



May 24, 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 Reply of Pennsylvania-American Water Company and Upper Pottsgrove Township to the Answer of Pottstown Borough Authority and Borough of Pottstown to the Joint Preliminary Objections of Pennsylvania-American Water Company and Upper Pottsgrove Township

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the above-referenced pleading. 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.

Sincerely,

COZEN O'CONNOR

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

DPZ/kmg
Enclosure

cc: Administrative Law Judge Jeffrey A. Watson
Nicholas Miskanic
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 24th day of May 2021 served a true copy of the foregoing **Joint Reply of Pennsylvania-American Water Company and Upper Pottsgrove Township to the Answer of Pottstown Borough Authority and Borough of Pottstown, Montgomery County to the Joint Preliminary Objections of Pennsylvania-American Water Company and Upper Pottsgrove Township** 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,

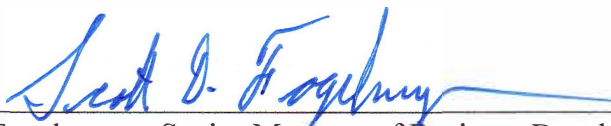


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Attorneys for *Pennsylvania-American Water Company*

VERIFICATION

I, Scott Fogelsanger hereby state that the facts above 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 made herein are made subject to the penalties of 18 Pa. Cons. Stat. §4904 (relating to unsworn falsification to authorities).




Scott Fogelsanger, Senior Manager of Business Development
Pennsylvania-American Water Company

Dated: May 24, 2021

VERIFICATION

I, Michelle L. Reddick, 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: 05-24-2021


Michelle L. Reddick
Township Manager

**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 REPLY OF PENNSYLVANIA-AMERICAN WATER COMPANY AND UPPER
POTTSGROVE TOWNSHIP TO THE ANSWER OF POTTSTOWN BOROUGH
AUTHORITY AND BOROUGH OF POTTSTOWN, MONTGOMERY COUNTY
TO THE JOINT PRELIMINARY OBJECTIONS OF PENNSYLVANIA-AMERICAN
WATER COMPANY AND UPPER POTTSGROVE TOWNSHIP

AND NOW COME PAWC¹ and UP, pursuant to the Prehearing Order issued by the Administrative Law Judge, to file this Reply (“Reply”) to the Answer (“Answer”) of PBA and BP to the Joint Preliminary Objections (“Joint Preliminary Objections”) of PAWC and UP. PAWC and UP continue to request that the Administrative Law Judge dismiss the Protest in its entirety and with prejudice because the Commission lacks jurisdiction over the issues raised by PBA and BP and because the Protest is legally insufficient. In the alternative, PAWC and UP request that the ALJ limit the participation of PBA and BP to the issue of whether the Commission should approve the Application with a condition that the STSA be assigned to PAWC at Closing.

In support thereof, PAWC and UP aver as follows:

In their Protest, PBA and BP note that UP’s wastewater system sends wastewater to PBA’s wastewater treatment plant for treatment pursuant to the STSA and that the Application proposes that UP

¹ Unless otherwise noted, this Reply uses the same acronyms and capitalized terms as were used in the Joint Preliminary Objections.

assign the STSA to PAWC at Closing. Protest ¶¶ 4-6. PBA and BP state that, pursuant to the STSA, they must consent to this assignment, but they will not do so until a contractual dispute with UP is resolved. Answer ¶¶ 3, 6-7. They ask the Commission to condition any approval of the Acquisition on a completed assignment of the STSA prior to Closing. Answer ¶ 15.

PAWC and UP's Preliminary Objections ¶¶ 6-12, noted that UP's alleged outstanding obligation is a purely contractual claim, which is contested by UP, and that the Commission lacks jurisdiction to construe and enforce contracts – particularly contracts to which no public utility is a party. In their Answer, ¶ 12, PBA and BP admit that they are not requesting that the Commission adjudicate their contract claim against UP. Consequently, the Administrative Law Judge should find that the contractual claim of PBA and BP against UP is beyond the scope of this litigation. In short, the Administrative Law Judge should find that the Commission lacks jurisdiction to determine whether UP has any outstanding obligation to PBA and BP.

PBA and BP nevertheless contend that the Commission has jurisdiction over their claims because PAWC must demonstrate its ability to serve UP's current customers, which depends on the assignment of the STSA. Answer ¶ 5. In addition, PBA and BP contend that their Protest is legally sufficient because the transaction cannot close, and PAWC cannot serve its potential customers, without the assignment of the STSA to PAWC. Answer ¶ 13.

PAWC and UP contend that the Protest of PBA and BP is legally insufficient. Commission regulations state that “[a] person objecting to the approval of an application filed with the Commission may file a protest to the application.” 52 Pa. Code § 5.51(a) (“Protest to an application”). PBA and BP, however, are not objecting to the approval of the Application; they are requesting the same relief as PAWC and UP.

The Application, ¶¶ 3 and 45, asks the Commission to approve the APA as submitted, which clearly states that assignment of the STSA is a condition precedent to Closing. APA § 12.01 (“Consents and Approvals”). PAWC and UP have not requested that the Commission modify the STSA or otherwise approve the Acquisition without assignment of the STSA. The Commission can approve the Application as submitted because the Acquisition is already conditioned on the assignment of the STSA under the APA.

The Administrative Law Judge therefore should find that the “Protest” of PBA and BP is legally insufficient because it does not oppose the Commission’s approval of the sale of the UP wastewater system to PAWC, but only asks that it be conditioned on the assignment of the STSA, which the Application already contemplates.² Thus, PBA and BP seek no relief different from what approval of the Application necessarily entails.³

If, however, the Administrative Law Judge agrees with PBA and BP, and finds that the Commission has jurisdiction and that their Protest is legally sufficient, PBA and BP’s participation in this proceeding should be limited to the issue of whether the Commission should approve the Application subject to a condition, pursuant to 66 Pa. C.S. § 1103(a), that the STSA be assigned to PAWC prior to Closing. This is the only issue raised by PBA and BP’s Protest for which they have arguably demonstrated standing. PBA and BP should not be permitted to clutter the record and delay this proceeding -- which is subject to a six month time line -- by introducing extraneous and irrelevant issues.

WHEREFORE, for the reasons stated above, PAWC and UP respectfully request that the Administrative Law Judge:

- (1) GRANT the Preliminary Objections and dismiss the Protest of PBA and BP in its entirety and with prejudice; or, in the alternative,
- (2) Limit the participation of PBA and BP to the issue of whether the Commission should approve the Application subject to a condition, pursuant to 66 Pa. C.S. § 1103(a), that the STSA be assigned to PAWC prior to Closing.

² This conclusion reinforces the argument that the Protest should be dismissed for lack of jurisdiction – there is no dispute regarding any issue that is within the Commission’s jurisdiction.

³ If the Administrative Law Judge determines that PBA and BP’s Protest should not be dismissed in its entirety on the basis of the Joint Preliminary Objections, PAWC and UP reserve their right to file a motion for judgment on the pleadings at a subsequent point in the proceeding. *See* 52 Pa. Code § 5.102(d)(1)(“The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.”).

Respectfully submitted,



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Dated: May 24, 2021

Respectfully submitted,

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