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## I. INTRODUCTION

In this proceeding, Pennsylvania-American Water Company asks the Pennsylvania Public Utility Commission (Commission) to approve its acquisition of the Elizabeth Borough Municipal Authority and establish a fair market value rate base for the acquired assets. A settlement was reached by all parties except Forward Township.

This decision recommends that the Commission approve the settlement and the application, as amended and as modified by the terms of the settlement. Pennsylvania-American Water Company and the parties joining in the settlement have demonstrated that the acquisition of the Elizabeth Borough Municipal Authority system will provide substantial affirmative benefits and is in the public interest. Under the settlement, the amount to be used for ratemaking rate base purposes for the acquired system is \$27,138,703.

This decision finds that Forward Township failed to rebut the *prima facie* case made by the settling parties that the application and settlement should be approved, without modification of the agreed-on rate base amount. This decision further recommends denying the claims asserted by Forward Township regarding the Elizabeth Borough Municipal Authority's compliance with the Municipal Authorities Act and Forward Township's request for damages, as the Commission does not have jurisdiction to adjudicate the claims or grant the requested relief.

The statutory deadline for the Commission to act in this proceeding is October 27, 2025. The last reasonable public meeting before the statutory deadline is October 9, 2025.

## II. HISTORY OF THE PROCEEDING

On January 28, 2025, Pennsylvania-American Water Company (PAWC or Company) filed an application (Application) with the Commission at Docket No. A-2025-3052983, seeking Commission approval of its acquisition of the wastewater collection and treatment system (System) presently owned by the Elizabeth Borough Municipal Authority (EBMA) pursuant to 66 Pa.C.S. §§ 507, 1102 and 1329.

On February 21, 2025, in response to a deficiency letter from the Commission's Bureau of Technical Utility Services, PAWC submitted several amended appendices to the Application.

On February 6, 2025, Steven C. Gray, Esq. and Rebecca Lyttle, Esq., filed their Notices of Appearance on behalf of the Office of Small Business Advocate (OSBA). On February 18, 2025, Christy M. Appleby, Esq. and Katie Kennedy, Esq., filed their Notices of Appearance on behalf of the Office of Consumer Advocate (OCA). On February 18, 2025, the OCA filed a protest. On February 20, 2025, the OSBA filed a Notice of Intervention. On February 21, 2025, Michael A. Podskoch, Jr., Esq., filed a Notice of Appearance on behalf of the Commission's Bureau of Investigation and Enforcement (I&E).

By Secretarial Letter issued on March 6, 2025, the Commission notified PAWC that the Application was conditionally accepted. On March 21, 2025, PAWC filed a copy of the notice that it intended to distribute to customers, which established a due date of June 3, 2025 for protests and notices of intervention.

On April 17, 2025, PAWC notified the Commission that it had complied with the service and notice requirements in the March 6, 2025 Secretarial Letter. On April 21, 2025, Forward Township filed a Petition to Intervene. On April 23, 2025,

Forward Township filed a protest. On May 14, 2025, Forward Township filed a revised protest which added a Notice to Plead but did not otherwise change the substance of the protest.

On April 28, 2025, the Commission accepted the Application for filing. On May 5, 2025, EBMA filed a Petition to Intervene.

The Application was assigned to the Office of Administrative Law Judge and, on May 10, 2025, notice of the Application's filing was published in the *Pennsylvania Bulletin* and established a deadline of May 30, 2025 for filing formal protests and petitions to intervene. 55 Pa.B. 3329 (May 10, 2025).

On May 12, 2025, the Commission issued a Prehearing Conference Notice, scheduling a telephonic prehearing conference for June 3, 2025 and assigning us as Presiding Officers.

We issued a Prehearing Conference Order on May 12, 2025, establishing the procedural rules that would govern the initial prehearing conference. The Prehearing Conference Order also directed that each party file and serve a prehearing memorandum by noon on June 2, 2025. Given the statutory deadline for Commission action on the application, we encouraged the parties to discuss and attempt to agree on a litigation schedule and any proposals for public input hearings. Additionally, we established expedited deadlines for discovery served on and after May 12, 2025.

On May 12, 2025, the parties submitted a joint request for a telephonic public input hearing to be scheduled on Thursday, June 5, 2025 at 6:00 p.m. The Commission approved the request and, on May 19, 2025, the Commission issued a Public Input Hearing Notice, which provided information for participating in the public input hearing.

In response to the Prehearing Conference Order, prehearing memoranda were filed by PAWC, EBMA, I&E, OCA, OSBA and Forward Township.

On June 3, 2025, the initial prehearing conference was held, as scheduled. PAWC, EBMA, I&E, OCA, OSBA and Forward Township were represented by counsel.

On June 3, 2025, I&E, OCA, OSBA and Forward Township pre-served written direct testimony, in accordance with the schedule jointly proposed by the parties.

On June 4, 2025, PAWC filed a Proof of Publication regarding notice that it provided for the June 5, 2025 telephonic public input hearing.

Also, on June 4, 2025, PAWC filed a Petition for Protective Order.

On June 5, 2025, the public input hearing was held, as scheduled. Eight people provided sworn testimony, and a total of seven exhibits were moved into the record.

On June 9, 2025, we issued a scheduling order. In the order, we granted EBMA's petition to intervene, which was unopposed. As Forward Township became a party when it filed a protest against the Application, we did not find it necessary to grant its intervention.

Also on June 9, 2025, we issued an Order Granting Petition for Protective Order. A corrected Order Granting Petition for Protective Order was issued on June 13, 2025.

On June 12, 2025, PAWC and Forward Township filed a Joint Stipulation for the Admission of Evidence, in which they stipulated to the authenticity of certain responses to interrogatories.

On June 13, 2025, we issued an Order Granting Joint Stipulation and Admitting Evidence and, thereby, admitted the specified interrogatory responses into the record with verifications by the sponsoring witnesses.

On June 13, 2025, PAWC filed a Joint Stipulation for the Admission of Pre-Served Testimony and Exhibits (Stipulation), in which all parties stipulated to the authenticity of the pre-served testimony and exhibits listed in the Stipulation, and requested that they be admitted into the evidentiary record in this matter.

On June 16, 2025, we issued an Order Granting Joint Stipulation and Admitting Pre-Served Testimony and Exhibits and, thereby, admitted the specified testimony and exhibits into the record with verifications by the sponsoring witnesses.

An evidentiary hearing was held on June 16, 2025. No oral rejoinder was presented. One EBMA witness provided testimony in response to cross-examination. The parties waived cross-examination of all other witnesses.

A list of all testimony and exhibits admitted into the evidentiary record is included as an appendix to this decision. Everything is public and posted on the Commission's website, except for two appendices to the Application that PAWC designated as "Confidential."

By notice issued on June 16, 2025, the Evidentiary Hearing scheduled for June 17, 2025 was cancelled. In discussion with the parties, we established deadlines for

filing of settlement documents and briefs in the event a partial or non-unanimous settlement was reached.

On June 27, 2025, PAWC filed a Joint Petition for Approval of Non-Unanimous Settlement of All Issues (Joint Petition or Settlement), which was joined by PAWC, EBMA, I&E and the OCA (Joint Petitioners or “settling parties”).

On July 3, 2025, the OSBA filed a letter stating it does not oppose the Settlement.

On July 8, 2025, Forward Township timely filed a Post Hearing Brief and Objection to Settlement (Objections).

On July 17, 2025, PAWC filed a Reply to the Post Hearing Brief and Objection to Settlement Filed by Forward Township (PAWC Reply).

Also on July 17, 2025, EBMA filed a Reply to Forward Township’s Objections (EBMA Reply).

The record in this matter closed on July 18, 2025, which was the deadline for filing responses to briefs and objections.

### III. PUBLIC INPUT HEARINGS

A six-month statutory deadline is imposed on applications filed under Section 1329 of the Pennsylvania Public Utility Code (Code).<sup>1</sup> Meeting this deadline

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<sup>1</sup> 66 Pa.C.S. § 1329(d)(2); *McCloskey v. Pa. PUC*, 195 A.3d 1055 (Pa. Cmwlth. 2018) (*McCloskey*).

requires an accelerated litigation schedule. Following the guidelines in the Commission's Tentative Implementation Order,<sup>2</sup> the time between the May 30, 2025 protest deadline<sup>3</sup> and the technical evidentiary hearing was 17 days.

To help ensure that the parties would have time to consider public input hearing testimony in developing their positions and to enable the parties to provide public notice about public input hearings as early in the proceeding as possible, the presiding officers invited the parties to contact us with any requests for public input hearings in advance of the June 3, 2025 prehearing conference. The parties submitted a joint request for one telephonic public input hearing to be scheduled on Thursday, June 5, 2025 at 6:00 p.m. The Office of Administrative Law Judge and the parties received no other requests from legislators, local officials or customers for a public input hearing in this matter.<sup>4</sup> We agreed that a telephonic public input hearing would serve the public interest based on our consideration that all parties supported the request, and that a telephonic format would provide opportunity for customers in the service territories of both seller and buyer to provide their comments to the Commission on the proposed acquisition.

Accordingly, one public input hearing was held telephonically during which a total of eight people testified. Tr. 42-145. A summary of their testimony is as follows:

1) Mayor Barry Boucher

- Barry Boucher identified himself as the mayor of Elizabeth Borough, a member of EBMA, and personal customer of the authority, who is involved in the sale. Tr. 43. He testified the sewage operations have outgrown the authority's capability to operate it. Tr. 44. He states that as the Township has grown and the authority took on more customers along with more liability, it has had a hard time keeping up with things like overflows.

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<sup>2</sup> *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Tentative Implementation Order entered July 21, 2016).

<sup>3</sup> 55 Pa.B. 3329 (May 30, 2025).

<sup>4</sup> Tr. 14.

- Mayor Boucher is not sure enough about the rate numbers to be quoted on how much money might flow over to Elizabeth Borough from the transaction. Tr. 47.

## 2) Amy Cline

- Amy Cline identified herself as a family-owned business owner and resident of Forward Township, is not an EBMA customer and does not pay a sewage bill. Tr. 50, 60. She was recently appointed as a Forward Township supervisor but did not testify on behalf of Forward Township; she provided testimony as a resident and an advocate of the community. Tr. 51-52.
- Ms. Cline is concerned with the lack of notice that Forward Township residents received about the public input hearings because PAWC did not run an ad in the official newspaper of the municipality (*Mon Valley Independent*) and, as of June 3, 2025, she saw no notice on PAWC's website. Tr. 54-55. She does not think that older residents of Forward Township are familiar with LinkedIn, where the information was posted. Tr. 55. Ms. Cline asks, "Why then did it take three years to inform Forward Township residents" that EBMA accepted PAWC's bid to purchase the Authority on November 8, 2022? Tr. 55.
- Ms. Cline is also concerned that six appendices to the Asset Purchase Agreement were not included and made publicly available for review or comment by the public. Tr. 54.
- Ms. Cline objects to proceeds from the proposed sale going exclusively to Elizabeth Borough with no consideration to Forward Township residents having paid a proportionate share of EBMA's system maintenance, employee wages and improvements to the infrastructure. Tr. 56-57. She stated that the current EBMA system is functional and the infrastructure is sound, that they are adequately servicing customers at an affordable rate and that the sale would be a windfall for Elizabeth Borough but would not be a positive change for members of Forward Township, particularly seniors and fixed-income families. Tr. 58.

## 3) Michael Dowden

- Mr. Dowden is a customer of EBMA. He believes that EBMA could have put notice of the sale into customer's monthly billing for notification so that customers found out about it before the mailing he received at the end of March or beginning of April 2025. Tr. 66.
- He is concerned that PAWC is a for-profit company that has a fiduciary obligation to its stockholders. Tr. 67-68. EBMA could pay the \$25 million cost without including profit and could put a surcharge on bills that would go away when the financial obligation is met. But PAWC has to spend that money, there will be additional profit, and it is not likely that it will reduce rates after the initial cost is paid back. The proposed 104.8% rate increase will never go away. Tr. 67.

- Mr. Dowden testified that Elizabeth Borough will make some money from the sale but, as a consumer, he will end up paying for the money PAWC pays to Elizabeth Borough, with profit added on top. Tr. 69.

#### 4) Sherry Fisher

- Ms. Fisher lives in the portion of Elizabeth Township that is served by EBMA. Tr. 72, 74-75. She believes that ratepayers and the general public have not been given enough notice of the proposed sale and opportunity for comment. She also believes that holding a public input hearing telephonically rather than in-person is designed to shield PAWC from facing public questioning. Tr. 72.
- She believes ratepayers have not been properly informed of the details of the asset purchase agreement, and that in its filing to the PUC, PAWC labeled critical appendices confidential to keep them from public scrutiny. Tr. 72.
- She believes that the only parties which stand to gain from the asset purchase agreement are the municipal government, Elizabeth Borough, and Elizabeth Township. Tr. 73. Elizabeth Borough has long been fiscally irresponsible, so any APA should ensure that money from PAWC goes into a trust fund to cushion the current EBMA ratepayers against future rate hikes. Tr. 74.
- Ms. Fisher is on a fixed income and states that the agreement does not contain adequate provisions to accommodate low-income ratepayers who will be charged rates after the acquisition. Tr. 73.

#### 5) Joseph DeChicchis

- Mr. DeChicchis identified himself as both a residential and commercial customer of EBMA and the president of a nonprofit scholarly association called Historic Elizabeth. Tr. 78-79.
- He testified that he likes the water service he currently gets from PAWC as a customer and believes that PAWC has the technical skills to process wastewater, but the asset purchase agreement should not be approved. Tr. 79, 96-97.
- Mr. DeChicchis states that this sale seems like a chance to pay down some municipal debt. Tr. 83. The only reason for the sale he can discern is the expectation of a windfall profit for the government of Elizabeth Borough and, to a lesser extent, Elizabeth Township. Tr. 96.
- He expressed his belief that the current system should not be changed because it seems to be working fine, that EBMA has technically competent people, a subcontractor in place, and that if something isn't broken, don't fix it. Tr. 95-96.
- He highlighted funds are already available for municipal authorities to pay costs, such as PENNVEST, the HTOPA program, and the Growing Greener Plus Grants Program, stating that money is made available through the Department of Environmental protection, which PAWC may not be able to tap into, making it cheaper for ratepayers to stay with a municipal authority. Tr. 91.

- Mr. DeChicchis states that it is difficult for a small operation to deal with the Pennsylvania and federal regulations that are increasingly cumbersome, but there may be help available to the EBMA, including people in the mid Mon Valley with technical expertise. Tr. 102.
- He testified that the primary obligation in determining whether to sell should be the ratepayers, as they are the people paying for the pipes and to tap in, who built the infrastructure, and they should be considered as joint owners. Tr. 84, 94.
- Mr. DeChicchis thinks that the schedule is too fast and another year should be taken to involve ratepayers, including residents in Elizabeth Township and Lincoln Borough, and sort out and think about the sale. Tr. 99-100, 108-09.
- He is concerned that the public has not been able to review sealed documents, witness testimony, and projected rate increases for continued EMBA ownership. Tr. 85-86, 100-01, 105. Mr. DeChicchis asks, “How can the public, how can we, the users of the system, even evaluate the APA if we can’t read it or even know what it is?” Tr. 85.
- In particular, he is concerned that no one seems to have the 1950 Articles of Incorporation, which may impact the question whether Elizabeth Borough owns EBMA. Tr. 82, 93, 98-99. “And before [Elizabeth Borough’s ownership] is demonstrated, I don't think we can proceed with the sale that awards a premium to Elizabeth Borough and maybe some go-along money with Elizabeth Township.” Tr. 102.
- Mr. DeChicchis is concerned that the application does not include a rate stabilization plan, which should be required to reassure current ratepayers, because rates will increase more quickly if the purchase goes through than if it does not go through. Tr. 104. He testified that an APA should include language that guarantees that the rates would not jump up and that people on fixed incomes would be accommodated. Tr. 97.

#### 6) Bonnie Pollack

- Ms. Pollack is a customer of EBMA. She is concerned with the accelerated schedule for sale to PAWC. Tr. 128. The Public Utility Commission meeting should be postponed to a later date to give ample time to have meetings where all ratepayers can voice their opinions on this, as the sale will greatly affect them. Tr. 128-29. She believes there should be more input and more meetings, and is concerned that a lot of the residents are totally unaware of the sale happening. *Id.*
- She believes that \$28 million should not be given to Elizabeth Borough to extinguish what she believes is their irresponsible spending. Tr. 128.
- PAWC should be ordered to disclose confidential documents presented to the Public Utility Commission. She believes taxpayers should be able to scrutinize what should be public records not held in secret or under seal. Tr. 128.

7) Scott Benack

- Mr. Benack is retired and a customer of EBMA. He believes that most people in Forward Township are not aware of the rate increase. Tr. 132. Public meetings are needed. “When the Lock 3 was being removed, the Army Corps of Engineers had meetings down to the fire hall in Elizabeth and had people talking and answering questions. They need to do the same on something this critical.” *Id.*
- He testified that his sewage bill is about \$280 a quarter, and that if the sale goes through it would double to a little bit over \$560 a quarter, which he says is a big increase, especially for retired people. Most of his neighborhood is retired, and that the sale would impact a lot of residents. Tr. 133.

8) Scott Craighead

- Mr. Craighead is the borough manager for Elizabeth, lives in Elizabeth Township, and is not an EBMA customer. Tr. 135-36, 143. He disputes statements that Elizabeth Borough is in debt or financially irresponsible and that the sale is for a windfall of money to solve those kinds of things – rather, Elizabeth Borough has not raised taxes in the last three years, and its fund balance continues to grow. Tr. 136-37. Selling the Municipal Authority is in line with Elizabeth Borough’s Strategic Management Plan and the best use of their assets. Tr. 138, 141. “I would definitely not be in support of that sale if I felt that in the end the taxpayers would be paying a higher expense in any - in any position possible, whether it be utilities or taxes or anything else.” Tr. 139.
- Based on his previous background in school districts where he was responsible for a couple of sewer plants, he testified that “Elizabeth Borough cannot continue to maintain that plant.” Tr. 140. DEP has put many more restrictions on small sewage plants, like taking daily readings instead of monthly readings. It is hard for small communities that are not really concentrated on that area to maintain the expertise they need to keep up with DEP requirements. Tr. 140-41, 143-44.
- Mr. Craighead believes that Pennsylvania American can make the investment needed for the improvement of the wastewater facility and spread and absorb costs more across their customer base or anywhere else, better than a small municipality like Elizabeth Borough can. Tr.138-39. In his view, if Elizabeth Borough has to maintain the facility, then rates will increase more or less the same amount as if the sale went through because it is extremely expensive to keep up with DEP regulations and you need a lot of expertise to do it. Tr. 143-44.

#### IV. FINDINGS OF FACT

##### *The Parties*

1. Pennsylvania-American Water Company, a subsidiary of American Water Works Company, Inc. (American Water), is the largest investor-owned water and wastewater utility in the Commonwealth of Pennsylvania. PAWC St. 1 at 16, 25-26. As of December 31, 2024, PAWC furnished wastewater service to approximately 114,915 direct and bulk customers in Pennsylvania. As of December 31, 2024, PAWC furnished water service to approximately 687,608 customers in Pennsylvania. PAWC St. 1 at 18.

2. Elizabeth Borough Municipal Authority is a municipal authority created pursuant to the Municipality Authorities Act of 1945. It was incorporated on December 29, 1949 by Elizabeth Borough. EBMA St. 1 at 3.

3. The Bureau of Investigation and Enforcement serves as the prosecutory bureau for the Pennsylvania Public Utility Commission (Commission) for purposes of representing the public interest in rate and other proceedings. I&E St. 1 at 1; *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered Aug. 11, 2011).

4. The Office of Small Business Advocate is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

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

6. Forward Township is a township in Allegheny County, Pennsylvania. Forward Township is a customer of EBMA. EBMA St. 1 at 2.

