

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Application of Washington
Park Sanitary Company,
Incorporated, d/b/a
Washington Park Sanitary
Company
Telephonic Pre-Hearing
Conference

Docket No.: A-230550 F2000
Docket No.: I-00070114
Docket No.: P-00072313

Pages 1 - 54

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Hearing Room 318
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Scranton, PA 18503

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Wednesday, July 18, 2007
Commencing at 10:00 a.m.

BEFORE:

EMBER S. JANDEBEUR, Administrative Law Judge

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SECRETARY'S BUREAU

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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P R O C E E D I N G S

JUDGE EMBER JANDEBEUR:

1
2 -----
3
4 This is the time and place to basically
5 go over discovery issues in the matter of the
6 Application of WP Sanitary Company to abandon and also
7 pursuant to the Commissioners Order of last Thursday's
8 public meeting. They have instituted an investigation
9 and they have required the Law Bureau to participate.
10 They have required the office of Administrative Law
11 Judge to hold a hearing and an adjudication. They
12 have required that the investigation and the
13 proceeding on a 529 hearing to all be consolidated
14 with the application for abandonment. They have also
15 required to be joined as parties United Water,
16 American Water and Aqua Pennsylvania. Hopefully, that
17 Order was served on each of those. I'm not sure if
18 everyone has gotten it in time since that was simply
19 last Thursday.

20 Nonetheless, here we are. So let me
21 basically take attendance and see who is on the call.
22 Since you all cannot see each other, I guess what I
23 will do is call names and see who I've got. That
24 probably would be the safest, otherwise, we'll all
25 speak at the same time. Do I have Kim Joyce? No.

1 Okay. For Kim Joyce I have Tom Niesen?

2 ATTORNEY NIESEN:

3 Yes, Your Honor. I'm here. Ms. Joyce is
4 not on the phone line.

5 JUDGE JANDEBEUR:

6 Right. Okay. And she did tell me that.
7 I'm just checking. Okay. And Mr. Niesen, you will be
8 representing Aqua?

9 ATTORNEY NIESEN:

10 Yes, with Ms. Joyce.

11 JUDGE JANDEBEUR:

12 Okay. So she will be --- you'll both
13 file notices of appearance?

14 ATTORNEY NIESEN:

15 Yes, Your Honor.

16 JUDGE JANDEBEUR:

17 Very good. Okay. And so today I just
18 have you, Mr. Niesen. Rhonda Daviston?

19 ATTORNEY DAVISTON:

20 Yes, Your Honor.

21 JUDGE JANDEBEUR:

22 Okay.

23 ATTORNEY DAVISTON:

24 With me I also have Kriss Brown and Patty
25 Wiedt.

1 JUDGE JANDEBEUR:

2 Okay.

3 ATTORNEY DAVISTON:

4 And all three of us will be Law Bureau
5 prosecutor staff.

6 JUDGE JANDEBEUR:

7 Okay. Very good.

8 ATTORNEY DAVISTON:

9 And they we will be filling their notices
10 of appearance as well.

11 JUDGE JANDEBEUR:

12 Thank you very much.

13 ATTORNEY DAVISTON:

14 You're welcome.

15 JUDGE JANDEBEUR:

16 Okay. John Dillon for United Water? Do
17 we have anyone for United Water? Okay. Well, Mr.
18 Dillon maybe running late if we hear someone join in
19 it might be him. And I do not have John Hollenbach.
20 Fayling Dempsey for DEP?

21 MS. DEMPSEY:

22 I'm here, Your Honor.

23 JUDGE JANDEBEUR:

24 Thank you. And do you have anybody with
25 you Ms. Dempsey?

1 MS. DEMPSEY:

2 Yes. I have some program staff with me.

3 I have Kate Crowley.

4 JUDGE JANDEBEUR:

5 Good morning, Kate.

6 MS. CROWLEY:

7 Good morning.

8 ATTORNEY DEMPSEY:

9 Steve Brokenshire.

10 JUDGE JANDEBEUR:

11 Brokenshire. Do you want to spell that
12 for me?

13 ATTORNEY DEMPSEY:

14 Sure. B-R-O-K-E-N-S-H-I-R-E.

15 JUDGE JANDEBEUR:

16 Okay.

17 ATTORNEY DEMPSEY:

18 And Todd Ostir, O-S-T-I-R.

19 JUDGE JANDEBEUR:

20 Okay.

21 ATTORNEY DEMPSEY:

22 I have Len Nawocki. N-A-W-O-C-K-I. I
23 have Frank Luongo. It's L-U-O-N-G-O.

24 JUDGE JANDEBEUR:

25 Okay.

1 ATTORNEY DEMPSEY:

2 And I also have Dino Agustini. It's
3 A-G-U-S-T-I-N-I, Dino, D-I-N-O.

4 JUDGE JANDEBEUR:

5 My goodness. Okay.

6 ATTORNEY DEMPSEY:

7 It's highly observed because we want to
8 know if --- we have someone --- people for the waste
9 water as well, as the drinking water issues came up.

10 JUDGE JANDEBEUR:

11 Okay.

12 ATTORNEY DEMPSEY:

13 Thanks.

14 JUDGE JANDEBEUR:

15 Thank you. Chris Hoover? Christine
16 Hoover?

17 ATTORNEY GANNON:

18 Here, Honor. No, Your Honor. I'm sorry.
19 We have Erin Gannon and Darlene Wong for the OCA.

20 JUDGE JANDEBEUR:

21 Okay. Thank you.

22 ATTORNEY GANNON:

23 Chris will be participating, but she's
24 not here today.

25 JUDGE JANDEBEUR:

1 Okay. Paul Litwin?

2 ATTORNEY LITWIN:

3 Present.

4 JUDGE JANDEBEUR:

5 And you are Washington Township?

6 ATTORNEY LITWIN:

7 Yes. We filled a protest to the
8 abandonment. However, with the consolidation of the
9 529 --- we don't have as much of an objection, in
10 fact, we have none.

