

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held October 19, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman, Conflict Statement
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Conyngham Township

C-2021-3023624

v.

Sanitary Sewer Authority of
the Borough of Shickshinny

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by the Sanitary Sewer Authority of the Borough of Shickshinny (SSABS or Respondent) on June 30, 2023, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Conrad A. Johnson, issued June 12, 2023, in the above-captioned proceeding. The Initial Decision sustained the Formal Complaint (Complaint) filed by Conyngham Township (Township or Complainant) on January 7, 2021. No Replies to Exceptions were filed. For the reasons

stated below, we shall grant, in part, and deny, in part, SSABS' Exceptions, and modify the ALJ's Initial Decision, consistent with this Opinion and Order.

I. History of Proceeding¹

On January 7, 2021, the Township filed a Complaint, alleging that SSABS 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 SSABS to immediately stop billing residents of the Township and return all monies collected until after a valid Certificate is obtained. Complaint at 2-3.

On January 26, 2021, SSABS filed an Answer and New Matter and Preliminary Objections. SSABS asserted that it "is not acquiring or beginning to operate any plant, equipment, or other facility, or doing any other activity which would trigger the need for a Certificate of Public Convenience." Answer at 2. In New Matter, the Respondent asserted 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. *Id.* at 3. SSABS requested that the Complaint be dismissed with prejudice. *Id.* at 4.

In its Preliminary Objections, SSABS raised the following objections: (1) the Borough lacked standing to seek relief on behalf of others, and the Public Utility Code (Code) does not provide for the filing of class actions; (2) the rights asserted by the Township are derived from a private contract, over which the Commission lacks

¹ See, I.D. at 2-19 for a detailed summary describing the procedural history of this proceeding, which is incorporated herein.

jurisdiction; therefore, the Complaint is legally insufficient; (3) the Commission lacked jurisdiction to grant monetary compensation in the form of refunds to Complainant; and (4) the Complaint is legally insufficient because SSABS is not acquiring or beginning to operate any plant, equipment, or other facility, or doing any other activity which would trigger the need for a Certificate, as required by 66 Pa. C.S. § 1102(a)(5). SSABS requested that the Complaint be dismissed in its entirety. Preliminary Objections at 3-6.

The Complainant 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. The Complainant further averred that it has standing to bring the Complaint as a customer of the Respondent. Complainant reiterated its request for relief as stated in its Complaint. Reply to New Matter at 1-3.

That same day, the Township also filed an Answer to the Respondent's Preliminary Objections, arguing that the Preliminary Objections were conclusions of law to which no response was required. The Township further averred that: (1) the Township has standing because it was unlawfully billed by the Respondent for the billing period January 1, 2021 to March 31, 2021 for sewage treatment at the Township Municipal Building; (2) the Commission has authority to grant refunds "with interest" and "on behalf of all patrons subject to the same rate of the public utility"; (3) prior to September 11, 2020, the Complainant and the Respondent were parties to a bulk services agreement whereby the Respondent would bill the Conyngham Township Sewer Authority (CTSA) for sewage treatment for customers of CTSA, for which a Certificate was not required, and which the Respondent unilaterally terminated on or about September 11, 2020, followed by the Respondent operating beyond its corporate limits by directly billing Township customers; and (4) the rights asserted by the Township in this action derive from the Code and Pennsylvania Law, rather than a private contract, and the Respondent was at no point in time authorized by law or contract to act as a "public utility" within the corporate limits of the Township without a Certificate, after it

terminated the bulk services agreement. The Township requested that the Commission deny and dismiss Respondent's Preliminary Objections. Answer to Preliminary Objections at 2-5.

On March 5, 2021, the ALJ issued a First Interim Order Sustaining in Part and Denying in Part Preliminary Objections and Denying Respondent's Request for Dismissal of the Complaint. In that First Interim Order, the ALJ sustained the Preliminary Objections to the extent that the Township lacked standing to represent the residents of the Township and denied the Preliminary Objections in all other respects. I.D. at 5.

As mediation proved to be unsuccessful, this case was set for hearing on September 15, 2021. *Id.* at 6.

On September 3, 2021, I&E filed a Notice of Intervention. Also on September 3, 2021, I&E filed a Motion for Continuance to allow time for I&E to conduct additional discovery and re-establish the litigation schedule to include the service of written testimony and potential settlement discussions. *Id.*

A new date of January 19, 2022, was assigned for the evidentiary hearing. *Id.* at 7.

