

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

CONYNGHAM TOWNSHIP

Complainant

- against -

SANITARY SEWER AUTHORITY
OF THE BOROUGH OF SHICKSHINNY

Respondent

COMPLAINT DOCKET

No. C-2021-3023624

**ANSWER TO PRELIMINARY OBJECTIONS OF RESPONDENT SANITARY SEWER
AUTHORITY OF THE BOROUGH OF SHICKSHINNY**

COMPLAINANT CONYNGHAM TOWNSHIP, by and through its attorneys, DeLUCA LAW OFFICES, Vito J. DeLuca, Esquire, as and for the foregoing ANSWER TO PRELIMINARY OBJECTIONS OF RESPONDENT SANITARY SEWER AUTHORITY OF THE BOROUGH OF SHICKSHINNY, answers as follows:

1. Denied. No response required.
2. Admitted. The document speaks for itself.
3. Admitted. The document speaks for itself.
4. Denied as a conclusion of law to which no response is required.
5. Denied as a conclusion of law to which no response is required.
6. Denied as a conclusion of law to which no response is required.
7. Denied as a conclusion of law to which no response is required.
8. Denied as a conclusion of law to which no response is required. By way of further

answer, Conyngham Township has standing in that it was itself unlawfully billed by Respondent for billing period January 1, 2021 to March 31, 2021 for sewage treatment at the Township Municipal Building located at 10 Pond Hill Road, Mocanaqua, Pennsylvania, as “Customer Number 5390” and as referenced at the end of paragraph 1 of the Formal Complaint filed in the instant matter. The Pennsylvania Utility Commission has jurisdiction over the instant matter pursuant to the Public Utility Code, 66 Pa.C.S. Section 101, et seq. Regarding refunds, the Commission has explicit authority to grant refunds “with interest” and “on behalf of all patrons subject to the same rate of the public utility.” See 66 Pa.C.S. Section 1312 (entitled “Refunds”). In addition, the formal complaint form provided by the Commission and filed in the instant matter states the following at the bottom of page 3 in blue, bold type: “Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.”

9. Denied as a conclusion of law to which no response is required. By way of further answer, Conyngham Township has standing in that it was itself unlawfully billed by Respondent for billing period January 1, 2021 to March 31, 2021 for sewage treatment at the Township Municipal Building located at 10 Pond Hill Road, Mocanaqua, Pennsylvania, as “Customer Number 5390” and as referenced at the end of paragraph 1 of the formal complaint. Although Conyngham Township is not seeking “class action status” as averred by Respondent’s Counsel, the Commission does have explicit authority to grant refunds “with interest” and “on behalf of all patrons subject to the same rate of the public utility.” See 66 Pa.C.S. Section 1312 (entitled “Refunds”).

10. Denied as a conclusion of law to which no response is required. By way of further

answer, Conyngham Township has standing in that it was itself unlawfully billed by Respondent for billing period January 1, 2021 to March 31, 2021 for sewage treatment at the Township Municipal Building located at 10 Pond Hill Road, Mocanaqua, Pennsylvania, as “Customer Number 5390” and as referenced at the end of paragraph 1 of the formal complaint. Although Conyngham Township is not seeking “class action status” as averred by Respondent’s Counsel, the Commission does have explicit authority to grant refunds “with interest” and “on behalf of all patrons subject to the same rate of the public utility.” See 66 Pa.C.S. Section 1312 (entitled “Refunds”).

11. Denied as a conclusion of law to which no response is required.

12. Denied as a conclusion of law to which no response is required.

13. Denied as a conclusion of law to which no response is required.

14. Denied as a conclusion of law to which no response is required. By way of further answer, the physical location of Respondent’s plant is irrelevant. At all relevant times prior to September 11, 2020, Complainant and Respondent were parties to a bulk services agreement whereby Respondent would bill the Conyngham Township Sewer Authority (“CTSA”) for sewage treatment for customers of CTSA. A Certificate of Public Convenience was not required for that arrangement. Respondent unilaterally terminated the arrangement on or about September 11, 2020 by written notice to the Township and began operations beyond its corporate limits by billing Conyngham Township customers directly. Conyngham Township is beyond the corporate limits of Respondent.

