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34 MAP 2025

IN THE SUPREME COURT OF PENNSYLVANIA

NO. 34 MAP 2025

CONYNGHAM TOWNSHIP,
Appellee

v.

PENNSYLVANIA PUBLIC UTILITY COMMISSION,
Appellant

BRIEF FOR *AMICUS CURIAE* PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION

Appeal from the Order of the Commonwealth Court of Pennsylvania
dated October 4, 2024, at No. 113 CD 2024,
Vacating and Remanding the Decision of the Public Utility Commission
at No. C-2021-3023624 dated January 18, 2024

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I. STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus Curiae Pennsylvania Municipal Authorities Association ("PMAA") is an association that represents the interests of municipal authorities in Pennsylvania, which authorities collectively provide water, sewer, stormwater, waste management and other services to millions of Pennsylvania citizens. Founded in 1941, the mission of PMAA is to assist authorities in providing services that protect and enhance the environment, and promote the economic vitality and general welfare of the Commonwealth of Pennsylvania and its citizens. Specific services provided by PMAA include advocacy on government affairs issues, education and training, publications and resources, and group programs. [1]

PMAA wishes to participate as an *Amicus Curiae* in this case because, due to its nature, mission and membership, it is in a unique position to offer its view of the Municipality Authorities Act, 53 Pa.C.S. §§ 5601-5623, and the case law interpreting the Act. PMAA can also provide an overview of the state-wide impact to municipal authorities from the Commonwealth Court's interpretation of Pennsylvania's Municipality Authorities Act, specifically as to whether the Pennsylvania Public Utility Commission has exclusive jurisdiction over municipal authorities. The determination of that issue by the Pennsylvania Supreme Court will have a profound impact on municipal authorities throughout the Commonwealth

[1] http://www.municipalauthorities.org/

since many municipal authorities provide services across municipal boundaries. Therefore, because the outcome of this case is important to PMAA and its members, PMAA respectfully submits this *Amicus Curiae* Brief in support of the Pennsylvania Public Utility Commission, pursuant to Pa. R. App. P. 531.

No person other than the *amicus curiae* paid, in whole or in part, for the preparation of this brief. No person other than counsel for PMAA authored any part of this brief.

II. QUESTION FOR REVIEW

(1) Did the Commonwealth Court err when it held the Pennsylvania Public Utility Commission has jurisdiction over a municipal authority established under the Municipality Authorities Act, 53 Pa.C.S. § § 5601 *et seq*.?

Suggested Answer: Yes.

III. ARGUMENT

A. The Supreme Court should reverse the Commonwealth Court's decision because it ignored both the plain language of 53 Pa.C.S. § 5607(d)(9) and over seventy (70) years of case law by the courts of this Commonwealth.

The Commonwealth Court's opinion in *Conyngham Township v. Pennsylvania Public Utility Commission*, if not reversed by the Supreme Court, could have a profound impact on municipal authorities and their ratepayers across the Commonwealth of Pennsylvania. Many municipal authorities provide water, sewer and stormwater services across municipal boundaries. If the Supreme Court

affirms the Commonwealth Court's opinion as the rule of law in Pennsylvania, such a decision could conceivably require many municipal authorities to seek Certificates of Public Convenience after years of providing service to neighboring municipalities without the need for such Certificates. Moreover, many authorities serve multiple neighboring municipalities. What will happen to such service if Certificates of Public Convenience become necessary and how will the Pennsylvania Public Utility Commission handle the potential onslaught of applications? Will vital water and wastewater services be interrupted? PMAA supports the Pennsylvania Public Utility Commission in this matter and urges the Supreme Court to reverse the decision of the Commonwealth Court, which reversal will allow municipal authorities in Pennsylvania to maintain the status quo in delivering vital utility services to the residents of the Commonwealth.

1. The Commonwealth Court ignored the plain language of Section 5607(d)(9) of the Municipality Authorities Act and over seventy (70) years of case law in the Commonwealth interpreting the Municipality Authorities Act.

The enabling legislation governing municipal authorities (also referred to herein as "Authority" or "Authorities") in Pennsylvania is the Municipality Authorities Act. There have been two iterations of the Act, the first referred to as the Municipality Authorities Act of 1935, which was later replaced with the Municipality Authorities Act of 1945. In 2001, the Municipality Authorities Act was codified in the Pennsylvania Consolidated Statutes (53 Pa.C.S. §5601, *et seq*.). The

addition of 53 Pa.C.S. Ch. 56 is a continuation of the Municipality Authorities Act of 1945. *See* Act 22 of 2001. ("Municipality Authorities Act" or "Act").