On January 11, 2022, SSABS requested a continuance of the hearing due to its counsel's conflicting appearance in another court proceeding. As a result, the evidentiary hearing was rescheduled to March 2, 2022. *Id.* at 8.

On January 12, 2022, the Parties filed a Joint Stipulation of Facts (Joint Stipulation). *Id.*

On February 24, 2022, SSABS requested a second continuance of the hearing scheduled for March 1, 2022, because the Parties had been in earnest negotiations regarding reaching a settlement in this matter. The evidentiary hearing was rescheduled for May 17, 2022. *Id.*

On May 11, 2022, SSABS filed a Motion for Stay, stating that it was seeking a stay to file in the Court of Common Pleas of Luzerne County for a declaratory judgment on the legal effect of SSABS' September 2020 letter terminating the bulk service sewage treatment agreement between SSABS and the Township. I&E and the Township did not consent to the stay. SSABS' Motion for Stay also requested that the ALJ "direct the SSABS to file their declaratory judgment action within 10 days of the order staying this matter, seeking an expedited hearing from the Court." The evidentiary hearing scheduled for Tuesday, May 17, 2022, was converted to and convened as a Third Prehearing Conference to discuss the Motion to Stay and other procedural matters. Following the receipt of written responses to the Motion for Stay, the ALJ denied SSABS' Motion for Stay. *Id.* at 8-14.

The evidentiary hearing was scheduled for October 4, 2022, and it convened as scheduled. The Parties were represented by counsel and presented the testimony of several witnesses. The following testimony and exhibits were admitted into the record:

Township Whitebread St. 1
Township Kubasek St. 1
Township Exhs. 1-9
SSABS Noss St. 1
SSABS Exhs. 1-6
I&E Lamb St. 1
I&E Lamb St. 1-R
I&E Exhs. 1 – 22
Parties' Joint Exhs. A and B

Id. at 15-16.

On October 26, 2022, the 342-page transcript of the evidentiary hearing was filed with the Commission's Secretary. Main Briefs were filed on November 18, 2022. The record was closed on November 23, 2022. On November 30, 2022, the ALJ sustained the objections of I&E and the Township to SSABS' request for the filing of Reply Briefs; therefore, Reply Briefs were not filed in this matter. *Id.* at 16-18.

On February 1, 2023, the ALJ reopened the record and directed the court reporter for the evidentiary hearing to submit the Parties' admitted documents to the Commission's Secretary for docketing. On February 23, 2023, the Parties' admitted written testimonies and exhibits were docketed by the Secretary, and the transcript for the evidentiary hearing, together with the Parties' admitted written testimonies and exhibits, were submitted by the court reporter to the Commission's Secretary and docketed by the Secretary. The record was closed again on March 14, 2023. *Id.* at 18.

In the Initial Decision issued on June 12, 2023, ALJ Johnson sustained the Complaint finding that the Township established its burden of proving that SSABS is operating as a public utility without a Commission-issued Certificate. In addition, the ALJ denied, as unwarranted under the circumstances, the Township's request for a refund and I&E's request for the assessment of a civil penalty. *Id.* at 1, 36-42.

As noted, *supra*, SSABS filed Exceptions on June 30, 2023. No Replies to Exceptions were filed.

II. Background

A. History

In the early 1990s, the Pennsylvania Department of Environmental Resources, now the Department of Environmental Protection (DEP), ordered the Township to join with the Borough of Shickshinny to undergo a project to improve the purity of the waters of the Commonwealth pursuant to the Clean Streams Law (Preservation Project). I.D. at 19; Jt. Stip. At 1. The Township passed a joint resolution with the Borough of Shickshinny on May 7, 1973, to undertake the Preservation Project. Jt. Stip. at 1. SSABS was formed on September 25, 1973, as a municipal authority. Jt. Stip. at 2; SSABS Br. at 3. The Borough of Shickshinny is the sole member of SSABS. I.D. at 19, citing I&E St. 1 at 7, I&E Exh. 5; Jt. Stip. At 2.