11 JUDGE JANDEBEUR:

12 Okay. And Mr. Litwin, is anyone else
13 with you?

14 ATTORNEY LITWIN:

15 No, Your Honor.

16 JUDGE JANDEBEUR:

17 Okay. Kathleen Pate (phonetic)?

18 ATTORNEY MENDELSON:

19 No.

20 JUDGE JANDEBEUR:

21 No.

22 ATTORNEY MENDELSON:

23 Your Honor, this is Seth Mendelsohn. I
24 think when Kathie Pate was served, it's when she was
25 with Aqua. She is now the new present of Pennsylvania

1 American Water. I'm here today, Seth Mendelsohn,
2 representing Pennsylvania American Water and will be
3 doing so with Susan Finmarsh (phonetic) who is not on
4 this call, but we have entered our appearance.

5 JUDGE JANDEBEUR:

6 Okay. Right. I have that. Okay.
7 Kieran Casey?

8 ATTORNEY CASEY:

9 Here, Your Honor.

10 JUDGE JANDEBEUR:

11 Okay. Mr. Preate?

12 ATTORNEY PREATE:

13 Yes, Your Honor. Hi, good morning
14 everybody.

15 JUDGE JANDEBEUR:

16 Good morning.

17 ATTORNEY PREATE:

18 I'm here with Carl and Sandy Kresge.

19 JUDGE JANDEBEUR:

20 Okay.

21 ATTORNEY HUGHES:

22 Judge Jandebaur, it's Boyd Hughes. I
23 just got on the line.

24 JUDGE JANDEBEUR:

25 Mr. Hughes, who are you representing?

1 ATTORNEY HUGHES:

2 I'm representing United Water,
3 Pennsylvania.

4 JUDGE JANDEBEUR:

5 Okay.

6 ATTORNEY HUGHES:

7 And John Dillon should be on momentarily.

8 JUDGE JANDEBEUR:

9 Okay. Yes. I had already asked for him
10 and have not found him yet. Okay. Is there anyone on
11 the line that I have not called their name? Who just
12 joined?

13 ATTORNEY DILLON:

14 Hi. This is John Dillon. I'm the
15 Corporate Attorney for United Water, Pennsylvania.

16 JUDGE JANDEBEUR:

17 Okay. Very good. I think we got a full
18 roster now. Okay. Well, did any of you discuss how
19 you would like to proceed? I mean, basically this
20 call is to figure out a discovery and hearing
21 schedule. The most important part for me and the only
22 part I'm interest in really is the hearing schedule.
23 You all should be interested in the discovery
24 schedule. Were you able to think through how you
25 would like this to proceed?

1 ATTORNEY HUGHES:

2 On behalf of United Water, Judge, this is
3 Boyd Hughes. No, we haven't done anything. And we
4 have our own position regarding this as to how we
5 should not be included in this 529 application.

6 JUDGE JANDEBEUR:

7 Are you going to file a motion to that
8 effect?

9 ATTORNEY HUGHES:

10 Yes, Your Honor. I haven't received any
11 --- I just got a call last night. I was in
12 depositions all day yesterday I got back at a quarter
13 to five and I got a call from John Hollenbach. I got
14 him, and I got John Dillon this morning. So once I
15 get all of the communications on this, I believe our
16 position is going to be that we will file a motion to
17 be excluded from the 529 on the basis that we do not
18 qualify, because we do not have the capability to
19 manage the sewer plant.

20 JUDGE JANDEBEUR:

21 Okay. While we wait to see that motion.
22 All right. OCA, Ms. Gannon or Ms. Wong.

23 MS. GANNON:

24 Yes, Your Honor. I did have an
25 opportunity to speak with Law Bureau regarding the

1 schedule yesterday. I think that first, to address
2 discovery which may fall from the schedule, I think
3 that we would ask for an expedited discovery schedule,
4 and we couldn't go through the details of that.

5 In terms of procedure, and Law Bureau can
6 add their own comments, we had discussed a process
7 where we have possibly as many as three sets of
8 hearings, all of those may not be necessary once we
9 get more information about what issues may be
10 stipulated to. The findings might be stipulated to.
11 But generally what we were thinking of is having an
12 evening public input hearing in the service territory,
13 followed by a hearing where the Law Bureau would have
14 an opportunity to try to establish their prima facie
15 case supported by any parties who were in alignment
16 with them. And then a third set of hearings where WP
17 would have an opportunity to put forth the case and to
18 respond. Law Bureau would have an opportunity --- I'm
19 sorry, WP would have an opportunity to put forth a
20 case that it is able to render adequate sufficient
21 cases of reasonable service at reasonable rates, if
22 they chose to present that case. And then the other
23 utilities like United Aqua, Pennsylvania American
24 would have also at the hearing the opportunity to
25 prove that they are unable to acquire and operate the

1 system.

2 Again we certainly have hope that the
3 findings underlying a lot this could be figured into,
4 and that as I said, some or many of those hearings may
5 not be necessary.

6 JUDGE JANDEBEUR:

7 Okay. Ms. Daviston, do you have any
8 thoughts to add to Ms. Gannon's?

9 MS. DAVISTON:

10 We were in agreement with what Ms. Gannon
11 just said. We also discussed possibly having a
12 mediation session to see if we could possibly come to
13 an agreement, a mutually agreed upon settlement.

14 MS. GANNON:

15 This is Erin Gannon. Thank you, Rhonda
16 for bring that up. I did fail to mention that we
17 would like to build into this schedule multiple
18 opportunities for the parties to either participate in
19 formal mediation or informal conference calls between
20 the parties. I think we were able to establish those
21 dates in advance, that might be helpful, but we
22 definitely agree that would so that I would be in this
23 case.

24 JUDGE JANDEBEUR:

25 Mr. Preate?

1 MR. PREATE:

2 Judge, this is Ernie Preate. I totally
3 support any attempt to have a mediator appointed to
4 get this thing resolved. This can be resolved very
5 quickly if we can all sit down, found out what water
6 companies or providers are willing to acquire us and
7 we'll get out of the business. We need this --- just
8 somebody sit down, be a mediator, and put us all
9 together and we'll come to some conclusion.

