

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Application of Valley Run Water : Docket No.
Company, LLC. For a certificate of : A-210121
public convenience to begin to offer :
furnish or provide water service to :
the public in a portion of Washington :
Township, Berks County, PA. :
Initial pre-hearing conference. :

Pages 1 through 37

Hearing Room No. 1
1400 Spring Garden Street
Philadelphia, Pennsylvania

Monday, November 21, 2005

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

CYNTHIA WILLIAMS-FORDHAM, Administrative Law Judge

APPEARANCES:

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1 P-R-O-C-E-E-D-I-N-G-S

2 ADMINISTRATIVE LAW JUDGE CYNTHIA WILLIAMS-FORDHAM:

3 Good morning, my name is Cynthia
4 Williams-Fordham. And this is the time and place for
5 a prehearing in the matter of Application of Valley
6 Run Water Company at docket number A-210121.

7 I note for the record the appearance of
8 Thomas J. Sniscak, Esquire and William T. Hawke,
9 Esquire for Valley Run Water Company, LLC and Louise
10 A. Knight, Esquire for Superior Water Company. I'll
11 give a brief history of the proceedings so far.

12 On August 18th of 2005, Valley Run Water
13 Company through its attorney filed an application
14 requesting the right to begin to offer, render,
15 furnish or provide water service to the public in a
16 portion of Washington Township, Berks County,
17 Pennsylvania.

18 Specifically there were two developments,
19 the Gehriner Farm Track and Ponds at Valley Run. The
20 certificate of service attached to the application
21 indicated that the Office of Consumer Advocates, Office
22 of Trial Staff and Office of Small Business Advocate
23 was served. By correspondence dated August 22nd of
24 2005 the secretary of the Commission notified the
25 applicant's counsel to serve copies of the application

1 upon some other entities, and those entities
2 were listed in that correspondence.

3 In addition the applicant's counsel was
4 directed to publish the enclosed notice once a week
5 for two consecutive weeks in a newspaper having a
6 general circulation in the area involved and file
7 proof of publication with the Commission
8 on or before September 19th of 2005.

9 Notice that the applicant filed an
10 application for Certificate of Public Convenience was
11 published in the September 3, 2005 Pennsylvania
12 Bulletin at 35PA Bulletin 4988. By correspondence
13 dated September 20th of 2005 the applicant's counsel
14 submitted proof that the notice was published in the
15 Reading Eagle on Friday, September 9th and Friday,
16 September 16, 2005.

17 On September 19, 2005 Superior Water
18 Company through counsel, filed a protest to the Valley
19 Run Water Company application for Certificate of
20 Public Convenience.

21 On September 19, 2005 Superior through
22 its counsel filed a motion for proper service of
23 application. On September 26th the applicant through
24 its counsel filed an answer to the motion of Superior
25 Water Company for proper service of application. In

1 prehearing order dated November 3rd of 2005 I denied
2 Superior's motion. The denial was based on the
3 conclusion that the applicant had shown that it served
4 the application on the appropriate entities.
5 Therefore there was no need to require the applicant
6 to serve additional entities and allow them an
7 opportunity to file a protest.

8 Since then, there have been several
9 motions filed. There was a motion to dismiss protest
10 filed by Valley Run on October 11, 2005. Valley Run
11 contends that Superior lacked standing because its
12 right under a certificate at docket number
13 A-212955F0016 is subject to conditions that have not
14 been met.

15 October 21st of 2005 Superior through its
16 counsel filed an answer to Valley Run's motion to
17 dismiss protest. Although not with -- under this
18 docket number since it has some relation to this
19 docket, there was a petition for decision or amendment
20 of Superior's certificate rights filed on October 11th
21 of 2005; Valley Run asked that the granted authority
22 be rescinded or amended and clarified to confirm that
23 Superior's rights are not mature.

24 On October 31st of 2005 Superior through
25 its counsel filed an answer to that petition. There

1 is a motion to dismiss the petition of Valley Run for
2 lack of standing and that is also on the other docket
3 number A-212955F0016. That was filed by Superior
4 through its counsel on October 31st of 2005, and on
5 November 14th of 2005 Valley Run through its counsel
6 filed an answer to that motion.

7 There is a motion to compel discovery and
8 I don't believe I have a copy of that motion,
9 Ms. Knight. And then on November 14th there was an
10 answer to the motion to compel discovery. On November
11 16th Valley Run filed a motion for certification of a
12 material question and an answer was filed on November
13 21st by Superior.

14 Now, the parties have submitted
15 prehearing memoranda today, and some other filings are
16 listed in those prehearing memorandum but I would ask
17 the counsel to add that to the record.

