

**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

**COMPLAINANT CONYNGHAM TOWNSHIP'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

TO THE HONORABLE THE JUDGES OF SAID COURT:

And now comes the Complainant, by and through Counsel, Vito J. DeLuca, Esq., DeLUCA LAW OFFICES, and files these Proposed Findings of Fact and Conclusions of Law, in the above-captioned matter, for the reasons hereinafter set forth:

PROPOSED FINDINGS OF FACT

1. “[SSABS] was formed on September 25, 1973 as a municipal authority for the purpose of constructing, improving, furnishing and equipping a sanitary sewage system and treatment works, to acquire land necessary to effectuate this purpose and to perform any necessary items incidental to this purpose.” Joint Stipulation of Facts, #5.
2. “The general scope of the [SSAB’s] activities includes, but is not limited to, providing treatment of domestic wastewater and discharging the treated wastewater to the

Susquehanna River in accordance with a permit issue by DEP.” Joint Stipulation of Facts, #6.

3. “The sole municipality that joined [SSABS] is the municipality that formed it, which is the Borough of Shickshinny.” Joint Stipulation of Facts, #7. See also, Direct Testimony of Matthew T. Lamb, P.E., page 7, lines 6-10.
4. “The sewer lines located in [Conyngham Township] are owned and maintained by the CTSA, and those lines convey sewage to [SSABS]’s processing plant located on property owned by [SSABS] located in [Conyngham Township].” Joint Stipulation of Facts, #8.
5. “[SSABS] provides sewage treatment service to the Borough of Shickshinny and a portion of [Conyngham Township], among other areas.” Joint Stipulation of Facts, #9.
6. “[SSABS] and [Conyngham Township] entered into a Sewage Treatment Agreement on November 18, 1992 wherein [SSABS] agreed to provide sewage treatment and disposal services to [Conyngham Township] as a single bulk customer (“Sewage Treatment Agreement”).” Joint Stipulation of Facts, #10. See also, Joint Exhibit A.
7. “By letter dated September 11, 2020, [SSABS] notified [Conyngham Township] that it was cancelling the Sewage Treatment Agreement.” Joint Stipulation of Facts, #11 and Joint Exhibit B.
8. The 1992 Bulk Services Agreement was, in fact terminated by SSABS. See Direct Testimony of Matthew T. Lamb, P.E., page 7, lines 6-10, I&E Exhibit 10. SSABS provided a copy of the 1992 Bulk Services Agreement in response to I&E Data Requests, Set I, No 7(a):

“7. Reference Paragraph 19 of the Authority’s Preliminary Objections dated January 26, 2021 in the Commission proceeding at Docket No. C-2021-3023624. Provide the following:

- a. a copy of the service contract between the Authority and Conyngham Township, *which terminated in November of 2020*; and ...” *[Emphasis added.]*

See also, Direct Testimony of Matthew T. Lamb, P.E., page 13, lines 8-12, I&E Exhibit

11. SSABS provided a copy of a 9/11/2020 letter from Counsel for SSABS to

Conyngham Township in response to I&E Data Requests – Set I, No. 7(b):

“7. Reference Paragraph 19 of the Authority’s Preliminary Objections dated January 26, 2021 in the Commission proceeding at Docket No. C-2021-3023624. Provide the following:

...

b. *Document(s) that formally terminated the service contract.*” *[Emphasis added.]*

9. Prior to January, 2021, Conyngham Township, through its legal counsel notified SSABS of its requirement to secure a Certificate of Public Convenience prior to beginning operations in Conyngham Township since it no longer was a party to a bulk services agreement with Conyngham Township. PRE-SERVED DIRECT TESTIMONY OF ERIC KUBASEK, p. 6, lines 13-20 and Complainant Exhibit 5.
10. SSABS failed to secure a Certificate of Public Convenience prior to direct billing Conyngham Township customers, and failed to secure said Certificate from the Pennsylvania Utilities Commission even as of the date of hearing in this matter. Direct Testimony of Matthew T. Lamb, P.E., page 21, lines 19-21.
11. No evidence was presented by SSABS that it had in fact secured a Certificate of Public Convenience at any time relevant to the proceeding. See transcript of 10/4/2022 evidentiary hearing.
12. “On January 1, 2021, April 1, 2021, and July 1, 2021, [SSABS] sent a quarterly invoice directly to ratepayers/customers located in [Conyngham Township] a rate of \$75.00 per quarter.” Joint Stipulation of Facts, #13.

