

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

Conyngham Township
v.

Public Meeting held October 19, 2023
3023624-OSA
Docket No. C-2021-3023624

**Sanitary Sewer Authority of
the Borough of Shickshinny**

MOTION OF COMMISSIONER RALPH V. YANORA

Before the Pennsylvania Public Utility Commission (Commission or PUC) for consideration and disposition are the Exceptions filed by the Sanitary Sewer Authority of the Borough of Shickshinny (Authority or Respondent) on June 30, 2023, to the Initial Decision (ID) of Administrative Law Judge (ALJ) Conrad A. Johnson, issued June 12, 2023, in the above-captioned proceeding. The ID sustained the Formal Complaint (Complaint) filed by Conyngham Township (Township or Complainant) on January 7, 2021.

In its Complaint, the Township alleged that the Authority is operating in the Township by providing wastewater treatment and disposal service beyond its jurisdictional limits without a Commission-issued Certificate of Public Convenience (Certificate). The Township requested that the Commission order the Authority to immediately stop billing residents of the Township and return all monies collected until after the Authority obtains a valid Certificate.

In the ID of June 12, 2023, ALJ Johnson sustained the Complaint finding that the Township established its burden of proving that the Authority is operating as a public utility without a Commission-issued Certificate. In addition, the ALJ denied, as unwarranted, the Township's request for a refund and the Commission's Bureau of Investigation and Enforcement's (I&E's) request for the assessment of a civil penalty.

In its Exception No. 1, the Authority argues that the ALJ erred because the Commission lacks jurisdiction over municipal authorities. The Authority contends that the Commission's jurisdiction does not extend to municipal authorities because the Municipality Authorities Act of 1945, 53 Pa. C.S. § 5601, *et seq.*, supersedes the Commission's jurisdiction over the rates and services of municipal authorities. Rather, the Authority argues that the Municipality Authorities Act expressly grants municipal authorities the power to fix their rates for services and vests the courts of common pleas with exclusive jurisdiction to review the same.¹

¹ Although the Authority filed additional Exceptions to the ID in this matter, the key issue in this proceeding is whether or not the Commission has jurisdiction with respect to the rates and services of the Authority, a duly authorized municipal authority which provides service outside of the boundaries of its incorporating municipality.

On January 12, 2022, I&E, the Authority, and the Township filed a Joint Stipulation of Facts (Joint Stipulation). Paragraph 5 of the Joint Stipulation states that 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.” Based on this uncontested record evidence, all parties agree that the Authority is in fact a municipal authority duly organized under the Municipal Authorities Act and authorized to furnish wastewater service in the Commonwealth.

Turning to the question regarding whether the Commission has jurisdiction over the Authority, upon our review of the relevant law, the courts of common pleas are vested with exclusive jurisdiction of the rates and services of such municipal authorities, beyond, as well as within, the limits of the municipality which created the authority.

Historically, as discussed, *supra*, Commission jurisdiction has existed over municipal utilities providing service outside of their political boundaries. Section 1102 of the Code, 66 Pa. C.S. § 1102, established that it shall be lawful for any municipal corporation to provide public utility service beyond its corporate limits so long as it obtains a Certificate from the Commission. Section 1301 of the Code, 66 Pa. C.S. § 1301, established Commission jurisdiction over the rates charged by municipal corporations when those entities provide public utility service outside their corporate limits. Section 102 of the Code, 66 Pa. C.S. § 102, defines a “municipal corporation” as:

All cities, boroughs, towns, townships, or counties 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.

66 Pa. C.S. § 102. Also, Section 1501 of the Code, 66 Pa. C.S. § 1501, provides the Commission with jurisdiction over the quality, reliability, and adequacy of services of those entities under similar terms. In addition, the Code contains other references and requirements for municipal corporations that offer service beyond their boundaries. *See, e.g.*, Pa. C.S. §§ 502, 507, 508, and 1304.

However, the Commission’s jurisdiction presently extends only to municipalities, not municipal authorities. The enactment of the Municipality Authorities Act in 1945 removed municipal authorities from Commission jurisdiction and, instead, vested the courts of common pleas with exclusive jurisdiction over rates and services of municipal authorities. Specifically, Section 5607(d)(9) of the Municipality Authorities Act states:

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.

