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May 14, 2021

Via Electronic Filing
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: In Re: Application of PA-American Water Company
Docket Numbers: A-2020-3021460

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission please find the Protest of Pottstown Borough Authority and Borough of Pottstown, Montgomery County in regard to the above-referenced proceeding.

All parties of record have been served pursuant the attached Certificate of Service. If you have any questions or concerns, please do not hesitate to contact this office.

Thank you very much for your cooperation and assistance.

Very truly yours,

LAMB MCERLANE PC

By: */s/ Vincent M. Pompo*

Vincent M. Pompo

/sg

Enclosures served via E-mail and U.S. First Class Mail

cc: Honorable Jeffrey A. Watson (jeffwatson@pa.gov)
Nick Miskanic (nmiskanic@pa.gov)

All Counsel and parties of record per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re:	:	Application Docket
	:	
APPLICATION OF PENNSYLVANIA-AMERICAN	:	No. A-2020-3021460
WATER COMPANY PURSUANT TO SECTIONS	:	
507, 1102 AND 1329 OF THE PUBLIC UTILITY CODE	:	
FOR APPROVAL OF ITS APPLICATION OF ITS	:	
ACQUISITION OF THE WASTEWATER SYSTEM	:	
ASSETS OF UPPER POTTS GROVE TOWNSHIP	:	

:

**PROTEST OF POTTS TOWN BOROUGH AUTHORITY AND BOROUGH OF
POTTS TOWN, MONTGOMERY COUNTY**

Pursuant to 52 Pa. Code §§ 3.502, 5.51, 5.52 and 5.53, Pottstown Borough Authority and Borough of Pottstown, Montgomery County (individually the “Authority” and the “Borough” and collectively the “Protestants”) hereby file with the Pennsylvania Public Utility Commission (“Commission”) this Protest in the Application captioned above of Pennsylvania-American Water Company Artesian – Wastewater Division (“PAWC-WD”) by which PAWC-WD seeks approval pursuant to the legal standards of Sections 1102 and 1329 of the Pennsylvania Public Utility Code, 66 Pa C.S. §§ 1102(a) and 1329, for approval of: (1) the transfer, by sale, of substantially all of the wastewater system assets, properties and rights of Upper Pottsgrove Township related to its wastewater collection and conveyance system; (2) the right of PAWC-WD to begin to offer or furnish wastewater service to the public in Upper Pottsgrove Township, Montgomery County, and a portion of Douglass Township, Berks County, Pennsylvania; and (3) the use for ratemaking purposes of the lesser fair market value or the negotiated purchase price of the Upper Pottsgrove Township assets related to its wastewater collection and treatment system (the “Application”). In support of this Protest, Protestants provide the following information:

1. The Authority is a municipal authority organized and existing pursuant to the Municipality Authorities Act, 53 Pa C.S. §5601 *et seq.*, with an address of 100 E. High Street, Pottstown, PA 19464 and a telephone number of 610-970-6500.

2. The Borough is organized and existing pursuant to the Borough Code, 8 Pa C.S. §101 *et seq.*, and is a political subdivision of the Commonwealth, with an address of 100 E. High Street, Pottstown, PA 19464 and a telephone number of 610-970-6500.

3. Protestants' attorney is Vincent M. Pompo, Pennsylvania attorney identification number 37714, of the firm of Lamb McErlane PC, with an address of 24 E. Market Street, P. O. Box 565, West Chester, PA 19381-0565 and a telephone number of 610-430-8000.

4. The existing wastewater system subject to PAWC-WD's Application flows to an interceptor for treatment at the Authority's sewage treatment plant (the "STP") in which Upper Pottsgrove Township has purchased 670,100 gpd of bulk wastewater treatment capacity pursuant to a Sewage Treatment Service Agreement dated September 13, 2004 between Upper Pottsgrove Township, the Authority and the Borough (the "STSA").

