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November 22, 2023

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Conyngham Township v. Sanitary Sewer Authority of the Borough of  
Shickshinny  
Docket No. C-2021-3023624

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (Commission) please find the Answer of the Sanitary Sewer Authority of the Borough of Shickshinny to Conyngham Township's Petition for Reconsideration in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

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

Very Truly Yours,

*Sean W. Logsdon*  
Sean W. Logsdon, Esquire

SWL:

cc: Sanitary Sewer Authority of the Borough of Shickshinny  
Vito J. DeLuca, Esquire (Via electronic means)  
Michael L. Swindler, Esquire (Via electronic means)  
PUC Office of Special Assistants (Via electronic means at [Ra-OSA@pa.gov](mailto:Ra-OSA@pa.gov))

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CONYNGHAM TOWNSHIP :  
 :  
 v. : Docket No. C-2021-3023624  
 :  
 SANITARY SEWER AUTHORITY OF THE :  
 BOROUGH OF SHICKSHINNY :

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that this day I served a copy of the **Answer of the Sanitary Sewer Authority of the Borough of Shickshinny** to Conyngham Township's 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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Date: November 22, 2023

Sean W. Logsdon

Sean W. Logsdon, Esquire

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                 |   |                           |
|---------------------------------|---|---------------------------|
| CONYNGHAM TOWNSHIP              | : |                           |
|                                 | : |                           |
| v.                              | : | Docket No. C-2021-3023624 |
|                                 | : |                           |
| SANITARY SEWER AUTHORITY OF THE | : |                           |
| BOROUGH OF SHICKSHINNY          | : |                           |

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**ANSWER OF THE  
SANITARY SEWER AUTHORITY  
OF THE BOROUGH OF SHICKSHINNY TO  
CONYNGHAM TOWNSHIP'S  
PETITION FOR RECONSIDERATION**

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## I. INTRODUCTION

The Pennsylvania Public Utility Commission (“Commission” or “PUC”) correctly held — in its Opinion and Order dated November 1, 2023 (“November 1 Order”) — that municipal authorities, including (but not limited to<sup>1</sup>) the Sanitary Sewer Authority of the Borough of Shickshinny (“SSABS” or “Authority”), are exempt from the Commission’s jurisdiction. That means that rates, service and service area of municipal authorities are subject to regulation and oversight by Courts,<sup>2</sup> not by the Commission.

Conyngnam Township (“Township” or “Conyngnam”) filed the subject Petition for Reconsideration (“Petition”)<sup>3</sup> arguing that municipal authorities are required to secure a certificate of public convenience and necessity (“CPCN” or “Certificate”) from the Commission. Petition at ¶ 27, 28, 29, 31, 33, 38.

The Township’s Petition should be dismissed because, as discussed herein, it is legally flawed and fails to meet the Commission’s *Duick*<sup>4</sup> standard for reconsideration.

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<sup>1</sup> On November 1, 2023, the Commission determined that the Commission has no jurisdiction over municipal authorities operating outside of the municipal boundaries of their incorporating municipality. *Pennsylvania Public Utility Commission v. East Dunkard Water Authority*, PUC Docket No. C-2021-3027615, Opinion and Order entered November 1, 2023, <https://www.puc.pa.gov/pcdocs/1803835.pdf>. Notably, the complaint against East Dunkard Municipal Authority was commenced by Commission’s Bureau of Investigation and Enforcement (I&E). I&E did not seek reconsideration of the Commission’s decision on East Dunkard Water Authority, PUC Docket No. C-2021-3027615.

<sup>2</sup> 53 Pa. C.S. § 5607(d)(9); *Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. 1949) (*Rankin*). In fact, there is a pending civil action where SSABS is seeking to be paid for services provided to the Township. SSABS Exceptions at 2-3.

<sup>3</sup> The Commission’s Bureau of Investigation and Enforcement (I&E) — which had formally intervened in this proceeding (<https://www.puc.pa.gov/pcdocs/1718501.pdf>) — filed a letter of support of the Township’s Petition on November 15, 2023 (<https://www.puc.pa.gov/pcdocs/1805740.pdf>).

<sup>4</sup> *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. PUC 553 (1982) (*Duick*).

## **II. BACKGROUND**

There is no dispute that the Authority is a municipal authority organized under and governed by the Municipality Authorities Act, 53 Pa. C.S. § 5601, *et seq.*<sup>5</sup>

The Petition does not raise any new discovered evidence or change in circumstances.

