



April 21, 2023

VIA E-FILING

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

Re: StoneyBank Development LLC v. The Walnut Hill Utility Company; Docket No. C-2020-3022179

StoneyBank Development LLC's Prehearing Conference Memorandum

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Prehearing Conference Memorandum of StoneyBank Development LLC. Copies are being served as shown on the attached certificate of service.

Please contact me if you have any questions regarding this filing. Thank you.

Sincerely,

COZEN O'CONNOR

By: Jonathan P. Nase
Counsel for *StoneyBank Development LLC*

JPN:kmg
Enclosure

cc: Honorable Steven K. Haas
Per Certificate of Service
Stephen G. Mantakounis

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

StoneyBank Development LLC

v.

The Walnut Hill Utility Company

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Docket No. C-2020-3022179

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of April, 2023 served a true copy of the foregoing **Prehearing Conference Memorandum of StoneyBank Development LLC** upon the following, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Via E-mail and First Class Mail

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Jonathan P. Nase, Esquire
Counsel for *StoneyBank Development LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Steven K. Haas

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|---------------------------------|---|---------------------------|
| StoneyBank Development LLC | : | |
| | : | |
| v. | : | Docket No. C-2020-3022179 |
| | : | |
| The Walnut Hill Utility Company | : | |

**PREHEARING CONFERENCE MEMORANDUM OF
STONEBANK DEVELOPMENT LLC**

AND NOW COMES StoneyBank Development LLC (“StoneyBank”), pursuant to 52 Pa. Code § 5.222(d) and the Prehearing Conference Order of Administrative Law Judge Steven K. Haas (the “ALJ”), issued on March 29, 2023, to file this Prehearing Conference Memorandum in the above-captioned matter, and states as follows:

I. INTRODUCTION AND PROCEDURAL HISTORY

1. On September 24, 2020, StoneyBank filed the instant Complaint alleging that The Walnut Hill Utility Company (“Walnut Hill”) was offering or furnishing wastewater collection, treatment, and disposal service to the public for compensation without obtaining a certificate of public convenience (“Certificate”) from the Pennsylvania Public Utility Commission (“Commission”).

2. In pertinent part, the Complaint alleged that StoneyBank was in the process of developing a thirty-three unit townhouse development (the “Development” or the “Reserves at StoneyBank”) that requires wastewater treatment and disposal service. The Complaint also alleged

that, in July 2017, StoneyBank entered into a Sanitary Sewage Agreement (“Agreement”) with Walnut Hill by which Walnut Hill agreed to provide sanitary sewage treatment and disposal service for the townhouses in the Development and for the adjacent property owned by Mark and Nancy Beard (the “Beards”). Finally, the Complaint alleged that, in July 2020, Walnut Hill sought to terminate the Agreement, claiming that limitations imposed on Walnut Hill by the Pennsylvania Public Utility Code (“Code”) prevented Walnut Hill from performing its obligations under the Agreement. StoneyBank was unwilling to terminate the Agreement due to its need for wastewater service to the Development.

3. On October 19, 2020, Walnut Hill filed an Answer to the Complaint (“Answer”), averring, among other things, that it is not a public utility as defined in the Code, 66 Pa. C.S. § 102 (“Definitions”) because it is a *bona fide* cooperative association (“Association”).

4. Also on October 19, 2020, Walnut Hill filed Preliminary Objections, contending that StoneyBank lacks standing to maintain the Complaint and that the Complaint is not legally sufficient. On October 29, 2020, StoneyBank filed an Answer to the Preliminary Objections.

5. On November 6, 2020, Walnut Hill filed an errata to its Answer because its original Answer attached an incomplete copy of Walnut Hill’s bylaws. Walnut Hill attached a complete copy of its bylaws as the errata. Based on this errata, on November 16, 2020, StoneyBank filed an Amended Answer to the Preliminary Objections.

6. Deputy Chief Administrative Law Judge Joel H. Cheskis (“DCALJ Cheskis”) issued an Order Denying Preliminary Objections on November 24, 2020.

7. A hearing was scheduled for January 19, 2021 and DCALJ Cheskis issued a Prehearing Order on November 25, 2020. The hearing was cancelled to permit the Parties additional time to negotiate a settlement.

8. The Parties filed a Joint Status Report on February 5, 2021, stating that StoneyBank and Walnut Hill had reached a settlement and requesting that this matter continue to be held in abeyance.

9. In response to the Joint Status Report, DCALJ Cheskis issued an Order Granting Request for Abeyance on February 12, 2021.

10. On April 1, 2021, StoneyBank filed its Petition to Withdraw, based on the Parties' settlement.

11. On April 21, 2021, the Commission issued DCALJ Cheskis' Initial Decision granting the Petition to Withdraw.

12. No Exceptions were filed. The Initial Decision became final by operation of law, 66 Pa. C.S. § 332(h), and the Final Order was entered on May 25, 2021.

13. On June 28, 2022, StoneyBank filed a Petition to Rescind or Amend the Final Order ("Petition to Amend"). StoneyBank alleged that the settlement was based on a mutual mistake of fact (the assumption that the Pennsylvania Department of Environmental Protection ("DEP") would approve StoneyBank's ownership and operation of certain sewer facilities, as set forth in the Agreement). DEP has advised StoneyBank that it will not approve StoneyBank's ownership and operation of some sewer facilities while Walnut Hill owns /operates other facilities. StoneyBank asked that the Commission rescind the Final Order and remand this matter for further proceedings.