5. The Application proposes that Upper Pottsgrove will assign the STSA to PAWC-WD upon closing.

6. Section 10.10 of the STSA prohibits the assignment of the STSA to PAWC-WB without the consent of the Authority and the Borough, and only allows assignment without consent to a municipal authority created by Upper Pottsgrove, thus leaving PAWC-WB without an agreement to treat its collected wastewater absent the consent of the Authority and the Borough.

7. In or around 2013, the Authority undertook a project for sewer conveyance upgrades within the Borough in Hanover Street to replace existing pipe and install new siphon boxes and pipe (the "Project").

8. The Project, while located in the Borough, was necessary to increase the conveyancing capacity of the Upper Pottsgrove wastewater system to the STP for a residential development located within Upper Pottsgrove known as Coddington View and to meet other future customer demands for wastewater treatment services within Upper Pottsgrove. The Authority derived little or no benefit from the Project.

9. Upper Pottsgrove, the Authority and the Borough entered into a Settlement Agreement & Release dated July 2, 2013 (the "Settlement Agreement"), in which Upper Pottsgrove agreed to make a \$259,000.00 payment to the Authority, which would be ultimately expended for the Project.

10. The Settlement Agreement provided that the Authority "shall not be required to contribute any additional funds to and/or for the Project".

11. The Settlement Agreement further provided that "[t]he parties agree that [the Authority] will be entitled to reimbursement, as permitted by the Authority's Act, for any funds expended by [the Authority] to construct the Project for which the parties contemplate the execution of a mutually acceptable reimbursement agreement."

12. The developer of the Coddington View residential development in Upper Pottsgrove, Arcadia at Coddington View, LP, contributed \$345,000.00 to the Project.

13. As a result of cost overruns, the Project cost the Authority a total of \$1,073,537.00 causing the Authority to advance \$473,539.00 in additional Authority funds on the Project beyond the funds contributed for the Project by Upper Pottsgrove and by the developer.

14. Consistent with the Settlement Agreement, on February 17, 2015, Upper Pottsgrove adopted Resolution No. 656 amending its sewer tapping fees by imposing a tapping fee

reimbursement part/component of \$292.98 per EDU on future connections to its sewer system in order to reimburse the Authority and the developer for their respective contributions to the Project.

15. Upper Pottsgrove based the reimbursement part/component of its tapping fee on a total Project cost of \$1,073,537.00, and contributions of \$259,000.00 from Upper Pottsgrove, \$345,000.00 from the developer, and \$473,539.00 from the Authority.

16. On or about March 4, 2015, Protestants billed Upper Pottsgrove \$473,407.00 for the Siphon Project. On or about September 22, 2017, the Borough received \$3,222.78 to apply to the Siphon Project balance, leaving a present principal balance of \$470,184.22. On or about November 20, 2020, Upper Pottsgrove tendered to the Borough by check the amount of \$25,350.05 towards the balance along with a letter from the Township solicitor stating its position that once the system is sold to PAWC-WD the payments would cease; however, the Borough has not yet cashed the check since, after inquiry, the Township would not agree that such action would be without prejudice to Protestants' position that the sale would not relieve the Township of its obligation.

17. On April 20, 2020, Upper Pottsgrove enacted Ordinance No. 508 which ordinance authorizes and approves the execution, delivery and performance of the Asset Purchase Agreement with PAWC-WD and the assignment of the STSA to PAWC-WD, among other actions.

18. Following the enactment of Ordinance No. 508, Upper Pottsgrove has advised the Protestants that after the closing of the sale of its wastewater system assets to PAWC-WD, Upper Pottsgrove will no longer honor its obligation to reimburse the additional Authority funds advanced on the Project since it will no longer have the legal authority to charge any sewer tapping fees.

19. This obligation established by the Settlement Agreement cannot be unilaterally obliterated by the Township adopting Ordinance No. 508 approving the sale of the sewer system, and then implementing the Ordinance by proceeding to closing, as to do so would breach the Settlement Agreement, and would also violate Article I, § 10 of the United States Constitution and Article I, § 17 of the Pennsylvania Constitution by impairing its contractual obligations with the Protestants.

