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May 21, 2015

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**RE: Cornwall Borough, Lebanon County, Municipal Authority v Borough of Cornwall
Docket Nos. C-2015-2475978 and P-2015-2475991**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Borough of Cornwall's Answer to the *de facto* New Matter in the above-referenced proceedings.

As shown on the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Adeolu A. Bakare

Counsel to the Borough of Cornwall

Enclosure
c: Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

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Adeolu A. Bakare

Counsel to the Borough of Cornwall

Dated this 21st day of May, 2015, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORNWALL BOROUGH, LEBANON	:	
COUNTY, MUNICIPAL AUTHORITY,	:	
	:	
Complainant/Petitioner	:	Docket Nos. C-2015-2475978
	:	P-2015-2475991
vs.	:	
	:	
BOROUGH OF CORNWALL,	:	
	:	
Respondent	:	

**THE BOROUGH OF CORNWALL'S ANSWER
TO DE FACTO NEW MATTER**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

The Borough of Cornwall ("Borough") files, pursuant to 52 Pa. Code § 5.342(g)(1), this Answer to the *de facto* New Matter filed by Cornwall Borough Municipal Authority ("Authority") on May 11, 2015. On May 11, 2015, the Authority filed an Answer in Opposition to Preliminary Objections to Complaint and Petition for Declaratory Order ("Authority Answer to Preliminary Objections"). Importantly, the Authority's Answer to Preliminary Objections repeatedly emphasizes that the Borough did not provide a verification for the Preliminary Objections filed in the above-captioned proceeding. While couched within the Authority Answer to Preliminary Objections, the Borough avers that this allegation constitutes a New Matter pursuant to Section 5.62(b) of the Commission's Regulations, 52 Pa. Code § 5.62(b). Accordingly, the Borough requests that the Commission consider the Authority's verification allegations as a *de facto* New Matter, to which the Borough is entitled to respond.

I. BACKGROUND

On January 9, 1956, the Borough enacted Ordinance No. 128, authorizing creation of the Authority for purposes of owning and operating, *inter alia*, the Borough's water distribution system pursuant to the Municipal Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended and supplemented, and as subsequently codified as the Municipal Authorities Act of June 19, 2001, P.L. 287, 53 Pa.C.S. § 5601 *et seq.* (the "Authorities Act"). *See* Complaint, Exhibit G *attaching* Ordinance No. 128.

On April 2, 2015, the Borough Council enacted Ordinance No. 2015-1, authorizing the termination of the Authority and the transfer of its property to the Borough, pursuant to the power vested in the Borough by the Authorities Act. Following enactment of Ordinance No. 2015-1, the Authority now exists solely for purposes of complying with Borough directives necessary to transfer its assets to the Borough, including the water system assets.

On April 9, 2015, the Authority filed a Complaint ("Complaint") and Petition for Declaratory Order ("Petition") with the Commission.

On April 29, 2015, the Borough filed both an Answer and Preliminary Objections to the Authority's Complaint and Petition (respectively, "Borough Answer" and "Borough Preliminary Objections").

The Authority subsequently filed the aforementioned Authority Answer to Preliminary Objections on May 11, 2015.

II. LEGAL STANDARD

As a threshold matter, the Authority's claim that the Borough failed to verify the Borough Preliminary Objections constitutes a material fact beyond a denial of the averments in the Borough Preliminary Objections, which should have been properly pled as a New Matter

pursuant to Section 5.62(b) of the Commission's Regulations, 52 Pa. Code § 5.62(b). Under Section 5.63 of the Commission's Regulations, replies to New Matters may be filed within 20 days of service of an Answer setting forth a New Matter. Accordingly, the Borough requests that the Commission consider the Authority's allegations regarding improper verification as a *de facto* New Matter, to which the Borough hereby answers as follows:

III. ANSWER

The Authority's Answer to Preliminary Objections set forth numerous arguments purporting to respond to the Borough Preliminary Objections filed on April 29, 2015. Unfortunately, the Authority's Answer to Preliminary Objections continues a trend of raising plainly inapplicable arguments as part of what the Borough can only assume to be an attempt to create confusion before the Commission. Contrary to the Authority's apparent interest in inundating the Commission with unwieldy, unfounded, and irrelevant arguments, the Borough hereby submits this limited Answer to New Matter addressing solely the Authority's averments regarding improper verification.