SSABS provides sewage treatment service to the Borough of Shickshinny, and a portion of the Township, among other areas. Jt. Stip. At 2. SSABS owns and operates a wastewater system within the Borough of Shickshinny. The wastewater collected by SSABS is delivered to the SSABS water treatment plant, which is located in the Township after being selected and approved by the Township. SSABS owns the property on which the water treatment plant is located. I.D. at 20; SSABS Br. at 3. The CTSA owns and maintains lines in the Township that convey sewage to SSABS' water treatment plant. I.D. at 20; Jt. Stip. at 2. The wastewater collected by the Township is delivered by the Township to SSABS, via a single point of connection, where it is treated by SSABS. SSABS Br. at 3.

The relationship between SSABS and the Township is governed by a 1992 Sewage Treatment Agreement (1992 Agreement). I.D. at 20; SSABS Br. at 3; SSABS Exh. 2. The 1992 Agreement, a bulk service agreement, provided for SSABS to provide sewage treatment and disposal services to the CTSA, as a single bulk customer. In turn,

the CTSA would pay a quarterly invoice to SSABS for the processing of the sewage coming from the Township. The CTSA invoiced customers in the Township \$134.00 for the wastewater services. I.D. at 20; SSABS Br. at 4.

On September 11, 2020, SSABS sent a letter to the Township purporting to terminate the 1992 Agreement due to a failure by the CTSA to address influx and infiltration issues. Thereafter, SSABS invoiced customers² of the Township connected to the Township's systems directly for quarterly charges of \$75.00 per quarter on January 1, 2021, April 1, 2021, and July 1, 2021. SSABS stopped invoicing customers in the Township in September 2021. I.D. at 21-23; Jt. Stip. at 3; SSABS Br. at 5.

SSABS filed a lawsuit with the Court of Common Pleas of Luzerne County against the Township and CTSA seeking a declaration of rights under the 1992 Agreement, alleging breach of contract, unjust enrichment, and seeking injunctive relief. The lawsuit remains pending. SSABS Br. at 5.

B. Positions of the Parties

1. I&E

I&E argued that SSABS operated as an uncertificated, de facto public utility providing sewage treatment and disposal service for compensation to customers located in the Township after the Authority terminated the 1992 Agreement. I.D. at 27, citing I&E Br. at 1. I&E submitted that under 66 Pa. C.S. § 1102(2)(5), a Certificate is required for a municipal corporation to begin to operate any facility for the furnishing to the public any public utility service beyond its corporate limits, and that SSABS is, by definition, a municipal corporation under 66 Pa. C.S. § 102. *Id.* at 28, citing I&E Br.,

² There are approximately 220 residential customers and eight commercial customers located in the Township. I.D. at 22; Jt. Stip. at 3.

at 12-13. I&E further averred that SSABS has never applied for a Certificate from the Commission, nor does it serve individual customers in the Township pursuant to a contract, have control over the selection of Township customers or the sale or leasing of customer properties in the Township, and it has never denied a request for sewage treatment service from a customer located in the Township. *Id.* at 28-29, citing I&E Br. at 10. I&E further argued that SSABS can provide sewage treatment and disposal service to additional customers in the Township if CTSA expands its collection and conveyance of the wastewater to SSABS' sewage treatment plant. *Id.* Furthermore, I&E contended that SSABS is a de facto public utility, pursuant to 52 Pa. Code § 69.1401. *Id.*, citing I&E Br. at 19-20.

For these reasons, I&E contended that the Commission should impose a civil penalty in the amount of \$100,000, order the issuance of refunds to Township customers in the amount that SSABS unlawfully collected with interest, and direct SSABS to apply for a Certificate. *Id.* at 30, citing I&E Br. at 21, 26-27; Tr. at 209.

2. Township

The Township averred that SSABS unilaterally terminated the 1992 Agreement on September 11, 2020. *I.D.* at 26, citing Whitebread St. 1 at 3; Jt. Stip. Nos. 10, 11 and Joint Exhs. A and B; Tr. 215; Township Memorandum at 2. The Township asserted that it is a customer of SSABS, and SSABS sent quarterly invoices directly to customers located in the Township at a rate of \$75.00 per quarter on January 1, 2021, April 1, 2021, and July 1, 2021. *Id.*, citing Tr. 14-21; Whitebread St. 1 at 4; Jt. Stip. No 13; Township Memorandum at 3. The Township contended that SSABS billed it and other Township customers without securing a Certificate from the Commission. *Id.*, citing Tr. 203, 208, 210, 247-248; I&E St. 1; Township Memorandum at 3.

