

**[J-32-2026] [MO: McCaffery, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

CONYNGHAM TOWNSHIP,	:	No. 34 MAP 2025
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court at No. 113
	:	CD 2024, dated October 4, 2024,
v.	:	Vacating and Remanding the
	:	Decision of the Public Utility
	:	Commission at No. C-2021-
PENNSYLVANIA PUBLIC UTILITY	:	3023624 dated January 18, 2024
COMMISSION,	:	
	:	
Appellant	:	ARGUED: April 16, 2026
	:	

DISSENTING OPINION

JUSTICE BROBSON

DECIDED: October 29, 2026

The Majority provides a thorough review of the history of the Municipality Authorities Act (MAA), 53 Pa. C.S. §§ 5601-5623, and its effect on the Public Utility Code (Code), 66 Pa. C.S. §§ 101-3316, and I agree with many of the general principles contained in its opinion. Among these principles, however, the Majority makes a few novel declarations of law with which I cannot agree. Primarily, I disagree with the Majority’s conclusion that a dispute regarding a municipal authority’s service area is a “question[] involving . . . service” under Section 5607(d)(9) of the MAA, 53 Pa. C.S. § 5607(d)(9), and, as a result, the Public Utility Commission (Commission) lacks subject matter jurisdiction over such dispute. (See Majority Op. at 29-30.) Beyond these explicit, and inaccurate, declarations of law, I also take issue with the Majority’s loose use of the term “jurisdiction” to cover both the traditional concept of personal and subject matter jurisdiction, as well as the concept of regulatory authority over an entity.

To begin, the Majority, arguably guided by the question on which this Court granted review, frames the issue presented in this appeal as whether “the Commission has jurisdiction over a municipal authority established under the MAA when the authority provides utility service to customers beyond the boundaries of its incorporating municipality.” (*Id.* at 9 (citing *Conyngham Twp. v. Pa. Pub. Util. Comm’n*, 340 A.3d 272 (Pa. 2025) (per curiam)).) In doing so, the Majority conflates the concepts of subject matter jurisdiction and regulatory authority. These concepts, while similar in many regards, are not interchangeable. This case concerns not regulatory authority but, rather, whether the Commission has subject matter jurisdiction to interpret a provision of the Code and to determine whether that provision applies to a municipal authority. To the extent the Majority answers this inquiry in the negative, I dissent.

To better understand my concern, I must revisit the Commonwealth Court’s decision below. Ultimately, the Commonwealth Court held that the Commission had jurisdiction to consider a complaint filed by Conyngham Township (Township), wherein the Township asserted that Section 1102(a)(5) of the Code¹ required the Sanity Sewer Authority of the Borough of Shickshinny (Authority), a municipal authority incorporated under the MAA, to obtain a Certificate of Public Convenience (CPC) to continue offering utility services in the Township. The Commonwealth Court reached this conclusion after

¹ Section 1102(a)(5) of the Code provides:

(a) General rule.--Upon the application of any public utility and the approval of such application by the [C]ommission, evidenced by its [CPC] first had and obtained, and upon compliance with existing laws, it shall be lawful:

. . . .

(5) For any municipal corporation to acquire, construct, or begin to operate, any plant, equipment, or other facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits.

66 Pa. C.S. § 1102(a)(5).

conducting an independent statutory construction analysis of Section 1102(a)(5) of the Code, as well as Section 5607(d)(9) of the MAA.² I find no error in the Commonwealth Court's analysis and conclusion.

There is no dispute that Section 5607(d)(9) of the MAA grants exclusive jurisdiction to the court of common pleas over certain challenges involving a municipal authority; namely, "questions involving rates or service." 53 Pa. C.S. § 5607(d)(9). This broad statement, however, should not be read in isolation. Section 5607(d)(9) provides clarification of the scope of the court of common pleas' jurisdiction in the immediately preceding sentence. That sentence provides 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*" has the right to bring suit against the municipal authority in the court of common pleas. *Id.* (emphases added). Thus, in order "[t]o conclude that courts of common pleas have exclusive jurisdiction over complaints

² Section 5607(d)(9) of the MAA provides, in relevant part:

(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 . . . 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. . . . 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 The court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service.