18 Mr. Sniscak, you can proceed with your --

19 MR. SNISCAK: We had filed a motion I
20 believe it was and let me get the date of it -- on
21 November 16th asking Your Honor to exercise your
22 powers under the 52PA code section 15.305(a)1 to
23 certify a material question to the Commission, namely
24 the motion to dismiss the issue is up to the
25 Commission itself. So it had essentially all three

1 pleadings or petitions before due to the somewhat
2 interrelated nature pertaining to the issue of
3 standing. Subsequent to that, we had received dated
4 today -- well, your Honor, Ms. Knight certainly can
5 speak to what they filed. So that concludes our
6 latest filing, Your Honor.

7 JUDGE WILLIAMS-FORDHAM: Thank you.

8 MS. KNIGHT: Yes, Your Honor. In an
9 effort to have no outstanding matters by the time of
10 this prehearing conference, we did get a motion
11 assembled and filed today which is not only an answer
12 to the motion of Valley Run for certification of the
13 material question, but also a motion to consolidate an
14 application that my client, Superior, filed on
15 November 7th for seeking additional territory, service
16 territory in Washington Township, as well as territory
17 in Colebrookdale Township which is adjacent to
18 Washington Township.

19 That application is docketed at
20 A-212955F0017. So I guess we still do have one
21 outstanding motion that Valley Run has not had an
22 opportunity to respond to.

23 JUDGE WILLIAMS-FORDHAM: Now, in filing
24 this application the service territory encompasses the
25 territory that Valley Run is requesting.

1 MS. KNIGHT: It is a subset of the total
2 service territory Superior is seeking; that's correct.

3 JUDGE WILLIAMS-FORDHAM: What is the date
4 for protest to be filed?

5 MS. KNIGHT: I thought it would be
6 published in the Bulletin on Friday but it wasn't and
7 I had not yet received a letter from Secretary
8 McNaulty directing service and publication. However,
9 following the regulation at 52 PA code 3501 Superior
10 did file a copy of it on all municipal entities and
11 authorities and existing service providers adjacent to
12 the service territory within a mile. So it has been
13 served on all those entities. However, there has been
14 no newspaper publication.

15 JUDGE WILLIAMS-FORDHAM: I haven't had a
16 chance to look at Ms. Knight's response to the motion
17 to certify a material question. But I also know that
18 even though the applicant has asked for that motion,
19 that they have also asked for us to go forward with
20 setting up a hearing and setting a procedural schedule
21 in this matter; is that correct?

22 MR. SNISCAK: That's correct, your Honor.

23 JUDGE WILLIAMS-FORDHAM: And I noticed
24 that in both of the prehearing order -- prehearing
25 memoranda that the potential witnesses have been

1 listed and a proposed schedule. With respect to the
2 applicant there are four witnesses listed, and with
3 respect to the protestant there are four with the last
4 one being a DEP witness that's not identified at this
5 point.

6 MS. KNIGHT: That's correct.

7 JUDGE WILLIAMS-FORDHAM: With respect to
8 the proposed schedule there are differences. The
9 schedule for the applicant does not have written
10 testimony but, oral presentations and then briefing
11 and the time lines are very different. Does the
12 applicant want to have written testimony or are you
13 just thinking that oral testimony would be sufficient?

14 MR. SNISCAK: Your Honor, our concern is
15 with the time line. And again I don't want to get up
16 on a soap box but I think it may be helpful to your
17 Honor and the Commission to know the reasons behind
18 why we're asking that this case be heard sooner rather
19 than later.

20 First of all, we've largely been ham
21 strung and hampered by this protest relative to the
22 fall construction season. While this is hanging out
23 there, it's almost -- it's very difficult to finalize
24 arrangements necessary to get these developments up
25 and running.

1 The delay is costing not only time and
2 the distraction but also expense. Our goal would be
3 that we would be able to get the earliest possible
4 available construction season, which namely in our
5 prehearing memoranda identifies that having a decision
6 up or down say by the beginning of April, somewhere in
7 that general vicinity.

8 Consequently, we certainly do not think
9 that the schedule that the protestant is proposing not
10 to mention their attempting now to overlay and lump in
11 yet another application proceeding that could involve
12 a lot of other additional players -- there are other
13 townships involved -- we don't know who's going to
14 materialize in those. That's going to, in our opinion,
15 slow down the whole process.

