

**BEFORE THE PENNSYLVANIA HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON PUBLIC UTILITIES AND THE SUBCOMMITTEE
ON GOVERNMENT AND FINANCIAL OVERSIGHT**

**Title 66, Section 1329:
Valuation of Acquired Water and Wastewater Systems**

**Testimony of Elizabeth R. Marx, Executive Director
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May 26, 2021



Good morning members of the Subcommittee on Public Utilities and the Subcommittee on Government and Financial Oversight, and thank you for the invitation to appear before you today on this important matter. My name is Elizabeth Marx, I am the Executive Director of the Pennsylvania Utility Law Project (PULP). PULP is a specialty legal services program within the Pennsylvania Legal Aid Network, which is exclusively focused on ensuring that all Pennsylvanians can connect and maintain safe and affordable utility services to their home. We work to achieve our mission by providing representation, advice, education, and support services to low income individuals and community groups across Pennsylvania.

PULP regularly represents individual consumers facing termination of water and wastewater service as a result of their inability to pay – both in the regulated and unregulated context. We also represent low income consumer groups in water and wastewater rate proceedings for investor-owned utilities before the Public Utility Commission. As such, we have had a front-row seat to the tangible impact of water and wastewater acquisitions on low and moderate income Pennsylvanians, and the ability of these households to maintain safe and affordable service to their homes.

I note from the outset that my office has not historically taken a position on water and wastewater acquisitions. Regionalization and consolidation of water and wastewater services can produce economies of scale, improve water quality and safety, and increase access to important consumer protections like standardized notices, payment arrangements, and medical protections that are only available to customers of regulated water and wastewater utilities. Thus, in the past we have remained neutral on the acquisition of water and wastewater systems because it presented an opportunity to bring critically important protections to municipal utility consumers across the state.

At this juncture, however, we can no longer remain neutral on the issue, as the purported benefits of regionalization and consolidation have quickly given way to substantial and largely unconstrained rate impacts that threaten the ability of low and moderate income Pennsylvanians to afford life-sustaining water and wastewater services. Indeed, water and wastewater rates have grown exponentially over the last decade - in many cases surpassing the amount residential households pay for energy services. This increase in rates is not solely driven by water and wastewater acquisitions, but acquisition costs are a substantial contributing factor which must be addressed.

My testimony today will briefly address the procedural constraints inherent in Section 1329, which curtail the ability of consumers and consumer groups to meaningfully participate in acquisition proceedings, as well as the profound impact that water and wastewater acquisitions at current valuation standards are having on rates. I will then provide a number of recommendations. Chief among our recommendations is for the General Assembly to halt acquisitions under Section 1329, and task the Public Utility Commission and the Department of Environmental Protection to develop a statewide plan for consolidation and regionalization of water and wastewater that is

explicitly centered on and accounts for the affordability and accessibility of water and wastewater services for all Pennsylvanians.

Procedural Constraints of Section 1329

First, there are significant procedural constraints contained in Section 1329, which interfere with the ability of consumers to meaningfully participate in the review process to ensure that an acquisition is in the public interest and will not harm existing or newly acquired public utility customers.

On this issue, I note that PULP has not, to date, represented low income consumers in a Section 1329 water or wastewater acquisition proceeding. This is not due to a lack of interest by low income consumers or a lack of need to address unique low income concerns in review and approval of a water or wastewater acquisition. This is instead a reality driven by the compressed timeframe with which acquisitions are reviewed – as well as the lack of any specific, enumerated legal requirement to consider rate affordability or anticipated rate impacts for both the acquired and the acquiring utility’s customers in reviewing a proposed acquisition.

With regard to timing, Section 1329 requires that the Commission issue a final determination within 6 months of the date an acquisition is *filed*.ⁱ In the context of utility litigation, this is lightning fast. After accounting for procedural timeframes within that 6-month review period, the parties to a Section 1329 proceeding are left with very little time – typically just two or three weeks – to fully investigate the filing and develop a record in the proceeding. Discovery, for example, is not answered until *after* final acceptance of the application, once notice of the application is complete and the protest period begins. This can be several weeks after the case is initially filed with the Commission, and significantly truncates the already brief period for review. Moreover, direct testimony of intervening parties is often due just one or two days after the prehearing conference in the case. Given the complexity of an acquisition proposal, the current timeframe for review is simply too short to allow for impacted consumers to meaningfully participate. Indeed, a Section 1329 acquisition proceeding before the PUC is often over before it ever really begins.

