

Appendix L:

Public Utility Commission Settlement – UIP - DEP

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Utilities,

A-230013F0003

Inc. of Pennsylvania

**INITIAL DECISION
UPON REMAND**

Before
Marlane R. Chestnut
Administrative Law Judge

HISTORY OF THE PROCEEDING

An Application was filed by Utilities, Inc. of Pennsylvania (UIP or applicant) with the Pennsylvania Public Utility Commission (Commission) on November 18, 2003 for approval to provide wastewater service to additional portions of West Bradford Township (WBT). Notice of the Application was published in the December 21, 2002 *Pennsylvania Bulletin*, with a protest due date of January 6, 2003.

A timely Protest to the Application was filed by WBT on December 13, 2002 and Orleans Homebuilders, Inc. (Orleans) intervened pursuant to my Prehearing Order #2 dated April 1, 2003.

On June 9, 2003, the Pennsylvania Department of Environmental Protection (DEP) filed and served a Petition to Intervene (Petition). On August 11, 2003, applicant filed and served an Answer in Opposition to the Petition.

At the first prehearing conference, held on April 1, 2003, the parties (UIP, WBT and Orleans) indicated that they had reached an agreement in principle. Although at each of the

subsequent prehearing conferences the parties asserted that they were making progress reducing the agreement to writing, no amendment had been developed by the time of the third prehearing conference held on June 17, 2003. Therefore, in light of the outstanding DEP Petition, a litigation schedule was adopted. An Amended Application was filed and served on July 2, 2003. As a result, both WIST and Orleans withdrew their opposition to the Amended Application. As DEP had not withdrawn its Petition, all parties filed direct testimony in accordance with the schedule established in Prehearing Order #3. In Prehearing Order #4, dated July 25, 2003, I suspended the schedule pending my resolution of the outstanding Petition.

By Initial Decision dated August 18, 2003, I denied DEP's Petition and referred the Amended Application to the Commission's Bureau of Fixed Utility Services for review and resolution. By Opinion and Order entered February 19, 2004, the Commission granted DEP's Petition to Intervene and remanded the Amended Application.

The parties agreed to utilize the mediation process, and a mediation session was scheduled for March 24, 2004. Because applicant UIP and protestant DEP reached an agreement in principle prior to March 24, 2004, that mediation session was cancelled.

On June 25, 2004, the Settlement Agreement was filed and served. As discussed in more detail below, the proposed settlement should be accepted without modification by the Commission. The parties are to be commended for arriving at this consensus resolution.

SUPPLEMENTAL FINDINGS OF FACT

1. By Settlement Agreement dated June 23, 2004, applicant Utilities, Inc. of Pennsylvania and protestant Department of Environmental Protection agreed to resolve the outstanding issues raised in this proceeding.
2. Pursuant to the Settlement Agreement, upon its approval by the Commission, protestant Department of Environmental Protection agrees to withdraw its pending Protest within ten days of receipt of the Commission's order.

3. West Bradford Township, which withdrew its Protest upon the filing of the Amended Application, by letter dated June 17, 2004 supports adoption of the Settlement Agreement. Settlement Agreement, Attachment D.

DESCRIPTION OF THE PROPOSED SETTLEMENT AGREEMENT

The Settlement Agreement is attached to this Initial Decision as Appendix A. Generally, it sets out a process by which the Sewage Facilities Act (and implementing regulations) and associated township planning will be addressed by UIP in rendering Commission-approved wastewater service. It also contains provisions intended to enhance communication among the three parties.

DISCUSSION

Although no party presented any reasons to support the Commission's adoption of the Settlement Agreement, the proposed settlement is in the public interest and should be approved by the Commission without modification.

The Commission encourages parties in contested on-the-record proceedings to engage in settlements. See, 52 Pa. Code §5.231. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may include review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all other ratepayers of the utility, who otherwise may have to bear the financial burden such litigation entails.

By definition, a "settlement" reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest. Pa. P.U.C. v. CS Water and Sewer Associates, 74 Pa. P.U.C. 767, 771 (1991).

The settlement should be approved, first, because it represents a just and fair compromise, by the active parties who represent a variety of interests, of the serious issues raised in this proceeding.

