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July 13, 2022

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (Commission) please find the Motion to Establish a Reestablished Litigation Schedule of Sanitary Sewer Authority of the Borough of Shickshinny in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service. The opposing parties do not concur in this motion.

Please contact me if you have any questions regarding this filing.

Very Truly Yours,



Sean W. Logsdon, Esquire

SWL:

Cc: Administrative Law Judge Conrad Johnson (Via Electronic means)
Sanitary Sewer Authority of the Borough of Shickshinny
Vito J. DeLuca, Esquire (Via Electronic means)
Stephanie M. Wimer, Esquire (Via Electronic means)

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of:

CONYNGHAM TOWNSHIP,	:	
	:	
Complainant	:	
	:	
v.	:	COMPLAINT DOCKET
	:	NO. C-2021-3023624
SANITARY SEWER AUTHORITY OF THE BOROUGH OF SHICKSHINNY,	:	
	:	
Respondent	:	
	:	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that this day I served a copy of the foregoing Motion to Establish a Reestablished Litigation Schedule 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:

Vito J. DeLuca, Esquire
DeLuca Law Offices
26 Pierce Street
Kingston, PA 18704
vjd@delucalawoffices.com

Via Email Only to:

Stephanie M. Wimer, Esquire
PA Public Utility Commission
Bureau of Investigation & Enforcement
P.O. Box 3265
Harrisburg, PA 17120
stwimer@pa.gov

Date: July 13, 2022



Sean W. Logsdon, Esquire
Attorney for Sanitary Sewer
Authority of the Borough of
Shickshinny

**COMMONWEALTH OF PENNSYLVANIA
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v.	:	COMPLAINT DOCKET
	:	NO. C-2021-3023624
SANITARY SEWER AUTHORITY	:	
OF THE BOROUGH OF	:	
SHICKSHINNY,	:	
	:	
Respondent	:	
	:	

**MOTION OF THE SANITARY SEWER AUTHORITY
OF THE BOROUGH OF SHICKSHINNY FOR A
REESTABLISHED LITIGATION SCHEDULE**

TO ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON:

AND NOW COMES Sanitary Sewer Authority of the Borough of Shickshinny (SSABS or the "Authority"), pursuant to 52 Pa. Code § 5.103, to file this motion ("Motion") requesting that the Honorable Administrative Law Judge Conrad Johnson (the "ALJ") enter an Order establishing a reestablished Litigation Schedule in this matter. This Motion is opposed by Conyngham Township and I&E.

I. Introduction and Summary

On January 8, 2021, SSABS was served with the Formal Complaint filed by Conyngham Township (the "Township") against SSABS at Docket No. C-2021-3023624, alleging that SSABS is operating in the Township without a Certificate of Public Convenience. On January 27, 2021, SSABS filed an Answer and New Matter to the Formal Complaint. Also, on January

27, 2021, SSABS filed Preliminary Objections to the Formal Complaint. The preliminary objections raised the issue of the PUC's jurisdiction over private contractual disputes.

On May 11, 2022 SSABS filed a Motion to Stay this matter so it may seek a declaration that the September 11, 2020 unilateral termination of the Parties' Sewage Treatment Agreement was void ab initio. This issue of whether the agreement was terminated or could have been terminated in September of 2020 goes directly to the jurisdiction of this court.

On July 1, 2022 the Court denied the Motion to Stay, and issued an Order stating the following:

1. That Respondent Sanitary Sewer Authority of the Borough of Shickshinny's Motion to Stay filed in this proceeding at Docket No. C-2021-3023624 is denied.
2. That the Parties shall confer and agree upon a *reestablished litigation schedule*, which provides for a *fourth prehearing conference date, the submission of any additional written testimony, and an evidentiary hearing date*. (Emphasis Added).
3. That after the Parties have conferred and agreed upon a reestablished litigation schedule, counsel for Complainant Conyngham Township shall file and serve a proposed and reestablished litigation schedule by **Friday, July 15, 2022**.
4. That after Friday, July 15, 2022, a fourth prehearing conference shall be scheduled to discuss a reestablished litigation schedule and any other procedural matters.

II. Background

A. Procedural History of the Instant Case

1. As stated above, on January 6, 2021, SSABS was served with the Formal Complaint filed by the Township alleging that SSABS is operating in the Township of Conyngham without a Certificate of Public Convenience.
2. On January 26, 2021, SSABS filed an Answer and New Matter to the Formal Complaint.
3. Also, on January 26, 2021, SSABS filed Preliminary Objections to the Formal Complaint.
4. On March 5, 2021, Judge Johnson issued an Interim Order on the Preliminary Objections sustaining the objections in part and denying in part. SSABS's Preliminary Objections were sustained to the extent that the Township lacks standing to represent the residents of Conyngham Township.
5. The Preliminary Objections were denied in all other respects including the request to dismiss the Complaint.
6. The Matter was referred for mediation, however, no mediation was actually conducted and the process was unsuccessful.
7. On September 9, 2021 the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") filed a Notice of Intervention.
8. On October 15, 2021 a Forth Interim Order was issued for a litigation schedule and prehearing matters.
9. On January 13, 2021 a Joint Stipulation of Facts was filed by the Parties.