13. “There are approximately 220 residential customers and eight commercial customers located in [Conyngham Township].” Joint Stipulation of Facts, #14.
14. The rate charged Conyngham Township customers for *treatment alone* was **\$5.00 per EDU more** than the rate it charged its own customers for both *treatment and conveyance*. See Direct Testimony of Matthew T. Lamb, P.E., page 15, lines 1-9.
15. As of January 2021 SSABS had not completed a rate study in at least the previous five (5) years “which appears to establish its rates are arbitrary and may not be apportioned properly or reasonable based upon usage of the Authority’s system.” Direct Testimony of Matthew T. Lamb, P.E., page 15, lines 9-12.
16. “In addition to being arbitrarily charged \$5.00 more per calendar year quarter, the Authority also charges [Conyngham Township] customers \$4.61 for conveyance, which is a service that the Authority does not provide to Township customers.” Direct Testimony of Matthew T. Lamb, P.E., page 16, lines 4-9.
17. Conyngham Township is itself a customer of SSABS. PRE-SERVED DIRECT TESTIMONY OF ED WHITEBREAD, lines 14-21.
18. Conyngham Township received the three billings and paid to SSABS the full amount billed. PRE-SERVED DIRECT TESTIMONY OF ED WHITEBREAD, lines 70-74.
19. “From January 1, 2021 to September 23, 2021, [SSABS] collected an approximate total of \$54,684.68 from ratepayers located in [Conyngham Township].” Joint Stipulation of Facts, #15.
20. Only after PUC I&E Division intervened in the matter in the fall of 2021 did SSABS stop billing Conyngham Township customers. Joint Stipulation of Facts, #17.

PROPOSED CONCLUSIONS OF LAW

1. Conyngham Township is a proper complainant under Section 66 Pa.C.S. §§ 701,
2. SSBS is a “public utility” as that term is defined in the Pennsylvania Public Utility Code and is subject to PUC oversight and regulation. 66 Pa.C.S. §§ 102.
3. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. §§ 102, 701, 1102, and 1501.
4. The Public Utility Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory. 66 Pa.C.S. §1102(a)(5).
5. SSABS has the burden of proof to show that it is in compliance with the Pennsylvania Public Utilities Code. 66 Pa.C.S. § 315(c).
6. Findings of fact necessary to support an adjudication must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. 2 Pa.C.S. § 704.
7. SSABS has not established that it is in compliance with Section 1102 of the Code in that it has failed to secure a certificate of public convenience despite beginning operations outside its corporate limits in January 2021. 66 Pa.C.S. §§ 1102.
8. Complainant Conyngham Township and all patrons billed by Defendant SSABS are entitled to a refund of all monies paid to Defendant with interest at the legal rate. See 66 Pa.C.S. § 1312(a).

Respectfully submitted,

DeLUCA LAW OFFICES

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

Vito J. DeLuca, Esquire
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Conyngham Township

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that this day I served a copy of the foregoing Brief and Proposed Findings of Fact and Conclusions of Law 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
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DATED: November 16, 2022

BY: _____

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

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**COMPLAINANT CONYNGHAM TOWNSHIP'S POST-EVIDENTIARY HEARING
MEMORANDUM OF LAW**

Complainant Conyngham Township, by and through Counsel, Vito J. DeLuca, Esquire, DeLuca Law Offices, respectfully submit this Post Evidentiary Hearing Brief.

I. STATEMENT OF THE CASE

“[SSABS] was formed on September 25, 1973 as a municipal authority for the purpose of constructing, improving, furnishing and equipping a sanitary sewage system and treatment works, to acquire land necessary to effectuate this purpose and to perform any necessary items incidental to this purpose.” Joint Stipulation of Facts, #5. “The general scope of the [SSAB’s] activities includes, but is not limited to, providing treatment of domestic wastewater and discharging the treated wastewater to the Susquehanna River in accordance with a permit issue by DEP.” Joint Stipulation of Facts, #6. “The sole municipality that joined [SSABS] is the municipality that formed it, which is the Borough of Shickshinny.” Joint Stipulation of Facts, #7. See also, Direct Testimony of Matthew T. Lamb, P.E., page 7, lines 6-10.

“The sewer lines located in [Conyngham Township] are owned and maintained by the CTSA, and those lines convey sewage to [SSABS]'s processing plant located on property owned by [SSABS] located in [Conyngham Township].” Joint Stipulation of Facts, #8. “[SSABS] provides sewage treatment service to the Borough of Shickshinny and a portion of [Conyngham Township], among other areas.” Joint Stipulation of Facts, #9.

“[SSABS] and [Conyngham Township] entered into a Sewage Treatment Agreement on November 18, 1992 wherein [SSABS] agreed to provide sewage treatment and disposal services to [Conyngham Township] as a single bulk customer ("Sewage Treatment Agreement").” Joint Stipulation of Facts, #10. See also, Joint Exhibit A.