Second, it contains a series of procedures and puts a process in place that recognizes the interplay between the Commission's discharge of its statutory responsibilities and that exercised by the Department of Environmental Protection. It ensures that UIP will comply with applicable laws and regulations, and contains a series of provisions designed to improve communication among the utility, the township and DEP.

Third, as noted above, approval of the proposed settlement avoids the substantial time, expense and uncertainty involved in full litigation. By avoiding the necessity of further administrative proceedings, including possible appeals, the resources of the Commission and the parties can be appropriately conserved.

I wish to commend the parties. The agreement shows the diligence and good faith each party expended to arrive at a reasonable, workable arrangement.

In conclusion, the proposed settlement clearly is just and reasonable and in the public interest and should be approved without modification by the Commission.

SUPPLEMENTAL CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.
2. The proposed Settlement Agreement is just, reasonable and in the public interest.

3. It is just, reasonable and in the public interest that the Amended Application be referred to the Commission's Bureau of Fixed Utility Services for review and resolution.

ORDER

THE BEFORE,

IT IS ORDERED:

1. That the Settlement Agreement, filed on June 25, 2004 at Docket No. A-230013F0003 is hereby approved without modification; and
2. That the Amended Application filed at A-230013F0003 be referred to the Commission's Bureau of Fixed Utility Services for review and resolution.

Date: June 29, 2004

Marlane R. Chestnut
Marlane R. Chestnut
Administrative Law Judge

APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF UTILITIES, INC.
OF PENNSYLVANIA.

: Docket No. A-230013 F0003

SETTLEMENT AGREEMENT

Utilities, Inc. of Pennsylvania ("Utilities") and the Commonwealth of Pennsylvania, Department of Environmental Protection (the "Department") (collectively, the "Parties"), on this 23rd day of June, 2004, by and through their respective counsel, with the intent of resolving the above-captioned matter, pursuant to 52 Pa. Code § 5.232, enter into and hereby notify the Pennsylvania Public Utility Commission (the "Commission" or "PUC") of this Settlement Agreement (the "Agreement"), and agree as follows:

WHEREAS, Utilities provides wastewater collection, conveyance, treatment, and disposal service in West Bradford Township through a stream-discharge sewage treatment facility, named the "Broad Run Sewer Plant";

WHEREAS, on November 18, 2002, Utilities filed with the Commission an Application for Certificate of Public Convenience, Dkt. No. A-230013F0003 (the "Application of November 18, 2002"). That Application requested that the Commission approve an expansion of Utilities' existing sewer service area within the Township to allow it to offer, render, furnish, or supply wastewater disposal and treatment service to the public in all territories within that municipality;

WHEREAS, on December 12, 2002, the Township filed a timely Protest to the Application, Dkt. No. A-230013F0003;

WHEREAS, on June 10, 2003, the Department filed a Petition to Intervene in the Protest on the side of the Township, attached hereto as Exhibit "A," opposing the Application and challenging the necessity and propriety of the Application;

WHEREAS, Utilities and the Township entered into a written Agreement, dated June 30, 2003, providing for a modification to Utilities' Application, withdrawal of the Township's objections to the Application pending before the Commission at PUC Dkt. No. A-230013F0003, support by the Township of a proposed revised Application, and withdrawal by Utilities of its appeal before the Environmental Hearing Board, EHB Dkt. No. 2003-019-MG;

WHEREAS, pursuant to the July 2, 2003 Agreement between Utilities and the Township, Utilities filed an Amended Application (the "Amended Application"), also in PUC Dkt. No. A-230013F0003, attached hereto as Exhibit "B." The Amended Application reduced the size of the proposed wastewater service area sought in the Application of November 18, 2002 (see the description and definitions of the areas set forth in detail in Exhibit "B");

WHEREAS, by letter dated July 7, 2003 to the presiding Administrative Law Judge of the Commission and all parties, the Township expressed its support for approval of the Amended Application, included in PUC Dkt. No. A-230013F0003, attached hereto as Exhibit "C";

WHEREAS, the Department has continued to oppose the Amended Application for the same reasons it opposed the Application of November 18, 2002 in its Petition to Intervene. By Order entered February 19, 2004, the PUC granted the Department's Petition to Intervene and remanded Utilities' Application to the Office of Administrative Law Judge for expedited hearing or hearings as deemed appropriate;

