



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

July 19, 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 to Establish a Reestablished  
Litigation Schedule**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Answer of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E") in Opposition to the Sanitary Sewer Authority of the Borough of Shickshinny's Motion to Establish a Reestablished Litigation Schedule 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 'Steph M. Wimer', is written over a light blue horizontal line.

Stephanie M. Wimer  
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Bureau of Investigation and Enforcement  
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SMW/ac  
Enclosures

cc: Hon. Conrad A. Johnson, OALJ-Pittsburgh (*via email only*)  
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	:	

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**ANSWER OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT  
IN OPPOSITION TO THE MOTION TO ESTABLISH  
A REESTABLISHED LITIGATION SCHEDULE  
OF THE SANITARY SEWER AUTHORITY OF  
THE BOROUGH OF SHICKSHINNY**

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**TO ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON:**

Pursuant to 52 Pa. Code § 5.103(c), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby files this Answer in opposition to the Motion to Establish a Reestablished Litigation Schedule of the Sanitary Sewer Authority of the Borough of Shickshinny (“Authority”), which was filed on July 13, 2022 in the above-captioned proceeding.<sup>1</sup> In support of its Answer, I&E avers as follows:

**I. BACKGROUND**

The presiding officer, Administrative Law Judge (“ALJ”) Conrad A. Johnson, issued a Seventh Interim Order in this proceeding on July 1, 2022, which, *inter alia*, directed the

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<sup>1</sup> The Authority’s Motion was filed pursuant to 52 Pa. Code § 5.103. Motion at 1. Therefore, an Answer may be filed up to twenty (20) days from the date of service of the Authority’s Motion pursuant to 52 Pa. Code 5.103(c). I&E notes that the Authority failed to include a notice apprising the parties of the responsive pleading deadline, which is required pursuant to 52 Pa. Code § 5.103(b).

parties to confer and agree upon a reestablished litigation schedule that provides for a fourth prehearing conference date, the submission of any additional written testimony, and an evidentiary hearing date.<sup>2</sup>

On July 12, 2022, the Authority emailed the following reestablished litigation schedule to the parties, noting that all proposed dates are from July 15, 2022:

- 15 days for any amendments to the pleadings
- 30 days for any written testimony/rebuttal to any previously submitted testimony
- 45 days for any rebuttal to any written testimony submitted by the Authority or rebuttal to any additional written testimony submitted by any party
- 60 days for amended stipulations of facts
- 75 days 4<sup>th</sup> prehearing conference

The Authority's proposed reestablished litigation schedule did not include an evidentiary hearing date, as instructed by the Seventh Interim Order. Instead, the Authority's proposed reestablished litigation schedule includes a number of items that have already occurred in this proceeding, such as the submission of written testimony and a stipulation of facts. The Authority's Motion fails to allege that any new evidence was discovered or that a change in circumstances occurred to support its attempt to introduce new testimony at this juncture or to amend factual stipulations. Rather, the Authority is merely seeking a "second bite of the apple" to now submit testimony and amended factual stipulations because it failed to submit

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<sup>2</sup> *Conyngham Township v. Sanitary Sewer Authority of the Borough of Shickshinny*, Docket No. C-2021-3023624, Seventh Interim Order Denying Respondent's Motion for Stay and Directing Parties to Confer and Propose a Reestablished Litigation Schedule (July 1, 2022) at 11 ("Seventh Interim Order").

testimony in the Fall of 2021, in accordance with the litigation schedule that was established in this proceeding.<sup>3</sup>

On July 13, 2022, I&E responded to the Authority's email by proposing that a fourth prehearing conference be held during the week of July 25, 2022 (excluding July 29) or the week of August 1, 2022. I&E further proposed that the evidentiary hearing be held during the week of September 26, 2022 (excluding September 30) or the week of October 3, 2022. I&E also indicated that the Authority's proposal to submit written testimony at this late stage, as well as file amended pleadings, which were unspecified at the time of the Authority's proposal, and an amended stipulation of facts, was unacceptable to I&E. Conyngham Township ("Township") agreed with I&E's proposed reestablished litigation schedule and concurred with I&E's objection to Authority's proposal to now submit testimony, amended pleadings, and amended factual stipulations.

I&E's and the Township's objections to the Authority's proposed reestablished litigation schedule resulted in the filing of the instant Motion.

## **II. ANSWER**

As further support to deny the Authority's Motion, 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

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<sup>3</sup> *Conyngham Township v. Sanitary Sewer Authority of the Borough of Shickshinny*, Docket No. C-2021-3023624, Fourth Interim Order for Litigation Schedule and Prehearing Matters (October 15, 2021) ("Fourth Interim Order").

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 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.<sup>4</sup> 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.<sup>5</sup> 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, unreasonable, or in violation of any regulation or order of the Commission, pursuant to 66 Pa.C.S. § 1312(a).<sup>6</sup>

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.

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<sup>4</sup> *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.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 9.

7. Admitted in part and denied in part. It is admitted that I&E filed a Notice of Intervention. It is denied that I&E's Notice of Intervention was filed on September 9, 2021. Instead, it was filed on September 3, 2021. 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, the litigation schedule that was established pursuant to the Fourth Interim Order 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.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted upon information and belief.

15. Admitted in part and denied in part. It is admitted that the Authority seeks to amend its Answer to the Township's complaint and the Joint Stipulation of Facts. I&E is

without knowledge or information sufficient to form a belief as to the remainder of the averments in this Paragraph and therefore, they are denied.

