

Buchanan

Ingersoll · Rooney

John F. Povilaitis
717 237 4825
john.povilaitis@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852

April 21, 2023

VIA EMAIL

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


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

Dear Secretary Chiavetta:

Enclosed please find the Prehearing Conference Memorandum of The Walnut Hill Utility Company in the above-referenced proceeding.

This document is being served as indicated in the Certificate of Service.

Very truly yours,


John F. Povilaitis

JFP/kas

Enclosures

cc: The Honorable Steven K. Haas
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PREHEARING CONFERENCE MEMORANDUM OF
THE WALNUT HILL UTILITY COMPANY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE STEVEN K. HAAS:

The Walnut Hill Utility Company (“Walnut Hill” or the “Company”) hereby submits this Prehearing Conference Memorandum in accordance with 52 Pa. Code § 5.222 of the regulations of the Pennsylvania Public Utility Commission (“PaPUC” or “Commission”) and the Prehearing Conference Order of the Administrative Law Judge (“ALJ”) dated March 29, 2023. Walnut Hill is a non-profit cooperative association, run by volunteers, which operates a sewer system for its Users, the great majority of whom are homeowners.

I. PROCEDURAL HISTORY

On September 24, 2020, StoneyBank Development LLC (“StoneyBank”)¹ filed with the PaPUC a formal complaint against Walnut Hill alleging, *inter alia*, that Walnut Hill had been providing public utility water and wastewater services to the public for compensation without having first obtained a certificate of public convenience from the PaPUC. 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

¹StoneyBank is developing a thirty-three-unit townhouse development (the “Reserves”) in Chester Heights Borough, Chester County, Pennsylvania, which requires wastewater collection and treatment service and is seeking such service from Walnut Hill.

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 denying the material allegation therein and noted that the Commission's Bureau of Investigation and Enforcement ("BI&E") had been investigating 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 averred that BI&E concluded that Walnut Hill operates as a *bona fide* cooperative association that is exempt from the Commission's regulatory jurisdiction, predicated on Walnut Hill terminating a certain sanitary sewage agreement between Walnut Hill and StoneyBank.

Before hearings commenced, on April 1, 2021, StoneyBank filed with the PaPUC a Petition to Withdraw, stating that, based on a vote of the Users of Walnut Hill held on March 24, 2021, the proposed residents of StoneyBank's proposed subdivision would be admitted as Users of Walnut Hill pursuant to the Agreement, thereby resolving the controversy.

By Initial Decision issued on April 21, 2021, the then-presiding 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 on May 25, 2021 ("May 2021 Order").

The Initial Decision was served on the Parties and BI&E.

BI&E later issued its letter of April 27, 2021 terminating its review of the status of Walnut Hill. BI&E's letter noted that Walnut Hill was not acting as a *de facto* public utility.

On June 28, 2022, StoneyBank filed a Petition for Rescission or Amendment 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 requested 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 an Answer to the Petition for Rescission requesting that it be denied. On July 28, 2022, BI&E submitted a letter to the Secretary of the PaPUC indicating it was not filing an answer to the Petition to Rescind or Amend as the Petition does not allege a violation or potential violation of the Public Utility Code, 66 Pa.C.S. § 101, *et seq.* In an order entered October 27, 2022, the Commission granted StoneyBank's Petition for Rescission or Amendment of the May 2021 Order and referred the proceeding to the Commission's Office of Administrative Law Judge as deemed necessary or appropriate.

ALJ Haas issued a Prehearing Conference Order dated March 29, 2023 in preparation for a telephonic prehearing conference scheduled for April 26, 2023 at 10:00 AM. This Prehearing Conference Memorandum is being submitted in accordance with that order.

II. COUNSEL FOR WALNUT HILL

Walnut Hill's counsel for this proceeding are:

John F. Povilaitis (ID # 28944)
Alan M. Seltzer (ID# 27890)
Buchanan Ingersoll & Rooney PC
409 N. Second Street, Suite 500
Harrisburg, PA 17101
Phone: 717-237-4800
Fax: 717-233-0852
E-mail: john.povilaitis@bipc.com
E-mail: alan.seltzer@bipc.com

III. SERVICE OF DOCUMENTS

Walnut Hill agrees to receive electronic service of documents in this proceeding and does not require that hard copies follow. If materials are disseminated electronically, it is requested that copies be sent to john.povilaitis@bipc.com and alan.seltzer@bipc.com.

IV. ISSUES

Walnut Hill believes that the only factual and legal issue in this proceeding is whether Walnut Hill, organized and operating as a water and wastewater services provider solely for its user/members, is a public utility under applicable law. Walnut Hill believes the answer is undeniably no and that there is no real dispute on either the relevant facts or applicable law. Accordingly, absent a negotiated settlement, Walnut Hill believes this proceeding can and should be resolved by preliminary motion, thus obviating any need for evidentiary hearings.

V. WITNESSES

Recognizing Walnut Hill's view that this proceeding can and should be resolved by preliminary motion, Walnut Hill has not yet identified its witnesses for hearing. It will do so after discovery is further advanced and prior to the filing of any testimony. Walnut Hill will timely advise the ALJ and StoneyBank accordingly.

VI. DISCOVERY

Discovery is underway and active. Walnut Hill does not propose any special order regarding discovery. A twenty (20) day interrogatory response period, as required by PaPUC regulations, is appropriate for this proceeding.

VII. LITIGATION SCHEUDLE

Walnut Hill concurs in StoneyBank's position that a thirty-day interval for continuance of settlement negotiations, already underway, is appropriate. In thirty (30) days, the Parties can

either request additional time for negotiations, propose a procedural schedule or request further relief as is reasonable from the ALJ.

VIII. SETTLEMENT

Walnut Hill and StoneyBank have been and are continuing to explore ways to settle this proceeding in accordance with 52 Pa. Code §5.231(a) and will advise if a settlement has been achieved.

IX. PROTECTION OF CONFIDENTIAL INFORMATION

Walnut Hill will work collaboratively with StoneyBank to propose an appropriate form of Protective Order for the ALJ's consideration if such an Order is necessary. At this time, there does not appear to be a need for a Protective Order in this matter.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Dated: April 21, 2023

By:



John F. Povilaitis, Esquire
Alan M. Seltzer, Esquire
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
john.povilaitis@bipc.com
alan.seltzer@bipc.com

Counsel for The Walnut Hill Utility Company

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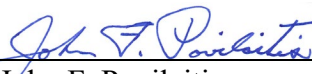
CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing document upon persons listed below in the manner indicated in accordance with the requirements of 52 Pa Code § 1.54.

VIA EMAIL

Hon. Steven K. Haas
Administrative law Judge
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor West
Harrisburg, PA 17120
sthaas@pa.gov
(Cover Letter and Certificate of Service ONLY)

Jonathan Nase, Esquire
David Zambito, Esquire
Cozen & O’Conner
17 N. Second Street Suite 1410
Harrisburg, PA 17101
jnase@cozen.com
dzambito@cozen.com

By: 

John F. Povilaitis

DATED: April 21, 2023