



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 10, 2022

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 Answer in Opposition to Motion for Stay

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Answer in Opposition** of the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission to the Motion for Stay of the Sanitary Sewer Authority of the Borough of Shickshinny 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

Enclosures

cc: Hon. Conrad A. Johnson, OALJ-Pittsburgh (*via email only – w/Word version*)
Nicholas Misknic, OALJ Legal Assistant (*via email only*)
Michael L. Swindler, I&E Deputy Chief Prosecutor (*via email 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	:	

**ANSWER OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
IN OPPOSITION TO
THE MOTION FOR STAY OF THE
SANITARY SEWER AUTHORITY OF
THE BOROUGH OF SHICKSHINNY**

TO ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON:

Pursuant to 52 Pa. Code § 5.61(a), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby files this Answer in Opposition to the Motion for Stay of the Sanitary Sewer Authority of the Borough of Shickshinny (“Authority”) filed on May 11, 2022 in the above-captioned proceeding. During the third Prehearing Conference, which was held on May 17, 2022, the presiding officer, Administrative Law Judge (“ALJ”) Conrad A. Johnson, established a deadline of June 10, 2022 to respond to the Authority’s Motion for Stay.

In its Motion, the Authority requests that this proceeding be stayed pending the outcome of a yet to be filed action for Declaratory Judgment in the Court of Common Pleas that would request that the Authority’s own September 11, 2020 letter terminating its Sewage Treatment Agreement with Conyngham Township (“Township”) be rendered invalid. The Authority, however, already **stipulated** in this proceeding that it cancelled the Sewage Treatment

Agreement with the Township.¹ This factual stipulation effectively established that violations of the Public Utility Code occurred and narrowed the issues for the evidentiary hearing that had been scheduled for May 17, 2022 to be the amount of relief, *i.e.*, civil penalty, refunds, and directive to apply for a Certificate of Public Convenience, that would be imposed on the Authority. The Authority's Motion for Stay is merely a last-minute, desperate maneuver to avoid any financial repercussions from its admitted violations of the Public Utility Code and it should swiftly be denied as being contrary to the public interest.

I. BACKGROUND

A. The Authority is Acting Beyond its Corporate Limits and Must be Regulated by the Commission

The Authority's admits that it terminated the Sewage Treatment Agreement with the Township,² which renders the sewage treatment and disposal service that it provides to Township customers for compensation to be public utility service subject to Commission jurisdiction. Municipal corporations that operate any plant, equipment, or other facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits are required to obtain a Certificate of Public Convenience prior to operating.³ Public utility service that is furnished or rendered by a municipal corporation beyond its corporate limits is subject to regulation and control by the Commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility.⁴ The Public Utility Code includes municipal authority in the definition of "municipal corporation."⁵ The Township is not

¹ Joint Stipulation of Fact No. 11 (filed on January 12, 2022).

² *Id.*

³ 66 Pa.C.S. § 1102(a)(5).

⁴ 66 Pa.C.S. § 1501.

⁵ *State College Borough Authority v. Pa. Public Utility Comm'n*, 31 A.2d 557 (Pa. Super. 1943).

a member of and has not joined the Authority.⁶ Additionally, the Authority admits that it terminated the Sewage Treatment Agreement with the Township.⁷ Therefore, the Authority's sewage treatment and disposal service to Township customers for compensation is beyond the Authority's corporate limits.

The purpose of subjecting a municipally operated public utility which renders service beyond its corporate limits to the Commission's jurisdiction is to protect users of the service who are not residents of the municipality.⁸ Commonwealth Court has stated as follows:

Prior to the Public Utility Law of 1937, the Public Service Commission had no jurisdiction over a municipally operated public utility whether or not it rendered service beyond its corporate limits.... A realistic appreciation of the temptation to discriminate against the outside users impelled the change. When a municipality limits its service to its own voters the power of the ballot is perhaps an adequate protection. The officials who manage the property are elected by and, therefore, beholden to the consumers for their power to manage.... It is the consumer outside the corporate limits, who has no right to participate in the governmental affairs of the municipality and, therefore, in its selection of management, who needs protection against the natural inclination of management to favor its constituents at the expense of the outsider who has no voice.