53 Pa. C.S. § 5607(d)(9).² Therefore, the Commission has no authority over entities created and operating under the Municipality Authorities Act.

The Courts have reviewed and upheld this statutory language. For instance, the Superior Court of Pennsylvania found that the Municipality Authorities Act provided the courts of common pleas, not the Commission, with exclusive jurisdiction over the rates and service of a municipal authority within, and beyond, the corporate boundaries of the municipality which created it. *See, Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. 1949) (*Rankin*). In addition, the Supreme Court of Pennsylvania reached a similar holding. *See, Elizabeth Twp. v. Mun. Auth. of McKeesport*, 447 A.2d 245 (Pa. 1982).³ In both of these cases, the Courts acknowledged that the provision of Section 5607(d)(9), 53 Pa. C.S. § 5607(d)(9), which was a result of an amendment to the Municipality Authorities Act in 1945, was intended to reject the Superior Court’s holding in *State College Borough Authority v. Pa. PUC*, 31 A.2d 557 (Pa. Super. 1943), that permitted the Commission to hear challenges to the rates of municipal authorities.⁴ Also, the Commonwealth Court has similarly held that the courts of common pleas, not the Commission, have exclusive jurisdiction of the rates and service of municipal authorities, both within and outside, their corporate boundaries. *See, Graver v. Pa. PUC*, 469 A.2d 1154 (Pa. Cmwlth. 1984) (*Graver*);⁵ *Borough of Sewickley Water Authority v. Mollica*, 544 A.2d 1122 (Pa. Cmwlth. 1988); and *White Rock Sewage Corp. v. Pa. PUC*, 578 A.2d 984 (Pa. Cmwlth. 1990).⁶

² The Municipality Authorities Act was officially codified in 2001, as 53 Pa. C.S. § 5601, *et seq.*, and was intended as a continuation of the prior law, the Municipality Authorities Act of 1945. As a result, Section 4B(h) of the Municipality Authorities Act became 53 Pa. C.S. § 5607(d)(9).

³ *See also, Calabrese v. Collier Twp. Mun. Auth.*, 240 A.2d 544 (Pa. 1968).

⁴ The Superior Court in *Rankin* acknowledged that [now codified 53 Pa. C.S. § 5607(d)(9)] was inconsistent with certain sections of the Public Utility Law, now the Code, that provided the Commission with jurisdiction over the reasonableness of rates charged by a municipal authority to consumers residing outside the municipality which created the authority. However, the Court concluded that where there is a “positive repugnancy” between laws enacted at different times, the earlier provision is impliedly repealed. Therefore, the Court held that it was clear that “a definite limitation [was] imposed upon the operation and effect” of the provision of the Public Utility Law by the Municipality Authorities Act, which resulted in “the determination of issues involving reasonableness of rates beyond the corporate limits of the municipality creating the Authority – as well as within – now lies exclusively with the court of common pleas.” *Rankin* at 461.

⁵ Like *Rankin*, the Court in *Graver* also explained that the Municipality Authorities Act modified the Code. *See, Graver* at 1157.

⁶ The Commonwealth Court, in an unreported opinion in November 2020, affirmed the Greene County Court of Common Pleas’ Order granting the preliminary objection of the Southwestern Pennsylvania Water Authority and dismissing the complaint filed by the EDWA in a territorial dispute regarding the provision of water service in their service areas under the Municipality Authorities Act because EDWA failed to produce evidence of the Commission’s approval of its provision of service beyond the boundaries of Dunkard Township. *See, East Dunkard Water Authority v. Southwestern Pennsylvania, Water Authority*, 2020 Pa. Cmwlth. Unpub. LEXIS 547 (Pa.

Furthermore, the Commission has held that the jurisdiction over the rates and service of municipal authorities, within and outside of the limits of the municipality which created the authorities, lies with the courts of common pleas, and not the Commission. The ALJ explained this conclusion in *Schneider v. Borough of New Wilmington and New Wilmington Water Authority*, Docket No. C-00924506 (Order entered March 23, 1993, adopting the Initial Decision dated February 8, 1993), 1993 Pa. PUC LEXIS 4 (*Schneider*), as follows:

Municipal authorities are organized under and governed by the Municipality Authorities Act. Municipal authorities are not creatures, agents or representatives of municipalities which organize them, but rather are independent agencies of the Commonwealth and a part of its sovereignty.” *White Rock Sewage Corp. v. Pennsylvania Public Utility Commission*, 133 Pa. Commonwealth Ct. 608, 614-15, 578 A.2d 984, 987 (1990); accord section 4A of the Municipality Authorities Act, 53 P.S. § 306A.

