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November 18, 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 Main Brief of the Sanitary Sewer Authority of the Borough of Shickshinny in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

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

Very Truly Yours,

Sean W. Logsdon

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 Main Brief of the 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.

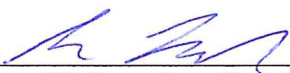
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Date: November 18, 2022



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

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**MAIN BRIEF OF THE SANITARY SEWER AUTHORITY
OF THE BOROUGH OF SHICKSHINNY**

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I. INTRODUCTION

This Formal Complaint proceeding was initiated against the Sanitary Sewer Authority of the Borough of Shickshinny (“SSABS” or “Authority”) by Conyngham Township (the “Township” or “Conyngham”), a bulk wastewater customer of the Authority, alleging that the SSABS is operating in the Township without a Certificate of Public Convenience. The Commission’s Bureau of Investigation and Enforcement (“I&E”) intervened in this matter and also alleges that the rates and service of SSABS are subject to the jurisdiction of the Pennsylvania Public Utility Commission (“PUC” or “Commission”).

The claims by the Township and I&E of the Commission’s jurisdiction over the rates and service of the SSABS must fail, since the Commission lacks jurisdiction over the rates and service of municipal authorities, including but not limited to SSABS. Appellate and Commission precedent (discussed herein) have held, for over seventy years, that municipal authorities are exempt from regulation by the Commission, even if operating outside of the municipal boundaries of their incorporating municipality, based on language in the Municipality Authorities Act. That language clearly and simply states that: “The court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service [of a municipal authority.]” 53 Pa. C.S. § 5607(d)(9). That statutory language and the related precedent are enough to warrant the dismissal of the Formal Complaint for lack of jurisdiction.

The Township and I&E are putting “the cart before the horse,” since the Commission-jurisdictional claims being presented require decisions by the Court of Common Pleas on the contractual disputes between the Township and the SSABS, since their claims are predicated upon contractual disputes between the Township and the SSABS and the continued validity of the 1992 Sewage Treatment Agreement. If the 1992 Sewage Treatment Agreement is valid, it should be

clear that the rates and service by SSABS are not subject to the Commission's jurisdiction. Here, the continued validity of that agreement is being challenged and the claims by the Township and I&E are premised upon the invalidity of the 1992 Sewage Treatment Agreement. The Commission, however, lacks jurisdiction to rule on the parties' responsibilities under a private agreement (the 1992 Sewage Treatment Agreement), or to determine the validity of the agreement or to award damages under that agreement.¹ The rates of SSABS, as well as the 1992 Sewage Treatment Agreement, are subject to review by the common pleas courts which are given jurisdiction "to determine questions involving rates and service" under the Municipalities Authorities Act.² Indeed, precedent is clear that a contract under which a municipal authority provides services is outside the Commission's authority to review.³ So, the Court (and not the Commission) should be determining the underlying contractual issues and disputes before the Commission spends more time and resources in this matter on issue for which it has no jurisdiction to adjudicate

With the foregoing in mind, SSABS has not engaged in any conduct that violates the Public Utility Code or Commission regulations or orders. The Commission's jurisdiction does not extend to treatment service being provided by the Authority. That does not change based on the actions of SSABS.

Despite the action being filed as a Formal Complaint with the PUC, the PUC has no subject matter jurisdiction over this Formal Complaint and the Formal Complaint should be dismissed for lack of jurisdiction.

¹ See, e.g., *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

² See 53 Pa. C.S. § 5607

³ *White Rock Sewage Corp. v. Pennsylvania Pub. Util. Comm'n*, 133 Pa. Cmwlth. 608, 613, 578 A.2d 984, 986 (1990); citing *Virgilli v. Southwestern Pennsylvania Water Authority*, 58 Pa. Cmwlth. 340, 427 A.2d 1251 (1981).

II. BACKGROUND AND PROCEDURAL HISTORY

A. BACKGROUND

Wastewater Treatment by the SSABS

SSABS was formed by the Borough of Shickshinny as a Municipal Authority and has operated as the same since its establishment on September 25, 1973.⁴ SSABAS owns and operates a wastewater collection system within the Borough of Shickshinny. The wastewater collected by SSABS is delivered by SSABS to the SSABS' wastewater treatment plant, which is located in the Township. The location of the processing plant in Township was selected and approved by Conyngham Township's Supervisors.⁵ SSABS owns the property on which the plant is located. SSABS operates on land owned by the Authority, not Conyngham Township. SSABS provides service to Conyngham Township pursuant to a 1992 Sewage Treatment Agreement.⁶

The Township's Wastewater Collection System

The Township owns and operates a wastewater collection system within the Township. The wastewater collected by the Township is delivered by the Township to the SSABS (via a single point of connection). That wastewater is treated by the SSABS. None of the Township's wastewater customers (other than the Township itself) are able to deliver wastewater directly to facilities owned and operated by SSABS. The Conyngham Township Sewer Authority was established on April 26, 1974.⁷ It handles installation, regulation, and maintenance of the

⁴ Direct written testimony of Barry Noss, p. 1, admitted into evidence at 277.

⁵ SSABS Exhibit 1, see Direct written testimony of Barry Noss, p. 1, admitted into evidence at 277.

⁶ SSABS Exhibit 2.

⁷ Direct written testimony of Barry Noss, p. 1, admitted into evidence at 277.

Conyngahm Township wastewater system.⁸ The system consists of main sewer lines and pumps which were installed in 1993.⁹ The Conyngahm Township Sewer Authority handles the conveyance portion of wastewater disposal, and its pipes connect to the SSABS treatment facility.¹⁰

The relationship between SSABS and Conyngahm Township is governed by the 1992 Agreement¹¹, and the Conyngahm Township Sewer Authority would pay a quarterly invoice to SSABS for the processing of the sewage coming from the Township.¹² The Conyngahm Township Sewer Authority invoiced customers in Conyngahm Township \$134.00, with no delineation on the invoice as to whether the charges were for conveyance or processing.¹³

Contractual Disputes Between the Township and SSABS

SSABS sent a letter to the Township on September 11, 2020¹⁴ purporting to terminate the agreement due to a failure by the Conyngahm Township Sewer Authority to address influx and infiltration issues.¹⁵ There was no provision in the in the 1992 Agreeemnt for influx and infiltration, but a corrective action plan was formally adopted in 2014 by all parties as a revision to their Act 537 Official Sewage Plans.¹⁶ A flow report reveals the numerous times when Conyngahm Township's flows were extremely excessive in 2018, 2019 and 2020.¹⁷ An

⁸ Direct written testimony of Eric Kubasek, p. 2, admitted into evidence at 233.

