

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Darlene D. Heep**

In re: Application of Towamencin Township, Pursuant to Section 1102(a), for a Certificate of Public Convenience to Offer, Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions of Worcester Township, Lower Salford Township, Franconia Township and Lansdale Borough, All in Montgomery County, Pennsylvania

Docket No. A-2023-3040661

**JOINT PETITION FOR APPROVAL OF
NON-UNANIMOUS SETTLEMENT OF ALL ISSUES**

I. INTRODUCTION

Towamencin Township (the “Township”) and the Office of Consumer Advocate (“OCA”) (collectively, the “Joint Petitioners”), hereby submit this “Joint Petition for Approval of Non- Unanimous Settlement of All Issues” (“Settlement”) and respectfully request that the Honorable Administrative Law Judge Darlene D. Heep (the “ALJ”) recommend approval of, and the Commission approve, this Settlement without modification. The remaining parties to this matter, the Office of Small Business Advocate (“OSBA”) and Upper Gwynedd Township (“Upper Gwynedd”), do not oppose the relief requested by the Joint Petitioners.

In support of the Settlement, the Joint Petitioners state the following:

II. BACKGROUND

1. The Settlement pertains to the application (as amended, the “Application”) filed by the Township on May 15, 2023 pursuant to Section 1102(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 1102(a) requesting (among other things) that the Commission issue a Certificate of Public Convenience to the Township regarding its provision of wastewater service to customers outside of its geographic boundaries.
2. On June 6, 2023, staff from the Commission’s Bureau of Technical Utility Services (“TUS”) notified the Township that they had performed a completeness review of the Application and determined that certain information was missing. TUS staff requested that the information be provided within ten business days (*i.e.*, by June 21, 2023). On June 21, 2023, the Township filed the information requested by TUS.
3. On May 31, 2023, the OSBA filed its Notice of Intervention, and Nakea S. Hurdle, Esq. entered her appearance on behalf of the OSBA. On June 15, 2023, Nakea S. Hurdle, Esq. withdrew her appearance, and Sharon E. Webb, Esq. entered her appearance on behalf of the OSBA.
4. On June 12, 2023, Upper Gwynedd Township filed its Petition to Intervene, and Lauren A. Gallagher, Esq. and Samantha L. Newell, Esq. entered their appearances on behalf of Upper Gwynedd Township.
5. On June 15, 2023, the OCA filed its Notice of Intervention and Public Statement, and Harrison W. Breitman, Esq. and Christopher M. Andreoli, Esq. entered their appearances on behalf of the OCA.
6. By Secretarial Letter dated June 13, 2023, the Commission notified the parties that a Prehearing Conference would be held On June 22, 2023. The ALJ issued her Prehearing Conference Order on June 12, 2023.
7. The Prehearing Conference was held as scheduled on June 22, 2023.

8. During the Prehearing Conference, the ALJ informed that parties that Her Honor did not intend the Township's contemplated abandonment of service and proposed rates to be effective January 1, 2024 as part of the Application.
9. On June 29, 2023, the ALJ issued her Prehearing Order.
10. A telephonic public input hearing was held at 6:00 p.m. on July 20, 2023.
11. On July 18, 2023, the Township filed a Petition for Partial Reconsideration of the ALJ's decision to exclude the Township's contemplated abandonment of service and proposed rates to be effective January 1, 2024 as part of the Application.
12. On August 2, 2023, the ALJ denied the Township's Petition for Partial Reconsideration.
13. On August 28, 2023, the ALJ entered an order requiring the Joint Petitioners to file settlement documents with the ALJ by September 25, 2023, including a joint stipulation of testimony and exhibits, a Statement in Support from each party signing the settlement, and a joint petition addressing the standards by which the PUC approves a settlement, the public interest served by the settlement, and the concerns raised during the July 20, 2023 public input hearing.