16 We're ready to go. We have our sewer.
17 We have -- according to our clients we have the sewer.
18 We have the water to serve initial demands. Our
19 opponents we believe are not in that position. They
20 don't have water yet. They don't have permits. While
21 they may be working on things, that's fine. But
22 things take time. There has to be I think --
23 admittedly in one of their pleadings their developer
24 has to do an erosion and sedimentation filing with an
25 environmental agency and get that approved before

1 they're good to go.

2 So consequently we would like to put this
3 on the fastest reasonable track. If we hit that
4 deadline, and they want to use prefiled testimony,
5 that's fine with us too. Or we can do it orally. We
6 can certainly as in a court of law, agree that any
7 exhibits or any technical stuff be produced in advance
8 of those hearings so that we're not pulling direct
9 exhibits out of a magic box and doing Perry Mason
10 surprises; that's not our intent by asking for oral
11 hearings.

12 And I also think attending to any
13 schedule we certainly, again by delving into the
14 schedule we're not conceding any of the points on our
15 pending motions but we certainly would consider
16 cutting down or shortening the response times as to
17 reasonable relative discovery.

18 I've been in a number of proceedings that
19 the Commission has been in on a relatively short time
20 track and one of the rules is you almost half the
21 response time. And if you can't, you try to work it
22 out with counsel, but if that doesn't work, then you
23 take it to the judge. But it's work. And it's much
24 more complicated with many, many more parties.

25 And, for example, talking with regards to

1 telecommunications stock, they have always worked that
2 way. So it can be done. But again we feel for the
3 reasons we stated in our motion that we're ready to
4 go. It's going to be an economic catastrophe for the
5 developers of the company, if it's going to take a
6 year, a year and a half for this thing to run to
7 ground or even late in the summer. So that's the
8 background of our request.

9 JUDGE WILLIAMS-FORDHAM: Ms. Knight.

10 MS. KNIGHT: Your Honor, three points.
11 One is that I hear the plea of urgency from opposing
12 counsel, but as I noted in my answer to their motion
13 for certification, when they filed their application
14 was dependent on them. They had apparently-- according
15 to the application their DEP permit was issued on
16 March 18, 2004. I'm certainly not in a position to
17 know what their timing of this project was. But I
18 believe sort of creating your own problem is not an
19 argument for rushing proceedings through that have
20 substantial public significance.

21 My client believes that its protest is
22 entirely proper, that it should have full due process
23 rights. But it is prepared to move forward. And we
24 can certainly advance the schedule that I suggested.
25 I assumed that we wanted to prepare testimony but we

1 don't have to prepare testimony.

2 However, I would note that we promulgated
3 discovery quickly so that we could expedite the
4 proceeding and all that I have on my desk right now
5 are objections to discovery. So notwithstanding
6 Mr. Sniscak's comments, we don't have any answers to
7 discovery that was filed very promptly. So that being
8 said we certainly can negotiate the schedule. If we
9 want to expedite discovery, that's fine.

10 And we can certainly then move up --
11 hopefully move up the date for closing discovery and
12 we would work out any disagreements we have. I think
13 that we could work them out or if we need a conference
14 with you I think that should certainly be enough if we
15 can forego the time of the formal motions to compel
16 back and forth. And yes we would willing to go
17 without prepared testimony.

18 JUDGE WILLIAMS-FORDHAM: Now, in terms of
19 the time line proposed by the applicant I know that I
20 have been assigned the Aqua rate case and I was trying
21 to see where that was, and I don't know exactly. I
22 know that there has been a filing. And it seems that
23 the suspension date that they proposed is in January.
24 If it was suspended for seven months, then we're
25 talking about into July, and closing the record the

1 beginning of March. So in terms of public input
2 hearings and the hearings for that matter I'm not
3 sure.

4 So if we set something today, we might
5 have to change it around a little bit depending on
6 that proceeding. But that's the only other proceeding
7 that I have that I think would interfere with any
8 scheduling that we might set.

9 MS. KNIGHT: I guess the only other
10 comment I would have is obviously December is the
11 holidays and things tend to take a little bit longer
12 than normal. But if we could close discovery say the
13 first week in January, and perhaps right now we can
14 talk about -- I do have a copy of the motion to
15 compel, your Honor. It does show that you were
16 served. I don't know why you didn't get a copy.

17 JUDGE WILLIAMS-FORDHAM: I was looking
18 through my documents and I didn't see it.

19 MS. KNIGHT: That's my only copy but you
20 can have it.

21 JUDGE WILLIAMS-FORDHAM: I'll make sure
22 that --

23 MS. KNIGHT: Maybe we can work through
24 that right now and not through expedited --

25 MR. SNISCAK: If I can ask a

1 clarification. What does your interpretation propose?
2 Do you mean the last date for getting them out or the
3 last date for answering them?

