

C-20055455



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

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: March 10, 2006

C-20055451; et al

BRIAN P DEGROOT
13 ROSEMARY DRIVE
TUNKHANNOCK PA 18657

DOCUMENT
FOLDER

Brian P. Degroot; et al & PA PUC Law Bureau, Office of Consumer Advocate Intervenors
v.
Washington Park Water Company; et al & PA Public Law Bureau, Office of Consumer Advocate Intervenors
v
Washington Park Sanitary Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Ember S. Jandebaur. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McInelly
Secretary

Encls.
Certified Mail
Receipt Requested
MMB
See attached list for additional parties

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Brian P. Degroot : C-20055451
Kathleen Sylvester : C-20055453
Kandi Jo Madill : C-20055454
Joseph Yakowski : C-20056460
James Holly & Sandy Phillips : C-20055461
Leigh Powell : C-20055468
Lisa Higgins : C-20055472
William J. Finkler : C-20055473
Fred T. Riebeling : C-20055556

Formal Complainants

And

PA PUC Law Bureau,
Office of Consumer Advocate
Intervenors

v.

Washington Park Water Company

Kathleen Sylvester : C-20055455
Kandi Jo Madill : C-20055456
Fred T. Riebeling : C-20055557
William J. Finkler : C-20055473

Formal Complainants

And

PA PUC Law Bureau,
Office of Consumer Advocate
Intervenors

v.

Washington Park Sanitary Company

DOCKETED
MAR 14 2006

DOCUMENT
FOLDER

INITIAL DECISION

Before
Ember S. Jandebaur
Administrative Law Judge

2. The Hearing Notice was mailed to all Complainants at the addresses they listed on their Complaint.

3. None of the hearing Notices were returned to the PUC as undeliverable.

4. Complainants Brian P. Degroot C-20055451, Kandi Jo Madill C-20055454 and C-20055456, Joseph Yakowski C-20056460, James Holly & Sandy Phillips C-20055461, Leigh Powell C-20055468, Lisa Higgins C-20055472, Fred T. Riebeling, C-20055556 and C-20055557 failed to appear for the initial hearing scheduled on February 27, 2006.

5. Complainants Brian P. Degroot C-20055451, Kandi Jo Madill C-20055454 and C-20055456, Joseph Yakowski C-20056460, James Holly & Sandy Phillips C-20055461, Leigh Powell C-20055468, Lisa Higgins C-20055472, Fred T. Riebeling, C-20055556 and C-20055557 neither requested nor received a continuance in this matter.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. P.U.C., 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied when the parties are accorded notice and the opportunity to appear and be heard. *Id.*

Notice of the February 27, 2006, hearing in these Complaints was sent to all of the Complainants on January 4, 2006, by regular first-class prepaid mail to the address stated on their Complaint. None of the Notices was returned to the undersigned Administrative Law Judge (ALJ) or the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. Accordingly, they are deemed received. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdiereck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Superior Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Superior Ct. 221, 444 A.2d 658 (1982).

2. Notices mailed to a Complainants provided address not returned as undeliverable are deemed received. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Superior Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Superior Ct. 221, 444 A.2d 658 (1982).

3. As the party seeking affirmative relief from the Commission, the Complainants bear the burden of proof. 66 Pa. C.S. §332(a).

4. Brian P. Degroot C-20055451, Kandi Jo Madill C-20055454 and C-20055456, Joseph Yakowski C-20056460, James Holly & Sandy Phillips C-20055461, Leigh Powell C-20055468, Lisa Higgins C-20055472, Fred T. Riebeling, C-20055556 and C-20055557 each failed to meet their burden of proof and have waived their right to further participate. 52 Pa. Code §5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. The motion of Washington Park Water Company and Washington Park Sanitary Company to dismiss the Complaints of Brian P. Degroot C-20055451, Kandi Jo Madill C-20055454 and C-20055456, Joseph Yakowski C-20056460, James Holly and Sandy Phillips C-20055461, Leigh Powell C-20055468, Lisa Higgins C-20055472, Fred T. Riebeling, C-20055556 and C-20055557 for failure to prosecute is granted; and