III. SETTLEMENT TERMS

The Joint Petitioners agree as follows:

A. Approval of Application

14. The Commission should approve the Township's Application for Certificate of Public Convenience, *nunc pro tunc*, seeking approval to offer, furnish, render, and supply wastewater service to the public in certain portions of Worcester and Lower Salford Townships, as well as to bulk customers that interconnect with the Township's sewer system outside of the Township's geographic boundaries.
15. This settlement in no way implies that the pending application by Pennsylvania American Water at Docket No. A-2023-3039900 to acquire the Township's wastewater system should

be approved or disapproved. The parties to this proceeding do not waive any rights to contest or support that application. The resolution of this matter only resolves the issue of Towamencin's compliance with the Public Utility Code.

B. Withdrawal of Abandonment of Service

16. Towamencin will withdraw its request for the Commission to conditionally approve its abandonment of service upon consummation of the proposed sale between Towamencin and Pennsylvania-American Water.

C. Abandonment of Stepped Rate

17. Towamencin will withdraw its request for the Commission to approve a stepped-rate which included the current rate and the rate to be effective January 1, 2024. Towamencin will seek the approval of only the current rate in its initial tariff.

D. Standard Settlement Conditions

18. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in the Settlement without modification. If the Commission modifies the Settlement, any Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five (5) business days after the entry of an Order modifying the Settlement. The Joint Petitioners acknowledge and agree that the Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

19. This Settlement is proposed by the Joint Petitioners to settle all issues in the instant proceeding. If the Commission does not approve the Settlement and the proceedings continue, the Joint Petitioners reserve their respective procedural rights, including the right to present additional testimony and to conduct full cross-examination, briefing and argument. The Settlement is

made without any admission against, or prejudice to, any position which any Petitioner may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

20. The Joint Petitioners have prepared Statements in Support, a Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs. The Joint Petitioners further agree that the facts agreed to in that Joint Stipulation are sufficient to find that the Settlement is in the public interest.

21. If the ALJ recommends approval of the Settlement without modification, the Joint Petitioners will waive their rights to file Exceptions.

IV. REQUEST FOR RELIEF

WHEREFORE, Towamencin Township and the Office of Consumer Advocate, by their respective counsel, respectfully request that:

a. The Honorable Administrative Law Judge Darlene D. Heep recommend approval of, and the Commission approve, this Joint Petition for Non-Unanimous Settlement of All Issues as submitted, including all terms and conditions thereof, without modification.

b. The Application filed by the Township on May 12, 2023, as amended, and as further amended by the Settlement, be approved.

c. The Commission issue a Certificate of Public Convenience, *nunc pro tunc*, under 66 Pa. C.S. §§ 1102(a) evidencing Commission approval of the Township's right to offer, furnish, render, and supply wastewater service to the public in certain portions of Worcester and Lower Salford Townships, as well as to bulk customers that interconnect with the Township's sewer system outside of the Township's geographic boundaries.

[Signatures appear on next page.]

Respectfully submitted,

/s/ James J. Rodgers

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Date: September 22, 2023

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STATEMENT IN SUPPORT OF TOWAMENCIN TOWNSHIP

STATEMENT IN SUPPORT OF OFFICE OF CONSUMER ADVOCATE

STATEMENT OF NON-OPPOSITION OF UPPER GWYNEDD TOWNSHIP

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Darlene D. Heep

In re: Application of Towamencin Township,
Pursuant to Section 1102(a), for a Certificate of
Public Convenience to Offer, Furnish, Render, and
Supply Wastewater Service to the Public in Certain
Portions of Worcester Township, Lower Salford
Township, Franconia Township and Lansdale
Borough, All in Montgomery County,
Pennsylvania

Docket No. A-2023-3040661

**STATEMENT OF TOWAMENCIN TOWNSHIP IN SUPPORT OF THE JOINT
PETITION FOR APPROVAL OF NON-UNANIMOUS SETTLEMENT OF ALL ISSUES**

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Counsel for Towamencin Township

September 22, 2023

I. INTRODUCTION

Towamencin Township (the “Township”) files this Statement in Support of the Joint Petition for Approval of Non-Unanimous Settlement of All Issues (“Settlement”) entered into by: the Township and the Office of Consumer Advocate (“OCA”) (collectively, the “Joint Petitioners”). The Township respectfully requests that the Honorable Administrative Law Judge Darlene D. Heep (the “ALJ”) recommend approval of, and that the Commission approve, this Settlement without modification, the terms of which are summarized in the foregoing Joint Petition for Settlement, Paragraphs 14 through 21. To limit duplication, this Statement in Support incorporates those paragraphs by reference as if fully set forth herein.