WHEREAS, the Department disagrees with issuance by the Commission of any certificate of public convenience for wastewater collection, conveyance, treatment, and disposal

that is not consistent with the corresponding official sewage facilities plan approved by the appropriate municipality and the Department, in accordance with the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. 1535 (1965), No. 537, *as amended*, 35 P.S. §§ 750.1-750.20a (the "Sewage Facilities Act" or "Act 537") and its implementing regulations;

WHEREAS, Utilities acknowledges that sewage planning approval by both the municipality and the Department, as referenced above, is a requirement prior to physical service to customers in the Commonwealth of Pennsylvania. Utilities asserts that municipal sewage plans are fluid and may be revised by municipal governments in accordance with the Sewage Facilities Act and its implementing regulations. Moreover, the provision of sewer service by a PUC-regulated entity remains subject to all of the statutory and regulatory requirements contained in the Sewage Facilities Act and its implementing regulations. Therefore, Utilities maintains that local sewage planning need not be completed prior to the PUC's issuance of a Certificate of Public Convenience, as any revisions or deficiencies may be addressed during the municipal and/or Department review process.

WHEREAS, the Department recognizes that the Township currently has in existence comprehensive plans for the provision of sewage systems (the "Township's Official Sewage Facilities Plan"), approved by the Department, in fulfillment of the Township's obligations under the Sewage Facilities Act and its implementing regulations;

WHEREAS, the Department maintains that the Township's Official Sewage Facilities Plan presently does not allow for Utilities to provide wastewater service with the Broad Run Sewer Plant in the territories sought by Utilities in its Amended Application but acknowledges that the Township may revise its Official Sewage Facilities Plan at any time in accordance with the Sewage Facilities Act and its implementing regulations;

WHEREAS, to date, the Township has maintained its commitment to carry out the planning process and to fulfill its obligations under the Sewage Facilities Act (see Letter from Kenneth Myers on behalf of West Bradford Township to the Department and Utilities, dated June 17, 2004, attached hereto as Exhibit "D");

WHEREAS, the Township has initiated the process of developing a comprehensive official plan revision in order to identify and, as necessary, provide a plan for future facilities, beginning with the Township's March 6, 2003 submission to the Department of a Plan of Study and Task Activity Report for the Sewage Facilities Plan for West Bradford Township, which was approved by the Department on August 6, 2003 (the "Plan of Study");

WHEREAS, in order to protect groundwater resources in West Bradford Township, it is the policy of the Township to encourage groundwater recharge;

WHEREAS, Utilities and the Township are committed to cooperating in current and future sewage planning in the municipality;

WHEREAS, the Department seeks to promote cooperation in sewage planning between all of the Parties;

WHEREAS, the Parties have engaged in settlement discussions, and, as a result of those discussions, have reached a settlement of this matter in accordance with the terms set forth below; and

WHEREAS, without agreeing to any fact or law alleged by any party in this document or in the course of this proceeding, the Parties desire to settle this matter without resorting to further litigation.

THEREFORE, in consideration of the promises, covenants, representations, warranties, and agreements contained herein, and intending to be legally bound, the Parties hereby enter into this Agreement and agree as follows:

1. This Agreement is proposed to settle the instant case and is made without any admission against, or prejudice to, any position that any party might adopt during subsequent litigation, including further litigation of this case. This Agreement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. Within ten (10) business days of receipt of an Order by the Commission adopting this Settlement Agreement as herein proposed and without modification, the Department agrees to withdraw its protest at PUC Dkt. No. A-230013F0003 without prejudice to any factual or legal claims it has raised in this proceeding. If the Commission should disapprove the Agreement or modify the terms and conditions herein, this Agreement shall be of no force and effect. In the event that the Commission disapproves or modifies the Agreement, the Parties reserve their respective rights to fully litigate this case including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of briefs, reply briefs, exceptions, and reply exceptions.

2. If the Administrative Law Judge, in her Initial Decision, recommends that the Commission adopt this Agreement as herein proposed and without modification, the Parties agree to waive the filing of exceptions to the Initial Decision. However, the Parties do not waive their rights to file exceptions with respect to any modifications to the terms and conditions of this Agreement or any additional matters proposed by the Administrative Law Judge in her Initial Decision. The Parties also reserve the right to file replies to any exceptions that may be filed.

