



DIRECT DIAL NUMBER:
(215) 575-7143

James J. Rodgers
jrodgers@dilworthlaw.com

July 1, 2021

VIA E-FILING

The Honorable Jeffrey A. Watson
Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place
301 5th Avenue, Suite 220
Harrisburg, PA 15222

**Re: Pennsylvania-American Water Company – Wastewater Division Upper
Pottsgrove Township Wastewater System Section 1329 Application / Docket
No. A-2020-3021460**

Dear Judge Watson:

I represent Petitioner Upper Pottsgrove Township in the above-listed matter, and I attach for filing the Reply to Objections to Settlement in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, all known parties will be served, as indicated.

Respectfully,

/s/ James J. Rodgers

James J. Rodgers

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Jeffrey A. Watson**

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 al.*
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 :

**RESPONSE OF UPPER POTTS GROVE TOWNSHIP TO OBJECTION OF
POTTSTOWN BOROUGH AUTHORITY AND BOROUGH OF POTTSTOWN TO
APPROVAL OF THE NON-UNANIMOUS SETTLEMENT**

Upper Pottsgrove Township (“Upper Pottsgrove” or “the Township”) submits this Response to the Objection filed by the Pottstown Borough Authority and the Borough of Pottstown (the “Pottstown Parties”) to the Settlement reached in this proceeding by all parties, other than the Pottstown Parties. That Non-Unanimous Settlement would resolve all issues pertinent to the Commission’s consideration (and hopefully approval) of the above-captioned Application.

The Pottstown Parties provide wastewater transportation and treatment services to Upper Pottsgrove. An essential element of the proposed transaction is the assignment of the existing Sewer Treatment Services Agreement (“STSA”) between the Pottstown Parties and Upper Pottsgrove to the acquiring party, PAWC so that PAWC will have continuing access to the facilities of the Pottstown Parties for the handling of wastewater from the existing Township system. After laying down a smoke screen of purported issues relating to the terms and conditions of the assignment,¹ the Pottstown Parties get to the real issue – they want to put whatever roadblocks they can in the way of the closing of the proposed transaction in order to maximize their leverage to extract economic concessions from Upper Pottsgrove, as laid out candidly in their Protest to the approval of the transaction.

Upper Pottsgrove incorporates herein by reference its Reply Brief, filed contemporaneously with this Response.

The Objection of the Pottstown Parties does present its arguments in a slightly different way than the arguments in its Brief. However, the arguments in both filings are equally without merit.

The Pottstown Parties object to the Settlement on two grounds: (1) it fails to deal with the fact that the Settlement does not deal with the Pottstown Parties argument that changes in the terms and conditions of the existing STSA must be made before it can be assigned by a municipality (Upper Pottsgrove) to a non-municipal entity (PAWC), and (2) that the Settlement fails to provide that any order of a court of competent jurisdiction compelling the Pottstown Parties to consent to the assignment of the STSA must be final and unappeasable for the transaction to close.

¹ These are mundane issues that arise in every acquisition of a water or sewer system from a municipal entity by an investor owned utility such as PAWC.

Neither argument has any merit. They cannot be allowed to stand in the way of a Settlement agreed to by all other interested parties, including most importantly the offices within the public advocates charged with protecting the public interest.

Clearly, the Pottstown Parties are simply trying to magnify the leverage they already enjoy by virtue of the fact that there is a consent to assignment provision in the STSA, by consent or by court order. The Pottstown Parties are fully protected by the terms of the Settlement which clearly require that no closing of the transaction occur without assignment of the STSA. However, the Pottstown Parties simply want to put as many roadblocks as possible in the way of expeditiously proceeding to Commission approval and then whatever process – consensual or through resort to litigation – may be necessary to secure satisfaction of all conditions to closing, including the assignment of the STSA.

As addressed in Upper Pottsgrove’s Reply Brief, the issue about a need to modify terms and conditions was not raised in the Pottstown Parties’ Protest of the application or in testimony, and it would be unfair to consider it at this time. Moreover, the Commission deals with this type of adjustment whenever an investor-owned utility acquires a municipal water or sewer system. The necessary adjustments are usually identified and made by agreement of parties acting in good faith. Failing that, the Commission has adequate powers under Sections 507 and 508 of the Public Utility Code to approve or require changes to such agreements as may be required in the public interest.

The argument about a “final and unappealable” order of a court, as opposed to an unstayed order of a court, arises entirely from the Pottstown Parties’ effort to use these proceedings to restrict the right of Upper Pottsgrove to secure effective judicial relief against their demand for payment of the full amount, plus interest and “costs” as a condition of agreeing

to assignment of the STSA. And this notwithstanding any provision of law (in the Public Utility Code or the Municipalities Authorities Act) or an express agreement between the Pottstown Parties and Upper Pottsgrove that would entitle them to such a payment.

