

BEFORE THE WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD

RECEIVED

AUG 12 2024

AMERICAN MUNICIPAL POWER, INC.

Environmental Quality
Board

Appellant,

v.

Appeal No. 24-07-EQB

**JEREMY W. BANDY, DIRECTOR
DIVISION OF WATER AND WASTE MANAGEMENT,
WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Appellee.

MOTION FOR CONTINUANCE

COMES NOW Appellant American Municipal Power, Inc. (“AMP” or “Appellant”) pursuant to W.Va. Code § 22B-1-7(d) and Rules 5.3 and 6.2 of the Board’s Procedural Rules, and hereby moves the Board for a Continuance of the hearing recently rescheduled to September 12, 2024. As set forth below, good cause exists to grant the requested continuance. *See* W.Va. Code S. Rules § 46-4-6.2 (establishing “good cause” standard for issuance of continuance).

The Board recently granted AMP’s motion for a stay of certain portions of NPDES Water Pollution Control Permit No. WV0116424 (“the Permit”), issued by Jeremy W. Bandy, Director of the Division of Water and Waste Management (“the Department”), on June 11, 2024, which was to become effective on August 1, 2024. Specifically, AMP sought a stay of those portions of the Permit related to the numeric water quality-based effluent limitations for Total Recoverable Iron. In its Order Granting Stay (attached hereto as Exhibit A) the Board agreed to grant the requested stay until November 15, 2024, observing that the arguments presented by the parties did “not establish there would be any significant risk of environmental harm to the waters of this State or the public while the appeal is pending.” In conjunction with granting the stay, the Board also issued

a Notice of Hearing and Prehearing Status Conference (attached hereto as Exhibit B) that, among other things and on the Board's own motion, moved the evidentiary hearing scheduled for November 14, 2024, to September 12, 2024.

Counsel for AMP is unavailable the week of September 12, 2024. Specifically, Timothy J. Hagerty, who will serve as lead counsel for AMP at the hearing, has long-scheduled travel plans with elderly family members that will require him to be away from September 8 through September 15, 2024. Mr. Hagerty's presence is important to assist those family members during their travels.

Based on this unavoidable scheduling conflict, AMP respectfully requests that the evidentiary hearing be returned to the originally scheduled November 14, 2024, or as soon thereafter as the Board's schedule will allow. This will permit AMP to proceed with the counsel of its choice, as contemplated by the Board's Rules. AMP also requests that the stay be extended so that it remains in effect for 60 days following the evidentiary hearing date to provide sufficient time for post-hearing briefing and a decision by the Board. This minor extension of the stay (for an additional 60 days past the current November 15, 2024 expiration date) will not cause any significant additional risk of harm to the waters of the State or the public while this appeal is resolved on the merits. Furthermore, it will allow the Board to conduct a fulsome review of the record in support of a considered decision. Accordingly, good cause exists to grant the requested continuance.

Counsel for AMP has consulted with Counsel for the Department, who stated that the Department does not oppose moving the hearing to a later date but does oppose any extension of the stay period. Counsel for the Department also has agreed to waive a response to the motion, as indicated by Counsel's signature hereon.

Respectfully submitted,

AMERICAN MUNICIPAL POWER, INC.

By Counsel,



Joseph M. Ward (WV Bar No. 9733)

Timothy Hagerty (pro hac vice)

Frost Brown Todd LLP

500 Virginia Street East,

Suite 1100

Charleston, WV 25301

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Reviewed and Agreed to by:



Charles S. Driver, Esq.

