

**COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

CONYNGHAM TOWNSHIP

Complainant

- against -

SANITARY SEWER AUTHORITY  
OF THE BOROUGH OF SHICKSHINNY

Respondent

COMPLAINT DOCKET

No. C-2021-3023624

**PETITION FOR RECONSIDERATION OF  
COMPLAINANT CONYNGHAM TOWNSHIP**

**I. INTRODUCTION**

Pursuant to Section 703(g) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 703(g), and Section 5.572 of the Commission’s regulations, 52 Pa. Code § 5.572, Conyngham Township (the “Township”) hereby petitions the Pennsylvania Public Utility Commission (“Commission”) to reconsider, modify and/or rescind its Opinion and Order entered November 1, 2023, in the above-referenced matter.

In the Order, the Commission addressed the Formal Complaint filed by Conyngham Township (“Complainant”) regarding its claim that Respondent Shickshinny Sanitary Authority (“SSA”), a Pennsylvania Municipal Authority, was operating outside its jurisdictional limits without a Certificate of Public Convenience as required by 66 Pa. C.S. § 1102(2)(5). In its Order, the Commission found that it did not have jurisdiction over SSA in light of 53 Pa.C.S.A. Section

5607(d)(9) of the Municipal Authorities Act and that jurisdiction for the instant action, instead, lies with the Luzerne County Court of Common Pleas.

Reconsideration of the Order is warranted and appropriate because the Commission has overlooked or not considered that Complainant's action was related to SSA's failure to secure a Certificate of Public Convenience as required by 66 Pa. C.S. § 1102(2)(5) and is not at all related to the reasonableness or uniformity of its rates or the adequacy, safety and reasonableness of the authority's services. 53 Pa.C.S.A. Section 5607(d)(9).

For this reason, the Township respectfully submits that the Commission should grant reconsideration of its Order, and modify the Order or remand to the Office of Administrative Law Judge for additional hearings.

## **II. BACKGROUND**

1. Complainant, Conyngham Township, situated in Luzerne County, is a political subdivision of the Commonwealth of Pennsylvania. Initial Decision of ALJ Conrad, p. 19.

2. The municipal building for the Township is located at 10 Pond Hill Road, in the Village of Mocanaqua, which is an unincorporated community/section of Conyngham Township, Pennsylvania. Id.

3. Respondent, the Sanitary Sewer Authority of the Borough of Shickshinny ("SSA") located in Luzerne County, Pennsylvania, was established on September 25, 1973, by the Borough of Shickshinny as a municipal authority for, inter alia, the purpose of constructing, improving, furnishing, and equipping a sanitary sewage system and treatment works. Id.

4. The Borough of Shickshinny is the sole member of SSA. Id.

5. SSA operates and maintains a sewage treatment facility in the Village of Mocanaqua in Conyngham Township. Initial Decision of ALJ Conrad, p. 20.

6. SSA provides sewage treatment and disposal service to the Borough of Shickshinny, a portion of Salem Township, the Village of Mocanaqua community of Conyngham Township, and to the Pennsylvania State Correctional Institute – Retreat. Initial Decision of ALJ Conrad, p. 20.

7. The Township is not a member of SSA and has no representation on SSA’s Board. Id.

8. SSA and the Township entered into a Sewage Treatment Agreement (bulk service agreement) on November 18, 1992, under which SSA agreed to provide sewage treatment and disposal services to the Township as a single bulk customer. Id.

9. Under the bulk service agreement and until the end of 2020, the SSA billed CTSA for sewer treatment and conveyance, and in turn CTSA billed Township customers, which included the Township for services to the Township municipal building, and SSABS invoiced its other customers. Id.

10. On September 11, 2020, SSA sent the Township a letter, stating, “Please allow this letter to serve as notice that the SSABS is cancelling the Sewage Treatment Agreement . . . dated November 18, 1992, between the SSABS and the Township of Conyngham.” Initial Decision of ALJ Conrad, p. 21.

11. After cancelling the bulk service agreement on September 11, 2020, SSA furnished wastewater treatment service for compensation directly to customers/ratepayers residing in the Township including the Township as a customer, who were beyond SSA’s jurisdiction/corporate limits. Initial Decision of ALJ Conrad, p. 22.

12. On January 1, 2021, SSA began directly invoicing customers located in the Township, and such billing continued quarterly through the third quarter of 2021. Id.

13. On January 7, 2021, the Township filed a Complaint with the PUC alleging that SSA is operating in the Township beyond its jurisdictional limits without a Certificate of Public Convenience (Certificate). Opinion and Order, p.2

14. On January 26, 2021, SSA filed an Answer and New Matter and Preliminary Objections. Id.

15. On January 29, 2021, the Township filed a response to the New Matter and Preliminary Objections and reiterated its position that it had standing as a customer of SSA. Opinion and Order, p.3

16. 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. Opinion and Order, p.4.

17. On September 3, 2021, I&E filed a Notice of Intervention. Id.

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

19. An evidentiary hearing was held on October 4, 2022. Opinion and Order, p.5

20. In the Initial Decision issued on June 12, 2023, ALJ Johnson sustained the Complaint finding that the Township established its burden of proving that SSA 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. Opinion and Order, p.6

21. SSA filed Exceptions on June 30, 2023. Id.

22. On November 1, 2023, the Commission issued its Opinion and Order ("Order") regarding the complaint. The Order found that the Commission lacked jurisdiction.

23. The Township now submits this Petition seeking reconsideration of the Commission's Opinion and Order in this proceeding.

### **III. LEGAL STANDARDS**

24. The Public Utility Code establishes a party's right to seek relief following the issuance of a decision. Such requests for relief must be consistent with Section 5.572 of the Commission's regulations and/or Section 703(g) of the Public Utility Code.