Section 4B(h) of the Municipality Authorities Act, 53 P.S. § 306B(h),⁷ declares that

[a]ny person questioning...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 wherein the project is located....The court of common pleas shall have exclusive jurisdiction to determine all such questions involving rates or service.

(Emphasis added.) Consequently, pursuant to section 4B(h), “the courts of common pleas have exclusive jurisdiction concerning the utility services of municipal authorities beyond, as well as within, the limits of the municipality which created the authorities.” *Borough of Sewickley Water Authority*, 118 Pa. Commonwealth Ct. at 246, 544 A.2d at 1124 (quoting *Graver v. Pennsylvania Public Utility Commission*, 79 Pa. Commonwealth Ct. 528, 531-32, 469 A.2d 1154, 1156 (1984)).

Cmwlth. 2020). It does not appear that this unreported opinion can be relied upon in the instant matter because it is not relevant under the doctrine of law of the case, *res judicata*, or collateral estoppel. Additionally, the cases cited in this decision regarding Commission jurisdiction over extraterritorial service, including *Ridgway v. P.U.C.*, 83 Pa. Cmwlth. 379, 480 A.2d 1253 (Pa. Cmwlth. 1984) (*Ridgway*), as discussed further below, dealt with municipalities, and not municipal authorities, providing the service. However, the Commonwealth Court’s conclusion that EDWA was obligated to submit to Commission jurisdiction to seek a Certificate authorizing it to operate beyond the municipal boundaries of Dunkard Township appears to be at odds with precedent establishing that the Court of Common Pleas retains jurisdiction for disputes involving the rates of and services provided by municipal authorities whether inside or outside of their municipal boundaries.

⁷ 53 P.S. § 306B(h) is now, 53 Pa. C.S. § 5607(d)(9).

Accordingly, I conclude that the Commission lacks jurisdiction over Landowner's complaint because it concerns a municipal authority's provision of water service.

Schneider at 3-4. The Commission has similarly found that it does not have jurisdiction over municipal authorities providing extraterritorial service. *Paul E. Zimmerman v. Township of Whitpain et al.*, Docket No. C-00822905 (Order entered October 19, 1984). Also, in 2018, the Commission, in *Implementation of Chapter 32*, reviewed the background and history of the removal of municipal authorities from the Commission's jurisdiction by the Municipality Authorities Act.

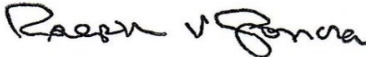
To the contrary, reliance on the Commonwealth Court's ruling in *Ridgway* appears inapposite to the instant matter. *Ridgway* involved a municipality providing extraterritorial sewer service to the public, not a municipal authority. As discussed, *supra*, municipalities and municipal authorities are separate legal entities created by separate laws, and they are independent agencies of the Commonwealth. While the Commission has exclusive jurisdiction over municipalities which are providing extraterritorial service to the public, municipal authorities, as explained above, are different types of entities organized and existing under different laws. Inasmuch as the decision in *Ridgway* did not involve a municipal authority, its ruling does not appear to be applicable in the instant matter.

Based on the reasons set forth above, the Commission lacks jurisdiction over the rates and services of municipal authorities like the Sanitary Sewer Authority of the Borough of Shickshinny. Rather, under the Municipality Authorities Act, that jurisdiction lies exclusively with the courts of common pleas. Accordingly, the Commission will grant the Authority's Exception No. 1. Because the Commission lacks jurisdiction over this matter, we should deny the Authority's Exception Nos. 2, 3, 4, 5 and 6.

THEREFORE, I MOVE THAT:

1. That the Exceptions of the Sanitary Sewer Authority of the Borough of Shickshinny, filed on June 30, 2023, to the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on June 12, 2023, at this docket, are granted, in part, and denied, in part, consistent with this Motion.
2. That the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on June 12, 2023, at this docket, is modified, consistent with this Motion.
3. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.
4. Upon completion of Ordering Paragraph 3, this proceeding be closed.

DATE: October 19, 2023



Ralph V. Yanora, Commissioner