**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

StoneyBank Development LLC :

:

v. : C-2020-3022179

:

The Walnut Hill Utility Company :

**SECOND PREHEARING CONFERENCE ORDER**

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 it 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 29, 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 indicated that the parties are in negotiations and believe they are close to reaching a settlement in principle. 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 have 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. 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, among other things, 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’s petition to withdraw its complaint was approved by Initial Decision dated April 13, 2021 and became final by Commission Final Order dated May 25, 2021.

On June 28, 2022, however, StoneyBank filed a Petition to Rescind or Amend the Final Order. In its petition, StoneyBank asserted that the crucial underlying assumption of the parties’ settlement agreement – that the Pennsylvania Department of Environmental Protection (DEP) would issue permit approvals for the necessary wastewater facilities – has not been fulfilled. StoneyBank thus requested that the Commission rescind its Final Order dated May 21, 2021 and remand the proceeding back to the Office of Administrative Law Judge (OALJ) 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 the petition 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.

By Opinion and Order entered October 27, 2022, the Commission determined to grant StoneyBank’s petition for rescission and refer the proceeding back to OALJ for further proceedings as deemed necessary and appropriate. The Commission also attached to the Opinion and Order a list of five additional questions to be asked in this proceeding.

As a result, on November 2, 2022, a hearing notice was issued setting an initial telephonic hearing for this matter for Thursday, January 5, 2023 at 10:00 a.m. By Hearing Change Notice dated November 3, 2022, the hearing was changed to a prehearing conference.

In accordance with Section 333 of the Public Utility Code, 66 Pa.C.S. § 333, and Sections 5.221-5.224 of the Commission’s regulations, 52 Pa.Code §§ 5.221-5.224, this prehearing conference order is being issued.

ORDER

THEREFORE,

IT IS ORDERED:

1. That a telephonic Prehearing Conference shall be held on **Thursday, January 5, 2023**, beginning at 10:00 a.m. The toll-free bridge number is 877-931-3508 and the PIN number is 32041174.
2. That absent a continuance for good cause, all parties must be prepared to participate in the scheduled prehearing conference. Failure of a party to participate in the conference, after being served with notice of the time thereof, without good case shown, shall constitute a waiver of all objections to the agreements reached and an order or ruling with respect thereto. **A parties list will be established at the initial prehearing conference that will be used for the remainder of the case**. If a party does not appear at, or file a petition to intervene by, the prehearing conference, or otherwise express an interest in being on the parties list, that party may not receive all documents filed in this case.
3. That all parties shall review the regulations relating to discovery, specifically 52 Pa.Code § 5.331(b), which provides, among other things, that “a party shall initiate discovery as early in the proceedings as reasonably possible,” and 52 Pa.Code § 5.322, which encourages parties to exchange information on an informal basis. All parties are urged to cooperate in discovery. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§ 5.361, 5.371 – 5.372.
4. That pursuant to 52 Pa.Code §§ 1.21 – 1.23, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *pro hac vice*, represent you. **However, if you are a partnership, corporation, trust, association, or governmental agency or subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *pro hac vice*, represent you in this proceeding**. Unless you are an attorney, you may not represent someone else. Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa.Code § 1.24(b).
5. That you must serve me electronically at [jcheskis@pa.gov](mailto:jcheskis@pa.gov) with a copy of any document that you file in this proceeding. If you send me any correspondence or document, you must send a copy to all other parties. A copy of the Commission’s current service list of the parties to this proceeding is enclosed with this order.
6. That parties shall review the regulations pertaining to prehearing conferences, in particular 52 Pa.Code § 5.222(d), which provides that parties and counsel will be expected to attend the conference fully prepared for useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto. The preparation should include, among other things, advance study of all relevant materials, and advance informal communication between the participants, including requests for additional data and information, to the extent it appears feasible and desirable.

1. That pursuant to 52 Pa.Code § 1.55, each party shall be limited to one entry on the service list. Parties shall provide the name, business address, business telephone number and business e-mail address of the person they wish to have listed on the service list.
2. That on or before **December 29, 2022**, the parties shall serve me and each other with a Prehearing Conference Memorandum addressing:

a.) The information described in Paragraph 7, above.

b.) A statement regarding possible settlement of the case, subject to Commission approval.

c.) Any proposed modifications to the Commission’s discovery regulations.

d.) A proposed schedule for litigation.

e.) Names, business addresses, and telephone numbers of witnesses the party expects to call and the subject matter of each witnesses’ testimony.

f.) A list of the issues and sub-issues of this proceeding which the party intends to address and a statement of the party’s position on each of the issues and sub-issues listed.

1. That a request for a change of the scheduled Prehearing Conference date shall state the agreement or opposition of other parties and shall be submitted in writing no later than five (5) days prior to the initial prehearing conference. 52 Pa.Code §1.15(b). Requests for change must be sent to us with copies to all parties of record.

Date: November 4, 2022 /s/

Joel H. Cheskis

Deputy Chief Administrative Law Judge

**C-2020-3022179 - STONEYBANK DEVELOPMENT LLC v. THE WALNUT HILL UTILITY COMPANY**Via electronic service only due to Emergency Order at M-2020-3019262

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