

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement

Public Meeting held October 19, 2023
3027615-OSA
Docket No. C-2021-3027615

v.

East Dunkard Water Authority

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 East Dunkard Water Authority (Authority or EDWA) to the Initial Decision (ID) of Administrative Law Judge (ALJ) Marta Guhl, issued June 27, 2023, in the above-captioned proceeding. The ID approved, without modification, a Joint Petition for Settlement (Settlement) between the Authority and the Commission’s Bureau of Investigation and Enforcement (I&E) filed on September 26, 2022.

The Settlement covered all issues set forth in I&E’s Formal Complaint (Complaint) filed on August 2, 2021, alleging that since 2011, the Authority has impermissibly furnished water service to the public for compensation without holding a Certificate of Public Convenience (Certificate) issued by the Commission to customers located in Greene, Monongahela, Cumberland, Perry, and Whiteley Townships, which are municipalities beyond the Authority’s corporate limits, in violation of 66 Pa. C.S. § 1102(a)(5). In addition, in its Complaint, I&E argued that the Authority failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities to customers located beyond its corporate limits, in violation of 66 Pa. C.S. § 1501.

As a threshold matter, it is necessary to consider whether the Commission has jurisdiction with respect to municipal authorities, whether or not the authority is providing service outside of its incorporating municipal boundaries. In the ID, the ALJ found that the Authority, is a “municipal corporation” as defined at 66 Pa. C.S. § 10102 and is providing extraterritorial service without a Certificate issued by the Commission. The ALJ also concluded, as a matter of law, that the Commission has jurisdiction over the subject matter and Parties in this case, pursuant to 66 Pa. C.S. §§ 501, 701, and 1101-1103. As we explain below, this conclusion is incorrect.

On August 23, 2021, EDWA entered its “Articles of Incorporation” into the record certifying its compliance with the Municipal Authorities Act of 1945, 53 Pa. C.S. § 5601, *et seq.*, under which it is authorized to provide water service to Dunkard Township as other geographic areas.¹ This record evidence demonstrates that EDWA is a municipal authority authorized to provide water service in the Commonwealth.

¹ EDWA Answer, Exhibit A.

Turning to the question regarding whether the Commission has jurisdiction over EDWA, 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. 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

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)).

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

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).

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 EDWA. Rather, under the Municipality Authorities Act, that jurisdiction lies exclusively with the courts of common pleas. Therefore, the Commission lacks jurisdiction to consider both the I&E Complaint and resulting Settlement in this matter.

THEREFORE, I MOVE THAT:

1. That the Initial Decision of Administrative Law Judge Marta Guhl, issued on June 27, 2023, at this docket, is modified, consistent with this Motion.
2. That the Exceptions of the East Dunkard Water Authority to Initial Decision of Administrative Law Judge Marta Guhl, issued on June 27, 2023, at this docket are denied, consistent with this Motion.
3. The Settlement filed between the East Dunkard Water Authority and the Commission's Bureau of Investigation and Enforcement on August 2, 2021, is rejected for lack of Commission jurisdiction.
4. The Complaint filed by the Commission's Bureau of Investigation against the East Dunkard Water Authority on August 2, 2021, is dismissed for lack of Commission jurisdiction.
5. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.
6. Upon completion of Ordering Paragraph 5, this proceeding be closed.

Ralph V. Yanora

DATE: October 19, 2023

Ralph V. Yanora, Commissioner