*Elizabeth Borough, EBMA and the Wastewater System*

7. Elizabeth Borough is located in Allegheny County on the east bank of the Monongahela River, about 15 miles upstream of Pittsburgh. EBMA St. 1 at 4.

8. EBMA owns and operates the System, which is comprised of a combined sewer collection and conveyance network serving Elizabeth Borough and a wastewater treatment plant serving Elizabeth Borough, Elizabeth Township, Forward Township and Lincoln Borough. PAWC St. 2 at 3; EBMA St. 1 at 2.

9. Elizabeth Township, Forward Township and Lincoln Borough receive treatment services from EBMA pursuant to bulk service agreements between EBMA and each municipality. PAWC St. 2 at 3; EBMA St. 1 at 2.

10. As of December 31, 2024, the System furnished wastewater services to approximately 672 direct customers and about 1,504 indirect customers. PAWC St. 1 at 18; I&E St. 2 at 5.

11. EBMA is operated by one administrative employee, two facility workers and a part-time operator. EBMA St. 1 at 3.

12. The System's treatment works are currently in hydraulic and organic overload, resulting in numerous combined sewer overflow (CSO) events that occur annually at the System's five combined sewer outfall/regulator structures. For the five years ending 2023, EBMA reported an average of 242 sewer overflow events per year where untreated sewage was discharged into the Monongahela River. PAWC St. 2 at 9.

13. A Long-Term Control Plan was developed in 2004. The Pennsylvania Department of Environmental Protection (DEP) found the plan inadequate and did not approve it. In 2012, DEP required EBMA to address technical issues and re-submit the plan. PAWC St. 2 at 19.

14. In 2014, DEP and the Allegheny County Department of Health required EBMA to submit a System Characterization, Monitoring and Modeling Report for the LTCP. This report was submitted in November 2014. This plan was conditionally approved in January 2015. PAWC St. 2 at 19.

15. In July 2017, EBMA submitted a revised LTCP. Revisions were made in March 2018. DEP approved the LTCP in July 2018. PAWC St. 2 at 19.

16. In December 2020, EBMA's engineer asked DEP to reset the compliance deadlines in the LTCP, but DEP has not responded in writing. EBMA failed to comply with the proposed reset schedule. PAWC St. 2 at 19.

17. The LTCP requires extensive expansion and improvements to the collection system and treatment plant to provide long-term capacity for customers. PAWC St. 2 at 9, 15.

18. In 2021, EBMA completed the first project in the LTCP. EBMA has fallen six years behind schedule in meeting the original LTCP implementation dates. As a result, the remaining improvement projects will be significantly more expensive than originally estimated (\$24.6 million to complete the remaining projects). PAWC St. 1 at 10.

19. In each of the last three annual inspections conducted by the Allegheny County Health Department (ACHD), EBMA has been cited for exceeding

permitted effluent limits for fecal coliform bacteria and for missing/damaged air diffusers in the aeration basins. PAWC St. 2 at 20.

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

### *The Sale Process*

21. EBMA decided to sell the System to avoid significant future costs, eliminate existing debt and make infrastructure improvements. PAWC St. 1 at 9; EBMA St. 1 at 7.

22. EBMA used a bid process to sell the System. EBMA St. 1 at 7-8.

23. PAWC submitted a bid on July 12, 2022, which was the highest bid on the System. PAWC St. 1 at 11-12.

24. EBMA and PAWC negotiated the Asset Purchase Agreement (APA), which was signed in January 2023. PAWC St. 1 at 11-12.

25. EBMA held three public meetings to address, evaluate and approve the sale to PAWC, on August 9, 2022, November 8, 2022 and April 25, 2023. EBMA St. 1 at 8.

26. These meetings provided an opportunity for public comment, but no member of the public provided comments. PAWC St. 1 at 12; EBMA St. 1 at 8.

*The Transaction*

27. PAWC will purchase substantially all assets, properties and rights that EBMA owns and uses in connection with the System. PAWC St. 1 at 12.

28. The purchase price of the System was \$28,000,000. PAWC St. 1 at 14.

29. Closing will occur after the receipt of all necessary approvals, including Commission approval. PAWC St. 1 at 13.

30. Upon closing, PAWC will begin rendering wastewater services to EBMA's current customers and EBMA will permanently discontinue providing wastewater service to the public. PAWC St. 1 at 13.

31. EBMA plans to dissolve on or shortly after closing. PAWC St. 1 at 14; EBMA St. 1 at 3.

32. Items that will not be acquired by PAWC include the Retained Wastewater Treatment Plant Assets (the non-moving structural portion of the DUPERON® FLEXRAKE® FPFs Full Penetration Fine Screen unit consisting of the base, vertical supports, and back/side plates). This asset will be leased to PAWC. PAWC St. 1 at 13.

33. PAWC and EBMA will jointly request that DEP and the EPA confirm that the APA's arrangement will allow the wastewater treatment plant to continue to be classified as a Publicly Owned Treatment Works for purposes of the "domestic sewage exclusion" in 40 CFR § 261.4(a)(1) and the Resource Conservation and Recovery Act of 1976. PAWC St. 2 at 4-5.

34. EBMA will place \$1,120,000 in escrow to cover any claims or damages of any PAWC Indemnified Party for a period of up to two years after closing. PAWC St. 1 at 14.

35. EBMA will fund an easement escrow fund in the amount of \$2,000 for each missing easement. PAWC St. 1 at 15.

36. As part of the transaction, PAWC will negotiate a Consent Order and Agreement (COA) with DEP to establish a new compliance schedule for the LTCP. PAWC will then assume responsibility for implementing the LTCP. PAWC St. 2 at 21.

### *The Application*

37. PAWC and EBMA elected to use the valuation methodology in Section 1329 of the Code, 66 Pa.C.S. § 1329. This methodology provides that the ratemaking rate base for the System will be based on the lesser of: (1) the average of two Utility Valuation Engineer (UVE) appraisals, or (2) the purchase price. In this case, the purchase price is less than the average of the two UVE appraisals. PAWC St. 3 at 6; PAWC St. 1 at 6-7.

38. The average of the two UVE appraisals is \$28,438,605.<sup>5</sup> PAWC St. 4-R at 8.

39. PAWC and EBMA hired LSSE Civil Engineers and Surveyors to complete the “Engineering Assessment Study of the Physical Assets of the Elizabeth Borough Municipal Authority.” PAWC Exhibit MK-1 (Appendix A-15-a).

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<sup>5</sup> In its Application, PAWC states that the average of the appraisals of the buyer’s UVE and the seller’s UVE is a slightly lesser amount of \$28,438,507. PAWC Exhibit MK-1 (Appendix A-11).

40. PAWC retained Weinert Appraisal and Depreciation Services, LLC (WADS) to perform an appraisal of the System. PAWC St. 4 at 1.

41. WADS is registered with the Commission as a utility valuation expert. WADS performed its appraisal in accordance with the Uniform Standards of Professional Appraisal Practice. PAWC St. 4 at 1.

42. The results of WADS' appraisal are as shown below:

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

PAWC St. 4 at 3.

43. EBMA retained Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming) to perform an appraisal of the System. EBMA St. 2 at 2-3.

44. Gannett Fleming is registered with the Commission as a utility valuation expert. Gannett Fleming performed its appraisal in accordance with the Uniform Standards of Professional Appraisal Practice. EBMA St. 2 at 2-3, 10-11.

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

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

EBMA St. 2 at 12.

46. The average depreciated original cost of the System from the UVE appraisals is \$16,649,511 (Gannett Fleming’s \$16,620,978 + WADS Consultants’ \$16,678,044 / 2). PAWC St. 1 at 6; PAWC St. 4-R at 8.

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

48. I&E witness Zachari Walker recommended that the ratemaking rate base to be recorded on PAWC’s books should be determined based on the RRR for the year ended December 31, 2024, of 1.63. The result represents a ratemaking rate base of \$27,138,703 (\$16,649,511 x 1.63). I&E St. 1 at 6; I&E St. 1-SR at 2.

49. I&E’s recommended ratemaking rate base of \$27,138,703 is \$861,297 less than the purchase price (\$28,000,000 - \$27,138,703). PAWC St. 1-R at 2.

50. I&E's recommended ratemaking rate base of \$27,138,703 is \$832,475 less than the ratemaking rate base that PAWC calculated using the RRR published on August 2, 2024 (\$27,917,178 - \$27,138,703). I&E St. 1 at 6; PAWC St. 1-R at 2.

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

*PAWC's Fitness*

52. PAWC is a Commission-regulated public utility with a history of complying with the Pennsylvania Public Utility Code and other applicable laws, including environmental laws. PAWC has had no material issues in complying with the Code, the Clean Streams Law, or other regulatory requirements. PAWC St. 2 at 26.

53. There are no pending legal proceedings that suggest PAWC is not legally fit to provide service to System customers. PAWC St. 1 at 25.

54. PAWC had total assets of about \$7.3 billion as of December 31, 2023. PAWC had operating income of approximately \$465 million and net income of approximately \$300 million for the 12 months ending December 31, 2023. PAWC St. 3 at 3; PAWC St. 1 at 25.

55. PAWC has a \$495 million line of credit through American Water Capital Corp. (AWCC). PAWC St. 3 at 4.

56. PAWC obtains long-term debt financing through AWCC at favorable interest rates and payment terms. It also uses low-cost financing through the

Pennsylvania Infrastructure Investment Authority (PENNVEST) when applicable.  
PAWC St. 3 at 4-5.

57. PAWC carries a corporate credit rating of “A3” from Moody’s Investors Services and an “A” rating from Standard and Poor’s Rating Services. PAWC St. 3 at 4.

58. PAWC may obtain additional equity investment through American Water. PAWC St. 3 at 5.

59. PAWC does not anticipate that the acquisition of the System or investment commitments in the System will have a negative impact on PAWC’s cash flows, credit ratings or access to capital and therefore will not deteriorate in any manner PAWC’s ability to continue to provide safe, adequate, and reasonable service to its existing customers at just and reasonable rates. PAWC St. 3 at 5.

60. PAWC currently employs about 1,150 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, materials management, risk management, human resources, legal, accounting and customer service. PAWC St. 1 at 16-17; PAWC St. 2 at 24.

61. PAWC has extensive experience in the operation of wastewater collection and treatment systems, including specific experience with the types of treatment technologies employed in the System. PAWC St. 1 at 18-19.

62. PAWC has successfully addressed DEP and EPA compliance orders requiring operational improvements and substantial capital investments in several recent wastewater acquisitions. PAWC St. 2 at 25.

*Rate Impact*

63. PAWC will implement EBMA's rates in effect as of Closing. PAWC St. 1 at 15; PAWC St. 3 at 8.

64. EBMA's customers will be subject to PAWC's prevailing wastewater tariff with respect to miscellaneous fees and charges and rules and regulations for wastewater service. PAWC St. 1 at 15; PAWC St. 3 at 8.

65. PAWC calculates that, at current EBMA rates, the average monthly bill for EBMA customers using 3,000 gallons per month is \$60.61. PAWC St. 3 at 11; PAWC Exhibit MK-1 (Appendix A-18-d).

66. PAWC calculates that there will be a \$1,918,419 annual revenue deficiency for the System, which is the difference between revenue requirement and Year One revenues from the acquired EBMA customers. PAWC St. 3 at 11; PAWC Exhibit SDG-1 at 4; *see also* PAWC Exhibit MK-1 (Appendix A-18-d).

67. The revenue requirement calculation was based on a ratemaking rate base of \$28,000,000. PAWC Exhibit SDG-1 at 4.

68. PAWC's current average monthly combined sewer system bill for residential customers utilizing 3,000 gallons is \$98.36. PAWC St. 3 at 12.

69. PAWC expects to propose to move EBMA's customers toward consolidated rates in future base rate cases. PAWC St. 3 at 9.

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

71. Subject to Commission approval, PAWC anticipates allocating a portion of its wastewater revenue requirement to the combined water and wastewater customer base, as permitted by 66 Pa.C.S. § 1311(c). PAWC St. 3 at 9.

#### *Post-Closing Operation of the System*

72. After Closing, the System will be operated as a stand-alone system. It will be an operating district in PAWC's Southwest Area operations. PAWC St. 2 at 12.

73. Employees in PAWC's water and wastewater departments serving the same territory will support each other when appropriate and necessary. They will also be supported by all operations and employees in PAWC and in the broader American Water system. PAWC St. 2 at 12.

74. PAWC has a five-year capital plan that calls for investing \$25.9 million in the System. The majority of these costs are related to improvements under the LTCP. PAWC St. 2 at 13; PAWC Exhibit DJH-2.

75. I&E witness Ethan Cline recommended that an amended Long-Term Infrastructure Improvement Plan (LTIIP) be filed within 180 days of the closing of the transaction. I&E St. 2 at 2.

76. OCA witness Nicholas DeMarco recommended that an amended LTIIP be filed within 90 days of the closing of the transaction. OCA St. 1 at 27.

*Customer Notice and Opportunity to Participate*

77. PAWC provided notice of the acquisition to existing PAWC water and wastewater customers and to EBMA customers. PAWC St. 3 at 10.

78. The customer notice contained a non-binding estimate of the impact of the transaction on EBMA customers (a potential increase of 105.0%), on PAWC's existing wastewater customers (a potential increase of 1.1%) and on PAWC's existing water customers (a potential increase of 0.2%). PAWC St. 3 at 11-13.

79. Forward Township received notice that the Application was filed with the Commission. Objections at 4; PAWC St. 3 at 10.

80. PAWC published notice of the public input hearing in the *Pittsburgh Post-Gazette*, for two consecutive weeks prior to the hearing. PAWC St. 1-R at 8; Proof of Publication of Notice of Public Input Hearing (filed on June 4, 2025).

81. PAWC gave notice of the public input hearing through its website and social media posts, including Facebook, LinkedIn, X and Instagram. PAWC St. 1-R at 8; Proof of Publication of Notice of Public Input Hearing (filed on June 4, 2025).

82. PAWC marked two documents from its Application as "confidential" – the appraisers' work papers and a map; the rest of the filing and all admitted testimony and exhibits for this proceeding are available to the public on the Commission's website. PAWC St. 1R at 9-10; Tr. Exhibits (hearing held June 16, 2025).

*Affirmative Benefits of a Substantial Nature*

83. Systems located near each other can share equipment and staff, and can share cost savings from the additional purchasing power of a larger enterprise. PAWC St. 1R at 5.

84. EBMA's wastewater treatment plant is located about 7 miles from PAWC's McKeesport Wastewater Treatment Plant. PAWC St. No 1 at 22-23.

85. EBMA has been cited for not having a responsible operator. The lack of a responsible operator demonstrates EBMA's lack of technical fitness. PAWC St. 2-R at 3.

86. The fact that the LTCP is stalled and years away from completion further demonstrates EBMA's lack of technical fitness. PAWC St. 2-R at 3.

87. EBMA lacks the financial or technical capability of completing the LTCP. OCA St. 1SR at 6; PAWC St. 2-R at 2-4; EBMA St. 1-R.2; Tr. 44-50 (Boucher); Tr. 136-43 (Craighead).

88. PAWC will implement the LTCP. PAWC St. 1 at 11.

89. Customers of EBMA and PAWC will benefit from reducing CSOs because it will improve local water quality and the water quality of downstream drinking water intakes, including PAWC's Pittsburgh drinking water system intake. PAWC St. 1 at 19.

90. DEP recommended an Industrial Pretreatment Program for the System. PAWC intends to develop and implement an Industrial Pretreatment Program in a future base rate case if necessary. PAWC St. 1 at 19.

91. By selling the System, EBMA alleviates burdens such as the responsibility for complying with increasingly stringent environmental requirements. EBMA St. 1 at 4. EBMA is also freed from the responsibility and expense of completing the LTCP. EBMA St. 1 at 7.

92. EBMA will receive \$28,000,000 in proceeds from the transaction. EBMA St. 1 at 3.

93. Upon Closing, the Authority will be dissolved, outstanding debt will be satisfied and all remaining assets will be conveyed to Elizabeth Borough. EBMA St. 1 at 3.

94. The Borough states that it will use the money for public purposes. EBMA St. 1 at 3. The proceeds could be used to stabilize its finances to avoid more cuts to public services while avoiding the increase of real estate taxes. EBMA St. 1 at 6.

95. The transaction will eliminate EBMA's long term debt liability (\$12,800,000). PAWC St. 1 at 11.

96. All EBMA employees involved in the operation of the System will be offered employment with PAWC, subject to PAWC's existing hiring policies and procedures. PAWC St. 1 at 11; PAWC Exhibit MK-1 (Appendix A-24-a.1) at 21, 101.

97. If the transaction does not close, EBMA estimates that it would need to increase its monthly bill for an average residential customer utilizing 3,000 gallons to approximately \$114.23. EBMA St. 1 at 9-10; EBMA St. 1-R at 2-3.

98. EBMA's rate projection was calculated based on a blend of the three possible options for the Authority to finance its cost to complete the LTCP. The financing

options include PENNVEST funding, bonds, and a mix of PENNVEST funding and bonds.<sup>6</sup> EBMA St. 1 at 9-10.

99. After Closing, EBMA’s low-income customers will have access to PAWC’s customer assistance programs. PAWC St. 1 at 10.

100. PAWC offers two customer assistance programs for wastewater customers: (1) grants of up to \$500 per year, and (2) a tiered discount on total wastewater charges based on income levels. PAWC also offers payment arrangements and budget billing. EBMA has no low-income customer service assistance programs, nor any income-based repayment options. PAWC St. 2 at 38; PAWC St. 3 at 13-14.

101. EBMA customers who are PAWC water customers and are already enrolled in PAWC’s Bill Discount Program for their water service will automatically be enrolled in the program for their wastewater service. PAWC St. 3-R pp 5-6.

102. OCA witness DeMarco recommended that “PAWC should provide a letter to the acquired customers that provides information regarding its low-income programs, including a description of the available programs, eligibility and requirements, and PAWC’s contact information.” OCA St. 1 at 23.

103. Mr. DeMarco recommended that the letter should be sent within 30 days after closing so that eligible customers can benefit from the programs as soon as possible and, importantly, before rates are increased. OCA St. 1 at 23.

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<sup>6</sup> The \$114.23 amount is based on a mix of revenue bond funding and PENNVEST funding. Cross Exam Exhibit 2, Q.10.

104. OCA witness DeMarco also recommended that PAWC should include the same information regarding low-income programs in bills sent to Elizabeth Borough customers within 90 days after closing. OCA St. 1 at 23.

105. Mr. DeMarco recommended that PAWC should report the number of eligible customers from the former Elizabeth Borough service area who are enrolled in PAWC's CAP. The report should be provided to the Commission and to the parties every six months until the conclusion of PAWC's next base rate case. OCA St. 1 at 23.

106. PAWC has a Hardship Fund to which it currently contributes a minimum of \$1,450,000 annually. PAWC St. 3-R at 9. Among other things, this fund provides grants to low-income water and wastewater customers. PAWC St. 2 at 38.

107. OCA witness DeMarco also recommended that if the Commission were to approve the transaction, it should be conditioned on the requirement that PAWC make an annual contribution of \$70,000 to the hardship fund for five years following closing. OCA St. 1 at 24.

108. Mr. DeMarco recommended that these hardship fund contributions should not be included in rates and that all unspent funds at the end of the program year should be rolled over and added to the budget for the hardship grant program in the following year(s). OCA St. 1 at 24.

109. PAWC will bring economies of scale to the System that EBMA cannot achieve on its own. For example, PAWC can move equipment around its system whereas EBMA must buy or lease equipment, and PAWC can perform planning, design and construction management services internally whereas EBMA must contract the work out to consulting engineers at higher cost. PAWC St. 1 at 23-24.

110. PAWC provides water service to much of EBMA's service territory. PAWC St. 2 at 10. If the transaction is approved, customers will only get one bill for their water/wastewater service. PAWC St. 1 at 19; EBMA St. 1 at 11.