⁹ Id.

¹⁰ Id.

¹¹ SSABS Exhibit 1.

¹² Direct written testimony of Barry Noss, p. 2, admitted into evidence at 277.

¹³ Record Hearing, N.T. p. 255.

¹⁴ Joint Exhibit B.

¹⁵ Direct written testimony of Barry Noss, p. 3, 5, admitted into evidence at 277.

¹⁶ SSABS Exhibit 4, Direct written testimony of Barry Noss, p. 3, admitted into evidence at 277.

¹⁷ SSABS Exhibit 3, Direct written testimony of Barry Noss, p. 3, admitted into evidence at 277.

amended Agreement was sent to Conyngham Township on June 17, 2019 to address the influx of water but the same was rejected.¹⁸

SSABS invoiced the Conyngham Township customers connected to the township's systems directly for quarterly charges beginning in January of 2021 and invoiced them for three quarters in 2020.¹⁹ The amount invoiced directly to the ratepayers of the Township was \$75.00 per quarter.²⁰ It was 5 dollars more than what was charged to ratepayers in Shickshinny because of the infiltration issue and so SSABS could conduct a study to remediate the issue since the CTSA would not.²¹ SSABS stopped invoicing ratepayers in the Township in September of 2020, and the Township has failed to pay for service since then, despite the same being provided.²²

Pending Litigation Before the Court of Common Pleas of Luzerne County

A lawsuit was filed in the Court of Common Pleas of Luzerne County by SSABS against the Township and the Conyngham Township Sewer Authority seeking a declaration of rights under the 1992 Sewage Treatment bulk services agreement, alleging breach of contract, unjust enrichment, and seeking injunctive relief. The Township and Conyngham Township Sewer Authority have been conveying sewage to the SSABS plant without paying any compensation since October of 2021.

B. PROCEDURAL HISTORY

On January 6, 2021, the Township filed a Formal Complaint with the Commission against the SSABS. The Township alleges that SSABS is operating in the Township without a

¹⁸ SSABS Exhibit 6, Direct written testimony of Barry Noss, p. 4-5, admitted into evidence at 277.

¹⁹ Direct written testimony of Barry Noss, p. 6, admitted into evidence at 277.

²⁰ Direct written testimony of Barry Noss, p. 5, admitted into evidence at 277.

²¹ Id.

²² Direct written testimony of Barry Noss, p. 6-7, admitted into evidence at 277.

Certificate of Public Convenience. Complaint ¶4. For relief, the Township requests “that the Commission order Respondent to immediately stop billing residents of Conyngham Township and return all monies collected until after a valid Certificate of Public Convenience is obtained.” Complaint ¶5. The SSABS filed an Answer and New Matter and Preliminary Objections on January 26, 2021. In New Matter, Respondent asserts the following affirmative defenses: failure to state a claim for which relief can be granted; issue and claim preclusion, Complainant's lack of standing; lack of Commission jurisdiction over non-public utility entities; lack of standing to pursue issues related to Conyngham Township's Complaint; federal and state preemption; estoppel; and laches. New Matter ¶11. As relief, Respondent requests dismissal of the Complaint with prejudice, and that the Commission assess costs and counsel fees and grant such other and further relief it deems just and proper.

The Township filed a response to the New Matter on January 29, 2021, averring that the allegations of the New Matter were essentially conclusions of law to which no response was required. On January 29, 2021, the Township filed an Answer to SSABS's Preliminary Objections. On March 5, 2021, the Court issued a *First Interim Order Sustaining in Part and Denying in Part Preliminary Objections and Denying Respondent's Request for Dismissal of the Complaint (First Interim Order)*. The preliminary objections were sustained to the extent that Conyngham Township lacked standing to represent the residents of Conyngham Township and denied in all other respects consistent with the First Interim Order.

On March 8, 2021, the Court issued a Prehearing Conference Order, which informed the Parties that a prehearing conference would be held on April 7, 2021. On April 22, 2021, counsel for SSABS requested the appointment of a mediator to assist the Parties in reaching an amicable

resolution of the Complaint. Consequently, the prehearing conference was held in abeyance, pending the outcome mediation. Mediation did not achieve resolution of the Complaint.

On September 3, 2021, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Intervention and Request for Continuance of the hearing scheduled for September 15, 2021, in order to conduct discovery. On May 11, 2022, SSABS filed Motion for Stay. The Motion suggested that SSABS was seeking a stay in order to file in the Court of Common Pleas of Luzerne County for a declaratory judgment on the legal effect of SSABS's September 11, 2020 letter. The Motion was denied, but the declaratory judgment action was filed on July 6, 2022 in the Court of Common Pleas at Docket Number 05829 of 2022.

The record hearing in this matter was conducted on October 4, 2022.

III. LEGAL STANDARDS

A. BURDEN OF PROOF

The Public Utility Code, 66 Pa. C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Township and BIE have the burden of proof in this matter.

B. THE COMMISSION HAS LIMITED SUBJECT MATTER JURISDICTION

The Pennsylvania Supreme Court has observed: "Subject matter jurisdiction relates to the competency of a court to hear and decide the type of controversy presented. Jurisdiction is a matter of substantive law." *Commonwealth v. Bethea*, 828 A.2d 1066, 1074 (Pa. 2003), cert. denied, 540 U.S. 1118 (2004).

The Commission must act within, and cannot exceed, its statutory jurisdiction.²³

Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs.²⁴

Unless subject matter jurisdiction has been granted to it by the legislature, the Commission lacks subject matter jurisdiction.²⁵ Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy.²⁶ Subject matter jurisdiction may not be conferred by the parties where none exists.²⁷ Neither silence nor agreement of the parties will confer subject matter jurisdiction where it otherwise would not exist,²⁸ nor can subject matter jurisdiction be obtained by waiver or estoppel.²⁹

C. THE COMMISSION DOES NOT REGULATE THE RATES AND SERVICE OF THE SSABS

The Municipality Authorities Act clearly and simply states that: “The court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service [of a municipal authority.]” 53 Pa. C.S. § 5607(d)(9).³⁰

Consistent with that statutory language, the PUC does not regulate SSABS. *See, e.g., Chester Water Auth. v. Pennsylvania Public Util. Comm'n*, 868 A.2d 384, 392 (Pa. 2005)

²³ *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa. Super. 1945).