The requirements for organizing and creating an Authority are set forth in Section 5603 of the Act. 53 Pa.C.S. § 5603. These requirements include the adoption of a resolution or ordinance signifying the intent of a municipality or municipalities to organize an Authority, public notice of such resolution or ordinance, and the filing of articles of incorporation with the Secretary of the Commonwealth. Upon the issuance of a certificate of incorporation by the Secretary of the Commonwealth, the corporate existence of the Authority shall begin. 53 P.C.S. 5603(e).

Although created by a municipality or municipalities under Section 5603 of the Act, an Authority is neither a creature, agent nor representative of the municipality or municipalities. *See Highland Sewer and Water Authority v. Engelbach*, 208 Pa. Super. 1, 220 A.2d 390 (1966); *Simon Appeal,* 408 Pa. 464, 184 A.2d 695 (1962). Rather, the Authority is an independent agency of the Commonwealth of Pennsylvania, defined by the Act as "a body politic and corporate." 53 Pa.C.S. § 5602. *See Commonwealth v. Erie Metropolitan Transit Authority*, 281 A.2d 882, 884, 444 Pa. 345, 348 (1971); *Evans v. West Norriton Municipal Authority*, 370 Pa. 150, 87 A.2d 474 (Pa. 1952).[2]

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[2] Section 5602 of the Municipality Authorities Act includes definitions for both "Authority" and "Municipal Authority." As defined in the Act, a "Municipal Authority" is "[t]he body or board authorized by law to enact ordinances or adopt resolutions for the particular municipality," such as a county, city, borough, township or school district of the Commonwealth. An "Authority" is "[a] body politic and corporate created under this chapter" or under the various iterations of the Municipality Authorities Act. It is important to note that in case law, the term "municipal authority" is often used to refer to an Authority.

The powers granted to an Authority by the General Assembly are broad, and set forth in Section 5607(d) of the Act. The provision of the Act at issue in the matter *sub judice* is Section 5607(d)(9), which states:

> "**(d)** Powers. – Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers: . . .
>
> **(9)** To fix, alter, charge and collect rates and other charges in the area served by its facilities at reasonable and uniform rates to be determined exclusively by it for the purpose of providing for the payment of the expenses of the authority, the construction, improvement, repair, maintenance and operation of its facilities and properties and, in the case of an authority created for the purpose of making business improvements or providing administrative services, a charge for such services which is to be based on actual benefits and which may be measured on, among other things, gross sales or gross or net profits, the payment of the principal of and interest on its obligations and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations, or with a municipality and to determine by itself exclusively the services and improvements required to provide adequate, safe and reasonable service, including extensions thereof, in the areas served. If the service area includes more than one municipality, the revenues from any project shall not be expended directly or indirectly on any other project unless such expenditures are made for the benefit of the entire service area. 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. Except in municipal corporations having a population density of 300 persons or more per square mile, all owners of real property in eighth class counties may decline in writing the services of a solid waste authority. The owner of multiple residential units that are served by a single water meter may periodically request the authority to adjust the amount billed by showing a minimum of five consecutive years of actual usage data

> to determine if the amount billed exceeds the actual usage by 30% or more. If the usage data shows that an adjustment is needed, the authority shall appropriately adjust the billing and use the adjusted amount going forward. When calculating the new amount, the authority may include up to 10% over the amount used. After an initial adjustment, the owner may not request another adjustment for five years after the adjustment is completed."

The language from Section 5607(d)(9) of the Act that is germane to the Commonwealth Court's opinion in *Conyngham Township v. Pennsylvania Public Utility Commission,* 325 A.3d 885 (Pa. Cmwlth. 2024) is the following:

> "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."

History teaches us that the intent of the General Assembly in enacting the Municipality Authorities Act of 1945 was to provide the courts of common pleas with exclusive jurisdiction over Authorities in matters involving an Authority's "rates or service" both within and outside of the municipality or municipalities that incorporated the Authority. Moreover, given that the term "authority's services, including extensions thereof," is modified in Section 5607(d)(9) by the words "adequacy, safety and reasonableness," it is clear that the legislative intent of Section 5607(d)(9) was to provide the courts of common pleas with exclusive jurisdiction

over all questions regarding an Authority's "rates or service," including services provided across municipal boundaries.

