



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

February 13, 2019

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

Re: Application of Exeter Township for Certificate of Public Convenience to Offer,
Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions
of Lower Alsace Township, Berks County, Pennsylvania
Docket No. A-2018-3006505

Dear Secretary Chiavetta:

Enclosed for filing please find the Bureau of Investigation and Enforcement's
(I&E) **Complaint** for the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions,
please contact me at (717) 783-6170.

Sincerely,

Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 320526

ELM/jfm
Enclosure

cc: Hon. Andrew M. Calvelli (Office of ALJ, Harrisburg)
Per Certificate of Service

SECRETARY'S BUREAU
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FEB 13 2019

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement,
Complainant

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

v.

Docket No. C-2019-

Exeter Township,
Respondent

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§5.61 and 5.103, you are hereby notified that the Bureau of Investigation and Enforcement has filed a Complaint at the above-referenced docket to which you may file an answer within twenty (20) days unless otherwise provided in Chapter 5 of Title 52 of the Pennsylvania Code, the Public Utility Commission, or by the Presiding Officer. Your failure to answer will allow the Public Utility Commission or Presiding Officer to rule on the Complaint without a response from you, thereby requiring no other proof. All pleadings such as a reply to this document must be filed with the Secretary of the Pennsylvania Public Utility Commission at 400 North Street, Harrisburg, PA 17120, with a copy served on the undersigned prosecutor for the Bureau of Investigation and Enforcement.



Erika L. McLain
Attorney I.D. # 320526

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, Pennsylvania 17120
(717) 783-6170

Dated: February 13, 2019

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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FEB 13 2019

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement,
Complainant

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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: Docket No. C-2019-

v.

Exeter Township,
Respondent

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COMPLAINT

NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by its prosecuting attorney, and files this Complaint against Exeter Township (“Exeter” or “Respondent”), pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701.

Parties and Jurisdiction

1. The Pennsylvania Public Utility Commission, with a mailing address of 400 North Street, Harrisburg, PA 17120, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth and other entities acting within the scope of the Commission’s jurisdiction pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*

2. The Commission regulates public utilities engaged in wastewater collection, treatment, or disposal for the public for compensation. 66 Pa.C.S. § 102.

3. Complainant is the Commission’s Bureau of Investigation and Enforcement and is the entity established to prosecute complaints against public utilities pursuant to 66 Pa.C.S. § 308.2(a)(11).

4. Complainant is represented by:

Erika L. McLain
Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-6170
ermclain@pa.gov

5. Respondent is Exeter Township, with an address of 4975 DeMoss Road, Reading, PA 19606.

6. Respondent serves 29 customers in Lower Alsace Township but does not hold a Certificate of Public Convenience to offer, furnish, render, and supply wastewater service to the public in Lower Alsace Township, Berks County, Pennsylvania as required by Section 1101 of the Public Utility Code, 66 Pa. C.S. §1101.

7. Section 501(a) of the Public Utility Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.

8. Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, authorizes the Commission to, *inter alia*, hear and determine complaints against persons and corporations for a violation of any law or regulation that the Commission has jurisdiction to administer.

9. Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility, or any other person or corporation subject to the Commission's authority, for violation(s) of the Public Utility Code and/or Commission regulations.

10. Section 1312 of the Public Utility Code, 66 Pa. C.S. § 1312, authorizes the Commission to authorize refunds for any unlawful collections of rates of a public utility.

11. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this Complaint and the actions of Respondent related thereto.

Factual Background

12. Exeter provides wastewater service to the entirety of its geographical boundaries and to 29 additional customers located within Lower Alsace Township, Berks County.¹

13. Exeter Township has been serving Lower Alsace Township, Berks County, Pennsylvania without a Certificate of Public Convenience since 2014.²

14. On December 10, 2018, Exeter Township filed its Application for Certificate of Public Convenience to Offer, Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions of Lower Alsace Township, Berks County, Pennsylvania.

¹ Application of Exeter Township for Certificate of Public Convenience, p. 2.

