



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

July 11, 2007

I-00070114
P-00072313
A-230550 F2000

ERNEST D PREATE JR ESQUIRE
MELLON BANK BUILDING
400 SPRUCE STREET SUITE 300
SCRANTON PA 18503

DOCUMENT
FOLDER

Investigation of W.P. Water Co., Inc. and W.P. Sanitary Co., Inc. pursuant to
Section 529 of the Pennsylvania Public Utility Code.

W.P. Water Co., Inc. and W.P. Sanitary Co., Inc.

Application of W.P. Sanitary Co., Inc. for Approval of Abandonment of Service.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on July 11, 2007 adopted
an Investigation Order in the above entitled proceeding.

An Investigation Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

Encls
Cert. Mail
MH

See attached list for additional parties of record.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265

Public Meeting held July 11, 2007

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Terrance J. Fitzpatrick
Tyrone J. Christy
Kim Pizzingrilli

DOCUMENT
FOLDER

In re: Investigation of W.P. Water Co., Inc. and W.P. Sanitary Co., Inc. pursuant to Section 529 of the Pennsylvania Public Utility code I-00070114

In re: W.P. Water Co., Inc. and W.P. Sanitary Co., Inc. P-00072313

Application of W.P. Sanitary Co., Inc. for Approval of Abandonment of Service A-230550F2000

INVESTIGATION ORDER

DOCKETED
OCT 16 2007

BY THE COMMISSION:

On June 6, 2007, the Office of Consumer Advocate ("OCA") filed a Petition for a Commission Order Instituting a Proceeding to Order the Acquisition of W.P. Water Company, Inc. and W. P. Sanitary Company, Inc. ("W.P.") pursuant to 66 Pa. C.S. § 529 ("Petition"). Under authority at section 529 of the Public Utility Code, the Commission may, after due process notice and opportunity to be heard, direct the acquisition of a small non-viable water or sewer company by a larger capable public utility.

In its petition, OCA requested that the Commission issue an expedited order pursuant to section 529 instituting a proceeding to facilitate the acquisition of W.P. by a proximate capable public utility. OCA states that all or virtually all of the evidence to support a Commission order directing the acquisition of W.P. has already been adduced in two recent proceedings involving W.P. An initial decision has been issued in one of these cases and a decision is pending in the other.¹ OCA asserts that evidence from these proceedings demonstrates the financial, technical and managerial inability of W.P. to provide or make necessary improvements to provide adequate service to customers as required under section 1501 of the Public Utility Code.

In a related matter, we note that OCA filed concurrently with the mandatory takeover petition, a separate petition for ex parte emergency relief under our regulations at 52 Pa. Code § 3.2. The petition for emergency order was docketed at P-00072312. Vice Chairman Cawley granted that petition, in part, by Emergency Order dated June 15, 2007.² The Emergency Order was ratified at the Public Meeting of June 21, 2007.

On June 14, 2007, W.P. filed an answer to OCA's section 529 petition. In its answer, W.P. specifically denied that it has violated statutory and/or regulatory standards as would support a section 529 proceeding. However, W.P. did not expressly object to the initiation of take-over proceedings and admitted that it was "both viable and practical to transfer assets of W.P. to a capable public utility and a proximate public utility." (W.P. Answer, Para. 18). Further, W.P.'s answer specifically identified United Water

¹ Customers of W.P. Water and W.P. Sanitary filed complaints against W.P. between October 19, 2005 and November 10, 2005. Sylvester, et al v. W.P. Water Co., at Docket Nos. C-20055453, C-20055473 and C-20065849, and Sylvester, et al v. W.P. Sanitary Co., at Dockets No. C-20055455, C-20055473 and C-20065850. Hearings were held on these matters and an Initial Decision by Presiding ALJ Ember S. Jandebour is pending. Additionally, on May 1, 2007, ALJ Cocheres issued an Initial Decision at Docket No. A-210104F0074, Application of Aqua Pennsylvania, Inc. for approval to begin to offer, render, furnish and supply water service to the public in portions of Dallas Township, Luzerne County, Pennsylvania.

² A copy of the June 15, 2007 Emergency Order is attached to this order.

Pennsylvania Inc., Aqua Pennsylvania, Inc., and Pennsylvania American Water as appropriate proximate utilities capable to acquire W.P. (W.P. Answer, Para. 19).

On June 22, 2007, OCA filed a Motion to Consolidate the Application of W.P. Sanitary Co., Inc. for Approval of Abandonment of Service at Docket No. A-230550F2000 (the Application) and the Petition for a Commission Order Instituting a Proceeding to Order the Acquisition of W.P. Water Co. Pursuant to 66 Pa.C.S. § 529 at Docket No. P-00072313 (the Petition). In its Motion, OCA asserts that the issues involved in both the Application and the Petition are the same, and that there are common questions of law and fact that warrant consolidation of the proceedings. We agree that consolidation of these proceedings would avoid unnecessary duplication and would allow the proceedings to be litigated more efficiently.