“By letter dated September 11, 2020, [SSABS] notified [Conyngham Township] that it was cancelling the Sewage Treatment Agreement.” Joint Stipulation of Facts, #11 and Joint Exhibit B.¹

Prior to January, 2021, Conyngham Township, through its legal counsel notified SSABS of its requirement to secure a Certificate of Public Convenience prior to beginning operations in

1 See also, Direct Testimony of Matthew T. Lamb, P.E., page 7, lines 6-10, I&E Exhibit 10. SSABS provided a copy of the 1992 Bulk Services Agreement in response to I&E Data Requests, Set I, No 7(a):

“ 7. Reference Paragraph 19 of the Authority’s Preliminary Objections dated January 26, 2021 in the Commission proceeding at Docket No. C-2021-3023624. Provide the following:

a. a copy of the service contract between the Authority and Conyngham Township, **which terminated in November of 2020; and ...” [Emphasis added.]**

See also, Direct Testimony of Matthew T. Lamb, P.E., page 13, lines 8-12, I&E Exhibit 11. SSABS provided a copy of a 9/11/2020 letter from Counsel for SSABS to Conyngham Township in response to I&E Data Requests - Set I, No. 7(b):

7. Reference Paragraph 19 of the Authority’s Preliminary Objections dated January 26, 2021 in the Commission proceeding at Docket No. C-2021-3023624. Provide the following:

...

b. **Document(s) that formally terminated the service contract.” [Emphasis added.]**

Conyngham Township since it no longer was a party to a bulk services agreement with Conyngham Township. PRE-SERVED DIRECT TESTIMONY OF ERIC KUBASEK, p. 6, lines 13-20 and Complainant Exhibit 5. SSABS failed to secure a Certificate of Public Convenience prior to direct billing Conyngham Township customers, and failed to secure said Certificate from the Pennsylvania Utilities Commission even as of the date of hearing in this matter. Direct Testimony of Matthew T. Lamb, P.E., page 21, lines 19-21. It is important to note that no evidence was presented by SSABS that it had in fact secured a Certificate of Public Convenience at any time relevant to the proceeding.

“On January 1, 2021, April 1, 2021, and July 1, 2021, [SSABS] sent a quarterly invoice directly to ratepayers/customers located in [Conyngham Township] a rate of \$75.00 per quarter.” Joint Stipulation of Facts, #13. “There are approximately 220 residential customers and eight commercial customers located in [Conyngham Township].” Joint Stipulation of Facts, #14. The rate charged Conyngham Township customers for *treatment alone* was **\$5.00 per EDU more** than the rate it charged its own customers for both *treatment and conveyance*. Direct Testimony of Matthew T. Lamb, P.E., page 15, lines 1-9. As of January 2021 SSABS had not completed a rate study in at least the previous five (5) years “which appears to establish its rates are arbitrary and may not be apportioned properly or reasonable based upon usage of the Authority’s system.” Direct Testimony of Matthew T. Lamb, P.E., page 15, lines 9-12. “In addition to being arbitrarily charged \$5.00 more per calendar year quarter, the Authority also charges Township customers \$4.61 for conveyance, which is a service that the Authority does not provide to Township customers.” Direct Testimony of Matthew T. Lamb, P.E., page 16, lines 4-9.

Conyngham Township is itself a customer of SSABS. PRE-SERVED DIRECT TESTIMONY OF ED WHITEBREAD, lines 14-21. Conyngham Township received the three

billings and paid to SSABS the full amount billed. PRE-SERVED DIRECT TESTIMONY OF ED WHITEBREAD, lines 70-74.

“From January 1, 2021 to September 23, 2021, [SSABS] collected an approximate total of \$54,684.68 from ratepayers located in [Conyngham Township].” Joint Stipulation of Facts, #15.

Only after PUC I&E Division intervened in the matter in the fall of 2021 did SSABS stop billing Conyngham Township customers. Joint Stipulation of Facts, #17.

II. SUMMARY OF ARGUMENT

Legal counsel for SSABS recently argued that SSABS should not have been able to legally terminate the bulk services agreement in September of 2021. Regardless of whether at the time of its unilateral termination SSABS should have been able to terminate the agreement, the agreement is, and has been, terminated. SSABS notified Conyngham Township by letter dated September 11, 2020 that it was terminating the agreement. It rejected the arguments presented by the Conyngham Township Solicitor that it could not do so. It direct billed Conyngham Township customers, which would have been a violation of the terminated agreement. In addition, the amount it billed Conyngham Township customers was almost 60% higher than what had been provided in the terminated agreement and was higher than what is billed its own residents – also in violation of the terminated agreement. Conyngham Township’s action in choosing to prosecute the instant action in lieu of filing a breach of contract action evidences Conyngham Township’s assent to the termination.