10. Orders were issued on January 14, 2022, and March 1, 2022, granting SSABS's motion for a continuance while the Parties attempted to reach a settlement of this matter.

11. No settlement has been able to be reached in this matter.

12. The July 1, 2022 Order directed the parties to confer and agreed upon a reestablished litigation schedule.

13. Despite communications and proposed schedules being circulated, the parties are unable to agree on a reestablished litigation schedule.

14. SSABS wishes to allocate a time period to submit written testimony as indicated in the July 1, 2022 Order.

15. SSABS wishes to amend its answer to the complaint and amend the parties' stipulations, based on the written testimony and any rebuttal testimony.

16. The Township and I&E object to SSAB submitting any written testimony or any amendments to the stipulations or pleadings.

III. Legal Standard

17. Extensions of time are governed under 52 Pa. Code § 1.15, which provides that Commission may extend that time period "upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act".

18. Relevant and material evidence is admissible, and additional evidence may be presented by the parties before or during a hearing, and, as necessary, at the request of the Commission or presiding officer, after the hearing. 52 Pa. Code §§ 5.401; 5.404.

19. Administrative proceedings require that all parties be afforded an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. *In re: Shenandoah Suburban Bus Lines, Inc*, 158 Pa.Super. 638, 46 A.2d 26 (Pa. Super. 1946).

IV. SSABS's proposed Reestablished Litigation Schedule

20. SSABS proposes the following reestablished litigation schedule:

- July 30, 2022 for any amendments to the pleadings
- August 15, 2022 for any written testimony/rebuttal to any previously submitted testimony
- August 30, 2022 for any rebuttal to any written testimony submitted by SSABS or rebuttal to any additional written testimony submitted by any party
- September 15, 2022 for amended stipulations of facts
- September 30, 2022 for a 4th prehearing conference
- October 1, 2022 for record hearing

21. SSABS has attempted since the onset of this matter to amicably settle the dispute with limited financial strain on SSABS.

22. Settlement has been unsuccessful, and the matter appears to require a hearing.

23. SSABS is seeking a very limited window of time to submit the requested written testimony of two, possibly three witnesses.

24. Because the pleadings in this matter are so factually limited, SSABS requests that it be permitted to amend its answer to very clearly spell out its defenses.

25. The written testimony submitted may require an amendment to the stipulation, which should in turn limit the issues for the Court to consider.

26. No party will be prejudiced by the schedule as proposed by SSABS.

27. The Township has not paid SSABS for sewage processing services since the third quarter of 2021.

28. No Conyngham ratepayer has been billed by SSABS for sewage processing services since the third quarter of 2021.

29. SSABS has not received any compensation from the Township, and the Township has indicated that it will not pay for any services until a certificate of public convenience is obtained by SSABS or a new service agreement is established.

30. The reestablished schedule as proposed by SSABS in no way prejudices the Township or I&E.

31. SSABS has no method to nor does it intend to stop sewage service to the Township.

32. Since the activity complained of in the Formal Complaint has ceased, there is no harm to any other interested party in granting SSABS a limited time to present written testimony.

33. No party has filed a Motion for Summary Judgment or Judgment on the pleadings, revealing that the factual issues will be heard by the Court, and all parties should be permitted to fully develop the record as a matter of fairness.

34. SSABS would agree that all interested parties should have the right to provide rebuttal testimony to any written testimony submitted by SSABS.

35. Issuing an order reestablishing the litigation schedule as proposed by SSABS would not substantially harm or prejudice any other Party to this proceeding.

36. The Court's Seventh Interim Order contemplates the submission of written testimony, however, the Township and I&E object to the same.

V. Conclusion

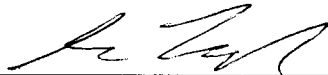
WHEREFORE, for all of the above reasons, SSABS respectfully requests that the Honorable Administrative Law Judge Conrad Johnson issue an Order reestablishing the litigation schedule in this matter as follows:

- July 30, 2022 for any amendments to the pleadings
- August 15, 2022 for any written testimony/rebuttal to any previously submitted testimony
- August 30, 2022 for any rebuttal to any written testimony submitted by SSABS or rebuttal to any additional written testimony submitted by any party
- September 15, 2022 for amended stipulations of facts
- September 30, 2022 for a 4th prehearing conference
- October 30, 2022 for record hearing

DATE: 7/13/2022

Respectfully submitted,

By:


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