²⁴ *See Riedel v. Human Relations Commission of the City of Reading*, 39 A.2d 121 (Pa. 1999).

²⁵ *See, e.g., Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977) (The Commission must act within, and cannot exceed, its jurisdiction); *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa Super. 1945) (Jurisdiction may not be conferred by the parties where none exists).

²⁶ *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *appeal denied*, 637 A.2d 293 (Pa. 1993); *DeFrancesco v. Western Pennsylvania Water Co.*, 453 A.2d 595 (Pa. 1982) (holding that the PUC did not have exclusive jurisdiction of liability issue).

²⁷ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

²⁸ *Commonwealth v. VanBuskirk*, 449 A.2d 621 (Pa. Super. 1982).

²⁹ *Scott v. Bristol Twp. Police Department*, 669 A.2d 457 (Pa. Cmwlth. 1995).

³⁰ 53 Pa. C.S. § 5607, which was 53 P.S. § 306 under the Municipality Authorities Act of 1945. That 1945 Act repealed and replaced the Municipality Authorities Act of 1935, Act of June 28, 1935, P.L. 463.

(explaining that “the PUC lacks regulatory control over services by and rates charged by municipal authorities”); *Municipal Auth. of Borough of West View v. Public Util. Comm'n*, 41 A.3d 929, 934 (Pa. Cmwlth. 2012) (noting that PUC claimed that it did not regulate a municipal authority in addressing a standing issue); *Graver v. Pennsylvania Public Util. Comm'n*, 469 A.2d 1154 (Pa. Cmwlth. 1984) (affirming PUC’s dismissal, for lack of PUC’s jurisdiction, a complaint by developers that a water authority created under the Municipality Authorities Act of 1945 wrongfully disconnected water meters because PUC lacked “jurisdiction to determine questions of the reasonableness of rates fixed or of the services provided by a municipal authority beyond the limits of the municipality”); *In re Heckman*, 560 B.R. 657, 661 (Bankr. E.D. Pa. 2016) (explaining that litigant filed informal complaint with the Pennsylvania Public Utilities Commission, asking it to direct RAWA to “investigate his situation to determine if the excessive water consumption was caused by a defective meter or other equipment causing the water meter to malfunction,” and the Commission responded by “stating that it does not regulate municipal authorities”).

IV. SUMMARY OF ARGUMENT

Municipal authorities are exempt from regulation by the Pennsylvania Public Utility Commission, even if operating outside of the municipal boundaries of their incorporating municipality. The Municipality Authorities Act expressly grants municipal authorities the power to fix rates for services provided by them. The Commission does not have a role in either process under that Act. Section 5607 of the Municipality Authorities Act vests the courts of common pleas with jurisdiction to review the rates and service of municipal authorities. In doing so, Section 5607(d)(9) of the Municipality Authorities Act exempts municipal authorities from regulation by the Commission.

It is well-settled that the Township, in order to prevail before the Commission, must carry its burden of showing that the named entity is responsible for the problem(s) described in the complaint. Further, any alleged offense must violate the Public Utility Code, a Commission regulation or a Commission order. The complainant has the burden of proof, meaning that he or she must present a preponderance of the evidence. Adjudications by the Commission must be supported by substantial evidence, which is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

SSABS has shown through its testimony that it fixed the rates charged to the Township ratepayers, and any issues regarding those rates are the exclusive jurisdiction of the Court of Common Pleas. The 1992 Sewage Treatment Agreement at issue was not terminated by mutual agreement of the SSABS and the Township. Any invoicing of customers by SSABS in Conyngham Township is a breach of contract issue, also not under the jurisdiction of the PUC.

V. ARGUMENT

Despite the action being filed as a Formal Complaint with the PUC, and the Formal Complaint should be dismissed for lack of jurisdiction. Neither the Township nor I&E may maintain claims against SSABS before the Commission because the rates and service of SSABS are subject to the exclusive jurisdiction of the courts. This means that the Commission has no subject matter jurisdiction over this Formal Complaint, and that SSABS is entitled to dismissal of this complaint. See *Martinez v. City of Reading Prop. Maint. Div.*, No. CV 16-1290, 2017 WL 4347667, at *29 (E.D. Pa. Sept. 29, 2017).

A. The Commission lacks jurisdiction over the rates and service of municipal authorities, including but not limited to SSABS

The Commission lacks jurisdiction over the rates and service of municipal authorities. Municipal authorities are exempt from regulation by the Commission, even if operating outside of the municipal boundaries of their incorporating municipality. That has been the law for over seventy years. The Commission only has the power expressed in the Public utility Code, 66 PA C.S. § 101 *et seq.* The Commission is empowered to regulate public utilities and certain municipal corporations,³¹ pursuant to the Public Utility Code.³² “Public utilities” are persons³³ or corporations³⁴ who are furnishing a regulated commodity or service (such as water or wastewater services) to the public for compensation.³⁵ The term “municipal corporation” includes all municipalities (cities, boroughs, towns, townships, or counties of this Commonwealth).³⁶ It also includes an “authority . . . created or organized under any law of this Commonwealth for the

³¹ While not relevant to this discussion, it should be noted that other persons and entities are also subject to the Commission’s oversight. These “others” include electric generation suppliers, natural gas suppliers and conservation service providers. See 66 Pa. C.S. § 2201 to 2212, 2801 to 2815. The Commission also (a) has oversight of and pipeline operators, 58 P.S. § 801.101, *et seq.*; and (b) enforces Pennsylvania’s Underground Utility Line Protection Law, 73 P.S. § 176 to 186.

³² 66 Pa. C.S. §§ 101, *et seq.* Specifically, 66 Pa. C.S. § 501(a) authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code. See, e.g., *PPL Elec. Utils. Corp. v. City of Lancaster*, 214 A.3d 639 (Pa. 2019). (Comprehensive statutory framework for utility regulation, as complemented by the Public Utilities Commission (PUC) voluminous complementary regulations, reflect the General Assembly’s general intention to occupy the field of utility regulation at the state level.)

³³ “Persons” are “Individuals, partnerships, or associations other than corporations, and includes their lessees, assignees, trustees, receivers, executors, administrators, or other successors in interest.” 66 Pa. C.S. § 102 (emphasis added).

³⁴ “Corporations” are “All bodies corporate, joint-stock companies, or associations, domestic or foreign, their lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations, except as otherwise expressly provided in this part, nor bona fide cooperative associations which furnish service on a nonprofit basis only to their stockholders or members.” 66 Pa. C.S. § 102 (emphasis added).

