

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

StoneyBank Development LLC	:	
	:	
v.	:	C-2020-3022179
	:	
The Walnut Hill Utility Company	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants a petition to withdraw a complaint filed by a developer of a thirty-three-unit townhouse development against a provider of wastewater service. The complaint seeks to have the wastewater provider supply wastewater service to the development. The petition to withdraw is granted because it is in the public interest and there is no objection to it.

HISTORY OF THE PROCEEDING

On September 24, 2020, StoneyBank Development LLC (StoneyBank) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against the Walnut Hill Utility Company (Walnut Hill), docket number C-2020-3022179. In its complaint, StoneyBank averred that it is in the process of developing a thirty-three-unit townhouse development in Chester Heights Borough, Chester County which requires wastewater collection and treatment service. StoneyBank added that it entered into a sanitary sewage agreement with Walnut Hill to provide sanitary sewage collection and treatment services for the residences in the

development. StoneyBank provided additional averments regarding the agreement and noted that Walnut Hill subsequently sent StoneyBank a termination agreement. StoneyBank then averred that Walnut Hill has been in violation of the Public Utility Code by holding itself out to the public as providing public utility service to the public for compensation without a certificate of public convenience for at least three years. StoneyBank requested that Walnut Hill be ordered to apply for a certificate of public convenience, an investigation be instituted against Walnut Hill pursuant to Section 529 of the Public Utility Code and that Walnut Hill pay a civil penalty for each day it held itself out to the public as offering or providing public utility service for compensation. StoneyBank provided multiple attachments to its complaint in support of its position.

On October 19, 2020, Walnut Hill filed an answer to the complaint filed by StoneyBank. In its answer, Walnut Hill provided background regarding an investigation by the Commission's Bureau of Enforcement and Investigation (I&E) that sought to determine whether Walnut Hill has been operating and continues to operate as a de facto public utility providing wastewater service for compensation without holding a certificate of public convenience from the Commission. Walnut Hill added that the investigation also examined whether Walnut Hill fit within an exemption to the definition of "public utility" under the Public Utility Code. Walnut Hill noted that I&E agreed that Walnut Hill operates as a bona fide cooperative association that is exempt from the Commission's regulatory jurisdiction. Walnut Hill added, however, that I&E's conclusion was predicated on Walnut Hill terminating the sanitary sewage agreement with StoneyBank which it attempted to do by letter to StoneyBank dated July 20, 2020. Walnut Hill provided specific responses to each of StoneyBank's averments and requested that the complaint be dismissed.

Also on October 19, 2020, Walnut Hill filed preliminary objections in response to StoneyBank's complaint. StoneyBank filed an answer to those preliminary objections on November 16, 2020 requesting that the preliminary objections be dismissed. By order dated November 24, 2020, Walnut Hill's preliminary objections were dismissed.

On November 25, 2020, a hearing notice was issued establishing an initial call-in hearing for this matter for Tuesday, January 19, 2021 at 10:00 a.m. and assigning me as the

presiding officer. In anticipation of that hearing, a prehearing order was issued on November 25, 2020 setting forth various rules that would govern the hearing.

On January 7, 2021, however, counsel for StoneyBank emailed the presiding officer to indicate that the parties are in negotiations and believe they are close to reaching a settlement in principle. Counsel indicated that the parties have not been able to finalize their agreement due to the death in the family of the president of Walnut Hill. Counsel requested that the hearing scheduled for January 19, 2021 be cancelled to allow for additional time to discuss settlement. The parties were informed via email that the hearing would be cancelled and were directed to provide a status report within thirty days. As a result, on January 8, 2021, a hearing cancellation notice was issued formally cancelling the hearing scheduled for January 19, 2021.