² Application of Exeter Township for Certificate of Public Convenience, p. 2.

15. Exeter Township, within its Application, contemplates a rate increase to all customers, including those 29 customers within the Applied-For Service Territory.³

16. The Certificate of Public Convenience Application requests a waiver of 52 Pa. Code § 3.501.⁴

Violations

17. The Public Utility Code, specifically 66 Pa. C.S. §1102(a)(5), requires that an entity, such as a municipal corporation serving customers beyond its corporate limits, must first receive a Certificate of Public Convenience before beginning to render utility service. Exeter Township has been providing unlawful wastewater service to the Lower Alsace Township, which lies beyond Exeter Township's corporate limits, since the dissolution of the Exeter Township Municipal Authority in 2014.⁵ After providing unlawful public utility service for approximately 4 years, Exeter Township filed its Application for Certificate of Public Convenience on December 10, 2018 requesting a waiver of the requirements in 52 Pa. Code § 3.501. Section 3.501 details information necessary to evaluate whether an applicant is fit to be granted a certificate of public convenience. I&E opposes the waiver of Section 3.501.

³ Application of Exeter Township for Certificate of Public Convenience, p. 5.

⁴ Application of Exeter Township for Certificate of Public Convenience, p. 6.

⁵ Application of Exeter Township for Certificate of Public Convenience, p. 2.

18. Section 1301 requires that “every rate made, demanded, or received by a public utility... shall be just and reasonable, and in conformity with regulations or orders of the commission.”⁶ Since 2014, Exeter Township has been charging rates without a tariff for wastewater service to customers located within Lower Alsace Township without a Certificate of Public Convenience mandated by Section 1101 of the Public Utility Code.

19. The Public Utility Code specifically prohibits a public utility from demanding or receiving a greater or lesser rate for any service rendered by that public utility than that specified in its tariffs.⁷ Section 1303 also provides that the lawful rates of a public utility are those rates specified in its tariff. Exeter Township does not have a Commission-approved tariff and is unlawfully charging customers in Lower Alsace Township for utility service.

20. The Public Utility Code at Section 1308, 66 Pa. C.S. § 1308, states that a public utility is not permitted to make any change to its rates without first filing a tariff stating the new rate and without receiving Commission approval of the determination of just and reasonable rates. Exeter Township proposes a substantial rate increase within its Certificate of Public Convenience Application.⁸ Specifically, it contemplates increasing residential rates from \$60.99 to \$78.70 by February 2019. This rate increase would apply to the 29 customers in Lower Alsace Township that are jurisdictional to the Commission. Exeter Township increased its rates without complying with Section 1308 of the Public Utility Code, which governs voluntarily rate increases by a utility.

⁶ 66 Pa. C.S. § 1301.

⁷ 66 Pa. C.S. § 1303.

⁸ Application of Exeter Township for Certificate of Public Convenience, p. 5.

21. The Public Utility Code mandates that customers receive notice before rates are increased, 66 Pa. C.S. § 1308. Furthermore, the Commonwealth Court in *McCloskey v. Pennsylvania Public Utility Commission* recently stated, “[b]ecause an increase in rates involves a substantial property right, ratepayers are entitled to notice of a Commission’s administrative proceeding...”⁹ Commission regulations at 52 Pa Code § 53.45 details the notice that must be provided to customers facing a rate increase. Exeter Township failed to notify its customers in accordance with Section 1308 of the Public Utility Code and Commission regulations at 52 Pa Code § 53.45 of the pending unlawful rate increase. Therefore, those customers affected by the rate increase were deprived of their notice and opportunity to provide comments on the increase.

