



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 13, 2021

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
East Dunkard Water Authority
Docket No. C-2021-3027615
I&E Motion to Strike Untimely Filed Answer

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's ("I&E") **Motion to Strike the Untimely Filed Answer of the East Dunkard Water Authority** that was submitted in response to I&E's Formal Complaint in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie M. Wimer'.

Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522
Bureau of Investigation and Enforcement

SMW/ac
Enclosures

cc: Michael L. Swindler, Deputy Chief Prosecutor (*via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3027615
	:	
East Dunkard Water Authority	:	
Respondent	:	

NOTICE TO PLEAD

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) has filed a Motion to Strike the Untimely Filed Answer of the East Dunkard Water Authority in the above-captioned matter. Pursuant to 52 Pa. Code § 5.103(c), you are hereby notified to file a written response within twenty (20) days of service of the Motion. Any Answer to the Motion must be filed with the Pennsylvania Public Utility Commission, with a copy served to the I&E prosecutor.

Pursuant to *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order ratified on March 26, 2020, as modified by an Order entered on July 15, 2021), you must eFile your Answer using the Commission’s website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage.



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 772-8839
stwimer@pa.gov

Dated: September 13, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3027615
	:	
East Dunkard Water Authority	:	
Respondent	:	

**MOTION TO STRIKE THE UNTIMELY FILED
ANSWER OF THE EAST DUNKARD WATER AUTHORITY**

TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE:

Pursuant to 52 Pa. Code § 5.103, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, files this Motion to Strike the Untimely Filed Answer of the East Dunkard Water Authority (“Authority”), which was submitted in response to I&E’s Formal Complaint (“Complaint”). In support thereof, I&E respectfully represents as follows:

I. PROCEDURAL HISTORY

1. I&E commenced this action on August 2, 2021 by filing a Complaint alleging that the Authority has impermissibly furnished water service to the public for compensation since 2011, without holding a Certificate of Public Convenience issued by the Commission to serve municipalities beyond the Authority’s corporate limits, in violation of 66 Pa.C.S. § 1102(a)(5).

2. Such allegation is premised on the factual findings of I&E’s informal investigation of the Authority as well as a November 16, 2020 unreported Opinion of the Commonwealth Court of Pennsylvania in *East Dunkard Water Auth. v. Southwestern Pa.*,

No. 116 C.D. 2020, 2020 Pa. Commw. Unpub. LEXIS 547* (Pa. Cmwlth. 2020), which found, *inter alia*, that the Authority impermissibly circumvented the Commission by providing water service beyond Dunkard Township without demonstrating a right to do so *via* a Certificate of Public Convenience. In the Opinion, the Commonwealth Court noted that counsel for the Authority represented during oral argument on October 13, 2020 that the Authority was in the process of attempting to obtain a Certificate of Public Convenience from the Commission. *Id.* at *22, FN 10. Brazenly, however, the Authority has not applied for a Certificate of Public Convenience with the Commission and continues to provide the above-described unlawful service.

3. The Complaint further alleges the Authority failed to furnish and maintain adequate, efficient, safe and reasonable service and facilities to customers beyond its corporate limits in that the Authority provided discolored or dirty water, no water or low water pressure, and facilities that leaked water on at least 119 occasions, in violation of 66 Pa.C.S. § 1501.

4. As a result of the above-described violations, the Complaint seeks the following: (a) payment of a \$500,000 civil penalty pursuant to 66 Pa.C.S. §§ 3301(a)-(b) and 3314(a), and 52 Pa. Code § 69.1201; (b) that the Authority be directed to refund customers located in municipalities that are outside of the Authority's corporate limits the total amount paid by the customers over the previous four years (approximately \$2,000,000) pursuant to 66 Pa.C.S. §1312(a); (c) that the Authority be directed to submit an Application for a Certificate of Public Convenience; and (d) that the Commission grant further relief as is just and reasonable.

5. I&E hereby incorporates by reference the Complaint that it filed in this proceeding on August 2, 2021.

6. On August 3, 2021, the Complaint was served by Secretarial Letter upon counsel for the Authority through email pursuant to *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order ratified on March 26, 2020, as modified by Order entered July 15, 2021).