Section 1921(a) of Pennsylvania's Statutory Construction Act requires courts of this Commonwealth to "ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S. § 1921(a). In its entirety, Section 1921 of the Statutory Construction Act provides as follows:

> **(a) Object and scope of construction of statutes. –** The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.
>
> **(b) Unambiguous words control construction. –** When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.
>
> **(c) Matters considered in ascertaining intent. –** When the words of a statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:
>
> **(1)** The occasion and necessity for the statute.
>
> **(2)** The circumstances under which it was enacted.
>
> **(3)** The mischief to be remedied.
>
> **(4)** The object to be attained.
>
> **(5)** The former law, if any, including other statutes upon the same or similar subjects.
>
> **(6)** The consequences of a particular interpretation.
>
> **(7)** The contemporaneous legislative history.
>
> **(8)** Legislative and administrative interpretations of such statute.

The Statutory Construction Act requires that: "[w]hen the words of the statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pre-text of pursuing its spirit". 1 Pa.C.S. § 1921(b). Here, Section 5607(d)(9) of the Municipality Authorities Act provides that:

> "Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers"…to fix, alter, charge and collect rates and other charges in the area served by its facilities"…"to determine by itself exclusively the services and improvements required to provide adequate, safe and reasonable service, including extensions thereof, in the areas served"…and "[a]ny 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"…and "[t]he court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service."

In the case *sub judice*, Conyngham Township ("Township") and the Sanitary Sewer Authority of the Borough of Shickshinny ("Sanitary Sewer Authority") entered into an agreement ("Agreement") whereby the Sanitary Sewer Authority provided sewage treatment services beyond its jurisdictional limits to the Township. Following termination of the Agreement, the Township filed a complaint with the Commission alleging that the Sanitary Sewer Authority was operating without a Commission-issued Certificate of Public Convenience and requested that the Commission order the Sanitary Sewer Authority to cease billing Township residents and return all collected monies to the residents. *Conyngham,* 325 A.3d at 886. The facts of the matter in the case *sub judice*, which involve sewage treatment **services**

provided by the Sanitary Sewer Authority to the Township, fit squarely within the Section 5607(d)(9) "rates or service" proviso, thereby giving the court of common pleas exclusive jurisdiction to hear any challenge to the Sanitary Sewer Authority's rates or services. However, in direct contrast to the language of the Municipality Authorities Act, which is "clear and free of all ambiguity" (1 Pa.C.S. § 1921(b)), the Commonwealth Court concluded that "exclusive jurisdiction" did not rest with the court of common pleas under Section 5607(d)(9) but, rather, with the Pennsylvania Public Utility Commission ("Commission"), notwithstanding numerous judicial decisions, as discussed below, to the contrary.

The issue in the case *sub judice* traces its origin back to the Municipality Authorities Act of 1935. Following the enactment of the Municipality Authorities Act of 1935, the Pennsylvania Superior Court addressed the jurisdiction issue in a matter involving an Authority's increase in rates to consumers located outside of the municipality that created the Authority. *State College Borough Authority v. Pennsylvania Public Utility Commission*, 152 Pa. Super. 363, 31 A.2d 557 (1942). In that matter, the Superior Court held that an Authority providing service beyond the boundaries of the municipality that incorporated it triggered the jurisdiction of the Commission. In its opinion, however, the court also noted that proposed legislation known to and reviewed by the court during the conduct of the case indicated "that the legislature has construed the law [Municipality Authorities Act

of 1935] as not extending jurisdiction to the commission and did not intend to so extend it." *Id.*, 31 A.2d at 561. Nevertheless, the proposed bills were not part of the record and not considered in the Superior Court's decision. *Id.*

However, shortly after the Superior Court's decision in *State College Borough Authority*, the General Assembly enacted the Municipality Authorities Act of 1945, which clarified the very issue that the Superior Court identified regarding legislative intent as to jurisdiction over Authorities. The Municipality Authorities Act of 1945 plainly states that the courts of common pleas have "exclusive jurisdiction" on questions involving an Authority's rates or service. As a result of this enactment, the General Assembly put to rest any notion that the Commission has jurisdiction over Authorities on questions involving an Authority's rates or services.