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

C-20055455

IN REPLY PLEASE
REFER TO OUR FILE

March 13, 2006

C-20055451; et al

BRIAN P DEGROOT
13 ROSEMARY DRIVE
TUNKHANNOCK PA 18657

DOCUMENT
FOLDER

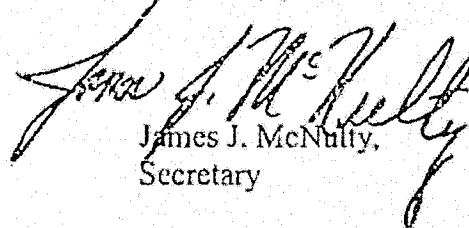
Brian P. Degroot; et al & PA PUC Law Bureau, Office of Consumer Advocate Intervenors
v.
Washington Park Water Company, et al & PA PUC Law Bureau, Office of Consumer Advocate
Intervenors
v.
Washington Park Sanitary Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of an Errata to Administrative Law Judge Ember S. Jandebaur
decision served in the above entitled proceeding.

An Errata is enclosed for your records.

Very truly yours,


James J. McNulty,
Secretary

MMB
Encls.
Cert. Mail
Receipt Requested

See attached list for additional parties

BTL

ERRATA NOTICE

This is to advise all parties of record that the Initial Decision issued on March 10, 2006 in the above-captioned proceeding contains a typographical error. The docket number for Joseph Yakowski is incorrect. The correct docket number is C-20055460.

The Initial Decision on the PA PUC website will be corrected as indicated above. This correction will not effect the exception period established by the Commission's Service Letter. Please correct your copy of the Initial Decision.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Brian P. Degroot : C-20055451
Kathleen Sylvester : C-20055453
Kandi Jo Madill : C-20055454
Joseph Yakowski : C-20055460
James Holly & Sandy Phillips : C-20055461
Leigh Powell : C-20055468
Lisa Higgins : C-20055472
William J. Finkler : C-20055473
Fred T. Riebeling : C-20055556

Formal Complainants

And

PA PUC Law Bureau,
Office of Consumer Advocate
Intervenors

v.

Washington Park Water Company

Kathleen Sylvester : C-20055455
Kandi Jo Madill : C-20055456
Fred T. Riebeling : C-20055557
William J. Finkler : C-20055473

Formal Complainants

And

PA PUC Law Bureau,
Office of Consumer Advocate
Intervenors

v.

Washington Park Sanitary Company

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

April 27, 2006

DOCUMENT
FOLDER

RECEIVED
2006 APR 27 PM 3:50
PA PUBLIC
SECRETARY'S BUREAU

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
P.O. Box 3265
Harrisburg, PA 17120

Re: Kathleen Sylvester, William J. Finker, and James Pugh, Complainants

v.

WP Water Company, Respondent
Docket Nos. ~~C-20055454~~, C-20055473, and C-20065849
~~C-20055453~~

Kathleen Sylvester, William J. Finkler, and James Pugh, Complainants

v.

WP Sanitary Company, Respondent
Docket Nos. C-20055455, C-20055473 and C-20065850

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the Application of the Office of Consumer Advocate for the Issuance of a Subpoena Duces Tecum and Notice to Answer or Object in the above-referenced proceeding.

RECEIVED
MAY 03 2006

Sincerely yours,

Erin L. Garnon
Assistant Consumer Advocate

RECEIVED
2006 APR 27 PM 3:51
PA PUBLIC
SECRETARY'S BUREAU

Enclosures

cc: Hon. Ember Jandebour, ALJ (via Electronic Mail & Federal Express)
88560 doc./ELG/smr

52

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Kathleen Sylvester, : Docket No. C-20055453
William J. Finkler: : Docket No. C-20055473
and James Pugh, : Docket No. C-20065849
Complainants

v.

W.P. Water Company
Respondent

Kathleen Sylvester, : Docket No. C-20055455
William J. Finkler, : Docket No. C-20055473
and James Pugh, : Docket No. C-20065850
Complainants

v.

