

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held October 27, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss, Statement
John F. Coleman, Jr.

StoneyBank Development LLC

C-2020-3022179

v.

The Walnut Hill Utility Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of StoneyBank Development LLC (StoneyBank or Petitioner) to Rescind or Amend the Final Order (Petition for Rescission) entered by the Commission in this matter on May 25, 2021 (*May 2021 Order*). The *May 2021 Order* made final the Initial Decision of Deputy Chief Administrative Law Judge Joel H. Cheskis (the ALJ) granting StoneyBank's Petition to Withdraw its Formal Complaint filed on September 24, 2020 (Petition to Withdraw). For the reasons stated below, we shall grant the Petition for Rescission and remand this matter to the Office of

Administrative Law Judge (OALJ) for further proceedings, consistent with this Opinion and Order.

I. History of the Proceeding

On September 24, 2020, StoneyBank filed a Formal Complaint (Complaint) with the Commission against the Walnut Hill Utility Company (Walnut Hill). StoneyBank averred that it was in the process of developing a thirty-three unit townhouse development (the Reserves) in Chester Heights Borough, Chester County, Pennsylvania, which requires wastewater collection and treatment service. StoneyBank stated that it had entered into a sanitary sewage agreement with Walnut Hill to provide sanitary sewage collection and treatment services for the residences in the Reserves but that Walnut Hill subsequently attempted to terminate that agreement. StoneyBank averred that Walnut Hill has been in violation of the Public Utility Code (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 Code, 66 Pa. C.S. § 529, and that Walnut Hill pay a civil penalty for each day it had held itself out to the public as offering or providing public utility service for compensation.

On October 19, 2020, Walnut Hill filed an answer to the Complaint, including information about an investigation by the Commission's Bureau of Investigation and Enforcement (I&E) that sought to determine whether Walnut Hill has been operating 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 the exemption to the definition of "public utility" under the Code for bona fide cooperatives. Walnut Hill noted that I&E had agreed that Walnut Hill operates as a bona fide cooperative association that is exempt from the Commission's regulatory jurisdiction, predicated on Walnut Hill terminating the sanitary sewage agreement with StoneyBank. Walnut Hill

indicated that it had attempted to terminate that agreement 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 asserting, *inter alia*, that StoneyBank's Complaint was beyond the Commission's jurisdictional reach. StoneyBank filed an answer on November 16, 2020 requesting that the preliminary objections be dismissed and by order served November 24, 2020 (Order Denying Preliminary Objections), Walnut Hill's preliminary objections were denied.

On November 25, 2020, a hearing notice was issued establishing an initial call-in hearing for this matter for January 19, 2021. However, as a result of productive settlement negotiations, the hearing was cancelled and the Parties were directed to provide a status report to the ALJ within thirty days.

On February 5, 2021, the Parties submitted a status report indicating that the Parties reached an agreement in principle by which Walnut Hill would hold a virtual meeting of its users on March 31, 2021 to vote on whether to admit the residents of the Reserves and the Beards, nearby residents, as Users of Walnut Hill. The Parties indicated that if the Users admitted the Reserves and the Beards as Users of Walnut Hill, StoneyBank would file a petition for leave to withdraw its Complaint. If not, StoneyBank would proceed with its Complaint or the Parties would request to continue to hold the matter in abeyance to permit Walnut Hill to reschedule the meeting. In light of these developments, on February 12, 2021, the ALJ issued an order 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 the Petition to Withdraw. In its Petition to Withdraw, 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 the Reserves at 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 Code. StoneyBank stated that approval of the Petition to Withdraw was thus in the public interest because the controversy of whether Walnut Hill is providing public utility service to the public in compliance with the Code had been resolved. StoneyBank also averred that the Petition to Withdraw was in the public interest because StoneyBank could proceed with the construction of its development which promotes economic development in Pennsylvania. Furthermore, StoneyBank emphasized that withdrawing the Complaint would save resources of the Parties and the Commission and expedite resolution of this matter. Finally, StoneyBank noted that Walnut Hill did not oppose the Petition to Withdraw.

The record in this case was closed on April 1, 2021, when StoneyBank filed its Petition to Withdraw without objection by Walnut Hill.