10 JUDGE JANDEBEUR:

11 Okay. Now, I assume then in the original
12 filings, Ms. Gannon, that OCA did not request
13 mediation? It wouldn't be in front of me if someone
14 along the line had requested mediation. So I assume
15 that wasn't done yet?

16 MS. GANNON:

17 No, Your Honor. And it's not to say that
18 we're opposed to mediation. I think it was simply a
19 fact that in the process of requesting the 529
20 proceeding be initiated, that wasn't alternative that
21 was identified in the codes.

22 JUDGE JANDEBEUR:

23 Okay.

24 MS. WONG:

25 This is Darlene Wong. I would just

1 mention that, you know, per your request that we take
2 a look at this schedule. We did want to have in mind,
3 you know, dates for anticipated litigation. And when
4 we say mediation, I don't think necessarily we have to
5 exclude the fact that we can have settlement
6 discussions, you know, within the litigation saying we
7 may or may not want to go to the Commission, you know,
8 a process of mediation.

9 JUDGE JANDEBEUR:

10 Okay. Well, there's a couple
11 of ----.

12 MS. WONG:

13 Depending on what the parties agree on.

14 JUDGE JANDEBEUR:

15 There's a couple of things to consider
16 here. If there is a formal request for mediation, and
17 it is given to our mediation unit --- in other words,
18 Mr. Nurick, that will definitely stall things out in
19 front of me because until he finishes his review, it
20 simply does not come to me. And as you all are aware,
21 there is no cross over between the Office of the
22 Administrative Law Judge and Mr. Nurick's process. I
23 know absolutely nothing of what goes on there, nor
24 would I know the outcome, unless if it's settled, it
25 doesn't come to me. If it's not settled, it comes to

1 me. And that's the whole exist of what I would know
2 about that process.

3 Now, we can assume that we are going to
4 go forward since we're under a Commission Order to do
5 that on a 529 proceeding. And actually, I don't think
6 we really have a whole lot of wiggle room with that.
7 I believe because of the Commission's Thursday Order,
8 we have to setup a discovery schedule and we have to
9 setup a hearing schedule. If you all are able to
10 settle it without a hearing and without me having to
11 do an initial decision, then I would suggest you
12 either settle it out from under me completely or
13 submit a proposed settlement that I would approve as a
14 recommended decision to the Commissioners and they
15 would have final say on it.

16 I would suspect that is what the
17 Commissioners would like to see happen, that this
18 whole group on the telephone actually arrives at a
19 proposed settlement that everybody has had input in
20 rather than litigate it. That's always the best
21 solution because then everybody has a stake in the
22 outcome and it will probably be more successful than a
23 litigated outcome. That being said, I am going to
24 assume that we are not going to try and move this to
25 Mr. Nurick. If any one of the parties on the

1 telephone want to attempt to move it to Mr. Nurick's
2 office, the formal mediation unit, then you need to do
3 that by formal request in writing to the Office of the
4 Administrative Law Judge, specifically Ronnie Smith,
5 the Chief ALJ, and if that happens, that's fine.

6 In lieu of that, we are going to go
7 forward and we are going to set a discovery schedule.
8 Now, I need to know from OCA, Law Bureau and Mr.
9 Preate, from your clients, the time block that you
10 need in order to prepare for hearings. Let me preface
11 that by saying I believe that most of the facts that
12 would meet the information required by the 529
13 proceeding --- I think you all are aware that there's
14 six components of that 529 proceeding. I believe
15 almost all six of those components have already been
16 before me. They are already in a decision from me
17 that is in Harrisburg and is still in the process. It
18 went to Harrisburg last week, I believe, and because
19 that Decision is extensive, it is still in the review
20 process, but it will be coming out. And unless, of
21 course, it's overruled and remanded, then I believe a
22 lot of the information, as OCA pointed out, is already
23 in another case. So I do not believe that we need a
24 long block of time for discovery. That was my long
25 winded way of saying that I believe 30 or 45 days max

1 for discovery and a hearing date approximately 30 to
2 45 days from today is doable. Thoughts on that from
3 either Law Bureau, OCA, or Mr. Preate.

4 MR. PREATE:

5 It's Ernie here, Ernie Preate. I have a
6 vacation scheduled for a couple weeks in the middle of
7 August. I've already put money down on a house at the
8 shore and I'm just going to fall right within your 30
9 to 45-day window.

10 JUDGE JANDEBEUR:

11 Okay. So basically we need to go to the
12 end of August or early September.

13 MR. PREATE:

14 Yeah. That would be fine.

15 JUDGE JANDEBEUR:

16 Okay. All right.

17 ATTORNEY GANNON:

18 Your Honor, this the OCA. And again Law
19 Bureau can add their thoughts. But we would discuss
20 maybe the week of August 27 or the week of September 3
21 for the hearing for Law Bureau and the aligned
22 parties.

23 JUDGE JANDEBEUR:

24 Okay. Well, like Mr. Preate, I will be
25 out 26 to 29. I'm sorry. August 22 to 29.

1 September, there's a holiday right in there, that
2 first week of September there's a holiday. Hold on
3 one second.

4 MR. PREATE:

5 The 3rd, Judge.

6 JUDGE JANDEBEUR:

7 Yes. The 3rd and 4th and 5th I already
8 have hearings, so we have 6th and 7th.

9 ATTORNEY NIESEN:

10 Your Honor, this is Tom Niesen, I'm out
11 of the office the week of --- actually from the 29th
12 through September --- I think Ms. Hayes might be
13 available during that time, but I am unavailable. And
14 I'm not sure whether Aqua, if it has witnesses, under
15 the schedule being suggested by Ms. Daviston and Ms.
16 Gannon would be expected to testify at those hearings,
17 at that set of hearings.

18 MS. GANNON:

19 Your Honor, this is Erin Gannon. I don't
20 think --- I think we just anticipated having witness
21 for Law Bureau and likely the OCA and perhaps some DEP
22 witnesses.