The concern that a court will enter an order compelling the Pottstown Parties to consent to the assignment, followed immediately by a closing, will somehow deprive the Pottstown Parties of their “rights” is fatuous. First of all, this could occur only if Upper Pottsgrove convinced a court that it had a clear right to relief and that the balance of hardships rested in its favor. If the Pottstown Parties believed such an order to be in error, they could appeal and request a stay, in the first instance from the trial court, and, if denied there, from the appellate court. If the appeal were meritorious, it must be assumed that the stay would be granted. But in any case, there would be no denial of the Pottstown Parties’ rights. Their right is to have a due process determination by a court of the amount of payment to which they are entitled from Upper Pottsgrove. They have no right to exercise maximum leverage using the constraints of the regulatory process to extract an excessive payment from Upper Pottsgrove while holding up a transaction that all relevant parties agree is in the public interest.

The Pottstown Parties’ position would risk causing the failure of the Commission to meet the statutory deadline under Section 1329. Even if their standard for a court order sufficient to permit closing were applied after approval, the prospect of years of possibly meritless appeals should not be allowed to derail a transaction such as this one, which is clearly in the public interest.

WHEREFORE, for the reasons set forth above, Upper Pottsgrove Township respectfully requests that the Objection of Pottstown Borough Authority and the Borough of Pottstown should be rejected, that the Settlement be approved and the Application approved by the Public

Utility Commission, as modified by the Settlement. The Settlement between all parties (other than the Pottstown Borough Authority and the Borough of Pottstown), as well as the Rebuttal Testimony of Pennsylvania-American Water Company, provides adequate assurance that closing will not occur without assignment of the Sewage Treatment Service Agreement by consent or by order of a court of competent jurisdiction. A resolution of the assignment issue will occur, either by negotiation or court order, and closing can then timely proceed without the parties' having to go back to the Commission to litigate a new Section 1329 proceeding – thereby unnecessarily wasting the time and resources of the Commission and parties. This case should not be litigated twice before this Commission.

Respectfully submitted,

Marc A. Feller

James J. Rodgers, Esq. (PA ID 21635)
Marc A. Feller, Esq. (PA ID 19545)
Elizabeth Preate Havey, Esq. (PA ID 80793)
DILWORTH PAXSON LLP
1500 Market Street, Suite 3500E
Philadelphia, PA 19102
(215) 575-7143

Counsel for *Upper Pottsgrove Township*

**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 : Docket No. A-2020-3021460, *et al.*
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 :

CERTIFICATE OF SERVICE

I hereby certify that I have served true and correct copies of the foregoing Reply to Objections to Settlement and Reply Brief of Upper Pottsgrove Township upon the parties, listed below, in accordance with the requirements of §1.54 (relating to service by a party).

DAVID P ZAMBITO, ESQUIRE
JONATHAN NASE, ESQUIRE
COZEN O’CONNOR
17 NORTH SECOND ST SUITE 1410
HARRISBURG PA 17101
Tel.: 717-703-5892
Tel.: 717-773-4191
E-Mail: dzambito@cozen.com
E-Mail: jnase@cozen.com
Accepts EService
*Representing Pennsylvania American Water
Company*

ROBERT M. TUCKER, ESQ.
GREGG I. ADELMAN, ESQ.
Kaplun Stewart Meloff Reiter & Stein, PC
Union Meeting Corporate Center
910 Harvest Drive
P.O. Box 3037
Blue Bell, PA 19422-0765
E-Mail: rtucker@kaplaw.com
E-Mail: gadelman@kaplaw.com
Counsel for Shadeland Development Corp.

ELIZABETH ROSE TRISCARI, ESQUIRE
PENNSYLVANIA AMERICAN WATER
COMPANY
852 WESLEY DRIVE
MECHANICSBURG PA 17055
Tel.: 717-550-1574
E-Mail: Elizabeth.Triscari@amwater.com
Accepts Eservice
*Representing Pennsylvania American Water
Company*

VINCENT M. POMPO, ESQ.
Lamb McErlane, PC
24 E. Market Street
P.O. Box 565
West Chester, PA 19381-0565
E-Mail: vpompo@lambmcerlane.com
*Counsel for Pottstown Borough Authority and
Borough of Pottstown, Montgomery County*

GINA MILLER, ESQUIRE PA PUC
BUREAU OF INVESTIGATION AND
ENFORCEMENT
400 North Street
HARRISBURG PA 17120
Tel.: 717-783-8754
E-Mail: ginmiller@pa.gov
Accepts EService

ERIN FURE
OFFICE OF SMALL BUSINESS
ADVOCATE
FORUM PLACE
555 WALNUT STREET 1ST FLOOR
HARRISBURG PA 17101
Tel.: 717-783-2525
E-Mail: efure@pa.gov
Accepts Eservice

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
Tel.: 717-783-5048
E-Mail: egannon@paoca.org
E-Mail: choover@paoca.org
E-Mail: hbreitman@paoca.org
Accepts EService

Dated: July 1, 2021

/s/ James J. Rodgers

James J. Rodgers, Esquire
PA Attorney Id. No.: 21635
Marc A. Feller, Esquire
PA Attorney Id. No.: 19545
DILWORTH PAXSON LLP
1500 Market Street, Suite 3500E
Philadelphia, PA 19102
Tel: 215-575-7143
jrodgers@dilworthlaw.com
mfeller@dilworthlaw.com