The Petition does, however, mischaracterize the issues raised by the Township's Complaint. The Commission's November 1, 2023 Order properly characterized the relief sought by the Township as follows: "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." Such relief directly relates to the rates and service of the Authority. In fact, the Township presented a witness who alleged that the Authority rates appeared "arbitrary and may not be apportioned properly or [reasonably]." Township Brief at Proposed Finding of Fact No. 15. However, in its Petition, the Township denies that the Township brought "into question the" rate or services of the Authority. Petition at 38.

## **III. LEGAL STANDARD**

The standards for granting a petition for reconsideration were set forth in *Duick*. Such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.<sup>6</sup>

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<sup>5</sup> See Township Brief at 1; Township Brief at Proposed Finding of Fact No. 1; I&E Brief at 7, 13.

<sup>6</sup> *Duick*, 56 Pa. P.U.C. at 559. It has been held that, because a grant of relief on such petitions may result in the disturbance of final orders, reconsideration should be granted judiciously and only under appropriate circumstances. *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995), appeal denied, 674 A.2d 1079 (Pa. 1996); *City of Pittsburgh v. PennDOT*, 416 A.2d 461 (Pa. 1980).

The Commission will not reconsider its previous decision based on arguments that have already been made. The *Duick* standard does not permit a petitioner, such as the Township, to raise questions considered and decided below such that the petitioner obtains a second opportunity to argue properly settled matters.<sup>7</sup>

When evaluating the new or novel argument, or overlooked consideration, the Commission will not necessarily modify its prior decision just because a party offers a new or novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order.<sup>8</sup> There must be a sufficient basis for the Commission to exercise its discretion to amend or rescind a prior order, in whole or in part.

#### **IV. ANSWER BY THE AUTHORITY**

##### **A. The Commission should not reconsider its November 1 Order based on arguments that have already been made and dismissed by the Commission.**

Arguments regarding the alleged need for SSABS to obtain a Certificate from the Commission are not new or novel and were previously considered by the Commission. The Township's Petition argues that the Authority is required to secure a Certificate from the Commission. Petition at 1, 2; Petition at ¶¶ 27, 28, 29, 31, 33, 38. The Petition also argues that the Authority is a de facto public utility. Petition at ¶ 33. They are not a new or novel arguments in

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<sup>7</sup> *Id.*, quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935) ("Parties . . . , cannot be permitted [a second opportunity] . . . , to raise the same questions which were specifically considered and decided against them.").

<sup>8</sup> *Interstate Gas Supply, Inc., et al. v. Metropolitan Edison Company, et al.*, PUC Docket Nos. C-2019-3013805; C-2019-3013806; C-2019-3013807; C-2019-3013808, Opinion and Order on Reconsideration dated April 14, 2022, *affirmed*, 298 A.3d 1181 (Pa. Cmwlth. April 28, 2023) (PUC did not abuse its discretion in denying suppliers' request for reconsideration).

this proceeding. Those arguments were presented by the Township<sup>9</sup> and by I&E.<sup>10</sup> Both of them argued that the Authority is required — under 66 Pa. C.S. §§ 102, 1101 to 1103 — to obtain a Certificate from the Commission. In fact, I&E advocated for imposing civil penalties upon the Authority.<sup>11</sup> Such arguments were not overlooked. They were expressly considered and dismissed by the Commission.<sup>12</sup>

Arguments that SSABS is required to comply with the Public Utility Code are not new or were previously considered by the Commission. The Township’s Petition argues that 66 Pa. C.S. § 1501, provides, Commission jurisdiction over the “service and extensions” of municipal authorities. Petition at ¶ 32. That is a not new or novel argument in this proceeding. Both the Township and I&E argued that the Authority was in violation of the Public Utility Code.<sup>13</sup> Specifically, they argued that (1) the Authority’s service was subject to the Commission’s oversight under 66 Pa. C.S. § 1501;<sup>14</sup> (2) the Authority’s service area was subject to the Commission’s oversight under 66 Pa. C.S. §§ 102, 1102;<sup>15</sup> and, (3) the Authority’s rates were subject to the Commission’s oversight and were subject to refund under 66 Pa. C.S. § 1312.<sup>16</sup>

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<sup>9</sup> See, e.g., Township Brief at 5-6; Township Brief at Proposed Conclusions of Law Nos. 2, 3, 4, 5, 7.

<sup>10</sup> See, e.g., I&E Brief at 1, 12-28; I&E Brief, Appendix B, Conclusion of Law No. 2-8.

<sup>11</sup> I&E Brief at 22-28.