Id. citing *State College Borough Authority v. Pa. Pub. Util. Comm'n*, 31 A.2d 557, 562 (Pa. Super. 1943).

Here, Township customers have no protection over the management of the Authority's sewage treatment and disposal service that is provided to them without a Township agreement or representation on the Authority. Between January 1, 2021 and September 30, 2021, the Authority charged Township customers for sewage treatment and disposal service a rate of \$5.00

⁶ Joint Stipulation of Fact No. 7 (filed on January 12, 2022); 53 Pa.C.S. § 5603(a) (relating to method of incorporation); and 53 Pa.C.S. § 5604 (relating to the procedure set forth in the Municipality Authorities Act for municipalities withdrawing from and joining in joint authorities).

⁷ Joint Stipulation of Fact No. 11 (filed on January 12, 2022); 53 Pa.C.S. § 5607(d)(13) (permitting municipal authorities to make contracts of every name and nature and to execute all instruments necessary for the carrying on of its business).

⁸ *County of Dauphin v. Pa. Pub. Util. Comm'n*, 634 A.2d 281, 283 (Pa. Cmwlth. 1993).

more per calendar year quarter than customers located in other municipalities that are served by the Authority.⁹ Embedded in this arbitrarily more expensive rate was a quarterly charge of \$4.61 for conveyance, which is a service that the Authority does not provide to Township customers.¹⁰ The Authority's discriminatory charges upon Township customers following the admitted termination of the Sewage Treatment Agreement illustrate why Commission oversight in this instance is crucial. Staying this proceeding will further delay regulation over the Authority by the Commission, which would not be in the public interest.

B. The Authority's Motion for Stay Should be Denied

The Authority filed the Motion for Stay and therefore is the proponent of a rule or order from the Commission.¹¹ Therefore, the Authority has the burden to establish the requisite elements in support of the issuance of a stay.¹² "A litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence which is substantial and legally credible."¹³

Through its un rebutted written direct testimony and the Joint Stipulations of Fact, I&E illustrated that the Authority is the violating the Public Utility Code. As the wrongdoer, it is inappropriate for the Authority to request a stay to preserve the *status quo* as it would cause *per se* harm to Township customers. Accordingly, for this reason and the reasons explained in greater detail below, the Authority has not established through a preponderance of the evidence that it satisfied all of the requisite elements to stay this proceeding.

⁹ I&E Statement No. 1 at 15; I&E Exhibit 14.

¹⁰ I&E Statement No. 1 at 16; I&E Exhibit 16.

¹¹ 66 Pa.C.S. § 332(a).

¹² *Petition of Librandi Machine Shop, Inc. for Declaratory Order; Librandi Machine Shop, Inc. v. Metropolitan Edison Company and Borough of Middletown*, Docket No. P-2018-3000047 (Order entered March 10, 2022).

¹³ *Id.* citing *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

II. Answer

As further support to deny this Motion for Stay, I&E offers the following responses in enumerated fashion:

A. Procedural History

1. Admitted in part and denied in part. It is admitted that the Township filed a Formal Complaint (“Complaint”) against the Authority alleging that the Authority is unlawfully operating in the Township without a Certificate of Public Convenience. I&E is without knowledge or information sufficient to form a belief as to the date in which the Authority was served with the Complaint and, therefore, the averment is denied and proof thereof is demanded.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted. By way of further answer, the Authority’s Preliminary Objections were denied because, *inter alia*, the presiding Administrative Law Judge (“ALJ”) correctly found that there is a question of fact as to whether the Authority is conducting an activity in the Township that requires the Authority to have a Certificate of Public Convenience.¹⁴ The ALJ properly noted that the Authority may face a civil penalty in the event that it is demonstrated that the Authority is operating in the Township without a Certificate of Public Convenience.¹⁵ The ALJ also correctly found that the Commission is empowered to order refunds for any rate received by a public utility that is determined to be unjust,

¹⁴ *Conyngham Township v. Sanitary Sewer Authority of the Borough of Shickshinny*, Docket No. C-2021-3023624, First Interim Order Sustaining In Part and Denying In Part Preliminary Objections and Denying Respondent’s Request for Dismissal of the Complaint (March 5, 2021) at 10.