II. STANDARDS OF COMMISSION APPROVAL

The instant Settlement pertains to the application (the "Application") filed by the Township pursuant to Sections 1102(a) and 1103 of the Pennsylvania Public Utility Code ("Code"), 66 Pa. C.S. §§ 1102(a) and 1103, requesting (among other things) that the Commission issue a Certificate of Public Convenience, *nunc pro tunc*, for the Township to offer, furnish, render, and supply wastewater service to the public in certain portions of Worcester and Lower Salford Townships, as well as to bulk customers that interconnect with the Township’s sewer system outside of the Township’s geographic boundaries

The Joint Petitioners have agreed to a settlement of all issues in this proceeding. Commission policy promotes settlements. See 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. See 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-

00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

A. Public Interest Served

As an initial matter, the fact that the Settlement resolves all issues raised by all parties is, in and of itself, strong evidence that the Settlement is reasonable and in the public interest, particularly given the diverse interests of the Joint Petitioners and the active roles that each has taken in this proceeding. The Settlement was achieved through the hard work and perseverance of the Joint Petitioners. They have repeatedly demonstrated their good faith and willingness to cooperate to resolve this case within the six-month deadline mandated by the General Assembly in Section 1329 of the Code, 66 Pa. C.S. § 1329.

The Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners and satisfies the various requirements of the Code. The Settlement is in the best interest of the Township and its existing customers, and the public-at-large. It is in the public interest and, accordingly, should be approved.

III. CONCERNS RAISED DURING PUBLIC INPUT HEARING

On July 20, 2023, the ALJ presided over a telephonic public input hearing on the Township's Application for a Certificate of Public Convenience. At the hearing, the following concerns were raised:

1. **Notification to Rate Payers of Sewer Sale:** Mr. James Collins and Ms. Tina Gallagher, Towamencin Township customers, raised concerns that rate payers inside and outside of Towamencin Township have not received adequate notification or communication regarding the status of the sale of the sewer system. Towamencin Township believes these comments pertain to the application filed by Pennsylvania American Water at Docket No. A-2023-

3039900 under Sections 1102(a) and 1329 of the Pennsylvania Public Utility Code and are inapplicable to this proceeding. The Township has, and will continue to, abide by any and all notice requirements set forth by the Pennsylvania Public Utility Code, the PUC and other recognizable authorities within the Commonwealth of Pennsylvania.

2. **PUC Oversight of Municipal Authority Systems:** Mr. Kofi Osei, a non-customer Towamencin Township resident, and Ms. Jenifer Foster, a Towamencin Township resident and customer, raised concerns over whether the Township is required to seek a Certificate of Public Convenience, nunc pro tunc, to serve extraterritorial customers. Mr. Osei pointed out that neighboring jurisdictions such as North Penn, North Wales, and Bucks County do not have Certificates of Public Convenience because PUC oversight of their systems is too costly. Ms. Foster stated that the Township's service of extraterritorial customers without a Certificate of Public Convenience has been the status quo for decades. Towamencin Township seeks to comply with the mandate a 66 Pa. C.S. § 1103(a). In so doing, the Township will serve as an example to other municipalities that find themselves in similar situations. Additionally, the Township believes that all of its customers will benefit from the protections of PUC oversight.

CONCLUSION

The Joint Petitioners have arrived at a settlement that resolves all of the issues in this proceeding in a fair and equitable manner and the remaining parties are unopposed to the settlement. A fair and reasonable compromise has been reached in this case. As such, Towamencin Township fully supports the Settlement.