111. Synergies between the water and sewer infrastructure networks will benefit customers and the general public. For example, water and wastewater projects can be better coordinated to improve efficiency. PAWC St. 2 at 26, PAWC St. 1 at 23.

112. PAWC is subject to the Commission's oversight, whereas EBMA is not. PAWC is therefore statutorily required to provide safe, adequate service at just and reasonable rates. PAWC St. 1 at 20.

113. The OCA and the OSBA can assist customers of PAWC. They cannot assist customers of municipal authorities. PAWC St. 2 at 41.

114. The transaction will improve the operation of the System due to the strong staffing numbers and expertise that PAWC provides. PAWC has a large team that is devoted to customer service, while EBMA has an administrative staff of one. EBMA St. 1 at 10.

115. PAWC's customer call center is available for routine customer interactions from 7:00a.m. to 7:00 p.m. Monday-Friday and 24/7/365 for emergencies. PAWC also has field service crews available for 24/7/365. EBMA's regular business hours are 8 a.m. – 4:00 p.m. Monday through Friday. After 4:00 p.m. or on weekends, EBMA's customers are instructed to contact the police. PAWC St. 2 at 31.

116. PAWC has cyber and physical security plans, emergency response plans and a business continuity plan. EBMA does not have similar plans in place. PAWC St. 2 at 30.

117. PAWC is a member in good standing of the Pennsylvania Water/Wastewater Agency Response Network (PaWARN), whereas EBMA is not a member of PaWARN. PAWC St. 2 at 32.

118. With regard to compliance with the requirements of the “One Call” system, PAWC achieved a 100 percent ticket completion rate in 2024. EBMA has a 61 percent completion rate in 2022. This relatively low completion rate is not just a compliance issue; it is a public safety issue because it could lead to more strikes on public utility assets. PAWC St. 2 at 33.

119. The transaction will have no immediate rate impact on PAWC’s existing customers. Any impacts on the rates of PAWC’s existing water and wastewater customers would occur only after a Commission decision in a base rate proceeding. PAWC St. 3 at 9.

120. In the long term, PAWC’s existing wastewater customers may benefit from PAWC expanding its customer base so that costs of operating PAWC’s system are spread among a greater number of customers. PAWC St. 1 at 21.

### *Section 507 Agreements*

121. PAWC seeks Commission approval of the APA, the First Amendment to the Amended APA, and six other contracts with municipalities (including a pro forma lease for the Retained Asset). Commission approval of these contracts is necessary for PAWC, after Closing, to provide wastewater service to the public as EBMA has done. PAWC St. 1 at 28.

V. SETTLEMENT

A. Terms and Conditions of the Non-Unanimous Settlement

PAWC, EBMA, I&E and OCA entered into a Joint Petition for Approval of Non-Unanimous Settlement of All Issues. OSBA does not oppose the Settlement. Forward Township opposes the Settlement, as set forth in its Post Hearing Brief and Objection to Settlement. The Joint Petition includes the terms and conditions of the Settlement relating to the agreed-upon amount to be used for ratemaking rate base purposes for the acquired system, the rate treatment of the acquired system, cost of service study, distribution system improvement charge (DSIC) and long term infrastructure improvement plan (LTIIP), allowance for funds used during construction, deferral of depreciation and transaction costs, other rate-related issues, and the agreements necessary to effectuate the transaction. The Settlement also addresses closing, customer service and assistance, and funding for improvements to the acquired system. The Joint Petition includes Appendices A to G:

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

The terms of the proposed settlement are set forth below. The Terms and Conditions of the Settlement can be found in Paragraph Nos. 19 to 44 of the Joint

Petition.<sup>7</sup> The Settlement petition also includes the usual “standard settlement conditions” that are typically included in settlements. These terms, among other things, protect the parties’ rights to file exceptions if any part of the Settlement is modified, condition the agreement upon approval by the Commission and provide that no party is bound in future cases by any position taken in this Settlement. The Joint Petitioners also agreed to waive exceptions if the Settlement is approved without modification.<sup>8</sup> These additional terms and conditions will not be repeated here verbatim.

The Joint Petitioners agree as follows:

**A. Approval of Application**

19. The Joint Petitioners agree that the Commission should approve PAWC’s acquisition of the wastewater system assets (“System”) currently owned by EBMA and PAWC’s right to begin to offer, render, furnish, or supply wastewater services in the areas served by the System, as well as any other necessary approvals or certificates for the transactions, subject to approval of all of the following conditions and without modification.

**B. Rates**

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

21. Except as explicitly agreed upon in this Settlement, nothing contained herein or in the Commission’s approval

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<sup>7</sup> Settlement at 4-12, ¶¶ 19-44. For ease of reference, the essential terms of the Settlement have been adopted verbatim and using the same paragraph numbering as found in the original. Although no substantive modifications were made, the formatting may have been slightly modified consistent with the formatting found within this recommended decision.

<sup>8</sup> *Id.* at 12-13, ¶¶ 45-50.

of the Application shall preclude any Joint Petitioner from asserting any position or raising any issue in a future PAWC proceeding.

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

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

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

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

d. OCA, I&E and OSBA reserve their rights to address PAWC's rate proposals fully, and to make other rate proposals. The Parties expressly recognize the Commission's ultimate ratemaking authority to set just and reasonable rates and, notwithstanding anything to the contrary contained in this Paragraph 22, may enter into a settlement of the base rate case, whether full or partial and whether unanimous or non-unanimous, on reasonable terms and conditions.

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

### **C. Fair Market Value for Ratemaking Rate Base Purposes**

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

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

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

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

### **D. Distribution System Improvement Charge**

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

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

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

### **F. Closing**

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

### **G. Transaction and Closing Costs**

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

that it will clearly set out and identify all transaction and closing costs associated with this matter.

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

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

#### **H. Approval of Section 507 Agreements**

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

a. The APA dated January 24, 2023, by and between the Elizabeth Borough Municipal Authority and Pennsylvania-American Water Company (submitted as **Appendix A-24-a.1**);

b. First Amendment to Asset Purchase Agreement, dated July 5, 2023, by and between the Elizabeth Borough Municipal Authority and Pennsylvania- American Water Company (the "First Amendment") (submitted as **Appendix A-24-a.2**);

c. Service Agreement dated January 25, 2000, by and between the Borough of Elizabeth and the Sanitary Authority of Elizabeth Township (submitted as **Appendix A-25.1**);

d. Fallen Timber Run Watershed Area Interceptor Sewer Project Agreement between the Borough of Elizabeth, Elizabeth Borough Municipal Authority, the Township of Forward, the Township of Elizabeth, and the Sanitary Authority of Elizabeth Township (submitted as **Appendix A-25.2**);

e. Agreement dated December 15, 1987, by and between the Borough of Elizabeth, Elizabeth

Borough Municipal Authority and the Borough of Lincoln (submitted as **Appendix A-25.3**);

f. Agreement dated November 26, 1957, by and between Borough of Elizabeth, Elizabeth Borough Municipal Authority, the Township of Elizabeth and Sanitary Authority of Elizabeth Township (submitted as **Appendix A- 25.4**);

g. Agreement dated January 23, 1958, by and between Borough of Elizabeth, Elizabeth Borough Municipal Authority and the Township of Forward (submitted as **Appendix A-25.5**); and,

h. *Pro Forma* Lease Agreement by and between the Elizabeth Borough Municipal Authority and Pennsylvania-American Water Company (submitted as **Appendix A-25.6**).

#### **I. Cost of Service Studies**

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

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

#### **J. Customer Assistance Programs**

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

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

39. Within the first billing cycle following Closing, PAWC shall include a bill insert to System customers regarding its low income programs and shall include such information in a welcome letter to System customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low income programs, eligibility requirements for participation in the programs, and PAWC's contact information. PAWC also agrees to ongoing, targeted outreach to its EBMA-area wastewater customers regarding its low income programs.

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

41. Every six months for a period of two years following Closing, PAWC will track the number of EBMA's customers that are (1) potentially eligible to enroll in PAWC's customer assistance program ("CAP"); and (2) who are enrolled in PAWC's CAP. PAWC will provide and present this information on a timely basis to the regularly held meetings of PAWC's Customer Assistance Advisory Group. PAWC will also present this information, as available at the time, in its first base rate case in which the EBMA System is included. The information will be in a format showing the potential eligibility and enrollment data broken down by six-month increments starting from the time of Closing through and until the time of filing the rate case. Potential eligibility will be based on U.S. Census data.

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

**K. Pennsylvania Infrastructure Investment Authority**

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

**L. Other Necessary Approvals**

44. The Commission shall issue any other approvals or certificates appropriate, customary, or necessary under the Pennsylvania Public Utility Code to carry out the transactions contemplated in the Application in a lawful manner.

B. Statements in Support of Settlement

As noted above, the settling parties provided Statements in Support of the Settlement, which are attached as Appendices D through G to the Joint Petition. Their specific support for each settlement term is addressed with our analysis below (VII. Discussion).

In sum, the Joint Petitioners conclude in their supporting statements that, after extensive discovery and discussion, the Settlement resolves the issues raised in the proceeding in a fair and equitable manner, is supported by the record evidence, is in the public interest, and is consistent with the requirements of the Public Utility Code. All settling parties support approval of the Settlement, without modification.

PAWC emphasizes the diverse interests of the Joint Petitioners and that each of their counsel and experts fully explored the issues in this case, openly exchanged information, and reached a carefully balanced compromise of the interests of the Joint Petitioners that satisfies the various requirements of the Code.<sup>9</sup> EBMA agrees and adds that the compromise accounts for the public benefits expected to result from the transaction while mitigating any potential harm.<sup>10</sup>

I&E and OCA submit that terms of the Settlement provide a reasonable resolution for the concerns and issues raised in their respective testimonies.<sup>11</sup> I&E adds that the Settlement contains numerous terms to protect PAWC's ratepayers, both existing and those who will become PAWC's ratepayers through this transaction, and will ensure that PAWC's ratepayers receive the benefits of the transaction without being subject to

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<sup>9</sup> Settlement (Appendix D) at 1-14, 24.

<sup>10</sup> Settlement (Appendix E) at 1, 16-17.

<sup>11</sup> Settlement (Appendix F) at 7, (Appendix G) at 7.

protracted and expensive litigation.<sup>12</sup> Accordingly, I&E submits that the Application, as modified by the Joint Petition, now meets the requisite standards for approval.

The OCA also avers that the Settlement is supported by substantial evidence and, in particular, points to testimony provided by EBMA and public input hearing witnesses that the Authority lacks technical fitness and ability to complete the requirements of the Long-Term Control Plan (LTCP).<sup>13</sup>

C. Forward Township Brief in Opposition

As set forth in its Post Hearing Brief and Objection to Settlement, Forward Township objects to the Settlement, arguing that the transaction does not provide a substantial public benefit pursuant to 66 Pa.C.S. §§ 1102 and 1103. Forward Township argues that ratepayers (acquired EBMA customers and existing PAWC water and wastewater customers) will pay higher rates under PAWC ownership than if EMBA retained ownership, and there is no substantial benefit to the public to outweigh that harm.<sup>14</sup> It avers that Elizabeth Borough is the only beneficiary of the sale and contends that the record does not support several of the alleged public benefits.<sup>15</sup> In particular, Forward Township contends that EBMA is capable of properly operating the system and has chosen not to, and the only barrier is the cost for hiring outside engineers to perform the LTCP work.<sup>16</sup> In this context, Forward Township claims that EBMA violated the Municipal Authorities Act and that residents in Forward Township should have received direct notice of the Application and public meetings and input hearing.<sup>17</sup>

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<sup>12</sup> Settlement (Appendix F) at 7.

<sup>13</sup> Settlement (Appendix G) at 7 (citing OCA St. 1-SR at 6-7; PAWC St. 2-R at 2-6; EBMA St. 1-R at 2-3; Tr. 44-50 (Boucher), 136-43 (Craighead)).

<sup>14</sup> Objections at 6-10.

<sup>15</sup> Objections at 8-14.

<sup>16</sup> Objections at 11-13.

<sup>17</sup> Objections at 2, 7, 12.

Based on EBMA's failure to use its funds to pursue the LTCP, with the result that the LTCP work will be more expensive, Forward Township seeks to recoup its equity in the EBMA system, as damages.<sup>18</sup> If the sale to PAWC is approved, Forward Township contends that the proposed ratemaking rate base should be lowered to \$22.1 million, as initially recommended by the OCA.<sup>19</sup>

## VI. LEGAL STANDARDS

The Commission's standards for reviewing a non-unanimous Settlement as proposed here, are the same as those for deciding a fully contested case. Accordingly, the Commission must determine that the proposed terms and conditions are in the public interest.<sup>20</sup> Substantial evidence consistent with the statutory requirements must support the proposed settlement.<sup>21</sup>

The burden of proof in this proceeding is upon the Applicant.<sup>22</sup> Because the settling parties request that the Commission enter an order in this proceeding approving the Settlement without modification, they share the burden of proof to show that the terms and conditions of the Settlement are in the public interest.<sup>23</sup> As the parties bearing the burden of proof, the Joint Petitioners must prove by a preponderance of the evidence that the Commission's issuance of a certificate of public convenience approving

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<sup>18</sup> Objections at 14-15.

<sup>19</sup> Objections at 15-16.

<sup>20</sup> *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. PUC v. C S Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991).

<sup>21</sup> *Popowsky v. PUC*, 805 A.2d 637 (Pa. Cmwlth. 2002); *ARIPPA v. Pa. PUC*, 792 A.2d 636 (Pa. Cmwlth. 2001).

<sup>22</sup> 66 Pa.C.S. § 332(a); *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

<sup>23</sup> *Id.*; *Pa. PUC v. City of Bethlehem – Water Dept.*, Docket No. R-2020-3020256 at 13 (Opinion and Order entered Apr. 15, 2021). In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. PUC v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991).

the Purchase Agreement and terms, as modified by the Settlement, is in the public interest because it will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.<sup>24</sup> However, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible.<sup>25</sup> Instead, the Commission “applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.”<sup>26</sup>

If evidence is presented to initially satisfy the Joint Petitioners’ burden of proof then the burden of going forward shifts to the opponent, here Forward Township. Forward Township must rebut the proponent’s case with co-equal or stronger evidence. If successful, the proponents’ burden of proof has not been satisfied. The Joint Petitioners now have to provide some additional evidence to rebut that of Forward Township.<sup>27</sup> While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission.<sup>28</sup>

The Asset Purchase Agreement (APA) requires the approval of the Commission as evidenced by its issuance of a certificate of public convenience.<sup>29</sup> Before the Commission may issue a certificate of public convenience it must find that the granting of such certificate is necessary or proper for the service, accommodation,

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<sup>24</sup> *City of York v. Pa. PUC*, 295 A.2d 825 (Pa. 1972) (*City of York*).

<sup>25</sup> *Popowsky v. Pa. PUC*, 937 A.2d 1040 (Pa. 2007) (*Verizon*).

<sup>26</sup> *Id.*

<sup>27</sup> *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983).

<sup>28</sup> *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

<sup>29</sup> 66 Pa.C.S. § 1102(a)(3).

convenience, or safety of the public.<sup>30</sup> Even where the Commission finds sufficient public benefit to grant a certificate of public convenience as necessary or proper for the service, accommodation, convenience, or safety of the public without imposing any conditions, the Commission nevertheless has discretion to impose conditions which it deems to be just and reasonable.<sup>31</sup> In an acquisition context when the Commission considers the public interest, it is contemplated that the benefits and detriments of the acquisition will be measured as they impact on all affected parties and not merely on one particular group or geographic subdivision.<sup>32</sup>

Further, pursuant to Section 1103 of the Code, PAWC must show it possesses the technical, legal and financial capability to own and operate the assets it seeks to purchase from EBMA.<sup>33</sup> As a certificated public utility, PAWC benefits from a rebuttable presumption that it possesses such requisite fitness.<sup>34</sup>

Section 1329 sets forth a procedure which permits a public utility to utilize fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation.<sup>35</sup> Under Section 1329, the value of water and wastewater system assets to be included in the acquiring utility's rate base for ratemaking purposes will be the lesser of the purchase price negotiated by the acquiring utility and seller or the "fair market value" of the selling utility's system.<sup>36</sup> The fair market value of the system is defined as the average of the two separate UVE appraisals conducted in compliance with Section 1329(a)(3).<sup>37</sup>

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<sup>30</sup> 66 Pa.C.S. § 1103(a).

<sup>31</sup> *Id.*

<sup>32</sup> *Middletown Twp. v. Pa. PUC*, 482 A.2d 674 (Pa. Cmwlth. 1984).

<sup>33</sup> *Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 762 (Pa. Cmwlth. 1985);  
*Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240 (Pa. Super. 1958).

<sup>34</sup> *South Hills Movers, Inc. v. Pa. PUC*, 601 A.2d 1308 (Pa. Cmwlth. 1992).

<sup>35</sup> 66 Pa.C.S. § 1329; *compare with* 66 Pa.C.S. § 1311(b)(1).

<sup>36</sup> 66 Pa.C.S. § 1329(c)(2).

<sup>37</sup> 66 Pa.C.S. § 1329(g).

In this matter, PAWC seeks additional approval of an APA and other connected agreements pursuant to Section 507 of the Public Utility Code.<sup>38</sup> Section 507 requires that contracts between a public utility and a municipal corporation (except for contracts 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 allow the contract to take effect by operation of law as evidenced 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. Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission grants its approval.

## VII. DISCUSSION

### A. Municipal Authorities Act and Damages

#### 1. Parties' Positions

In its Objections, Forward Township explains that it has been a ratepayer of EBMA since it entered an Agreement with EBMA in 1958.<sup>39</sup> Pursuant to that Agreement, Forward Township has collected fees from its residents, and, between 2019 and the present, Forward Township accounted for roughly 21% of EBMA's operating revenues.<sup>40</sup> Forward Township contends that it has contributed the same amount to EBMA's equity.

Forward Township claims that EBMA has not used those funds for their intended purpose, as required by Section 5612(a.1)(a) of the Municipal Authorities Act (the Act).<sup>41</sup> Further, EBMA now proposes to distribute that equity, in the form of funds

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<sup>38</sup> 66 Pa.C.S. § 507.

<sup>39</sup> Objections at 14 (citing PAWC Exhibit MK-1 (Appendix A-25.5)).

<sup>40</sup> *Id.* (citing Cross Exam Exhibit 3 (Q.2), Tr. 173-74).

<sup>41</sup> The Municipal Authorities Act is codified at 53 Pa.C.S. §§ 5601-5623.

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.<sup>42</sup> The Township argues that this conduct has harmed Forward Township and other ratepayers in that, its delay to use the funds to pursue the LTCP increased the cost to perform the LTCP work.<sup>43</sup> On this basis, Forward Township states that it "is entitled to recoup its equity as damages whether through this transaction, if approved, or otherwise and [Forward Township] demands the same."<sup>44</sup>

In its Reply, PAWC argues that Forward Township's arguments based on the Act raise issues and/or seek relief over which the Commission lacks jurisdiction.<sup>45</sup> Specifically, PAWC contends that the Commission has no jurisdiction to consider whether EBMA violated the Act by failing to utilize funds properly and has no jurisdiction to grant the relief requested, i.e. damages. In support, PAWC cites to cases holding that the Commission only has such powers as expressly conferred or necessarily implied by statute and argues that nothing in the Act or the Code gives the Commission authority to enforce the Act or to adjudicate dispute arising under it.<sup>46</sup> To the contrary, PAWC points to Section 5607(d)(9) of the Act, which states that "[t]he court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service." Moreover, Forward Township cites 53 Pa.C.S. § 5612(a.1)(1) as the basis for its claim for an equitable share of the proceeds of the sale, but 53 Pa.C.S. § 5612(a.1)(2) clearly gives jurisdiction over such claims to the civil courts.<sup>47</sup>

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<sup>42</sup> Objections at 15.

