



March 18, 2024

The Pennsylvania Public Utility Commission (PUC)  
400 North Street  
Harrisburg, PA 17120

Re: **Docket No. M-2016-2543193**  
Tentative Supplemental Implementation Order: *Valuation of Acquired Municipal Water and Wastewater Systems – Act 12 of 2016 Implementation*

Dear Commissioners:

The Pennsylvania Municipal Authorities Association (PMAA) appreciates the opportunity to submit comments to the Tentative Supplemental Implementation Order: *Valuation of Acquired Municipal Water and Wastewater Systems – Act 12 of 2016 Implementation*, Docket No. M-2016-2543193 (Proposed Order). The Proposed Order was published in the February 17, 2024 Pennsylvania Bulletin, and, consistent with the March 18, 2024 deadline for comments, PMAA respectively submits the following information and comments for consideration.

PMAA represents over 700 municipal authorities across the Commonwealth, the vast majority of which provide drinking water and wastewater treatment services to more than six million citizens. Founded in 1941, the mission of PMAA is to assist authorities in providing services that protect and enhance the environment, promote economic vitality, and further the general welfare of the Commonwealth and its citizens.

To provide some background, an authority, by virtue of the Municipality Authorities Act (MAA), is a separate body created under state law for accomplishing public purposes rather than through direct action of local governments, such as boroughs, cities, and townships. Municipal authorities may provide services to the community and finance its services by means of user fees. Authorities also commonly provide services in more than one municipality and in so doing, provide operational efficiencies and economies of scale by serving beyond political boundaries. Irrespective of how many communities they serve, the mission of municipal authorities is to provide excellent quality, reliable, and safe services at an affordable cost to the customers of their local community, whether that be large or small. To reiterate, for these reasons, the authority model is perfectly suited for providing services on a regional level.

To bolster this viewpoint, it is important to understand the governing structure of a municipal authority. Authorities can be created by any county, borough, city, or township, functioning singly or jointly with one or more other local governments. Once created, the authority manages all aspects of the authority's operation via a municipally appointed board of directors, and authority meetings are conducted in public, complying with the open meeting requirements of the Sunshine Act. These features ensure that authorities act in a transparent manner governed locally with full public access and operate only in the best interests of the communities they serve. Many PMAA members will be impacted by the PUC's ultimate decision on the aforementioned Proposed Order.

PMAA's specific comments on the Proposed Order are as follows:

1000 North Front Street, Suite 401, Wormleysburg, PA 17043  
717-737-7655 . 717-737-8431 (f) . [info@municipalauthorities.org](mailto:info@municipalauthorities.org)

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**Public Meeting/Hearing Requirements** – Proposes at least two public hearings be held prior to the signing of an Asset Purchase Agreement (APA).

Many “Fair Market Value” acquisitions have been hit with harsh public pushback when made public after the signing of an APA.

**Comments:**

- The length of time required to notify a selling utility’s customers of public hearings is not identified. Public notice well in advance (e.g. at least 90 days) of public hearings is crucial to providing impacted ratepayers of both the acquiring and selling utility with the ability to effectively prepare worthwhile comments. Ratepayers should be provided with a reasonable timeframe to prepare for their participation in the public hearings.
- Public hearing procedures should include:
  - Announcement of intent.
  - Full relevant information disclosure.
  - A reasonable amount of time for ratepayers to analyze all information and data germane to the proposed transaction.
  - Time set on the agenda to allow ratepayers to present their comments.
- Transparency could be boosted by:
  - Requiring public disclosure and public hearings prior to the execution of the APA and ensuring that a qualified representative from both the acquiring and selling entities attend all public hearings, which representatives must have sufficient knowledge regarding the proposed transaction in order to respond to all ratepayer inquiries.
  - Ensuring public input prior to the execution of the APA.
  - Ensuring all transactions throughout the process are made public.
  - Requiring public bidding when appropriate.
- Non-disclosure agreements should be prohibited.

Public input and participation are needed long before a contract is signed to sell a municipally owned water or sewer system. The PUC proposes two public meetings prior to executing a sale contract, and while this is a good minimum, more is necessary. The public must be involved from the moment the local government decides to consider a utility sale, and the public must be notified and allowed to provide comments at every stage of the sale process. There should be at least one public hearing before the system solicits bids. There should be full and complete disclosure of the impact of the sale on the residents of the selling entity and all customers of the acquiring entity as well as all analysis that went into making the sale recommendation.

While public hearings are a step in the right direction, the PA General Assembly should require public referendum/ratepayer approval prior to a sale under the law, allowing for local decisions with significant community impact to play out via the democratic process.