7. Attached to the Complaint was a Notice advising the Authority that it must file an Answer within twenty (20) days of service of the Complaint.

8. The Notice also advised the Authority that if it failed to answer the Complaint within twenty (20) days, I&E would request that the Commission issue an Order imposing the civil penalty and other relief set forth in the Complaint.

9. The Notice further provided the Authority with detailed instructions related to filing an answer to the Complaint, including the instruction that the Authority's Answer must be eFiled pursuant to the Emergency Order.

10. The twenty (20) days to file an Answer to the Complaint expired on August 23, 2021.

11. The Authority's Answer was deemed filed on August 27, 2021 at 4:00 PM, and thus is procedurally deficient and should be stricken.

II. BASIS FOR MOTION TO STRIKE

12. Pursuant to Section 1.11(a)(4) of the Commission's regulations, a pleading, submittal or other document is deemed to be filed:

[o]n the date stated on the confirmation of receipt from the Commission's electronic filing system, when the time shown is prior to 4:30 p.m. local prevailing time in the Eastern Time Zone (United States of America) and the date shown is a day on which the Commission offices are open.

52 Pa. Code § 1.11(a)(4).

13. The Commission's document management system reveals that counsel for the Authority electronically filed the Authority's Answer on August 26, 2021 at 4:55 p.m. See I&E Exhibit 1, which is appended to this Motion. On August 27, 2021 at 8:01 am, the Commission sent confirmation concerning the electronic filing of the Authority's Answer. I&E Exhibit 1. Accordingly, the Authority's Answer was filed on August 27, 2021 – four (4) days late.

14. Pursuant to Section 5.61(c) of the Commission's regulations, a Respondent who fails to file an Answer to a Complaint within the applicable time period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. 52 Pa. Code § 5.61(c).

15. The Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty days. See *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

16. In *Hickory Hollow Farms c/o Lamar Harnish v. Liberty Power Holdings LLC and United Energy Alliance LLC*, Docket No. C-2016-2559494 (Final Order entered

August 31, 2017), the Commission adopted the Administrative Law Judge's decision to grant a motion for default judgment upon an unrepresented, pro se respondent's failure to file a timely answer to an amended complaint. The unanswered allegations of the complaint were treated as admissions and a civil penalty was imposed.

17. In the instant matter, the Authority is represented by counsel and offered no explanation, let alone good cause, for the failure to timely file an Answer to I&E's Complaint.

18. For the reasons set forth above, the Authority should not be afforded any leniency for its failure to comply with Commission procedural regulations. The Authority's untimely filed answer should be stricken and I&E's Complaint in the instant proceeding should be sustained.

WHEREFORE, I&E respectfully requests that the presiding officer issue a decision that grants I&E's Motion by striking the Authority's late-filed Answer, sustains I&E's Complaint and directs as follows:

- a. That the Authority pay a civil penalty of \$500,000 for the above-described violations, in accordance with 66 Pa.C.S. §§ 3301(a)-(b) and 52 Pa. Code § 69.1201;
- b. That the Authority be directed to refund customers located in Greene, Monongahela, Cumberland, Perry and Whiteley Townships, pursuant to 66 Pa.C.S. § 1312(a), in the total amount paid by customers over the previous four years, which approximately totals

Two Million Dollars (\$2,000,000), and subsequently file a report of compliance with the Commission pursuant to 52 Pa. Code § 5.591;

- c. That the Authority be directed to submit an Application for a Certificate of Public Convenience to lawfully serve customers located beyond its corporate limits; and
- d. That the Commission order such other relief as the Commission may deem to be appropriate.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 772-8839
stwimer@pa.gov

