



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 3, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Conyngham Township v.
Sanitary Sewer Authority of the Borough of Shickshinny
Docket No. C-2021-3023624
I&E Notice of Intervention

Dear Secretary Chiavetta:

On behalf of the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission, enclosed for electronic filing please find the **Notice of Intervention** in the above-referenced matter. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie M. Wimer'.

Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522
Bureau of Investigation and Enforcement
(717) 772-8839
stwimer@pa.gov

SMW/jfm
Enclosures

cc: Hon. Conrad A. Johnson, OALJ-Pittsburgh (*via e-mail only*)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Conyngham Township	:	
	:	
v.	:	Docket No.: C-2021-3023624
	:	
Sanitary Sewer Authority of	:	
the Borough of Shickshinny	:	

**NOTICE OF INTERVENTION OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

Pursuant to 52 Pa. Code §§ 5.71-76, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby gives Notice of Intervention in the above-captioned proceeding. In support thereof, I&E states as follows:

I. Introduction

1. Act 129 of 2008, 66 Pa.C.S. § 308.2, authorizes the Commission to establish bureaus, offices and positions to, *inter alia*, take appropriate enforcement actions that are necessary to insure compliance with the Public Utility Code and Commission regulations and orders. 66 Pa.C.S. § 308.2(a)(11).

2. In accordance with Act 129, the Commission established I&E to serve as the prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129*

of 2008; *Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

3. I&E, through its prosecutors, has standing and authority to participate in all Commission proceedings and to initiate enforcement actions and prosecutions in the public interest. *Id.* at 5.

4. The names and contact information for I&E's senior prosecutor is as follows:

Stephanie M. Wimer
PA Attorney ID No. 207522
stwimer@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
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II. Background

5. By letter dated February 1, 2021, I&E initiated an informal investigation of the Sanitary Sewer Authority of the Borough of Shickshinny ("Authority") consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113. *See* Bp8CaseIDNo. 3023904.

6. The investigation focused on the Authority's alleged provision of wastewater service to Pennsylvania consumers for compensation without holding a Certificate of Public Convenience issued by the Commission.

7. Two rounds of data requests and the responses thereto were exchanged between I&E and the Authority.

8. The findings of the investigation led to a determination that violations of the Public Utility Code were substantiated, and I&E was prepared to initiate a formal enforcement proceeding against the Authority, pursuant to 52 Pa. Code § 3.113(b)(2).

9. Simultaneously, Conyngham Township (“Township”) filed a Formal Complaint (“Complaint”) against the Sanitary Sewer Authority of the Borough of Shickshinny (“Authority”) in the above-captioned matter on January 8, 2021, alleging that the Authority is operating in the Township without a Certificate of Public Convenience. The Township requests that the Authority immediately stop billing Township residents and return all monies collected after a Certificate of Public Convenience is obtained.

10. On January 26, 2021, the Authority filed an Answer disputing the material allegations set forth in the Township’s Complaint. The Authority’s Answer also raised New Matter.

11. Separately, but concurrently on January 26, 2021, the Authority filed Preliminary Objections raising a lack of standing on behalf of the Township to represent the Township’s residents, legal insufficiency of the Complaint, lack of Commission jurisdiction over the subject matter and a lack of jurisdiction for the Commission to award the requested relief.

12. On January 29, 2021, the Township filed an Answer to the Authority’s Preliminary Objections.

13. Also on January 29, 2021, the Township filed a Reply to the New Matter raised by the Authority.

14. By Motion Judge Assignment Notice dated February 8, 2021, Administrative Law Judge Conrad A. Johnson (“ALJ Johnson”) was assigned as the presiding officer in the above-captioned matter.

15. By First Interim Order dated March 5, 2021, ALJ Johnson sustained the Authority’s Preliminary Objections to the extent that the Township lacks standing to represent the Township’s residents. ALJ Johnson denied the Authority’s Preliminary Objections in all other respects as well as the Authority’s request to dismiss the Complaint.

16. By Notice dated March 8, 2021, a telephonic prehearing conference was scheduled for April 7, 2021. Also on March 8, 2021, a Prehearing Conference Order was issued.

17. On March 31, 2021, the Township and the Authority filed their respective prehearing conference memoranda.

18. The telephonic prehearing conference was held on April 7, 2021 at which a litigation schedule that included the service of written direct testimony and written rebuttal testimony was established.

19. By letter dated April 22, 2021, the Authority requested that the matter be assigned to a mediator.

20. By Second Interim Order dated May 27, 2021, ALJ Johnson referred the matter to mediation and held the litigation schedule in abeyance pending completion of the mediation process. The Second Interim Order provides that “the litigation schedule proposed during the prehearing conference may require revisions in the event mediation proves unsuccessful.” *Id.* at 5-6.

21. By Notice dated August 13, 2021, an initial call-in telephonic hearing is scheduled for September 15, 2021.

22. On August 16, 2021, a Prehearing Order was issued to the parties.

23. The Prehearing Order does not contemplate a litigation schedule that includes the service of written testimony.

III. Intervention

24. As the bureau within the Commission that is responsible for ensuring compliance with the Public Utility Code and Commission regulations and orders, I&E is intervening in this proceeding to protect the public interest. I&E asserts that the Authority's termination of the Sewage Treatment Agreement with the Township, which had been a single bulk customer, and its subsequent provision of wastewater service to numerous Township residents for compensation renders it to be a public utility subject to the Commission's jurisdiction. I&E further asserts that the Authority should be directed to apply for a Certificate of Public Convenience and issue refunds, with the legal rate of interest, to Township residents for the rates that were charged to and received from customers located in the Township, pursuant to 66 Pa.C.S. 1312(a).

25. I&E is separately, but concurrently, filing a Motion for Continuance of the Initial Hearing currently scheduled for September 15, 2021 to permit additional time for I&E to collect discovery and to reestablish a litigation schedule that contains the service of written testimony that would include written testimony from an I&E expert witness.

26. I&E asserts that time and resources are conserved with its intervention in this proceeding now, as I&E would have filed a separate complaint against the Authority with regard to similar violations that I&E uncovered in its investigation. Additionally, given that

it was anticipated that the litigation schedule might require revisions if the mediation process proved to be unfruitful and the attempt at mediation failed as recently as mid-August 2021, I&E's intervention will not substantially delay the proceeding or prejudice the parties.

Respectfully submitted,



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Date: September 3, 2021

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Conyngham Township :
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 v. : Docket No.: C-2021-3023624
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 Sanitary Sewer Authority of :
 the Borough of Shickshinny :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Notification by Electronic Mail as indicated:

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Dated: September 3, 2021