¹⁵ *Id.*

unreasonable, or in violation of any regulation or order of the Commission, pursuant to 66 Pa.C.S. § 1312(a).¹⁶

6. Admitted in part and denied in part. It is admitted that this matter was referred to mediation. Since the mediation occurred prior to I&E's intervention, I&E is without knowledge or information sufficient to form a belief as to the remainder of the averments in this Paragraph.

7. Admitted. By way of further answer, prior to its intervention in the instant matter, I&E conducted an informal investigation of the Authority. The findings of I&E's investigation led to a determination that violations of the Public Utility Code were substantiated. Specifically, the Authority's termination of the Sewage Treatment Agreement with the Township and its subsequent provision of wastewater service to Township residents and businesses for compensation renders the Authority to be a public utility subject to the Commission's jurisdiction. In lieu of initiating a separately docketed formal enforcement proceeding against the Authority for providing *de facto* public utility wastewater service, I&E elected to intervene in the instant matter.

8. Admitted. By way of further answer, a litigation schedule was established that provided for the submission of written direct testimony from all parties on October 21, 2021, and written rebuttal testimony from all parties on November 22, 2021. The Authority failed to submit any written testimony.

9. Denied. The parties filed a Joint Stipulation of Facts on January 12, 2022. By way of further Answer, the Authority stipulated that it cancelled the Sewage Treatment Agreement with the Township on September 11, 2020.¹⁷

¹⁶ *Id.* at 9.

¹⁷ Stipulation of Fact No. 11.

10. Admitted.

11. Admitted.

B. The Authority's September 11, 2020 Letter that Terminated the Sewage Treatment Agreement

12. Denied. The Sewage Treatment Agreement is appended to the Authority's Motion for Stay as Exhibit 2. The Sewage Treatment Agreement speaks for itself. The remaining averments state a conclusion of law to which no response is required. To the extent a response is deemed to be required, the averments are denied.

13. Denied. The September 11, 2020 letter that terminated the Sewage Treatment Agreement is appended to the Authority's Motion for Stay as Exhibit 1. The letter speaks for itself. It is denied that the influx and infiltration issues referenced in the letter by the Authority have any merit. The remaining averments state a conclusion of law to which no response is required. To the extent a response is deemed to be required, the averments are denied.

14. Admitted.

15. Admitted. By way of further answer, between January 1, 2021 and September 30, 2021, the Authority directly billed Township customers a rate greater than what had been agreed to in the Sewage Treatment Agreement and a rate greater than other customers served by the Authority.

16. Denied. I&E is without knowledge or information sufficient to form a belief as to the Township's actions and, therefore, the averment is denied and proof thereof is demanded.

17. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

18. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

19. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further answer, there is a question of fact as to whether the Authority is conducting or has conducted an activity in the Township that requires the Authority to have a Certificate of Public Convenience. This factual inquiry is not dependent on the outcome of a yet to be filed Declaratory Order from an outside court.

20. Admitted.

21. Denied. I&E is without knowledge or information sufficient to form a belief as to the averments in this Paragraph and the same are therefore denied and proof thereof is demanded.

22. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

23. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

C. Legal Standard for Motions for Stay

24. Denied. The averments in (a) through (d) state a conclusion of law to which no response is required. To the extent a response is deemed to be required, they are denied. By way of further answer, the Commission has not adopted the standards set forth in *Pa. Pub. Util. Comm'n v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983) (“*Process Gas*”) to pending, non-final matters that do not seek to stay the effect of final Commission Orders. The Commission has stated that “[t]he *Process Gas* criteria more properly pertain to stay requests of

Commission Orders and not to the evaluation of the likely success of a civil complaint proceeding involving legal issues which at present appear to be beyond our ken.”¹⁸

25. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further answer, in *Pa. Public Util. Comm’n, Office of Small Business Advocate, Office of Consumer Advocate, and MetEd Industrial Users Group & Penelec Industrial Customer Alliance v. Pa. Electric Co.*, Docket Nos. M-2008-2036188, *et al.* (Order entered March 25, 2010), the Commission determined that the petition for stay of a previously entered Commission Order did not meet the standards articulated in *Process Gas*. However, the Commission found that it was in the public interest to grant a stay of its final Order as the underlying matter involved rates and the Commission did not want to subject customers to potential confusion and rate uncertainty if the Commission’s final Order were not affirmed on appeal. Granting a stay of the instant matter would, on the other hand, create rate uncertainty for Township customers as the Authority continues to provide unregulated sewage treatment and disposal service to the public. The Authority can discontinue at any time its self-imposed moratorium on charging Township customers for sewage treatment and disposal service and instead charge whatever rate it desires, which is what occurred between January 1, 2021 and September 30, 2021. Granting a stay in this matter is not in the public interest.

D. The Authority has not Met the Standards for Stay

- i. It is Improper to Request the ALJ to Make a Determination as to the Merits of a Currently Non-Existent Court of Common Pleas Action Concerning a Subject Matter that is Beyond the Scope of the Commission’s Jurisdiction

¹⁸ *Application of Aqua Pennsylvania Wastewater, Inc., pursuant to Sections 507, 1103, and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority*, Docket No. A-2019-3015173 (Order Entered August 31, 2020) (“*Application of Aqua*”).

26. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

27. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further answer, the Authority is asking the ALJ to determine whether the Authority made a substantial case on the merits for a yet to be filed action in a Court of Common Pleas on a subject matter that is beyond the Commission's jurisdiction. In the *Application of Aqua*, the Commission stated that "[a] review of the first prong of *Process Gas* makes clear that such a request is inappropriate because it requires the evaluation of the likely success of a newly asserted cause of action in another tribunal relating to issues over which the Commission has no jurisdiction."

28. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

29. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

30. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further answer, if the Township had not filed a Complaint against the Authority, I&E would have filed a Formal Complaint against the Authority pursuant to 52 Pa. Code § 3.113(b)(2), as I&E's informal investigation of the Authority substantiated violations of 66 Pa.C.S. § 1102(a)(5) and 66 Pa.C.S. § 1501.

31. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further answer, it is not in the public interest to further delay the instant proceeding and subject Township customers to unregulated wastewater service provided by the Authority.

32. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further answer, it is denied that the Commission has the requisite authority to determine whether the Sewage Treatment Agreement was unilaterally terminated. Rather, the proper focus of this proceeding is whether the Authority is conducting or has conducted an activity in the Township that requires the Authority to have a Certificate of Public Convenience.

33. Admitted in part and denied in part. It is admitted that the Authority never stopped providing the service. The remainder of the averments in this Paragraph state a conclusion of law to which no response is required. To the extent a response is deemed to be required, they are denied.

34. Admitted in part and denied in part. It is admitted that the Township as well as residents and businesses in the Township receive sewage treatment and disposal service provided by the Authority. The remainder of the averments in this Paragraph state a conclusion of law to which no response is required. To the extent a response is deemed to be required, they are denied.

35. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further answer, the Authority violated 66 Pa.C.S. § 1102(a)(5) and 66 Pa.C.S. § 1501, and customers in the Township were harmed in that they paid a rate greater than all other Authority customers for sewage treatment and disposal service.

36. Denied. I&E is without knowledge or information sufficient to form a belief as to the rates that the Conyngham Township Authority charges. The Conyngham Township Authority is not a party to this proceeding nor is it subject to the Commission's jurisdiction. Therefore, the averment is denied and proof thereof is demanded.

37. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

ii. As Violations of the Public Utility Code have Occurred and/or are Occurring, Staying this Matter Would Cause Irreparable Harm to the Public Interest

38. Denied. By way of further answer, when evaluating the appropriateness of a civil penalty in settled or litigated proceedings, the Commission examines, *inter alia*, whether the civil penalty is sufficient to deter future violations.¹⁹ It is not in the public interest to settle a matter for a civil penalty that is not sufficient to deter future violations.

39. Admitted.

40. Denied as stated. By way of further answer, there is also a question of fact as to whether the Authority is conducting or has conducted an activity in the Township that requires the Authority to have a Certificate of Public Convenience.

41. Admitted upon information and belief.

42. Admitted upon information and belief.

43. Admitted upon information and belief.

44. Admitted upon information and belief.

45. Denied. The Authority's own actions in providing wastewater service to the public for compensation beyond its corporate limits subjected itself to Commission jurisdiction.

46. Denied. I&E is without knowledge or information sufficient to form a belief as to the averments in this Paragraph and, therefore, the same are denied and proof thereof is demanded.

¹⁹ 52 Pa. Code § 69.1201(c)(8).

47. Denied. I&E is without knowledge or information sufficient to form a belief as to the averments in this Paragraph and, therefore, the same are denied and proof thereof is demanded. By way of further answer, if the Authority does not desire to obtain a Certificate of Public Convenience, then the Authority should not have engaged or be engaged in providing extraterritorial wastewater service to the public for compensation.

48. Admitted upon information and belief.

49. Denied. I&E is without knowledge or information sufficient to form a belief as to the averments in this Paragraph and, therefore, the same are denied and proof thereof is demanded. By way of further response, any non-payment by the Township to the Authority for sewage treatment and disposal service is due to the fault of the Authority in terminating the Sewage Treatment Agreement.

50. Admitted. Pursuant to 66 Pa.C.S. § 3301(a)-(b), the Commission is authorized to impose a civil penalty of \$1,000 per day for each day that the violation continues. The Authority provided wastewater service to Township customers for compensation between January 1, 2021 and September 30, 2021 – a total of 272 days. I&E’s requested civil penalty of \$100,000 is far below the statutory maximum civil penalty of \$272,000.

51. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

52. Denied. The averments in (a) through (d) are denied. It is specifically denied that the Authority will be irreparably harmed if the instant proceeding is not stayed. To the contrary, I&E has shown that the Authority violated 66 Pa.C.S. § 1102(a)(5) and 66 Pa.C.S. § 1501 in providing wastewater service to the public for compensation without a Certificate of Public Convenience. “When the Legislature declares certain conduct to be unlawful it is tantamount in law to calling it injurious to the public. For one to continue such unlawful conduct constitutes irreparable injury.” *Pa. Pub. Util. Comm’n v. Israel*, 52 A.2d 317, 321 (Pa. 1947).

53. Denied. I&E is without knowledge or information sufficient to form a belief as to the averments in this Paragraph and, therefore, the same are denied and proof thereof is demanded.

54. Denied. By way of further answer, I&E hereby incorporates its response to Paragraph 52.

55. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further answer, the instant proceeding was initiated nearly one and a half years ago. Holding an evidentiary hearing in this matter at this juncture is not premature and there are no due process concerns. The Authority has had ample opportunity to defend itself in this matter but elected not to submit any written testimony.

56. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

iii. The Issuance of a Stay Would Substantially Harm I&E, which is Responsible for Representing the Public Interest

57. Admitted in part and denied in part. It is admitted that the Authority's action to directly bill Township customers between January 1, 2021 and September 30, 2021 is a part of the Complaint. It is denied that this is the sole activity that is the subject of the Complaint. Another issue includes the Authority's continued provision of wastewater service to customers located outside of its corporate limits without first obtaining a Certificate of Public Convenience. Additionally, the Authority may reinstitute billing to Township customers at any time and charge whatever rate it desires.

58. Denied. I&E is without knowledge or information sufficient to form a belief as to the averments in this Paragraph and, therefore, the same are denied and proof thereof is demanded.