23 JUDGE JANDEBEUR:

24 Okay. What is everybody's week September
25 10 look like?

1 MR. PREATE:

2 Ernie Preate. That's perfect for me.
3 Open right now.

4 MS. DAVISTON:

5 This is Rhonda Daviston. I will be
6 working on a reply brief in another matter that week.
7 It's due that week.

8 JUDGE JANDEBEUR:

9 Okay. So pretty much your work will be
10 accomplished?

11 MS. DAVISTON:

12 For the most part.

13 JUDGE JANDEBEUR:

14 Yes. I think that is the best week.
15 There are no hearings that week, so I am going to hold
16 that week. Now, number of days for hearing, depending
17 on stipulations --- Ms. Gannon, I suspect that you
18 probably don't have a handle yet on how much of the
19 529 proceeding you are going to need to put witnesses
20 on for each block of it; is that correct?

21 MS. GANNON:

22 Yes, Your Honor. Because of the
23 honorable thing, that much of it can be either
24 stipulated to or established by bringing in pleadings,
25 or record evidence from the existing proceeding. As I

1 said, we hope that much or all of it can stipulated
2 to. But we aren't sure at this point.

3 JUDGE JANDEBEUR:

4 Okay. Would it be safe for me to set
5 aside three days for hearing, or do I need to just
6 block that week and we'll revisit an actual schedule
7 after you get a handle --- after all of you get a
8 handle on what is going to be stipulated to and
9 whether there's a prayer of you being able to either
10 settle it or propose a settlement?

11 ATTORNEY MENDELSON:

12 Your Honor, this is Seth Mendelsohn on
13 behalf of Pennsylvania American Water. We are
14 relatively new to this proceeding and have not been
15 involved before. I guess I would ask, Ms. Gannon
16 earlier had said she looked at these as three
17 components. I'm okay with beginning of the three
18 hearings, I'm okay with beginning the 10th, but that's
19 not giving my client a lot of time --- I would say
20 let's start then, but maybe later in the month to have
21 that 3rd, because right now we don't know if we can
22 provide service or not. As Mr. Hughes had said that
23 his client has an issue, I think that would be a
24 pretty expedited time period to have that portion of
25 the hearing.

1 ATTORNEY DAVISTON:

2 Mr. Mendelsohn, if I could respond?

3 ATTORNEY MENDELSON:

4 Sure.

5 ATTORNEY DAVISTON:

6 Actually, what we had in mind was
7 probably having about three to four weeks between that
8 hearing for Law Bureau and the next hearing for the
9 other utilities.

10 ATTORNEY MENDELSON:

11 Okay. That would be sufficient, Your
12 Honor. Thank you.

13 JUDGE JANDEBEUR:

14 Okay. So if we set ---.

15 ATTORNEY HUGHES:

16 Judge, Boyd Hughes for United Water.
17 What Mr. Mendelsohn said, and what the Law Bureau said
18 there, Ms. Gannon, just for everybody's knowledge, we
19 have terminated all of the --- our sales agreement, or
20 our agreement to purchase the water facilities, of WP
21 Water. We are not in the sewer business. And that
22 agreement has now been terminated back in May. I
23 don't believe the Judge is aware of it, but there was
24 a meeting which United attended, WP Water attended,
25 the Law Bureau attended, Fish and Game officer, the

1 OCA attended, Washington Park supervisors. And after
2 that meeting, United Water --- we told Mr. Preate that
3 our agreement was terminated based on that meeting.
4 We were not in the sewer business and there was no way
5 if 529 came down, that we would be able to take over
6 the sewer authority. They're two independent and
7 distinct companies with separate tariffs and two
8 separate entities.

9 At the time we were only interested in
10 the water proceeding and the water companies. Aqua
11 has obtained the certificate to serve Saddle Ridge.
12 That was one of the conditions of our due diligence in
13 our Petition to Intervene. Judge Cocheres, in his
14 Ruling, granted Aqua's petition. So now they will be
15 serving Saddle Ridge. With that, we have no interest
16 in taking over the other --- WP Water's 27 customers
17 down in Sleepy Hollow. And we were looking at a
18 united effort there that --- that Saddle Ridge would
19 be contiguous to our area. So that is why, when I
20 just found out about this last night, and we came into
21 this conference call, it's our position on behalf of
22 United Water Pennsylvania that we should not even be
23 involved in the process. And I haven't had time to
24 discuss this with Mr. Dillon, but that's the basis of
25 my saying that we would have a motion to exclude us

1 from this entire proceeding.

2 But not withstanding that, as long as we
3 will not be involved in that process on September
4 10th, that in the event our motion is denied, that
5 then would be at the end of September for the fourth
6 hearing, or the fourth item on Ms. Gannon's list, for
7 the other utilities to prove that we are unable to
8 operate the systems. If that would be held at the end
9 of September, that would be fine with us.

10 JUDGE JANDEBEUR:

11 That was a very long winded way of saying
12 that, Mr. Boyd.

13 ATTORNEY HUGHES:

14 There was a lot to say there. Thank you,
15 Judge.

16 JUDGE JANDEBEUR:

17 All right. We got 10 days, 10, 11 and 12
18 I will hold that aside. Do we want to look at the
19 week of the 24th? Now, just to let you know, we have
20 an ALJ conference 25 and 26, we could go 24 and 27, or
21 we could do 27 and 28.

22 ATTORNEY NIESEN:

23 Your Honor, this is Tom Niesen for Aqua
24 Pennsylvania. Again, for Ms. Gannon, the second set
25 of hearings is viewed to be for what purpose, Erin?

1 ATTORNEY GANNON:

2 Well, the second set of hearings --- I
3 just want to note that at this point we've kind of
4 skipped over the input hearing, because I think we
5 have a little more flexibility as to when that would
6 be scheduled. But the main second set of hearings
7 would be for the purpose of --- if the parties choose
8 to present this case, for WP to prove its ability to
9 render adequate efficiency service and for any of the
10 potential inquiring utilities to prove the financial,
11 managerial, or technical inability to acquire and
12 operate the system.