On June 28, 2007, W.P. filed its initial report³ as required by the June 15, 2007 Emergency Order indicating the following actions on the part of W. P.: (1) W.P. has drilled a new well located approximately 110 feet North of the existing well #3; (2) the new well site yields water at the rate of 8 gallons per minute; (3) that W.P.'s engineer, Frank Westowski, P.E. has submitted to DEP an application for a construction permit for a new well and a 50,000 gallon underground concrete storage tank; (4) that W.P. is in the process of preparing the site for the 50,000 gallon storage tank; (5) that W.P. had contacted Richard Stepanski, P.E., technical services chief, DEP, Water Supply Program, and Larry Lash, P.E., Commission Bureau of Fixed Utility Services concerning the installation of meters to all customers; and (6) W.P. asserted that a geological study is not required to place the new well as a geological study had previously been completed for the existing well #3. In its report, W.P. also asserted that it had initiated compliance with

³ A copy of the June 28, 2007 report of W.P. is attached to this order.

all specific requirements of the Commission's Emergency Order and has made good faith efforts towards compliance with that Order.

However, it appears to this Commission that W.P. failed to appropriately respond to the June 15, 2007 Emergency Order. While W.P. may have drilled a new well, it did not follow proper permitting procedures and failed to follow procedures for determining a proper location for a new well site. Furthermore, the reported water flow rate of 8 gallons per minute from this new well site appears grossly inadequate for its intended purpose of ensuring continuous adequate service. In addition, while W.P. indicated that it has begun the process of preparing a site for a 50,000 gallon storage tank and ordering concrete to construct the tank on the premises at the Washington Park subdivision, it has done so without the necessary permits or without following DEP procedures for locating this facility by failing to first seek DEP permission. Also, the report submitted by W.P. fails to advise what steps it has taken to assure that customers will have adequate alternative supplies of potable water during all periods of low pressure and outage events. Finally, while W.P. asserted that a previously completed geological study would be adequate for determining the appropriate location of the new well, W.P. failed to provide the previous geological study with its report so that Commission Staff could determine whether this assertion is correct.

Based upon our review of the OCA's Petition and W.P.'s Initial Report to the June 15, 2007 Emergency Order, which does not appear to be adequate, the Commission has serious concerns regarding whether W.P. has the financial, technical and managerial ability to provide, or make improvements to provide adequate, efficient, safe and reasonable service to its customers. Under these circumstances, it appears that initiation of an investigation proceeding to determine whether the Commission may order a capable public utility to acquire W.P. is warranted; **THEREFORE,**

IT IS ORDERED:

1. That an investigation should be instituted into whether the Commission should order a capable public utility to acquire W.P. Water Company and W.P. Sanitary Company pursuant to 66 Pa. C.S. § 529.

2. That OCA's petition for a Commission Order Instituting a Proceeding to Order the Acquisition of W.P. Water Company and W.P. Sanitary Company Pursuant to 66 Pa. C.S. § 529 is granted in part and denied in part consistent with this Order.

3. That the Law Bureau is directed to participate in this investigation proceeding pursuant to 66 Pa. C.S. § 529(i).

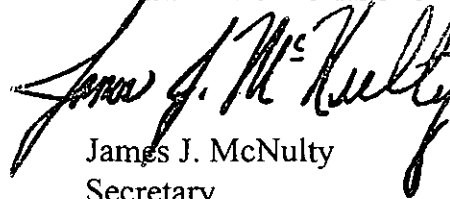
4. That this investigation be referred to the Office of Administrative Law Judge for hearing and adjudication.

5. That the investigation proceeding instituted by this Order at Docket No. I-0007____ is hereby consolidated with the Application proceeding currently before Administrative Law Judge Ember S. Jandebour at Docket No. A-230550F2000.

6. That in addition to Law Bureau Prosecutory Staff, Washington Township and the following proximate public utilities should be joined as parties to the consolidated proceeding: United Water, Pa. American Water Company, and Aqua Pennsylvania, Inc. A copy of this Order should be served on each of above-named entities, as well as, the Office of Consumer Advocate, W.P. Water Company, W.P. Sewer Company, the Office

of Small Business Advocate, the Department of Environmental Protection, the
Commission's Office of Administrative Law Judge and the Office of Trial Staff.

BY THE COMMISSION



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: July 11, 2007

ORDER ENTERED: **JUL 11 2007**

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Docket Number: P-00072313

0010

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