Date: September 13, 2021

I&E EXHIBIT 1

08/27/2021, 08:01:41 AM	EConfirmation Sent	SYSTEM				EConfirmation sent for 'Answer to Commission Complaint - East Dunkard Water Authority'	{FEB1B088-6FE3-CFA5-866C-7B843EA00000}
08/27/2021, 08:00:44 AM	Private Document Published on Web	Wolf, Ariel				Document 'Answer to Commission Complaint - East Dunkard Water Authority' Restricted on Web	{FEB1B088-6FE3-CFA5-866C-7B843EA00000}
08/27/2021, 07:58:56 AM	Send to Enforcement Deputy Chief Prosecutor	Signore, Stephen T	3027615-BIE-0005	BIE	Other - See Comments		EAST DUNKARD WATER AUTHORITY
08/27/2021, 07:43:06 AM	Initiated Task - BIE Prosecution	Wolf, Ariel	3027615-BIE-0005	SEC	Other - See Comments		
08/27/2021, 07:42:56 AM	Automatic Notification Sent to BIE	FileNetApp,PUC		BIE			Notification for BIE Administrator
08/27/2021, 07:42:56 AM	Document Attached to Case	Wolf, Ariel				Answer to Commission Complaint - East Dunkard Water Authority	East Dunkard Water Authority filed Answer to Commission Complaint.
08/26/2021, 04:55:20 PM	Document EFiled	Megan Patrick					Communication-Answer to Formal Complaint.pdf
08/03/2021, 12:09:24 PM	Assign Prosecutor	Swindler, Michael	3027615-BIE-0003	BIE	Other - See Comments		C-docket assignment to replace Bp8.
08/03/2021, 09:17:45 AM	Send to Enforcement Deputy Chief Prosecutor	Signore, Stephen T	3027615-BIE-0003	BIE	Other - See Comments		EAST DUNKARD WATER AUTHORITY
08/03/2021, 08:40:50 AM	Document Published on Web	Leonard, Allyson				Document 'C-2021-3027615 BIE Complaint Notice' is made public	{1343C868-B0A4-C0F1-8608-7B0BF6200000}
08/03/2021, 08:24:40 AM	Document Served	Leonard, Allyson	3027615-SEC-0002	SEC	Other - See Comments		Assigned to BIE
08/03/2021, 08:23:51 AM	Initiated Task - BIE Prosecution	Leonard, Allyson	3027615-BIE-0003	SEC	Other - See Comments		
08/03/2021, 08:23:49 AM	Initiated Task - SEC ServeDocument	Leonard, Allyson	3027615-SEC-0002	SEC	Other - See Comments		
08/03/2021, 08:23:45 AM	Serve Document & Initiate Task	Leonard, Allyson	3027615-SEC-0001	SEC	Other - See Comments		Notice of complaint served to respondent for answer due in 20 days.
08/03/2021, 08:21:26 AM	Document Added	Leonard, Allyson		SEC			Document 'C-2021-3027615 BIE Complaint Notice.docx' Added To Case
08/02/2021, 04:41:18 PM	EConfirmation Sent	SYSTEM				EConfirmation sent for 'BIE Complaint'	{FD16283D-1694-C0D3-86C4-7B0845E00000}

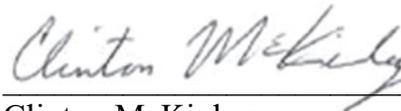
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3027615
	:	
East Dunkard Water Authority	:	
Respondent	:	

VERIFICATION

I, Clinton McKinley, Fixed Utility Valuation Engineer – 3, in the Bureau of Technical Utility Services, 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: September 13, 2021



Clinton McKinley
Fixed Utility Valuation Engineer – 3
Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3027615
	:	
East Dunkard Water Authority,	:	
Respondent	:	

CERTIFICATE OF SERVICE

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

Notification by Electronic Mail:¹

Megan L. Patrick, Esq.
Makel & Associates, LLC
98 E. Maiden Street
Washington, PA 15301
megan@makelandassociates.com
Counsel for East Dunkard Water Authority



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
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Commonwealth Keystone Building
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Harrisburg, PA 17120
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stwimer@pa.gov

Dated: September 13, 2021

¹ Service by Commission staff shall be performed electronically only, given the Commission's inability to maintain normal mailing operations due to COVID-19. See *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order ratified on March 26, 2020, as modified by Order entered July 15, 2021).