13 JUDGE JANDEBEUR:

14 Well, basically it would be the utilities
15 primarily because Mr. Preate has indicated his clients
16 would like to give up the company; is that correct,
17 Mr. Preate?

18 ATTORNEY PREATE:

19 Yes, Judge.

20 JUDGE JANDEBEUR:

21 So primarily, Ms. Gannon, this will be
22 for the utilities to establish their ability.

23 ATTORNEY GANNON:

24 Yes, Your Honor, that's correct.

25 ATTORNEY PREATE:

1 And the Township.

2 JUDGE JANDEBEUR:

3 Thank you.

4 ATTORNEY GANNON:

5 Actually, Your Honor ---.

6 JUDGE JANDEBEUR:

7 Was that Mr. Litwin?

8 ATTORNEY LITWIN:

9 No, that was Attorney Preate, Your Honor,
10 this is Paul Litwin.

11 JUDGE JANDEBEUR:

12 Again, folks, because the court reporter
13 and I can't see you, if you would just state your name
14 before you speak. Some of the voices I recognize,
15 obviously some I don't.

16 ATTORNEY GANNON:

17 Your Honor, this is Erin Gannon. I just
18 wanted to mention in response to Mr. Preate's comment
19 regarding the Township. It's my understanding that
20 pursuant to 529, the Commission has the authority to
21 require existing public utilities to acquire a
22 utility. It's not my understanding that they have the
23 authority to require the Township to acquire WP.

24 ATTORNEY LITWIN:

25 Your Honor, it's Paul Litwin. That's my

1 understanding as well.

2 JUDGE JANDEBEUR:

3 Well, that's what 529 says. It says we
4 may order a capable public utility. So if the
5 Township is not a capable public utility, we wouldn't
6 have the power to order them to take it over.

7 ATTORNEY NIESEN:

8 Your Honor, this is Tom Niesen again. My
9 only thought about the second set of hearings is that
10 my client may need more time to address its testimony
11 in the event it decides to submit something,
12 particularly if the parties that are testifying on the
13 10th, 11th or 12th are going to perhaps suggest a
14 particular utility as being the acquiring entity.

15 JUDGE JANDEBEUR:

16 What kind of time block would you
17 suggest, Mr. Niesen?

18 ATTORNEY NIESEN:

19 I would think that --- and we haven't
20 talked about whether the testimony is going to be in
21 writing or in what fashion, I don't believe. And I
22 would think we'd need at least another week after this
23 first set of hearings to have the second set of
24 hearings.

25 JUDGE JANDEBEUR:

1 Well, there is a week in there, there's
2 the week of the 17th. You're saying you think that
3 you might need two weeks?

4 ATTORNEY NIESEN:

5 Well, I thought that Ms. Gannon had
6 suggested initially a three-week spacing between the
7 hearings. Maybe I heard that incorrectly, but ---.

8 ATTORNEY MENDELSON:

9 This is Seth Mendelsohn. I believe she
10 said it's three to four. And Your Honor, I would
11 propose for that second set beginning no earlier than
12 October 9th. Looking at the calendar, I believe the
13 8th is probably Columbus Day.

14 JUDGE JANDEBEUR:

15 Yes. I don't have any aversion to that
16 as long as the Law Bureau and OCA believe that that
17 schedule meets the expedited needs of the customers.
18 And I'll need to hear that from you two.

19 ATTORNEY WONG:

20 Your Honor, this is Darlene Wong from the
21 OCA. And that is exactly our concern, as of the
22 notice to the joined approximate public utilities,
23 they do have an opportunity to start to prepare their
24 case. And as soon as this prehearing conference is
25 over, and the discovery schedule is established, they

1 can submit their request for discovery. So I think
2 that the time for preparing the case begins today.

3 JUDGE JANDEBEUR:

4 Or last Thursday with the Commission
5 Order.

6 ATTORNEY WONG:

7 Right. Correct. And I think --- this is
8 something I would put out there. I think possibly if
9 we haven't talked about it, we could look at another
10 week for the initial hearing on the first set of
11 hearings, if that would help move us to the second set
12 of hearings. But that's absolutely correct, we are
13 concerned that --- the nature of the 529 proceeding is
14 that the --- and the fact that the Commission has
15 issued this Order allowing the 529 to go forward,
16 which is a very rare order, is that this is an
17 extraordinary circumstance and there are customers out
18 there, hundreds of customers, that need a solution to
19 their water problems right away. So we are really
20 interested in expediting the schedule.

21 JUDGE JANDEBEUR:

22 Okay. Well, it looks like you folks
23 don't like the 27th and 28th, despite OCA's wish to
24 move it forward. I do believe that the information
25 that the utilities, Aqua, United, Pennsylvania

1 American need --- and obviously United is not
2 particularly interested, so that leaves us with
3 Pennsylvania American and Aqua American. I do think
4 that you two utilities have enough to work with
5 already. Additional discovery, you will have pretty
6 much all of September. You will have a full 30-day
7 block of time. I would suggest that we go along with
8 Mr. Mendelsohn, and reschedule 9 and 10 or 10 and 11
9 October for the utility hearings and anything that Mr.
10 Preate's clients would want to add. Is that agreeable
11 with everyone?

12 ATTORNEY DAVISTON:

13 I'm okay with it.

14 JUDGE JANDEBEUR:

15 That's Ms. Daviston?

16 ATTORNEY DAVISTON:

17 Yes.

18 ATTORNEY PREATE:

19 Mr. Preate is okay with it.

20 JUDGE JANDEBEUR:

21 Okay. I will set October 10 and 11 for
22 the second block of hearings.

23 ATTORNEY HUGHES:

24 Judge, if I could just ask one question,
25 this is Boyd Hughes. I have not seen the Order. What

1 was dated before, I don't know if it was Erin or
2 Darlene, that she just mentioned that it was the water
3 companies. Is this just the water or ---

4 JUDGE JANDEBEUR:

5 No.

6 ATTORNEY HUGHES:

7 --- is it the water and sewage? It's my
8 understanding that they are linked together and that
9 the Order --- whoever takes over the water company is
10 also going to take over the sewer company.