WHEREFORE, Towamencin Township respectfully requests that the Honorable Darlene D. Heep recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification, and enter an order consistent with the Settlement and the specific paragraphs set forth in its "Request for Relief".

Respectfully submitted,

/s/ James J. Rodgers

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Elizabeth Preate Havey, Esq. (PA ID 80793)
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Date: September 22, 2023

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Towamencin Township :
Pursuant to 66 Pa. C.S., § 1102(a), For A :
Certificate of Public Convenience :
To Offer, Furnish, Render, and Supply :
Wastewater Service to the Public in : A-2023-3040661
Certain Portions of Worcester Township, :
Lower Salford Township, Franconia Township :
And Lansale Borough, All in Montgomery :
County, Pennsylvania :

**STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE
IN SUPPORT OF SETTLEMENT**

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Settlement (Settlement), finds the terms and conditions of the Settlement to be in the public interest for the following reasons:

I. INTRODUCTION

Towamencin Township has provided wastewater service to customers outside its municipal boundaries of Towamencin Township since approximately 1969. On May 12, 2023, Towamencin Township (Township or Applicant) filed an Application for a Certificate of Public Convenience to offer, furnish, render, and supply wastewater service to the public in certain portions of Worcester Township, Lower Salford Township, Franconia Township and Lansdale Borough, all in Montgomery County, Pennsylvania pursuant to the Pennsylvania Public Utility Code. 66 Pa. C.S. § 1102(a). The Township also requested a Certificate to Abandon Service upon the closing of a proposed sale of substantially all of the Applicant’s assets consisting of the Applicant’s wastewater system to the Pennsylvania-American Water Company (PAWC) pursuant to 66 Pa. C.S. Section 1102(a). Additionally, as part of the Township’s application, the Township requested

a phased-in rate increase. On June 15, 2023, the OCA filed a Notice of Intervention and Public Statement.

The parties to the proceeding have had numerous discussions that resulted in the proposed Joint Petition for Settlement. For reasons discussed in greater detail below, the OCA submits that the Settlement is in the public interest and the best interest of the Township's PUC-jurisdictional ratepayers, and should be approved by the Commission without modification.

II. TERMS AND CONDITIONS

A. Approval of the Application (Settlement ¶¶ 14-15)

The OCA agrees that the Application, now limited to only serving customers outside its municipal boundaries, should be approved as being in the public interest subject to other terms and conditions as discussed in the Settlement and in this Statement in Support. Under Section 1102(a) of the Public Utility Code, a Certificate of Public Convenience is required “[f]or any municipal corporation to acquire, construct, or begin to operate, any plant, equipment, or other facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits.” 66 Pa. C.S. § 1102(a)(5).

Contrary to the Public Utility Code, Towamencin has been providing wastewater service outside of its municipal boundaries since approximately 1969. *See* Application at Ex. F. The Application, as modified by the Settlement, grants the Township a Certificate of Public Convenience so that the Township will be in compliance with the Public Utility Code. The Settlement also removes portions of the Application that were inconsistent with the Public Utility Code, such as the request of a rate increase and abandonment, as discussed in further detail below. As modified by the Settlement, granting a Certificate of Public Convenience to the Township without granting the Township a Certificate to Abandon Service and a phased-in rate increase is in the public interest.

B. Withdrawal of Abandonment of Service (Settlement ¶ 16)

In its initial Application, Towamencin requested that the Commission grant a Certificate to Abandon Service upon the closing of the proposed sale to PAWC of substantially all of its assets comprising its wastewater system. Application at 1. Under the Settlement, Towamencin withdraws its request for the Commission to conditionally approve its abandonment of service. Settlement ¶ 16. This provision ensures that there was no prejudgment of the likelihood of success of an as yet adjudicated application for sale to PAWC. This provision also ensures that ratepayers who are currently receiving essential utility service from the Township are not abandoned because of the Township's non-compliance with the Public Utility Code.