4 MS. KNIGHT: For answering them. Of
5 course, I don't have -- we don't have anything from
6 you yet but we would make every effort to --

7 MR. SNISCAK: We're hoping we never have
8 to ask you any questions.

9 JUDGE WILLIAMS-FORDHAM: So we're talking
10 about the proposal from the applicant is December 31st
11 which is the --

12 MS. KNIGHT: That's a little tough
13 because of the holidays.

14 JUDGE WILLIAMS-FORDHAM: That's on a
15 Saturday.

16 MS. KNIGHT: So if we could move it to
17 the first week of January.

18 JUDGE WILLIAMS-FORDHAM: Right. The 31st
19 is a Saturday. The holiday January 1st is on a
20 Sunday. So the 2nd is also a holiday. So are we
21 talking about moving it to that Friday of the 6th? So
22 the close of discovery would be January 6th.

23 MR. SNISCAK: Right.

24 JUDGE WILLIAMS-FORDHAM: Even if you
25 don't have written testimony, we would at least have

1 exchange of exhibits. So what time line are we
2 talking about with that? Are we talking about two
3 weeks after close of discovery for everything to be
4 submitted?

5 MR. SNISCAK: I'm not sure we need that
6 much time, your Honor. I think by then we should have
7 a pretty good handle on what exhibits so to speak are
8 going to be associated with the direct, or I call it
9 the protestant's response to testimony.

10 JUDGE WILLIAMS-FORDHAM: So maybe 7 days?

11 MR. SNISCAK: Yes. Seems to me by the
12 13th, we ought to --

13 MS. KNIGHT: I think that's doable. And
14 the proposal originally had been for the 12th and 13th
15 to be the oral presentation of direct and protestant's
16 response. So do you want to make that January 19th
17 and 20th?

18 MR. SNISCAK: Yes, your Honor.

19 JUDGE WILLIAMS-FORDHAM: So Thursday,
20 January 19th and Friday, January 20th will be the oral
21 presentation of applicant's direct and protestant's
22 response. And then the 26th and the 27th would be the
23 oral presentation of applicant's rebuttal. Would you
24 like another date?

25 MR. SNISCAK: No, your Honor. We were

1 just talking about whether we need actually two days
2 but we probably out of abundance of caution --

3 JUDGE WILLIAMS-FORDHAM: To schedule it?

4 MR. SNISCAK: Yes. And under the
5 schedule the main briefs were to be due within a week
6 of that. I note that you would be asking for
7 expedited transcripts but do you want to give
8 yourselves more than a week?

9 MS. KNIGHT: Your Honor, I need more than
10 two days to write a brief. It can take three days to
11 turn around even an expedited transcript.

12 MR. SNISCAK: Can we go with like the
13 14th?

14 JUDGE WILLIAMS-FORDHAM: The 14th of --

15 MR. SNISCAK: February. It's Valentine's
16 Day.

17 JUDGE WILLIAMS-FORDHAM: That's a
18 Tuesday. The 14th is a Tuesday.

19 MR. SNISCAK: Actually, I'm sorry, Your
20 Honor, you're right. I have one of those calendars
21 that starts with Monday the 13th.

22 JUDGE WILLIAMS-FORDHAM: That would be
23 Monday the 13th of February?

24 MR. SNISCAK: Right.

25 MS. KNIGHT: Your Honor, we have the mid

1 winter meeting scheduled. Can we make it the 15th?

2 JUDGE WILLIAMS-FORDHAM: Okay. Friday
3 the 24th or Monday the 25th.

4 MR. SNISCAK: Friday the 24th.

5 JUDGE WILLIAMS-FORDHAM: And with the
6 schedule we have set we close discovery on Friday,
7 January 6, 2006, and have all exhibits and other
8 documents that we need by January 13th which is also a
9 Friday. The oral presentation would be on Thursday,
10 January 19th and Friday, January 20th. The
11 applicant's rebuttal would be January 26th and if
12 necessary the 27th. The main briefs would be filed
13 February 15th and the reply briefs February 24th. Is
14 that acceptable?

15 MS. KNIGHT: Your Honor, that's
16 acceptable contingent upon working out the objections
17 to that discovery if we can do that within a
18 reasonable time period.

19 JUDGE WILLIAMS-FORDHAM: So we have the
20 motion to compel and the other thing is we also have
21 the certification, the motion for certification. So
22 we do have other things working on the same track
23 which might vary the schedule, but so far that's the
24 schedule that we have proposed.