³⁵ 66 Pa. C. S. § 102; 52 Pa. Code §69.1401. Certain activities are explicitly excluded from that definition. *Id.* Failure to satisfy one (or more) of these elements (or be eligibility for an exception) means that the person or entity is not a public utility within the statutory definition.

³⁶ 66 Pa. C.S. § 102.

purpose of rendering any service similar to that of a public utility.”³⁷ That being said, it should be emphasized that municipalities and municipal authorities are separate legal entities created by separate laws.³⁸

Under the Public Utility Code, the Commission’s jurisdiction does not extend at all times to all municipalities.³⁹ Regarding municipalities, the Commission’s jurisdiction only exists when a municipality is serving customers who reside outside of its corporate boundaries.⁴⁰ When service is provided by the municipality outside its corporate boundaries, the Commission requires the municipality to obtain a Certificate of Public Convenience (regarding the outside service) from the Commission.⁴¹ The Commission maintains jurisdiction over the rates and

³⁷ 66 Pa. C.S. § 102. The Commission has held that a municipal authority “not created for the purpose of rendering any service similar to that of a public utility” is not a “municipal corporation” under the Public Utility Code. See *Capital City Cab Service, Inc.; v.; Susquehanna Area Regional Airport Authority*, C-20043019, 2005 Pa. PUC LEXIS 41 (Pa. P.U.C. December 8, 2005); Application of Cambria and Indiana Railroad Company for approval of specified crossings, A-00111716, Recommended Decision, 1996 Pa. PUC LEXIS 179 (January 7, 1996); Application of the Erie-Western Pennsylvania Port Authority for Approval of the Construction of Two Crossings, Docket No. A-00118931, 2003 WL 21322991

³⁸ The primary distinction is that each municipality is created by the Legislature, while municipal authorities are independent agencies of the Commonwealth created by one or more municipalities under the Municipality Authorities Act. See, e.g., *O’Hare v. County of Northampton*, 782 A.2d 7, 13 (Pa. Cmwlth. 2001).

³⁹ Pursuant to the Public Utility Code, municipal corporations are required to first obtain a Certificate of Public Convenience issued by the Commission prior to acquiring, constructing, or beginning to operate any plant, equipment, or other facilities for the rendering or furnishing to the public of any public utility service beyond the municipal corporation’s corporate boundaries. 66 Pa. C.S. §1102(a). Service that is furnished or rendered by a municipal corporation beyond its corporate boundaries 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. 66 Pa. C.S. § 1501.

⁴⁰ For example, in *East Hempfield Township v. City of Lancaster and City of Lancaster Authority*, 273 A.2d 333 (Pa. 1971), the Pennsylvania Supreme Court stated that a municipality, as a lessee operating a system owned by a municipal authority, is subject to the Commission’s jurisdiction as to service provided by the municipality outside its corporate boundaries as sure as if the municipality owned the system itself and provided the same extraterritorial service.

⁴¹ See, e.g., *Borough of Ambridge v. Pa. PUC*, 508 A.2d 429 (Pa. Super. 1939) (holding that municipality providing extraterritorial service could not give undue or unreasonable preference to or unfairly discriminate amongst customers outside its municipal boundaries); *Borough of Phoenixville v. Pa. PUC*, 280 A.2d 471 (Pa. Cmwlth. 1971) (Once municipality provides utility services outside its boundaries, jurisdiction of Public Utility Commission attaches, and municipality is in same position and subject to same control as a privately owned public utility); *City of Erie v. Pa. PUC*, 398 A.2d 1083 (Pa. Cmwlth, 1979) (Service which is rendered outside a municipality's political boundaries; i.e., corporate limits, is termed extraterritorial service); *Shryock Bros., Inc. v. Uwchlan Twp.*, No. C-20066648, Opinion and Order entered April 27, 2007; 2007 Pa. PUC LEXIS 67, at *32 (holding that the PUC had jurisdiction over Uwchlan Township, a municipality, when it provided extraterritorial utility services).

service by the municipality to the outside customers and does not regulate rates and service to the municipality's inside customers.

The result is different if a municipal authority is providing service, since the rates and service of a municipal authority are subject to the Municipality Authorities Act.

The Courts' Jurisdiction Under the Municipality Authorities Act

The Municipality Authorities Act⁴² expressly grants municipal authorities the power to fix rates for services provided by them. The Commission does not have a role in either process under that Act. In fact, Section 5607 of the Municipality Authorities Act⁴³ vests the courts of common pleas with jurisdiction to review the rates and service of municipal authorities. In doing so, Section 5607(d)(9) of the Municipality Authorities Act exempts municipal authorities from regulation by the Commission. It states, in the relevant part, as follows:⁴⁴

Any person questioning the reasonableness or uniformity of a rate fixed by an authority or the adequacy, safety and reasonableness of the authority's services, including extensions thereof, may bring suit against the authority in the court of common pleas of the county where the project is located or, if the project is located in more than one county, in the court of common pleas of the county where the principal office of the project is located. The court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service. (emphasis added).

Judicial recognition of the Commission's lack of jurisdiction over municipal authorities goes back more than seventy years and has been recognized (at different times) by each of the appellate courts.

⁴² The Municipality Authorities Act was officially codified in 2001. Act 22 of 2001 (S.B. 780), P.L. 287, as amended, 53 Pa. C.S. § 5601, et seq. It was intended as a continuation of the prior law, the Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended, 53 P.S. §§ 301-322. .

⁴³ 53 Pa. C.S. § 5607, which was 53 P.S. § 306 under the Municipality Authorities Act of 1945. That 1945 Act repealed and replaced the Municipality Authorities Act of 1935, Act of June 28, 1935, P.L. 463.

⁴⁴ 53 Pa. C.S. § 5607(d)(9).

In 1945, the Superior Court held (in *Rankin*⁴⁵) that the court of common pleas, not the Commission, “has exclusive jurisdiction to inquire into the reasonableness of rates charged by a municipal authority beyond as well as within the corporate boundaries of the municipality which created it.” The court explained that the “exclusive jurisdiction” language was added to the Municipal Authorities Act of 1945 **to reject** the holding of a prior case (*State College*⁴⁶) that municipal authorities were subject to the Commission’s jurisdiction with respect to activity beyond the corporate boundaries of the authority’s incorporating municipality.

The Pennsylvania Supreme Court made a similar holding in 1982.⁴⁷ In doing so, the court explained that “exclusive jurisdiction” language was intended to preclude challenges to the rates of municipal authorities from being heard by the Commission.