Soon after the enactment of the Municipality Authorities Act of 1945, the issue of jurisdiction over Authorities was addressed in another Superior Court decision, *Rankin v. Chester Municipal Authority*, 165 Pa. Super. 438, 68 A.2d 458 (1949). In *Rankin*, the Superior Court carefully analyzed the interrelationship between the newly enacted Municipality Authorities Act of 1945 and the Public Utility Law (later to become the Public Utility Code). Notably, the Superior Court held that the Municipality Authorities Act of 1945 negated the effect of the *State College Borough Authority* holding, ruling that the "court of common pleas has exclusive jurisdiction to inquire into the reasonableness of rates charged by a

municipal authority beyond as well as within the corporate limits of the municipality which created it." *Rankin,* 68 A.2d at 460. The Superior Court then discussed its earlier decision in *State College Borough Authority* and that court's reliance on the Public Utility Law in reaching its decision. Specifically, the *Rankin* Court noted that the Municipality Authorities Act of 1945 "is wholly inconsistent" with the sections of the Public Utility Law relied upon by the court in *State College Borough Authority*, and emphasized that "there is a positive repugnancy" between the two laws. According to the *Rankin* Court, when there is such a "positive repugnancy," the earlier provision, that being the Public Utility Law, is impliedly repealed. *Id*., "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." *Id.*, citing to the Statutory Construction Act of 1937.[3]

Following the *Rankin* decision, the Supreme Court had the opportunity to weigh in on the exclusive jurisdiction issue in the context of a rate challenge. *Elizabeth Township v. Municipal Authority of McKeesport*, 498 A.2d 476, 447 A.2d 245 (1982).[4] In this case, an Authority's rates were challenged by a township and township sanitary authority. In analyzing the rate challenge, the Supreme Court

[3] The same language in the Statutory Authorities Act of 1937 cited by the *Rankin* court appears in Section 1936 of the current version of the Statutory Construction Act. 1 Pa. C. S. 1936.

[4] It should be noted that in an earlier opinion from 1968, the Pennsylvania Supreme Court also cited the Municipality Authorities Act of 1945 in concluding that the "court of common pleas shall have *exclusive* jurisdiction to determine all such questions involving rates or service," when any person "challenges the reasonableness or the uniformity of any rate fixed by an Authority…" (emphasis in original) Calabrese v. Collier Township Municipal Authority, 430 Pa. 289, 294, 240 A.2d 544, 547 (1968)

discussed the pre-Municipality Authorities Act of 1945 state of the law with respect to jurisdiction and noted that prior to the 1945 enactment of the Municipality Authorities Act, "a municipal corporation which had not formed an authority to provide utility services was subject to rate challenges in one of two forums…"[i]f the rate challenge arose out of services provided by the corporation within its corporate boundaries, the challenge was to be brought in the courts of common pleas [citation omitted]..."[i]f the challenge arose out of services provided outside the corporate boundaries, the challenge was to be brought before the P.U.C…" *Elizabeth Township,* 498 Pa. at 481, 447 A.2d at *247.* The Supreme Court also noted that the Municipality Authorities Act of 1935 "contained neither an express provision authorizing challenges to rates set by a municipal authority nor a provision allocating jurisdiction over such disputes between the courts of common pleas and the P.U.C." *Id*., 498 Pa. at 481, 447 A.2d at 248. The Supreme Court then specifically addressed the *State College Borough Authority* decision, noting that the Superior Court relied upon the Municipality Authorities Act of 1935 in finding that challenges to an Authority's rates were "within the jurisdiction of the P.U.C." *Id*., 498 Pa. at 482, 447 A.2d at 248.

After evaluating the Municipality Authorities Act of 1935, the Supreme Court turned its attention to the Municipality Authorities Act of 1945 and explicitly recognized that "it is clear that the provision of section 4B(h) of the Act of 1945

which states that the courts of common pleas shall have 'exclusive jurisdiction' over all challenges to the rates set by a municipal authority was intended to reject the holding of State College that had permitted challenges to the rates of municipal authorities to be heard by the P.U.C." *Id*. In doing so, the Supreme Court acknowledged the "reallocation of jurisdiction" from the P.U.C. to the courts of common pleas for questions involving an Authority's rates or services. *Id*.[5] Therefore, the Supreme Court found that the plain meaning of the Municipality Authorities Act of 1945 was that the courts of common pleas have exclusive jurisdiction over questions involving the rates or service of Authorities.