By Initial Decision issued on April 21, 2021, the ALJ granted the Petition to Withdraw as being in the public interest. No Exceptions or Replies were filed to the Initial Decision, and it became final by operation of law without further Commission action by the *May 2021 Order* issued on May 25, 2021.

On June 28, 2022, StoneyBank filed its Petition for Rescission of the *May 2021 Order* asserting, *inter alia*, that the crucial and underlying assumption of the Parties' settlement agreement, that the Pennsylvania Department of Environmental Protection (DEP) would issue permit approvals for the necessary wastewater facilities, had not been fulfilled. StoneyBank thus requests that the Commission rescind its *May 2021 Order* and remand this proceeding to the ALJ for further proceedings, essentially returning the Parties to their pre-settlement positions.

On July 26, 2022, Walnut Hill filed its Answer to the Petition for Rescission requesting that it be denied.

On July 28, 2022, I&E filed a letter indicating that it would not be submitting an Answer to the Petition for Rescission.

II. Discussion

A. Legal Standards

Initially, we note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, *12-13:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . what we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Id.* at *13.

By the terms of Section 703(g) of the Code, the Commission has the power to amend or rescind its own orders at any time subject only to the requirements of due process of notice and opportunity to be heard. 66 Pa. C.S. § 703(g); *see, Department of Highways v. Pa. PUC*, 138 A.2d 143 (Pa. Super. 1958) (*Department of Highways*). However, a petition to modify or rescind a final Commission decision may only “be granted judiciously and under appropriate circumstances,” because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 416 A.2d 461 (Pa. 1980). Additionally, we recognize that while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered

December 17, 1982) (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)). Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

With respect to petitions for rescission, specifically, we have stated that in order “[t]o establish a proper basis for rescission, a petitioner must first establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law.” *Feleccia v. PPL Electric Utilities Corp.*, Docket No. C-20016210 (Order entered March 7, 2003), slip op. at 3 (citing *Duick* at 559).

A Commission decision to deny a petition for rescission or amendment is a matter squarely within its discretion, subject to being overturned only where a reviewing court finds “the agency’s decision demonstrates evidence of bad faith, fraud, capricious action or abuse of power.” *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995).

B. *May 2021 Order and Initial Decision*

We note at the outset that, by our *May 2021 Order*, the Initial Decision became final by operation of law pursuant to 66 Pa. C.S. § 332(h), without further discussion, because no party excepted to the Initial Decision and the conclusions therein comported with the public interest. As such, our focus while considering StoneyBank’s Petition for Rescission is on the Initial Decision and the reasoning set forth therein for granting the Petition to Withdraw.

In the Initial Decision, the ALJ determined that the Petition to Withdraw was in the public interest pursuant to the standard set forth in Section 5.94 of the

Commission's Regulations, 52 Pa. Code § 5.94. The ALJ noted that the Petition was not opposed and cited three reasons warranting withdrawal: (1) it resolves the controversy between the parties; (2) it will promote economic development; and (3) it will conserve the resources of the Commission and the parties. I.D. at 7.

Specifically, the ALJ reasoned:

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.

I.D. at 6-7.

On the basis of this reasoning, the Petition to Withdraw was granted and the matter was marked closed. *May 2021 Order* at Ordering ¶¶ 1-4.

C. Petition for Rescission and Answer

In its Petition for Rescission, StoneyBank contends that the Petition to Withdraw was based on a settlement in principle (Settlement) between StoneyBank and Walnut Hill and that StoneyBank recently discovered that the Settlement was based on a mutual mistake of fact. Petition for Rescission at 1-2 and 7-9. As a result of that mistake, the Settlement will not result in wastewater service to StoneyBank's development and does not resolve the Parties' controversy. Petition for Rescission at 1-2.

StoneyBank avers that the Parties' mutual mistake of fact relates to the Sanitary Sewage Agreement (Agreement) that StoneyBank and Walnut Hill entered into

in 2017, well before the Parties reached the Settlement. Petition for Rescission at 2 and 7. StoneyBank noted that it referenced the Agreement in its Complaint, and it is attached as Exhibit 1 to the Petition for Rescission. StoneyBank explains that under the Agreement, StoneyBank will construct certain facilities that will be turned over to and owned by Walnut Hill and other facilities that will be retained by StoneyBank (the Reserves Sewer System). Agreement at ¶¶ 3, 10, and 18. In addition, the Agreement provides that StoneyBank will be responsible for preparing and submitting to the DEP, the planning modules necessary to obtain permits to construct the aforementioned facilities. Agreement at ¶ 2. StoneyBank contends that a basic assumption of the Agreement and the Settlement is that DEP would approve StoneyBank's ownership and operation of the Reserves Sewer System. Petition for Rescission at 8 and ¶ 28.

