



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 14, 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 Prehearing Memorandum

Dear Secretary Chiavetta:

Enclosed for filing please find the Bureau of Investigation and Enforcement's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

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

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

SMW/ac
Enclosures

cc: Hon. Conrad A. Johnson, OALJ-Pittsburgh (*via e-mail only*)
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*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	:	

**PREHEARING CONFERENCE MEMORANDUM OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON:

Pursuant to the Third Interim Order Converting Initial Call-in Telephone Hearing into a Second Prehearing Conference (“Third Interim Order”) that was issued on September 9, 2021 and Section 5.222(d)(1) of the Commission’s regulations, 52 Pa. Code § 5.222(d)(1), the Bureau of Investigation and Enforcement (“I&E”) hereby submits this Prehearing Conference Memorandum in the above-captioned proceeding in advance of the Second Prehearing Conference scheduled for September 15, 2021.

I. BACKGROUND

By letter dated February 1, 2021 and addressed to the Sanitary Sewer Authority of the Borough of Shickshinny (“Authority”), I&E initiated an informal investigation of the Authority pursuant to 52 Pa. Code § 3.113(a) for possible violations of the Public Utility Code and the Commission’s regulations concerning allegations that the Authority has been providing wastewater service to Pennsylvania consumers for compensation without holding a Certificate of Public Convenience issued by the Commission. *See* Bp8CaseIDNo. 3023904.

Two rounds of data requests and the responses thereto were exchanged between I&E and the Authority. I&E's review of the responses 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).

Simultaneously, Conyngham Township ("Township") filed a Formal Complaint ("Complaint") against the 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.

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. Separately, but concurrently on January 26, 2021, the Authority also 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.

On January 29, 2021, the Township filed an Answer to the Authority's Preliminary Objections. Also on January 29, 2021, the Township filed a Reply to the New Matter raised by the Authority.

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.

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.

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.

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

The telephonic prehearing conference was held on April 7, 2021 during which a litigation schedule was established.

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

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.

By Notice dated August 13, 2021, an initial call-in telephonic hearing was scheduled for September 15, 2021 at 10:00 a.m. On August 16, 2021, a Prehearing Order was issued to the parties.

On September 3, 2021, I&E filed a Notice of Intervention and an unopposed Motion for Continuance of the initial call-in telephone hearing. Also on September 3, 2021, I&E served Interrogatories and Requests for Production of Documents – Set I directed to the Authority.

By Third Interim Order issued on September 9, 2021, the initial call-in telephonic hearing that was scheduled for September 15, 2021 at 10:00 a.m. was converted into a Second Prehearing Conference and the parties were directed to each file a Prehearing Memorandum on September 14, 2021 before 4:00 p.m.

I&E files this Prehearing Memorandum in preparation for the Second Prehearing Conference, and pursuant to the Third Interim Order and 52 Pa. Code § 5.222(d)(1).

II. I&E PREHEARING CONFERENCE MEMORANDUM

A. Presently Identified Issues

I&E deems the question central to the disposition of this matter to be whether the Authority is operating as an uncertificated, *de facto* public utility providing wastewater and/or sewage treatment service to customers for compensation located in the Township. Such unlawful service appears to have commenced on January 1, 2021, following the termination of the bulk sewage treatment agreement between the Authority and the Township. Ancillary issues include the potential imposition of civil penalties pursuant to 66 Pa.C.S. 3301§ (a)-(b) and the issuance of refunds to customers located in the Township pursuant to 66 Pa.C.S. § 1312(a).

B. I&E Witnesses

I&E expects to present the testimony of the following witness:

Matthew T. Lamb, P.E.
Fixed Utility Valuation Engineer
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services
400 North Street
Harrisburg, PA 17120

I&E anticipates that Mr. Lamb will testify that the Authority is subject to the Commission's jurisdiction as a public utility providing sewage collection, treatment or disposal for the public for compensation and should be certificated. I&E expects that Mr. Lamb's testimony will lend support to the relief in the form of civil penalties and refunds that I&E intends to seek.

I&E reserves the right to call other witnesses as necessary to address any issues that have been or are later raised during the course of this proceeding and will identify such additional witnesses within a reasonable period of time prior to the commencement of hearings.

C. Proposed Litigation Schedule

The parties conferred and have agreed upon the following proposed litigation schedule:

<u>Date</u>	<u>Event</u>
October 21, 2021	Direct Written Testimony Due (all parties)
November 22, 2021	Rebuttal Testimony Due (all parties)
December 22, 2021	Discovery Ends
January 5, 2022	Stipulations Due
January 19, 2022	Evidentiary Hearing

D. List of Exhibits

At the present time, I&E proposes to introduce the following exhibits to be admitted into evidence:

1. A map of the Authority's service area
2. The Authority's Articles of Incorporation
3. The Authority's Certificate of Incorporation
4. The Borough of Shickshinny's ordinance that created the Authority
5. Response to I&E Data Requests – Set I, No. 5(a) providing that the Authority was created by the Borough of Shickshinny
6. Response to I&E Data Requests – Set I, No. 5(h) providing that the only municipality that joined the authority is the Borough of Shickshinny
7. The Sewage Treatment Agreement between the Authority and the Township
8. A letter dated September 11, 2020 terminating the Sewage Treatment Agreement between the Authority and the Township
9. Response to I&E Data Requests – Set II, No. 2(a) providing that January 1, 2021 was the date in which the Authority began directly invoicing customers in the Township
10. A sample invoice that the Authority sends to Township customers
11. Response to I&E Data Requests – Set II, No. 2I providing the method in which the Authority calculates charges to customers in the Township

I&E notes that it served Interrogatories and Requests for Production of Documents – Set I directed to the Authority on September 3, 2021, and Authority’s responses thereto are due on or before September 23, 2021. Accordingly, I&E reserves the right to supplement its list of exhibits to include any pertinent evidence that may be obtained throughout the discovery process of this proceeding, which is on-going.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 772-8839
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Date: September 14, 2021

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 14, 2021