<sup>43</sup> *Id.* at 15 (citing PAWC St. 1 at 10).

<sup>44</sup> *Id.* at 15, 16.

<sup>45</sup> PAWC Reply at 12-14.

<sup>46</sup> *Id.* at 12-13 (citing *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977) (*Feingold*); *Comm. v. Butler Cnty. Mushroom Farm*, 454 A.2d 1 (Pa. 1982)).

<sup>47</sup> PAWC Reply at 13 (citing 53 Pa.C.S. § 5612(a.1)(2)) ("A ratepayer to an authority shall have a cause of action in the court of common pleas where the authority is located to seek the return of money expended in violation of [53 Pa.C.S. § 5612(a.1)(1)] from the recipient").

Regarding Forward Township’s claim that, as a customer of EBMA, it has equity in the System, PAWC avers that it is well settled that the Commission lacks authority to order a public utility to pay monetary damages.<sup>48</sup> Given that EBMA is not a public utility, PAWC asserts that, if the Commission does not have authority to order a public utility to pay damages, it has no such authority regarding a municipal authority.<sup>49</sup>

PAWC makes a further argument that the Commission has held that it lacks jurisdiction over a seller’s disposition of the proceeds of a sale under Section 1329 of the Public Utility Code, 66 Pa.C.S. § 1329.<sup>50</sup> Finally, PAWC points out that Forward Township has pending litigation in civil court where it can raise its concerns with the transaction that are outside the scope of the Commission’s jurisdiction.<sup>51</sup>

For all of those reasons, PAWC asks the Commission to deny and dismiss Forward Township’s Objections based on the Municipal Authorities Act, as well as the Township’s requests for damages and an “equitable share of the proceeds.”<sup>52</sup>

EBMA shares PAWC’s position that the Commission does not have jurisdiction to adjudicate matters involving (1) the service of a municipal authority or alleged violations of the Act and (2) how EBMA uses its sale proceeds.<sup>53</sup> EBMA makes the additional argument that there is no evidence or legal support for Forward Township’s

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<sup>48</sup> PAWC Reply at 13 (citing *Byer v. Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. 1977); *Feingold*).

<sup>49</sup> PAWC Reply at 13.

<sup>50</sup> *Id.* at 13-14 (citing *Application of Aqua Pa. Wastewater Inc. – Cheltenham Twp.*, Docket No. A-2019-3008491 (Order entered Oct. 24, 2019); *Application of Aqua Pa. Wastewater, Inc. – Willistown Twp.*, Docket No. A-2021-3027268 (Opinion and Order entered Jul. 8, 2022)).

<sup>51</sup> PAWC Reply at 14 (citing Forward Township Objections at 10, n.6).

<sup>52</sup> PAWC Reply at 14.

<sup>53</sup> EBMA Reply at 7, 9, 11-12.

claim that it owns any portion of EBMA's infrastructure.<sup>54</sup> EBMA asserts that, by its own admission, Forward agrees that its equity claim "is a contractual dispute between it and EBMA based upon a 1958 sewage service agreement."<sup>55</sup>

## 2. Analysis

As stated above, among Forward Township's objections to the sale of the System is the Township's contention that EBMA was able to – but chose not to – perform work on the LTCP. Forward Township argues that this intentional failure to use EBMA's funds for the LTCP work (1) violated its obligations under the Act, (2) caused harm to ratepayers by increasing the LTCP costs, which entitles Forward Township to recoup its equity in the System as damages, and (3) manufactures a false benefit from PAWC ownership.<sup>56</sup>

We find that the Commission does not have jurisdiction to consider issues (1) and (2). Whether Forward Township utilized its money for its "intended purpose" requires application and interpretation of Section 5612(a.1)(a) of the Municipal Authorities Act, which prohibits use of authority money 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)."

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<sup>54</sup> EBMA Reply at 7, 9; Tr. 194.

<sup>55</sup> EBMA Reply at 11.

<sup>56</sup> EBMA Reply at 10-12, 14-15.

The Commission is a creature of statute and has only the powers expressly conferred upon it by its enabling legislation.<sup>57</sup> Nothing in the Public Utility Code authorizes the Commission to apply or interpret the Municipal Authorities Act. Moreover, we agree with PAWC and EBMA that the Act expressly gives the court of common pleas exclusive jurisdiction to determine questions involving a municipal authority's service.<sup>58</sup>

Forward Township expressly asks as relief that its "equitable share of proceeds be distributed to it."<sup>59</sup> Where a ratepayer seeks a return of money from an authority on the basis that the authority did not use the money for its intended purpose under Section 5612(a.1)(1) of the Act, the Act specifies that its cause of action is in the court of common pleas.<sup>60</sup> Further, whatever the basis for a request for damages, it is well established that the Commission does not have the authority to order a public utility to pay monetary damages.<sup>61</sup> We agree with PAWC that "[i]f the Commission lacks authority to order a public utility to pay damages, it certainly lacks authority to order a municipal authority to pay damages."<sup>62</sup>

Issues raised by Forward Township about EBMA's ability to perform the LTCP work, however, are properly before the Commission because it bears on the consideration and weighing of the settling parties' claimed benefits from the transaction.

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<sup>57</sup> *Feingold*, 383 A.2d 791 (Pa. 1977) (citing *Allegheny Cnty. Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967)); *Del. River Port Auth. v. Pa. PUC*, 145 A.2d 172 (Pa. 1958).

<sup>58</sup> 53 Pa.C.S. § 5607(d)(9).

<sup>59</sup> Objections at 16.

<sup>60</sup> 53 Pa.C.S. § 5612(a.1)(2).

<sup>61</sup> *Feingold*; *Byer v. Peoples Nat. Gas Co.*, 380 A.2d 383 (Pa. Super. 1977); *DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980).

<sup>62</sup> PAWC Reply at 13.

Forward Township’s arguments on that issue, as well as its arguments about public notice and ratemaking rate base, are discussed in the sections below.

B. Public Notice and Opportunity to Participate

1. Parties’ Positions

In its Objections, Forward Township argues that its residents should have received direct notice of the Application filing and public input hearing.<sup>63</sup> It states:

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. 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.<sup>[64]</sup>

Forward Township avers that publishing notice is not sufficient.<sup>65</sup>

Several EBMA customers and residents in Forward and Elizabeth Townships also raised concerns about notice, arguing that the method and timing of notification, and the number and mode of public input hearings were not sufficient or effective. As a result, they contend that many people (1) are not informed about the sale itself or issues raised by it and (2) were not aware of the opportunities for participation, resulting in few people participating in EBMA’s public meetings or proceedings before the Commission.<sup>66</sup> Contributing to the problem, customers and residents voiced concerns about the compressed schedule, and asked that the Commission’s proceedings be

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<sup>63</sup> Objections at 14.

<sup>64</sup> *Id.* at 4 (citing Cross Exam Exhibit 3, Q.2).

<sup>65</sup> Objections at 14.

<sup>66</sup> Tr. 54-55 (Cline), 66 (Dowden), 72, 74-75 (Fisher), Tr. 132 (Benack).

extended to allow for more involvement by all impacted groups: “Put on the brakes, slow things down. Let’s get the public better informed.”<sup>67</sup>

Directly related, concerns were raised at the public input hearings about access to the Application and information about the sale. Participants testified that appendices to the APA and pertinent information about the sale, including witness testimony, projected rate increases for continued EMBA ownership, and the authority’s Articles of Incorporation, were either marked as confidential or otherwise not made publicly available for review or comment.<sup>68</sup>

Regarding notice, PAWC contends that it complied with all notice requirements, and that Forward Township’s objection that Township residents did not receive adequate notice of the filing of the Application and public input hearing should be denied and dismissed.<sup>69</sup> PAWC states that it provided the required personal notice of the Application to the customers of PAWC and EBMA during the conditional acceptance phase of the application process before the Commission. Forward Township is a bulk customer of EBMA and admits that it received notice of the Application.<sup>70</sup> EBMA also mailed an explanatory letter to all EBMA customers. PAWC asserts there is no requirement that PAWC or EBMA provide personal notice “to the customers of their customers.”<sup>71</sup>

PAWC also asserts that, even though direct notice to Forward Township residents was not required, the Township still received legally sufficient (constructive)

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<sup>67</sup> Tr. 109 (DeChicchis); *see also* Tr. 99-100, 108-09 (DeChicchis), 128-29 (Pollack).

<sup>68</sup> Tr. 54 (Cline), 72 (Fisher), 82, 85-86, 93, 98-101, 105 (DeChicchis), 128 (Pollack).

<sup>69</sup> PAWC Reply at 14-16.

<sup>70</sup> PAWC St. 1-R at 9.

<sup>71</sup> PAWC Reply at 15.

notice because PAWC published notice of the Application in the *Pennsylvania Bulletin*<sup>72</sup> and the *Pittsburgh Post-Gazette* on March 20 and March 27, 2025.<sup>73</sup> PAWC and EBMA also contend that Forward Township residents received legally sufficient notice of the public input hearing.<sup>74</sup> PAWC states:

The ALJs instructed PAWC to publish notice of the hearing in a newspaper for two consecutive weeks prior to the hearing, if feasible. PAWC published notice of the public input hearing in the *Pittsburgh Post-Gazette*, a newspaper of general circulation in the area served by EBMA, for two consecutive weeks prior to the hearing. In addition, as required by the ALJs, PAWC gave notice of the public input hearing through its website and social media posts (*e.g.*, Facebook, LinkedIn, X (f/k/a Twitter) and Instagram).<sup>[75]</sup>

Regarding the availability of information, PAWC responds that it marked two documents as “confidential” – the appraisers’ work papers and a map; otherwise, the full Application and all filed supporting materials, including direct testimony by PAWC and EBMA witnesses, were posted on the Commission’s website on January 29, 2025.<sup>76</sup>

For its part, EBMA responded that the additional documentation requested by Mr. DeChicchis, the 1950 Articles of Incorporation creating the EBMA, was publicly available through the Pennsylvania Department of State.<sup>77</sup> EBMA obtained the documents and attached them to its Supplemental Rebuttal testimony as EBMA Exhibit TG-1.

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<sup>72</sup> *Id.* (citing *Application of PPL Elec. Utils. Corp.*, Docket No. A-2009-2082652 (Opinion and Order entered May 28, 2009)).

<sup>73</sup> PAWC St. 1 at 9.

<sup>74</sup> PAWC Reply at 15; EBMA Reply at 11.

<sup>75</sup> PAWC St. 1-R at 8; Tr. 13; *see also* Proof of Publication of Notice of Public Input Hearing (filed June 4, 2025).

<sup>76</sup> PAWC St. 1-R at 9-10.

<sup>77</sup> *See also* EBMA St. 1-R.2 at 2-3.

## 2. Analysis

As held by the Commonwealth Court in *McCloskey v. Pennsylvania Public Utility Commission*, individualized notice of applications filed under Section 1329 is required for ratepayers because a rate base determination is a substantial property interest.<sup>78</sup> Also, ratepayers must be given opportunity to participate in the proceeding. As a bulk service customer, Forward Township is a “ratepayer” of EBMA but its residents are not. Therefore, we do not find that individualized notice to Forward Township residents of the application filing was required.<sup>79</sup> We also concur with PAWC and EBMA that required notice was provided for the June 5, 2025 public input hearing.

Regarding public notice for the public meetings that EBMA held leading up to the signing of the APA, we agree with PAWC that those meetings were held before the Commission adopted a public hearing requirement and, further, that the requirement is limited to ratepayers of the selling utility and does not apply to Forward Township residents, who are not EBMA ratepayers.<sup>80</sup>

Accordingly, we do not find that Forward Township has shown a failure to comply with the Commission’s or presiding officers’ notice requirements. We note, however, that where the sale of a system will impact service and rates for a broader group than direct “ratepayers,” additional forms of notice by the buyer and seller about opportunities to participate in the proceedings may be appropriate and beneficial. The Commission provided examples of effective notice in its order adopting the requirement for public meetings:

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<sup>78</sup> *McCloskey*.

<sup>79</sup> *Id.*; *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Supp. Implementation Order entered Feb. 28, 2019).

<sup>80</sup> PAWC Reply at 14, n.4; *Valuation of Acquired Municipal Water & Wastewater Systems – Act 12 of 2016 Implementation*, Docket No. M-2016-2543193 (Final Supp. Implementation Order entered Jul. 2, 2024) (*2024 FSIO*).

local newspapers, community newsletters, faith community bulletins, public service announcements, social media posts shared with community groups and municipalities, local radio and television stations, posting in areas of high foot traffic, communications to local community groups, and posting shared with local community centers. Direct outreach to concerned residents may also be considered as notice, whether through a phone call, text, letter, or e-mail.<sup>[81]</sup>

We next consider the matters raised about public access, both to information about the sale and to the Commission’s proceedings due to their brevity. As discussed in Section III above, a six-month statutory deadline is applied to applications filed under Section 1329.<sup>82</sup> This requires a significantly accelerated litigation schedule,<sup>83</sup> shortening the time available for the public to participate. However, we do not find that any avoidable limits were placed on public access to the Commission’s proceedings. With the exception of the work papers and map, the entirety of the evidentiary record is public, including all testimony, exhibits, settlement materials, and briefs.<sup>84</sup> Further, the additional documentation requested by Mr. DeChicchis, the 1950 Articles of Incorporation creating the EBMA, was admitted into the record and posted on the Commission’s website on June 18, 2025.<sup>85</sup>

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<sup>81</sup> 2024 FSIO at 52.

<sup>82</sup> 66 Pa.C.S. § 1329(d)(2); *McCloskey*.

<sup>83</sup> In the instant case, the time between the May 30, 2025 protest deadline and close of the evidentiary record was 49 days. 55 Pa.B. 3329 (May 30, 2025); *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Tentative Implementation Order entered July 21, 2016) (providing the Commission’s guidelines for procedural schedules in Section 1329 proceedings).

<sup>84</sup> It is noted that no party challenged the designation of the work papers and map as confidential. It is further noted that, while all hearings in this matter and the related transcripts are public, they are not posted on the Commission’s website because there is a fee to purchase transcripts from the court reporting service.

<sup>85</sup> See EBMA Exhibit TG-1; see also EBMA St. 1-R.2 at 2-3.

C. Sections 1102 and 1103

1. Fitness

Pursuant to 66 Pa.C.S. § 1103, PAWC must demonstrate that it possesses the technical, legal, and financial capability to own and operate the assets it seeks to purchase from EBMA.<sup>86</sup> As a certificated public utility, however, PAWC benefits from a rebuttable presumption that it possesses such requisite fitness.<sup>87</sup>

Since no party has challenged or otherwise questioned PAWC's fitness to take over EBMA, it may be presumed that the Company does, in fact, possess the requisite fitness for approval of the transaction. However, a discussion of PAWC's fitness may be found in the Direct Testimony of PAWC witnesses Kohl, Hufton, and Gress.<sup>88</sup> By way of brief summary, PAWC stated the following in its testimony:

PAWC is the Commonwealth's largest water and wastewater provider, with total assets of \$7.3 billion and annual revenues of \$965 million for 2023. For 2023, PAWC had operating income of approximately \$465 million and net income of approximately \$300 million. These operating results produced cash flows from operations of approximately \$585 million.<sup>[89]</sup>

PAWC currently employs approximately 1,150 professionals with expertise in all areas of water and wastewater utility operations, including engineering, regulatory compliance, water and wastewater treatment plant operation and maintenance, distribution and collection system operation and maintenance, materials

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<sup>86</sup> *Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240 (Pa. Super. 1958).

<sup>87</sup> *South Hills Movers, Inc. v. Pa. PUC*, 601 A.2d 1308 (Pa. Cmwlth. 1992).

<sup>88</sup> *See, e.g.*, PAWC St. 1 at 16-18, 24-26; PAWC St. 2 at 10-14, 23-27; PAWC St. 3 at 3-5.

<sup>89</sup> PAWC St. 3 at 3.

management, risk management, human resources, legal, accounting, and customer service.<sup>[90]</sup>

PAWC has extensive experience in the operation of wastewater collection and treatment systems including specific experience with the types of treatment technologies employed in the System.<sup>[91]</sup>

PAWC has an established track record of successfully managing large capital investment projects in order to provide reliable service to the communities it serves. PAWC has an ongoing proactive program of capital investment focused on systematically replacing and adding new pipes, treatment and pumping facilities, and other water and wastewater infrastructure; thereby minimizing customer disruption caused by infrastructure failure. PAWC has funded in excess of \$1 billion in capital construction over the past five years with expenditures expected to total \$470 million to \$600 million per year for the next five years.<sup>[92]</sup>

Upon consideration of the record evidence of PAWC's fitness set forth in its testimony, and in the absence of any evidence challenging its fitness, we find that PAWC does, in fact, possess the requisite fitness supporting approval of the Application.

## 2. Affirmative Public Benefits

Having established PAWC's fitness, we now turn to the issue of whether PAWC and the settling parties have proven by a preponderance of the evidence that approval of the Application is in the public interest by demonstrating that the transaction, as modified by the terms of Settlement, will produce affirmative public benefits. In *City of York*, the Pennsylvania Supreme Court held that the proponents of a merger or acquisition must show, by a preponderance of the evidence, that the proposed transaction

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<sup>90</sup> PAWC St. 1 at 16-17.

<sup>91</sup> *Id.* at 18-19.

<sup>92</sup> PAWC St. 2 at 13-14.

will promote the service, accommodation, convenience or safety of the public in some substantial way. The appellate courts have specifically addressed this standard in the context of applications filed under Section 1329. In determining whether an acquisition passes the affirmative public benefit test, the Commission is to weigh all factors for and against the acquisition.<sup>93</sup> That standard was upheld and clarified in *Cicero v. Pennsylvania Public Utility Commission*, 300 A.3d 1106 (July 31, 2023), *alloc. granted*, 320 A.3d 667 (June 14, 2024) (*Cicero*), where the Commonwealth Court held that there must be reasons specific to the instant transaction to support a finding of net benefits. The Court stated:

Where...there are **no benefits that differ substantially** from the benefits already being provided by the existing system operator, those alleged benefits arise as a result of the acquiring utility's fitness, rather than from the actual transaction, and where there are acknowledged or known harms that will result from the transaction, there are insufficient net benefits to support approving the transaction and granting the [Certificate] under Section 1103(a).<sup>[94]</sup>

In other words, there must be a showing that the level of service and benefits provided to the seller's customers would be materially different under the buyer's ownership, especially if the existing system is operating safely and reliably and there are acknowledged or known harms from the transaction.<sup>95</sup>

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<sup>93</sup> *McCloskey*.

<sup>94</sup> *Cicero* at 1119 (emphasis in original).

<sup>95</sup> *See Application of Aqua Pa. Wastewater, Inc. – City of Beaver Falls*, Docket No. A-2022-3033138 at 15-16 (Opinion and Order entered June 18, 2025) (*Beaver Falls*) (citing *Cicero* at 1118).

a. Parties' Positions

PAWC and EBMA argue that the transaction, with the conditions described in the Settlement, benefits all of the stakeholder groups impacted by the transaction in a substantial way: the public; EBMA and Elizabeth Township; the existing customers of EBMA's System; and the existing customers of PAWC. As their positions overlap substantially, they are discussed together.

Regarding benefits to the general public, PAWC submits that the transaction achieves the General Assembly's goals when it enacted Section 1329, as the Commission has recognized that Section 1329 reflects a Legislative determination that fair market value acquisitions of municipal water and wastewater systems further the public interest.<sup>96</sup> Additionally, both PAWC and EBMA argue that the acquisition would benefit the public by promoting regionalization and consolidation, consistent with the Commission's regulatory policy and notes that, even without a physical interconnection between systems, the EBMA system can share equipment and staff with PAWC's nearby McKeesport system, as well as sharing cost savings from the additional purchasing power of a larger enterprise.<sup>97</sup>

PAWC and EBMA also contend that the transaction benefits the public at large due to its environmental benefits. PAWC introduced evidence about citations from the Allegheny County Health Department for exceeding permitted effluent limits for fecal coliform bacteria and for missing/damaged air diffusers in the aeration basins, and not

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<sup>96</sup> Settlement (Appendix D) at 4 (citing *Implementation of Section 1329 of the Public Utility Code – Tentative Implementation Order*, Docket No. M-2016-2543193 (Order entered Jul. 21, 2016); *Implementation of Section 1329 of the Public Utility Code – Tentative Supp. Implementation Order*, Docket No. M-2016-2543193 (Order entered Sept. 20, 2018)).