25 MR. SNISCAK: Yes, your Honor.

1 JUDGE WILLIAMS-FORDHAM: Now, with
2 respect to discovery disputes, I note that the
3 applicants have indicated they do not believe that the
4 protestants have standing; therefore at this point you
5 do not want to respond to discovery. I can't say
6 exactly when the motion to certify that whole track, I
7 can't say when that would be completed. If that's not
8 completed within a timely manner, then that's going to
9 change the schedule. The applicant is still waiting
10 for the decision before responding to discovery.

11 MR. SNISCAK: I'm sorry, your Honor. I'm --

12 JUDGE WILLIAMS-FORDHAM: Do you still
13 want to wait for either the Commission to rule or my
14 ruling before you respond to the discovery at all?

15 MR. SNISCAK: That would be our
16 preference, your Honor. Obviously if there is
17 slippage in terms of the Commission ruling on the
18 preliminary or summary type resolution of the matter,
19 that may affect discovery. Unfortunately none of us
20 have a crystal ball to let you know when the
21 Commission is going to be in a position to rule on
22 these things and we understand your Honor has other
23 cases too, so we're hoping you won't have to reset the
24 schedule. And we would certainly use our best efforts
25 to do a quick turnaround in the discovery request.

1 And perhaps even at that juncture, Your
2 Honor, instead of either taking your time to rule on
3 the formal motions, we can do a quick conference call
4 on some of the points. And counsel and I certainly
5 would be amenable to try to stay within the scope or
6 scale issues or objections themselves with opposing
7 counsel if we start bumping up against the edge of the
8 schedule.

9 MS. KNIGHT: Your Honor, let me
10 understand this. We've just agreed to an expedited
11 schedule but they're maintaining their position
12 they're not going to answer their brief on the basis --
13 remember they have a petition filed in front of the
14 Commission for decision, but it's based on disputed
15 facts. There's not going to be a final resolution of
16 that even if the Commission takes it up promptly.

17 MR. SNISCAK: Well --

18 MS. KNIGHT: And second of all, I filed
19 an answer to their motion for certification.
20 According to my reading of the regulations, they don't
21 even have grounds to ask for one because there's no
22 decision of yours that they're appealing and yet we're
23 going to hold up the whole process because of all
24 these speculative outcomes. I don't agree with the
25 schedule if that's the position they're going to take.

1 MR. SNISCAK: Your Honor, if I can just
2 address those two points. First of all, relative to
3 any application there's a whole universe of issues at
4 this point. And just because you raise issues doesn't
5 mean you have standing. A lot of issues that Superior
6 has raised and said are material are really issues
7 that historically the Commission's staff reviews,
8 considers and then makes a recommendation to the
9 Commission to grant the application, deny the
10 application or grant a condition.

11 The salient material facts here are not
12 in dispute. They don't have water. They don't have
13 the permits. The legal issue which again prompted our
14 asking Your Honor to certify through the Commission is
15 not because we don't have confidence in Your Honor's
16 ability to revise it, but the Commission wrote the
17 order granting them their rights upon which they are
18 basing their standing.

19 We're saying their rights are completely
20 interim, tentative. They have not matured because the
21 conditions of getting these permits has not occurred
22 already. So they have no standings there.

23 And we feel that the Commission is in the
24 best position to rule upon that issue. Because
25 otherwise it's conceivable that we could have the

1 Commission ruling one way on the petition for the
2 decision and you ruling another interpreting the very
3 same provision.

4 And again reasonable warrants in two
5 provisions are differently in the eyes of the
6 beholder. Here we thought the common efficiency for
7 everybody would certainly be advanced by having that
8 go on at the Commission's stage.

9 On the other hand, there is no guarantee
10 that the Commission is going to act or react within a
11 set period of time. We are willing to go forward.

12 In particular there is one area of
13 discovery that we are sensitive to and we certainly
14 need to decide while we're in the process of
15 finalizing the details of the developer. In one of
16 the responsive pleadings they say we want to negotiate
17 with you. We've objected to that for obvious reasons,
18 that this is privileged and confidential at that point
19 to negotiate it. We don't need somebody who wants to--
20 we feel have no real standing to come in arguing that
21 very important detail and using that information to
22 negotiate against us.

23 However, if we can resolve those things,
24 when those things are finalized, we'll produce it to
25 them. We'll do it and we're hoping that that will be

1 done relatively quickly.

