1*, pp. 16, 22.

Accordingly, the record evidence demonstrates that the proposed Transaction will benefit the public at large by enabling PAWC to operate the system in a more environmentally efficient and compliant manner, consistent with Commission policy and regulatory objectives.

Second, Forward argues that there is no evidence suggesting that EBMA's customer service is deficient. However, the record demonstrates that PAWC is in a significantly stronger position to provide high-quality customer service. PAWC operates a 24/7 customer service call center. *See PAWC Statement No. 2*, pp. 31, 36. In addition, PAWC plans to educate customers near the time of closing regarding billing options and the transition in ownership. *Id.*, at p. 35. PAWC is better equipped to engage with system customers due to its dedicated customer service team, whereas

EBMA operates with a single administrative staff member. *See EBMA Statement No. 1*, p. 10. EBMA's regular business hours are limited to 8:00 a.m. to 4:00 p.m., Monday through Friday. Outside of those hours, customers are instructed to contact the police. *See PAWC Statement No. 2*, p. 31. A fair comparison of the two entities' customer service capabilities clearly supports the conclusion that PAWC's additional personnel, extended availability, and proactive customer engagement represent a substantial improvement over EBMA's current service model.

Third, Forward argues that those in attendance at the Public Input Hearing overwhelmingly opposed the Transaction. Forward fails to identify the actual concerns of the participants of the Public Input Hearing. The majority of the testimony was concerned with rates, which have been negated by the Settlement as discussed above.

vi. Forward Residents received notice via publication.

Forward alleges that its residents were not provided notice of the Public Input Hearing that was held on June 5, 2025, despite Forward residents participating in the Public Input Hearing. Without any legal citation, Forward argues that publication of notice was insufficient. Nonetheless, PAWC filed proof of publication that it advertised notice of the Public Input Hearings in the Pittsburgh-Post Gazette on May 22, 2025 and May 29, 2025 and complied with the directive from the Administrative Law Judge.

2. Forward's Equity argument is not properly before the Commission.

Forward's main argument against the Transaction is that it is not receiving a share of the proceeds based upon its contention that it is an equity owner of the EBMA system. By its own admission in its argument, Forward agrees that this is a contractual dispute between it and EBMA based upon a 1958 sewage service agreement. As stated above, the issue of how EBMA uses the proceeds from the Transaction is outside the jurisdiction of the Commission. *See Application of*

*Aqua Pennsylvania Wastewater, Inc. for the Acquisition of the Wastewater Assets of Willistown Township*, Docket No. A-2021-3027268 (Opinion and Order entered July 8, 2022), p. 69 (holding that the Commission lacks jurisdiction over the seller’s use of sale proceeds). Further, repetitively, Forward alleges a violation of the MAA, but the MAA itself states that the courts of common pleas have exclusive jurisdiction to adjudicate matters involving the service of a municipal authority. 53 Pa.C.S.A. § 5607(9).

It is well settled that the Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 43 A.2d 348 (Pa. Super. Ct. 1945). Therefore, the Commission is divested of jurisdiction with regard to the issue of a share of the proceeds or any perceived violations of the MAA.

3. Forward has not justified a reduction in the base rate.

Forward argues in the alternative, that the base rate of \$27,138,703 should be reduced based upon OCA witness David Garret’s (“Mr. Garrett”) testimony. Forward takes this position despite its knowledge that OCA itself is a Joint Petitioner, and offered support behind the agreed upon rate base, stating:

In the OCA’s view, the Settlement’s \$27.1 million ratemaking rate base represents an amount that is within the range of possible outcomes in a Commission final order in the event of full litigation of the case based on substantial record evidence. At the same time, the Settlement provides mitigation of the rate impact of the transaction for existing PAWC customers and the acquired EBMA customers by reducing overall costs. (Settlement at ¶¶ 25-28) while simultaneously establishing a rate gradualism outcome that is consistent with the OCA’s litigation position in this matter. Settlement at ¶¶ 23-24.

*OCA Statement in Support*, p. 10.

Additionally, Forward relies heavily on the testimony of Mr. Garrett while entirely disregarding the rebuttal testimony of Harold Walker III (“Mr. Walker”), who raised significant concerns regarding the credibility and methodology of Mr. Garrett’s analysis. Mr. Walker testified

that Mr. Garrett did not conduct an appraisal of the EBMA system and that his recommendations concerning base rates violate Section 1329 of the Public Utility Code, 66 Pa.C.S.A. § 1329. *See EBMA Statement No. 2-R*, pp. 1–2. For example, Mr. Walker explained that Mr. Garrett failed to account for the value of EBMA’s 1,502 ultimate wholesale customers, basing his rate recommendations solely on EBMA’s 680 domestic customers (i.e., residents of Elizabeth Borough). *Id.*, at pp. 3–4. Mr. Walker’s rebuttal testimony outlines a litany of issues with Mr. Garrett’s analysis, further undermining the reliability of Forward’s position. *See EBMA Statement No. 2-R*

At its core, this matter involves a difference of opinion regarding the valuation of the EBMA system. To date, the Commission has not adjudicated these competing valuations or made any credibility determinations regarding the testimony of either witness. Forward, however, has selectively adopted the lower of the two proposed base rates without offering any substantive analysis to support its position. When applying the Commission’s 2025 Reasonableness Review Ratio (“RRR”), the value of the system would be calculated as follows:  $\$16,649,511$  (Average Depreciated Cost of UVEs)  $\times 1.63 = \$27,138,703$ . This figure aligns with the base rate agreed-upon by the Joint Petitioners.

Accordingly, the agreed-upon valuation complies with current Commission orders and further supports the conclusion that the Transaction is in the public interest. The record reflects that the Joint Petitioners fully and thoroughly evaluated each other’s positions and, after considering the relevant factors, agreed upon a base rate of  $\$27,138,703$ . In contrast, Forward’s analysis is threadbare and should be rejected—particularly because it fails to consider or address the testimony of Mr. Walker, and instead adopts Mr. Garrett’s position without any critical evaluation.

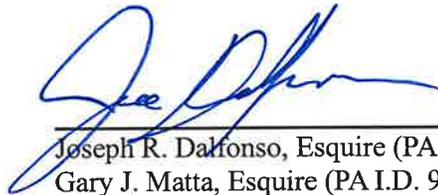
Therefore, the Settlement rate base, as developed and supported by the Joint Petitioners, is consistent with Commission standards and clearly serves the public interest.

### III. CONCLUSION

Based on the foregoing, and for the reasons set forth in EBMA's Statement in Support of the Joint Petition for Settlement, EBMA respectfully submits to the Administrative Law Judges that the proposed Transaction satisfies the standards required by the Commission. As modified by the Settlement, the Transaction meets the net benefits assessment, offering public benefits that are materially distinct from those currently provided by EBMA. Accordingly, EBMA respectfully requests that Forward's objections be dismissed in their entirety and that the Commission approve the Transaction without modification.

Dated: July 17, 2025

Respectfully Submitted,



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