On February 5, 2021, the parties submitted a status report indicating that the parties reached an agreement in principle by which Walnut Hill will hold a virtual meeting of users on March 31, 2021 to vote on whether to admit the residents of the Reserves at StoneyBank and the Beards, nearby residents, as users of Walnut Hill. The parties indicated that if the users admit the Reserves at StoneyBank and the Beards as users of Walnut Hill, StoneyBank will file a petition for leave to withdraw its complaint. If not, StoneyBank will proceed with the complaint or the parties will request to continue to hold the matter in abeyance to permit Walnut Hill to reschedule the meeting. In response to the status report, the parties were informed by email that the case would be held in abeyance and the parties agreed to provide a second status report within sixty days. On February 12, 2021, an order was issued formally holding the matter in abeyance and directing the parties to provide a status report no later than April 5, 2021.

On April 1, 2021, StoneyBank filed a petition for leave to withdraw its complaint. In its petition, StoneyBank stated that a meeting of the users of Walnut Hill was held on March 24, 2021 where a motion was passed to admit the residents of StoneyBank and the Beards as users of Walnut Hill, thereby resolving the controversy over whether Walnut Hill is providing wastewater service to the public in compliance with the Public Utility Code. StoneyBank stated that approval of the petition to withdraw is in the public interest because the controversy of whether Walnut Hill is providing public utility service to the public in compliance with the

Public Utility Code is resolved. StoneyBank added that the petition is in the public interest because StoneyBank can proceed with the construction of its development which promotes economic development in Pennsylvania. StoneyBank noted that withdrawing the complaint will save resources of the parties and the Commission and expedite resolution of this matter. StoneyBank noted that Walnut Hill does not oppose the petition to withdraw its complaint.

The record in this case closed on April 1, 2021 when StoneyBank filed its petition to withdraw and noted that Walnut Hill does not object to the petition. As discussed below, StoneyBank's petition to withdraw will be granted because it is in the public interest and there is no opposition to it.

FINDINGS OF FACT

1. The complainant in this case is StoneyBank Development LLC.
2. The respondent in this case is The Walnut Hill Utility Company.
3. On September 24, 2020, StoneyBank filed a complaint against Walnut Hill alleging that Walnut Hill was offering or furnishing wastewater collection, treatment, and disposal service to the public for compensation without obtaining a certificate of public convenience from the Commission.
4. On October 19, 2020, Walnut Hill filed an answer to the complaint averring, in part, that it is not a public utility because it is a bona fide cooperative association.
5. On November 24, 2020, an order was issued denying preliminary objections that were filed by Walnut Hill.
6. On November 25, 2020, a hearing was scheduled for the complaint for January 19, 2021.

7. The hearing scheduled for January 19, 2021 was cancelled to allow the parties additional time to negotiate a settlement.
8. On February 5, 2021, the parties indicated they reached a settlement agreement in principle and requested that the matter be held in abeyance.
9. On February 12, 2021, an order granting the request for abeyance was issued.
10. On April 1, 2021, StoneyBank filed the petition for leave to withdraw the complaint.
11. No objections were filed in response to StoneyBank's petition to withdraw the complaint.

DISCUSSION

Section 5.94(a) of the Commission's regulations provides that a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon other parties. 52 Pa.Code § 5.94(a). Section 5.94 further provides that the petition must set forth the reasons for the withdrawal and that a party may object to the petition to withdraw within 10 days. Id. Finally, Section 5.94 also provides that, after considering the petition, any objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted. Id.

In this case, StoneyBank identified in its petition three reasons why withdrawing the complaint is in the public interest. They are: 1) the controversy over whether Walnut Hill is providing public utility service to the public in compliance with the Public Utility Code is resolved, 2) the economic development in Pennsylvania is promoted and 3) the resources of the parties and the Commission will be conserved.