StoneyBank states that after the *May 2021 Order* was entered, it worked with DEP to acquire approval of the planning modules for the new wastewater facilities. However, DEP has advised StoneyBank that, because DEP promotes the regionalization and consolidation of water and wastewater collection and conveyances systems, DEP will not approve StoneyBank's ownership and operation of the Reserves Sewer System. Petition for Rescission at 8. Without DEP approval of the planning modules, StoneyBank cannot obtain the permits necessary to construct any of the sewage conveyance facilities. Petition for Rescission at 8-9 and ¶¶ 29-30. Until the facilities are constructed, the owners of the townhomes and the Beards cannot be connected to the Walnut Hill wastewater treatment system and cannot receive service as contemplated by the Settlement. In addition, until the townhomes and the Beards' home are connected to the Walnut Hill system, they cannot become Users of the Walnut Hill system, as contemplated by the Settlement. *Id.*

In addition to *Duick*, StoneyBank recites the legal standards applicable to Petitions for Rescission or Amendment set forth in the Commission's Orders in *Application of Susquehanna Valley Limousine, Inc.*, Docket Nos. A-2013-2395502 and

A-00110765 (Order entered November 13, 2014) (*Susquehanna Valley*), *Feleccia v. PPL Electric Utilities Corp. et al.*, Docket No. C-20016210 (Order entered March 7, 2003), and *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995). In summary, to establish a proper basis for rescission, a petitioner must first establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of law and the Commission may exercise its discretion to grant or deny such a petition, subject to being overturned only on the basis of evidence of bad faith, fraud, capricious action or abuse of power. Petition for Rescission at 5-6.

StoneyBank asserts that it has satisfied the two-part *Susquehanna Valley/Duick* analysis for the Commission to grant the Petition for Rescission, because StoneyBank has raised new facts that have come to light since the *May 2021 Order* – *i.e.*, that DEP refuses to approve the planning modules because it will not allow StoneyBank to own/operate the Reserves Sewer System. Petition for Rescission at 10, ¶ 33. StoneyBank claims that these new facts indicate that the Parties made a mutual mistake of fact when they entered into the Settlement and this mistake will have a material effect on the agreed exchange. Because of the mistake, the Settlement does not resolve the Parties’ conflict because it will not result in wastewater service to the Reserves and the Beards nor allow the townhome owners or the Beards to become Users of Walnut Hill. Petition for Rescission at 10, ¶ 34. Because it is now apparent that the Petition to Withdraw does not resolve the controversy between the Parties nor promote economic development, the Commission should grant the Petition for Rescission, deny the Petition to Withdraw and remand the matter to the ALJ for further proceedings. Petition for Rescission at 11, ¶¶ 37-38. StoneyBank submits that restoring the Parties to their former positions will allow them to negotiate a new Settlement, based on the facts now known, or fully litigate the Complaint if a new accord cannot be reached. *Id.*

Walnut Hill’s July 26, 2022 Answer seeks its denial on the basis that it fails to present new or compelling evidence or argument for Commission consideration.

Answer at 1 and 7-10. Walnut Hill argues that StoneyBank has not met the legal standard for rescission set forth in *Duick*. Walnut Hill claims that StoneyBank's claim that it cannot fulfill its obligations under the Agreement to secure DEP approval of the planning module is not new evidence and certainly was not evidence overlooked or not addressed by the Commission. Answer at 7. Noting that the Agreement was executed in 2017, far in advance of StoneyBank's Complaint, the Settlement, and the Petition to Withdraw, according to Walnut Hill, the Agreement clearly contemplated the result because receipt of the DEP approval was a contingency for performance under various provisions of the Agreement. *Id.* (citing to ¶¶ 2, 3, 11 and 15 of the Agreement). Walnut Hill asserts that, by defining numerous rights and obligations of the parties as contingent on StoneyBank's securing DEP approval of the Planning Module, the Agreement fully contemplated the possibility of DEP denying such approval. Answer at 7-9. Walnut Hill disputes the DEP disapproval as "new evidence" and asserts that StoneyBank therefore has not met the legal test for the granting of a Petition for Rescission or Amendment. *Id.* at 7.