20. Moreover, only as a direct result of the Project, and the consent of the Authority and the Borough to the assignment of the STSA to PAWC-WB, can PAWC-WD demonstrate its ability to provide adequate wastewater collection, treatment or disposal capacity to meet present and future customer demands.

21. The present and future ratepayers of the Upper Pottsgrove wastewater system should assume the unreimbursed Authority costs of the Project.

22. The ratepayers of the Borough and the Authority should not be left to assume the unreimbursed Authority costs of the Project.

23. Protestants have an interest in the Application in order to assure that their ratepayers do not assume the unreimbursed Authority costs of the Project, and instead that the present and future ratepayers of the Upper Pottsgrove wastewater system assume the unreimbursed Authority costs of the Project.

24. Protestants' interest in the Application is unique, substantial and immediate, and not represented by any other party in the proceeding.

25. Participation by Protestants in this proceeding is in the public interest.

26. No other party to this proceeding possesses an interest identical to that of Protestants.

27. Protestants possesses a sufficient legal interest in the Application so as to permit the filing of this protest.

WHEREFORE, Protestants requests that this Honorable Commission accept this Protest for filing, permit Pottstown Borough Authority and the Borough of Pottstown to become parties to this proceeding, and condition any approval of the Application on the full reimbursement of the \$470,184.22 in Authority costs advanced towards the Siphon Project, plus interest and costs.

Respectfully submitted,

LAMB MCERLANE PC

By: /s/ Vincent M. Pompo

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Attorney I.D. #37714
Attorney For Protestants

Dated: May 14, 2021

VERIFICATION

I, Vincent M. Pompo, hereby state that I am the Solicitor of the Borough of Pottstown Authority and Special Counsel for the Borough of Pottstown, Montgomery County, Pennsylvania and am duly authorized to make this verification on its behalf. The facts set forth in the foregoing Protest are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: May 14, 2021

/s/Vincent M. Pompo
Vincent M. Pompo
LAMB MCERLANE, PC
24 E. Market Street
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CERTIFICATE OF SERVICE

I hereby certify that this day I have served a copy of Pottstown Borough Authority and the Borough of Pottstown's Protest upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a party).

Via First Class Mail and Electronic Mail Transmission:

<p>Elizabeth Rose Triscari, Esquire Pennsylvania American Water Company 852 Wesley Drive Mechanicsburg PA 17055 elizabeth.triscari@amwater.com <i>Counsel for Applicant, PAWC-WD</i></p>	<p>David P. Zambito, Esquire Jonathan Nase, Esquire Cozen O'Connor 17 North Second Street Suite 1410 Harrisburg, PA 17101 dzambito@cozen.com jnase@cozen.com <i>Counsel for Applicant, PAWC-WD</i></p>
<p>Erin L. Gannon, Esquire Christine M. Hoover, Esquire Harrison W. Breitman, Esquire Office of Consumer Advocate 555 Walnut Street; 5th Floor; Forum Place Harrisburg, PA 17101 egannon@paoca.org choover@paoca.org hbreitman@paoca.org</p>	<p>James J. Rodgers, Esquire Dilworth Paxson LLP 1500 Market Street, Suite 3500E Philadelphia, PA 19102 jrodgers@dilworthlaw.com <i>Counsel for Intervenor Upper Pottsgrove Township</i></p>
<p>Gina Miller, Esquire PA PUC Bureau of Investigation and Enforcement 400 North Street Harrisburg, PA 17120 ginmiller@pa.gov</p>	<p>Erin K. Fure Office of Small Business Advocate 555 Walnut Street; 5th Floor; Forum Place Harrisburg, PA 17101 efure@pa.gov</p>

Dated: May 14, 2021

/s/ Vincent M. Pompo
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