

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
Darlene D. Heep**

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 STIPULATION OF PROPOSED FINDINGS OF FACT,
PROPOSED CONCLUSIONS OF LAW AND
PROPOSED ORDERING PARAGRAPHS**

Towamencin Township (the “Township”) and the Office of Consumer Advocate (“OCA”) (hereinafter, the “Stipulating Parties”), file this Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs (“Stipulation”) in the above-captioned proceeding, pursuant to Paragraph 20 of the Joint Petition for Approval of Non-Uniform Settlement of All Issues (the “Settlement”). The remaining parties to this matter, the Office of the Small Business Advocate (“OSBA”) and Upper Gwynedd Township (“Upper Gwynedd”) do not oppose this Stipulation. In support of the Stipulation, the Stipulating Parties represent as follows:

1. Paragraphs 1 through 15 (regarding “Background”) of the Settlement are hereby incorporated by reference.

2. Consistent with Paragraph 20 of the Settlement, the Stipulating Parties have jointly prepared **Appendix A - Proposed Findings of Fact, Appendix B - Proposed Conclusions of Law** and **Appendix C - Proposed Ordering Paragraphs**. The Stipulating Parties agree that the facts agreed to in this Joint Stipulation are sufficient to find that the Settlement is in the public interest.

3. This Stipulation is presented by the Stipulating Parties in conjunction with the Settlement, which is intended to settle all issues among the parties in the above-captioned proceedings. If the Commission rejects or otherwise modifies the Settlement, the Stipulating Parties reserve their respective procedural rights to submit testimony and exhibits, and cross-examine witnesses at on-the-record evidentiary hearings.

4. This Stipulation is being presented in conjunction with the Settlement only to support the proposed resolution of the above-captioned proceedings. Regardless of whether this Stipulation is approved, no adverse inference shall be drawn, nor shall prejudice result to any Stipulating Party in this or any future proceeding as a consequence of this Stipulation, or any of its terms or conditions.

5. Attached hereto as Appendix D is a proposed “Order Granting Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs” for consideration by the Honorable Administrative Law Judge Darlene D. Heep.

WHEREFORE, the Stipulating Parties, by their respective counsel, respectfully request that the Honorable Administrative Law Judge Darlene D. Heep approve this Stipulation.

Respectfully submitted,

/s/ James J. Rodgers

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APPENDIX A
PROPOSED FINDINGS OF FACT

Parties

1. Towamencin Township (the “Township”) is a second-class township in Montgomery County, Pennsylvania. It has approximately 18,500 residents. It furnishes wastewater service to customers inside and outside of its geographic boundaries.

2. The OCA is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

3. The OSBA is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

4. Upper Gwynedd Township (“Upper Gwynedd”) is a first-class township in Montgomery County, Pennsylvania. The Township provides wastewater services to Upper Gwynedd residents pursuant to a 2015 Customer Service Agreement.

The System

5. The System is a wastewater collection and conveyance system. It is not a combined sewer system, nor is it a municipal separate storm sewer system. As of May 15, 2023, the System provided direct service to approximately 8,066 customers, including 310 customers in Worcester Township and 21 customers in Lower Salford Township.

6. Additionally, the Township provides wastewater service under bulk contracts with: (i) Lower Salford Township, pursuant to an agreement among the Township, Lower Salford Township, and Lower Salford Township Authority; (ii) Lansdale Borough, pursuant to an agreement among the Township, Lansdale Borough, Upper Gwynedd Township, and Lansdale

Sewer Authority; and (iii) one (1) commercial customer in Franconia Township, pursuant to an agreement among the Township, Franconia Township Authority, and JDJ Associates.

The Township's Financial Fitness

7. The Township has approximately \$5.7 million in available funds in the sewer account dedicated to its wastewater service.

8. The Township has a Standard & Poor's credit rating of AA/Stable.

9. The Township has provided service to all of its customers without issue

10. The Township is a financially-sound municipality that can financially support the ongoing operating and investment commitments required to operate, maintain, and improve the System. The Township has provided wastewater service for over 50 years without financial issue.

