

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc. : A-2019-3009052
pursuant to Sections 507, 1102 and 1329 of the :
Public Utility Code for Approval of its Acquisition :
of Wastewater System Assets of East Norriton :
Township :

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

In this proceeding, Stanley Mansell (Protestant) filed a protest with the Pennsylvania Public Utility Commission (Commission) against the application in this proceeding. The Protestant determined it was appropriate to withdraw his protest. This decision grants the withdraw requested by the Protestant as it is in the public interest and there were no objections thereto.

HISTORY OF THE PROCEEDING

On July 30, 2019, Aqua Pennsylvania Wastewater, Inc. (APW) filed an application at this docket requesting the approval of the Commission of its acquisition of the wastewater system assets of East Norriton Township (ENT) and approval of the ratemaking rate base of these assets as determined by Sections 1102 and 1329 of the Public Utility Code. APW also requested approval of contracts, including assignments of contracts pursuant to Section 507 of the Public Utility Code. APW sent several requests for extension of time to file the requisite data for the application which were granted.

On September 6, 2019, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention, public statement, and Notice of Appearance of Shelby Linton-Keddie, Esquire. On September 11, 2019, the Office of Consumer Advocate (OCA) filed a protest and public statement. On October 25, 2019, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance of Gina Miller, Esquire and Erika McLain, Esquire. On October 31, 2019, the OSBA filed a Notice to withdraw the appearance of Ms. Linton-Keddie, and filed the Notice of Appearance of Ms. Erin Fure, Esquire.

By Secretarial letter on November 26, 2019, the Commission accepted the APW Application and it was assigned to the undersigned in the Office of Administrative Law Judge (OALJ).

On December 2, 2019, Stanley Mansell and Christine and Michael Maddalo filed protests. On December 5, 2019, the OCA filed a Notice of Appearance of Santo Spataro, Esquire.

A Hearing Notice dated December 3, 2019 directed a prehearing conference to convene telephonically on December 30, 2019.

By Order dated December 4, 2019, I provided, among other things, procedural rules for this proceeding, and directed that prehearing memoranda be filed by the parties regarding the presentation of this case by no later than noon, Friday, December 27, 2019.

On December 9, 2019, counsel for ENT petitioned to intervene in this proceeding. Also, on December 9, 2019, Allen Dalton filed a protest of this application.

By letter dated December 12, 2019, Mr. Mansell stated his desire to withdraw his protest to this proceeding.¹ Mr. Mansell stated he reserved the right to object to any later proposed

¹ By letter dated December 18, 2019, the Commission's Secretary required an original signature from the Protestant for his protest withdrawal. By memorandum dated December 17, 2019, the undersigned forwarded the original protest from Mr. Mansell to the Secretary's Bureau curing the need for an original signature.

rate increase for Aqua customers whether related or not to the acquisition of this proceeding. Mr. Mansell requested that he be notified of the locations of any further meetings regarding this proceeding.

On December 30, 2019, the prehearing conference convened as scheduled. The following six parties were present at the prehearing conference:

- (1) APW
- (2) ENT
- (3) I&E
- (4) Mrs. Christine Maddolo
- (5) OCA; and
- (6) OSBA.

Among other business, the undersigned asked if there were any objections to the withdrawal requested by Mr. Mansell. No party objected to Mr. Mansell's request.

This matter is ripe for decision.

DISCUSSION

This matter is a contested proceeding to resolve the request of the Applicant in its desire to acquire the wastewater system assets of ENT.

The Protestant stated that he wished to withdraw his protest. The letter was written by the Protestant with no evidence that he was coerced. It is concluded that the request is made under his own volition.

Commission regulations allow for the liberal construction of its procedural requirements, particularly as to pro se litigants, as stated in Section 1.2 of the Pennsylvania Code.

52 Pa.Code § 1.2(a), (c) and (d) state,

(a) This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

* * *

(c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.

(d) These liberal construction provisions apply with particularity in proceedings involving pro se litigants.

Commission regulations address the withdrawal of pleadings in a contested proceeding at Section 5.94(a) of Title 52 of the Pennsylvania Code which states,

§ 5.94. Withdrawal of pleadings in a contested proceeding.

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

52 Pa.Code § 5.94(a).

Section 1.8 of Title 52 of the Pennsylvania Code states, under “Pleading,”

An application, complaint, petition, answer, motion, preliminary objection, **protest**, reply, order to show cause, new matter and reply to new matter or other similar document filed in a formal proceeding.

52 Pa.Code § 1.8 (emphasis added). Based on the definition for pleading, the instant protest of Mr. Mansell is a pleading.

The undersigned finds that the Protestant's request, although not written as a Petition for Leave to Withdraw, should be liberally construed as a pleading in compliance with the requirements of 52 Pa.Code § 5.94. Furthermore, the substance of the actions of the Protestant overrides any defect in the appropriate form of a pleading pursuant to 52 Pa.Code § 1.2(a). Furthermore, the Protestant is representing himself in this proceeding, and 52 Pa.Code § 1.2(d) affords liberal construction of the Commission's regulations in proceedings where a Protestant appears pro se.

It is noted that the Protestant performed this action under his own discretion. It is compelling that no other party objected to the withdrawal requested by the Protestant.

It curtails the costs of the Commission and the parties to cease any further consideration of the protest if the matter is not viable or no longer in need of pursuit by the Protestant. For these reasons, I find that the Protestant's request to withdraw his protest is in the public interest.

I note that Mr. Mansell requested to be notified of further meetings in this proceeding. Because Mr. Mansell has withdrawn his protest, he no longer has an interest in any meetings convened by the parties confidentially and will not be given notice of any non-public meetings. However, any public, non-confidential meetings in this proceeding Mr. Mansell is to be informed of and maintained on the Commission's service list.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa.C.S. § 701.

