

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

Public Meeting held January 18, 2024

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 is the Petition for Reconsideration (Petition) filed by Conyngham Township (the Township) on November 14, 2023, seeking reconsideration of the Order entered on November 1, 2023 (*November 2023 Order*), relative to the above-captioned proceeding. For the reasons set forth below, we shall deny the Petition, consistent with this Opinion and Order.

I. History of the Proceeding¹

On January 7, 2021, the Township filed a Formal Complaint (Complaint), alleging that the Sanitary Sewer Authority of the Borough of Shickshinny (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), and requesting 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. The Commission granted, in part, and denied, in part, the Exceptions of SSABS, and modified the Initial Decision of Administrative Law Judge Conrad A. Johnson, via the *November 2023 Order*, finding that the Commission lacks jurisdiction over the rates and services of municipal authorities like SSABS.

As previously noted, on November 14, 2023, the instant Petition was filed by the Township. On November 15, 2023, the Commission's Bureau of Investigation and Enforcement (I&E) filed a letter stating that in lieu of filing a Petition for Reconsideration, I&E files a Letter in Support of the Petition. On November 22, 2023, SSABS filed an Answer to the Petition.

By Order entered November 16, 2023, we granted reconsideration pending review of, and consideration on, the merits, pursuant to Pa. R.A.P. 1701(b)(3).²

¹ See, *November 2023 Order* at 2-6 for a summary describing the procedural history of this proceeding, which is incorporated herein.

² The Order entered November 16, 2023, was adopted following a notational vote by the Commission, and this action was recorded and entered in the minutes of the Commission's Public Meeting of December 7, 2023, consistent with 4 Pa. Code § 1.43(c).

II. Discussion

A. Legal Standards

Initially, we note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Public Utility Code (Code) establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, *12-13:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . what

we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. 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. *Id.* at *13.

The Commission has administrative discretion regarding whether to grant or deny a petition for reconsideration of an order filed under Section 703(g). *West Penn Power Co., v. Pa. PUC*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995). Such a petition, however, should only be granted judiciously and under appropriate circumstances, because such action results in the disturbance of a final order. *Id.* (citing *City of Pittsburgh v. Pa. Dep’t of Transportation*, 416 A.2d 461 (Pa. 1980)).

B. *November 2023 Order*

In the *November 2023 Order*, the Commission concluded that it lacks jurisdiction over the rates and services of municipal authorities like SSABS. Rather, the Commission found that, under the Municipality Authorities Act of 1945, 53 Pa. C.S. § 5601, *et seq.* (Municipality Authorities Act), jurisdiction over the rates and services of municipal authorities, beyond, as well as within, the limits of the municipality which created the authority, is vested exclusively with the courts of common pleas. Therefore,

the Commission held that it lacks jurisdiction over the issues raised by the Township's Complaint. *November 2023 Order* at 23-28.

The Commission explained that historically, Commission jurisdiction has existed over municipal utilities providing service outside of their political boundaries. *See*, Pa. C.S. §§ 502, 507, 508, 1102, 1301, 1304, 1501. However, the Commission's jurisdiction presently extends only to municipalities, not municipal authorities, because the enactment of the Municipality Authorities Act removed municipal authorities from Commission jurisdiction and, instead, vested the courts of common pleas with exclusive jurisdiction over rates and services of municipal authorities. *See*, 53 Pa. C.S. § 5607(d)(9).³ Therefore, the Commission has no authority over entities created and operating under the Municipality Authorities Act. *Id.* at 24-25.

Furthermore, the *November 2023 Order* explained that the Courts have reviewed and upheld this statutory language in the Municipality Authorities Act with respect to Commission jurisdiction over municipal authorities. *See, Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. 1949); *Elizabeth Twp. v. Mun. Auth. of McKeesport*, 447 A.2d 245 (Pa. 1982); *Calabrese v. Collier Twp. Mun. Auth.*, 240 A.2d 544 (Pa. 1968); *Graver v. Pa. PUC*, 469 A.2d 1154 (Pa. Cmwlth. 1984); *Borough of Sewickley Water Authority v. Mollica*, 544 A.2d 1122 (Pa. Cmwlth. 1988); *White Rock Sewage Corp. v. Pa. PUC*, 578 A.2d 984, 988 (Pa. Cmwlth. 1990).⁴ In these cases, the Supreme Court of Pennsylvania, the Superior Court of Pennsylvania, and the Commonwealth Court of Pennsylvania have all held that the Municipality Authorities Act provides the courts of common pleas, not the Commission, with exclusive

³ 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.

⁴ *See, November 2023 Order* at 24-28, for the detailed legal summary and analysis supporting the Commission's conclusions regarding jurisdiction over municipal authorities, which is incorporated herein.

jurisdiction over the rates and service of a municipal authority within, and beyond, the corporate boundaries of the municipality which created it. *Id.* at 25-26.

In addition, the *November 2023 Order* explained that 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. *See, 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; *Paul E. Zimmerman v. Township of Whitpain et al.*, Docket No. C-822905 (Order entered October 19, 1984); *Implementation of Chapter 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority*, Docket Nos. M-2018-2640802, M-2018-2640803 (Order entered January 18, 2018). *Id.* at 27-28.

The *November 2023 Order* concluded that the evidence of record demonstrated that SSABS is a municipal authority duly organized under the Municipality Authorities Act and is authorized to furnish wastewater service in the Commonwealth. Therefore, the Commission concluded that it lacks jurisdiction over the issues raised by the Township's Complaint because the Municipality Authorities Act provides that jurisdiction over the rates and services of municipal authorities, beyond, as well as within, the limits of the municipality which created the authority, is vested exclusively with the courts of common pleas. *Id.* at 28.