In addition to a compressed timeframe, the lack of any explicit legal parameters requiring the Commission to review the impact of an acquisition on the affordability of rates is likewise a limiting factor to meaningful participation in Section 1329 proceedings. Given the pace at which acquisition proceedings are reviewed and approved, there is little ability to argue for consideration of factors not explicitly required by statute. As a result, acquisitions often go through without any critical examination of the impact the acquisition would have on rate affordability for either the acquiring or the acquired utility consumers.

While we have a number of clients that have expressed concerns about water and wastewater acquisitions, and the impact of acquisitions on the accessibility of service in their community, these two factors have frustrated our ability to get involved on their behalf because we simply do

not have the focused resources necessary to meaningfully participate within these existing legal and procedural constraints.

Water and Wastewater Affordability and Acquisition Costs

Water and wastewater services are increasingly unaffordable across the Commonwealth, as rates for service have risen precipitously over the last decade.ⁱⁱ Low income families now regularly pay more than 10% of their gross household income for water and wastewater services alone, and there are few programs available to help meaningfully offset those costs.ⁱⁱⁱ

The COVID-19 pandemic has placed a bright spotlight on water and wastewater affordability concerns. By the end of November, 2020, regulated utility consumers owed 40% more than in the prior year – and 240% more residential consumers (roughly 180,000 households) were at risk of termination.^{iv}

Critical infrastructure investment needs, including stormwater system requirements and lead remediation issues, have driven substantial rate increases in communities across the state, for both public and investor-owned water and wastewater systems. But infrastructure costs are not alone responsible for increasing water and wastewater rates. The acquisition of relatively healthy and financially stable publicly owned water and wastewater systems at fair market value pursuant to Section 1329, and the full recovery of those acquisition costs through rates, is contributing to the growing unaffordability of water and wastewater rates.

For example, Pennsylvania American Water Company (PAWC) customers were recently required to foot the \$19.9 million bill to cover the premium valuation costs associated with just five Section 1329 water and wastewater acquisitions.^v

The premium costs borne by consumers as a result of the current valuation standards bear no relationship to the provision of safe service – nor is there any cap on the number of systems that an investor-owned company can acquire while passing the premium costs on to consumers. The systems acquired pursuant to Section 1329 have few operational issues – and are not “troubled” systems in need of a costly acquisition in order to provide safe service. Rather, the generous valuation has been used to consolidate relatively healthy systems – providing substantial financial value to the local municipality and to the acquiring utility, while leaving residential ratepayers to foot the bill.

There is often an agreement built into an acquisition that promises to shield the acquired utility customers from further rate increases for a period of years following a rate increase. But eventually, this rate freeze will always come to an end – and can lead to rate shock for customers of the acquiring company when their rates are increased to reach parity with the acquiring utility’s other customers.

It is important to note here that the solution to rising infrastructure costs is not to continue incentivizing acquisition of relatively stable, municipally owned water and wastewater systems by

private, investor-owned utilities. Private, investor-owned water and wastewater utilities charge substantially higher prices compared to municipally owned utilities.^{vi} This is driven primarily by the fact that, unlike municipal utilities, private, investor-owned utilities are entitled to earn a return on their investment which is built into rates. Likewise, the cost of capital is often lower for municipally owned utilities, which have greater access to low or no cost municipal financing and other public funds to help pay for infrastructure projects.

I recognize that the broader debate around the privatization of water and wastewater systems in Pennsylvania more generally is a separate and distinct issue that goes beyond today's inquiry into Section 1329 valuation. That said, it is an important consideration when determining whether and to what extent the law should continue to incentivize the purchase of municipally owned water and wastewater authorities by private, investor-owned utilities.