Soon after the Supreme Court's decision in *Elizabeth Township*, the Commonwealth Court had the opportunity to address *Rankin* in a matter involving the alleged wrongful disconnection of water meters, within the context of the now well-settled position in Pennsylvania that the courts of common pleas have exclusive jurisdiction over Authorities. *Graver v. Pennsylvania Public Utility Commission*, 469 A.2d 1154 (Pa. Cmwlth. 1984). Significantly, in *Graver*, the Commonwealth Court not only reaffirmed *Rankin,* but framed the specific issue in the case as follows: "Does the PUC have jurisdiction to determine questions of the reasonableness of rates or **of the services provided** by a municipal authority beyond

[5] Although the *Elizabeth Township* matter involved a rate challenge, it is axiomatic that the reallocation of jurisdiction referred to by the Supreme Court included Authority services as well, given the directive in Section 5607(d)(9) of the Act that "[t]he court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service." This is important in the context of the Commonwealth Court's focus on rates, and not service, in the matter *sub judice*. *See*, *infra*, pages 16-17.

the limits of the municipality which created it or are such questions committed to the exclusive jurisdiction of the court of common pleas of the county where the authority's project is located?" (emphasis supplied). *Id*. at 1155. In answering the very issue that it framed, the Commonwealth Court (in direct contrast to its opinion in *Conyngham*) expressly held that the exclusive jurisdiction of such questions is vested in the courts of common pleas. *Id*. In doing so, the Commonwealth Court explained that:

> "In *Rankin v. Chester Municipal Authority*, 165 Pa. Superior Ct. 438, 68 A.2d 458 (1949), the Superior Court declared that Section 4B(h) was enacted to negate the effect of the holding of State College Borough Authority, that Section 4B(h) is inconsistent with the provisions of the Public Utility Law construed in State College Borough Authority; that the Municipality Authorities Act of 1945 being the later enactment, impliedly repealed the inconsistent provisions of the Public Utility Law; and that for these reasons, the courts of common pleas have exclusive jurisdiction of questions concerning the utility services of municipal authorities beyond, as well as within, the limits of the municipality which created the authorities. *Graver*, 469 A.2d at 1156."

Accordingly, in *Graver*, the Commonwealth Court was unmistakenly clear that exclusive jurisdiction of questions regarding an Authority's rates or service belongs in the courts of common pleas.

Soon after the *Graver* decision, in yet another challenge to an Authority's rates, the Commonwealth Court reaffirmed its holding in *Graver. White Rock Sewage Corp. v. Pennsylvania Public Utility Commission*, 133 Pa. Cmwlth. 608, 578 A.2d 984 (1990).

White Rock Sewage Corp. dealt with an issue involving the South Middleton Authority's treatment of waste from customers outside of its corporate limits. Germane to the matter *sub judice*, the Commonwealth Court addressed an argument where White Rock contended that the Commission possessed the requisite jurisdiction under the Public Utility Code to determine whether South Middleton Authority was charging White Rock reasonable rates, because South Middleton Authority was providing services beyond its corporate limits. The Commonwealth Court expressly rejected White Rock's argument, holding that Authorities are independent agencies of the Commonwealth and, as such, "South Middleton Authority may provide services to many different areas in the Commonwealth and has no boundaries within which it must limit its services." *Id*. 578 A.2d at 987. The Commonwealth Court also concluded that "[e]ven if we were to find that South Middleton was offering services outside of its boundaries, the PUC has determined that it does not have jurisdiction over the reasonableness of the rates fixed or over the services provided by a municipal authority beyond the limits of the municipality which created it, based on the holding in *Graver v. Pennsylvania Public Utility Commission*, 79 Pa. Commonwealth Ct. 528, 469 A.2d 1154 (1984), which addresses the Public Utility Commission's jurisdiction as provided by Section 306 B(h) of the Municipality Authorities Act." *Id*. (footnote omitted).

Notwithstanding its own precedent, the Commonwealth Court, in the matter *sub judice*, seemingly attempts to resurrect pre-1945 law, misapplies the ruling in *Rankin* and ignores its own precedent in *Graver and White Rock Sewage Corp.*

Notably, in the matter *sub judice*, the Commonwealth Court also places undue import on the Public Utility Code, and suggests that "none of the…cases" relied upon by the Commission "address whether the Commission has jurisdiction over municipal authorities concerning the [Public Utility] Code's mandate that municipal authorities obtain Certificates when furnishing service beyond their corporate limits." *Conyngham,* 385 A.3d 885, 890 (Pa. Cmwlth. 2024).