<sup>97</sup> Settlement (Appendix D) at 4-5, (Appendix E) at 10; *see* PAWC St. 1 at 16, 22-24, 1-R at 5.

having a certified operator, as well as lack of an Industrial Pretreatment Program recommended by DEP.<sup>98</sup>

Further, both parties state that EBMA has been under directive from DEP to reduce sewer overflow events since at least 2004 when EBMA initially developed its LTCP in 2004, which requires extensive expansion and improvements to the collection system and treatment plant in order to provide long-term capacity for customers, and that EBMA did not meet the original or deferred schedule for completion.<sup>99</sup> According to PAWC and EBMA, the System's treatment works are currently in hydraulic and organic overload, which has resulted in hundreds of sewer overflow events per year where untreated sewage was discharged into the Monongahela River.<sup>100</sup> These discharges affect the residents in Elizabeth Borough as well as the residents of other area municipalities. PAWC plans to negotiate with DEP for a new compliance schedule for the LTCP and assume responsibility for implementing the LTCP and its projects. Those projects constitute the bulk of the \$25.9 million that PAWC says it will invest in the System after closing.<sup>101</sup>

The Company and EBMA argue that the transaction provides public benefits to the seller, area municipalities and their residents. Through the sale, EBMA will avoid significant future costs and, instead will receive \$28,000,000, which it can use to eliminate its existing long-term debt and save thousands of dollars in public funds.<sup>102</sup>

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<sup>98</sup> Settlement (Appendix D) at 5-6, (Appendix E) at 8; *see* PAWC St. 2 at 19, 20).

<sup>99</sup> Settlement (Appendix D) at 6-7, (Appendix E) at 8; *see* PAWC St. 2 at 9, 15, 19).

<sup>100</sup> Settlement (Appendix D) at 6, 8-9, (Appendix E) at 7-8; *see* PAWC St. 2 at 9.

<sup>101</sup> Settlement (Appendix D) at 7-8, (Appendix E) at 8-9; *see* PAWC St. 2 at 13, 21; PAWC Exhibit DJH-2.

<sup>102</sup> Settlement (Appendix D) at 9 (citing EBMA St. 1 at 3, 4, 7; PAWC St. 1 at 11; Cross Exam Exhibit 4 at 2); *see also* PAWC St. 2 at 21.

PAWC also identifies that Elizabeth Township will receive \$2,750,000 from the sale, which it can use to benefit the public in its township.

According to PAWC, EBMA customers will benefit from having expanded call center hours and a larger team devoted to their customer service; the convenience of getting one consolidated bill for PAWC water and wastewater service; gaining access to PAWC's customer assistance programs and, for customers already enrolled in PAWC's bill discount program for water service, automatic enrollment for their wastewater service; having the Commission oversee their rates and service quality; and also from PAWC's security, emergency response, and business continuity plans, which EBMA does not have in place.<sup>103</sup>

The Company avers that PAWC, specifically, would benefit from the transaction by becoming a larger company through gaining 672 direct customers and 3 bulk customers, increasing its efficiency, and sharing personnel and equipment between its EBMA and McKeesport systems.<sup>104</sup> Because PAWC also provides water service to much of EBMA's service territory, the Company asserts that it will be able to better coordinate construction projects and more efficiently repair infrastructure.

Additionally, PAWC claims that expanding its wastewater customer base helps keep rates stable for all PAWC wastewater customers by allowing the costs of operating the Company's wastewater system to be shared among more customers, which is a further benefit of the proposed transaction.<sup>105</sup>

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<sup>103</sup> Settlement (Appendix D) at 11 (citing EBMA St. 1 at 10, 11; PAWC St. 2 at 30, 31; PAWC St. 1 at 19, 20; PAWC St. 3-R at 5-6); *see also* Settlement (Appendix E) at 11.

<sup>104</sup> Settlement (Appendix D) at 10 (citing PAWC St. 2 at 10, 11, 18, 23; PAWC St. 1-R at 5).

<sup>105</sup> Settlement (Appendix D) at 10 (citing PAWC St. 1 at 21).

PAWC and EMBA contend that if EBMA retains ownership of the System, it would need to increase its monthly bills for average residential customers utilizing 3,000 gallons to approximately \$114.23.<sup>106</sup> PAWC compares this to its current average monthly combined sewer system bill for residential customers utilizing 3,000 gallons, which is \$98.36.<sup>107</sup>

If PAWC acquires EBMA, based on the information the Company put in customer notices for the Application, rates could potentially increase by approximately 105% for EBMA customers, 1.1% for PAWC's existing wastewater customers, and 0.2% for PAWC's existing water customers.<sup>108</sup> PAWC and EBMA point to provisions of the Settlement, which they assert will substantially reduce those estimates for the potential rate impact for EBMA customers in the near-term.<sup>109</sup> In particular, they note that Paragraphs 22.b and 22.c impose limits on the rate increases that PAWC can propose for the EBMA zone in the Company's first and second base rate cases in which the System is included. Consistent with Section 1329, rates for EBMA customers will not change at the time PAWC takes ownership.<sup>110</sup> Likewise, the acquisition will not affect rates for existing PAWC customers until the first base rate case in which the System's assets are included, at which time the Commission will set just and reasonable rates.<sup>111</sup>

Additionally, PAWC argues that the rate impacts should not be considered a detriment of the transaction because the rate increase flows directly from the valuation method in Section 1329, so the General Assembly must have determined that rate

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<sup>106</sup> Settlement (Appendix D) at 13, (Appendix E) at 7; *see* EBMA St. 1 at 9-10; EBMA St. 1-R at 2-3.

<sup>107</sup> Settlement (Appendix D) at 13 (citing PAWC St. 3 at 12).

<sup>108</sup> Settlement (Appendix D) at 13 (citing PAWC St. 3 at 11-13).

<sup>109</sup> Settlement (Appendix D) at 13, (Appendix E) at 13; *see* PAWC St. 3 at 11-13; Settlement ¶¶ 22.b, 22.c.

<sup>110</sup> Settlement (Appendix D) at 12, (Appendix E) at 13; *see* 66 Pa.C.S. § 1329(d)(1)(v); PAWC St. 1 at 15; PAWC St. 3 at 8; Settlement ¶ 20.

<sup>111</sup> Settlement (Appendix D) at 13 (citing 66 Pa.C.S. § 1301).

increases due to the use of that methodology were acceptable as a matter of public policy.<sup>112</sup> In the alternative, if these rate impacts are considered a detriment, they are more than outweighed by all the benefits of the transaction.

I&E agrees that PAWC's acquisition of the EBMA System will provide the affirmative public benefits set forth in PAWC's testimony and emphasizes the value of the public benefits will be better realized because the Settlement contains numerous terms to protect PAWC's ratepayers, both existing and those acquired through this transaction.<sup>113</sup>

The OCA does not discuss affirmative benefits but, as noted above, in the context of addressing public benefits from approval of the Settlement, the OCA contends that EBMA does not have the necessary technical expertise on staff to run and maintain the system and complete the requirements of the LTCP.<sup>114</sup>

Forward Township challenges claims by the settling parties that the proposed transaction provides substantial public benefits for purposes of Sections 1102 and 1103 of the Code and the *Cicero* and *McCloskey* cases sufficient to offset the rate impact on EBMA and PAWC customers. It argues that residential rates would increase a minimum of 105% and as much as 137% if PAWC takes ownership.<sup>115</sup> The Township contends that, if EBMA retains ownership under the same circumstances, rates would only increase to \$114.23, or by 86% in the worst case scenario.<sup>116</sup> The transaction would also result in higher rates for current PAWC customers, of up to 1.1%.<sup>117</sup>

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<sup>112</sup> Settlement (Appendix D) at 13-14.

<sup>113</sup> Settlement (Appendix F) at 6-7.

<sup>114</sup> Settlement (Appendix G) at 7 (citing OCA St. 1-SR at 6-7; PAWC St. 2-R at 2-6; EBMA St. 1-R at 2-3; Tr. 44-50 (Boucher), 136-43 (Craighead)).

<sup>115</sup> Objections at 7-8 (citing Cross Exam Exhibit 1; PAWC Exhibit MK-1 (Appendix 18-d)).

<sup>116</sup> Objections at 7 (citing Cross Exam Exhibit 2, Q.10).

<sup>117</sup> Objections at 8 (citing OCA St. 2 at 10; PAWC Exhibit MK-1 (Appendix 18-d)).

Forward Township argues that the only beneficiary of the proposed sale is Elizabeth Borough, which will receive the proceeds.<sup>118</sup> Further, the Township argues that the benefit to Elizabeth Borough is reduced because the Borough will pay a portion of the sale proceeds to Elizabeth Township.<sup>119</sup>

The Township also contends that any delay in performing the LTCP, with resulting sewage overflow events, was intentional non-performance by EBMA and argues that the following evidence establishes EBMA can competently perform the work necessary to complete the LTCP and operate the system in compliance with all government mandates:<sup>120</sup>

- EBMA witness Guffey testified the only reason for not completing the LTCP is cost rather than fitness; EBMA has been able to manage the operations.<sup>121</sup>
- EBMA can obtain loans.<sup>122</sup>
- EBMA is not under any Corrective Action Plan nor is there any connection moratorium.<sup>123</sup>
- There are no public complaints in the record as to service issues.<sup>124</sup>

Forward asserts that, as residents would receive no benefit from alleged PAWC expertise or experience to outweigh the harm from PAWC's rate increases, PAWC and the Joint Petitioners have not shown the proposed transaction would provide a substantial net public benefit under Sections 1102, 1103 and *Cicero*.<sup>125</sup>

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118 Objections at 8-11.

119 *Id.* at 9.

120 Objections at 10-12.

121 Tr. 166-68 (Guffey); Cross Exam Exhibit 2, Q.35.

122 Tr. 169-70 (Guffey); Cross Exam Exhibit 2, Q.10-1.

123 PAWC St. 2 at 20; OCA St. 1 at 5.

124 Objections at 13.

125 *Id.* at 6-7, 10-12.

Finally, Forward Township contends that the transaction does not promote the goal of regionalization because Forward will still own and maintain its own system. The Township states that “[i]f 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.”<sup>126</sup>

b. Analysis

As stated above, for PAWC and the settling parties to satisfy their burden to demonstrate that net affirmative benefits will result from the transaction, they must show benefits that differ from the services or upgrades that the existing operator is capable of providing.<sup>127</sup> As the Commission recently addressed in *Beaver Falls*, the difference must be substantial, especially where (1) the seller’s system is currently operating safely and reliably and (2) there are acknowledged harms from the proposed transaction.<sup>128</sup>

In the instant matter, Forward Township and many of the public input hearing participants contend that rate increases under PAWC ownership will be a harmful consequence from the proposed transaction. PAWC acknowledges that, at current rates, System revenues will not cover the costs directly resulting from acquisition, i.e. all else being equal, rates for acquired or existing PAWC customers would have to increase for the Company to recover the revenue deficiency.<sup>129</sup> The record in this case also shows that near-term rate increases are projected for System customers if EBMA retains ownership. We discuss rate impact more fully below, in our weighing of all the factors for and against the transaction required by *McCloskey* (applying *City of York*).

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<sup>126</sup> Objections at 2.

<sup>127</sup> *City of York; Cicero*.

<sup>128</sup> *See Beaver Falls* at 15-16 (discussing *Cicero*).

<sup>129</sup> PAWC St. 3 at 11; PAWC Exhibit SDG-1 at 4; *see also* PAWC Exhibit MK-1 (Appendix A-18-d).

We turn now to consideration of the record evidence, briefs, and statements in support addressing whether PAWC would provide the same services or upgrades that the existing operator is capable of providing.

The record in this proceeding documents EBMA's history of environmental compliance issues.<sup>130</sup> Of particular concern is that:

- In each of the last three annual inspections conducted by the Allegheny County Health Department, EBMA has been cited for exceeding permitted effluent limits for fecal coliform bacteria and for missing/damaged air diffusers in the aeration basins.<sup>131</sup>
- In 2023, the ACHD found there is no certified Operator in Responsible Charge for the facility as required by DEP regulations.<sup>132</sup>
- The System's treatment works are currently in hydraulic and organic overload, resulting in numerous combined sewer overflow events that occur annually at the System's combined sewer outfall/regulator structures.<sup>133</sup>
- For the five years ending 2023, EBMA reported an average of 242 sewer overflow events per year where untreated sewage was discharged into the Monongahela River.<sup>134</sup>
- EBMA has been under directive from the Pennsylvania DEP to reduce CSO events through the development and implementation of a LTCP since at least 2004. The LTCP is stalled and years away from completion.<sup>135</sup> In the meantime, CSO events continue unabated.<sup>136</sup>

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130 Settlement (Appendix D) at 5-6, (Appendix E) at 8-9.

131 PAWC St. 2 at 20.

132 *Id.*

133 *Id.* at 9.

134 *Id.*

135 *Id.* at 18; PAWC St. 2-R at 3.

136 PAWC St. 2-R at 4-5.

Forward Township agrees that the LTCP work has to be done.<sup>137</sup> But the Township disputes that EBMA lacks technical fitness to perform the work and argues that cost is the only barrier to EBMA completing the LTCP.<sup>138</sup> Thus it contends that PAWC ownership would increase rates without providing any benefit that EBMA cannot provide itself.

However, Mr. Guffey explained that cost is not EBMA's only major concern. He stated:

A primary concern is the projected increase in sewage rates, which could rise to \$114.23 per month if EBMA proceeds with its \$24.6 million LTCP. However, in addition to the financial burden that will be attributed to our ratepayers, another major concern is EBMA's technical capability to complete the LTCP.<sup>[139]</sup>

EBMA further addressed its concerns about continuing to own the System in its Statement in Support, stating:

EBMA also does not have the manpower to implement and operate an expanded System. EBMA is governed by a five-member volunteer board, operates without a general manager, employs only two staff members, and relies on a third-party contractor for system operations. This limited technical capacity constrains EBMA's ability to operate and modernize the System effectively. If this Transaction is not approved, EBMA would be forced to supplement its staff through new hires, that will add to EBMA's bottom line, and increase rates further.<sup>[140]</sup>

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<sup>137</sup> Objections at 15.

<sup>138</sup> Objections at 7, 11; *see also* Tr. 167-68 (Guffey).

<sup>139</sup> EBMA St. 1-R.2 at 2-3.

<sup>140</sup> Settlement (Appendix E) at 7.

Thus, the problem is two-fold. First, there is the concern that current EBMA staff is not capable of managing the improvement projects, LTCP compliance, and operating the modernized system. Second, the rate projections for EBMA funding the estimated \$24.6 million cost for the LTCP projects do not include the costs for outside hires that would be needed under continued EBMA ownership.

We recognize further that no party has contested that EBMA's delay in executing the LTCP caused the estimated cost for completing the LTCP work to increase. According to PAWC:

by delaying this project for several years, the Authority will incur an additional \$12.9 million to deliver the same project it was under regulatory obligation to do back in 2018. This is a 66 percent increase in the project cost that will have to be borne by the Authority's customers.<sup>[141]</sup>

Regardless of the motives ascribed to EBMA's delay, the fact remains that EBMA is more than 6 years behind schedule on the LTCP project.<sup>142</sup> Further, as PAWC witness Hufton explained:

More delays are on the way, as the Authority currently has no active work streams proceeding on the LTCP project. By the time the project actually gets completed, it will likely cost even significantly more than the \$32.5 million figure due to continued inflation.<sup>[143]</sup>

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141 PAWC St. 2 at 15.

142 *Id.*

143 *Id.*

Based on the foregoing, we find there is no reasonable assurance that EBMA is technically capable of completing the LTCP work, without substantial rate increases, and in a timely way.<sup>144</sup>

If the System is sold to PAWC, it will negotiate a Consent Order and Agreement with DEP to establish a new LTCP compliance schedule and assume responsibility for implementation.<sup>145</sup> Further, PAWC has a five-year capital plan that calls for investing \$25.9 million in the System.<sup>146</sup> Additionally, PAWC has a track record of successfully addressing DEP and Environmental Protection Agency compliance orders requiring operational improvements and substantial capital investments in acquired wastewater systems.<sup>147</sup>

In its Objections, Forward Township argues that any benefits from the transaction are not sufficient to outweigh the extreme rate increases that would result from PAWC ownership.<sup>148</sup> The Township claims that EBMA can borrow money to perform the work itself and rates would be lower than if acquired by PAWC.<sup>149</sup> That claim is not borne out by the evidence. Rather, PAWC and EBMA have demonstrated that the rate impact may be less if PAWC acquires the System.<sup>150</sup>

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<sup>144</sup> See, e.g., PAWC St. 2-R at 2-6; EBMA St. 1-R at 2-3; Tr. 44-50, 136-43; see also OCA St. 1-SR at 6-7.

<sup>145</sup> *Id.* at 4, 21.

<sup>146</sup> PAWC St. 2 at 13; PAWC Exhibit DJH-2. The majority of costs in the capital plan are related to improvements under the LTCP. *Id.*

<sup>147</sup> PAWC St. 2 at 25.

<sup>148</sup> The Township claims that, under the Settlement, rates would rise 60% or more in the first two years and more after. Objections at 2, n.2. This claim will be further addressed in the discussion below on the settlement terms addressing rates.

<sup>149</sup> Objections at 7, 12, n.9.

<sup>150</sup> PAWC Reply at 27-30; EBMA Reply at 4-5.

Specifically, if EBMA maintains ownership of the System, it projects that rates would need to increase to about \$114.23 per month, or 88.5%, to fund the LTCP.<sup>151</sup> EBMA would increase its rates at the time the borrowing took place.<sup>152</sup>

We note further that, as EBMA pointed out, the projected LTCP cost of \$24.6 million does not include the costs for hiring additional staff in order to implement and operate a modernized and expanded System.<sup>153</sup> Further, it does not take into consideration any further delays in implementing the LTCP and continued inflation.<sup>154</sup>

In comparison, the record shows that, if PAWC acquires the system, rates for EBMA's customers would not increase before the first base rate case in which the System is included.<sup>155</sup> In that first base rate case, pursuant to the Settlement, PAWC would not propose a rate increase for acquired EBMA customers of more than 30% of EBMA's rates in effect at closing. In the second base rate case in which the system is included, PAWC would not propose a rate increase for EBMA's customers of more than 60% of EBMA's rates in effect at closing. At EBMA's current rate of \$60.61 for a customer using 3,000 gallons per month, a 30% increase would be a bill of about \$78.80.<sup>156</sup> A 60% increase to the same bill would increase the bill to about \$97.00.<sup>157</sup>

PAWC contends that its acquisition of the System would result in no immediate rate increases for EBMA customers followed by gradual, regulated increases

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<sup>151</sup> Cross Exam Exhibit 2, Q.10; EBMA St. 1 at 9.

<sup>152</sup> Cross Exam Exhibit 2, Q.11.

<sup>153</sup> Settlement (Appendix E) at 7.

<sup>154</sup> PAWC St. 2 at 15.

<sup>155</sup> Settlement ¶ 22.b.

<sup>156</sup>  $\$60.61 \times 130\% = \$78.79$ .