Director

Office of Legal Services

West Virginia Department of Environmental Protection

601 57th Street, SE

Charleston, WV 25304

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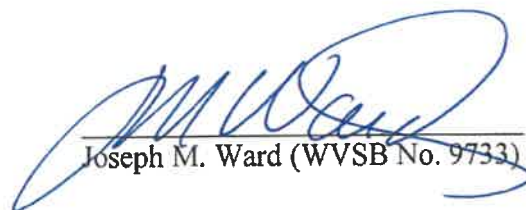
CERTIFICATE OF SERVICE

I, Joseph M. Ward, counsel for American Municipal Power, Inc., do hereby certify that the foregoing **Motion for Continuance** has been served upon the following, this 8th day of August 2024, via email and first-class United States mail, postage pre-paid to the following:

Jeremy W. Bandy
Director, DWWM
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304
email: jeremy.w.bandy@wv.gov

Charles S. Driver, Esq.
Director
Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304
email: charles.s.driver@wv.gov

Kenna DeRaimo, Clerk
Environmental Quality Board
601 57th Street, SE
Charleston, WV 25304
email: kenana.m.deraimo@wv.gov



Joseph M. Ward (WVSB No. 9733)

EXHIBIT A

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

AMERICAN MUNICIPAL POWER, INC.,

Appellant,

v.

Appeal Nos. 24-07-EQB

**JEREMY W. BANDY, DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, WEST VIRGINIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Appellee.

ORDER GRANTING STAY

Appellant American Municipal Power, Inc. (“Appellant”) filed Appeal No. 24-07-EQB and a Motion for Stay with the West Virginia Environmental Quality Board (“Board”) on July 12, 2024. Contemporaneous with the Appeal, Appellant filed a Motion for Stay seeking a stay of the numeric water quality-based effluent limitations for Total Recoverable Iron in NPDES Water Pollution Control Permit No. WV0116424, during the pendency of this appeal.

The Board heard oral argument on the Motion for Stay on July 25, 2024. Dr. Edward Snyder, Dr. Charles Somerville, Mr. Steve Capelli, Ms. Marybeth Winters, and Dr. B. Mitchel Blake, Jr. attended the hearing via Zoom, along with the Board’s counsel, Mark Weiler, Esquire. The Appellant was represented by Joseph M. Ward, Esquire and Timothy J. Hagerty, Esquire, and the Appellee, the West Virginia Department of Environmental Protection, was represented by Charles Scott Driver, Esquire.

Pursuant to W. Va. Code R. § 46-4-5.2, “[t]he Board may, in its administrative discretion, and in the interests of fairness and justice, rule on motions which tend to regulate the course of a hearing, simplify the issues, and dispose of procedural requests or similar matters.”

After reviewing Appellant's Motion for Stay and upon due consideration of the arguments of the parties, the Board hereby GRANTS Appellant's motion for stay as the arguments presented does not establish there would be any significant risk of environmental harm to the waters of this State or the public while the appeal is pending. The Stay is hereby granted until November 15, 2024.

It is so **ORDERED** and **ENTERED** this 30th day of July, 2024.

Environmental Quality Board

for Kenna M DeRamus
Dr. Edward Snyder, Chairman

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

AMERICAN MUNICIPAL POWER, INC.,

Appellant,

v.

Appeal No. 24-07-EQB

**JEREMY W. BANDY, DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, WEST VIRGINIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Appellee.

CERTIFICATE OF SERVICE

I, Kenna M. DeRaimo, Clerk for the Environmental Quality Board, hereby certify that on this day, the **30th** day of July, 2024, a true copy of the foregoing **ORDER GRANTING STAY** has been served upon the following:

Joseph M. Ward, Esq.
FROST BROWN TODD LLP
500 Virginia Street East, Suite 100
Charleston, WV 25301

Via Certified First-Class Mail

9489 0090 0027 6628 8855 99

Timothy J. Hagerty, Esq.
FROST BROWN TODD LLP
400 West Market Street, Suite 3200
Louisville, KY 40202-3363

Via Certified First-Class Mail

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Charles S. Driver, Esq.
WV DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF LEGAL SERVICES
601 57th Street SE
Charleston, WV 25304

Via Interdepartmental Mail


Kenna M. DeRaimo, Clerk

EXHIBIT B

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

AMERICAN MUNICIPAL POWER, INC.,

Appellant,

v.

