Overview of Pennsylvania Water and Wastewater Fair Market Value Municipal Acquisitions Under 66 Pa. C.S. § 1329

Introduction

Section 1329 governs acquisitions of water and wastewater systems owned by municipal corporations or authorities — as distinct from the small or troubled private system acquisitions under Section 1327. The statute creates a voluntary (i.e., no receiverships) structured fair market value (FMV) appraisal process that, when elected by the parties, establishes a pre-determined ratemaking rate base for the acquired system. Since enactment, the Commission has issued a series of implementation orders refining procedural requirements, the most recent being the 2024 Final Supplemental Implementation Order (2024 FSIO) which added mandatory pre-application public hearing requirements, rate impact disclosure obligations, standardized appraisal weights, and a non-binding Reasonableness Review Ratio. The Commission has received approximately 27 applications since enactment.

A Section 1329 acquisition does not stand alone as a separate statutory proceeding. At core, it is a subset of a certificate of public convenience (CPC) transaction governed by Section 1102 of the Public Utility Code, 66 Pa. C.S. § 1102, which governs public utility transfers, acquisitions, or efforts to operate public utility facilities. A Section 1329 application is effectively filed as an attachment to the Section 1102 application, and the Commission's authority to approve or deny the transaction derives from its general authority under Section 1102.

The standard Section 1102 public interest inquiry therefore applies to every Section 1329 proceeding: the fair market value (FMV) valuation mechanism addresses rate base treatment but does not displace or modify the Commission's obligation to find affirmative public benefit before approving the acquisition. What Section 1329 adds is a specialized valuation overlay that, when elected, pre-determines the ratemaking rate base and subjects the proceeding to an accelerated six-month decision deadline in place of the standard open-ended Section 1102 suspension period.

Who Section 1329 Covers

Section 1329 applies to acquisitions of a *selling utility* — defined as a water or wastewater company located in Pennsylvania and owned by a municipal corporation or authority — by either an *acquiring public utility* (a regulated water or wastewater utility acquiring through a voluntary arm's-length transaction) or an *entity* (a person, partnership, or corporation filing for public utility status in connection with the acquisition, e.g., private equity). (§ 1329(g).) The statute applies only to voluntary transactions and does not govern involuntary takeovers or receiverships.

The Fair Market Value Appraisal Process

The Section 1329 FMV process is consensual. It applies "[u]pon agreement by both the acquiring public utility or entity and the selling utility." (§ 1329(a).) If the parties do not elect it, the acquisition proceeds under standard Section 1102 practice without the benefit of pre-determined rate base treatment. When elected, the process requires two separate appraisals by two utility valuation experts (UVEs). One selected by the acquiring party; one by the selling utility. Each must comply with the current biennial edition of the Uniform Standards of Professional Appraisal Practice (USPAP) and employ all three valuation approaches: cost, market, and income. (§ 1329(a)(2), (a)(3), (b)(1).)

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Each UVE must deliver the completed appraisal within 90 days of execution of the service contract, and both UVEs must support their appraisals with written direct testimony filed concurrently with the application. (§ 1329(a)(5).)

"Fair market value" under the statute is the average of the two UVE appraisals — not a value determined by the Commission. (§ 1329(g).) Each of the three valuation approaches is weighted equally (one-third) as a default; deviation requires a showing of good cause in the acquisition application, with full explanation of the alternative weights chosen.

The three valuation approaches.

The statute requires each UVE to employ all three of the following approaches:

- **Cost approach** — estimates value based on the investment required to replace or reproduce the system's future service capability, or by determining original cost less accrued depreciation. The parties must engage the same licensed engineer to assess the selling utility's tangible assets, and that assessment must be incorporated into each UVE's cost-approach analysis. (§ 1329(a)(4).) Going concern value, overhead add-ons, and future capital improvements may not be included.
- **Market approach** — estimates value by reference to comparable sales of similarly situated water or wastewater systems and market-based financial metrics of comparable publicly traded utilities, using the selling utility's current customer count. Speculative growth adjustments, net book financials multipliers, and goodwill-type adders are excluded.
- **Income approach** — estimates value by capitalizing earnings or cash flow, or by discounted cash flow analysis, using the Commission's quarterly earnings report for capital structure and cost of capital inputs. Going concern value, future capital improvements, and erosion-of-return adjustments are excluded.