3. The Department does not waive its rights to protest or take any other legal action with respect to the Amended Application, if modified in any way from the terms and conditions

currently contained therein, to expand the service area as described in Exhibit "B." The Department reserves its rights to participate in any legal or administrative proceeding and remains an Intervenor until the Commission takes final action on the Amended Application and any appeal period of that administrative action has expired.

4. Utilities agrees to provide written notice to the Township and the Southeast Regional Office of the Department if (a) Utilities amends, alters, or in any way changes the Amended Application to expand the proposed service area as described in Exhibit "B" hereto; or (b) Utilities withdraws the Amended Application. Utilities shall send such written notice to the Township and the Department via overnight mail, post-marked the same date as the Commission filing.

5. Utilities agrees that, where notice to Utilities is timely, it will submit timely comments to the Township regarding all sewage planning proposals affecting Utilities' certificated service area in West Bradford Township. Timely submission in this context shall mean that the comments shall be submitted to the Township in compliance with the standards set forth in the Sewage Facilities Act and its implementing regulations.

6. Utilities agrees that it will not accept any new physical connections to the Broad Run Sewer Plant unless allowed to do so under applicable laws of the Commonwealth, including, but not limited to, the Clean Streams Law, Act of June 22, 1937, P.L. 1987, No. 394, *as amended*, 35 P.S. §§ 691.1-691.1001 ("Clean Streams Law"), the Sewage Facilities Act, and the regulations thereunder.

7. Utilities agrees that when formally responding in writing to any requests made after execution of this Agreement regarding available capacity at the Broad Run Sewer Plant and/or connections to the Broad Run Sewer Plant, including its collection and conveyance system, it

shall inform the requestor that until, or unless, such connection and sewage service is consistent with the Township's Official Sewage Facilities Plan, the Township lawfully requests the connections, or the Department orders such connections be made, available capacity cannot be guaranteed and connections cannot be made. Utilities further agrees not to communicate to any person that any existing or proposed unit in the proposed expanded service area, defined in the Amended Application, attached as Exhibit "B," can connect to the Broad Run Sewer Plant or receive service from that system until allowed to do so under applicable laws of the Commonwealth. Whenever Utilities does formally communicate in writing to anyone that the Broad Run Sewer Plant has available capacity and/or an ability to accept connections, Utilities shall provide notice to the Southeast Regional Office of the Department and the Township.

8. The Department agrees to include Utilities in any and all written communications between the Department and the requestor of Utilities' services that occur subsequent to the initial notice to the Department and the Township, as set forth in Paragraph 7.

9. If Utilities or the Township proposes, at any time, to increase the permitted capacity of the Broad Run Sewer Plant beyond the 400,000 gallons per day currently permitted by the Department, Utilities shall evaluate and apply all reasonable efforts to provide a land application disposal alternative for all additional wastewater flows to encourage groundwater recharge, consistent with the Township's approved Official Sewage Facilities Plan and all applicable laws of the Commonwealth, including, but not limited to, the Sewage Facilities Act, the Clean Streams Law, and the regulations thereunder. Upon completion of its evaluation of the land application disposal alternative, and before or at the time of requesting from the Department or the PUC approval for an expansion of the sewage treatment facility plant's permitted capacity,

Utilities agrees to present to the Department its findings and results. The Department will have a full opportunity to review, critique, and, if necessary, object to the findings.

10. Utilities agrees to serve the appropriate regional office of the Department with a complete copy, with exhibits, of any future filing to the PUC regarding wastewater service, including, but not limited to, an application for a certificate of public convenience for wastewater service, whether it be to initiate, reduce, expand, or otherwise modify a service area within any municipality in the Commonwealth, at the time of such filing, by registered or certified mail, return receipt requested.

11. All communications required by this Agreement, unless expressly indicated otherwise in this Agreement, shall be addressed as follows:

To the Department:

James Newbold
Regional Manager, Water Management
Pennsylvania Department of Environmental Protection
2 East Main Street
Norristown, PA 19401
(484) 250-5900

with a copy sent to:

Adam N. Bram, Esquire
Assistant Counsel
Pennsylvania Department of Environmental Protection
Office of Chief Counsel
2 East Main Street
Norristown, PA 19401
(484) 250-5903

To Utilities:

Carl Daniel, Vice President and Regional Director
Utilities, Inc.
5701 Westpark Drive, Suite 101
P. O. Box 240908
Charlotte, NC 28224
(704) 525-7990

with a copy sent to:

James Patrick Dougherty, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 237-5249

To The Township:

Jack Hines, Jr.
Township Manager
West Bradford Township
1385 Campus Drive
Downington, PA 19355

with a copy sent to:

John Good, Esquire
331 W. Minor Street
West Chester, PA 19382
(610) 369-4174

Unless expressly indicated otherwise in this Agreement, service of any notice or communication under this Agreement shall be made by mailing a copy by first-class U.S. mail to the person identified at the above addresses.