<sup>157</sup>  $\$60.61 \times 160\% = \$96.98$ .

capped at specific percentages. By comparison, there would be no regulatory review of EMBA increases.<sup>158</sup>

While rates will increase under EBMA or PAWC ownership in the initial years of implementing the LTCP, the estimates in the evidentiary record indicate that the initial rate increases for EBMA customers will be less under PAWC ownership. We also conclude that acquisition of EBMA by PAWC would provide greater certainty that the LTCP will be completed and in a timely manner, with rate increase protections. We find this to be a material benefit that differs from the service that EBMA is able to provide.

We note that the rate impacts that we are comparing in this case are not apples to apples. The rate impact if EBMA keeps the system was derived from the cost to upgrade the system, i.e. the LTCP projects.<sup>159</sup> The rate impact if PAWC buys the System was derived from the cost to purchase EBMA.<sup>160</sup> It does not include any costs for PAWC to upgrade the system.<sup>161</sup>

There will be a cost for PAWC to do the LTCP project – the capital improvements that the Company includes in its \$25.9 million, 5-year capital plan for the System. PAWC will seek to recover its expenditures in future rate cases. But those costs, like the costs of its capital plans for other wastewater service areas, can be spread over the Company’s broader customer base of wastewater and water customers. EBMA can

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<sup>158</sup> PAWC Reply at 16.

<sup>159</sup> Specifically, the cost to fund the LTCP projects.

<sup>160</sup> Specifically, the rate impact is the amount being put into rate base plus return on the rate base (profit), plus PAWC’s estimated year-one expenses for the System (O&M, taxes, depreciation), less the estimated year-one revenues. PAWC Exhibit SDG-1 at 4; PAWC Exhibit MK-1 (Appendix K). Note that, under the Settlement, if the customer notice calculations were re-run, the rate impacts would be slightly lower because the agreed-on ratemaking rate base is slightly lower than \$28 million.

<sup>161</sup> See PAWC Reply at 16, n.5; PAWC Exhibit SDG-1 at 4.

only recover the costs from its existing customer base. That is a significant benefit to EBMA customers that flows from the consolidation.

For the existing PAWC wastewater and water customers, however, adding System costs to shared costs is expected to increase their rates. In this respect, they will not benefit from consolidation in the near-term when EBMA customers are not covering the costs for their own system and thus not contributing to the broader shared costs.

For this reason, the settling parties emphasize that the provisions of the Settlement addressing the DSIC, cost of service studies, and Section 1311(c) are important.<sup>162</sup> They are protections for the existing PAWC wastewater and water customers because they help to limit and balance how much their rates increase to subsidize EBMA costs.

Another mitigation of the rate impact is that the ratemaking rate base for this specific transaction is close to, and under the Settlement is reduced to, a level that is consistent with the Commission's Reasonableness Review Ratio (RRR) guidance. The ratio of the depreciated original cost of the System assets to the Settlement ratemaking rate base is 1.63, which is equal to the most recent RRR published prior to the filing of PAWC's Application. While the APA in this matter was executed before the RRR was developed, the parties gave consideration to the RRR because it is an available metric.<sup>163</sup>

As part of our weighing of the claimed benefits and harms of the transaction, we also reviewed Forward Township's challenge to PAWC's assertion that

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<sup>162</sup> Settlement ¶¶ 23, 28, 35, 36. See discussion below in Section VII.D.1, 3, 8.

<sup>163</sup> See, e.g., PAWC St. 1 at 6-7; Settlement (Appendix F) at 8; Settlement (Appendix G) at 10-11. The Settlement's modification to the ratemaking rate base is discussed further in Section VII.D.2 below.

EBMA ratepayers will benefit from regionalization.<sup>164</sup> It argues that Forward Township is an EBMA ratepayer, but PAWC is not acquiring the Forward Township system that feeds into EBMA facilities. While true that the Township system will continue as a separate entity, we find that EBMA ratepayers, including Forward Township, will benefit from regionalization because EBMA's close proximity to PAWC's existing wastewater system, seven miles away in McKeesport, will allow those systems to share equipment, staff, and other resources to improve the economic efficiency of both.<sup>165</sup>

We also agree with PAWC that there are consolidation benefits from the transaction because PAWC already provides water service to most of the EBMA customers.<sup>166</sup> Also, those customers receiving both services will receive one bill from one company for water and wastewater.<sup>167</sup>

As a general matter, Forward Township's objections are focused on the impacts of the proposed transaction on Forward Township, EBMA and Elizabeth Borough. As EBMA observed, Forward Township did not challenge the record evidence supporting benefits to the broader public, which were identified and discussed in the settling parties' statements in support of the settlement.<sup>168</sup> While it opposes the sale and the distribution of assets, the Township did not dispute that the sale would benefit Elizabeth Borough or Elizabeth Township. Moreover, it did not identify any harms to those groups.

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<sup>164</sup> Objections at 12-13.

<sup>165</sup> Additionally, those customers will receive one bill for both services. PAWC St. 1 at 19; EBMA St. 1 at 11.

<sup>166</sup> PAWC St. 2 at 10.

<sup>167</sup> Settlement (Appendix D) at 4-5; PAWC St. No 1 at 22-23.

<sup>168</sup> See Settlement (Appendix D) at 3-14, (Appendix E) at 4-12, (Appendix F) at 6-7, (Appendix G) at 7.

Consistent with the foregoing discussion, after weighing all factors for and against the acquisition, we find that PAWC and the settling parties have proven that the transaction is in the public interest and that the broader public, EBMA and Elizabeth Township, the existing customers of EBMA, and the existing customers of PAWC, will realize net affirmative benefits sufficient to warrant approval of the Application and, for the additional reasons discussed in the Section below, approval of the Settlement.

D. Section 1329 Analysis and Settlement Provisions

At the outset, we note that not every area of the Settlement was of interest to every settling party. Therefore, their respective statements in support only address those subject areas on which those parties took a position.<sup>169</sup> Further, to the extent any settling party's position is not discussed below, that is due to the support being repetitive of another party and/or our focus on the support we found most persuasive.

Forward Township objects to approval of the Settlement, as a whole, consistent with its position that the proposed sale to PAWC does not provide a substantial public benefit.<sup>170</sup> If the Commission disagrees and approves the Settlement and Application, the Township recommends a lower ratemaking rate base. That is considered below as part of the discussion of the relevant settlement provisions.<sup>171</sup>

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<sup>169</sup> The Settlement paragraph numbering that is referenced in the settling parties' Statements in Support does not align with the numbering in the Settlement filed with the Commission. In this Recommended Decision, we refer to the numbering from the filed Settlement.

<sup>170</sup> Objections at 6-14.

<sup>171</sup> See Section VII.D.2.

1. Rates (¶¶ 20-23)

Paragraph 20 of the Settlement asks the Commission to approve the *pro forma* tariff provided in Appendix A-12 of the Application. In their Statements in Support, PAWC and I&E agree that this request is in the public interest. PAWC identifies that it is consistent with 66 Pa.C.S. § 1329(d)(1)(v), which requires PAWC to charge rates after Closing that are equal to the seller's existing rates.<sup>172</sup> PAWC notes that, as part of its adoption of the seller's existing rates, PAWC will implement EBMA's equivalent dwelling unit (EDU) allocations until the System has been through a base rate case. Regarding EDU allocations, PAWC explains that its current tariff provides that, for customers acquired by the Company through a purchase or acquisition, information on EDUs is available at the Company's website.<sup>173</sup> As such, the EDU allocation for EBMA's customers will be posted to PAWC's website consistent with the allocation set forth in PAWC Exhibit SDG-2.

I&E submits that the *pro forma* tariff is in the public interest because the rates, rules and regulations regarding the conditions of PAWC's wastewater service should be fully disclosed.<sup>174</sup>

We recognize that PAWC's manner of disclosing EDU information on its website for customers acquired through a purchase or acquisition has already received Commission approval and no party raised any concerns about the proposal for the instant transaction. Further, as it effectuates the requirements of Section 1329(d)(1)(v), we accept the support offered by PAWC and I&E and find that Paragraph 20 should be adopted as proposed.

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<sup>172</sup> Settlement (Appendix D) at 14.

<sup>173</sup> *Id.* at 14-15 (citing PAWC St. 3 at 8).

<sup>174</sup> Settlement (Appendix F) at 7.

Paragraphs 22.a and 22.b of the Settlement impose limits on the rate increases that PAWC will propose in its first two base rate cases that include the EBMA System, while moving the System closer to the Company's Rate Zone 2 system-average wastewater rates.

As discussed above in our consideration of whether the transaction will provide net affirmative public benefits, the settling parties support this provision of the Settlement as an important modification to the transaction proposed in the Application. As PAWC, EBMA and the OCA describe, absent these limits and based on PAWC's estimates, the potential rate increase for the EBMA system provided in the customer notices was 105%.<sup>175</sup> All parties agree that the 30% and 60% limitations are in the public interest because they provide for rate increases consistent with principles of gradualism to avoid rate shock.

Additionally, to limit the rate impact of the transaction for PAWC's existing water customers, Paragraph 23 of the Settlement states that in the first base rate case that includes the System, PAWC will limit any shift of a revenue requirement pursuant to 66 Pa.C.S. § 1311(c) to no more than is needed to propose rates that comply with the 30% and 60% caps for EBMA customers in Paragraph 22.b. PAWC originally estimated that the acquisition could increase rates for PAWC's existing water customers by 0.2% (approximately 16 cents per month) if the System's revenue deficiency were entirely allocated to water customers.<sup>176</sup> Thus, PAWC and the OCA submit that this term of settlement is a reasonable means to mitigate potential rate impact for this customer group.<sup>177</sup>

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<sup>175</sup> Settlement (Appendix D) at 15, (Appendix E) at 13, (Appendix G) at 8-9.

<sup>176</sup> PAWC Reply at 29 (citing PAWC St. 3 at 13).

<sup>177</sup> *Id.*; Settlement (Appendix G) at 8-9.

Finally, Paragraphs 21, 22.c and 22.d of the Settlement permit PAWC to agree to rates other than those proposed for System customers in the context of a settlement of a base rate case<sup>178</sup> and also permit any Joint Petitioners to assert any position or raise any issue in a future PAWC base rate proceeding, except as explicitly agreed on in the Settlement.<sup>179</sup> PAWC avers that these provisions are consistent with the Code, consistent with previous Commission decisions in Section 1329 proceedings, and represent a reasonable compromise among the Joint Petitioners.<sup>180</sup> The OCA submits, further, that these provisions, together with other settlement provisions that address fair market value and cost of service studies, will help to reduce the overall costs of the acquisition and allow the parties to make recommendations to allocate them based on movement toward cost of service, while applying the ratemaking principles of gradualism.<sup>181</sup>

As reflected in the concerns raised by EBMA, the OCA, Forward Township, and many of the public input participants, the transaction's impact on rates is an important factor to be considered in assessing the net benefits of the instant transaction. We find the collective rate provisions in the Settlement are in the public interest because they help to reduce rate shock for the EBMA customers and mitigate the amount of revenue deficiency recovered from PAWC's existing water customers. Accordingly, we recommend that these Settlement terms be approved by the Commission without modification.

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<sup>178</sup> Settlement ¶ 22.c.

<sup>179</sup> *Id.* ¶¶ 21, 22.d.

<sup>180</sup> Settlement (Appendix D) at 15-16.

<sup>181</sup> Settlement (Appendix G) at 9.

2. Fair Market Value for Ratemaking Rate Base Purposes (§§ 24-27)

PAWC and EBMA elected to use the valuation procedure set forth in Section 1329 of the Code for their transaction.<sup>182</sup> The Commission has described the valuation of assets under Section 1329 of the Public Utility Code as follows:

Section 1329 of the Code establishes a process for ratemaking purposes to value the plant of municipal-owned water and wastewater systems to be acquired by certificated public utilities. Under Section 1329, the value of water and wastewater system assets to be included in the acquiring utility's rate base for ratemaking purposes will be the lesser of the purchase price negotiated by the acquiring utility and seller or the "fair market value" of the selling utility's system.<sup>[183]</sup>

The average of the two UVE appraisals is \$28,438,605.<sup>184</sup> Thus, in this case, the purchase price of \$28,000,000 is less than the average of the two UVE appraisals.<sup>185</sup>

In its Application and Direct Testimony, PAWC indicated that it would not object to a ratemaking rate base for the System of \$27,971,178, based on the depreciated original cost of the System times the RRR of 1.68, pursuant to the Commission's Final Supplemental Implementation Order entered July 2, 2024 at Docket No. M-2016-2543193 and the Report on the Reasonableness Review Ratio For the Year Ended 12.31.23 dated August 2, 2024 at Docket No. M-2024-3050303.<sup>186</sup>

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<sup>182</sup> 66 Pa.C.S. § 1329; PAWC St. 3 at 6; PAWC St. 1 at 6-7.

<sup>183</sup> *Beaver Falls* at 17 (citations omitted); 66 Pa.C.S. § 1329(c)(2).

<sup>184</sup> PAWC St. 4-R at 8.

<sup>185</sup> PAWC St. 3 at 6; PAWC St. 1 at 6-7.

<sup>186</sup> PAWC Exhibit MK-1 (Application ¶ 49); PAWC St. 3 at 6; PAWC St. 1 at

I&E recommended that the ratemaking rate base to be recorded on PAWC's books should be determined based on the RRR for the year ended December 31, 2024, of 1.63. The result represents a ratemaking rate base of \$27,138,703 ( $\$16,649,511 \times 1.63$ ).<sup>187</sup> I&E's recommended ratemaking rate base of \$27,138,703 is \$861,297 less than the purchase price ( $\$28,000,000 - \$27,138,703$ )<sup>188</sup> and \$832,475 less than the ratemaking rate base that PAWC calculated using the RRR published on August 2, 2024 ( $\$27,917,178 - \$27,138,703$ ).<sup>189</sup>

The OCA recommended a reduction of the ratemaking rate base to \$22,100,000, based on the adjustments its witness made to the UVE appraisals.<sup>190</sup>

In Settlement, the Joint Petitioners agreed to use the I&E recommendation of \$27,138,703.<sup>191</sup> The related settlement provisions in Paragraphs 25, 26 and 27 of the Settlement specify how and what PAWC may record for ratemaking to effect their agreement that approximately \$861,297 of the \$28,000,000 purchase price will not be recovered from ratepayers in rate base or via amortization.<sup>192</sup>

As set forth in their Statements in Support, PAWC and EBMA support this resolution as a compromise that is in the public interest because it results in lower rates in the future for all PAWC customers, including EBMA's current customers.<sup>193</sup>

I&E submits that PAWC's acceptance of its witness's recommended rate base amount is in the public interest because employing the most recent RRR of 1.63

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<sup>187</sup> I&E St. 1 at 6; I&E St. 1-SR at 2.

<sup>188</sup> PAWC St. 1-R at 2.

<sup>189</sup> I&E St. 1 at 6; PAWC St. 1-R at 2.

<sup>190</sup> OCA St. 2 at 35.

<sup>191</sup> Settlement ¶ 24.

<sup>192</sup> PAWC St. 1-R at 2.

<sup>193</sup> Settlement (Appendix D) at 16-17, (Appendix E) at 14.

most accurately estimates the EBMA System’s current value that is appropriate to be recorded by PAWC as rate base for ratemaking purposes.<sup>194</sup>

The OCA supports the settlement of this issue, for several reasons, including that the \$27.1 million ratemaking rate base represents an amount that is within the range of possible outcomes in the event of full litigation, and because it provides mitigation of the rate impact for existing PAWC customers and the acquired EBMA customers by reducing overall costs.<sup>195</sup> Additionally, regarding the application of the reasonableness review to this transaction, the OCA states:

The proposed resolution is consistent with the Commission’s Reasonableness Review Ratio (RRR) guidance, even though it may not necessarily apply to this proceeding. Under the Commission’s *Final Supplemental Implementation Order (FSIO)*, the Commission stated that “in considering the RRR in a particular proceeding, we clarify that we will look to the RRR that was in place at the time the selling utility and acquiring utility executed an APA.” *Valuation of Acquired Municipal Water and Wastewater Systems- Act 12 of 2016 Implementation, Final Supplemental Implementation Order*, Docket No. M-2016-2543193, Order at 106 (July 2, 2024) (*FSIO Order*). Here, the Asset Purchase Agreement was executed by PAWC and EMBA on January 24, 2023. However, the final Application was not filed until January 28, 2025. The parties have agreed to utilize the *FSIO Order* as a metric for determining the ratemaking rate base for the acquired system.<sup>[196]</sup>

In its Objection to the Settlement, Forward Township recommended that the OCA’s ratemaking rate base of \$22.1 million should be adopted for the reasons provided by OCA witness Garrett, including that PAWC will have to raise rates to acquire the

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<sup>194</sup> Settlement (Appendix F) at 8.

<sup>195</sup> Settlement (Appendix G) at 10-11.

<sup>196</sup> Settlement (Appendix G) at 10-11.

EBMA System.<sup>197</sup> In the alternative, the Township argues that the ratemaking rate base should be reduced by at least \$3.5 million, or to \$24.5 million. Its reasoning is that, “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.”<sup>198</sup>

In its Reply to the Township, PAWC argues that “there is no logical reason to find that the value of the System somehow depends on how EBMA uses the proceeds of the sale.”<sup>199</sup> Moreover, the Company supports the Settlement’s ratemaking rate base as a reasonable compromise of the Joint Petitioners’ litigation positions. PAWC avers that the Administrative Law Judges (ALJs) should not jeopardize a Settlement that is in the public interest by modifying one provision in it, because a modification could cause one or more Joint Petitioners to withdraw and reinstate the underlying litigation.<sup>200</sup>

In response to Forward Township’s primary recommendation – that the ALJs modify the Settlement and reduce the agreed-upon ratemaking rate base by 18.6%, PAWC repeats its contention that a party might withdraw from the Settlement. The Company also summarized its opposition to the OCA’s valuation, as set forth in the rebuttal testimony of the UVEs.<sup>201</sup>

EBMA similarly challenges Forward Township’s position, arguing that the Township selectively adopted the lower of the proposed adjustments by I&E and the OCA, “without offering any substantive analysis to support its position.”<sup>202</sup>

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<sup>197</sup> Objections at 15-16 (citing OCA St. 2 at 10).

<sup>198</sup> Objections at 16; *see also* Objections at 3 (“[t]he payout demonstrates an inflation of value”).

<sup>199</sup> PAWC Reply at 30.

<sup>200</sup> *Id.* at 31.

<sup>201</sup> PAWC Reply at 31-33.

<sup>202</sup> EBMA Reply at 13.

On consideration of the parties' positions and the evidence and arguments offered regarding the appropriate ratemaking rate base, we recommend adoption of Paragraphs 24 through 27 of the Settlement without modification.

As a preliminary matter, we note that the Commission has approved numerous settlements in Section 1329 applications where the settlement proposed a ratemaking rate base that differed from the purchase price or fair market value of the system, where the settling parties proposed a ratemaking rate base that was within the range of litigation outcomes developed on the record.<sup>203</sup>

As noted, the negotiated rate base value of \$27,138,703 was fully analyzed by the parties and reached as a compromise of competing positions. The agreed upon rate base value falls between the original positions of the parties and within the range of likely outcomes in the event of full litigation of the case. The value is approximately \$861,297 less than the purchase price for the System.

We do not find record support for either of Forward Township's recommended reductions to the Settlement ratemaking rate base. We agree with PAWC that the Township has failed to substantiate its claimed correlation between its negotiated payment to Elizabeth Township and fair market value for the System.

While we agree with Forward Township that the potential rate impact from the transaction would be less if the OCA's \$22,100,000 million ratemaking rate base were

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<sup>203</sup> *Beaver Falls* at 51-53, 71-72; see, e.g., *Application of Pa.-Amer. Water Co. for Approval of the Acquisition of Wastewater Collection and Treatment Sys. Owned by the York City Sewer Auth. and Operated by the City of York*, Docket No. A-2021-3024681 (Recommended Decision issued Feb. 28, 2022), adopted without modification (Final Order entered Apr. 14, 2022); *Application of Pennsylvania-Amer. Water Co. – Steelton Borough Auth.*, Docket No. A-2019-3006880 (Opinion and Order entered Oct. 3, 2019).

adopted, the Township did not provide any substantive basis for rejecting a \$27,138,703 ratemaking rate base.