SSABS became a ‘public utility’ as that term is defined by the Pennsylvania Public Utilities Code and triggered PUC oversight and regulation when in September 2020 it terminated the bulk services agreement between the parties and began directly billing customers in Conyngham Township, including the Township itself, in January 2021. SSBS unlawfully billed and collected

sums from Conyngham Township customers, including the Township itself, for sanitary sewer service in violation of the PUC Code when it failed to first secure a Certificate of Public Convenience from the Commission.

III. ARGUMENT

Inexplicably, two weeks prior to the previously scheduled evidentiary hearing, after more than one year of litigation in this matter, legal counsel for SSABS first took the position that the bulk services agreement that it had itself terminated was still in effect. Counsel for SSABS argues now that SSABS should not have been able to legally terminate the bulk services agreement in September of 2021. Regardless of whether at the time of its unilateral termination SSABS should have been able to terminate the agreement in September 2020, the agreement is, and has been, terminated. SSABS notified Conyngham Township by letter dated September 11, 2020 that it was terminating the agreement. SSABS rejected the arguments presented by the Conyngham Township Solicitor that it could not do so. It then proceeded to direct bill Conyngham Township customers, which, it is important to note, would have been a violation of the terminated agreement. In addition, the amount SSABS billed Conyngham Township customers was almost 60% higher than what was permitted by the terms of the terminated agreement. SSABS also billed Conyngham Township customers in an amount GREATER than what it billed its own residents which was another violation of the terms of the terminated agreement. Finally, Conyngham Township's action in choosing to prosecute the instant action before the Pennsylvania Public Utilities Commission in lieu of filing a breach of contract action in the Luzerne County Court of Common Pleas evidences Conyngham Township's assent to the termination.

The Commission has jurisdiction over the parties and the subject matter of this proceeding pursuant to 66 Pa.C.S. §§ 701, which provides in pertinent part:

“The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission....”

Upon termination of the 1992 bulk services agreement between the parties in September 2020 and the direct billing of Conyngham Township residents who are located outside its jurisdictional boundaries, Defendant SSABS because a “public utility” as defined by the Pennsylvania Public Utilities Code. See 66 Pa. C.S. Section 102, Definitions provides, in pertinent part:

“Corporation. —All bodies corporate, ... but shall not include municipal corporations, except as otherwise expressly provided in this part....

Municipal corporation. —All cities, boroughs, ... of this Commonwealth, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.

Public utility. (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for: ...(vii) Sewage Wastewater collection, treatment, or disposal for the public for compensation.

Wastewater. Any used water and water-carried solids collected or conveyed by a sewer, including: (1) Sewage, as defined in section 2 of the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act. (2) Industrial waste originating from an establishment. For the purposes of this paragraph, the terms ‘industrial waste’ and ‘establishment’ shall be as defined in section 1 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law. (3) Infiltration or inflow into sewers. (4) Other water containing solids or pollutants. (5) Storm water which is or will become mixed with waters described under paragraph (1), (2), (3) or (4) within a combined sewer system.”

Although the activities of SSBS were not regulated by the PUC during the period it was a party to the bulk services agreement, its termination of the agreement and direct billing of Conyngham Township customers triggered PUC oversight. Beginning in January 2021, SSBS furnished

and/or rendered and billed for “public utility service” as defined by the Pennsylvania Public Utility Code beyond its corporate limits in that it billed individual customers for sanitary sewer service. See 66 Pa.C.S. § 1501, “... Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be 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....”

SSBS’s direct billing of Conyngham Township residents required it to obtain a Certificate of Public Convenience as per the Pennsylvania Public Utilities Code. Section 1102(a)(5) of Title 66 provides, in relevant part as follows: “(a) General rule. -- Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience . . . it shall be lawful: “... (5) For any municipal corporation to acquire, construct, *or begin to operate, any plant, equipment, or other facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits.*” [*Emphasis added.*]

Complainant Conyngham Township and all patrons billed by Defendant SSABS are entitled to a refund of all monies paid to Defendant with interest at the legal rate. Section 1312(a) of Title 66, states:

“If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive. Any order of the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The commission shall state in any refund order the exact

amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact.”

IV. CONCLUSION

Based on the discussion above, Complainant Conyngham Township respectfully requests that this Court find it its favor, find Defendant SSABS in violation of the PUC Code in that it failed and continues to fail to secure a Certificate of Public Convenience, order SSBS to immediately take actions to secure said Certificate of Public Convenience, and further order the refund of all monies unlawfully billed with interest and impose the maximum civil penalty allowed by law along with such other relief as this Court deems just and proper.

Respectfully submitted,

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