The Authority's claim that the Borough Preliminary Objections omitted a verification is without merit as the Commission's rules do not require verifications for preliminary objections. In its Answer to Preliminary Objections, the Authority states that "[n]either the Borough's Answer nor its Preliminary Objections is verified as required by the Commission's rules."¹ See Authority Answer to Preliminary Objections, p. 4 note 8. The Authority further suggests that the

¹ Although entirely irrelevant to the Commission's disposition of the Borough's Preliminary Objections, the Authority Answer to Preliminary Objections also alleges improper verification of the Borough's Answer to the Complaint and Petition for Declaratory Order. See Authority Answer to Preliminary Objection pp. 6, 15. Importantly, the issue of verification was not properly raised as a preliminary objection to the Borough Answer, which the Borough would be permitted to cure under the Commission's rules. See 52 Pa. Code § 5.101(2); see also *P-I-E Nationwide, Inc. v. Pennsylvania Public Utility Com.*, 130 Pa. Commw. 270, 275, 567 A.2d 1124, 1127, 1989 Pa. Commw. LEXIS 818, *7 (Pa. Commw. Ct. 1989). Regardless, and out of an abundance of caution, the Borough hereby submits a Verification of the Borough Answer executed by Borough Council Vice President Anthony Fitzgibbons.

factual assertions in the Borough Preliminary Objections are not properly before the Commission because the Preliminary Objections were not verified. *See id.* at 15. While the Authority does not specifically identify the Commission rule upon which it relies, the Borough assumes the Authority intended to reference Section 1.36 of the Commission's Regulations, 52 Pa. Code § 1.36, which requires verifications for "[a]pplications, petitions, formal complaints, motions and answers thereto..." 52 Pa. Code § 1.36 (Emphasis added).

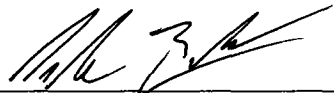
As evidenced by a reading of Section 1.36, verifications are *not* required for preliminary objections. Indeed, any requirement to verify facts alleged in a preliminary objection would be superfluous, as all disputed facts must be resolved in favor of the Petitioner or Complainant for purposes of ruling on preliminary objections. *See Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *see also Luanne Burnett; v. D&E Systems, Inc.* 2009 Pa. PUC LEXIS 673, *9 (Pa. PUC 2009). Further, any suggestion that the reference to motions in Section 1.36 includes Preliminary Objections must be rejected, as the Commission's Regulations consistently distinguish between the two pleadings. *See* 52 Pa. Code §§ 5.1, 5.101(a), 5.61 (each separately referencing Preliminary Objections and Motions). Accordingly, the Borough requests that the Commission dismiss the Authority's hyperbolic and unsupported claims regarding any failure to verify the Borough Preliminary Objections, grant the Borough Preliminary Objections, and dismiss the Authority's Complaint and Petition for Declaratory Order.

IV. CONCLUSION

For the above reasons, the Borough of Cornwall respectfully requests that the Commission deny the *de facto* New Matter filed by the Cornwall Borough Municipal Authority and grant the Preliminary Objections filed by the Borough of Cornwall.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to the Borough of Cornwall

Dated: May 21, 2015

VERIFICATION

Subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, I hereby certify that I am Vice President for the Cornwall Borough Council and that I am authorized to sign this verification on its behalf. I further verify that the facts set forth in the Answer filed by the Borough of Cornwall at Docket Nos. C-2015-2475978 and P-2015-2475991 on April 29, 2015, are true and correct to the best of my knowledge, information, and belief.



Anthony Fitzgibbons
Borough Council Vice President

Dated: May 21, 2015