In 1984,⁴⁸ the Commonwealth Court held that the 1945 case (*Rankin*) remained good law. Specifically, the court explained that “exclusive jurisdiction” language in Municipal Authorities Act of 1945 remained in force and modified the Public Utility Code⁴⁹ in the same manner as it modified the Public Utility Law (which was in effect at the time of the long rejected *State College* case). The Commonwealth Court reached the same result in 1988⁵⁰ and in 1990.⁵¹

⁴⁵ *Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. 1949).

⁴⁶ *State College Borough Authority v. Pa PUC*, 31 A.2d 557 (Pa. Super. 1943).

⁴⁷ *Elizabeth Twp. v. Mun. Auth. of McKeesport*, 447 A.2d 245, 246 (Pa. 1982). Prior to *Elizabeth Twp.*, the Supreme Court held that The court of common pleas sitting in equity lacked jurisdictional competency to entertain action by residents of township against township municipal authority for relief as to sewage fees fixed by the authority. *Calabrese v. Collier Twp. Mun. Auth.*, 240 A.2d 544, 548 (Pa. 1968).

⁴⁸ *Graver v. Pa. PUC*, 469 A.2d 1154 (Pa. Cmwlth. 1984).

⁴⁹ Public Utility Code was a codification without substantial change of the previously existing provision for utility regulation, the Public Utility Law, Act of May 28, 1937, P.L. 1053. The Public Utility Law was in effect from 1937 to 1978.

⁵⁰ See, *Glennon's Milk Serv., Inc. v. W. Chester Area Mun. Auth.*, 538 A.2d 138 (Pa. Cmwlth. 1988) (common pleas court decides whether water authority has power to determine maintenance responsibilities and require customers to regularly service pipes at their own expense); *Borough of Sewickley Water Authority v. Mollica*, 544 A.2d 1122 (Pa. Cmwlth. 1988) (Water Authority providing service outside of its boundaries was not a public utility under Public Utility Code).

⁵¹ *White Rock Sewage Corp. v. Pa. PUC*, 578 A.2d 984, 988 (Pa. Cmwlth. 1990) (“... based on *Graver* and Section 306 B(h) of the Act, the PUC correctly determined that they were unable to review the rates charged to White Rock by South Middleton.”).

None of those above-described holdings should be impacted by the 2001 codification of the Municipality Authorities Act, since the “exclusive jurisdiction” language is the same.

Notably, PUC Chairman Gladys Brown Dutrieuille testified (in 2017) before the Pennsylvania House Consumer Affairs Committee as follows regarding the Commission’s jurisdiction over municipal authorities:⁵²

Importantly though, this Commission’s jurisdiction presently does not extend to [municipal] authorities, but rather, only to municipalities. This is the case due to the enactment of the Municipal Authorities Act of 1945 (MAA), which declared that the courts of common pleas hold exclusive jurisdiction over authorities. ...

This distinction in exclusive jurisdiction between municipal utilities and [municipal] authorities operating beyond their political boundaries has been further supported by case law. The Pennsylvania Supreme Court determined that the MAA provides an exclusive remedy for passing upon the reasonableness of the rates or service of an authority because it provides exclusive jurisdiction to the courts of common pleas.⁵³ (footnote renumbered).

The Chairman’s statement is supported by the above-described judicial precedent as well as Commission precedent.⁵⁴

The positions being advanced by the Township conflict with the language in Section 5607 of the Municipality Authorities Act. Adopting those positions would be inconsistent with

⁵² https://www.puc.pa.gov/General/pdf/Testimony/Brown-Consumer_Affairs-HB798_092517.pdf.

⁵³ *Calabrese v. Collier Twp. Mun. Auth.*, 240 A.2d 544, 548 (Pa. 1968); *Elizabeth Twp. v. Mun. Auth. of McKeesport*, 447 A.2d 245, 246 (Pa. 1982).

⁵⁴ See, e.g., Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water And Sewer Authority, M-2018-2640802 (water); M-2018-2640803 (wastewater), Tentative Implementation Order entered January 18, 2018; 2018 Pa. PUC LEXIS 2, *4-*5 (“... approximately 70 years ago, municipal authorities were removed from Commission jurisdiction by the Municipal Authorities Act (MAA) ... 53 Pa. C.S. § 5607(d)(9)(emphasis added). Thus, the Commission had no authority whatsoever over entities created and operating under the MAA.”); Paul E. Zimmerman v. Township of Whitpain et al., C-822905, Opinion and Order entered October 19, 1984; 1984 Pa. PUC LEXIS 16 (concluding that the PUC does not have jurisdiction over municipal authorities providing extraterritorial service); Glen Alsace Water Company v. Mt. Penn Borough Authority, Complaint Docket No. 19413, Opinion and Order entered May 23, 1972; 1972 Pa. PUC LEXIS 28; 46 Pa. PUC 187 (“... inasmuch as the named defendant in the instant action is an authority and the Commission is not the appropriate forum before whom an action against an authority can be brought, it is necessary and appropriate that the motion to dismiss be granted.”).

said statutory language as well as the above-described judicial precedent as well as Commission precedent.

B. The Township is raising a contractual dispute before the Commission, which the Commission lacks jurisdiction to resolve.

Here, the Township's and I&E's claims of Commission jurisdiction over the SSABS are predicated upon the alleged termination of the 1992 Sewage Treatment Agreement between the Township by way of the SSABS by the September 11, 2020 Letter. Such claims, on their face, call upon the Commission to determine the continued validity of the 1992 Sewage Treatment Agreement by interpreting the 1992 Sewage Treatment and the September 11, 2020 Letter. The Commission, however, lacks jurisdiction to interpret such documents.⁵⁵ The rates of SSABS, as well as the 1992 Sewage Treatment Agreement, are subject to review by the common pleas courts which are given jurisdiction "to determine questions involving rates and service" under the Municipalities Authorities Act.⁵⁶ Ultimately, the law is clear that a contract under which a municipal authority provides services is outside the Commission's authority to review.⁵⁷ Courts and the Commission have repeatedly held that disputes on contracts like the 1992 Sewage Treatment Agreement, and the validity of the contract itself, are matters under the jurisdiction of the courts of common pleas.⁵⁸

⁵⁵ See, e.g., *Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673 (Pa. Super. Ct. 1978); *Behrend v. Bell Tel. Co.*, 363 A.2d 1162 (Pa. Super. Ct. 1976), subsequent history omitted; *Adams, et al. v. Pa. PUC*, 819 A.2d 631 (Pa. Cmwlth. 2003); *Leveto v. Nat'l Fuel Gas Dist. Co.*, 366 A.2d 270 (Pa. Super. Ct. 1976); and *Litman v. Peoples Natural Gas Co.*, 449 A.2d 720 (Pa. Super. Ct. 1982).