By terminating the 1992 Agreement and beginning to directly bill Township customers, the Township argued that SSABS became a public utility as defined under 66 Pa. C.S. § 102, which requires Commission oversight. *Id.*, citing Township Memorandum at 4, 6-7. The Township contended that it and other Township customers are entitled to a refund under 66 Pa. C.S. § 1312 because SSABS billed Township customers for service during the first three quarters of 2021 without holding a Certificate. The Township requested that the Commission order the SSABS to secure a Certificate, refund all monies unlawfully billed with interest, and impose the maximum civil penalty allowed by law. *Id.* at 26-27, citing Township Memorandum at 8.

3. SSABS

SSABS stated that, under the 1992 Agreement, it provided sewage treatment services to the Township and billed the CTSA quarterly for the processing of the sewage coming from the Township. *I.D.* at 31, citing Noss St. 1 at 2. SSABS averred that in 2018, 2019 and 2020, it experienced issues concerning large amounts of water influx and infiltration coming into the system from the Township. *Id.*, citing Noss St. 1 at 3; SSABS Exh. 3. SSABS also stated that it proposed to amend the 1992 Agreement to address the influx of water issue by changing the payment structure to a flow based quarterly charge structure; however, the Township rejected the amendment. *Id.*, Noss St. 1 at 4-5; SSABS Exh. 6. SSABS asserted that it cannot shut off sewage service to the Township without the Township and DEP indicating that they are building their own plant or sending the sewage to another plant. *Id.*, citing Noss St. 1 at 5. SSABS further contended that, although it sent a letter to the Township on September 11, 2020, purporting to terminate the 1992 Agreement, the Township never agreed to terminate the agreement, and the agreement cannot be unilaterally terminated. *Id.*, citing Noss. St. 1 at 5; Tr. 195, 242- 243; SSABS Br. at 4. Therefore, SSABS stated that it never discontinued or interrupted sewage processing service to the Township, and that its September 11, 2020, letter purporting to terminate the 1992 Agreement is of no legal

effect. *Id.*, citing Noss St. 1 at 5; SABS Br. at 17. Rather, SSABS argued that the September 11, 2020, letter's legal result, if any, is under the jurisdiction of the Court of Common Pleas, which is why SSABS filed a lawsuit against the Township alleging breach of contract and unjust enrichment and seeking a declaration of rights under the agreement and injunctive relief. *Id.*, citing Noss St. 1 at 8; SSABS Br. at 5, 17.

SSABS argued that it is still participating in the 1992 Agreement as the Township is still utilizing SSABS's treatment plant despite not paying for the treatment service being provided by SSABS. SSABS stated that, on September 30, 2020, it sent a notice to the Township stating that beginning in January 2021, SSABS would begin invoicing Township customers directly in the amount of \$75.00 per quarter, which was \$5.00 more than the \$70.00 quarterly charge to ratepayers in the Township because of the water infiltration issue in the Township, and that SSABS would conduct a study to remediate the influx and infiltration issue. *Id.* at 32, citing Noss St. 1 at 5-6; Township Exh. 2. SSABS asserted that it billed ratepayers in the Township for services at the \$75.00 quarterly rate for the first three quarters of 2021, and it ceased billing after I&E intervened in the matter. *Id.*, citing Noss St. 1 at 6.

Furthermore, SSABS argued that the Commission's jurisdiction does not extend to the treatment service it provides to the Township because neither the September 11, 2020, letter, nor its billings issued to customers, transformed SSABS into a de facto public utility. SSABS averred that the nature and character of the wastewater treatment service it provides in the Township remains the same because SSABS can only receive wastewater that is delivered by the Township's wastewater conveyance system. *Id.*, citing Noss St. 1 at 18. According to SSABS, if the 1992 Agreement is valid, the Township is contractually required to pay for the service provided by SSABS, and if the agreement is no longer valid, the Township is obligated to pay for sewage service under the doctrine of unjust enrichment. *Id.* SSABS further argued that its billing of individual Township residents, while not triggering the Commission's jurisdiction, if anything,

would be an alleged breach of agreement, which would properly lie with the Court of Common Pleas. *Id.*, citing Noss St. at 19.

