

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re:	:	Application Docket
	:	
APPLICATION OF PENNSYLVANIA-AMERICAN	:	No. A-2020-3021460
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 POTTS GROVE TOWNSHIP'S ASSETS,	:	
PROPERTIES AND RIGHTS RELATED TO ITS	:	
WASTE WATER COLLECTION AND CONVEYANCE	:	
SYSTEM TO PENNSYLVANIA-AMERICAN WATER	:	
COMPANY AND (2) THE RIGHTS OF PAWC TO	:	
BEGIN TO OFFER TO FURNISH WASTEWATER	:	
SERVICE TO THE PUBLIC IN UPPER POTTS GROVE	:	
TOWNSHIP, MONTGOMERY COUNTY AND	:	
PORTIONS OF DOUGLASS TOWNSHIP, BERKS	:	
COUNTY, PENNSYLVANIA.	:	

**CONSOLIDATED REPLY BRIEF OF POTTSTOWN BOROUGH AUTHORITY
AND BOROUGH OF POTTSTOWN**

LAMB McERLANE PC
Vincent M. Pompo, Esquire
PA I.D. No. 37714
Maureen M. McBride, Esquire
PA I.D. No. 57668
William R. Christman III, Esquire
PA I.D. No 318827
24 E. Market Street
West Chester, PA 19381
(610) 430-8000
vpompo@lambmcerlane.com

*Attorneys for the Pottstown Borough
Authority and Borough of Pottstown*

Dated: July 1, 2021

I. INTRODUCTION

The Pottstown Borough Authority (the “Authority”) and the Borough of Pottstown (the “Borough”) submit this Reply Brief in further support of their objections to the proposed Settlement (presented by all parties except the Authority and Borough) and Pennsylvania American Water Company (“PAWC”)’s Application in the above-captioned matter.

II. ARGUMENT

A. **Contrary to PAWC and the Township’s Arguments, there are Not “Adequate Safeguards” in Place to Protect the Borough and Authority’s Interests.**

Throughout their Main Briefs, both PAWC and Upper Pottsgrove Township (“the Township”) repeatedly argue that the Authority and the Borough lack colorable grounds to object to the Settlement because the Settlement provides the Authority and Borough with “adequate safeguards” by preventing a closing without the Borough and the Authority’s “consent.” *See* Township’s Main Brief, at 3.

These arguments ignore the elephant in the room. It is undisputed that the settlement, as currently framed, would allow the Township and PAWC to close on the transaction based on an order from a single judge from the Court of Common Pleas of Montgomery County directing the Authority and Borough to consent, notwithstanding that: (i) the trial judge’s decision could be overturned on appeal, and (ii) once the closing occurs, the transaction cannot be unwound. Thus, far from being merely “hypothetical,” the Borough and the Authority’s concerns that the rights of the Authority and Borough’s ratepayers and residents remain unprotected absent settlement language requiring a final, unappealable order from a court, are reasonable, real and legitimate. PAWC’s Application, as modified by the Settlement, should be denied.

Equally importantly, PAWC and the Township ignore that the Authority and Borough’s consent to an assignment alone does not allow PAWC to “legally” own or operate the system.

Rather, assignment of rights is only *one aspect* of what PAWC needs to lawfully utilize the wastewater system, since, as a non-municipal party, PAWC cannot simply assume a municipality's rights and obligations. Because PAWC must execute a new or modified agreement with the Authority, and because the terms of this new agreement have not been negotiated, let alone finally determined, the Commission should either deny the Application or defer the Application until these issues are resolved.

B. The Township's characterization of the Authority's and Borough's involvement was inappropriate

In its Main Brief, the Township baselessly suggests that the Borough's and Authority's involvement in these proceedings is simply a ruse in order to "exercise maximum leverage over the Township to coerce the Township to submit to the financial demands" of the Authority and Borough. *Id.*, at 8-9. This characterization is categorically false.

As the Authority and Borough have made clear, the Authority and Borough intervened into this action after the Township announced its intention to default on its financial obligations to the Authority and Borough upon the sale of the Township's wastewater system to PAWC. The Authority and Borough have detailed the significant harm such a breach of the July 2, 2013 Settlement Agreement will cause the Authority's ratepayers and Borough residents, and, for brevity's sake, will not repeat those arguments here. Suffice it to say that this harm is real, not imagined, and will be significant. Yet, while the Township and PAWC cast aspersions on the Authority and Borough for raising this issue, neither offers any solution to mitigate the harm that Borough's residents and Authority's ratepayers--left holding the bag once the deal closes--will suffer. The Township and PAWC's criticisms of the Authority's and Borough's participation in this action, where their only intention was to make the Commission aware of this significant

financial harm, is nothing more than a transparent attempt to distract from their own conduct. The Commission should summarily reject this unwarranted attack.

III. CONCLUSION

For all of the reasons set forth herein and in their Main Brief and Objection to Joint Petition for Approval of Non-Unanimous Settlement of All Issues, the Pottstown Borough Authority and Borough of Pottstown respectfully request that the Commission deny the Application, or in the alternative, defer the Application pending resolution of the dispute, currently being litigated in the Montgomery County Court of Common Pleas, between the Authority, the Borough, and Upper Pottsgrove Township related to reimbursement of costs incurred for the expansion of Upper Pottsgrove Township's wastewater system.

Respectfully submitted,

LAMB MCERLANE PC

Dated: July 1, 2021

/s/ Vincent M. Pompo

Vincent M. Pompo

PA I.D. No. 37714

Maureen M. McBride, Esquire

PA I.D. No. 57668

William R. Christman III, Esquire

PA I.D. No 318827

24 E. Market Street

West Chester, PA 19381-0565

(610) 430-8000

vpompo@lambmcerlane.com

*Attorneys for the Pottstown Borough
Authority and Borough of Pottstown*