59. Denied. The Authority continues to provide wastewater service to the public in the Township, which is outside of its corporate limits. The Authority may reinstitute billing to Township customers at any time and charge whatever rates it desires. Township customers remain powerless with respect to the Authority's wastewater service.

60. Admitted.

60.²⁰ Denied. I&E is without knowledge or information sufficient to form a belief as to the averments in this Paragraph and, therefore, the same are denied and proof thereof is demanded.

61. Denied. Prolonging the Authority's *de facto* public utility service harms the public interest. Township customers are unable to exercise any control over the service provided and rates charges by the Authority.

62. Denied. I&E already presented written testimony and was prepared for the evidentiary hearing that was scheduled for May 17, 2022. I&E will strenuously object to any attempt by the Authority to alter the litigation schedule by submitting testimony at this late juncture.

iv. Staying this Matter Adversely Affects the Public Interest as it Would Permit the Provision of *De Facto* Public Utility Service

63. Admitted.

64. Denied. The Authority could have sought a legal determination as to the effect of the September 11, 2020 letter when this proceeding started one and a half years ago. Staying this matter merely temporarily saves the Authority from facing any financial repercussions from its admitted violations of the Public Utility Code. However, staying this

²⁰ The Authority included two paragraphs numbered as "60."

proceeding would harm customers in the Township, which could raise *Israel, supra.*, to claim *per se* harm due to a violation of their statutory rights.

65. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

66. Admitted. By way of further answer, the Authority's Motion for Stay was filed at the last minute and compromised the efficiency of this proceeding.

67. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

68. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied.

69. Denied. Currently, there are no pending proceedings in Luzerne County upon which to base a Motion for Stay.

70. Denied. Currently, there is no Declaratory Judgment action. Further delaying this proceeding based on a non-existent action is non-sensical.

71. Denied. By way of further answer, there is no other proceeding pending on which to base a stay of the instant matter. Even if there were, the Authority's Motion for Stay rests on the assumption that it will prevail in the Declaratory Judgment matter, which is speculative at best.

E. The Authority's Motion for Stay should be Denied as being Contrary to the Public Interest

72. Denied. It is not appropriate to grant a stay of this matter when the Authority is continuing to provide wastewater service outside its corporate limits and may reinstitute directly billing affected customers at any time.

73. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further answer, the Authority is asking the ALJ to determine whether the Authority made a substantial case on the merits for a yet to be filed action in a Court of Common Pleas on a subject matter that is beyond the Commission's jurisdiction. In the *Application of Aqua, supra.*, the Commission determined that such a request is inappropriate.

74. Denied. It is expressly denied that the rights of Township ratepayers would be protected by staying this proceeding.

75. Denied. Staying this matter would preserve the *status quo*, which adversely affects the public interest as the Authority's provision of wastewater service to extraterritorial customers constitutes public utility service that must be regulated by this Commission.

76. Denied. It is denied that the Authority should be granted any leeway to further disrupt the litigation schedule that was established in this proceeding. The Authority had the opportunity to submit both written direct and written rebuttal testimony yet elected not to present a case.

F. The Authority's Request for Expedited Treatment Is Moot

77. Denied. It is expressly denied that the Authority filed the Motion within a reasonable period of time. The Authority elected to file the Motion for Stay five (5) days prior to the evidentiary hearing and nearly one and a half years after the inception of this proceeding.

78. Admitted.

79. Denied as stated. The evidentiary hearing scheduled for May 17, 2022, was converted into a third prehearing conference to discuss the Authority's Motion for Stay.

80. Denied as stated. The evidentiary hearing scheduled for May 17, 2022 was converted into a third prehearing conference where a deadline of June 10, 2022 was established to respond to the Motion for Stay.

III. CONCLUSION

For the reasons set forth above, the Authority's Motion for Stay should be denied and this proceeding should continue without further delay with an evidentiary hearing being promptly scheduled.

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
stwimer@pa.gov

Date: June 10, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Conyngham Township :
 :
 v. : Docket No.: C-2021-3023624
 :
 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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Stephanie M. Wimer
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Dated: June 10, 2022