Recommendations

As I noted above, and in light of the substantial impact of recent acquisitions on water and wastewater rates, we urge the General Assembly to halt municipal acquisitions at fair market value pursuant to Section 1329. We further recommend that the General Assembly task the Public Utility Commission and the Department of Environmental Protection to develop a coordinated and targeted plan for regionalization and consolidation that more appropriately values water and wastewater systems. The PUC and DEP should be required to include consideration of rate affordability as a central component to such a plan to ensure that the benefits of regionalization and consolidation are not eclipsed by the inherent costs.

Nevertheless, to the extent Section 1329 valuation remains intact, I urge the General Assembly to take a hard look at the procedural constraints I raised above to ensure that all impacted consumers have the opportunity to meaningfully participate. We recommend extending the statutory timeframe from 6 months to 9 months, consistent with the amount of time available in a statutory rate proceeding, to allow for adequate time to develop a comprehensive record in these proceedings.

In turn, we recommend that the General Assembly amend Section 1329 to include an explicit statutory requirement that the Public Utility Commission consider the rate impact that a proposed acquisition will have on low income consumers of the acquired and the acquiring utility. Proposed acquisitions should be required to include rate mitigation and universal service programming to offset identified rate impacts for low income customers of both the acquired and acquiring utility.

Limits should also be set on the acquisition premium permitted to be recovered through rates, and parameters should be established to ensure that acquisitions at fair market value are limited to a troubled or struggling water and wastewater systems – rather than allowing acquisitions of relatively healthy systems at a premium price.

Finally, but critically, rather than incentivize acquisitions of municipal utilities by private, investor-owned utilities, we urge the General Assembly to encourage *municipal* regionalization

and consolidation. This would help to keep costs down, as municipal utilities do not include shareholder profits in rates. To ensure the full benefits of consolidation and regionalization are realized, the General Assembly should require acquiring municipal utilities to comply with the Public Utility Commission’s standardized consumer billing, collections, and termination standards that apply to regulated utilities.

This concludes my remarks. Thank you, once again, for the invitation to appear before you today. I am happy to answer any questions you may have, and note that my team and I stand ready to assist the Subcommittees in their consideration of this critically important issue.

ⁱ 66 Pa. C.S. § 1329(d)(2).

ⁱⁱ Nina Lakhani, Millions of Americans Can’t Afford Water as Bills Rise 80% in a Decade, the Guardian (June 23, 2020), <https://www.theguardian.com/us-news/2020/jun/23/millions-of-americans-cant-afford-water-bills-rise>.

ⁱⁱⁱ Testimony submitted on behalf of PULP’s clients, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), in the recent Pennsylvania American Water rate case revealed that – at current rates – low income households paid up to 8% of household income for water - and as high as 13% of household income for wastewater, depending on their income and geographic region. Pa. PUC v. Pa. American Water, Docket Nos. R-2020-3019369, R-2020-3019371, Testimony of Mitchell Miller on Behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (filed September 8, 2020). This testimony is a matter of public record, and is available for review upon request.

^{iv} Public Utility Service Termination Proclamation of Disaster Emergency – COVID-19, PUC Docket No. M-2020-3019244, Responses of Electric, Gas, and Water Utilities to the PUC’s Request for Data (filed December 15, 2020).

^v See Pa. PUC v. Pa. American Water Co., Docket Nos. R-2020-3019369 and R-2020-3019371, Direct Testimony of Scott Rubin on Behalf of the Office of Consumer Advocate at 34.

^{vi} In 2017, the University of Delaware Water Resources Center, which tracks water rates for public and private water utilities in Delaware, Pennsylvania, New Jersey, and Maryland, found that the average water rate for public water utilities in those states was \$6.13 per 1000 gallons, while private utilities charged \$10.90 per 100 gallons – a difference of 44 percent. Since 2017, Pennsylvania’s two largest investor-owned water and wastewater utilities – Aqua and Pennsylvania American Water – have each been approved for significant additional rate increases, folding in the cost of fair market valuation into rates. See ITPI, The Risks Posed by Water Privatization (July 2020), https://www.inthepublicinterest.org/wp-content/uploads/ITPI_WaterPrivatization_July2020_final.pdf.