15. Denied. Strict proof is demanded.

16. Admitted in part, denied in part. It is believed and therefore averred that at some point Conyngham Township hired an engineer to study or consult related to sewage treatment issues and created the Conyngham Township Sewer Authority. The balance of the averment is denied. Strict

proof is demanded.

17. Denied as stated. Strict proof is demanded.

18. Admitted in part, denied in part. Specifically, it is admitted that Conyngham Township owns and maintains sewer lines for the purpose of conveying sewage to Respondent's processing plant located on property owned by Respondent located in Conyngham Township. The Township's ownership, in most cases, ends at the sewage lateral and individual property owners are responsible from that point. The balance of the averment is denied. Strict proof is demanded.

19. Admitted in part, denied in part. It is admitted that Conyngham Township was a party to a bulk services agreement with Respondent for sewage treatment of customers of CTSA. It is denied that the arrangement ended November of 2020. By way of further answer, Respondent ended the relationship on or about September 11, 2020 with written notice to the Township.

20. Admitted in part, denied in part. It is admitted that Conyngham Township is now considered by Respondent to be a rate payer of Respondent and received a bill in January 2021 for the period January 1 to March 31, 2021 for "Sewer Charge". The balance of the averment is denied. Strict proof is demanded.

21. Denied as a conclusion of law to which no response is required. By way of further answer, the rights asserted by Conyngham Township in this action derive from the PUC Code and Pennsylvania Law, not from a private contract. Regardless of the actual date of termination of the bulk services agreement by Respondent (See Paragraph 19 of Respondent's Preliminary Objections) the parties agree the agreement was terminated by Respondent. Respondent was at no point in time authorized by law or contract to act as a "public utility" within the corporate limits of Conyngham Township without a Certificate of Public Convenience.

22. Denied as a conclusion of law to which no response is required.

23. Denied as a conclusion of law to which no response is required. By way of further answer, the Commission has explicit authority to grant refunds “with interest” and “on behalf of all patrons subject to the same rate of the public utility.” See 66 Pa.C.S. Section 1312 (entitled “Refunds”).

24. Denied as a conclusion of law to which no response is required. By way of further answer, the Commission has explicit authority to grant refunds “with interest” and “on behalf of all patrons subject to the same rate of the public utility.” See 66 Pa.C.S. Section 1312 (entitled “Refunds”).

25. Denied as a conclusion of law to which no response is required. By way of further answer, the Commission has explicit authority to grant refunds “with interest” and “on behalf of all patrons subject to the same rate of the public utility.” See 66 Pa.C.S. Section 1312 (entitled “Refunds”).

26. Denied as a conclusion of law to which no response is required.

WHEREFORE, CONYNGHAM TOWNSHIP respectfully requests that the Commission deny and dismiss the Preliminary Objections of Respondent and award such other relief as the Commission deems just and proper.

DATED: January 29, 2021



BY: _____

Vito J. DeLuca, Esquire
PA ID # 68932
Attorney for Complainant
Conyngham Township
26 Pierce Street
Kingston, PA 18704
(570)288-8000


VERIFICATION

I, Eddie Whitebread, have read the foregoing document and know the contents thereof.

The contents of the document are true and correct to the best of my knowledge, except as to those matters alleged on information and belief, and as to those matters, I believe them to be true.

I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

CONYNGHAM TOWNSHIP

BY:  _____
Eddie Whitebread, President

Dated: 01/29/2021

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that this day I served a copy of the foregoing Answer to Preliminary Objections upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa.Code Section 1.54.

Via Email Only to:

Sean W. Logsdon, Esquire
85 Drasher Road
Drums, PA 18222
sean@karpowichlaw.com

DATED: January 29, 2021



BY: _____

Vito J. DeLuca, Esquire
PA ID # 68932
Attorney for Complainant
Conyngham Township