Appeal Nos. 24-07-EQB

**JEREMY W. BANDY, DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, WEST VIRGINIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Appellee.

**ORDER FOR CONTINUANCE
WITH NOTICE OF HEARING AND PREHEARING STATUS CONFERENCE**

Appeal No. 24-07-EQB was filed with the West Virginia Environmental Quality Board ("Board") on July 12, 2024. In accordance with West Virginia Code §22B-1-7(f), an evidentiary hearing concerning matters as more fully set forth in the *Notice of Appeal* filed in Appeal No. 24-07-EQB is scheduled for August 1, 2024.

The Board, on its own motion, determined that the evidentiary hearing in Appeal No. 24-07-EQB shall be continued until the **November 14, 2024, Board meeting beginning at 8:30 a.m.** The Parties may attend and participate in the evidentiary hearing in person or via Zoom by using the following Zoom link: <https://us02web.zoom.us/j/88472176934>.

Additionally, pursuant to CSR §46-4-5.2 of the *Procedural Rules Governing Appeals Before the Environmental Quality Board*, a **Prehearing Status Conference (PHSC) will be held on Thursday, October 31, 2024, at 10:00 a.m.** before the Board's Chairman and/or legal counsel. The Parties may attend and participate in the PHSC by ***Zoom only*** by using the following Zoom link:

<https://us02web.zoom.us/j/86035617203>.

The proceedings will be recorded and transcribed later, if necessary. The following will be discussed at the prehearing:


- (1) Presentation and consideration of preliminary legal issues;
- (2) Stipulations to facts that are not contested by the parties;
- (3) Stipulations to the admission of evidence to avoid unnecessary proof;
- (4) Identification and reduction of number of witnesses; and
- (5) Consideration of any other matters that will aid in the expeditious conduct of the hearing.

It is further ordered that each counselor representative attending the prehearing conference is required to have a thorough knowledge of the case, be prepared to discuss it, and to make stipulations or admissions where appropriate and to argue any pending motions. Each counselor representative must have full authority from the party represented and any law firm with which associated to take such action as may be necessary to comply with this order.

It is further ordered that at the conclusion of the conference, either orally for the record or by separate writing, an order will be entered which recites any action taken and agreements reached by the parties. The order will take the place of all that has gone before and will control the subsequent course of the hearing unless modified to prevent manifest injustice.

It is so **ORDERED** and **ENTERED** this 17th day of July, 2024.

Environmental Quality Board

for 
Dr. Edward Snyder, Chairman

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

AMERICAN MUNICIPAL POWER, INC.,

Appellant,

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Appeal No. 24-07-EQB

JEREMY W. BANDY, DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, WEST VIRGINIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Appellee.

CERTIFICATE OF SERVICE

I, Kenna M. DeRaimo, Clerk for the Environmental Quality Board, hereby certify that on this day, the 17th day of July, 2024, a true copy of the foregoing **ORDER FOR CONTINUANCE WITH NOTICE OF HEARING AND PREHEARING STATUS CONFERENCE** has been served upon the following:

Joseph M. Ward, Esq.
Timothy Hagerty, Esq.
FROST BROWN TODD LLP
500 Virginia Street East, Suite 1100
Charleston, WV 25301
*Counsel for Appellant
American Municipal Power, Inc.*

*Via Certified First Class Mail
and Electronic Mail*

9489 0090 0027 6573 8146 82

Charles S. Driver, Esq.
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OFFICE OF LEGAL SERVICES
601 57th Street SE
Charleston, WV 25304
*Counsel for Appellee
West Virginia Department of Environmental Protection*

*Via Interdepartmental Mail
and Electronic Mail*

Jeremy W. Bandy, Director
WV DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
601 57th Street SE
Charleston, WV 25304

*Via Interdepartmental Mail
and Electronic Mail*



Kenna M. DeRaimo, Clerk