⁵⁶ See 53 Pa. C.S. § 5607

⁵⁷ *White Rock Sewage Corp. v. Pennsylvania Pub. Util. Comm'n*, 133 Pa. Cmwlth. 608, 613, 578 A.2d 984, 986 (1990); citing *Virgilli v. Southwestern Pennsylvania Water Authority*, 58 Pa. Cmwlth. 340, 427 A.2d 1251 (1981).

⁵⁸ E.g. *Beaver Falls Mun. Auth. v. Mun. Auth. of the Borough of Conway*, 689 A.2d 379 (Pa. Commw. Ct. 1997) (appeal from the trial court on interrupting contract terms and rights regarding the sale of water between Authorities under the Municipality Authorities Act); *Highridge Water Auth. v. Lower Indiana Crnty. Mun. Auth.*, 689 A.2d 374 (Pa. Commw. Ct. 1997) (appeal from the trial court interrupting the rights and duties between authorities in the sale of water); *Lehigh Valley Co-Op Farmers, No. C-79081344*, 1980 WL 140912 (Dec. 1, 1980) (recognizing that the

Additionally, the 1992 Sewage Treatment Agreement was not unilaterally terminated by SSABS. On its face, the 1992 Sewage Treatment Agreement does not authorize either party to unilaterally terminate that agreement. Section 3.02 of the Sewage Treatment Agreement states that: “[S]ubject to the covenants and conditions set forth herein, the term of this Service Agreement shall be for such period of time as [SSABS] shall provide Conyngham with Sewage treatment and disposal service in the treatment plant, or until terminated by mutual written agreement of the parties.”

The September 11, 2020 letter is of no legal effect and any effect of the same is under the jurisdiction of the Court of Common Pleas. The Township has never, in writing, consented to the 1992 Sewage Treatment Agreement being terminated⁵⁹ nor has it stopped sending wastewater to the plant.⁶⁰ So, without the Township’s agreement to end wastewater treatment by the SSABS, the September 11, 2020 Letter has no effect on the validity of the 1992 Sewage Treatment Agreement. In fact, the Township is still participating in the 1992 Sewage Treatment Agreement as it is still utilizing SSABS’s treatment plant⁶¹, despite not paying for the treatment service being provided by the SSABS. This non-payment by the Township is before the Court of Common Pleas and SSABS has instituted the appropriate breach of contract (among others) action with the Court of Common Pleas of Luzerne County at Docket Number 05829 of 2022.

The September 11, 2020 Letter, if anything, raises a breach of contract issue that should be resolved before the Courts (or in arbitration). The 1992 Sewage Treatment Agreement contains a dispute resolution provision. *See* 1992 Sewage Treatment Agreement at Section

Commission regards utility service by on municipality to another via a bulk or wholesale agreement as nonjurisdictional where the line of the customer municipality connects to the line of the provider municipality within the latter’s corporate limits)

⁵⁹ Record Hearing N.T. p. 195, 242-243.

⁶⁰ Record Hearing N.T. p. 197.

⁶¹ Record Hearing N. T. p. 203.

7.07.⁶² Consistent with Section 7.07, the parties should be compelled to participate in arbitration (as agreed), even if SSABS attempted to unilaterally terminate the 1992 Sewage Treatment Agreement. In any event, the September 11, 2020 Letter does not present issues that the Commission can decide.

C. SSABS is not a de facto public utility.

The Commission's jurisdiction does not extend to treatment service being provided by SSABS, as discussed above. That does not change based on the actions of SSABS. To be clear, neither the September 11, 2020 Letter nor the bills turn the SSABS into a de facto public utility, since neither document changed the nature and character of the wastewater treatment service provided by SSABS.

The September 11, 2020 Letter did not trigger the Commission's jurisdiction, since the nature and character of the wastewater treatment service provided by the SSABS was and remains the same, SSABS can only receive wastewater that is delivered by the Township's wastewater conveyance system. Both before and after the September 11, 2020 Letter, SSABS continues to receive wastewater from the Township that is collected and conveyed by the Townships' wastewater collection system. If the 1992 Sewage Treatment Agreement is valid, the Township is contractually required to pay for the service provided by SSABS consistent with the 1992 Sewage Treatment Agreement. If the 1992 Sewage Treatment Agreement is no longer valid, the Township is obligated to pay for the treatment service provided by SSABS under the doctrine of unjust enrichment (or a different theory).

⁶² SSABS Exhibit 2.

The bills issued by the SSABS did not trigger the Commission’s jurisdiction. The billing of Township’s wastewater customers (residents) by SSABS as alleged by the Township are, if anything, a breach of contract issue. The 1992 Sewage Treatment Agreement calls for the Township to bill Township’s wastewater customers (residents) for the treatment provided by SSABS. The Township stopped paying its bill, to the detriment of the SSABS. The Township filed the Formal Complaint in an effort to (continue to) avoid paying SSABS. The issuance of the bills, and any payments thereon, would either work to reduce the Township’s liability to SSABS for the service provided by SSABS or be refunded by SSABS to the Township’s wastewater customers with the Township making a similar payment to SSABS. Any remedy regarding those bills and amounts lies with the Courts, not the Commission, since the bills are clearly related to the “rate” charged and the “service” provided.

The point that billing customers does not trigger the Commission’s jurisdiction is reinforced by the logic being advanced by I&E in a separate pending complaint proceeding. In *Bureau of Investigation and Enforcement vs. East Dunkard Water Authority*, PUC Docket No. C-2021-3027615, I&E reached a proposed settlement⁶³ with East Dunkard Municipal Authority, which is a municipal authority created by only one municipality that directly provides wastewater services to customers located in other municipalities. The logic in that proposed settlement provides that consent of the “other” municipalities is enough for I&E to “forgo” compliance with the Public Utility Code. The “other” municipalities consented in the East Dunkard complaint proceeding and I&E did not appear concerned with the continued billing and service by East Dunkard Municipal Authority in the “other” municipalities.

⁶³ *Bureau of Investigation and Enforcement vs. East Dunkard Water Authority*, C-2021-3027615, Joint Petition for Settlement Agreement dated September 26, 2022, <https://www.puc.pa.gov/pcdocs/1759614.pdf>. Statements in Support of that Joint Petition are attached thereto.