2 A lot of the other stuff had scope and
3 scale relevance objections also. Quite frankly we
4 keep referring to the point that all these issues
5 they've raised, the certification issues, they're
6 really ones the staff can handle. And again one of
7 the points in our motion to dismiss we're not asking
8 if our motion to dismiss is granted, that you give us
9 our certificate rights. We're not asking that at all.
10 We're just asking that Your Honor understand as part
11 of our motion to dismiss what should happen is the
12 matter be referred back to modified procedure.

13 Which means that the various divisions of
14 the Commission will ask us the questions and work with
15 us to go through to get it just like it's done in any
16 other non-contested application. And then come the
17 end of the day, they'll say you're viable. You meet
18 all these other standards. We think you can make a go
19 at it.

20 MS. KNIGHT: Your Honor, in response, I
21 find it ironic that they are claiming that we lack
22 standing to protest the application when the basis on
23 which we filed the motion to dismiss their petition is
24 clearly lacking standing. They weren't a party to the
25 proceeding.

1 They have no palpable standing to ask the
2 Commission to rescind the application. I would also
3 note they can call it speculative. They can call it
4 conditional. I have a Certificate of Public
5 Convenience to serve territory in Washington Township.
6 It doesn't have a single condition on it. So they can
7 call it whatever they want to call it. It's a
8 Certificate of Public Convenience that's been issued
9 by the Commission.

10 So I don't quite understand how we're
11 getting the cart before the horse here. They're
12 saying, oh just send our application back because
13 these people shouldn't have any right to comment. You
14 could say that about many protestants to applications
15 but there are due process rights. My client claims to
16 have standing. If it has standing, it has due process
17 rights to raise the issues at a hearing that are
18 material to that application, which is the need for
19 it.

20 MR. SNISCAK: Well, Your Honor, it's not
21 by any means the standard if they said meaning the
22 protestant itself, they claimed that they had a direct
23 immediate and substantial interest. They have none of
24 those. They have no water. They have not a single
25 customer in Berks County. They have not a single

1 customer in Washington Township. They have nothing
2 but tentative agreement rights that they have not
3 perfected.

4 And that's the issue really the
5 Commission has the best interest to determine. The
6 regulations themselves say you have to show proof that
7 you have water and a permit. They're trying to act
8 like that doesn't say that in order to persuade.

9 We have standing. They have based their
10 protest on this certification on those rights. Those
11 rights in our opinion are not perfected. That is our
12 legal argument.

13 We certainly have an interest in that
14 proceeding. We have an interest at a minimum in the
15 Commission clarifying that you can't exercise your
16 rights, and you have no rights unless and until you
17 get the permit and all those other things that we
18 conditioned. Their application itself specifically
19 states on their application, the Commission granted
20 their application. Their application states that they
21 agree that their certificate should be conditioned
22 upon obtaining the DRBC permit.

23 The way that permit process works is you
24 have to get the state permit first, the DEP permit.
25 If they don't have your DRBC, they don't have their

1 DEP. They have nothing. No water, no customers and
2 they're using that to boot strap an opposition to us
3 when we have our DEP permit and beside we don't need a
4 DOBC permit because we are under the threshold. They
5 have more other water operations than we do. We have
6 sewage. We have all those things. We'll work out
7 those issues with staff. If we can't prove those with
8 staff, we don't deserve to be certified. It's as
9 simple as that. But to say that we don't have
10 standing in that case and we don't have an interest,
11 we didn't pick a fight here. They protested us. They
12 fired the first volley.

13 We had to evoke the basis of their
14 standing on that. Similarly this application is one
15 which we have not yet had any opportunity to respond
16 to a meaningful opportunity, and again I would like to
17 reserve our right to fully respond.

18 But secondly, this application is in an
19 area where the two developers at issue don't want for
20 service, where there is already a DPT permitted
21 supply. They have no supply. What are they going to
22 do, duplicate well supply on that property. The
23 Commission is not going to go for that. This whole
24 thing is smoking mirrors. It's about locking up for a .
25 rainy day future territory. We're ready, we're

1 willing, we're able to construct. We're ready to go.
2 We should be able to do that.

3 JUDGE WILLIAMS-FORDHAM: I understand the
4 arguments of both sides. There are some issues that I
5 will be able to resolve or have the authority to do
6 so. There are some issues that I cannot resolve that
7 have been stated by the parties. Since the Commission
8 has already issued an order, I cannot revoke an order
9 or change an order that has already been issued by the
10 Commission.

11 So what I will do after today's hearing
12 is look at everything that has been submitted and make
13 a ruling on exactly what the next steps are going to
14 be in terms of certification, in terms of moving
15 forward. I will send out an order. I'm not sure
16 whether I'm going to send two separate orders because
17 we do have an order with the procedures scheduled.
18 Normally that's a separate order that I send but I
19 will make a determination as to how I'm going to send
20 it out, whether it be two certifications or not.