11 JUDGE JANDEBEUR:

12 Well, the Order does not specifically say
13 that. The Order says --- Order, in paragraph number
14 one, that an investigation should be instituted into
15 whether the Commission should order a capable public
16 utility to acquire WP Water Company and WP Sanitary
17 Company pursuant to 529. That OCA's Petition for
18 Commission Order instituted a proceeding to order the
19 acquisition, blah, blah, blah, is granted in part and
20 denied in part consistent with this Order. Paragraph
21 three, law bureau is directed to participate.
22 Paragraph four, it's referred to my office for hearing
23 and adjudication. Paragraph five, it is consolidated
24 with the abandonment application.

25 ATTORNEY HUGHES:

1 That's on the sewer.

2 JUDGE JANDEBEUR:

3 Correct.

4 ATTORNEY HUGHES:

5 There's been application to abandon sewer
6 service; correct?

7 JUDGE JANDEBEUR:

8 Correct. It is consolidating with that.

9 And paragraph six, that the Law Bureau Prosecutory
10 Staff, Washington Township, United Water, American
11 Water, and Aqua PA are all joined as parties. And
12 that's it.

13 ATTORNEY HUGHES:

14 And maybe this is for, your know,
15 Attorney Gannon, it's been my impression that the
16 meeting that we had with Washington Township, that
17 there always was linkage between the OCA and the Law
18 Bureau, that whoever took over the water companies
19 would take over the sewer. But there's a real problem
20 with the sewer. And that there is definite linkage
21 there. And is that their position in these hearings?

22 JUDGE JANDEBEUR:

23 Ms. Gannon?

24 ATTORNEY GANNON:

25 Your Honor, speaking for the OCA, I

1 think that we are definitely viewing them as linked.
2 However, our primary concern is to get both utilities
3 hired by a capable utility at a reasonable price in
4 the most reasonable possible rates for the WP
5 customers. That's our goal.

6 JUDGE JANDEBEUR:

7 And to that end, Ms. Gannon, you are not
8 wedded to the notion that it has to be the same
9 utility that purchases both?

10 ATTORNEY GANNON:

11 We think that it is likely that it should
12 be both, but we agree that they're not absolutely
13 together.

14 ATTORNEY DAVISTON:

15 And Ms. Daviston, your position?

16 ATTORNEY BROWN:

17 Your Honor, this is Kriss Brown from the
18 law bureau.

19 JUDGE JANDEBEUR:

20 Yes.

21 ATTORNEY BROWN:

22 And I'm just --- we don't believe that
23 all the entities here are linked such that they cannot
24 be broken up. So in other words, like the water could
25 be sold off to a separate company from the wastewater.

1 JUDGE JANDEBEUR:

2 Thank you. Does that answer your
3 question, Mr. Hughes?

4 ATTORNEY HUGHES:

5 Yes, Judge.

6 JUDGE JANDEBEUR:

7 Now, do you all need my assistance at all
8 with a discovery schedule, or can I leave that to you
9 all to work out?

10 ATTORNEY GANNON:

11 Your Honor, this is Erin Gannon with the
12 OCA. Perhaps we can just run through what we were
13 considering, and if there's any disagreement, then we
14 can take that offline and discuss it and perhaps there
15 won't be, and we can have that established.

16 JUDGE JANDEBEUR:

17 And while we're on that, do you wish to
18 submit written expert testimony, or do you wish to do
19 all of it orally?

20 ATTORNEY GANNON:

21 Your Honor, speaking for the OCA, we
22 could certainly do it either way. I think that's what
23 we're visiting to is to do things where we were
24 visiting it to be oral testimony.

25 JUDGE JANDEBEUR:

1 Okay. Mr. Niesen, that answers your
2 question.

3 ATTORNEY NIESEN:

4 Your Honor, this is Tom Niesen again. If
5 it's oral, then it is correct, is it not, that the
6 transcript won't come out for 15 working days after
7 the hearing?

8 JUDGE JANDEBEUR:

9 That is correct if we leave it that way.
10 We do have the option to, I believe, request a
11 three-day turnaround. And we do that in rate cases.
12 I think a 529, at least in my opinion, is more vital,
13 more crucial than a rate case. So I think we can do a
14 three-day turnaround. Does that help?

15 ATTORNEY NIESEN:

16 Yes, that will certainly help. I'm just
17 --- my client has been asked to participate, directed
18 to participate as a party, and we're going to do that.
19 If the testimony isn't written and there are financial
20 fees of some kind presented, that means that we will
21 not have those things prior to September the 10th.

22 JUDGE JANDEBEUR:

23 Good point. Very good point, Mr. Niesen.

24 ATTORNEY NIESEN:

25 And I don't know what the testimony today

1 will look like come September the 10th. And my only
2 concern is, on behalf of my client, is that we have
3 the time to prepare to participate with our testimony
4 on the 9th or 10th of October. If it's not written, I
5 think that it makes that preparation more difficult,
6 depending on what the testimony says.

7 JUDGE JANDEBEUR:

8 Let's do this, folks, because I think
9 we're just floundering. And what I would suggest is
10 that Mr. Mendelsohn, Mr. Niesen, Ms. Gannon, Ms. Wong
11 and Ms. Daviston, and your team, Mr. Brown and Ms.
12 Wiedt, that you all discuss offline a discovery
13 schedule. I would suggest that you do need expert
14 testimony in written form and rebuttal to expert
15 testimony in written form. Any additional witnesses
16 that you're going to have that are not going to be
17 expert witnesses, that can be oral.

18 I suspect that you're going to need to
19 subpoena a number of DEP witnesses and some of those
20 may be able to be expert testimony, some of them may
21 not, you'll need to analyze that and figure out
22 whether you're going to --- I would look at the three
23 days of hearings, figure out a schedule, a proposed
24 schedule for who's going to present when and how many
25 witnesses you have. And if you would, you can either

1 get that to me via e-mail or we'll simply have another
2 pre-hearing conference and just go over that schedule.
3 And I would suggest that that would need to be next
4 week. Does that sound like a viable solution?
5 Because I don't think we can iron it out on this call.
6 I think you all need to discuss what you want from
7 each other and then get back to me with a proposed
8 schedule.