C. The Township's Petition and SSABS' Answer

The Petition seeks reconsideration of the *November 2023 Order*. The Township argues that 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 SSABS to secure a Certificate pursuant to the Code. The Township avers that SSABS is

a municipal corporation, as defined under 66 Pa. C.S. § 102, and a *de facto* public utility, pursuant to 52 Pa. Code § 69.1401. The Township also argues that SSABS does not hold a Certificate to provide wastewater and disposal service in the Township. Petition at 6-7.

Furthermore, the Township submits that the Municipality Authorities Act “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*,” and that “interpreting the language as effecting 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.” *Id.* at 8-9. The Township states that its “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,” but rather “relates to the failure of [SSABS] to secure a [Certificate] as required by the [Code].” *Id.* at 9. The Township submits that the Commission’s determination in the *November 2023 Order* 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. The Township requests that the Commission reconsider the *November 2023 Order*, acknowledge its jurisdiction, and dismiss the Exceptions of SSABS. *Id.*

In response to the Petition, SSABS contends that the Commission should not reconsider the *November 2023 Order*. First, SSABS argues that the arguments raised by the Township in its Petition have been previously made and dismissed by the Commission. SSABS avers that the Township’s arguments regarding the alleged need for SSABS to obtain a Certificate and that SSABS is a *de facto* public utility are not new or novel arguments, but instead were presented and expressly considered and dismissed by the Commission in this proceeding. Answer at 3-5.

Next, SSABS argues that there is no basis for the Commission to amend or rescind the *November 2023 Order*. Assuming, *arguendo*, that new or novel arguments exist, SSABS contends that the Commission's conclusion that the Municipality Authorities Act places exclusive jurisdiction over municipal authorities in the courts of common pleas is correct, and there is no different result if the municipal authorities are operating outside of the municipal boundaries of their incorporating municipality. Further, SSABS avers that the Township misinterprets the Municipality Authorities Act and fails to distinguish the appellate and Commission precedent discussed in the *November 2023 Order*. For these reasons, SSABS submits that there is no basis to amend or rescind the *November 2023 Order*. *Id.* at 5-8.

D. Disposition

As mentioned, Petitions for Reconsideration are governed by *Duick*, which essentially requires a two-step analysis. First, we determine whether a party has offered new or novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. We will not reconsider our previous decision based on arguments that have already been considered. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. The second step of the *Duick* analysis is, therefore, to evaluate the new or novel argument or overlooked consideration, in order to determine whether to modify our previous decision.

Upon review, we find that the Petition does not raise any new or novel arguments or considerations that were overlooked or not addressed by the Commission in the *November 2023 Order*. The arguments included in the Township's Petition that SSABS is a de facto utility, and that SSABS is required to obtain a Certificate from the Commission, were previously presented by the Township and I&E and considered by the

Commission. Both the Township and I&E previously argued that SSABS is required to obtain a Certificate from the Commission pursuant 66 Pa. C.S. §§ 102, 1101-1103. *See*, Township Memorandum of Law at 5; I&E Br. at 12-15, 19-20, 27. In addition, the Commission considered and dismissed these arguments. *See, November 2023 Order* at 8-11, 13, 23-24.

Furthermore, the Township's arguments in the Petition with respect to SSABS' service being subject to 66 Pa. C.S. § 1501, SSABS's service area being subject to 66 Pa. C.S. §§ 102 and 1102, and SSABS' rates being subject to 66 Pa. C.S. § 1312, were also previously considered and dismissed by the Commission. *See, Id.* at 10, 13, 24. As these arguments are not new and novel and were previously addressed by the Commission in the *November 2023 Order*, we find that the Petition fails to satisfy the first step required in the analysis under *Duick*.

Moreover, the Petition mischaracterizes the issues raised in the Township's Complaint. In arguing that the jurisdiction over municipal authorities under the Municipality Authorities Act only relates to the rates and service of municipal authorities, the Petition states that the Township's Complaint did not raise issues regarding the rates or service of SSABS, but rather only SSABS' failure to secure a Certificate. However, based upon the Complaint on its face, the Township clearly raised issues relating to the rates and service of SSABS. In addition to arguing that SSABS was operating in the Township without a Certificate, the Complaint, as requested relief, specifically stated:

We are requesting that the PUC order Respondent to immediately stop billing residents of Conyngham Township and return all monies collected until after a valid Certificate of Public Convenience is obtained.

Complaint at 2-3. Contrary to the Township's claims in the Petition, this requested relief directly relates to the rates and service of SSABS and falls within the purview of Section 5607(d)(9) of the Municipality Authorities Act, 53 Pa. C.S. § 5607(d)(9).

Finally, there is no dispute that SSABS is a municipal authority organized and governed by the Municipality Authorities Act. Therefore, as discussed in detail in the *November 2023 Order*, the Commission lacks jurisdiction over the rates and services of municipal authorities like SSABS. Rather, under the Municipality Authorities Act, jurisdiction over the rates and services of municipal authorities, beyond, as well as within, the limits of the municipality which created the authority, is vested exclusively with the courts of common pleas. Accordingly, as set forth in the *November 2023 Order*, the Commission lacks jurisdiction over the issues raised by the Township's Complaint against SSABS.

III. Conclusion

For the reasons set forth above, we shall deny the Petition, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration filed by Conyngham Township on November 14, 2023, is denied.

2. That this proceeding at C-2021-3023624 shall hereby be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 18, 2024

ORDER ENTERED: January 18, 2024