III. Discussion

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Legal Standards

1. Jurisdiction

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. *Riedel v. The Human Relations Comm'n of the City of Reading*, 559 Pa. 33, 739 A.2d 121 (1999). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. PUC*, 157 Pa. Super. 595, 43 A.2d 348 (1945). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Cf., Hughes v. Pa. State Police*, 152 Pa. Cmwlth. 409, 619 A.2d 390 (1992), *app denied*, 536 Pa. 633, 637 A.2d 293 (1993). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967). Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist, *Commonwealth v. VanBuskirk*, 303 Pa. Super. 148, 449 A.2d 621 (1982), nor can jurisdiction be obtained by waiver or estoppel. *Scott v. Bristol Twp. Police Dep't.*, 669 A.2d 457 (Pa. Cmwlth. 1995).

The Commission has jurisdiction over municipal utilities providing service outside of their political boundaries. Section 1102 of the Code, 66 Pa. C.S. § 1102, provides 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, establishes 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.

The Commission’s jurisdiction, however, does not extend to municipal authorities. 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. Burden of Proof

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). To establish a legally sufficient case and satisfy the burden of proof, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. Denied*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*). That is, a complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent utility. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980) (*Norfolk*).

Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent utility. If the evidence presented by the respondent utility is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of production may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

B. ALJ's Initial Decision

In his Initial Decision, ALJ Johnson made thirty-two Findings of Fact and reached thirteen Conclusions of Law. I.D. at 19-23; 43-45. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As a preliminary matter, the ALJ concluded that the Commission has jurisdiction over the parties and the subject matter of this proceeding. I.D. at 43, citing 66 Pa. C.S. § 701. Upon review, the ALJ sustained the Complaint. I.D. at 1. Applying the Commonwealth Court's ruling in *Ridgway v. Pa. PUC*, 83 Pa. Cmwlth. 379, 480 A.2d 1253 (1984) (*Ridgway*), to the facts of the instant case, the ALJ found that the Township established its burden of proving that SSABS is operating as a public utility without a Certificate because it is delivering service to Township customers beyond its territorial limits and direct billing those customers. *Id.* at 33-36. Furthermore, the ALJ determined that the outcome of the pending civil litigation in the Luzerne County Court of Common Pleas regarding a contractual dispute on the legal effect of the purported termination of the 1992 Agreement does not change the fact that SSABS provided a public service and directly billed Township customers beyond its jurisdiction without holding a Certificate. *Id.* at 36.

In addition, the ALJ denied the Complainant's requests for the assessment of a civil penalty. I.D. at 1. Although the ALJ found that the evidence clearly established that SSABS violated the Code, upon application of the factors set forth in *Rosi v. Bell Atlantic-Pa., Inc.*, Docket No. C-00992409 (Order entered February 10, 2000), the ALJ did not find that a penalty is warranted under the circumstances. *Id.* at 37-39. The ALJ stated that SSABS is a municipal authority, which unlike a utility with shareholders, does not operate to make a profit; therefore, imposing a

penalty on SSABS would ultimately fall upon its ratepayers through an increase in rates to cover the cost of the penalty, which would be counterproductive. *Id.* at 39. Also, the ALJ noted that SSABS took steps to mitigate its violation when it ceased directly billing Township customers, and that it has continued to provide unbilled sewage treatment services to those customers pending the outcome of litigation. For these reasons, the ALJ concluded that the imposition of a civil penalty upon SSABS under the circumstances is unwarranted. *Id.* at 40.

The ALJ also addressed the Township's request for a refund. Finding that Township customers paid the same sewer treatment rates before and after January 1, 2021, the ALJ concluded that SSABS' \$75.00 quarterly charge was not unjust or unreasonable. Inasmuch as Township ratepayers received sewer treatment services during the first three quarters of 2021, the ALJ found that ordering SSABS to refund the full amount collected from Township ratepayers would be an unreasonable and inequitable result. I.D. at 40-42. However, the ALJ ordered SSABS to refund to Township customers, without interest, the amounts in excess of the quarterly \$60.00 it invoiced the CTSA for each Township customer because the three quarterly billings charged to Township customers were conducted by SSABS as an unlawful, uncertificated public utility. *Id.* at 42.

Finally, the Initial Decision directs SSABS to file an application for a Certificate, including an accounting of previous customer billed and unbilled charges to calculate and provide any customer credits. I.D. at 1, 45-46.