Here, I&E changed course and abandoned that logic. Rather than use the same logic as in the East Dunkard complaint proceeding, I&E is focused on the alleged termination of contractual relationship between the Township and the SSABS and the “fact” that the SSABS attempted (and stopped) billing the Township’s wastewater customers for the wastewater treatment provided by SSABS. Those contractual issues, however, as discussed should be resolved before the Courts (not the Commission). To the extent that consent of the Township is the actual issue, SSBAS requests that the record be reopened and that an additional hearing be conducted to address the “consent” issue (which appears to be the dispositive issue in the East Dunkard complaint proceeding). The additional hearing would be needed since consent exists both explicitly and implicitly that would satisfy the “East Dunkard” standard. Explicit consent can be found in the 1992 Sewage Treatment Agreement, relevant permits issued by the Pennsylvania Department of Environmental Protection and the Township’s Act 537 plans. Implicit consent is evidence by the Township continuing to send wastewater collected by the Township to SSABS.

D. The Bulk Services agreement between SSABS and the Township was not validly terminated.

As noted herein, a letter was sent, at least in relation to the Township’s payment issues on September 11, 2020.⁶⁴ SSABS cannot terminate the agreement unilaterally. On page 8 of SSABS Exhibit 2 it says that the agreement is in effect while SSABS is providing service to Conyngham Township, or until terminated by mutual written agreement of the parties.⁶⁵ SSABS is still providing service to Conyngham Township.⁶⁶ Conyngham Township did not consent to

⁶⁴ Joint Exhibit B.

⁶⁵ SSABS Exhibit 2, p. 8.

⁶⁶ Direct written testimony of Barry Noss, p. 5, admitted into evidence at 277.

termination of the agreement in writing.⁶⁷ The parties also failed to arbitrate the dispute which was required pursuant to page 15 section 7.07 of the agreement.⁶⁸ Conyngham Township has made no effort to contact DEP to seek alternative treatment of its sewage like, sending its sewage to Wyoming Valley Sanitary Authority, building its own treatment plant, or for temporarily collection and conveyance of its sewage.⁶⁹ Both Shickshinny Borough and Conyngham Township's Act 537 Plans indicate that the SSABS plant is their processing center.⁷⁰ In order to terminate the sewage treatment agreement, each municipality would have had to revise its Act 537 Plan, and those official plan revisions would have to go through a process of public input, advertisement, DEP review and approval, and require approval of the Municipal governing bodies, and none of that happened in this matter.⁷¹ The 1992 agreement is silent as to who invoices customers for service.⁷²

⁶⁷ Id.

⁶⁸ SSABS Exhibit 2, p. 15.

⁶⁹ Direct written testimony of Barry Noss, p. 9, admitted into evidence at 277. See also, Record Hearing N.T. p. 254.

⁷⁰ Id.

⁷¹ Id.

⁷² Direct written testimony of Barry Noss, p. 7, admitted into evidence at 277.

VI. CONCLUSION

For the foregoing reasons, the Sanitary Sewer Authority of the Borough of Shickshinny respectfully requests that the Commission expeditiously dismiss the Formal Complaint filed by Conyngham Township.

DATE: 11/18/2022

Respectfully submitted,

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APPENDIX A - PROPOSED FINDINGS OF FACT

1. The Department of Environmental Resources, now the Pennsylvania Department of Environmental Protection (“DEP”), ordered the Township to join with the Borough of Shickshinny to undergo a project of preservation and improvement of the purity of the waters of the Commonwealth pursuant to the provisions of the Clean Streams Law (“Preservation Project”).⁵⁰
2. The Township, on May 7, 1973, passed a joint resolution with the Borough of Shickshinny to undertake the Preservation Project.⁵¹
3. The Township employed an engineering firm to undertake and recommend a site for the processing plant and incorporated the Conyngham Township Sewer Authority (“CTSA”) to undertake the Preservation Project.⁵²
4. The Township passed a resolution finding the site recommended in its feasibility study acceptable for the erection of a processing plant for the purpose as ordered by the Commonwealth of Pennsylvania.⁵³
5. The Authority 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.⁵⁴

⁵⁰ Joint Stipulation of Facts.

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

6. The general scope of the Authority'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.⁵⁵

7. The sole municipality that joined the Authority is the municipality that formed it, which is the Borough of Shickshinny.⁵⁶

8. The sewer lines located in the Township are owned and maintained by the CTSA, and those lines convey sewage to the Authority's processing plant located on property owned by the Authority located in the Township.⁵⁷

9. The Authority provides sewage treatment service to the Borough of Shickshinny and a portion of the Township, among other areas.⁵⁸

10. The Authority and the Township entered into a Sewage Treatment Agreement on November 18, 1992 wherein the Authority agreed to provide sewage treatment and disposal services to the Township as a single bulk customer ("Sewage Treatment Agreement").⁵⁹

11. By letter dated September 11, 2020, the Authority notified the Township that it was cancelling the Sewage Treatment Agreement.⁶⁰

12. On January 1, 2021, April 1, 2021, and July 1, 2021, the Authority sent a quarterly invoice directly to ratepayers/customers located in the Township a rate of \$75.00 per quarter.⁶¹

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id., see also Joint Exhibit A.

⁶⁰ Id., see also Joint Exhibit B.

⁶¹ Joint Stipulation of Facts.

13. There are approximately 220 residential customers and eight commercial customers located in the Township.⁶²

14. From January 1, 2021 to September 23, 2021, the Authority collected an approximate total of \$54,684.68 from ratepayers located in the Township.⁶³

15. From January 1, 2021 to the first calendar year quarter of 2022, CTSA has been billing its ratepayers/customers located in the Township at the reduced rate of \$59.00 per EDU per quarter.⁶⁴

16. Because of the PUC intervention, the Authority did not invoice customers located in the Township for the fourth calendar year quarter of 2021.⁶⁵

17. The Authority did not invoice customers located in the Township for the first calendar year quarter of 2022.⁶⁶

18. The Authority has continually provided sewage processing and disposal service to Township residents and customers from the onset of the agreement to the present.⁶⁷

19. Neither the CTSA nor any individual ratepayer or customer has paid for the sewage processing or disposal service provided by the Authority since September 1, 2021.⁶⁸

20. The Authority has no control over who sells or leases properties in the Township.⁶⁹

21. The Conyngham Township Sewer Authority was established on April 26, 1974.⁷⁰

⁶² Joint Stipulation of Facts.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Direct written testimony of Barry Noss, p. 1, admitted into evidence at 277.