The Commonwealth Court need only revisit its prior decisions to address the perceived mandate that the Court now claims is provided for in the Public Utility Code. In *Graver,* the Court explicitly recognized that the Municipality Authorities Act of 1945 repealed the "inconsistent provisions of the Public Utility Law" and that "the courts of common pleas have exclusive jurisdiction of questions concerning the utility services of municipal authorities beyond, as well as within, the limits of the municipality which created the authorities." *Graver* 469 A.2d at 1156.

In addition to the Commonwealth Court's perceived mandate of what the Public Utility Code requires with respect to jurisdiction, the Commonwealth Court also noted that the cases cited by the Commission involve only rates. *See* fn. 5, *supra,* page 13. *Conyngham*, 385 A.3d at 890. However, it is clear that each of the cases

noted by the Commonwealth Court involves a "service" provided by an Authority that led to a rate dispute.

Consistent with the aforementioned, the Commonwealth Court seemingly focuses solely on the word "rates" and not on the word "service" in its opinion. *See Conyngham,* 325 A.2d at 890. To reiterate*,* under Section 5607(d)(9) of the Act, the General Assembly gave the courts of common pleas exclusive jurisdiction to address both rates and services. As discussed, Section 5607(d)(9) states, in part, that "[t]he court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service" and that "[a]ny 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…".[6]

Moreover, in an attempt to rebut the overwhelmingly persuasive case law supporting the Commission's position that it does not have jurisdiction over Authorities, the Commonwealth Court points to two of its own opinions, both unreported,[7] and both distinguishable.

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[6] Although the Commonwealth Court seemingly does not focus on the word "service" in Section 5607(d)(9) of the Act, it is noteworthy that in supporting the Township's position in the case *sub judice*, the Court cites approvingly to the definition of the word "service" in Section 102 of the Public Utility Code, which specifically endorses a broad and inclusive application of the word in addressing public utility service. *Section 102* of the Code states that the term *service: "* [u]sed in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them …" *66 Pa.C.S. § 102*. Conversely, in the case *sub judice*, the Commonwealth Court seemingly takes a restrictive definition of the word service in the Municipality Authorities Act.

[7]The unreported opinions referenced herein are cited solely for their persuasive value, and not binding precedent.

First, the Commonwealth Court cites to *Middle Smithfield Township Authority v. Maula* (Pa. Cmwlth. No. 89 C.D. 2008, filed Oct. 24, 2008). In this factually unique case, a **privately-owned corporation** obtained a Certificate of Public Convenience from the Commission to construct and operate a treatment plant. As the Commonwealth Court noted, the Pennsylvania Department of Environmental Protection subsequently issued an administrative order directing the township and/or its authorized agents to assume the operation and control of the sewage treatment plant. As the Commonwealth Court further noted, the township's authority applied to the Commission for a Certificate of Public Convenience simply for approval of abandonment of service by the **privately-owned corporation** that previously obtained the Certificate of Public Convenience to construct and operate the treatment plant at issue. Section 1102(a) of the Public Utility Code requires a Certificate of Public Convenience "[f]or any public utility to abandon or surrender, in whole or in part, any service…" In any event, the essence of this case was an appeal by the Middle Smithfield Township Authority from an order of the court of common pleas granting summary judgment in favor of certain property owners for unpaid sewer fees under the Municipal Claims and Tax Liens Act, *as amended, 53 P.S. § 7101 - 7505*. However, what actually makes the *Middle Smithfield Township Authority* decision applicable to the case *sub judice* is the law relied upon by the Commonwealth Court in reaching its Memorandum Opinion:

> "The Pennsylvania Supreme Court specifically held in *Calabrese v. Collier Township Municipal Authority,* 430 Pa. 289, 240 A.2d 544 (1968), **that the exclusive remedy to challenge a municipal authority's rates established under a prior version of the Municipality Authorities Act[8] was to bring an action in the court of common pleas where the project was located**. The Authority here has not alleged that the remedy is inadequate, only that the result is unfair. This argument is insufficient for equity jurisdiction to attach. Upon review, the court holds that the trial court committed neither an error of law nor an abuse of discretion in this matter, and its order therefore is affirmed." *Middle Smithfield Township Authority*, 2008 Pa. Commw. Unpub. LEXIS 764 *11-12. (emphasis supplied).