Walnut also asserts that StoneyBank has not provided the Commission with any compelling reason to rescind or amend its *May 2021 Order*. Answer at 10. Walnut Hill contends that the Commission is only permitted to rescind or amend an order when there is new evidence, and that evidence presents compelling reasons to override the directive to exercise its section 703(g) power sparingly. According to Walnut Hill, StoneyBank's failure to meet the terms of a negotiated private agreement cannot meet this standard. Further, the Petition to Withdraw did not modify StoneyBank's obligations under the Agreement and the Commission's approval of the Petition to Withdraw was not predicated on the Parties' performance under the Agreement. Walnut Hill maintains that any matters regarding performance under the Agreement are not properly before the Commission and certainly fall well short of the compelling standard for rescinding or amending a Final Commission Order. In addition, there was no mutual mistake of fact

between the Parties because the failed DEP approval was not a fact in existence at the time of contract. Answer at 10.

Walnut Hill claims that StoneyBank has mistakenly interpreted the *May 2021 Order* as a Commission ruling that it is entitled or directed to connect to Walnut Hills's system. This strained interpretation of the Order arises from StoneyBank's emphasis on the Initial Decision's reference to the promotion of an economic development by granting StoneyBank's Petition to Withdraw. Walnut Hill asserts that StoneyBank is now arguing that its failure to satisfy a provision in the Agreement amounts to a mutual mistake of fact, in that economic development has not been promoted because it cannot cure the DEP's refusal to approve the anticipated service connection. Walnut Hill submits that the Commission did not make such a finding. That is, StoneyBank's connection to Walnut Hill's system promotes economic development. Instead, according to Walnut Hill, the Initial Decision found only that withdrawal of the Complaint promotes economic development and conserves the resources of the Commission and the Parties. Walnut Hill continues by arguing that the Commission does not have authority to interpret, enforce, or adjudicate claims regarding a contract between private non-jurisdictional entities. Walnut Hill claims that if StoneyBank believes there was no meeting of the minds with regard to the terms of the Agreement, the Commission is not the appropriate forum for such claims. Contending that there is no mutual mistake of fact, Walnut Hill asserts that the standard for granting a petition for rescission or amendment has not been met and the Commission should thus deny the Petition. Answer at 10-12.

D. Disposition

A petition for rescission or amendment is governed by *Duick*, and its progeny, which essentially requires the Commission to perform a two-step analysis. First, the Commission must determine whether the petitioner has presented new facts or

arguments or a substantial change in circumstances that were not addressed by the Commission in its previous order. The Commission will not rescind its previous decision based on arguments that have already been made.

Second, the Commission must evaluate any new argument or evidence and decide whether modification of its previous order is warranted. However, the Commission will not necessarily modify a previous order just because a petitioner offers a new argument that was not addressed in a previous order.

We are cognizant of the importance of finality of the orders issued by this agency and we do not act with haste to grant or deny a petition for rescission or amendment of our previous orders. While it is a matter squarely within the Commission's discretion, subject to being overturned only where a reviewing court finds the agency's decision demonstrates evidence of bad faith, fraud, capricious action, or abuse of power, we are careful to exercise that discretion with deliberateness in only those cases meriting such relief.

In this matter, we find that StoneyBank has shown a substantial change in circumstances has occurred since the issuance of our *May 2021 Order* regarding the ALJ's Initial Decision. Thus, we shall grant the Petition for Rescission.

The substantial change, as emphasized by StoneyBank, is the fact that DEP has declined to approve the planning modules for sewer conveyance facilities to serve the relevant properties. While Walnut Hill claims that such a denial was a risk fully borne by StoneyBank in the Parties' Agreement and subsequent Settlement underlying the Petition to Withdraw, the ALJ's Initial Decision evaluating the public interest in allowing the withdrawal clearly relied on the opposite result – i.e., anticipation of DEP's approval of the planning modules. This is ascertainable from the ALJ's conclusion that economic development would be furthered by granting the Petition to Withdraw. I.D. at 5-7. Such

economic development could only come about if the planning modules were approved and the sewer conveyance facilities built. In addition, the Parties' agreed-upon provision accepting the townhome owners and the Beards as Users of Walnut Hill would take effect only if the facilities were built and services connected. Thus, given the change in circumstances with DEP declining regulatory assent, the public interest basis for the Initial Decision allowing the withdrawal has been substantially eroded.