The Township's Technical Fitness

11. The Township employs professionals with expertise in all areas of wastewater utility operations.

12. The Towamencin Township Wastewater Treatment Plant currently operates at approximately 52.3% of its capacity.

13. The Township has provided wastewater service for over 50 years without technical issue and demonstrated adequate fitness in doing so.

The Township's Legal Fitness

14. The Township is a Commission-regulated public utility with a history of compliance. There are no pending legal proceedings that would suggest that the Township is not legally fit to provide service to its customers. Continuation of the existing service in the applied-

for service territory is necessary for the accommodation, safety and convenience of the public because no other wastewater provider is currently available to provide the service to these customers.

Benefits of the Settlement

15. The Settlement will bring the Township into proper legal compliance. The Township is currently complying with a court order issued in *Bronia Sultanik v. Board of Supervisors of Towamencin Township & Towamencin Township*, Civil Action No. 1986-03576. The settlement and order resolving the litigation obligated the Township to provide wastewater service to customers living in Worcester Township.

16. The Settlement will bring extraterritorial customers under the legal protection of the PUC and other regulatory agencies.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this application proceeding. 66 Pa. C.S. § 1102.
2. The Township has the burden of proof in this proceeding. 66 Pa. C.S. § 332(a).
3. Commission policy promotes settlement. 52 Pa. Code § 5.231.
4. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. 52 Pa. Code § 69.401.
5. 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 & Sewer Assocs.*, 74 Pa. PUC 767 (1991). The instant settlement is in the public interest.
6. The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a) (“Procedure to obtain certificates of public convenience”).
7. A certificate of public convenience is required for “any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized” 66 Pa. C.S. § 1102(a)(1).

8. An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). The Township has demonstrated that it is technically, financially and legally fit.

9. The fitness of a currently certificated public utility is presumed. *See e.g., South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

10. In granting a certificate of public convenience, the Commission may impose such conditions as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).

11. The settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification.

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. That the Honorable Administrative Law Judge Darlene D. Heep recommend approval of, and the Commission approve, this Settlement as submitted, including all terms and conditions thereof, without modification.

2. That the Application filed by the Township on May 15, 2023 be approved, subject to the terms and conditions contained in the Joint Petition for Settlement.

3. That the Commission issue a Certificate of Public Convenience under 66 Pa. C.S. §§ 1102(a) evidencing Commission approval of 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.

APPENDIX D

**FORM OF ORDER GRANTING
JOINT STIPULATION OF
PROPOSED FINDINGS OF FACT,
PROPOSED CONCLUSIONS OF LAW AND
PROPOSED ORDERING PARAGRAPHS**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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, : Docket No. A-2023-3040661
Pennsylvania :

**ORDER GRANTING JOINT STIPULATION
OF PROPOSED FINDINGS OF FACT,
PROPOSED CONCLUSIONS OF LAW AND
PROPOSED ORDERING PARAGRAPHS**

In connection with the Joint Petition for Approval of Non-Unanimous Settlement of All Issues (the “Settlement”), filed on September 22, 2023, Towamencin Township and the Office of Consumer Advocate (collectively, the “Stipulating Parties”) also filed a Joint Stipulation of Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Ordering Paragraphs (“Stipulation”) in the above-captioned proceeding to which the remaining parties, the Office of the Small Business Advocate (“OSBA”) and Upper Gwynedd Township (“Upper Gwynedd”) do not oppose. Each of the Stipulating Parties agreed that the facts agreed to in the Stipulation are sufficient to find that the Settlement is in the public interest. The Stipulation is attached to this Order.

As this request is reasonable, it will be granted.

THEREFORE, IT IS ORDERED:

That the Stipulation, filed on September 22, 2023, is APPROVED.

Date: _____

Darlene D. Heep
Administrative Law Judge

**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 Stipulation of Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs, upon the following:

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