UVE Eligibility and Fee Limits

To perform appraisals under Section 1329, a firm or individual must register with the Commission as a UVE by filing an Application for Registration and paying a $125 filing fee; upon approval, the UVE is listed on the Commission's publicly available UVE Registry. Registration is at the firm or individual level; the conflict-of-interest and independence requirements that must be satisfied in each individual proceeding are separate from, and in addition to, baseline registry status.

The application requires:

- Prior registration as a business entity with the Pennsylvania Department of State.
- Organizational and contact information.
- Identification of parent, subsidiary, and affiliate relationships.
- Documentation of any prior business relationships with water or wastewater companies or other UVEs.
- Professional licenses and relevant experience demonstrating technical fitness.

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- A sworn affidavit executed by an authorized principal confirming the absence of any compromise, or appearance of compromise, of the UVE's professional judgment on the valuation.

Regarding conflict of interest, a UVE may not derive any material financial benefit from the sale other than service fees and may not be an immediate family member of a director, officer, or employee of either party within 12 months of hire. (§ 1329(b)(2).) UVE fees may be included in transaction and closing costs, capped at the lesser of 5% of FMV or a Commission-approved amount under the statute (§ 1329(b)(3)); The Commission interprets this to mean each individual UVE fee is limited to 2.5% of FMV.

Ratemaking Rate Base

The ratemaking rate base incorporated into the acquiror rate base is the lesser of: (i) the negotiated purchase price; or (ii) the FMV as determined by the two-appraisal average. (§ 1329(c)(2).) This is the statute’s central consumer-protection mechanism. An acquirer cannot recover any excess through rates. The Commission’s acquisition approval order establishes the ratemaking rate base figure, which is then incorporated during the acquirer’s next base rate case for a public utility acquirer, or in an entity’s initial tariff filing for a CPC. (§ 1329(c)(1), (d)(3)(i).) The statute expressly provides that the original source of funding for any part of the water or sewer assets like federal or state grants is not relevant to determining asset value, eliminating what had been a contested issue in prior municipal acquisitions. (§ 1329(d)(5).)

The Reasonableness Review Ratio

Adopted in 2024, the Commission annually publishes a Reasonableness Review Ratio (RRR) as a non-binding reference point for evaluating the prudency of Section 1329 acquisition prices. The RRR is calculated as Enterprise Value (EV) divided by Net Property, Plant & Equipment (Net PP&E), using a barometer group of publicly traded investor-owned water utilities, with EV and Net PP&E data collected quarterly. The data set begins in Q1 2017 and grows to a rolling ten-year average. The Commission compares a proposed transaction's Market Value Ratio (MVR) against its published RRR as one factor in its review. The MVR is the rate base addition — the lesser of the negotiated purchase price or FMV under § 1329(c)(2) — divided by the depreciated original cost (DOC) of the acquired system.

To illustrate how the RRR operates, consider two scenarios involving a municipal water system with a DOC of $10 million and two UVE appraisals averaging to an FMV of $16 million.

> *Scenario A — purchase price below FMV*. The parties negotiate a purchase price of $15 million. Because $15 million is less than the $16 million FMV, the ratemaking rate base is set at $15 million. The MVR is $15M ÷ $10M = 1.50. Compared to the current RRR of 1.59 (year ended 12/31/2025), the MVR falls below the benchmark, which would tend to support the reasonableness of the acquisition price.
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> *Scenario B — purchase price above FMV*. The parties negotiate a purchase price of $18 million. Because $18 million exceeds the $16 million FMV, the ratemaking rate base is capped at $16 million; the acquirer absorbs the $2 million excess

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without rate recovery. The rate base addition is $16 million — not $18 million — and the MVR is $16M ÷ $10M = 1.60. That ratio modestly exceeds the RRR of 1.59 and would ostensibly invite closer scrutiny, even though ratepayers are fully protected from the $2 million premium.