9 ATTORNEY NIESEN:

10 Your Honor, this is Tom Niesen. Yes, we
11 can participate in that effort. Thank you.

12 ATTORNEY HUGHES:

13 Judge, this is Boyd Hughes. I start a
14 three-day trial on the 25th of next week. I'll be out
15 Wednesday, Thursday and Friday. But by then we should
16 have our motion filed to disqualify United Water.

17 JUDGE JANDEBEUR:

18 Okay.

19 ATTORNEY HUGHES:

20 Unless everybody wants to let us out now.

21 JUDGE JANDEBEUR:

22 I don't think that we can do that. I
23 think it has to be through a motion.

24 ATTORNEY HUGHES:

25 I was only kidding, Judge.

1 JUDGE JANDEBEUR:

2 Today is the 18th. I can't do anything
3 next week. I'll be in Reno. And I don't really want
4 to call you all from Reno. How about we reconvene on
5 --- can you all get a schedule to me without another
6 prehearing conference call? You've got the hearing
7 dates, you need to back up from that.

8 ATTORNEY DAVISTON:

9 I think we can do that, Your Honor.
10 Rhonda Daviston speaking.

11 JUDGE JANDEBEUR:

12 I'm going to take that as a yes from all
13 of you, you know, and I'll put Ms. Daviston in charge
14 of the whip. Why don't you all get a schedule to me
15 by Monday the 30th. I will be back in my office on
16 the 30th. And I don't think that I will have any
17 issues with it. I pretty much like to stay out of
18 discovery battles unless I'm absolutely needed. I
19 leave that to you all. Trial management is the
20 litigator's role, it's not mine. So unless you guys
21 need me, I'm going to assume that you don't need me
22 and you'll just get me a discovery schedule on the
23 30th. Ms. Daviston, can you take the lead on getting
24 that to me?

25 ATTORNEY DAVISTON:

1 Yes, I can, Your Honor.

2 JUDGE JANDEBEUR:

3 And if for any reason there is an issue,
4 then of course I'm available. But you all are big
5 folks, you can handle it without me. What else do we
6 need to go over today?

7 ATTORNEY LITWIN:

8 Your Honor, it's Paul Litwin speaking
9 again for Washington Township. I'd just like to
10 confirm that you will not be looking at the Township
11 in the Act 529 proceeding as a suitable candidate to
12 acquire the system.

13 JUDGE JANDEBEUR:

14 I'm not going to be looking at you
15 specifically. If anybody puts you in front of me,
16 then I'll have to look at you. But I mean, I've got
17 the book open right here. And it says exactly what
18 Ms. Gannon says it says --- actually Ms. Wong said
19 that. The Commission may order a capable public
20 utility to acquire a small water or sewage utility,
21 blah, blah, blah. And my read of that is you don't
22 meet that.

23 ATTORNEY LITWIN:

24 Terrific.

25 JUDGE JANDEBEUR:

1 But I do not have the ability to tell you
2 that I will not look at you. If anybody puts you in
3 front of me, yeah, I'll look at you.

4 ATTORNEY LITWIN:

5 But with respect to discovery, will the
6 Township be part of that? Our involvement was simply
7 signing a protest to the Abandonment Petition.

8 JUDGE JANDEBEUR:

9 And are you going to withdraw that
10 protest?

11 ATTORNEY LITWIN:

12 If that will get us out of this,
13 absolutely.

14 JUDGE JANDEBEUR:

15 Well, it's up to you. I mean, you always
16 have the ability to withdraw something that you put in
17 front of the Commission. So if you wish to not be
18 involved in that, then I think that that's what you're
19 going to need to do. So I'll leave that to you,
20 whether you're going to do that or not.

21 ATTORNEY LITWIN:

22 Okay.

23 JUDGE JANDEBEUR:

24 All right. The dates that I have then
25 are September 10, 11, and 12 and then October 10 and

1 11. And I ---.

2 ATTORNEY GANNON:

3 Your Honor, this is Erin Gannon. I did
4 want to discuss a possible evening public input
5 hearing in the service territory.

6 JUDGE JANDEBEUR:

7 Yes, you did mention that. So I take it
8 from that that you think one is necessary?

9 ATTORNEY GANNON:

10 At this point, I'm fine if perhaps we
11 push it closer to when we're looking at a hearing, the
12 first round of hearings. But it won't be necessary.

13 JUDGE JANDEBEUR:

14 I think that probably OCA should do some
15 investigation in the service territory. If the
16 customers want one, I will certainly hold one. But I
17 don't want to hold one and have no one show.

18 ATTORNEY GANNON:

19 Your Honor, I can guarantee that
20 customers will attend. But I will make some contacts
21 with them and let them know where we are in the
22 process and see how they feel about not having one.

23 JUDGE JANDEBEUR:

24 Okay. To my knowledge, one is not
25 required in a 529. It's the sixth block in the 529,

1 the sixth criteria that actually the burden of proof
2 is on Ms. Daviston's group, the Law Bureau's group.
3 And as long as the Law Bureau shows that, a public
4 input is not necessary. But again, I would say if the
5 folks that are customers of WP wish to have a voice,
6 we will make the time available for them to speak. So
7 you'll get back to me on that and we'll hold on in the
8 service territory if you find that they would like
9 one.

10 ATTORNEY GANNON:

11 Thank you. I will get back to everyone
12 on that.

13 JUDGE JANDEBEUR:

14 Okay. What else?

15 ATTORNEY PREATE:

16 This is Ernie Preate, Judge. I'm going
17 to be filing a mediation motion that we would like to
18 have that expedited obviously.