14. On July 26, 2022, Walnut Hill filed an Answer opposing the Petition to Amend.

15. By Opinion and Order entered on October 27, 2022, the Commission granted the Petition to Amend and remanded this case for further proceedings. The Commission included a list of questions for the parties to address in these proceedings.

16. On November 16, 2022, the Commission issued a Notice of Judge Change, advising the Parties that the ALJ would be the Presiding Officer for the remanded proceedings.

17. A Second Prehearing Conference Order was issued, notifying the parties that a prehearing conference would be held on January 5, 2023. That prehearing conference was cancelled due to the withdrawal of counsel for Walnut Hill.

18. Another Prehearing Conference was scheduled for March 9, 2023. New counsel for Walnut Hill entered their appearance on January 30, 2023. On that same date, Walnut Hill filed a Motion for Continuance so counsel could become familiar with the case. StoneyBank did not oppose the Motion for Continuance. The March 9, 2023 Prehearing Conference was cancelled.

19. On March 29, 2023, the Commission issued a Prehearing Conference Notice scheduling a prehearing conference in this matter for April 26, 2023. The Commission also issued the Prehearing Conference Order of ALJ Haas.

II. COUNSEL

20. Counsel for StoneyBank in this matter are:

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David P. Zambito, Esq. (PA ID 80017)
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III. SERVICE OF DOCUMENTS

21. StoneyBank's attorneys are authorized to accept service on behalf of StoneyBank in this proceeding. StoneyBank requests that hard copies of documents be served on Attorney Nase at the address listed above. StoneyBank agrees to receive service of documents electronically in this proceeding and requests that all listed counsel for StoneyBank receive electronic service.

IV. ISSUES AND POSITION OF STONEYBANK

22. The Opinion and Order entered on October 27, 2022 directed the Parties to address the following questions:

a. The Parties should clearly identify those issues that are not jurisdictional to the Commission.

b. The Parties should include in the record all letters, correspondence, or other documentary evidence relied upon by Parties in pleadings or at hearings.

c. The 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.

d. The Parties should discuss potential Commission jurisdictional implications of the Agreement, particularly if StoneyBank Development will retain ownership of a significant portion of the collections system assets used to convey wastewater from the Reserves and the Beards to Walnut Hill.

e. The 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.

23. StoneyBank intends to pursue the following issues:

a. Did Walnut Hill violate 66 Pa. C.S. § 1101?

Position of StoneyBank: Yes. By entering into the Agreement, Walnut Hill offered to furnish wastewater service to StoneyBank and the Beards without a certificate of public convenience. Walnut Hill is not an Association. Even if Walnut Hill is an Association, Walnut Hill violated 66 Pa. C.S. § 1101 by offering to furnish wastewater service to StoneyBank and the Beards, who were not members of the Association when Walnut Hill agreed to furnish wastewater service to them.

b. What remedy should the Commission order for Walnut Hill's violation of 66 Pa. C.S. § 1101?

Position of StoneyBank: The Commission should order Walnut Hill to obtain a Certificate of Public Convenience. In addition, the Commission should order Walnut Hill to pay civil penalties for violating 66 Pa. C.S. § 1101.

c. Should the Commission initiate an investigation of Walnut Hill pursuant to 66 Pa. C.S. § 529?

Position of StoneyBank: Yes. Walnut Hill is operating as a *de facto* public utility. StoneyBank questions the ability of this small, volunteer-run organization to provide safe, adequate, efficient and reasonable wastewater service. The Commission should commence an investigation of Walnut Hill, pursuant to 66 Pa. C.S. § 529, to consider whether the Commission should order the appointment of a receiver for Walnut Hill and/or order a capable public utility to acquire Walnut Hill.

d. StoneyBank reserves the right to pursue additional issues that may arise based on the facts as developed in this case.

V. WITNESSES AND EVIDENCE

24. At this time, Counsel for StoneyBank expects to call the following witness and provide his testimony:

Stephen Mantakounis, President, StoneyBank Development LLC, 806 Lorraine Drive, Springfield, PA 19064, business telephone number (610) 543-3900. Mr. Mantakounis will provide testimony concerning all issues discussed in Paragraph 23, above.

25. StoneyBank reserves the right to identify additional witnesses. StoneyBank will notify all other Parties to the proceeding as soon as possible after additional witnesses are identified.

VI. DISCOVERY

26. There are no statutory or regulatory deadlines in these proceedings. Consequently, the Commission's general rules of practice and procedure should govern discovery.

VII. PROTECTIVE ORDER

27. At this time, StoneyBank does not anticipate that a protective order will be necessary in these proceedings.

VIII. PROCEDURAL SCHEDULE

28. Walnut Hill is run by a three-person Board of Directors who are volunteers. StoneyBank recognizes that two members of the Board of Directors of Walnut Hill were elected on April 19, 2023. In order to give them an opportunity to become familiar with this case, and to

give the parties an opportunity to attempt to negotiate a settlement, the parties have agreed that no procedural schedule should be established at this time. Instead, a status conference should be held in thirty days to determine whether a litigation schedule should be established at that time.

IX. SETTLEMENT DISCUSSIONS

StoneyBank and Walnut Hill have engaged in settlement discussions, which have not yet resolved this matter. StoneyBank is open to and available for further settlement discussions to resolve this proceeding, including discussions with the assistance of a Settlement Administrative Law Judge.

Respectfully submitted,



Jonathan P. Nase (I.D. No. 44003)
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Counsel for *StoneyBank Development LLC*

Date: April 21, 2023