22. Section 1312 of the Public Utility Code, 66 Pa. C.S. § 1312, grants the Commission the authority to make an order requiring the public utility to refund the amount of any excess paid by any customer due to unlawful collection within four years prior to the date of filing the complaint along with interest at the legal rate from date of each excessive payment.¹⁰ As explained above, Exeter Township is providing wastewater service to customers located beyond its corporate boundaries without a Certificate of Public Convenience and a Commission approved tariff. The customers within the Applied-For Service Territory have been unlawfully charged for wastewater service to Exeter Township since 2014 and those rates were recently substantially increased without receiving Commission approval for such an increase. As such,

⁹ *McCloskey v. Pennsylvania Public Utility Commission*, 1624 CD 2017, p. 23 citing *Barash v. Pennsylvania Public Utility Commission*, 546 A.2d 1296, 1305-1306 (Pa. Cmwlth. 1988).

¹⁰ 66 Pa. C.S. § 1312(a).

customers in Lower Alsace Township are entitled to a refund of those amounts unlawfully collected.

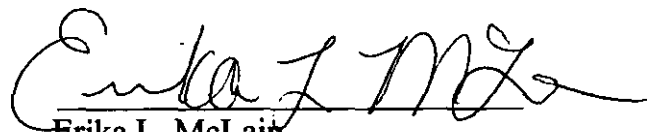
23. Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, grants the Commission the authority to impose civil penalties on a public utility for failure to comply with the Public Utility Code, Commission regulation, or Commission order. As explained above, Exeter Township is in violation of Sections 1101 and 1102, 66 Pa. C.S §§ 1101, 1101, as it is providing wastewater service to customers located beyond its corporate boundaries without a Certificate of Public Convenience. Exeter Township is in violation of Section 1303, 66 Pa. C.S. § 1303, because it is charging rates without a Commission approved tariff. Additionally, Exeter Township is in violation of Section 1308, 66 Pa. C.S. § 1308, because it recently implemented a rate increase without seeking Commission approval for the determination of just and reasonable rates. As such, a civil penalty of \$1.00 for every unlawful bill sent to Commission jurisdictional customers is warranted.

Request for Relief

WHEREFORE, for all the foregoing reasons, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement respectfully requests that:

- (a) Respondent cease unlawfully charging those customers in Lower Alsace Township, Berks County for which it has no Certificate of Public Convenience or Commission approved tariff;
- (b) Respondent be ordered to pay a civil penalty of \$1.00 for every unlawful bill sent to customers within the Applied-For Service Territory for the above-described violations, in accordance with 66 Pa.C.S. § 3301;
- (c) The Commission order Respondent to refund customers within the Applied-For Service Territory, in accordance with 66 Pa. C.S. § 1312;
- (d) The Commission order Respondent to provide the information as required by 52 Pa. Code § 3.501; and
- (e) That the Commission order such other relief as the Commission may deem to be appropriate.

Respectfully submitted,



Erika L. McLain
Prosecutor

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
(717) 783-6170
ermclain@pa.gov

Date: February 13, 2019

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PENNSYLVANIA PUBLIC UTILITY COMMISSION FEB 13 2019

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement,
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

v.

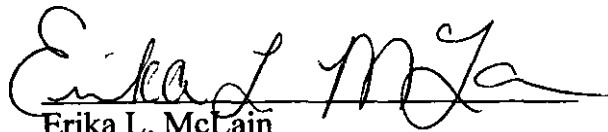
Docket No. C-2019-

Exeter Township,
Respondent

VERIFICATION

I, Erika L. McLain, Assistant Counsel, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: February 13, 2019



Erika L. McLain
Assistant Counsel
PA Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
 :
 v. : Docket No. A-2018-3006505
 :
 Application of Exeter Township for :
 Certificate of Public Convenience to Offer, :
 Furnish, Render, and Supply Wastewater :
 Service to the Public in Certain Portions of :
 Lower Alsace Township, Berks County, :
 Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Complaint** dated February 13, 2019, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via First Class and Electronic Mail

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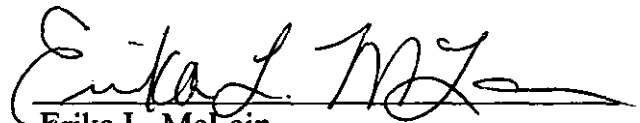
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Reading, PA 19601


Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 320526

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