

**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 MOTION FOR STAY 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 MOTION FOR STAY OF RESPONDENT SANITARY SEWER AUTHORITY OF THE BOROUGH OF SHICKSHINNY, answers as follows:

1. No response required.
2. No response required.
3. No response required.
4. No response required.
5. No response required.
6. Admitted in part, denied in part. It is admitted that the mediation was unsuccessful. It is

specifically denied that ‘no mediation was actually conducted.’

7. No response required.

8. No response required.

9. No response required.

10. No response required.

11. No response required.

12. Denied. There is no 'sewage treatment agreement at issue' as stated by Respondent. The 'sewage treatment agreement' attached to respondent's motion was terminated by respondent in September 2020 and Complainant acquiesced to same. Whether or not a bulk services agreement existed or somehow is found by a Court to continue to exist is entirely irrelevant to the instant proceedings. The matter before this Court is related to Respondent's unlawful billing of Township customers directly, outside its jurisdictional limits, without a certificate of public convenience.

13. Denied. Respondent actually terminated the agreement in September 2020. The reasoning suggested by Respondent is not supported by fact and is irrelevant to this proceeding.

14. No response required.

15. No response required.

16. Admitted in part, denied in part. It is admitted that wastewater is still sent to Respondent's plant. The balance of the averment is denied.

17. Denied as a conclusion of law.

18. Denied as a conclusion of law.

19. Denied. First, it should go without saying that it is absurd for Respondent to take this 180 degree position at this point in the litigation. Second, the PUC's jurisdiction in this matter is clear and not based on the bulk services agreement that had existed between the parties. Respondent directly billed Conyngham Township RESIDENTS in an amount that was 60% higher than what the Conyngham Township Sewer Authority was being billed per EDU under the terminated bulk

services agreement. Respondent never had an agreement with the individual customers and had no right to bill customers directly under the terminated agreement or the PUC code without a certificate of public convenience. Even if we assumed for a moment that a Court would ever find that the agreement was not terminated, PUC jurisdiction was exclusive the moment Respondent billed residents directly without a certificate of public convenience. It is that conduct which triggered Respondent's status as a 'public utility' under the PUC Code and supports the jurisdiction of this Court.

20. No response required.

21. Admitted in part, denied in part. It is admitted that arbitration was requested by the Township and that said request was denied by Respondent. The balance of the averment is denied as ridiculous.

22. Admitted in part, denied in part. It is admitted that the agreement required arbitration. By way of further answer, the Township chose not to petition the Court to compel same, thereby expressing its consent to the termination. The Township acquiesced to the termination by Respondent and, instead, notified Respondent that since the parties were no longer parties to a bulk services agreement, Respondent was required by the PUC code to secure a certificate of public convenience. The Township filed the complaint with the PUC when Respondent acted as a 'public utility' by operating beyond its jurisdictional limits for compensation by billing Township residents directly for wastewater services.

23. Denied. Regardless of the status of the terminated bulk services agreement, Respondent was never authorized to bill Township residents directly. The terminated agreement was between the Township and Respondent. Township residents were not a party to the agreement. It is precisely this action of Respondent in directly billing Township residents without a certificate of public

convenience that brings the matter under PUC jurisdiction. The existence or non-existence of a bulk services agreement is irrelevant.

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

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

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

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

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

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

30. Denied as a conclusion of law to which no response is required. The Township chose not to compel arbitration or file a breach of contract action thereby acquiescing to the termination.

Respondent's action in billing Township customers directly was a violation of the PUC code therefore this venue is the exclusive venue for these claims.

31. Denied as a conclusion of law to which no response is required. Complainant suggests that public policy concerns dictate that Respondent should be fined in such an amount as to deter other utilities from engaging in such activities in violation of the PUC Code.

32. Denied as a conclusion of law to which no response is required. By way of further answer, Respondent could have filed for the certificate of public convenience at any time after it was warned by Respondent's counsel that it was required – December 2020. If it had done that, it would have been able to legally bill Township residents for the service it was providing. To this date, Respondent has not filed for the certificate of public convenience despite the intervention of the PUC Enforcement Division on behalf of the public interest.

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

34. Denied. The agreement was terminated and the Township acquiesced to said termination.

Township customers, including the Township itself, paid for the service when Respondent unlawfully billed them for it. Respondent has not billed for service since 2021 and has still not filed for a certificate of public convenience which would permit Respondent to legally bill Township residents.

35. Denied. Township residents were never a party to the terminated bulk services agreement. Respondent's actions of billing Township residents directly was a violation of the PUC code and not even arguably a violation of the terminated agreement.

36. Denied. Respondent unlawfully billed residents directly in an amount that increased the per EDU charge for treatment by over 60%. The Conyngham Township Sewer Authority (CTSA) decided to temporarily reduce its charge to residents for wastewater conveyance by the same amount in order to limit the impact on its customers until Respondent could be forced to comply with the PUC code. Due to the actions of Respondent and the reduced revenue received by CTSA over the past 18 months, the shortfall will have to be made up at some point by Township customers. Due to CTSA's reduction in the amount it charges its customers for conveyance to make up for the 60% increase charged by Respondent, CTSA is losing an estimated \$30,000 annually in revenue.

37. Denied.

38. Denied.

39. Admitted.

40. Denied. The PUC Code requires that utilities operating outside political boundaries have a bulk service agreement or a certificate of public convenience. Respondent clearly did not, and to this date does not have a certificate of public convenience. Respondent also never had an agreement with residents of Conyngham Township and residents were not a party to the terminated bulk

services agreement with the Township.