21 MR. SNISCAK: Your Honor, a couple of
22 clarification points. We will shorten the answer
23 period for this latest motion if we can have leave
24 from Your Honor to file our response by this Friday
25 just because we have not yet had an opportunity to

1 respond to this motion to consolidate, that's attached
2 to the answer to our motion to certify.

3 They filed a separate as I understand it
4 motion to consolidate. Now, a couple of issues there.
5 I'm not sure --

6 JUDGE WILLIAMS-FORDHAM: Before you start --

7 MR. SNISCAK: -- if that's something that
8 Your Honor --

9 JUDGE WILLIAMS-FORDHAM: Right. That's
10 the other thing I was going to say. Because that's
11 why I asked Ms. Knight what was the procedural posture
12 of that. Because I have not been assigned that case.
13 I have not seen that. And until it's published in the
14 Pennsylvania Bulletin and until there is a protest,
15 it's not assigned to the office of Administrative Law
16 Judge.

17 MS. KNIGHT: That was the anticipated
18 protest being filed, Your Honor, and I wanted to give
19 everyone timely notice of being here.

20 JUDGE WILLIAMS-FORDHAM: So by Friday --

21 MR. SNISCAK: Well, your Honor, I take it
22 back. I forgot that it is Thanksgiving and I'm
23 thinking work mode and not practical, but we'll
24 endeavor to get that to whoever decides it as soon as
25 we reasonably can. Obviously we have to take a look

1 at it and research it.

2 The other question is can you certify it.
3 The regs does not mention anywhere that you need to
4 rule on something first necessarily. This isn't a
5 discovery dispute. This is a procedural dispute. And
6 if you look at the section it's 5.305; it doesn't
7 mention any prior steps. Again I'll have to take a
8 look at it. But I do know that in some of the
9 telecommunications proceedings where procedural issues
10 came up or schedules or questions sua sponte by judges
11 they have been certified by the Commission where it
12 makes sense. So we're not -- we respectfully disagree
13 with that procedural argument.

14 I'm trying to think -- I think then we
15 will file that other answer. Would you like a copy of
16 that answer even though we're not sure -- even though
17 we think the Commission or some entity of the
18 Commission will be deciding it, would you want to --

19 JUDGE WILLIAMS-FORDHAM: Yes, to make the
20 record that I have.

21 MR. SNISCAK: Okay.

22 JUDGE WILLIAMS-FORDHAM: Ms. Knight.

23 MS. KNIGHT: Two final issues. You still
24 haven't given a clear -- I say I still have a question
25 outstanding on discovery. Are they going to be -- I

1 am willing to put our questions about the
2 negotiations, oral communications between Valley Run
3 and Mr. Ortelli on hold, but I think there are other
4 grounds for not wanting to answer discovery that they
5 have a pending motion to dismiss. You can't have it
6 both ways. Either they want to wait and see what the
7 outcome is and then we fashion it if they're
8 unsuccessful.

9 Then we fashion a hearing schedule based
10 on what the timing to all that is or we move forward
11 so that we can meet the hearing schedule that we
12 devise at their behest today. I don't see how they
13 can have it both ways. I would like to have clarity
14 on whether discovery is going to be answered within a
15 reasonable period of time, that being it was
16 promulgated on --

17 MR. SNISCAK: I can certainly represent
18 you'll have all answers by close of discovery.

19 MS. KNIGHT: Your Honor, that's the game
20 plan at this point. My discovery was sent out in
21 early October. Now, he's telling me I have to wait
22 three months to get the answers. I don't think that's
23 appropriate --

24 MR. SNISCAK: I didn't say three months.
25 I'm going to go back and revisit what we might be able

1 to get out. That's the only thing I can do.
2 Certainly you're not going to get them before
3 Thanksgiving. We'll look at what we have and see
4 whether we're able to give you some of it.

5 MS. KNIGHT: Are you going to withdraw
6 some of your objections to discovery if I withdraw the
7 question that you find most objectionable?

8 MR. SNISCAK: First of all, we don't
9 think you have any rights in this proceeding because
10 you lack standing. But what I'm saying is we'll go
11 back and I can't give you an answer on timing on these
12 things. I'll have to speak with the various people
13 who would be answering these to see what they can
14 answer and when they can answer it. That's the best I
15 can do at this point. I'll try to get that process
16 completed by say Thursday if I can

17 MS. KNIGHT: That's Thanksgiving. You
18 don't want to say that.

19 MR. SNISCAK: Well, before. But in the
20 abstract I think that's the first step. Let us see
21 how long it takes to get you some of this stuff.