C. Exceptions³

1. SSABS' Exception No. 1

In its Exception No. 1, SSABS argues that the ALJ erred because the Commission lacks jurisdiction over the rates and service by municipal authorities, including SSABS. SSABS 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.* (Municipality Authorities Act), supersedes the Commission's jurisdiction over the rates and services of municipal authorities. Rather, SSABS 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. SSABS Exc. at 3-4, citing 53 Pa. C.S. § 5607(d)(9). SSABS avers that the appellate courts have reviewed and determined that the courts of common pleas, not the Commission, have exclusive jurisdiction to inquire about the reasonableness of rates charged by a municipal authority within and beyond its boundaries. *Id.* at 5-6, citing *Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. 1949) (*Rankin*); *Elizabeth Twp. v. Mun. Auth. of McKeesport*, 447 A.2d 245 (Pa. 1982) (*Elizabeth Twp.*); *Calabrese v. Collier Twp. Mun. Auth.*, 240 A.2d 544 (Pa. 1968) (*Calabrese*); *Graver v. Pa. PUC*, 469 A.2d 1154 (Pa. Cmwlt. 1984) (*Graver*); *Glennon's Milk Serv., Inc. v. W. Chester Area Mun. Auth.*, 538 A.2d 138 (Pa. Cmwlt. 1988); *Borough of Sewickley Water Authority v. Mollica*, 544 A.2d 1122 (Pa. Cmwlt. 1988) (*Borough of Sewickley Water Authority*); *White Rock Sewage Corp. v. Pa. PUC*, 578 A.2d 984, 988 (Pa. Cmwlt. 1990) (*White Rock Sewage*). In addition, SSABS states that former Commission Chair Gladys Brown Dutrieuille testified before the Pennsylvania House Consumer Affairs Committee in 2017 that, due to the Municipality Authorities Act, the Commission's jurisdiction does not extend to municipal authorities, but rather only to

³ No Replies to Exceptions were filed.

municipalities, and the exclusive jurisdiction to review the reasonableness of the rates and service of an authority is provided to the courts of common pleas. SSABS Exc. at 6, citing [http://www.puc.pa.gov/General/pdf/Testimony/Brown-Consumer Affairs-HB798_092517.pdf](http://www.puc.pa.gov/General/pdf/Testimony/Brown-Consumer%20Affairs-HB798_092517.pdf). SSABS submits that the Initial Decision erred by not following seventy years of precedent from the appellate courts resulting in a conclusion contrary to precedential law. *Id.* at 7.

Furthermore, SSABS argues that the Initial Decision conflicts with prior holdings of the Commission. SSABS Exc. at 8, citing *Schnieder 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*). Also, SSABS avers that the Initial Decision's reliance on *Ridgway* is misplaced because *Ridgway* involved a municipality, not a municipal authority, which are separate legal entities created by separate laws. SSABS contends that *Ridgway* lacks any value in deciding the question of the Commission's jurisdiction over municipal authorities in this case. *Id.* at 10. SSABS further contends that I&E improperly relied on *State College Borough Authority v. Pa. PUC*, 31 A.2d 557 (Pa. Super. 1943) (*State College*) to support the Commission's jurisdiction over municipal authorities because *State College* was expressly refuted by the Court in *Rankin* because the 1943 decision in *State College* was made before the 1945 addition of statutory language assigning exclusive jurisdiction over the rates and services of municipal authorities to the courts of common pleas. *Id.*

Finally, SSABS argues that the recommendations in the Initial Decision, if adopted, would violate its constitutional right to due process because the findings and conclusions of the Initial Decision would penalize SSABS based on criteria of which SSABS had no advance notice. In addition, SSABS avers that such new *ex post facto*

standards would violate the statutory requirement for notice and comment rulemaking and disregard fundamental fairness. SSABS Exc. at 11.

2. SSABS' Exception No. 2

In its Exception No. 2, SSABS avers that the ALJ erred because the Commission lacks jurisdiction to determine the service area and corporate limits of SSABS. SSABS argues that 53 Pa. C.S. § 5607(d)(9) removes service provided by municipal authorities from the Commission's jurisdiction. SSABS contends that the ALJ erred in concluding that the Commission has jurisdiction over the service provided by SSABS outside of the corporate limits of SSABS' incorporating municipality; however, SSABS argues that it is legitimately operating by invitation, the 1992 Agreement, and the Township's Act 537. SSABS submits that unresolved disputes of the nature and extent of the service area will be decided by the courts. SSABS Exc. at 12.

