

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Application of Pennsylvania-American Water Company under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code, for Approval of the Transfer, by Sale, to Pennsylvania-American Water Company, of Substantially all of the Assets, Properties and Rights Related to the Wastewater Treatment Plant and Collection System Owned and Operated by the Elizabeth Borough Municipal Authority

**Public Meeting held October 9, 2025
Docket No. A-2025-3052983
3052983-ALJ**

STATEMENT OF COMMISSIONER KATHRYN L. ZERFUSS

The Commission is making a determination today on Pennsylvania-American Water Company's (PAWC's) application requesting Commission approval to acquire the Elizabeth Borough Municipal Authority's (EBMA's) wastewater collection and treatment system and establish a fair market value rate base for the acquired assets. PAWC's application was amended by a Joint Petition for Approval of Non-Unanimous Settlement of All Issues (Settlement) filed by PAWC, EBMA, the Commission's Bureau of Investigation and Enforcement, and the Office of Consumer Advocate. Under the specific factual circumstances in this case, I find that the Settlement is in the public interest and that PAWC has satisfied its burden of demonstrating that acquiring EBMA will affirmatively promote the service, accommodation, convenience, or safety of the public.

I generally support the goals of regionalization and consolidation and believe that the acquisition of smaller systems by larger systems under Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, may improve the long-term viability of the water and wastewater industry. Nevertheless, I emphasize that we must carefully evaluate each Section 1329 proceeding on a case-by-case basis. In conducting this careful evaluation, the Commission's obligation is to review the evidence before us and decide whether PAWC has satisfied its burden of proving that there are substantial affirmative public benefits of this proposed acquisition that outweigh the acknowledged harms resulting from this acquisition. *See Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Cmwlth. 2023). The Court explained that where known harms result from the transaction, the acquisition must provide benefits that *differ substantially* from the benefits already being provided by the existing system operator. Providing the same services that are already being provided, or providing upgrades that the existing system operator is capable of providing, are not substantial affirmative benefits, especially if the existing system is already operating safely and reliably. *Id.* at 1118. Based on my evaluation of the record and the settlement provisions in this

case, I find that PAWC has demonstrated that its acquisition of EBMA will result in it providing services that differ substantially from, and are not currently being provided, by EBMA.

The transaction will resolve significant environmental, operational, and security deficiencies with the EBMA system. Most notably, EBMA's treatment works are currently in hydraulic and organic overload, resulting in numerous combined sewer overflow events that occur annually at the system's five combined sewer outfall/regulator structures. For the five years ending in 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. EBMA has been under a directive from the Pennsylvania Department of Environmental Protection (DEP) to reduce sewer overflows since at least 2004 when EBMA initially developed its Long-Term Control Plan (LTCP). The LTCP requires extensive expansion and improvements to the collection system and treatment plant, and EBMA is six years behind schedule in meeting the original LTCP implementation dates. Settlement, Appendix D at 6-7, Appendix E at 8; PAWC St. 1 at 10; PAWC St. 2 at 9. In the last three annual inspections, Allegheny County Department of Health has cited EBMA for exceeding permitted effluent levels for fecal coliform bacteria and missing/damaged air diffusers in the aeration basins, as well as not having a certified operator or an Industrial Pretreatment Program as DEP recommended. PAWC St. 2 at 19, 20. When PAWC acquires the system, it plans to negotiate with DEP for a new compliance schedule for the LTCP and assume responsibility for implementing the LTCP and its projects, which make up the majority of the \$25.9 million that PAWC will invest in the system. PAWC St. 2 at 13, 21; PAWC Exh. DJH-2.

PAWC and EBMA have also demonstrated that the rate impact from performing the necessary work on the system would be less if PAWC acquires the system than if EBMA conducted the work needed to implement the LTCP. Settlement, Appendix E at 7; PAWC St. 2 at 15. PAWC has the technical fitness to perform the necessary system improvements, whereas EBMA lacks the technical capacity to operate and modernize the 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. Settlement, Appendix E at 7. Based on the evidence presented, I agree with the ALJs that PAWC's acquisition of EBMA will provide "greater certainty that the LTCP will be completed in a timely manner, with rate increase protections," and this is a material benefit that differs from the service EBMA currently provides.

Moreover, the Parties to the Settlement have taken steps to minimize the impact of a rate increase on the acquired customers and PAWC's current customers. The Parties agreed to a ratemaking rate base of \$27,138,703 under the Settlement. By arriving at this amount, PAWC voluntarily agreed to use the depreciated original cost of the system times the Reasonableness Ratio Review of 1.63 for the year ended December 31, 2024, consistent with the process set forth in the Commission's *Final Supplemental Implementation Order*, Docket No. M-2016-2543193 (Order entered July 2, 2024). The Settlement also provides for a rate gradualism plan for EBMA's residential customers. In PAWC's first base rate case that includes the acquired assets, PAWC will not propose a rate increase for acquired EBMA customers of more than 30% of EBMA's rates in effect at closing. In PAWC's second base rate case that includes the acquired assets, PAWC will not propose a rate increase for acquired EBMA customers of more than 60%

of EBMA's rates in effect at closing.¹ The evidence shows that PAWC will not have to increase rates as much as EBMA would need to in order to comply with the LTCP if EBMA retained its system. If the transaction does not close, EBMA would need to increase its monthly bill for an average residential customer using 3,000 gallons to approximately \$114.23. EBMA St. 1 at 9-10. PAWC's current average monthly combined sewer system bill for residential customers using 3,000 gallons is \$98.36. PAWC St. 3 at 12. The Settlement also contains various public interest provisions that should be approved, including PAWC's commitment to do the following: (1) contribute an additional \$100,000 to its Hardship Fund over a five-year period or as a one-time contribution post-closing; (2) include a bill insert for current water customers and send a letter to newly acquired customers with information regarding the low-income programs PAWC offers and how to access and enroll in those programs, if eligible; and (3) track EBMA customers that are potentially eligible to enroll, or who are enrolled, in PAWC's Customer Assistance Program (CAP) and present a breakdown of this CAP enrollment data pertaining to EBMA customers in its next base rate case. Settlement, ¶¶ 37-41. While I would prefer that the settling parties had included a payment arrangement plan or other benefits for small businesses in their agreement, I find that the above settlement provisions are among the substantial affirmative public benefits in this case.

On balance based on the specific factual record in this case, I conclude that PAWC has satisfied its burden of demonstrating that the substantial affirmative public benefits outweigh the harms of this transaction. For these reasons, I will be voting in favor of the acquisition, as amended by the settlement.



DATE: October 9, 2025

Kathryn L. Zerfuss, Commissioner

¹ 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, and a 60% increase would be a bill of about \$97.00.