<sup>12</sup> See, e.g., November 1 Order at 8, 10, 13, 23, 24 (Section 102); November 1 Order at 3, 8, 13, 24 (Section 1102); November 1 Order at 8, 9, 11 (de facto operations).

<sup>13</sup> See, e.g., Township Brief at 6; Township Brief at Proposed Conclusions of Law Nos. 2, 3, 4, 5, 7; I&E Brief, at 3, 19-20.

<sup>14</sup> See, e.g., Township Brief at 7; Township Brief at Proposed Conclusion of Law No. 3; I&E Brief at 12; I&E Brief, Appendix B, Conclusion of Law No. 3.

<sup>15</sup> See footnotes 9 and 10.

<sup>16</sup> See, e.g., Township Brief at 6-7; Township Brief at Proposed Finding of Fact Nos. 14, 15, 19; Township Brief, Proposed Conclusions of Law No 8; I&E Brief at 26-27.



Such arguments were not overlooked. They were expressly considered and dismissed by the Commission.<sup>17</sup>

**B. There is not a sufficient basis for the Commission to exercise its discretion to amend or rescind the November 1 Order.**

Assuming, *arguendo*, that there are new or novel or overlooked arguments, which there are not, there is not a sufficient basis for the Commission to exercise its discretion to amend or rescind the November 1 Order.

In the November 1 Order, the Commission held that municipal authorities, including the Authority, are exempt from the Commission's jurisdiction. That means that rates, service and service area of municipal authorities are subject to regulation and oversight by Courts,<sup>18</sup> not by the Commission. There is not a different result if municipal authorities are operating outside of the municipal boundaries of their incorporating municipality.<sup>19</sup>

The Commission's holding is correct. The Municipality Authorities Act places exclusive jurisdiction over municipal authorities in the courts of common pleas.<sup>20</sup> The language covers the rate, services and service area of municipal authorities. More than seventy years of appellate and Commission precedent<sup>21</sup> (discussed in Commissioner Yanora's Motion<sup>22</sup> and in the Authority's Exceptions<sup>23</sup>) have held that **municipal authorities are not subject to the Commission's**

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<sup>17</sup> See, e.g., November 1 Order at 13, 24 (Section 1301); November 1 Order at 10, 22 (Section 1312); November 1 Order at 13, 24 (Section 1501). See also footnote 12.

<sup>18</sup> 53 Pa. C.S. § 5607(d)(9); *Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. 1949) (*Rankin*). In fact, there is a pending civil action where SSABS is seeking to be paid for services provided to the Township. SSABS Exceptions at 2-3.

<sup>19</sup> See footnote 1.

<sup>20</sup> 53 Pa. C.S. § 5607(d)(9).

<sup>21</sup> The Commission must follow, distinguish, or overrule its own precedent. See, e.g., *Bell Atlantic-Pa. v. PUC*, 672 A.2d 352 (Pa. Cmwlth. 1995).

<sup>22</sup> <https://www.puc.pa.gov/pcdocs/1802452.pdf>

<sup>23</sup> <https://www.puc.pa.gov/pcdocs/1790977.pdf>

**jurisdiction** — even *if* operating outside of the municipal boundaries of their incorporating municipality.

Despite the foregoing, the Township disagrees with the holding of the November 1 Order. That disagreement is not a sufficient basis for the Commission to exercise its discretion to amend or rescind the November 1 Order, in whole or in part.

The Township’s Petition argues that the Municipality Authorities Act and *Rankin* should not be read as effecting a complete divesture of the Commission’s jurisdiction over municipal authorities. Petition at ¶¶ 34, 37. According to the Township’s interpretation, only “matters questioning the ... rates ... and ... services” of a municipal authority under the jurisdiction and oversight of the Courts. Petition at ¶¶ 34-38. That is a misreading of the Municipality Authorities Act and *Rankin*. The proper interpretation was expressed, in 2017, by then PUC Chairman Gladys Brown Dutrieuille. She testified that.<sup>24</sup>

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

This distinction in exclusive jurisdiction between municipal utilities and [municipal] authorities operating beyond their political boundaries has been further supported by case law. The Pennsylvania Supreme Court determined that the [Municipal Authorities Act] provides an exclusive remedy for passing upon the reasonableness of the rates or service of an authority because it provides exclusive jurisdiction to the courts of common pleas.<sup>25</sup> (footnote renumbered).

