



May 24, 2021

**VIA E-FILING**

**David P. Zambito**

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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 Shadeland Development Corporation 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 Miskanec  
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 Shadeland Development Corporation 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,



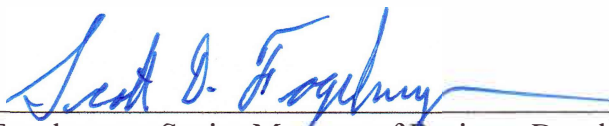
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**Attorneys for *Pennsylvania-American Water Company***

## 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).



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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 :

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JOINT REPLY OF PENNSYLVANIA-AMERICAN WATER COMPANY AND UPPER  
POTTSGROVE TOWNSHIP TO THE ANSWER OF SHADELAND DEVELOPMENT  
CORPORATION TO THE JOINT PRELIMINARY OBJECTIONS OF PENNSYLVANIA-  
AMERICAN WATER COMPANY AND UPPER POTTSGROVE TOWNSHIP

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AND NOW COME PAWC<sup>1</sup> and UP, pursuant the Prehearing Order issued by the Administrative Law Judge, to file this Reply (“Reply”) to Shadeland’s Answer (“Answer”) to the Joint Preliminary Objections (“Joint Preliminary Objections”) of PAWC and UP. PAWC and UP continue to request that the Administrative Law Judge dismiss Shadeland’s Intervention in its entirety and with prejudice because the Commission lacks jurisdiction over the issues raised by Shadeland and because Shadeland does not meet the standards for Intervention. If, however, the Administrative Law Judge disagrees, PAWC and UP request that the ALJ limit the participation of Shadeland to the issue of whether the Commission should approve the Application with a condition requiring UP to obtain clear title to the Sewer Line prior to Closing.

In support thereof, PAWC and UP aver as follows:

Shadeland purports to own the Sewer Line, which it claims will not be dedicated to the Township until the Township reimburses Shadeland for certain amounts it paid to construct the Sewer Line.<sup>2</sup>

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

<sup>2</sup> Shadeland’s Answer ¶ 2, alleges that the reimbursement obligation is found in the Municipalities Planning Code (“MPC”), 53 P.S. § 10507-A (“Prerequisites for assessing sewer and water tap-in fees”) and the Municipality

Shadeland seeks to intervene to ensure that the Township does not convey the Sewer Line to PAWC as part of the Transaction.

PAWC and UP's Preliminary Objections, ¶¶ 8 and 10-15, noted that ownership of the Sewer Line is disputed and that the Commission has no jurisdiction to determine ownership of the Sewer Line. PAWC and UP further argued that the Commission has no authority to interpret or enforce the Construction Agreement or the statutes that Shadeland references as support for its position.

In its Answer, ¶¶ 10 and 11, Shadeland admits that the ownership of the Sewer Line is disputed and that the Commission lacks jurisdiction to decide private contractual disputes. Consequently, the Administrative Law Judge should find that any contractual issues between Shadeland and UP, and any issues regarding the application of the MPC and the MAA, are beyond the scope of this litigation. In short, the Administrative Law Judge should find that the Commission lacks jurisdiction to determine the ownership of the disputed Sewer Line.

Shadeland nevertheless contends that the Commission has jurisdiction over its claims because the Commission can determine whether PAWC's acquisition of the Township's wastewater system is in the public interest while the dispute over the Sewer Line remains unresolved. Answer ¶ 10. Shadeland claims that it has standing to pursue this issue as an Intervenor to ensure that PAWC's acquisition of the Township's wastewater assets does not include the disputed Sewer Line. Answer ¶ 11.

PAWC and UP respectfully submit that Shadeland fails to meet the regulatory standards for Intervention. 52 Pa. Code § 5.72. Shadeland has no interest that will be bound by the Commission's decision. PAWC and UP ask the Commission to approve the Acquisition as described in the Asset Purchase Agreement ("APA"). Pursuant to the APA, 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

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Authorities Act ("MAA"), 53 Pa. C.S. § 5607 ("Purposes and powers"). Shadeland does not explain why the Municipality Authorities Act applies to the Township. In any event, the Commission has no jurisdiction to interpret or enforce either statutory provision.

the Commission approves the Acquisition as described in the Application, PAWC has the contractual right to refuse to Close until UP has established that it has title to the Sewer Line.<sup>3</sup> Moreover, UP has the contractual duty to obtain clear title to the assets before they are transferred to PAWC. Shadeland's alleged interest in the disputed Sewer Line would not be affected by the Commission's approval of the Acquisition because UP will not transfer the Sewer Line to PAWC until UP has clear title to it. The Administrative Law Judge therefore should find that Shadeland lacks the standing necessary to intervene in this proceeding.<sup>4</sup>

If, however, the Administrative Law Judge agrees with Shadeland, and finds that the Commission has jurisdiction and that Shadeland has standing to intervene, Shadeland'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 UP obtain clear title to the Sewer Line prior to Closing. This is the only issue raised by Shadeland's Intervention, and Shadeland should not be permitted to clutter the record and delay this proceeding by introducing extraneous and irrelevant issues – particularly in light of the Commission's obligation under Section 1329 to enter a final order within six months of application acceptance.

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

(1) GRANT the Preliminary Objections and dismiss the Intervention of Shadeland in its entirety and with prejudice; or, in the alternative,

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<sup>3</sup> The Sewer Line runs under UP property. Consequently, UP not only disputes that there is any agreement to reimburse Shadeland, but also asserts that it owns the line even if not dedicated to UP. These issues are properly addressed by the Court of Common Pleas, rather than the Commission.

<sup>4</sup> If the Administrative Law Judge declines to deny Shadeland's intervention in its entirety, 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.").

(2) Limit the participation of Shadeland to the issue of whether the Commission should approve the Application subject to a condition, pursuant to 66 Pa. C.S. § 1103(a), that UP obtain clear title to the Sewer Line prior to Closing.

Respectfully submitted,



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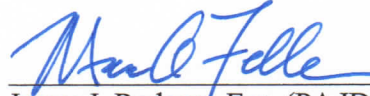
Dated: May 24, 2021

(2) Limit the participation of Shadeland to the issue of whether the Commission should approve the Application subject to a condition, pursuant to 66 Pa. C.S. § 1103(a), that UP obtain clear title to the Sewer Line prior to Closing.

Respectfully submitted,

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Dated: May 24, 2021