Therefore, in viewing this decision solely for its persuasive value, the opinion (*Middle Smithfield Township Authority*) relied upon by the Commonwealth Court in the matter *sub judice* to support its position that the Commission has jurisdiction over Authorities, states just the opposite and directly contradicts the position of the Commonwealth Court.

The second case relied upon by the Commonwealth Court in *Conyngham*, again, is an unreported decision. *East Dunkard Water Authority v. Southwestern Pennsylvania Water Authority,* 241 A.2d 692 (Pa. Cmwlth 2020).

This matter involved a complaint filed by the East Dunkard Water Authority ("East Dunkard") against the Southwestern Pennsylvania Water Authority ("SPWA") seeking to enjoin SPWA from, *inter alia,* continuing an expansion project. SPWA filed preliminary objections to the complaint, including one in which

[8] The Commonwealth Court entered a footnote here stating that the current version of the Municipality Authorities Act is found at 53 Pa.C.S. § 5607(d)(9).

it asserted that East Dunkard obtained a water distribution system owned by an Association, and if East Dunkard obtained the distribution system by contract and/or by deed from the Association, the acquisition would have had to be approved by the Commission. East Dunkard asserted that the Association is not a "public utility" because the Association only furnishes services to its stockholders and members on a nonprofit basis. Nevertheless, the trial court found that East Dunkard's maintenance and operation of the water distribution system owned by a third party, the Association, required Commission approval of the contract and/or deed from the Association. Therefore, the court of common pleas granted SPWA's preliminary objection on this count of the complaint.

On appeal, the Commonwealth Court stated that the Public Utility Code exempts a bona fide association from the definition of "public utility," and there was no requirement for East Dunkard to seek Commission approval for a contract between it and the Association. Nevertheless, the Commonwealth Court held that the applicable preliminary objection was properly sustained because East Dunkard failed to produce evidence of the Commission's approval of its provision of public utility services beyond the boundaries of Dunkard Township, an entirely different basis than that given by the court of common pleas in sustaining the same preliminary objection. Therefore, to the extent the Commonwealth Court in *East*

Dunkard viewed East Dunkard as an Authority, its ruling is contrary to well-established case law in the Commonwealth.

Significantly, the East Dunkard story does not end with the Commonwealth Court. On August 2, 2021, subsequent to the Commonwealth Court decision, the Commission's Bureau of Investigations and Enforcement filed a complaint against East Dunkard alleging that it impermissibly furnished water service to the public for compensation without holding a certificate of public convenience. Commission Docket No. C-2021-3027615. An Initial Decision in the matter issued on June 27, 2023 approved a Joint Petition for Settlement filed by the parties. The parties subsequently filed Exceptions to the Initial Decision. By Order dated November 1, 2023, the Commission issued an Opinion and Order denying the Exceptions and modifying the Initial Decision.[9] In its Opinion, the Commission discussed the current state of the law in the Commonwealth confirming the Commission's lack of jurisdiction over Authorities. (citing to Section 5607(d)(9) of the Municipality Authorities Act of 1945). Opinion, p.7. The Commission further noted that on August 23, 2021, East Dunkard "entered its 'Articles of Incorporation' into the record certifying its compliance with the Municipality Authorities Act," and that this record evidence demonstrates that East Dunkard "is a municipal authority authorized

[9] https://www.puc.pa.gov/pcdocs/1803835.pdf

to provide water service in the Commonwealth." Opinion, p.16. The Commission subsequently presented an extensive, thorough discussion of the law in Pennsylvania with respect to jurisdiction over Authorities as well as the Commonwealth Court's decision in *East Dunkard.* Opinion, pp. 17 – 21. As a result, the Commission ruled that it "lacks jurisdiction over the rates and services of municipal authorities like" East Dunkard, and "that jurisdiction lies exclusively with the courts of common pleas." Opinion, p.21. Accordingly, because the record indicated that East Dunkard was now [2023] an Authority, the Commission held that it "lacks jurisdiction to consider both the Complaint and resulting settlement in this matter." Opinion, pp. 21 – 22.