The OCA further notes that the Settlement contains a provision that that the settlement of this case in no way bears on the separate application of Pennsylvania-American Water to acquire Towamencin's sewer system at Docket No. A-2023-3039900. Settlement ¶ 16. The OCA and other parties have reserved all rights to contest the separate application. Continuing utility service for ratepayers currently served by the Township, and not pre-approving a Certificate to Abandon Service before any determination is made regarding a potential sale, is in the public interest.

C. Abandonment of Stepped Rate (Settlement ¶ 17)

Towamencin also agreed that it will withdraw its request for the Commission to approve a stepped-rate which included the current rate and the rate to be effective January 1, 2024. Settlement ¶ 17. In its initial Application, Towamencin proposed phased-in rates in which residential ratepayers would initially be charged the current rate of \$450 per equivalent dwelling unit (EDU) with a phased-in rate increase of \$590 per EDU effective January 1, 2024. Application at 6.

Under the Settlement, Towamencin will seek the approval of only the current rate in its initial tariff. Settlement ¶ 17. To implement a general rate increase, an investigation and analysis of a tariff filing to determine whether the requested rates are just and reasonable is required under

the Public Utility Code. 66 Pa. C.S. § 1308(d). A hearing determining the lawfulness of a Company's tariff filing and rate increase request is necessary under the Code. *Id.* Unless a majority of the Commissioners vote in favor of a tariff to become effective, the Code requires that the tariff be suspended for a period not to exceed seven months. *Id.* Moreover, the Public Utility Code requires public utilities to provide notice of proposed changes in rates to both the Commission and its customers. 66 Pa. C.S. § 1308(a). The OCA's position throughout this proceeding has been that Towamencin may only adopt its current rates and that any future rate increase for customers outside Towamencin's municipal boundaries must be filed pursuant to Section 1308 of the Public Utility Code.

This Settlement provision ensures that a request for a rate increase before the Commission, which was not in accordance with the Public Utility Code, is no longer a part of the Township's Application. Instead, the rates currently being charged to the Township's customers will continue to be charged. The OCA submits that this is the appropriate resolution of the rate issue in this proceeding as customers outside the municipal boundaries, who are unable to influence the political process associated with municipal rate increases, are protected by an appropriate process consistent with the provisions of the Public Utility Code.

III. CONCLUSION

The OCA submits that the terms and conditions of the proposed Settlement of this application represent a fair and reasonable resolution of the issues raised by the OCA in this proceeding. Therefore, the OCA submits that the Settlement should be approved by the Commission without modification as being in the public interest.

Respectfully submitted,

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Dated: September 12, 2023

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September 7, 2023

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Re: Joint Petition for Approval of Non Unanimous Settlement
Docket No. A-2023-3040661

Dear Secretary Chiavetta:

Please be advised that Upper Gwynedd Township has no objection to and does not oppose the Joint Petition for Approval of Non Unanimous Settlement, as jointly filed by the remaining parties to this application.

Very truly yours,



Lauren A. Gallagher

Secretary Chiavetta
September 7, 2023
Page 2

LAG:sn

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**IN RE: APPLICATION OF
TOWAMENCIN TOWNSHIP,
PURSUANT TO 66 PA. C.S. § 1102(A),
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE TO OFFER,
FURNISH, RENDER, AND SUPPLY
WASTEWATER SERVICE TO THE
PUBLIC IN CERTAIN PORTIONS OF
WORCESTER TOWNSHIP, LOWER
SALFORD TOWNSHIP, FRANCONIA
TOWNSHIP AND LANSDALE
BOROUGH, ALL IN MONTGOMERY
COUNTY, PENNSYLVANIA**

DOCKET A-2023-3040661

CERTIFICATE OF SERVICE

I hereby certify that I have this date, September 22, 2023, served a true copy of Joint
Petition for Approval of Non-Unanimous Settlement upon the following:

Administrative Law Judge Darlene Heep
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