41. Admitted. The Conyngham Township Sewer Authority is not a party to this action and was not a party to the terminated bulk services agreement between the Township and Respondent. Once the agreement was terminated and Respondent was no longer billing CTSA for wastewater treatment, it would be unlawful for CTSA to bill its customers for wastewater treatment.

42. Admitted. The Township is a party to this action ONLY by virtue of the fact that it was unlawfully billed for wastewater treatment services at its Township Administrative Building. The Township timely paid the unlawfully billed amounts to Respondent upon receipt of the bills.

43. Admitted.

44. Admitted in part, denied in part. The Township did pay to Respondent all amounts it unlawfully billed to it for wastewater services to the Township's Administrative building. No bills were received by the Township since Fall 2021. Respondent was advised that their continued action in billing without the bulk services agreement or the certificate of public convenience in violation of Pennsylvania law would likely result in a finding of greater fines by this Court. Respondent, apparently, has decided not to bill instead of properly securing the certificate.

45. Denied as unintelligible.

46. Denied. If Respondent had complied with the law, they would be lawfully billing all customers. To this date, Respondent has full control over its ability to collect from Township residents for services provided by filing for the certificate of public convenience.

47. Denied.

48. Denied as to what Respondent intends to do.

49. Admitted.

50. Denied. I believe that potential fines at this point would be much higher since Respondent

still had not secured the certificate of public convenience required by the PUC Code.

51. Denied. Respondent operated outside its jurisdictional limits when it billed Township customers without a separate agreement or certificate of public convenience. The existence or non-existence of the terminated bulk services agreement with the Township is irrelevant to this fact. That is the violation that is properly before this Court.

52. Denied. Respondent could stop its losses by properly filing for a certificate of public convenience as is required by the PUC code. It is unconscionable and inconceivable for holders of the public trust to be so reckless with that trust and expose its residents and customers to such severe economic consequences.

53. Denied.

54. Denied.

55. Denied as a conclusion of law to which no response is required. By way of further answer, it was RESPONDENT who has advanced this utterly ridiculous argument one week prior to final hearing on the matter by: 1) failing to submit so much as a sentence of testimony; and, 2) requesting numerous delays.

56. Denied as stated.

57. Denied as stated. The complaint speaks for itself. By way of further answer, Respondent operated in the Township as a public utility when it billed Township residents directly for wastewater treatment. Although Respondent has not billed customers directly since fall of 2021, Respondent, at any time, could begin billing again in violation of the PUC Code and Township customers, including Complainant, would have no recourse.

58. Admitted in part, denied in part. The Township has not received a bill for wastewater services to its Township Administrative Building from Respondent since 2021. The Township has

no knowledge as to whether Respondent billed other residents.

59. Denied. Although the activity complained of has ceased since 2021, Respondent, at any time, can again bill Township residents in violation of the PUC Code and Township residents would have no recourse.

60. Denied. The record speaks for itself.

61. Denied. By way of further answer, although the activity complained of has ceased since 2021, Respondent, at any time, can again bill Township residents in violation of the PUC Code and Township residents would have no recourse.

62. Denied.

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

64. Denied. By way of further answer, it is specifically denied that Respondent's ridiculous position that it should never have been able to terminate the original agreement in the first place is a 'threshold issue.' In fact, although the activity complained of has ceased since 2021, Respondent, at any time, can again bill Township residents in violation of the PUC Code and Township residents would have no recourse. In addition, jurisdiction is properly before this Court since Respondent has already committed violations of the PUC Code by billing Township residents directly without a certificate of public convenience.

65. Denied as a misstatement of law to which no response is required.

66. Denied as a conclusion of law to which no response is required. By way of further answer, it has been Respondent who has presented this ridiculous 180-degree argument one week from the date of hearing on the matter after numerous delays resulting from requests from Respondent.

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

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

- 69. Denied as a conclusion of law to which no response is required.
- 70. Denied as a conclusion of law to which no response is required.
- 71. Denied as a conclusion of law to which no response is required.
- 72. Denied as a conclusion of law to which no response is required.
- 73. Denied as a conclusion of law to which no response is required.
- 74. Denied as a conclusion of law to which no response is required.
- 75. Denied as a conclusion of law to which no response is required.
- 76. Denied as a conclusion of law to which no response is required.
- 77. Denied.
- 78. No response required.
- 79. No response required.
- 80. No response required.

WHEREFORE, CONYNGHAM TOWNSHIP respectfully requests that the Commission deny and dismiss the request of Respondent and schedule final hearing in this matter awarding such other relief as the Commission deems just and proper.

DATED: June 8, 2022



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

VERIFICATION

I, Vito J. DeLuca, Esquire, Solicitor for Conyngham Township, 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

A handwritten signature in black ink, appearing to be 'Vito J. DeLuca', written over a horizontal line.

BY: _____
Vito J. DeLuca, Solicitor

Dated: 06/08/2022

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PUBLIC UTILITY COMMISSION

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that this day I served a copy of the foregoing ANSWER TO MOTION FOR STAY OF RESPONDENT SANITARY SEWER AUTHORITY OF THE BOROUGH OF SHICKSHINNY 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

Stephanie Wimer, Esq.
PO Box 3265
Harrisburg, PA 17105-3265
stwimer@pa.gov



DATED: June 8, 2022

BY: _____

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