The Commonwealth Court's decision in the matter *sub judice* is also contradicted by a recent action of the General Assembly. In 2017, the General Assembly enacted Act 65 of 2017, which brought the operations of the Pittsburgh Water and Sewer Authority under the jurisdiction of the Commission for matters which clearly go beyond a rate issue. Notably, in the Co-sponsorship Memorandum to House Bill 1490 (which was the basis for Act 65 of 2017), then Representative Turzai stated that, "[w]hile the PUC does not currently have jurisdiction over the operations of municipal authorities, in the case of PWSA [Pittsburgh Water and Sewer Authority], regulatory oversight is needed to fix this deteriorating system and

restore the confidence of PWSA's customers."[10] Certainly, if the General Assembly held the same view as the Commonwealth Court regarding the jurisdiction of the Commission over Authorities, there would be no need to specifically enact legislation to grant the Commission jurisdiction over one Authority.

It is also worth noting that in the Commission's Tentative Implementation Order following Act 65 of 2017 being signed into law,[11] the Commission noted that "[a]pproximately 70 years ago, municipal authorities were removed from Commission jurisdiction by the Municipal Authorities Act (MAA)" (citing 53 Pa.C.S. § 5607(d)(9), emphasizing the following: The courts of common pleas shall have exclusive jurisdiction to determine questions involving rates or service)." Tentative Implementation Order, Docket M-2018-2640802 and Docket M-2018-2640803 at pg 3.

The Commission also acknowledged that it "had no authority whatsoever over entities created and operating under the MAA" and that "[t]he statutory amendments of Act 65 granting Commission jurisdiction over certain municipal authorities are necessary because the Pennsylvania Supreme Court had determined that the MAA provided the exclusive means to address the reasonableness of municipal authority rates and service." Citations omitted. *Id*.

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[10] House Co-Sponsorship Memo 23989 Information; 2017-2018 Regular Session - PA House of Representatives

[11] The date of the Tentative Implementation Order was January 18, 2018 and the date of the Final Implementation Order was March 15, 2018].

It is noteworthy that the Commission's discussion of the state of the law in the Commonwealth confirming the exclusive jurisdiction of the courts of common pleas regarding questions involving an Authority's rates and service in both Docket No. C-2021-3027615 involving East Dunkard and the Commission's Tentative Implementation Order relative to Act 65 of 2017, is fully consistent with the Commission's grant of power under the Public Utility Code and limitations placed on that grant of power by the General Assembly. It is well-settled law in the Commonwealth that an agency such as the Commission may only exercise the powers granted to it by statute. *Susquehanna Area Regional Airport Authority v. Pa. Public Utility Com.*, 911 A.2d 612, 617 (Pa. Cmwlth 2006). As such, the Commission has the full power to enforce the provisions of the Public Utility Code, but its powers are limited and must be viewed in light of the enumerated powers set forth in the Public Utility Code. *Id*. at 623.

Finally, it is clear that the plain language of the Municipality Authorities Act and case law interpreting the Act lead to but one conclusion: the courts of common pleas of the Commonwealth of Pennsylvania, and not the Commission, have exclusive jurisdiction on questions involving an Authority's rates and services.

In 1945, the General Assembly amended the Municipality Authorities Act to remove any power of the Commission over Authorities. If, indeed, the General Assembly thought that the numerous cases interpreting its 1945 amendment to the

Municipality Authorities Act were somehow incorrect, it certainly was within its purview to once again amend the Municipality Authorities Act to "correct" any such misinterpretation. Not surprisingly, given the plain meaning of the Municipality Authorities Act of 1945, the General Assembly has never amended the statute on the jurisdiction issue because the case law interpreting the Municipality Authorities Act has been consistent with the General Assembly's intent in enacting the statute.

IV. CONCLUSION

In conclusion, based on the foregoing, PMAA respectfully requests that the Pennsylvania Supreme Court reverse the Opinion of the Commonwealth Court and hold that the courts of common pleas of this Commonwealth have exclusive jurisdiction over an authority established under the Municipality Authorities Act 53 Pa.C.S. §§ 5601, *et seq*.

Respectfully submitted,

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Date: July 14, 2025

CERTIFICATE OF COMPLIANCE PER PA. R.A.P. 127

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

HAMBURG, RUBIN, MULLIN,
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By:______________________________
STEVEN A. HANN

Date: July 14, 2025

CERTIFICATE OF COMPLIANCE WITH RULE 531(b)(3)

The Brief of Amicus Curiae of Pennsylvania Municipal Authorities Association complies with the length of brief limitation in Pa. R.A.P. 531(b)(3) because the Brief contains 6,423 words. This Certificate is based upon the word count of the word processing system used to prepare the Brief.

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Date: July 14, 2025