Accordingly, we find that the Settlement rate base value represents a reasonable compromise by the settling parties and recommend that it be approved.

### 3. Distribution System Improvement Charge (¶ 28)

PAWC's Application included a request for approval to collect a DSIC as permitted under Section 1329, which allows the buyer to apply the DSIC prior to the first base rate case in which the System's plant-in-service is incorporated into PAWC's rate base.<sup>204</sup> I&E and OCA raised concerns and recommendations that, as initially proposed, PAWC did not commit to *when* it will file an amended LTIP and when the DSIC will be charged to customers.<sup>205</sup>

The OCA provided the following summary of how those issues are resolved by Paragraph 28 of the Settlement:

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

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<sup>204</sup> Application ¶¶ 3, 19; 66 Pa.C.S. § 1329(d)(4).

<sup>205</sup> Settlement (Appendix G) at 13 (citing OCA St. 1 at 26-27; I&E St. 2 at 6-7).

for the filing of an Amended LTIIP, and should therefore be approved as in the public interest.<sup>[206]</sup>

I&E agrees that PAWC's commitment to file an Amended LTIIP within 270 days of closing is a reasonable compromise of PAWC's and I&E's positions. I&E submits that Paragraph 28 serves the public interest by ensuring that PAWC's existing commitments in other service areas will not be re-prioritized as a result of planned improvements for the acquired EBMA system.<sup>207</sup> I&E also submits that the acquired EBMA customers will benefit from improved wastewater infrastructure, therefore promoting safer and more reliable service.

In addition to the consumer safeguards addressed by the OCA and I&E, PAWC notes that Paragraph 28 also prohibits PAWC from including System-related investments in its wastewater DSIC until it collects the DSIC from System customers. The Company supports this provision because "it protects existing PAWC [wastewater] customers from fully funding System-related improvements; EBMA customers will need to help pay for those improvements."<sup>208</sup>

Based on the support provided by the OCA, I&E and PAWC, we agree that the DSIC provisions of the Settlement are reasonable and in the public interest, and should be approved.

4. Claims for Allowance for Funds Used During Construction and Deferred Depreciation (§ 29)

Paragraph 29 of the Settlement identifies that the Application includes requests for permission to accrue an Allowance for Funds Used During Construction

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<sup>206</sup> Settlement (Appendix G) at 13.

<sup>207</sup> Settlement (Appendix F) at 9, (Appendix D) at 17.

<sup>208</sup> Settlement (Appendix D) at 17, 29.

(AFUDC) and defer depreciation for post-acquisition improvements not included in a DSIC.<sup>209</sup> This accounting treatment is permitted under Sections 1329(f)(1) and (2) of the Code.<sup>210</sup> Further, the Settlement provides that any claims for AFUDC and deferred depreciation will be addressed in PAWC’s first base rate case that includes System assets and the parties reserve their rights to litigate their positions fully in future rate cases.<sup>211</sup>

In its Statement in Support, the OCA emphasizes that the requests and that the claims will be subject to base rate case review and that this term should not be construed as a preapproval by the Commission.<sup>212</sup> I&E offers this additional support:

I&E supports this term because while it recognizes the potential for PAWC to invoke portions of Section 1329 related to post-acquisition projects, it also empowers parties to review PAWC’s proposed treatment of those projects in a future base rate case. Preserving the ability to litigate any of PAWC’s proposed AFUDC and deferred depreciation treatment protects the public interest by ensuring that interested parties are not hindered in developing a full and complete record for the Commission on this issue when additional information is available and ratemaking issues are ripe for determination.<sup>[213]</sup>

As these accounting treatments are permitted under Section 1329 and the Settlement assures that the parties have the ability to review and challenge any claims made for AFUDC and deferred depreciation in the first base rate case where they are

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<sup>209</sup> *Id.* at 17-18, (Appendix G) at 13.

<sup>210</sup> 66 Pa.C.S. §§ 1329(f)(1), (2). AFUDC can only be accrued for post-acquisition improvements that are not included in a DSIC “from the date the cost was incurred until the earlier of the following events: the asset has been in service for four years, or the asset is included in the acquiring utility’s next base rate case.” 66 Pa.C.S. §§ 1329(f)(1).

<sup>211</sup> Settlement ¶ 29.

<sup>212</sup> Settlement (Appendix G) at 13-14.

<sup>213</sup> Settlement (Appendix F) at 11 (internal citation omitted).

claimed, we agree that this term of Settlement is in the public interest, and should be approved.

5. Closing (¶ 30)

Settlement Paragraph 30 prohibits PAWC and EBMA from Closing until the Commission's order approving the transaction is final and unappealable. This provision recognizes that Commission approval of the transaction is necessary for PAWC and EBMA to Close.<sup>214</sup> The OCA supports this provision, as PAWC and EBMA's commitment will provide regulatory certainty before the transaction is closed, and that regulatory certainty is particularly important should PAWC file a base rate proceeding seeking to incorporate the System into its rates.<sup>215</sup>

We agree that this term of Settlement will contribute to regulatory certainty and should be approved as in the public interest.

6. Transaction and Closing Costs (¶¶ 31-33)

Paragraph 31 of the Settlement acknowledges that PAWC may, in the first base rate case that includes the System, include the transaction and closing costs incurred in this proceeding. This is permitted under Section 1329(d)(1)(iv) of the Code, 66 Pa.C.S. § 1329(d)(1)(iv). PAWC states that this term was included in the Settlement out of an abundance of caution and with recognition that the Commission will not preapprove the reasonableness of recovery of these costs in a Section 1329 proceeding.<sup>216</sup>

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<sup>214</sup> Settlement (Appendix D) at 18.

<sup>215</sup> Settlement (Appendix G) at 18.

<sup>216</sup> Settlement (Appendix D) at 18-19 (citing *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered Oct. 27, 2016)).

Paragraphs 32 and 33 require that any claim by PAWC to recover transaction and closing costs (a) will clearly identify all transaction and closing costs, (b) will separately identify any outside counsel legal fees, and (c) will not include any costs incurred by EBMA. PAWC points out that these provisions are consistent with several previous Commission decisions approving settlements in Section 1329 acquisitions, are reasonable and in the public interest, and should be approved.<sup>217</sup>

I&E provides several reasons supporting its position that PAWC's commitment to separately identify any legal fees included in its transaction and closing costs pursuant to the APA between PAWC and EBMA is in the public interest because, in combination, Settlement Paragraphs 31 through 33 help to ensure that:

- PAWC will only be permitted to recover prudently incurred costs from ratepayers, which protects ratepayers from paying unwarranted costs and promotes rate affordability.
- I&E is able to challenge the permissibility of any claims that PAWC may make for legal fees in its next base rate case, which is consistent with I&E's obligation to enforce the Code.
- I&E, other interested parties, and the Commission will easily be able to identify any portion of claimed fees, which will ease the administrative burden of uncovering this information when PAWC files its next rate case, which may be several years from now and be complicated by the complexity of the resulting rate investigation.<sup>218</sup>

The OCA points out that PAWC will incur transaction and closing costs of approximately \$1.1 million for the transaction, which PAWC will claim in its rate base in the base rate case following closing if the proposed acquisition is approved by the Commission and not yet subject to appeal.<sup>219</sup> The Settlement adopts the OCA's

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<sup>217</sup> Settlement (Appendix D) at 19.

<sup>218</sup> Settlement (Appendix F) at 12-13.

<sup>219</sup> Settlement (Appendix G) at 14-15 (citing OCA St. 1 at 24-25).

recommendations regarding transaction and closing costs, which the OCA says are necessary to ensure that ratepayers do not pay imprudent and unreasonable transaction and closing costs if the Commission determines to approve PAWC's Application.<sup>220</sup>

We are persuaded by the settling parties' support for these provisions. As such, we agree they are in the public interest and should be adopted.

7. Section 507 (¶ H.34)

In this proceeding, PAWC requests to assume enumerated municipal contracts currently held by EBMA. This request is subject to review under Section 507 of the Code. PAWC and I&E explain that these agreements are necessary for PAWC to provide wastewater service to EBMA's customers.<sup>221</sup>

We note that the OCA raised a concern with respect to one of the agreements, a *pro forma* Lease Agreement by and between EBMA and PAWC, which was submitted as Appendix A-25.6 to the Application. Specifically, the OCA questioned the proposal for EBMA to retain ownership of the non-moving structural portion of a screen unit after closing of the transaction and for PAWC to lease this portion of the screen unit from EBMA.<sup>222</sup> PAWC explained that the lease agreement will allow the wastewater treatment plant to retain the treatment plant's status as a Publicly Owned Treatment Works under state and federal regulations.<sup>223</sup> If the treatment plant would cease to qualify as a Publicly Owned Treatment Works, the sewage sludge produced by the plant would be classified as a hazardous waste, which PAWC estimates would increase the cost

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<sup>220</sup> Settlement (Appendix G) at 14-15 (citing OCA St. 1 at 25).

<sup>221</sup> Settlement (Appendix D) at 19-20, (Appendix F) at 13.

<sup>222</sup> PAWC St. 1 at 13-14; OCA St. 1 at 13.

<sup>223</sup> PAWC St. 2 at 4-5.

to manage and dispose of the sludge by \$50,000 per year or more.<sup>224</sup> PAWC's explanation addressed the OCA's concerns and the OCA agrees that this proposed lease agreement should be approved as in the public interest.

For the reasons stated by the parties, we agree that approval of the eight agreements that are the subject of PAWC's request, including the lease agreement, is reasonable and in the public interest.

8. Cost of Service Studies (§§ 35-36)

Paragraphs 35 and 36 provide that, in the first base rate case that includes the System's assets, PAWC will submit a cost of service study that removes all costs and revenues associated with the operation of the System, and will also provide a separate cost of service study for the System.

PAWC contends that these and similar provisions have been included in several other settlements of Section 1329 proceedings involving PAWC.<sup>225</sup> They are reasonable and in the public interest, and should be approved.

I&E also supports these provisions because it submits that the cost of service study will protect PAWC, its customers, the parties to this proceeding and the Commission. It states:

Specifically, the results of the cost of service study that PAWC has committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. The cost of service study will benefit PAWC's ratepayers as well, because if PAWC's Application

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<sup>224</sup> PAWC St. 2-R at 7; OCA St. 1 at 12.

<sup>225</sup> See, e.g., *Application of Pennsylvania-Amer. Water Co. – Butler Area Sewer Auth.*, Docket No. A-2022-3037047 (Opinion and Order entered Nov. 16, 2023).

is approved, PAWC’s existing customers will bear the rate impact. However, without a cost of service study, the Commission’s ability to evaluate the rate impact of the acquisition upon existing PAWC customers and its options of addressing that impact to provide any appropriate relief to existing customers could be compromised. Therefore, I&E supports this term as being in the public interest.<sup>[226]</sup>

The OCA similarly supports the requirements for cost of service studies: because they provide a means for the parties to use the cost-of-service data to set rates for EBMA customers that reflect the cost of service under PAWC ownership, or movement towards the cost of service, and that may differ, as appropriate, from rates established for other wastewater customers.<sup>227</sup>

We find this Settlement provision is in the public interest and should be approved. We agree with PAWC’s commitment, in its first base rate case filed after closing, to file a COSS that does not include operating costs and revenues associated with the EBMA System. By requiring cost of service studies in the Company’s next base rate case, the Commission will be in a better position to evaluate and establish rates for PAWC’s customer classes based on cost causation considerations. This, in turn, will move the rates charged to EBMA customers towards a more accurate cost of service, thereby promoting fairness to all of PAWC’s customer classes. Accordingly, we find this Settlement provision is in the public interest and should be approved.

9. Customer Assistance Programs (¶¶ 37-42)

At the Public Input Hearing, members of the public raised concerns about the need to protect seniors and fixed-income families from rate increases.<sup>228</sup> The OCA

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<sup>226</sup> Settlement (Appendix F) at 14.

<sup>227</sup> Settlement (Appendix G) at 16-17.

<sup>228</sup> Tr. 58 (Cline); 73 (Fisher); 97 (DeChicchis).

also raised concerns about rate impact and recommended several measures to address the needs of low-income customers in EBMA's service territory under PAWC ownership.<sup>229</sup>

As discussed by the settling parties, the Settlement provides several measures to address the needs of low-income customers in EBMA's service territory.

Paragraph 38 of the Settlement ensures that EBMA customers will become eligible for all PAWC payment options and customer programs immediately after closing. From PAWC's perspective, this commitment delivers on a promised benefit of the transaction.<sup>230</sup>

On pages 22 to 23 of its Statement in Support, PAWC aptly summarizes how the Settlement provisions respond to the concerns and recommendations raised by the OCA about participation in customer assistance programs (CAP) and funding for PAWC's hardship program. PAWC's summary is paraphrased below.

- The OCA expressed concern that low-income customers might not take advantage of PAWC's CAP because they may not know about it.<sup>231</sup> To help ensure that those customers who are eligible for assistance know about programs that might benefit them, Paragraph 39 provides that PAWC will provide (a) a bill insert to System customers about PAWC's low income programs in the first billing cycle following closing, (b) a welcome letter including similar information,<sup>232</sup> and (c) ongoing, targeted outreach to PAWC's EBMA-area wastewater customers regarding PAWC's CAP.

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<sup>229</sup> OCA St. 1 at 23-24.

<sup>230</sup> Settlement (Appendix D) at 21.

<sup>231</sup> OCA St. 1 at 23-24; OCA St. 1 at 23-24; OCA St. 1SR at 9.

<sup>232</sup> Paragraph 40 of the Settlement further specifies that the bill insert and the welcome letter shall include, at a minimum, a description of the low-income programs, eligibility requirements for the programs, and PAWC's contact information, as well as information about payment options and the OCA's recommended link where a customer can find the rate impact range. Settlement ¶ 40, (Appendix G) at 18.

- Additionally, the OCA recommended a reporting requirement to help determine whether EBMA’s low-income customers are in fact participating in PAWC’s low-income programs.<sup>233</sup> Settlement Paragraph 41 provides that, for the first two years after Closing, PAWC will track the number of EBMA’s customers that are potentially eligible for PAWC’s CAP and the number of EBMA’s customers who are actually enrolled in PAWC’s CAP. This information will be presented semi-annually to PAWC’s Customer Assistance Advisory Group and, to the extent available at the time, will also be presented in PAWC’s first base rate case that includes the EBMA System. PAWC submits that this provision is in the public interest because it will give the Customer Assistance Advisory Group information for measuring the extent to which low income customers of acquired systems actually take advantage of the programs that are available to them and discussing whether the Company should take additional steps to reach these customers.
- PAWC has a Hardship Fund to which it currently contributes a minimum of \$1,450,000 annually.<sup>234</sup> Among other things, this fund provides grants to low-income water and wastewater customers.<sup>235</sup> Paragraph 37 of the Settlement provides PAWC’s agreement to contribute an additional \$100,000 to this fund, either as a one-time contribution within 60 days after Closing or in installments over a five-year period. PAWC and the OCA agree that this provision is in the public interest because it will assist all PAWC low-income customers, including customers acquired from EBMA.<sup>236</sup>

In addition to the support addressed above, the OCA added that the information in the welcome letter will enable the acquired customers to more easily determine the rate impact of the change in ownership to PAWC. Further, the OCA submits that low-income data tracking will enhance interested stakeholders’ overview of low-income customer participation in PAWC’s CAP and increase transparency regarding important metrics.<sup>237</sup>

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<sup>233</sup> OCA St. 1 at 23; OCA St. 1SR at 9.

<sup>234</sup> PAWC St. 3-R at 9.

<sup>235</sup> PAWC St. 2 at 38.

<sup>236</sup> Settlement (Appendix D) at 23, (Appendix G) at 17-18.

<sup>237</sup> Settlement (Appendix G) at 19-20.

Although I&E did not take a position on Paragraphs 37 to 42 of the Settlement during the proceeding, it nonetheless supports these terms. It states that 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, which is consistent with the Code's policy to ensure that service remains available to all customers on reasonable terms and conditions.<sup>238</sup>

The presiding officers agree that these provisions are reasonable and, in combination, (1) help to ensure that those customers who are eligible for assistance are informed about programs that might benefit them and (2) contribute to the information available to stakeholders about customer participation in PAWC's CAP. Further, we agree with PAWC and the OCA that additional funding for the hardship program is reasonable and in the public interest because it will further assist PAWC's existing and acquired low-income customers.

The section of the Settlement addressing customer assistance programs includes a provision addressing easements, which was an issue contested by the OCA in this proceeding.<sup>239</sup> In testimony, the OCA recommended that, as a condition for approval of the application, the Commission should require that the closing of the transaction shall not be permitted to occur until PAWC acquires all outstanding easements.<sup>240</sup> As PAWC explains, Paragraph 42 of the Settlement acknowledges the provisions in the APA regarding easements.<sup>241</sup> The OCA submits that the Settlement is a reasonable resolution of the concerns that the OCA raised regarding the easements and, specifically, that the APA's treatment of any potentially missing easements is a reasonable approach because it

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<sup>238</sup> Settlement (Appendix F) at 14-15 (citing 66 Pa.C.S. § 1402(3)).

<sup>239</sup> Settlement (Appendix D) at 23, (Appendix G) at 20.

<sup>240</sup> OCA St. 1 at 29.

<sup>241</sup> Settlement (Appendix D) at 23.

provides protections to ensure that ratepayers are not paying for missing easements in rates.<sup>242</sup>

On review, we agree with PAWC and OCA that the APA provides adequate protections to prevent customers from incurring the cost of obtaining easements after closing on the transaction because it requires the following actions by EBMA, before and after closing:

- commence condemnation proceedings to obtain all missing easements that it can, prior to Closing.
- create a Missing Easement Escrow Fund, which will be funded in the amount of \$2,000 per missing easement.
- diligently pursue the missing easements for two years after Closing.<sup>243</sup>

Accordingly, we agree that Paragraph 42 of the Settlement is in the public interest and should be approved.

10. Pennsylvania Infrastructure Investment Authority (¶ 43)

This term of the Settlement provides that PAWC will investigate the feasibility of applying for a PENNVEST grant or loan for all eligible system improvements relating to the LTCP and any other upgrades identified in PAWC's tentative plan, and will share information about that investigation with OCA in the first base rate case in which the System is included, which is consistent with the OCA's recommendation.<sup>244</sup> As OCA witness DeMarco testified, PENNVEST funding will help to offset the cost of the purchase price and the cost of infrastructure improvements to the

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<sup>242</sup> Settlement (Appendix G) at 20.

<sup>243</sup> Settlement (Appendix D) at 23, (Appendix G) at 20.

<sup>244</sup> Settlement (Appendix G) at 20-21.

benefit of current and future ratepayers.<sup>245</sup> PAWC also states that this provision is in the public interest because it encourages the Company to seek grants and low-interest financing without improperly limiting PAWC’s discretion to evaluate all reasonable funding opportunities.<sup>246</sup> I&E agrees this term is in the public interest.<sup>247</sup>

We note that a concern was raised during the Public Input Hearings whether certain grants and loans, including from the PENNVEST program, would still be available to the System under PAWC ownership.<sup>248</sup> We agree that Paragraph 43 of the Settlement is in the public interest and should be approved, as it may serve to lower the overall costs to ratepayers.

11. Other Necessary Approvals (¶ 44)

As described by PAWC, the Joint Petitioners believe that they have requested all necessary approvals from the Commission. Nevertheless, as a safeguard, the Settlement includes a customary “safety valve” provision requesting that the Commission grant any necessary approvals that the Joint Petitioners might have inadvertently overlooked.<sup>249</sup> I&E supports this provision as appropriate and warranted and the OCA agrees that this condition is in the public interest when considered in totality with the Settlement and should be approved.<sup>250</sup> We agree that this provision is reasonable in that, if the Commission determines to approve the proposed transaction, it should grant overlooked approvals necessary for its effectuation.