StoneyBank's petition to withdraw its complaint will be granted because it is in the public interest and there is no objection to it. As noted in the petition, the parties entered into an agreement in July 2017 whereby Walnut Hill agreed to provide sanitary sewage collection, treatment, and disposal service for townhouses StoneyBank sought to construct. Walnut Hill, however, attempted to terminate that agreement due to the limitations imposed on Walnut Hill by the Public Utility Code but StoneyBank was unwilling to terminate the agreement. Subsequently, the parties agreed that a vote would be held of the users of Walnut Hill on whether to admit the residents of StoneyBank. The users of Walnut Hill voted on March 24, 2021 to admit the residents of StoneyBank. Therefore, StoneyBank agreed to withdraw its complaint.

It is reasonable to allow StoneyBank to withdraw its complaint in this case because the residents of StoneyBank, and the Beards, a neighboring residence, have been admitted to Walnut Hill. Therefore, the underlying purpose of the complaint has been alleviated. There would be no purpose to require StoneyBank to continue to pursue the complaint.

It is noted, however, that the question of whether an entity is providing public utility service to the public in compliance with the Public Utility Code is a matter for the Commission – not private parties – to determine. In this case, Walnut Hill noted in its answer to StoneyBank's complaint that, on January 3, 2020, I&E initiated an investigation of Walnut Hill to determine whether Walnut Hill has been operating and continues to operate as a de facto public utility providing wastewater service for compensation in Pennsylvania without holding a certificate of public convenience issued by the Commission in violation of the Public Utility Code and Commission regulations. In a letter dated August 20, 2020, I&E concluded that Walnut Hill operates as a bona fide cooperative association that is exempt from the Commission's regulatory jurisdiction. I&E then terminated its investigation without prejudice. Walnut Hill noted, however, that I&E's conclusion was predicated on the service agreement between StoneyBank and Walnut Hill being terminated.

StoneyBank's petition to withdraw its complaint is silent as to whether the predicate to I&E closing its investigation – the termination of the service agreement – has been satisfied. It is unclear whether the successful vote of the users of Walnut Hill to admit the

residents of StoneyBank terminates the service agreement between StoneyBank and Walnut Hill. In addition, even if the successful vote of the users of Walnut Hill to admit the residents of StoneyBank terminates the service agreement, it is unclear whether that alleviates I&E's concerns as to whether Walnut Hill has been operating and continues to operate as a de facto public utility providing wastewater service for compensation in Pennsylvania without holding a certificate of public convenience issued by the Commission in violation of the Public Utility Code and Commission regulations. That question, however, can be answered without requiring StoneyBank to continue to pursue its complaint. Instead, a copy of this Initial Decision will be served on I&E so that it can determine whether that question exists.

At this time, it is in the public interest to allow StoneyBank to withdraw its complaint because it resolves the controversy between the parties. In addition, allowing StoneyBank to withdraw its complaint is in the public interest because it will promote economic development and conserve the resources of the Commission and the parties, as StoneyBank also stated in its petition. Finally, there are no objections to the petition to withdraw the complaint.

As a result, all elements of consideration of the request to withdraw the complaint have been considered pursuant to Section 5.94 of the Commission's regulations. Such consideration warrants granting the request to withdraw. Therefore, StoneyBank's petition to withdraw its complaint against Walnut Hill will be granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. A party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon other parties. 52 Pa.Code § 5.94(a).

3. A petition to withdraw a pleading in a contested proceeding must set forth the reasons for the withdrawal and that a party may object to the petition within 10 days. 52 Pa.Code § 5.94(a).

4. After considering a petition to withdraw a pleading in a contested proceeding, any objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted. 52 Pa.Code § 5.94(a).

5. It is in the public interest to allow StoneyBank to withdraw its complaint.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the petition of StoneyBank Development LLC for leave to withdraw its complaint filed on April 1, 2021 at docket number C-2020-3022179 is hereby granted.

2. That the formal complaint filed by StoneyBank Development LLC against The Walnut Hill Utility Company at docket number C-2020-3022179, and dated September 24, 2020, is withdrawn.

3. That a copy of this Initial Decision shall be served on the Commission's Bureau of Investigation and Enforcement.

4. That this matter be marked closed.

Date: April 21, 2021

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge