



May 18, 2021

VIA E-FILING

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of Upper Pottsgrove Township's assets, properties and rights related to its wastewater collection and conveyance system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company 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; Docket No. A-2020-3021460 et al.

Joint Answer of Pennsylvania-American Water Company and Upper Pottsgrove Township to the Petition to Intervene of Shadeland Development Corporation

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the above-referenced Joint Answer. All parties to this proceeding have been served, as shown on the attached Certificate of Service.

Please contact me if you have any question or concern. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *Pennsylvania-American Water Company*

DPZ/kmg
Enclosure

cc: Administrative Law Judge Jeffrey A. Watson
Per Certificate of Service
Elizabeth Rose Triscari, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the :
Pennsylvania Public Utility Code, 66 Pa. C.S. § :
1102(a), for approval of (1) the transfer, by sale, of :
substantially all of Upper Pottsgrove Township’s :
assets, properties and rights related to its : Docket No. A-2020-3021460, *et*
wastewater collection and conveyance system to : *al.*
Pennsylvania-American Water Company, and (2) :
the rights of Pennsylvania-American Water :
Company 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 :

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of May served a true copy of the foregoing **Joint Answer of Pennsylvania-American Water Company and Upper Pottsgrove Township to the Petition to Intervene of Shadeland Development Corporation** on the parties, listed below in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

Due to the COVID-19 Pandemic, Service is Being Made by E-Mail Only

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Respectfully submitted,



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Attorneys for *Pennsylvania-American Water Company*

VERIFICATION

I, Scott D. Fogelsanger, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 5/18/2021

Scott D. Fogelsanger

VERIFICATION

I, Trace Slinkard hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: May 18, 2021

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized representation of the name 'Trace Slinkard'.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water Company :
under Section 1102(a) of the Pennsylvania Public Utility :
Code, 66 Pa. C.S. § 1102(a), for approval of (1) the :
transfer, by sale, of substantially all of Upper Pottsgrove :
Township’s assets, properties and rights related to its :
wastewater collection and conveyance system to : Docket No. A-2020-3021460, *et al.*
Pennsylvania-American Water Company, and (2) the :
rights of Pennsylvania-American Water Company 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 :

JOINT ANSWER OF PENNSYLVANIA-AMERICAN WATER COMPANY AND
UPPER POTTS GROVE TOWNSHIP TO THE PETITION TO INTERVENE OF
SHADELAND DEVELOPMENT CORPORATION

AND NOW COMES Pennsylvania-American Water Company (“PAWC”) and Upper Pottsgrove Township (“UP”), pursuant to 52 Pa. Code § 5.61, to file this Joint Answer to the Petition to Intervene (“Intervention”) filed by Shadeland Development Corporation (“Shadeland”) on May 14, 2021. PAWC and UP are also filing this day Preliminary Objections, based on lack of jurisdiction and lack of standing. PAWC and UP respectfully request that the Honorable Jeffrey A. Watson (the “Administrative Law Judge”) deny the Intervention in order to prevent Shadeland from interjecting issues into this proceeding over which the Pennsylvania Public Utility Commission (“Commission”) has no jurisdiction. The Commission should not permit its resources, and the resources of the parties, to be wasted on extraneous and irrelevant issues.

In support whereof, PAWC and UP aver as follows:

1. It is denied that Shadeland is the current owner of the sanitary sewer line and related improvements (the “Sewer Line”) traversing through the property located on West Moyer Road, Tax Parcel No. 600002254008. To the contrary, UP owns the Sewer Line. The ownership of the Sewer Line is therefore disputed, and the Commission lacks jurisdiction to resolve this dispute.

2. It is admitted that Shadeland constructed the Sewer Line. The Construction and Access Agreement between Shadeland and UP, dated August 5, 2016 (“Construction Agreement”) is a written document that speaks for itself.

3. 52 Pa. Code § 5.72(a) is a written document that speaks for itself.

4. Denied. By way of further answer, Shadeland’s intervention in this matter is neither necessary, nor in the public interest, because it seeks to raise issues over which the Commission has no jurisdiction. As an agency created by the General Assembly, the Commission has only the power given to it by the General Assembly, either explicitly or implicitly. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission lacks authority to interpret or enforce contracts, especially contracts (such as the Construction Agreement) not involving a public utility. *See, e.g., Allport Water Auth. v. Winburne Water Co.*, 258 Pa. Super. 555, 393 A.2d 673 (Pa. Super. 1978); *Adams et al. v. Pa. Pub. Util. Comm’n*, 819 A.2d 631 (Pa. Cmwlth. 2003); *Application of Pennsylvania-American Water Company under Sections 507, 1102, and 1329 of the Public Utility Code for Approval of its Acquisition of Wastewater System Assets of Exeter Township*, Docket No. A-2018-3004933 (Opinion and Order entered October 3, 2019);¹ *Evans v. FirstEnergy Solutions Corp.*, Docket No. P-2014-2421556 (Opinion and Order entered Jan. 26, 2015). Additionally, the Commission has no jurisdiction to resolve private disputes over the ownership of property. That is a matter for the Court of Common Pleas of Montgomery County. Finally, the Commission has no jurisdiction to interpret the Pennsylvania Municipalities Planning Code, 53 P.S. § 10507-A (“Prerequisites

¹ The Commission adopted the Recommended Decision of Administrative Law Judge Andrew M. Calvelli, who found that the Commission lacked jurisdiction over the contract claims pursued by St. Lawrence Borough in a Section 1329 acquisition proceeding:

Given the above jurisdictional limitations, and given the fact that St. Lawrence is clearly seeking money damages only, the Commission lacks the authority to rule on those claims. Those claims, should any exist, must be brought in a court of general legal jurisdiction such as the Common Pleas Court. Such claims are not properly before the Commission, as they are outside of the Commission’s legal jurisdiction.