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<sup>24</sup> [https://www.puc.pa.gov/General/pdf/Testimony/Brown-Consumer\\_Affairs-HB798\\_092517.pdf](https://www.puc.pa.gov/General/pdf/Testimony/Brown-Consumer_Affairs-HB798_092517.pdf). (emphasis added).

<sup>25</sup> *Calabrese v. Collier Twp. Mun. Auth.*, 240 A.2d 544, 548 (Pa. 1968); *Elizabeth Twp. v. Mun. Auth. of McKeesport*, 447 A.2d 245, 246 (Pa. 1982).

The Township has made no effort to distinguish appellate precedent. That effort was necessary, since the Townships' above-described interpretation of the Municipality Authorities Act and *Rankin* is contrary to appellate precedent. Specifically, there is a need to distinguish *Graver*,<sup>26</sup> which is cited in the November 1 Order.<sup>27</sup> In *Graver*, the Commission dismissed a complaint proceeding (brought by a developer) against a water authority that was operating outside of the corporate limits of the municipality which created that water authority. In 1984, the Commonwealth Court affirmed the Commission's dismissal for lack of Commission jurisdiction. The Commonwealth Court explained that the provisions of the Public Utility Code, when construed in the light of the Municipality Authorities Act, no longer to vest jurisdiction over municipal authorities in the Commission.

Nor was any effort made by the Township to distinguish Commission precedent holding that the Commission does not have jurisdiction over municipal authorities providing extraterritorial service.<sup>28</sup> For example, *Paul E. Zimmerman v. Township of Whitpain et al.*, Docket No. C-822905 (Order entered October 19, 1984) is long-standing precedent that was cited in the November 1 Order.<sup>29</sup> In that case, it was alleged that the Commission had jurisdiction because the Whitpain Authority was providing public utility service outside of its corporate limits. The key issue in that proceeding was whether the Commission had jurisdiction to order

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<sup>26</sup> *Graver v. PUC*, 469 A.2d 1154 (Pa. Cmwlth. 1984) (*Graver*).

<sup>27</sup> November 1 Order at 17, 26, 27.

<sup>28</sup> See, e.g., *Glen Alsace Water Company v. Mt. Penn Borough Authority*, Complaint Docket No. 19413, Opinion and Order entered May 23, 1972; 1972 Pa. PUC LEXIS 28; 46 Pa. PUC 187 (“... inasmuch as the named defendant in the instant action is an authority and the Commission is not the appropriate forum before whom an action against an authority can be brought, it is necessary and appropriate that the motion to dismiss be granted.”).

<sup>29</sup> November 1 Order at 28.

the Whitpain Authority to allow Zimmerman, the Complainant, to connect to its sewer system. The Commission dismissed the Complaint for lack of jurisdiction.

*East Dunkard* is newer precedent. It was decided at the same public meeting as the subject proceeding. In *East Dunkard*, I&E reached a proposed settlement<sup>30</sup> with East Dunkard Municipal Authority, which is a municipal authority created by only one municipality that was directly providing wastewater services to customers located in other municipalities. The settlement provided for fines for providing service without having first obtained a Certificate from the Commission. The Commission, on November 1, 2023, rejected the Settlement for lack of Commission jurisdiction.<sup>31</sup>

The Authority submits, based on the foregoing, that there is not a sufficient basis for the Commission to exercise its discretion to amend or rescind the November 1 Order, in whole or in part.

## V. CONCLUSION

For the reasons set forth above, the Authority respectfully requests that the Petition for Reconsideration be denied and that the Commission uphold its November 1, 2023 Order.

Respectfully submitted,

Sean W. Logsdon

Sean W. Logsdon, Esquire

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<sup>30</sup> *Bureau of Investigation and Enforcement vs. East Dunkard Water Authority*, C-2021-3027615, Joint Petition for Settlement Agreement dated September 26, 2022, <https://www.puc.pa.gov/pcdocs/1759614.pdf>. Statements in Support of that Joint Petition are attached thereto.

<sup>31</sup> See footnote 1.

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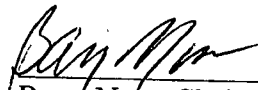
*Attorney for Sanitary Sewer Authority of the  
Borough of Shickshinny*

**VERIFICATION**

I, Barry Noss, am the Chairman of the Board of Directors of the Sanitary Sewer Authority of the Borough of Shickshinny, and I do hereby verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Sanitary Sewer Authority of the Borough of  
Shickshinny

DATE: November 22, 2023



\_\_\_\_\_  
Barry Noss, Chairman  
Board of Directors of the Sanitary Sewer  
Authority of the Borough of Shickshinny