22. The Conyngham Township Sewer Authority handles installation, regulation, and maintenance of the Conyngham Township wastewater system.⁷¹

23. The system consists of main sewer lines and pumps which were installed in 1993.⁷²

24. The Conyngham Township Sewer Authority handles the conveyance portion of wastewater disposal, and its pipes connect to the SSABS treatment facility at a single point.⁷³

25. There was no provision in the in the 1992 Agreement for influx and infiltration, but a corrective action plan was formally adopted in 2014 by all parties as a revision to their Act 537 Official Sewage Plans.⁷⁴

26. A flow report reveals the numerous times when Conyngham Township's flows were extremely excessive in 2018, 2019 and 2020.⁷⁵

27. An amended Agreement was sent to Conyngham Township on June 17, 2019 to address the influx of water but the same was rejected.⁷⁶

28. The 1992 agreement is silent as to who invoices customers for service.⁷⁷

29. The Authority is not in control of or providing distribution and collection.⁷⁸30.

30. The Authority receives wastewater at a single pipe location, and does not have dispersed infrastructure to serve the township or its customers.⁷⁹

⁷¹ Direct written testimony of Eric Kubasek, p. 2, admitted into evidence at 233.

⁷² Id.

⁷³ Id.

⁷⁴ SSABS Exhibit 4, Direct written testimony of Barry Noss, p. 3, admitted into evidence at 277.

⁷⁵ SSABS Exhibit 3, Direct written testimony of Barry Noss, p. 3, admitted into evidence at 277.

⁷⁶ SSABS Exhibit 6, Direct written testimony of Barry Noss, p. 4-5, admitted into evidence at 277.

⁷⁷ Direct written testimony of Barry Noss, p. 7, admitted into evidence at 277.

⁷⁸ Direct written testimony of Eric Kubasek, p. 2, admitted into evidence at 233.

⁷⁹ Id.

31. The Authority cannot shut off service to the Township without an order from DEP.⁸⁰

32. Conyngham Township has not paid for quarterly service since the third quarter of 2021.⁸¹

33. The Authority relies on the township maintaining and operating their distribution and collection systems.⁸²

34. The Township has an outstanding balance of approximately \$69,390.00 based on the quarterly rate of \$11,565.00 remaining unpaid since the third quarter of 2021.⁸³

35. The 1992 Service Agreement contains the entirety of the legal relationship between the Authority and the Township.⁸⁴

⁸⁰ Direct written testimony of Barry Noss, p. 5, admitted into evidence at 277.

⁸¹ Record Hearing N.T. p. 329.

⁸² Direct written testimony of Eric Kubasek, p. 2, admitted into evidence at 233.

⁸³ Direct written testimony of Barry Noss, p. 7, admitted into evidence at 277.

⁸⁴ Record Hearing N.T. p. 194.

APPENDIX B - PROPOSED CONCLUSIONS OF LAW

1. The Commission lacks jurisdiction over SSABS and over the subject matter of this proceeding. 66 Pa. C.S. § 701.

2. The burden of proof is on the parties seeking affirmative relief from the Commission. 66 Pa. C.S. § 332(a); *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420, at *29–30 (Pa. Commw. Ct. June 2, 2020).

3. The Commission lacks jurisdiction over the rates and service of municipal authorities pursuant to the Municipality Authorities Act. 53 Pa. C.S.A. § 5601 *et seq.*

4. The Township and I&E have failed to satisfy their to prove that the rates and service of SSABS are subject to the Commission's jurisdiction.

5. The Commission lacks jurisdiction over the contractual claims of the parties. *White Rock Sewage Corp. v. Pennsylvania Pub. Util. Comm'n*, 133 Pa. Cmwlth. 608, 613, 578 A.2d 984, 986 (1990); citing *Virgilli v. Southwestern Pennsylvania Water Authority*, 58 Pa. Cmwlth. 340, 427 A.2d 1251 (1981).

6. A contract under which a municipal authority provides services is outside the Commission's authority to review. *White Rock Sewage Corp. v. Pennsylvania Pub. Util. Comm'n*, 133 Pa. Cmwlth. 608, 613, 578 A.2d 984, 986 (1990); citing *Virgilli v. Southwestern Pennsylvania Water Authority*, 58 Pa. Cmwlth. 340, 427 A.2d 1251 (1981).

7. Courts and the Commission have repeatedly held that disputes on contracts like the 1992 Sewage Treatment Agreement, and the validity of the contract itself, are matters under the jurisdiction of the courts of common pleas. *E.g. Beaver Falls Mun. Auth. v. Mun. Auth. of the*

Borough of Conway, 689 A.2d 379 (Pa. Commw. Ct. 1997) (appeal from the trial court on interrupting contract terms and rights regarding the sale of water between Authorities under the Municipality Authorities Act); *Highridge Water Auth. v. Lower Indiana Cnty. Mun. Auth.*, 689 A.2d 374 (Pa. Commw. Ct. 1997)(appeal from the trial court interrupting the rights and duties between authorities in the sale of water); *Lehigh Valley Co-Op Farmers, No. C-79081344*, 1980 WL 140912 (Dec. 1, 1980) (recognizing that the Commission regards utility service by on municipality to another via a bulk or whole sale agreement to be nonjurisdictional where the line of the customer municipality connects to the line of the provider municipality within the latter's corporate limits).

8. The Commission has no jurisdiction over contracts between a township and a municipal authority. *Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. 1949).

9. The Township and BIE have failed to satisfy their burden of proof to prove that the 1992 Sewage Treatment Agreement [contract] between the Township and SSABS is subject to the Commission's jurisdiction.

10. There is no legal basis for the Commission to simply ignore the [Contract].

11. All other claims of the Township and BIE, at Docket at C-2021-3023624, against the Authority must be dismissed.

12. The Township and BIE have failed to satisfy their burden of proving that SSABS has violated the Public Utility Code, the Commission's regulations, the Orders of the Commission.

13. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2021-3031694 be dismissed with prejudice.

APPENDIX C - PROPOSED ORDERING PARAGRAPHS

THEREFORE, IT IS ORDERED:

1. That the Formal Complaint against the Sanitary Sewer Authority of the Borough of Shickshinny, at Docket C-2021-3023624, is dismissed for lack of jurisdiction.

2. That this matter be marked closed.