12. This Agreement shall not eliminate, curtail, or expand the obligations, responsibilities, or duties of any Party under the Sewage Facilities Act, Clean Streams Law, and the implementing regulations thereunder.

13. This Agreement shall not alter, expand, or modify the Department's authority under the Sewage Facilities Act, the Clean Streams Law, and the implementing regulations thereunder.

14. This Agreement does not amend, alter, or change any other promises, covenants, representations, warranties, or agreements between the Parties, including but not limited to the June 30, 2003 Agreement between the Township and Utilities and the Joint Stipulation between the Parties.

15. This Agreement constitutes the entire agreement between the Parties, and no alteration, additions, or amendments shall be valid unless mutually agreed to by the Parties and set forth in writing and duly executed by them.

16. The transfer of any legal or equitable interest in the Broad Run Sewer Plant, or the sale of a majority of Utilities' stock, shall not terminate, amend, alter, modify, or otherwise change the obligations, responsibilities, and duties under this Agreement, except as provided in Paragraph 17.

17. If a majority of the stock of Utilities will be sold, or if Utilities intends to transfer all, or substantially all, of the assets of the Broad Run Sewer Plant, Utilities shall serve a copy of this Agreement upon the prospective purchaser or transferee at least thirty (30) days prior to the contemplated sale or transfer and shall simultaneously inform the Southeast Regional Office of the Department in writing of such intent. Utilities shall condition a transfer of all, or substantially all, of the assets of the Broad Run Sewer Plant, or a sale of the majority of its stock, upon the agreement of the transferee or purchaser to comply with the terms of this Agreement. Should

Utilities transfer any legal or equitable interest in the Broad Run Sewer Plant to a company that is not a subsidiary of Utilities, Utilities, Inc., or its parent, Utilities shall not be liable for the failure of any unrelated transferee to comply with the provisions of this Agreement.

18. By their signatures below, the Parties consent to the terms of this Agreement and represent that they are authorized to execute this agreement on behalf of the respective party for whom they sign.

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION:**

James J. Kennedy, ARD Sr

James Newbold
Regional Manager, Water Management
Pennsylvania Department of Environmental Protection
2 East Main Street, Norristown, PA 19401
Dated: June 23 2004

Adam N. Bram

COUNSEL FOR THE COMMONWEALTH
Adam N. Bram, Esquire
Assistant Counsel
Pennsylvania Department of Environmental Protection
Office of Chief Counsel
2 East Main Street, Norristown, PA 19401
Dated: June 23 2004

FOR UTILITIES, INC. OF PENNSYLVANIA:



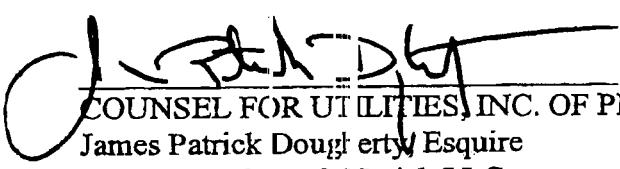
Carl Daniel
Vice President and Regional Director
Utilities, Inc.
5701 Westpark Drive, Suite 101
P. O. Box 240903
Charlotte, NC 28224
Dated: 6/26/04, 2004

COUNSEL FOR UTILITIES, INC. OF PENNSYLVANIA

James Patrick Dougherty, Esq.
McNees Wallace & Nuck, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Dated: 6/26/04, 2004

FOR UTILITIES, INC. OF PENNSYLVANIA:

Carl Daniel
Vice President and Regional Director
Utilities, Inc.
5701 Westpark Drive, Suite 101
P. O. Box 240908
Charlotte, NC 28224
Dated: _____, 2004


COUNSEL FOR UTILITIES, INC. OF PENNSYLVANIA
James Patrick Dougherty, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P. O. Box 1165
Harrisburg, PA 17108-1166
Dated: 6/22, 2004