The RRR is not a ceiling and establishes no legal obligation on the parties. A ratio modestly above the benchmark does not foreclose approval. Practitioners should also note that the RRR is not among the factors enumerated in Section 1329; reliance on it as a dispositive basis for approving or rejecting a rate base claim would present significant appellate risk.

Procedure and the Six-Month Rule

A Section 1329 application is filed with the Commission and reviewed by the Bureau of Technical Utility Services (TUS) against the Application Checklist. The review process involves two stages — conditional acceptance, in which staff identifies deficiencies and the applicant has an opportunity to cure, and final acceptance — and a Section 1329 docket remains inactive until final acceptance is issued; filings in an inactive docket are not considered formally filed with the Commission. The timeline to reach final acceptance depends on the conditions imposed, the applicant's responsiveness, and the scope of TUS review, and may be deliberately extended to ensure a consideration period of at least 170 days from the date of final acceptance to the scheduled Commission public meeting.

Section 1329(d)(2) requires the Commission to issue a final order within six months of the filing date of "an application meeting the requirements of subsection (d)(1)." The six-month clock does not begin to run until the application is both complete under the Checklist and finally accepted by the Commission; a filing that is conditionally accepted but not yet finally accepted has not started the clock. Critical practical point: applicants who submit incomplete filings or are slow to cure deficiencies may find months pass before the statutory period even begins. Once the docket becomes active and is assigned to the Office of Administrative Law Judge, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Bureau of Investigation and Enforcement (I&E) are automatic participants and must be served at the time of filing; other parties may intervene. Given the compressed six-month window, the Commission front-loaded public participation through the mandatory pre-asset purchase agreement (APA) public hearing requirement.

Application Requirements

When the Section 1329 process is elected, the acquiring public utility must attach the following to its Section 1102 acquisition application (§ 1329(d)(1)):

- Copies of both UVE appraisals. (§ 1329(d)(1)(i).)
- The agreed purchase price. (§ 1329(d)(1)(ii).)
- The ratemaking rate base as determined under § 1329(c)(2). (§ 1329(d)(1)(iii).)
- Transaction and closing costs to be included in rate base. (§ 1329(d)(1)(iv).)
- A proposed tariff at the seller's existing rates, and a rate stabilization plan if applicable. (§ 1329(d)(1)(v).)

An entity must provide the same information as an attachment to its Section 1102 application for a certificate of public convenience. (§ 1329(e).) The 2024 FSIO and Application

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Checklist add further requirements: at least two in-person public hearings conducted before execution of the APA, held within the proximate municipal boundaries of the selling utility with notice to the Commission; rate impact notifications to customers of both seller and buyer showing bill impacts at the full gross revenue requirement without proposed subsidy shifts; buyer, seller, and UVE verification statements; a 5-year Department of Environmental Protection (DEP) compliance history for both parties; and an executed, signed copy of the APA.

Interim Rates and DSIC

The seller's existing tariff rates remain in effect from closing until the acquirer's next base rate case, providing rate continuity for customers during the transition period. (§ 1329(d)(4).) During that interim period, the acquirer may collect a distribution system improvement charge (DSIC) if it has one approved by the Commission. (§ 1329(d)(4).)

Post-Acquisition Improvements

Two ratemaking protections apply to post-acquisition capital investment not included in a DSIC. First, allowance for funds used during construction (AFUDC) accrues from the date cost is incurred until the earlier of four years of in-service status or inclusion in the acquirer's next base rate case. (§ 1329(f)(1).) Second, depreciation on post-acquisition improvements not included in a DSIC is deferred for both book and ratemaking purposes until those improvements are incorporated in the next rate case. (§ 1329(f)(2).) Both provisions are designed to reduce the carrying cost of improvements made between closing and rate case filing.

shsparks@pa.gov