In addition, the public interest determination in the Initial Decision was bolstered by the fact that the withdrawal would resolve the controversy between the Parties. That is no longer the case given that DEP has indicated it will not approve the planning modules with the facilities ownership structure set forth in the Parties' Agreement. The Parties' dispute is ongoing.

Moreover, the ALJ cited the conservation of the resources of the Commission and the Parties and the fact that there was no objection to the withdrawal as factors he considered in making a public interest finding in favor of permitting the withdrawal. We note that StoneyBank's Complaint was not dismissed with prejudice when the Initial Decision granted the unopposed Petition to Withdraw. The ALJ relied upon the representations of StoneyBank that the matter had been successfully resolved as the basis for the conclusion that all would benefit from the Complaint being withdrawn. At this point, we determine it is most efficient to refer this matter to the ALJ for further proceedings consistent with this Opinion and Order.

Finally, we dispose of Walnut Hill's arguments that the Complaint attempts to usurp the Commission's regulatory process in order to override a non-jurisdictional contract between private parties by observing that similar arguments were made in Walnut Hill's preliminary objections filed early on in this case. Those Preliminary Objections were rejected by the ALJ. Order Denying Preliminary Objections at 7-9. In ruling on Walnut Hill's arguments, the ALJ noted that, simply because I&E has

conducted its own investigation and made a decision to proceed in a certain way with regard to Walnut Hill's alleged public utility status does not preclude StoneyBank from filing its Complaint. The ALJ noted that I&E is vested with protecting the public interest and may have multiple reasons why it decides to bring an investigation, such as financial constraints, among other things. The ALJ also emphasized that StoneyBank represents its own interests and likely has separate reasons why it may decide to file a complaint. In addition, the ALJ stressed in denying Walnut Hill's Preliminary Objections that the Complaint raised no "Public Utility Code implications" fails to consider that StoneyBank specifically raised issues in its complaint regarding Sections 529, 1101 and 3301 of the Code and that such averments must be accepted as true for purposes of disposing of Walnut Hill's Complaint. Order Denying Preliminary Objections at 9. The ALJ emphasized StoneyBank's heavy burden of proof to be carried as the complainant, but allowed the Complaint to proceed to hearing. *Id.* at 10.

III. Conclusion

Based on the foregoing discussion, this matter shall be referred to the Office of Administrative Law Judge for further proceedings as deemed necessary and appropriate. If the matter proceeds to hearing, the Parties should be prepared to also address the questions set forth in Appendix A of this Opinion and Order. Accordingly, we shall grant the Petition for Rescission, consistent with this Opinion and Order;

THEREFORE,

IT IS ORDERED:

1. That the Petition for Rescission or Amendment of the Commission's Final Order dated May 25, 2021 from the ALJ's Initial Decision dated April 21, 2021, filed by StoneyBank Development LLC on June 28, 2022, is granted, consistent with this Opinion and Order.

2. That the proceeding at this docket is referred to the Office of Administrative Law Judge for further proceedings as deemed necessary and appropriate.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being more prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022

Appendix A

Additional Questions To Be Asked

1. Parties should clearly identify those issues that are not jurisdictional to the Commission.
2. Parties should include in the record all letters, correspondence, or other documentary evidence relied upon by Parties in pleadings or at hearings.
3. Parties should address whether residents/members of the Reserves and Mr. and Ms. Beard would have substantial and equal control as do other bona fide members of the Walnut Hill cooperative association.
4. Parties should discuss potential Commission jurisdictional implications of the Sewage Agreement, particularly if StoneyBank Development will retain ownership of a significant portion of the collection system assets used to convey wastewater from the Reserves and the Beards to the Walnut Hill Utility Company.
5. Parties should discuss any potential Commission jurisdictional implications of the use of a broad cooperative organization for providing non-jurisdictional service to two or more distinct entities within the cooperative organization, such as is contemplated here.