W.P. Sanitary Company
Respondent

RECEIVED
2006 APR 27 PM 3:00
SECRETARY'S BUREAU

APPLICATION OF THE OFFICE OF CONSUMER ADVOCATE
FOR THE ISSUANCE OF A SUBPOENA DUCES TECUM

Pursuant to 52 Pa. Code § 5.421, the Office of Consumer Advocate (OCA) hereby files this Application for issuance of a subpoena to obtain the attendance and testimony of the following individual to appear at the Pennsylvania Public Utility Commission (Commission) hearing on May 23, 2006 in the above-captioned matter:

Mr. James Holmes
Water Quality Specialist Supervisor
Pa. Department of Environmental Protection
Bureau of Water Quality
Wilkes-Barre Regional Office
100 Pennsylvania Blvd.
Wilkes-Barre, PA 18701

In support of this application, the OCA avers as follows:

1. Mr. Holmes is an employee of the Pennsylvania Department of Environmental Protection (DEP)

2. Mr. Holmes is personally familiar, in the scope of his employment with the DEP, with W P Sanitary Company's operation and maintenance of its wastewater treatment plant.

3. Mr. Holmes would present direct testimony to the Commission and would be available for cross-examination thereon) concerning the wastewater service being rendered by W P Sanitary Company (W.P. or the Company) to its customers. Such testimony would include the historic and present nature of the Company's compliance with DEP regulations and recommendations, the likely causes of wastewater service problems and the short-term and long-term prospects for alleviating some or all of those problems, and other similar matters. Mr. Holmes would bring any documents related to these issues.

4. The OCA submits that these matters are relevant to the complaints of W P Sanitary Company customers. Mr. Holmes possesses information that corroborates the complaints of W P. customers and the testimony of Mr. Terry L. Fought, OCA Statement No. 1, filed on behalf of the OCA. Mr. Holmes testimony thus is important for development of a full evidentiary record.

5. Counsel for the DEP, Fayling Dempsey, has advised the OCA that the DEP does not object to the issuance of a subpoena to Mr. Holmes.

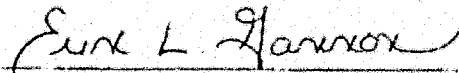
6. Pursuant to 52 Pa. Code § 5.421(b), the OCA must provide notice that an answer or objection to this Application for Subpoena may be filed with the Commission and Presiding Officer within 10 days of service of this application. If an answer or objection is filed, it should be served on all those named on the attached certificate of service and submitted to the following persons:

Mr. James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

The Honorable Ember S. Jandebour
Administrative Law Judge
Pennsylvania Public Utility Commission

WHEREFORE, for the foregoing reasons, the OCA respectfully requests that the Honorable Administrative Law Judge Ember S. Jandebour grant this Application and issue a Subpoena Duces Tecum as described herein (see Attachment A) to be delivered to the OCA for service upon Mr. James Holmes as soon as possible.

Respectfully submitted,



Erin L. Gannon
Assistant Consumer Advocate
Christine Maloni Hoover
Senior Assistant Consumer Advocate
Counsel for
Irwin A. Popowsky

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Telephone: 717-783-5048
Fax: 717-783-7152

Dated: April 27, 2006

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Kathleen Sylvester, : Docket No. C-20055453
William J. Finkler, : Docket No. C-20055473
and James Pugh, : Docket No. C-20065849
Complainants

v.

W.P. Water Company, Respondent

Kathleen Sylvester, : Docket No. C-20055455
William J. Finkler, : Docket No. C-20055473
and James Pugh, : Docket No. C-20065850
Complainants

v.

W.P. Sanitary Company, Respondent

SUBPOENA TO ATTEND, BRING DOCUMENTS AND TESTIFY

To Mr. James Holmes:

1. You are ordered by the Honorable Ember S. Jandebaur to come to the assigned hearing room, Room 318, in the Scranton State Office Building, at 100 Lackawanna Avenue in Scranton, Pennsylvania, on May 23, 2006 at 10:00 a.m., to testify in the above-captioned case, and to remain until excused.
2. You shall bring with you the following: all documents or things necessary to support testimony on the compliance history of W.P. Sanitary Company.

If you fail to attend or to produce the documents or things required by this subpoena, you shall be in violation of 66 Pa. C.S. § 3307 and shall be guilty of a summary offense.

Requested by: Erin L. Gannon, Assistant Consumer Advocate
Pennsylvania Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
(717) 783-5048

Date: _____

By: _____

Ember S. Jandebaur
Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Kathleen Sylvester; : Docket No. C-20055453
William J. Finkler; : Docket No. C-20055473
and James Pugh; : Docket No. C-20065849
Complainants

v.

W P. Water Company
Respondent

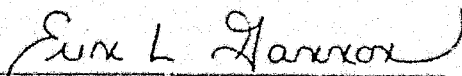
Kathleen Sylvester; : Docket No. C-20055455
William J. Finkler; : Docket No. C-20055473
and James Pugh; : Docket No. C-20065850
Complainants

v.

W P. Sanitary Company
Respondent

NOTICE

Under Rule 5.421 of the Public Utility Commission's Rules of Practice and Procedure, 52 Pa. Code § 5.421, an answer or objection to the attached Application of the Office of Consumer Advocate for the Issuance of a Subpoena Duces Tecum must be filed with the Public Utility Commission and Presiding Officer within ten (10) days of the date of service of this Application.


Erin L. Gannon
Assistant Consumer Advocate
Christine Maioni Hoover
Senior Assistant Consumer Advocate
Counsel for:
Irwin A. Popowsky

Dated: April 27, 2004

CERTIFICATE OF SERVICE

RECEIVED
2006 APR 27 PM 3:50
PENNSYLVANIA PUBLIC
UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Kathleen Sylvester, William J. Finkler and James Pugh, Complainants

v.

W. P. Water Company, Respondent

Docket Nos. C-20055454, C-20055473, and C-20065849

Kathleen Sylvester, William J. Finkler, and James Pugh, Complainants

v.

W. P. Sanitary Company, Respondent

Docket Nos. C-20055455, C-20055473 and C-20065850

I hereby certify that I have this day served a true copy of the foregoing document, the Application of the Office of Consumer Advocate for the Issuance of a Subpoena Duces Tecum and Notice to Answer or Object, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 27th day of April, 2006.

SERVICE BY ELECTRONIC MAIL AND INTER-OFFICE MAIL

Rhonda Daviston, Esq.
Law Bureau
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

SERVICE BY ELECTRONIC MAIL AND FEDERAL EXPRESS

Kimberly D. Borland, Esq.
Kieran Michael Casey, Esq.
Borland and Borland, L.L.P.
69 Public Square
Suite 1100
Wilkes-Barre, PA 18701

Fayling Dempsey, Assistant Counsel
Pa Dept. of Environmental Protection
Office of Chief Counsel
2 Public Square
Wilkes-Barre, PA 18711-0790

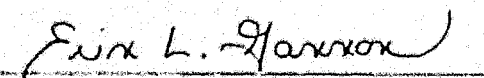
SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Mr. James Holmes
Water Quality Specialist Supervisor
Pa Dept. of Environmental Protection
Bureau of Water Quality
Wilkes-Barre Regional Office
100 Pennsylvania Boulevard
Wilkes-Barre, PA 18701

Kathleen Sylvester
17 Jeanne Drive
Tunkhannock, PA 18657

William J. Finkler
18 Jeanne Drive
Tunkhannock, PA 18657

James Pugh
8 Thomas Drive
Tunkhannock, PA 18657



Erin L. Gannon
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
88318 doc, I/ELG/smm

DATE: May 3, 2006

SUBJECT: C-20055453 , C-20055473, C-20065849
C-20055455, C-20055473, C-20065850

TO: Office of Administrative Law Judge

FROM: James J. McNulty, Secretary ^{FB}

Kathleen Sylvester, William J. Finkler, and James Pugh
v.
WP Water Company, Respondent

Kathleen Sylvester, William J. Finkler and James Pugh
v.
WP Sanitary Company, Respondent

Attached is a copy of the Office of Consumer Advocate Petition for Issuance of a Subpoena Duces Tecum and Notice to Answer or Object filed in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: OTS

ksb