16. Admitted. By way of further answer, it is I&E's position that the Authority has been provided with due process because it was afforded notice and the opportunity to be heard, yet elected not to present any written testimony in accordance with the original litigation schedule that was established in this proceeding. Now, after the Authority's Motion for Stay has been denied, the Authority seeks to further delay the conclusion of this proceeding by proposing a reestablished litigation schedule that provides the Authority with a second chance to present its case.

B. Legal Standard

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. By way of further answer, 52 Pa. Code § 1.15 speaks for itself.

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. By way of further answer, 52 Pa. Code §§ 5.401 and 5.404 speak for themselves. Moreover, 52 Pa. Code § 5.401(b)(2)(iii) provides that evidence will be excluded if the probative value is outweighed by considerations of undue delay or waste of time.

19. Denied. The averment states a conclusion of law to which no response is required. By way of further answer, the Authority has not been deprived of due process. The Authority made the decision not to file written direct testimony on October 21, 2021, or written rebuttal testimony on November 22, 2021 in accordance with the Fourth Interim

Order. Now, many months later and after the Authority's Motion for Stay failed, the Authority seeks yet another attempt at providing written testimony.

C. The Proposed Reestablished Litigation Schedule

20. Admitted upon information and belief. By way of further answer, the Authority's proposed reestablished litigation schedule is flawed in that it does not allow time for discovery with the normal 20-day responsive timeframe in between the August 15, 2022 proposed date for the Authority to file written testimony and the August 30, 2022 proposed date for responsive testimony. Moreover, the proposed date of October 1, 2022 for the evidentiary hearing is on a Saturday. Further, the litigation schedule proposed by the Authority in its Motion differs from the litigation schedule, *supra.*, that the Authority circulated *via* email to the parties.

21. Denied. I&E is without knowledge or information sufficient to form a belief as to what would constitute financial strain on the Authority and, therefore, the averment is denied and proof thereof is demanded. By way of further answer, alleged financial strain does not shield an entity that is subject to the Commission's jurisdiction from the imposition of a civil penalty. Rather, the civil penalty amount must be sufficient to deter future violations. Otherwise, the civil penalty is not in the public interest.<sup>7</sup>

22. Admitted.

23. Admitted in part and denied in part. It is admitted that the Authority seeks at the late posture of this proceeding the ability to submit written testimony. It is denied that the Authority's request is reasonable.

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<sup>7</sup> 52 Pa. Code § 69.1201(c)(8).



24. Admitted in part and denied in part. It is also admitted that the Authority seeks at the late posture of this proceeding the ability to amend pleadings. It is denied that the Authority's request is reasonable.

25. Admitted in part and denied in part. It is admitted that the Authority seeks at the late posture of this proceeding to amend the Joint Stipulation of Facts, which were already agreed to by the parties and filed on January 12, 2022. It is denied that the Authority's request is reasonable.

26. Denied. The public interest is harmed by any further delay in this proceeding. Preservation of the *status quo* constitutes *per se* harm to Township customers who have been and continue to be served by the Authority absent regulation by the Commission, as the Authority may resume billing Township customers at any time.

27. Denied. I&E is without knowledge or information sufficient to form a belief as to payments made by the Township to the Authority for sewage processing services and, therefore, the averment is denied and proof thereof is demanded.

28. Admitted upon information and belief. By way of further answer, the Authority may resume billing Township customers at any time.

29. Admitted in part and denied in part. It is admitted that the Township has indicated that it will not pay for any services until the Authority obtains a Certificate of Public Convenience from the Commission or enters into a new sewage treatment agreement with the Township. I&E is without knowledge or information sufficient to form a belief as to payments made by the Township to the Authority for sewage processing services and, therefore, the averment is denied and proof thereof is demanded.

30. Denied. I&E represents the public interest, which is harmed by any further delay in this proceeding. Preservation of the *status quo* constitutes *per se* harm to Township customers who have been and continue to be served by the Authority absent regulation by the Commission since the Authority may resume billing Township customers at any time.

31. Denied. I&E is without knowledge or information sufficient to form a belief as to the truth of this averment and the same is therefore denied and proof thereof is demanded.

32. Denied. Township customers have no representation on the Authority and no control over the Authority's decision making as it relates to rates and service. The Authority may commence charging Township customers at any time absent an effective sewage treatment agreement or regulation by the Commission. Further extending the procedural schedule in this matter, which began nearly one-and-a-half years ago, unreasonably prolongs the conclusion of this proceeding.

33. Denied. The Authority was previously afforded the opportunity to submit written testimony in the Fall of 2021 and elected not to do so.

34. Admitted in part and denied in part. It is admitted that the Authority has proposed that interested parties have the right to provide written testimony that is responsive to the Authority's written testimony. It is denied that any written testimony submitted by the Authority at this late juncture is reasonable.

35. Denied. I&E represents the public interest, which is harmed by any further delay in this proceeding. Preservation of the *status quo* constitutes *per se* harm to Township customers who are currently being served by the Authority absent regulation by the Commission since the Authority may resume billing Township customers at any time.

36. Denied as stated. The Seventh Interim Order directed the parties to confer and agree upon a fourth prehearing conference date, an evidentiary hearing date, and whether any additional written testimony should be submitted. Both I&E and the Township vehemently oppose the Authority's absurd position that it should be afforded a second opportunity to submit written testimony in this matter.

### III. CONCLUSION

For the reasons set forth above, the Authority's Motion to Establish a Reestablished Litigation Schedule should be denied, and an evidentiary hearing should be scheduled without further delay.

Respectfully submitted,



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Date: July 19, 2022

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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: July 19, 2022