22 JUDGE WILLIAMS-FORDHAM: So by next
23 Monday she should have an answer from you as to what
24 you can give her --

25 MR. SNISCAK: Right and when.

1 JUDGE WILLIAMS-FORDHAM: -- and by what
2 time period.

3 MS. KNIGHT: That will be at least a step
4 in the right direction.

5 The second outstanding issue, your Honor,
6 there were representations made in the prehearing
7 notice that there have been changes made to the
8 application which, you know, he's going up and looking
9 at the file we know about. I do print out the
10 Commission's daily log sheet and if there were changes
11 made to the application, I'm not receiving amendments
12 nor do I see on the log sheet any such amendment to
13 the application. So if they --

14 I don't spend all my time at the
15 Commission looking through files. I do check the log
16 sheet to see if anything happened. There's nothing
17 noted on this log sheet about an amendment to the
18 application. So I just ask for a clarification.

19 MR. SNISCAK: Again we filed this
20 document on September 14, 2005 with you and I'll give
21 a copy to Your Honor as well as to counsel. If we
22 hadn't had an opportunity to look through the entire
23 file --

24 MS. KNIGHT: As I said, I looked through
25 the log sheet to see if there was anything --

1 MR. SNISCAK: Well, it's not the file.

2 MS. KNIGHT: But nothing was logged in.
3 That's all I'm saying.

4 MR. SNISCAK: Well, the fact is or you
5 know OCA contacted us and asked for some
6 clarifications. We made those clarifications and
7 they're all, as far as we see it, consistent with our
8 application. And I think to disconnect if there was
9 any is you make certain assumptions based upon an
10 earlier business plan. And I'm sure if we pull
11 Superior's original business plan from whenever they
12 filed it, it would be in the early 90s that there
13 would be things that would be -- that they're doing
14 today that are a little bit different from that
15 reflected in that plan. So our plan when we say we're
16 going to meter customers and have them pay the tariff,
17 that's precisely what we mean. When we say we're
18 going to be a public utility, that's what we mean.

19 JUDGE WILLIAMS-FORDHAM: Thank you for
20 that clarification.

21 Mr. Sniscak, do you have any outstanding
22 issues?

23 MR. SNISCAK: No, I don't, Your Honor.

24 JUDGE WILLIAMS-FORDHAM: I believe we
25 have addressed the items that I have outlined in my

1 prehearing order and the issues that have been raised
2 by both parties. I would like to thank the parties
3 for their participation and their desire to cooperate
4 in this matter in terms of dealing with some of the
5 motions so that I won't have to write an order for
6 each thing, and that we can have a conference call if
7 it's necessary to do so.

8 Thank you.

9 MS. KNIGHT: Thank you.

10 MR. SNISCAK: Your Honor, I just want to
11 clarify something. I certainly wanted to make it
12 clear that it very well may be that this letter wasn't
13 reflected in the Commissions' punch list that
14 Ms. Knight would have looked at. I'll go back and
15 double-check to see. There's a possibility that this
16 was filed directly with staff because at that juncture
17 of the proceedings this case was proceeding under
18 what's called modified procedure which means that it
19 would have been with DFUS and that information would
20 have been given to them. I'll have to circle back and
21 double-check back and make sure that was in the file
22 which again it is our intention to file it.

23 I do recall seeing it stamped and copied.
24 I'll have to go back and double-check on that. But
25 anyway --

1 JUDGE WILLIAMS-FORDHAM: I believe that --

2 MR. SNISCAK: -- this document does
3 reflect and clarify any ambiguity or confusion between
4 the DEP business plan and what we proposed in our
5 application.

6 JUDGE WILLIAMS-FORDHAM: I do believe
7 that that's probably what happened that it was filed
8 with staff. I don't remember seeing a copy of that in
9 the documents that were provided to me.

10 MR. SNISCAK: Thank you, Your Honor.

11 Again I apologize to Ms. Knight for any
12 suggestion to you that you did not look through the
13 file. I know she does those things.

14 MS. KNIGHT: Apology accepted. Thank you
15 for that clarification.

16 JUDGE WILLIAMS-FORDHAM: Thank you.

17 MR. SNISCAK: Thank you.

18 MS. KNIGHT: Thank you.

19 - - -

20 (Whereupon the hearing was concluded
21 at 10:55 a.m.)

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C-E-R-T-I-F-I-C-A-T-E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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