25. Petitions made pursuant to Section 5.572 of the Commission's regulations or Section 703(g) of the Public Utility Code may properly raise any matters designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or in part. The standard for granting a petition for reconsideration, modification or clarification were set forth in **Duick v. Pennsylvania Gas and Water Company**. Under the standards set forth in Duick, such petitions may properly raise any matter designed to convince the Commission that it should exercise its discretion to amend or rescind a prior Order, in whole or in part. Such petitions should succeed when they raise "new and novel arguments" not previously heard or considerations that appear to have been overlooked or not addressed by the Commission or in the record. The Township's specific request for reconsideration below explain why its request meets the Duick standard.

#### **IV. REQUEST FOR RECONSIDERATION**

26. As described below, the Township has identified an important issue that the Commission did not address in its Order or that it overlooked in reaching its decision. These are new and novel arguments that the Commission either did not consider or overlooked in reaching its decision. As such, reconsideration is necessary and appropriate in this proceeding.

#### **The Commission Misinterpreted the Law and the Facts Relating to the Nature of the Township's Complaint and the Commission's Jurisdiction Over the Failure of SSA to Secure the Required Certificate Pursuant to the PUC Code**

27. The PUC Code, 66 Pa. C.S. § 1102(2)(5), requires that 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.

28. 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."

29. SSA is, by definition, a municipal corporation under 66 Pa. C.S. § 102.

30. There are approximately 220 residential customers and eight commercial customers located in the Township, including the Township itself which receives treatment services from SSA at its municipal building. Initial Decision of ALJ Conrad, p. 22.

31. SSA does not hold a Certificate of Public Convenience to provide wastewater and disposal service in the Township. Initial Decision of ALJ Conrad, p. 23.

32. Section 1501 of the Code, 66 Pa. C.S. § 1501, provides, as follows, with regard to Commission jurisdiction over character of service and facilities:

“§ 1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.”

33. SSA is a de facto public utility, pursuant to 52 Pa. Code § 69.1401.

34. 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.*” [Emphasis added.] 53 Pa. C.S. § 5607(d)(9).

35. The Pennsylvania Superior Court in Rankin v. Chester Municipal Authority, 68 A.2d 458, acknowledged the conflict between the PUC Code and the then newly enacted amendments to the Municipality Authorities Act, as follows:

“The principle is well established that where, as here, there is a positive repugnancy between provisions of separate laws enacted at different sessions of the legislature,

the earlier provision is impliedly repealed. Section 66 of the Statutory Construction Act of 1937, P.L. 1019, 46 P.S. § 566, provides: ‘Whenever the provisions of two or more laws passed at different sessions of the Legislature are irreconcilable, the law latest in date of final enactment shall prevail.’ General, independent, substitute or separate legislation, complete in itself, may have an amendatory effect upon other and uncited statutes by implication or indirection without violating Article III, § 6 of the Constitution, P.S., which provides: ‘No law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be reenacted and published at length.’ [City of Wilkes-Barre v. Pennsylvania Public Utility Commission](#), 164 Pa.Super. 210, 63 A.2d 452. Both by actual intentment and construction, it appears \*445 abundantly clear there was a definite limitation imposed upon the operation and effect of § 301 of the Public Utility Law by the Municipality Authorities Act of 1945, *whereby 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.*” *Emphasis added.* [Rankin v. Chester Municipal Authority](#), 165 Pa.Super. 443, 68 A.2d. 460 (1949).

36. The Statutory Construction Act at 1 Pa.C.S.A. § 1953, provides:

“§ 1953. Construction of amendatory statutes

Whenever a section or part of a statute is amended, the amendment shall be construed as merging into the original statute, become a part thereof, and replace the part amended, *and the remainder of the original statute and the amendment shall be read together and viewed as one statute passed at one time; but the portions of the statute which were not altered by the amendment shall be construed as effective from the time of their original enactment*, and the new provisions shall be construed as effective only from the date when the amendment became effective.” *Emphasis added.*

37. The Township submits that the Pennsylvania Municipal Authorities Act language at Section 5607(d)(9) only relates to Common Pleas jurisdiction for matters *questioning the reasonableness or uniformity of a rate fixed by an authority or the adequacy, safety, and reasonableness of the authority’s services.* Moreover, interpreting the language as effecting a complete divestiture of all Commission regulatory authority of municipal authorities produces the



absurd situation where municipal authorities are completely free of regulation and oversight while Townships, Boroughs, and Cities that operate outside of their jurisdictional limits are not.

38. The Township's complaint in this matter does not bring into question the reasonableness or uniformity of a rate fixed by an authority or the adequacy, safety, and reasonableness of the authority's services. The instant complaint relates to the failure of SSA to secure a certificate of public convenience as required by the PUC Code.

39. The Commission's interpretation of the PUC Code, Municipal Authorities Act, and subsequent case law with regard to its jurisdiction over municipal authorities acting outside their jurisdictional limits results in a significant gap in regulation and oversight of entities acting as public utilities in Pennsylvania and is against the public interest and the interest of the Township.

#### **V. CONCLUSION**

WHEREFORE, for the foregoing reasons, the Township respectfully requests that the Commission should grant reconsideration of the November 1, 2023 Opinion and Order and modify the Order to acknowledge its jurisdiction and dismiss the exceptions filed by SSA.

Respectfully submitted,

DeLUCA LAW OFFICES



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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that this day I served a copy of the foregoing Petition for Reconsideration upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa.Code Section 1.54.

Via Email Only to:

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DATED: November 14, 2023

BY:



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