Furthermore, SSABS argues that the Initial Decision does not acknowledge the rights of multi-municipal authorities, such as SSABS, to provide service outside of the municipal boundaries of their incorporating municipality. SSABS avers that it is a multi-municipal authority that can legally provide service outside of the municipal boundaries of its incorporating municipality under the Municipality Authorities Act, which imposes no geographic restrictions on the ability of a municipal authority to provide service. SSABS Exc. at 12-13.

In addition, SSABS states that the Initial Decision did not expressly define SSABS's corporate limits or attempt to analyze the case law and define what activities would constitute rendering service to the public beyond its corporate limits. SSABS argues that the membership in a municipal authority does not determine its corporate limits. SSABS Exc. at 13.

3. SSABS' Exception No. 3

In its Exception No. 3, SSABS excepts to the Initial Decision because it argues that the Commission lacks jurisdiction over bulk wastewater treatment service provided by SSABS. SSABS avers that it provides bulk treatment to a single customer, CTSA, but the ALJ misapprehended the facts by changing the bulk wastewater treatment service being provided into individual wastewater treatment to homes and businesses. SSABS contends that no homeowner or business in the Township has a direct connection to facilities owned and operated by it. Rather, the CTSA has the direct relationship with homeowners and businesses in the Township, collects and conveys the wastewater from connected homes and businesses for treatment and disposal, and is responsible for the wastewater from the point where it first enters the collection system until the wastewater leaves the system. SSABS states that none of the wastewater customers in the Township are able to deliver wastewater directly to facilities owned and operated by SSABS. SSABS argues that the Township has not made any effort to contact DEP for alternative treatment of its sewage like, sending its sewage to another authority, building its own treatment plant, or for temporary collection and conveyance of its sewage. SSABS Exc. at 14-15.

Assuming arguendo that the Commission has jurisdiction over municipal authorities, SSABS argues that the Initial Decision overlooked the facts of record that relate to potential exemptions from the definition of “public utility” under the Code. SSABS submits that it does not satisfy the definition of “public utility” because it is providing wholesale (or bulk) wastewater service to a single customer, which is conducted under the 1992 Agreement and is not subject to the jurisdiction of the Commission. Further, SSABS avers that the Initial Decision erred when it concluded that the validity of the 1992 Agreement has no bearing on the Commission’s jurisdiction over SSABS. SSABS asserts that the record does not support any claim that the 1992 Agreement was terminated because it does not authorize SSABS or the Township to

unilaterally terminate the agreement. As the record contains no evidence that the Township assented to SSABS' unilateral termination attempt, or that a Court has determined the contract was terminated, SSABS argues that the Township and I&E have failed to meet their burden of proof in asserting the Commission's jurisdiction over SSABS. SSABS contends that the Commission must dismiss the Complaint (or stay the Complaint pending a court of common pleas ruling on the validity of the 1992 Agreement) and find that the Township and I&E have failed their burden of proof. Moreover, SSABS states that it is not holding itself out to sell wastewater service to homeowners or businesses in the Township, and that the general public does not have a right to use wholesale (or bulk) service from SSABS under the 1992 Agreement. For these reasons, SSABS avers that its actions do not warrant oversight by the Commission. SSABS Exc. at 15-18.

Finally, assuming *arguendo* that the Commission has jurisdiction over municipal authorities, SSABS avers that the Initial Decision fails to properly consider the lack of payment to SSABS and other circumstances present. SSABS states that the CTSA is ultimately responsible for paying for the costs associated with treatment and disposal by SSABS under the 1992 Agreement, and that the CTSA and the Township stopped collecting costs associated with treatment and disposal from homes and businesses and failed to pay the undisputed portion of current wastewater treatment bills to SSABS when due. SSABS contends that it proceeded to notify affected premises and indicated that they could pay their portion of the costs for treatment services provided by SSABS, which were deducted from the amounts owed to SSABS, and that these payments were voluntary but necessary due to CTSA's violation of the 1992 Agreement. SSABS avers that the bills were sent in an effort to be paid for wastewater treatment, but not for the direct conveyance of wastewater treatment. SSABS submits that it cannot hold itself out as offering wastewater treatment service to homes and businesses in the Township who have a need for wastewater treatment. SSABS Exc. at 18-19.

4. SSABS' Exception No. 4

In its Exception No. 4, SSABS excepts to the Initial Decision stating that the Commission lacks jurisdiction over rates charged by SSABS and cannot order a refund under 66 Pa. C.S. § 1312. SSABS contends that the court of common pleas has jurisdiction over the rates pursuant to the Municipality Authorities Act, and only the courts can make such determinations on the reasonableness of rates charged by municipal authorities and potential refunds. SSABS Exc. at 19-20.