Application of Pennsylvania-American Water Company under Sections 507, 1102, and 1329 of the Public Utility Code for Approval of its Acquisition of Wastewater System Assets of Exeter Township, Docket No. A-2018-3004933 (Recommended Decision issued August 9, 2019) p. 59.

for assessing sewer and water tap-in fees”). Shadeland should not be permitted to intervene in this matter to pursue extraneous and irrelevant issues.

5. PAWC and UP incorporate their answer to ¶ 1, above. The Sewer Line is located, in part, on property owned by UP. Consequently, UP disputes that the Sewer Line must be dedicated to UP.

6. The Construction Agreement is a written document that speaks for itself. The remainder of this paragraph states a legal conclusion to which no response is necessary. By way of further answer, PAWC and UP incorporate their answer to ¶ 7, below.

7. Denied. By way of further answer, the agreement between Shadeland and UP never contemplated the obligation for reimbursement since the Sewer Line that was installed is located on open space property owned by UP. The agreement is silent as to any obligation of the Township to provide reimbursement. In addition, PAWC and UP incorporate their answer to ¶ 4, above.

8. This paragraph states a legal conclusion to which no response is necessary. By way of further answer, PAWC denies that Shadeland meets the standards for intervention set forth in 52 Pa. Code § 5.72(a)(2) or (3). Shadeland does not have an interest that will be bound by the Commission’s action in this proceeding. As stated above, the Commission does not have jurisdiction to interpret and enforce contracts, to interpret and enforce the MPC, or to determine the ownership of property. Therefore, even if the Commission approves PAWC’s acquisition of UP’s wastewater system, as described in the Application, Shadeland could subsequently file a proceeding in a court of common pleas² to pursue its claim that it owns the Sewer Line.³ Additionally, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission’s Bureau of Investigation and Enforcement can adequately represent the public’s interest in ensuring that the fair market value of the UP wastewater system is not overstated in this

² There is no pending court proceeding to determine the ownership of the Sewer Line.

³ Even if the Commission approves the Acquisition as described in the Application, PAWC’s obligation to Close on the Acquisition is conditioned on the representations and warranties of UP being true and correct on the Closing date. APA § 12.02. One such representation and warranty is that UP has title to the acquired assets. APA § 4.16(a). Thus, even if the Commission approves the Acquisition as described in the Application, PAWC could refuse to Close until UP has resolved the dispute with Shadeland over the Sewer Line. In the alternative, the Commission could condition its approval of the Application on the resolution of this dispute prior to Closing. These options reinforce the point that Shadeland does not have an interest that will be bound by the Commission’s action in the present proceeding.

proceeding, considering the dispute over the ownership of the Sewer Line.⁴ Shadeland therefore fails to satisfy the standard for intervention at 52 Pa. Code § 5.72(a)(2).

Moreover, Shadeland fails to satisfy the standard for intervention at 52 Pa. Code § 5.72(a)(3) because it has no interest “of such nature that participation of the petitioner may be in the public interest.” Shadeland describes no interest in this proceeding other than its alleged ownership of the disputed Sewer Line. PAWC respectfully submits that this allegation of private ownership of property, standing alone, fails to give Shadeland an interest in this proceeding such that Shadeland’s participation would promote the public interest. To the contrary, Shadeland’s participation would be contrary to the public interest because Shadeland seeks to pursue irrelevant and extraneous issues. Allowing it to do so would waste the Commission’s and the parties’ time and resources. Additionally, Shadeland is trying to use the Commission’s proceeding to pressure UP to make a monetary concession in a private contractual dispute over which the PUC has no jurisdiction. This is an improper use of the Commission’s litigation process.

WHEREFORE, for the reasons stated above, PAWC respectfully requests that the Administrative Law Judge deny Shadeland’s Petition to Intervene.

Respectfully submitted,



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⁴ Shadeland’s Intervention includes no information regarding the alleged value of the Sewer Line and its resulting impact on the valuation of UP’s wastewater system. The Sewer Line was installed in the last five years at an original cost of approximately \$283,000. PAWC’s requested fair market value rate base is \$13,750,000 which is substantially lower than the average of the Utility Valuation Experts’ appraisals (\$17,320,346 average), which were calculated including the Sewer Line. Even if excluded from the assets to be acquired, the Sewer Line would not impact the use of the purchase price as the fair market value rate base under 66 Pa. C.S. § 1329



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Date: May 18, 2021