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<sup>245</sup> OCA St. 1 at 10.

<sup>246</sup> Settlement (Appendix D) at 23.

<sup>247</sup> Settlement (Appendix F) at 15.

<sup>248</sup> Tr. 91 (DeChicchis).

<sup>249</sup> Settlement (Appendix D) at 24.

<sup>250</sup> Settlement (Appendix F) at 15, (Appendix G) at 21.

E. Disposition

The Commission recently addressed its standards for review of a nonunanimous settlement in its Opinion and Order in *Beaver Falls*. It stated:

[I]t is the policy of the Commission to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort, and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.<sup>[251]</sup>

Therein, the Commission also emphasized the importance of ensuring appropriate notice and due process for non-settling parties that do not support the proposed settlement or wish to continue litigation.<sup>252</sup> In the instant proceeding, Forward Township had opportunity to file (1) a brief on any issues that it would file as part of its main brief in the case, in the absence of a settlement, and (2) objections to the Settlement and Application, as amended by the Settlement.<sup>253</sup> In addition to filing a Post Hearing Brief and Objection to Settlement, Forward Township participated in the public input hearing and evidentiary hearing, conducted cross-examination, and had its exhibits moved into the record. Further, this decision considers the evidence and arguments presented by Forward Township.

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<sup>251</sup> *Beaver Falls* at 92 (citing *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2015-2468056 (Opinion and Order entered Dec. 3, 2015)).

<sup>252</sup> *Beaver Falls* at 93.

<sup>253</sup> Tr. 226.

The Joint Petition reflects the agreement of the settling parties that its terms and conditions benefit all interested parties and provide a reasonable resolution to the issues raised in this proceeding. In summarizing its support for the Settlement, PAWC stated:

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a settlement that resolves all of the issues in this proceeding in a fair and equitable manner. The Settlement is the result of detailed examination of the Transaction, discovery responses, evidence that was entered into the record, and extensive settlement negotiations. A fair and reasonable compromise has been achieved in this case. PAWC fully supports the Settlement and urges the ALJs and the Commission to approve it without modification.<sup>[254]</sup>

EBMA endorses approval of the Settlement as follows:

Following an extensive and detailed examination of the Application, discovery responses, and the evidentiary record, the Joint Petitioners entered into settlement negotiations with a full understanding of their respective positions. The result is a fair and reasonable compromise that accounts for the public benefits expected to result from the Transaction while mitigating any potential harm. EBMA fully supports the Settlement and respectfully urges the Administrative Law Judges and the Commission to approve it without modification.<sup>[255]</sup>

In summarizing its support for the Settlement, I&E states:

I&E represents that all issues raised in testimony have been satisfactorily resolved through discovery and discussions with the Company or are incorporated or considered in the resolution proposed in the Settlement. This Settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be

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<sup>254</sup> Settlement (Appendix D) at 24-25.

<sup>255</sup> Settlement (Appendix E) at 16-17.

irreconcilable regulatory differences. The Joint Petitioners have carefully discussed and negotiated all issues raised in this proceeding, and specifically those addressed and resolved in this Settlement. Further line-by-line identification of the ultimate resolution of the disputed issues beyond those presented in the Settlement is not necessary as I&E represents that the Settlement maintains the proper balance of the interests of all parties. I&E is satisfied that no further action is necessary and considers its investigation of this Section 1329 proceeding complete.<sup>[256]</sup>

The OCA also summarized its support for approval of the Settlement, stating:

The terms and conditions of the proposed Settlement provide a reasonable resolution of the issues raised by the OCA in its testimony, including the ratemaking rate base to be incorporated into PAWC's revenue requirement, the rate impact for existing PAWC customers and the acquired customers, PAWC's rate gradualism plan, PAWC's application of the Distribution System Improvement Charge (DSIC) to acquired customers, the treatment of post-acquisition infrastructure improvements, transaction and closing costs, PAWC's contribution to its Hardship Fund, PAWC's tracking of potential low-income EBMA customers, and PAWC's outreach and assistance to potential low-income customers.... the record evidence supports the public benefits of the transaction.<sup>[257]</sup>

In light of the above, including our analysis of the individual Settlement provisions, we find that the Joint Petitioners' proposed Settlement is in the public interest. Therefore, we recommend that the Settlement should be approved by the Commission, without modification.

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<sup>256</sup> Settlement (Appendix F) at 8.

<sup>257</sup> Settlement (Appendix G) at 7.

Forward Township submitted that the Settlement and Application should be denied.<sup>258</sup> However, we find that the record evidence in this proceeding demonstrates the public benefits of the proposed acquisition and, further, that the Application, as modified by the Settlement, will affirmatively and substantially promote the public interest.<sup>259</sup>

## VIII. CONCLUSION

Consistent with the foregoing discussion, we determine based on consideration of the facts specific to this case that PAWC and the settling parties have carried their burden of demonstrating that the net benefits of the transaction support its approval and are materially distinct from the level of service and benefits currently provided by EBMA to its customers.

As such, we recommend that the Commission approve without modification the Settlement and the Application, as amended and as modified by the terms of the Settlement.

## IX. CONCLUSIONS OF LAW

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

2. Pennsylvania-American Water Company has the burden of proof in these proceedings. 66 Pa.C.S. § 332(a).

3. Because the Joint Petitioners request that the Commission enter an order adopting the settlement without modification, they share the burden of proof to

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<sup>258</sup> Objections at 6-14.

<sup>259</sup> *City of York; McCloskey; Cicero.*

show that the terms and conditions of the Settlement are in the public interest. 66 Pa.C.S. § 332(a); *Pa. PUC v. City of Bethlehem – Water Dept.*, Docket No. R-2020-3020256 (Opinion and Order entered Apr. 15, 2021).

4. Commission policy promotes settlements. 52 Pa. Code §§ 5.231; 69.401.

5. A full settlement of all the issues in a proceeding eliminates the time, effort, and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort, and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties in this proceeding directly, but, indirectly, all customers of the public utility involved in the case. *Application of Aqua Pa. Wastewater, Inc. – City of Beaver Falls*, Docket No. A-2022-3033138 (Opinion and Order entered June 18, 2025); *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket Nos. R-2015-2468056 (Opinion and Order entered Dec. 3, 2015).

6. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. 52 Pa. Code § 69.401.

7. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. PUC v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991). The instant settlement is in the public interest.

8. 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”).

9. 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).

10. 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).

11. 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. PUC*, 502 A.2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240 (Pa. Super. 1958). PAWC has demonstrated that it is technically, financially and legally fit.

12. The fitness of a currently certificated public utility is presumed. *South Hills Movers, Inc. v. Pa. PUC*, 601 A.2d 1308 (Pa. Cmwlth. 1992).

13. 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. PUC*, 295 A.2d 825, 828 (Pa. 1972).

14. The affirmative public benefit test is a “net benefits assessment.” This requires a showing that, on net, the public is better off because of the transaction

than it would have been in the absence of the transaction. Where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction. *Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Cmwlth. 2023), *alloc. granted*, 320 A.3d 667 (June 14, 2024).

15. 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).

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

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

18. The Commission can approve a settlement that establishes a rate base for ratemaking purposes that deviates from the valuation methodology in Section 1329. *Application of Aqua Pa. Wastewater, Inc. – City of Beaver Falls*, Docket No. A-2022-3033138 (Opinion and Order entered Jun. 18, 2025).

19. 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).

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

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, during its next base rate proceeding. 66 Pa.C.S. § 1329(d)(2). The Commission will not approve these costs during the 1329 proceeding. *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered Oct. 27, 2016).

24. 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.

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

X. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Non-Unanimous Settlement of All Issues as submitted at Docket No. A-2025-3052983, including all terms and conditions thereof, is hereby approved without modification.

2. That the Application of Pennsylvania-American Water Company filed in this matter on January 28, 2025, as amended, and as further modified by the Joint Petition for Non-Unanimous Settlement of All Issues, is hereby approved.

3. That within ten (10) days after the closing of the Pennsylvania-American Water Company's acquisition of the Elizabeth Borough Municipal Authority wastewater system, Pennsylvania-American Water Company shall file notice of closing of the transaction with the Commission at this docket.

4. That the Commission issue Certificates of Public Convenience under 66 Pa.C.S. § 1102(a) and 1103(a) evidencing Commission approval of (i) the transfer, by sale, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by Elizabeth Borough Municipal Authority to Pennsylvania-American Water Company, and (ii) the right of Pennsylvania-American Water Company to begin to offer, render, furnish and supply wastewater service in the areas served by the wastewater collection and treatment system owned by Elizabeth Borough Municipal Authority.

5. That the Commission permit Pennsylvania-American Water Company to issue compliance tariff supplements, consistent with the *pro forma* tariff supplement submitted with the Application as Appendix A-12, including all rates, rules and regulations regarding conditions of Pennsylvania-American Water Company's wastewater service, to become effective immediately upon closing.

6. That, in the first base rate case that includes System assets:

a. Pennsylvania-American Water Company will propose to move the System closer to Pennsylvania-American Water Company's Rate Zone 2 system-average wastewater rates consistent with principles of gradualism to avoid rate shock.

b. Pennsylvania-American Water Company will not propose to increase rates for the Elizabeth Borough Municipal Authority zone more than 30% of Elizabeth Borough Municipal Authority's rates in effect at closing in Pennsylvania-American Water Company's first base rate case in which the System is included. Pennsylvania-American Water Company also will not propose to increase rates for the Elizabeth Borough Municipal Authority zone more than 60% of Elizabeth Borough Municipal Authority's rates in effect at closing in Pennsylvania-American Water Company's second base rate case in which the System is included.

c. Pennsylvania-American Water Company may agree to rates other than those proposed for System customers in the context of a settlement of the base rate case.

d. The Office of Consumer Advocate, Bureau of Investigation and Enforcement, and Office of Small Business Advocate reserve their rights to address Pennsylvania-American Water Company's rate proposals fully, and to make other rate proposals. The Commission has ultimate ratemaking authority to set just and reasonable rates and, notwithstanding anything to the contrary contained in Ordering Paragraph 6, the Parties may enter

into a settlement of the base rate case, whether full or partial and whether unanimous or non-unanimous, on reasonable terms and conditions.

e. Pennsylvania-American Water Company will propose to limit any Section 1311(c), 66 Pa.C.S. § 1311(c), shift of a revenue requirement deficiency related to Elizabeth Borough Municipal Authority's operations to no more than is needed to achieve the proposed rates as provided for in Ordering Paragraph 6.b.

7. That Pennsylvania-American Water Company will use \$27,138,703 as the ratemaking rate base for the acquired System.

8. That Pennsylvania-American Water Company may record the acquisition at the net value of the assets (i.e., the Commission-approved ratemaking rate base of the acquired assets), consistent with generally accepted accounting principles.

9. That any goodwill resulting from this transaction that is included on the balance sheet of Pennsylvania-American Water Company shall be excluded from its rate base. Therefore, financing costs for the goodwill will not be recovered in rates.

10. That the difference between the purchase price and the allowed rate base will not be recovered in rate base nor via amortization from Pennsylvania-American Water Company's existing customers or from Elizabeth Borough Municipal Authority's current customers.

11. That Pennsylvania-American Water Company will not include System-related investments in its DSIC until Pennsylvania-American Water Company collects a DSIC from System customers. Pennsylvania-American Water Company may collect a DSIC from System customers upon (i) Pennsylvania-American Water Company's filing of an amended wastewater Long-Term Infrastructure Improvement

Plan including the System, which does not re-prioritize other existing commitments in other service areas; (ii) the Commission's approval of the Amended LTIP, as may be modified in the discretion of the Commission; and (iii) Pennsylvania-American Water Company's filing of a compliance tariff supplement which incorporates the System into Pennsylvania-American Water Company's DSIC tariff, including all customer safeguards applicable thereto, no later than the next quarterly DSIC filing after Commission approval of the Amended LTIP. Pennsylvania-American Water Company will file an Amended LTIP with the Commission within 270 days of closing.

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

13. That, if Pennsylvania-American Water Company and Elizabeth Borough Municipal Authority decide to close on the transaction in accordance with their respective contractual rights and obligations under the APA, the closing will not take place sooner than the date of the existence of a final, unappealable order of the Commission approving the Application.

14. That the Application includes a request that Pennsylvania-American Water Company be permitted to claim transaction and closing costs associated with the acquisition of the System. The Joint Petitioners do not contest these requests in this

proceeding, but they reserve their rights to litigate their positions fully in future rate cases when this issue is ripe for review. In a future rate case when these costs are claimed, Pennsylvania-American Water Company will clearly set out and identify all transaction and closing costs associated with this matter.

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

16. That any claim by Pennsylvania-American Water Company to recover transaction and closing costs associated with the transaction will not include costs incurred by Elizabeth Borough Municipal Authority.

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

a. The APA dated January 24, 2023, by and between the Elizabeth Borough Municipal Authority and Pennsylvania-American Water Company;

b. First Amendment to Asset Purchase Agreement, dated July 5, 2023, by and between the Elizabeth Borough Municipal Authority and Pennsylvania-American Water Company;

c. Service Agreement dated January 25, 2000, by and between the Borough of Elizabeth and the Sanitary Authority of Elizabeth Township;

d. Fallen Timber Run Watershed Area Interceptor Sewer Project Agreement between the Borough of Elizabeth, Elizabeth Borough Municipal Authority, the Township of

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

e. Agreement dated December 15, 1987, by and between the Borough of Elizabeth, Elizabeth Borough Municipal Authority and the Borough of Lincoln;

f. Agreement dated November 26, 1957, by and between Borough of Elizabeth, Elizabeth Borough Municipal Authority, the Township of Elizabeth and Sanitary Authority of Elizabeth Township;

g. Agreement dated January 23, 1958, by and between Borough of Elizabeth, Elizabeth Borough Municipal Authority and the Township of Forward; and

h. Pro Forma Lease Agreement by and between the Elizabeth Borough Municipal Authority and Pennsylvania-American Water Company.

18. That, in the first base rate case that includes the System's assets, Pennsylvania-American Water Company will submit a cost of service study that removes all costs and revenues associated with the operation of the System.

19. That, in the first base rate case that includes the System's assets, Pennsylvania-American Water Company will also provide a separate cost of service study for the System.

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

21. That, immediately after closing, Elizabeth Borough Municipal Authority's customers will become eligible for all Pennsylvania-American Water Company payment options and customer programs.

22. That, within the first billing cycle following closing, Pennsylvania-American Water Company shall include a bill insert to System customers regarding its low income programs and shall include such information in a welcome letter to System customers. The bill insert and welcome letter shall include, at a minimum, a description of the available low income programs, eligibility requirements for participation in the programs, and Pennsylvania-American Water Company's contact information. Pennsylvania-American Water Company will also conduct ongoing, targeted outreach to its Elizabeth Borough Municipal Authority-area wastewater customers regarding its low income programs.

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

24. That every six months for a period of two years following closing, Pennsylvania-American Water Company will track the number of Elizabeth Borough Municipal Authority's customers that are (1) potentially eligible to enroll in Pennsylvania-American Water Company's CAP; and (2) who are enrolled in Pennsylvania-American Water Company's CAP. Pennsylvania-American Water Company will provide and present this information on a timely basis to the regularly held meetings of Pennsylvania-American Water Company's Customer Assistance Advisory Group. Pennsylvania-American Water Company will also present this information, as available at the time, in its first base rate case in which the Elizabeth Borough Municipal Authority System is included. The information will be in a format showing the potential eligibility and enrollment data broken down by six-month increments starting from the time of closing through and until the time of filing the rate case. Potential eligibility will be based on U.S. Census data.

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

26. That Pennsylvania-American Water Company will investigate the feasibility of applying for a PENNVEST grant or loan for all eligible system improvements relating to the Long Term Control Plan and any other upgrade identified in the Company's tentative plan for upgrades to the Elizabeth Borough Municipal Authority System, and will agree to share information relating to such investigation with the OCA in Pennsylvania-American Water Company's first base rate case in which the System is included upon request.

27. That the Commission issue any other approvals or certificates appropriate, customary or necessary under the Pennsylvania Public Utility Code to carry out the transactions contemplated in a lawful manner.

28. That the protest filed by Forward Township in this proceeding, is hereby denied and dismissed.

29. That the Commission's Secretary, upon the receipt of written notice from Pennsylvania-American Water Company, filed with the Secretary's Bureau notifying the Commission of the closing of the Pennsylvania-American Water Company's acquisition of the Elizabeth Borough Municipal Authority wastewater system, pursuant to Ordering Paragraph No. 3 above, and upon the completion of Ordering Paragraph No. 5 above, mark this docket at No. A-2025-3052983 closed.

Date: August 22, 2025

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/s/  
Erin L. Gannon  
Administrative Law Judge

\_\_\_\_\_  
/s/  
Steven K. Haas  
Administrative Law Judge

## APPENDIX

### Contents of the Record

#### PENNSYLVANIA-AMERICAN WATER COMPANY

1. PAWC Statement No. 1, Direct Testimony of Marcus Kohl, together with PAWC Exhibit MK-1 (the Application);
2. PAWC Statement No. 2, Direct Testimony of Daniel J. Hufton, P.E., together with PAWC Exhibits DJH-1 and DJH-2;
3. PAWC Statement No. 3, Direct Testimony of Stacey D. Gress, together with PAWC Exhibits SDJ-1 and SDJ-2;
4. PAWC Statement No. 4, Direct Testimony of Jerome C. Weinert, PE, ASA, CDP, together with PAWC Exhibit JCW-1;
5. PAWC Statement No. 1-R, Rebuttal Testimony of Marcus Kohl, together with PAWC Exhibit MK-1 R;
6. PAWC Statement No. 2-R, Rebuttal Testimony of Daniel J. Hufton, P.E.;
7. PAWC Statement No. 3-R, Rebuttal Testimony of Stacey D. Gress; and
8. PAWC Statement No. 4-R, Rebuttal Testimony of Jerome C. Weinert, PE, ASA, CDP.

#### ELIZABETH BOROUGH MUNICIPAL AUTHORITY

1. EBMA Statement No. 1, Direct Testimony of Timothy Guffey;
2. EBMA Statement No. 2, Direct Testimony of Harold Walker, III, together with Appendix HW-1;
3. EBMA Statement No. 1-R, Rebuttal Testimony of Timothy Guffey;
4. EBMA Statement No. 2-R, Rebuttal Testimony of Harold Walker, III; and

5. EBMA Statement No. 3-R, Supplemental Rebuttal Testimony of Timothy Guffey, together with Exhibit TG-1.

#### BUREAU OF INVESTIGATION AND ENFORCEMENT

1. I&E Statement No. 1, Direct Testimony of Zachari Walker;
2. I&E Statement No. 2, Direct Testimony of Ethan H. Cline;
3. I&E Statement No. 1-SR, Surrebuttal Testimony of Zachari Walker;  
and
4. I&E Statement No. 2-SR, Surrebuttal Testimony of Ethan H. Cline.

#### OFFICE OF CONSUMER ADVOCATE

1. OCA Statement 1, Direct Testimony of Nicholas A. DeMarco, together with Exhibits NAD-1 through NAD-4;
2. OCA Statement 2, Direct Testimony of David J. Garrett, together with Exhibits DJG-1 through DJG-11;
3. OCA Statement 1 SR, Surrebuttal Testimony of Nicholas A. DeMarco, together with Exhibit NAD-SR-1; and
4. OCA Statement 2SR, Surrebuttal Testimony of David J. Garrett.

#### OFFICE OF SMALL BUSINESS ADVOCATE

None

#### FORWARD TOWNSHIP

1. Forward Cross-Examination Exhibits 1 through 7.

#### PUBLIC INPUT HEARING EXHIBITS

1. Cline Exhibit 1; and
2. DeChicchis Exhibits 1 through 6.