**Rate Impact Notice** – Proposes three items be verified in initial application:

- (1) acknowledgement by both parties of rate impacts on selling utility’s customers,
- (2) notice to acquiring utility’s existing customers of rate impacts, and
- (3) an understanding by both parties that actual rate outcomes may vary from initial expectations.

“Fair Market Value” has been proven to provide no lasting benefit to customers, resulting in significantly higher rates.

**Comments:**

- Is it the intent of the PUC that items (1) and (3) also include acknowledgement and understanding by the selling utility’s existing customers via effective public notice and public input?

- Is it the intent of the PUC that potential future customers and all existing customers of the acquiring entity in the Commonwealth be provided with a copy of the APA and the Rate Impact Notice, including all technical appendices?
  - Customers should see all language inserted in the APA as abridgements and summaries may not provide a clear understanding of stand-alone rate impacts.

**Default Weights for Appraisals** – Proposes appraisers apply equal 1/3 weightings for cost, market, and income approaches for valuations.

While not many, isolated cases exist where sharp divergences in valuations have led to an overweighting of preferred approaches.

**Comments:**

- Should appraisers apply all 10 current Uniform Standards of Professional Appraisal Practice (USPAP) to the valuation process as opposed to only USPAP Standards 1 – 4?
- Do the methods now used for the preferred valuation approaches need reform?
- Further context on this proposal is needed to better understand its impact on future acquisitions.
- It allows for exceptions, which could be a concern.

**Reasonableness Review Ratio** – Proposes establishment of a reasonableness review ratio (RRR) based upon a multi-year average of enterprise value to net property, plant, and equipment metric. The RRR would be set annually. Based on current metrics, the RRR would be set at 1.68 initially, and would change annually on a rolling basis to allow for changes in market valuation.

Section 1329 valuations have spiraled higher in recent years, and many deals have been executed at multiples well above the proposed initial 1.68 RRR. At best, valuations would be reduced.

**Comments:**

- There is no clear guidance on how the PUC will use the RRR.
- The 1.68 RRR is too high.
  - The only reasonable price for ratemaking purposes is the actual depreciated book value of the system, less contributed assets. Other valuation methods lead to excessive and unreasonable rate hikes on customers and are counter to the public interest.
- If the use of an RRR mitigates the harm to ratepayers, it should be 1.
- This metric is non-binding, which could be a concern. If the use of an RRR mitigates the harm to ratepayers, it should be binding.
- Will higher premiums be approved?

Of note, the RRR does not eliminate, or correct the use of “Fair Market Value,” but instead, offers a limited harnessing of the methodology by imposing a new formula. Using the average of the RRR will only result in a purchase price based on the average for-profit “Fair Market Value” (based on inflated valuations used by other for-profit purchasers when pursuing other purchases). Protecting the public should be the highest priority.

**Conclusion**

Initially touted as a panacea for underfunded and improperly operated systems, the facts indicate that private companies have used “Fair Market Value” to pursue the purchase of many well-funded and properly operated systems rather than distressed systems which appear to be the original purpose of Act 12. Most, if not all, of these systems have been located outside of urban areas, and in suburbs where payment rates are high and needed system improvements are limited. While these proposals are a good starting point to the many negative impacts of “Fair Market Value,” they could prove insufficient. Overall, our position is that the PA General

Assembly should repeal Act 12 of 2016.

PMAA's final comments worth mentioning are:

- Are these proposals an attempt to halt Act 12 repeal legislation introduced by the PA General Assembly?
  - State legislators now more frequently recognize that using "Fair Market Value" to determine the appropriate sale and purchase price of a publicly owned water or sewer system, has been a dismal failure.
- Will these standards be applied retroactively to prior acquisitions?
- Return on equity should be limited. While not part of Section 1329, this is a major factor.
- The Pennsylvania Officer of Consumer Advocate (OCA) plays a vital role in representing the interests of ratepayers in utility transactions. The OCA should be bolstered to include ratepayer advocates assigned to specific transactions to help guide impacted customers through the process.
- The PUC should consider applying existing case law when evaluating Section 1329 applications (i.e. *Patrick M. Cicero v. Pennsylvania Public Utility Commission*, 2023 Pa. Cmwlth.).

Once again, PMAA appreciates the opportunity to submit comments on this Proposed Order.

Sincerely yours,

A handwritten signature in blue ink that reads "Jennie Shade". The signature is stylized, with a large, looped initial "J" and a large, looped initial "S".

Jennie Shade  
Senior Director of Government Relations