Potential Sea Change in Public Utility Law: Municipal Authorities Are Subject to Public Utility Commission Jurisdiction (Sort of)

By Dan Clearfield and Carl Shultz, Eckert Seamans

A recent Commonwealth Court decision has found that municipal authorities – long thought to be completely exempt from regulation by the Pennsylvania Public Utility Commission ("Commission" or "PUC") – must in fact obtain prior approval from the Commission in order to extend service beyond the boundaries of the municipal entities that created the authority. (The lone exception to this rule had been the water/wastewater authority that serves Pittsburgh – as to which the Legislature specifically extended PUC jurisdiction in 2018.)

The Commonwealth Court's October 2024 decision, as written (Conyngham Twp. v. PA PUC, 113 C.D. 2024), holds that the Commission has jurisdiction to approve extensions of service by municipal authorities while affirming that the Commission does not have authority to regulate the rates or service of an authority. **Nevertheless, the decision creates substantial issues and uncertainty for scores of authorities across the Commonwealth that provide service to residents and businesses that are beyond the corporate limits of the municipalities that created them.**

The Sanitary Sewer Authority of the Borough of Shickshinny ("SSABS")[1] is a municipal authority created by the Borough of Shickshinny that collects and treats wastewater from customers located within the Borough as well from other neighboring townships via contractual arrangements. One such entity is Conyngham Township. Again, as is typical, the Township billed its residents for SSABS's wastewater collection fees and paid its contractual obligations by passing on those collected fees to SSABS. The Township and SSABS became embroiled in a dispute about the Township's responsibility to correct inflow and infiltration on the Township's lines. When no resolution was to be had, SSABS declared that the existing contract was cancelled (despite the contractual language preventing unilateral termination). That declaration, nevertheless, prompted the Township to stop paying for sewage treatment service (even though it continued to send its wastewater to SSABS for treatment). In an effort to get paid, SSABS then took the unusual step of billing the Township residents directly for the wastewater treatment fees to which it was entitled for treating the wastewater. The Township thereupon filed a complaint with the Commission (PUC Docket No. C-2021-3023624) alleging that the Commission has jurisdiction over the wastewater treatment "services" being provided by SSABS to the Township's residents, that the Authority should have obtained the Commission's approval before it started to "directly serve" customers in the Township and that SSABS was required to cease billing Township residents and refund any charges it had collected.

Before the Commission, an administrative law judge agreed with the Township. But the Commission reversed the ALJ, concluding that under the Municipality Authorities Act ("MAA"), 53 Pa.C.S. § 5601, et seq. the Commission lacked subject matter jurisdiction over questions regarding the rates, services and service area of municipal authorities — like SSABS.

Continued on page 38.

[1]*The SSABS is a client of Eckert Seamans and the Authority consulted with Eckert on aspects of the appeal.*

Potential article continued from page 19.

In response to the Township's appeal of the Commission's Order, a Commonwealth Court panel vacated and reversed, holding that, while the Commission did not have jurisdiction over the "rates and service" of an authority, indeed, a municipal entity, including an authority, must obtain a certificate of public convenience and necessity under the Public Utility Code before it begins to serve "beyond the borders" of the municipality or municipalities that created the authority.

The Commonwealth Court panel reached its conclusion despite the provisions of the MAA stating that challenges to "the adequacy, safety, and reasonableness of the authority's services, including extensions thereof" are to be brought in common pleas court and case law from the 1940s' that had specifically disavowed any Commission jurisdiction over authorities. The panel decision also did not deal with the fact that, under the MAA an authority is specifically empowered to provide service anywhere in the Commonwealth so that its "service territory" is essentially anywhere it decides to provide service. Although there are limitations and conditions on that discretion, the MAA does not require the expanding authority to obtain approval from any entity or to show that the expansion is "necessary or proper for the service, accommodation, convenience, or safety of the public," the standard that authorities seemingly will now have to meet in order to provide utility service outside the boundaries of their original incorporators.

On the other hand, the Panel may have had in the back of its collective minds that the long held statutory scheme was illogical; why should a municipality wanting to serve across its borders need Commission approval not only to serve but also for its rate levels and adequacy of its service, when, if it simply created an authority and provided the same service it would not? But, seemingly, that question was answered by the General Assembly when it enacted the MAA.

Whether this sea change in municipal authority law will continue to be binding remains to be seen. Now that the Commonwealth Court has denied petitions for Reargument it is likely that petitions for allowance of appeal to the Supreme Court will be filed. Considering that the Commonwealth Court has changed an accepted tenant of public utility and municipal law which has existed for over eighty years it seems likely that the Supreme Court will have the final say. In the meantime, authorities and their solicitors have some tough decisions if they are considering extending service beyond the limits of their incorporating municipality.

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