53 Pa. C.S. § 5607(d)(9).

involving a municipal authority's failure to obtain a [CPC]," we would also have to conclude that such a challenge falls under one of these two categories. *Conyngham Twp. v. Pa. Pub. Util. Comm'n*, 325 A.3d 885, 889 (Pa. Cmwlth. 2024). It does not.

Section 1103(a) of the Code sets forth the procedure to obtain a CPC. It provides, in pertinent part, that the Commission shall grant a CPC "only if the [C]ommission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a). This "necessary or proper" determination, while related to services in the general sense, does not involve the "adequacy, safety and reasonableness" of services that a municipal authority provides. *See, e.g., Elite Indus., Inc. v. Pa. Pub. Util. Comm'n*, 832 A.2d 428, 432 (Pa. 2003) (quoting *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764-65 (Pa. Cmwlth. 1985) (explaining that General Assembly broadly intended for "necessary or proper" inquiry to prevent utilities from "engag[ing] in unrestrained and destructive competition, which activity was thought to be, by its very nature, at odds with the public interest")). Accordingly, I find no support for the Majority's conclusion that an inquiry into whether a municipal authority is required to obtain a CPC qualifies as a "question[] involving . . . service" under Section 5607(d)(9) of the MAA such that the court of common pleas would have exclusive jurisdiction. Rather, I would conclude that the Commission, as the tribunal that generally has primary jurisdiction to interpret the Code's provisions, would be the appropriate tribunal to decide whether Section 1102 requires a municipal authority to obtain a CPC. *See Borough of Lansdale v. Phila. Elec. Co.*, 170 A.2d 565, 566-67 (Pa. 1961) ("[N]o principle has become more firmly established in Pennsylvania law than that the courts will not originally adjudicate matters within the jurisdiction of the [Commission]. Initial jurisdiction in matters concerning the relationship between public utilities and the public is in the [Commission]—not in the courts."); *see*

also id. at 567 (“It has been so held [that the Commission has initial jurisdiction in matters] involving . . . rights to serve particular territory.” (citation omitted)).

In reaching a contrary conclusion, the Majority relies upon another phrase contained within Section 5607(d)(9) of the MAA that provides municipal authorities with certain enumerated powers. Namely, the Majority cites the portion of Section 5607(d)(9) that provides a municipal authority with the power to “determine by itself exclusively the services and improvements required to provide adequate, safe and reasonable service, including extensions thereof, in the areas served.” 53 Pa. C.S. § 5607(d)(9). The Majority interprets this language as granting municipal authorities “the exclusive power to establish their own . . . service areas.” (Majority Op. at 30 (emphasis omitted).) I disagree. Section 5607(d)(9), read in its entirety, clearly provides that a municipal authority can only carry out its exclusive power to determine the services and improvements required “*in the areas served.*” 53 Pa. C.S. § 5607(d)(9) (emphasis added). This language presupposes that there are, in fact, some boundaries within which the municipal authority is authorized to serve. What those boundaries consist of and who the appropriate authority is for determining those boundaries is separate from the question of jurisdiction now before us. Accordingly, I would not answer it.

At present, this Court need only answer whether the Commission has jurisdiction to consider a complaint seeking to interpret a provision of the Code and its application to a particular entity. Having found no applicable provision of the MAA that would remove jurisdiction from the Commission on this question, I would conclude that the matter was properly before the Commission. Consequently, I would affirm the Commonwealth Court’s order, which vacated the Commission’s inconsistent order and remanded the matter to the Commission for further proceedings on the merits of the underlying issue,

i.e., whether Section 1102(a)(5) of the Code required the Authority to obtain a CPC to continue offering utility services in the Township.

Justice Wecht joins this dissenting opinion.