19 JUDGE JANDEBEUR:

20 Well, you file that with Ronnie Smith.
21 And if it gets pulled out from under me, that's fine.

22 ATTORNEY PREATE:

23 And I'm just saying to the other lawyers
24 that are involved here, particularly the utility
25 lawyers, we would be absolutely willing to assist them

1 in their due diligence to look at our books. Needless
2 to say, have their engineers come up, take a look at
3 both facilities in Sleepy Hollow and Washington Park,
4 immediately. Immediately. They could start that
5 process right tomorrow if they want to do it.

6 We have already supplied United a
7 tremendous amount of documentation about --- they were
8 doing their due diligence. And so that package
9 already exists and we can easily supply that to Tom
10 Niesen and Seth Mendelsohn, for them to take a look at
11 it, and then they can have their engineers come on up
12 and take a look at the properties just like United
13 did.

14 I would suggest that I'm very glad to
15 hear Kriss say that everything is not connected.
16 Because if it's not connected, then there's a
17 possibility of having the water company sold out
18 separately from the sanitary company. And you know,
19 we've already explored that possibility with United
20 and they were willing to do that. They just objected
21 to the linkage to the sewer company.

22 So I'd be opposing United's attempt to
23 get out at this juncture, given what Kriss had said on
24 that. So I'd like to see that we get to the
25 mediation, get it down, what are we going to --- who

1 are we going to be dealing with. We have three
2 utilities. And we're happy to show all of our books,
3 all of our engineering records, all of our
4 applications, all of our permits, including the new
5 well that's been drilled up there on our property in
6 Washington Park.

7 So we're ready to go --- if the other
8 utilities are ready to go, we're ready to go. I don't
9 even see the need for any hearing. If we spend all of
10 our energy that we're going to send on the hearings
11 and spend it in mediation, this thing is over, it's a
12 done deal. Then the customers will be taken care of a
13 lot quicker than if these hearings and things would be
14 processed. That's my opinion.

15 JUDGE JANDEBEUR:

16 Thank you. One last thing before I
17 believe we're done, at least on my part. Is there
18 anything else anyone else wants to bring up?

19 ATTORNEY GANNON:

20 Your Honor, this is Erin Gannon. I was
21 just going to mention that perhaps it may be possible
22 for some of the parties to stay on the line after the
23 pre-hearing is over and we can begin talking about
24 some of these issues.

25 JUDGE JANDEBEUR:

1 I think as far as I know, Mr. Niesen,
2 this is your telephone line; correct?

3 ATTORNEY NIESEN:

4 It is Aqua's line, not my law firm's
5 line.

6 JUDGE JANDEBEUR:

7 And is there any problem with folks
8 staying on the line after I hang up?

9 ATTORNEY NIESEN:

10 As far as I know, there's no problem.

11 JUDGE JANDEBEUR:

12 Okay. It was very gracious of Aqua, I
13 appreciate that. I had no idea the Commonwealth's
14 lines are so in demand, but nonetheless, I appreciate
15 that.

16 All right. My one thing is housekeeping.
17 I need to tidy up this party list. It's kind of a
18 mess. And it basically is the e-mail that's going
19 back and forth. So let me just make sure I know who
20 wants to be served with documents. Starting with Law
21 Bureau, Ms. Daviston, you want all three folks served,
22 Mr. Brown, Ms. Wiedt and yourself?

23 ATTORNEY DAVISTON:

24 Yes, Your Honor.

25 JUDGE JANDEBEUR:

1 And for OCA, all three, Ms. Gannon, Ms.
2 Wong and Ms. Hoover?

3 ATTORNEY GANNON:

4 Correct, Your Honor.

5 JUDGE JANDEBEUR:

6 And Mr. Niesen you want Mr. Dillon and
7 yourself?

8 ATTORNEY NIESEN:

9 I'm Aqua, remember?

10 JUDGE JANDEBEUR:

11 All right. I'm going to get all you guys
12 mixed up. Let's just go by who for United wants to be
13 served?

14 ATTORNEY HUGHES:

15 That would be me, Boyd Hughes, and also
16 John Dillon, Your Honor.

17 JUDGE JANDEBEUR:

18 There we go, there's Mr. Dillon. For
19 Aqua, PA?

20 ATTORNEY NIESEN:

21 Tom Niesen, yes, and Kimberly Joyce.

22 JUDGE JANDEBEUR:

23 Okay. And for Pennsylvania American,
24 it's Susan Simms Marsha and Seth?

25 ATTORNEY MENDELSON:

1 Correct, Your Honor. Thank you.

2 JUDGE JANDEBEUR:

3 Ms. Dempsey, just yourself?

4 ATTORNEY DEMPSEY:

5 Just me. Thank you.

6 JUDGE JANDEBEUR:

7 And let's see, who else have I got here.

8 Mr. Litwin, you're on for a little while and you'll

9 see if you can get yourself off?

10 ATTORNEY LITWIN:

11 Yes, Your Honor.

12 JUDGE JANDEBEUR:

13 Mr. Casey?

14 ATTORNEY CASEY:

15 Yes, Your Honor.

16 JUDGE JANDEBEUR:

17 Mr. Casey and Mr. Preate, you're both for

18 the Kresge's; correct?

19 ATTORNEY CASEY:

20 That's correct, Your Honor.

21 JUDGE JANDEBEUR:

22 Am I missing anyone? That's going to be

23 the party list as far as I know and that's it. All

24 right. Are we done for today? The only outstanding

25 thing is on your back, Ms. Daviston. You're going to

1 keep a list of all of these folks and get a Discovery
2 schedule to me by the 30th?

3 ATTORNEY DAVISTON:

4 Yes, Your Honor.

5 JUDGE JANDEBEUR:

6 Thank you so much everyone for being
7 available. I'm going to hang up and I believe the
8 rest of you can stay on.

9 * * * * *

10 PRE-HEARING CONCLUDED AT 10:55 A.M.

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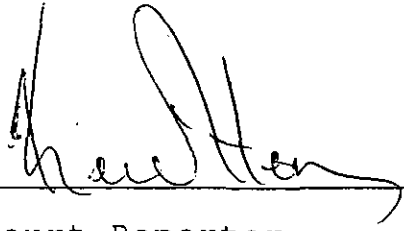
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C E R T I F I C A T E

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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