Even if the Commission has jurisdiction over municipal authorities, SSABS argues that the Initial Decision failed to make sufficient findings that the rates were unjust or unreasonable in support of a refund. Also, SSABS avers that the Initial Decision overlooked the facts that relate to who are the customers of SSABS. SSABS contends that the ALJ erroneously concluded that homeowners and businesses in the Township are customers. Rather, SSABS submits that all of the decisions regarding wastewater within the Township are within the control of the CTSA and the Township. Furthermore, SSABS maintains that it has not been paid since September 2021; therefore, refunds are not appropriate. SSABS Exc. at 20.

5. SSABS' Exception No. 5

In its Exception No. 5, SSABS excepts to the Initial Decision because the Township lacks standing to bring this Complaint because there is no allegation that the Township is served by SSABS and the Township cannot represent the interests of the Township residents. SSABS avers that the Township did not establish its standing, and the Initial Decision does not contain any Findings of Fact that wastewater from the Township's buildings is conveyed by the CTSA to SSABS for treatment by SSABS. In addition, SSABS states that the Initial Decision does not contain any Findings of Fact that the Township is a patron of SSABS (outside of the 1992 Agreement) or that the

Township was sent an individual bill for wastewater treatment by SSABS. SSABS Exc. at 22.

6. SSABS' Exception No. 6

In its Exception No. 6, assuming *arguendo* that the Commission has jurisdiction over municipal authorities, SSABS argues that the ALJ failed to join the CTSA as an indispensable party to this matter. SSABS avers that the rights of the CTSA are impaired or infringed because it owns and controls the facilities that deliver wastewater to SSABS for treatment. Since the CTSA is not a party to this proceeding, SSABS contends that any decision by the Commission would be a nullity. SSABS Exc. at 22-23.

D. Disposition

Although SSABS filed additional Exceptions to the Initial Decision in this matter, the key issue in this proceeding, as raised by SSABS in its Exception No. 1, is whether or not the Commission has jurisdiction with respect to the rates and services of SSABS, a duly authorized municipal authority which provides service outside of the boundaries of its incorporating municipality. In the Initial Decision, the ALJ held that SSABS, as a “municipal corporation” as defined at 66 Pa. C.S. § 102, providing extraterritorial service, subjects itself to the Commission’s jurisdiction.

Initially, we note that on January 12, 2022, I&E, SSABS, and the Township filed the Joint Stipulation. Paragraph No. 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.” Joint Stipulation at 2. Based on this

uncontested record evidence, all Parties agree that SSABS is in fact a municipal authority duly organized under the Municipality Authorities Act and authorized to furnish wastewater service in the Commonwealth.

Turning to the question regarding whether the Commission has jurisdiction over SSABS, 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).⁴ 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*. In addition, the Supreme Court of Pennsylvania reached a similar holding. *See, Elizabeth Twp.*⁵ In both of these cases, the Courts acknowledged that the provision of Section 5607(d)(9), 53 Pa. C.S. § 5607(d)(9),

⁴ 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).

⁵ *See also, Calabrese.*

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* that permitted the Commission to hear challenges to the rates of municipal authorities.⁶ 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*;⁷ *Borough of Sewickley Water Authority*; and *White Rock Sewage*.⁸

⁶ 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.

⁷ Like *Rankin*, the Court in *Graver* also explained that the Municipality Authorities Act modified the Code. *See, Graver* at 1157.

⁸ 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 East Dunkard Water Authority (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

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*, 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),⁹ 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)).

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.

⁹ 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-822905 (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 SSABS. Rather, under the Municipality Authorities Act, that jurisdiction lies exclusively with the courts of common pleas. Accordingly, we will grant SSABS' Exception No. 1. Because the Commission lacks jurisdiction over this matter, we shall deny SSABS' Exception Nos. 2, 3, 4, 5 and 6.

IV. Conclusion

Based upon our review of the record in this matter and the applicable law, we will grant, in part, and deny, in part, SSABS' Exceptions, and modify the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

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 Opinion and Order.
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 Opinion and Order.
3. That the docket at C-2021-3023624 is hereby marked closed.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 19, 2023

ORDER ENTERED: November 1, 2023