
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission :
Bureau of Investigation and Enforcement,:**

Complainant,

v.

East Dunkard Water Authority,

Respondent.

Docket No. C-2021-3027615

**REPLY TO MOTION TO STRIKE
UNTIMELY FILED ANSWER**

Filed on Behalf of Respondent:

**EAST DUNKARD
WATER AUTHORITY**

Counsel of Record for Said Party:

**Dennis M. Makel, Esquire
PA I.D. #40520
Christopher P. Furman, Esquire
PA I.D. # 89822
Megan L. Patrick, Esquire
PA I.D. # 320066**

**MAKEL & ASSOCIATES, LLC
98 East Maiden Street
Washington, PA 15301
Telephone: (724) 222-7639**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
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Complainant, :

v. :

East Dunkard Water Authority, :

Respondent. :

Docket No. C-2021-3027615

RESPONDENT’S REPLY TO MOTION TO STRIKE UNTIMELY FILED ANSWER

COMES NOW, the Respondent, East Dunkard Water Authority, by and through its undersigned counsel, Makel & Associates, LLC, and files this Reply to Motion to Strike Untimely Filed Answer and support thereof, avers as follows:

I. Procedural History

1. Admitted.

2. Admitted in Part and Denied in Part. The averments contained in Paragraph 2 are admitted to the extent that the I&E relied upon findings of its’ informal investigation to commence the filing of a Complaint and that the Commonwealth Court published an opinion in the matter of *East Dunkard Water Authority v. Southwestern Pa.*, No. 116 C.D. 2020, 2020 Pa. Commw. Unpub. LEXIS 547* (Pa. Cmwlth. 2020). It is also admitted that the Authority has not yet applid for a Certificate of Public Convenience; however, it continues to gather information in order to do so. Any remaining averments or inferences therefrom are specifically denied and strict proof thereof is demanded.

3. Admitted in Part and Denied in Part. The averments contained in Paragraph 3 of the Motion are admitted as it relates to the contents of the Complaint. The remaining averments or any inferences therefrom are specifically denied and strict proof thereof is demanded.

4. Admitted in Part and Denied in Part. The averments contained in Paragraph 4 of the Motion are admitted as it relates to the contents of the Complaint. The remaining averments or any inferences therefrom are specifically denied and strict proof thereof is demanded.

5. Denied. The averments contained in Paragraph 5 of the Motion are one of incorporation to which no response is required. To the extent that it is deemed otherwise, the averments are specifically denied and strict proof thereof is demanded.

6. Admitted in Part and Denied in Part. The averment contained in Paragraph 6 of the Motion is admitted to the extent email correspondence was received dated August 3, 2021 from Secretary Rosemary Chiavetta, along with a letter from Ms. Chiavetta dated August 3, 2021. Any remaining averment or inference therefrom is specifically denied and strict proof thereof is demanded. By way of further answer, the email correspondence also contained the BIE Formal Complaint which contained only a partial docket number, as well as correspondence dated August 2, 2021 with no reference to a docket number. Counsel for Respondent emailed Counsel for I&E a copy of Respondent's Answer on August 23, 2021. A copy of said email is attached hereto as

Exhibit 1.

7. Admitted.

8. Admitted.

9. Admitted in Part and Denied in Part. The averments contained in Paragraph 9 of the Motion are admitted to the extent that the Complaint contained instructions related to filing of

the Answer. Any remaining averments or inferences therefrom are specifically denied and strict proof thereof is demanded. By way of further answer, Counsel for Respondent uploaded for e-filing the Answer on August 23, 2021; however, it was rejected on August 24, 2021 for not having the full docket number attached thereto. Furthermore, Counsel for Respondent e-mailed the Answer to Counsel for I&E on August 23, 2021.

10. Admitted in Part and Denied in Part. The averments contained in the Motion are admitted to the extent that twenty days from the date of service of the Complaint was August 23, 2021. Any other averments or inferences therefrom are specifically denied and strict proof thereof is demanded. By way of further answer, the I&E did not file a demand for default judgment, nor is has the I&E in any way been prejudiced in this matter, as Counsel for the Respondent provided the I&E a copy of the filed Answer on August 23, 2021.

11. Denied. The averments contained in Paragraph 11 of the Motion are specifically denied and strict proof thereof is demanded. By way of further answer, the Answer was again uploaded on August 26, 2021 at 4:54 p.m. and filed at 8:30 a.m. on August 27, 2021. Additionally, the I&E did not file a demand for default judgment, nor is has the I&E in any way been prejudiced in this matter, as Counsel for the Respondent provided the I&E a copy of the filed Answer on August 23, 2021.

II. Basis for Motion to Strike

- 12. Admitted.
- 13. Admitted.
- 14. Admitted.

15. Admitted in Part and Denied in Part. The averment contained in Paragraph 15 is admitted to the extent that the Commonwealth Court has upheld the Commission's authority to sustain a complaint that is not answered. Any other averment or inference therefrom is specifically denied and strict proof thereof is demanded. By way of further answer, in *Fauso v. Pa. Pub. Util. Comm'n*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978) cited by the I&E, the Appellant/Respondent failed to ever file an answer. The matter presently is distinguished clearly by the fact that Respondent email a copy of the Answer to the I&E on the date the Answer was due and uploaded for filing the Answer. The mere fact that the Answer lacked a complete docket number was the basis for the rejection.

16. Admitted in Part and Denied in Part. The averments contained in Paragraph 16 of the Motion are admitted to the extent that an Order was entered granting default judgment against the Respondent. Any other averment or inference therefrom is specifically denied and strict proof thereof is demanded. By way of further answer, in *Hickory Hollow Farms c/o Lamar Harnish v. Liberty Power Holdings LLC and United Energy Alliance LLC*, Docket C-2016-2559494 cited by the I&E, the I&E filed for default judgment. The matter presently is distinguished clearly by the fact that the I&E never filed for default judgment in this matter. Additionally, the I&E is not prejudiced by any technical flaw in the filing, as the I&E was served via email with a copy of the Answer on August 23, 2021.

17. Denied. The averments contained in paragraph 17 of the Motion are specifically denied and strict proof thereof is demanded. By way of further answer, counsel for Respondent sent correspondence to Counsel for I&E on August 26, 2021 advising of the rejected filing and seeking a full docket number to utilize for the filing. The correspondence is attached hereto as ***Exhibit 2***.

18. Denied. The averments contained in Paragraph 18 of the Motion are denied and strict proof thereof is demanded. By way of further answer, the I&E has not shown that it has sustained any prejudice in the receipt and filing of Respondents documents. Further, the I&E did not file for default judgment such as in the case cited by I&E, and the Respondent did in fact file a responsive pleading unlike the respondent in the *Fauso* case cited by I&E.

WHEREFORE, Respondent respectfully requests the presiding officer deny the I&E's request to strike the Authority's filed Answer and deny the I&E's request for further relief.

Respectfully Submitted,

MAKEL & ASSOCIATES, LLC

A handwritten signature in blue ink, appearing to read 'Megan L. Patrick', is written over a horizontal line.

Megan L. Patrick, Esquire
PA ID #320066
98 East Maiden Street
Washington, PA 15301
(724) 222-7639
Attorneys for Respondent

VERIFICATION

I, Larry Vincie, hereby verify that the statements in the foregoing document are, true and correct to the best of my knowledge, information, and belief. I understand that false statements herein made are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

10/11/2021
Date


Larry Vincie

**BEFORE THE
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Pennsylvania Public Utility Commission :
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v. :

East Dunkard Water Authority, :

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Docket No. C-2021-3027615

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully Submitted,

MAKEL & ASSOCIATES, LLC



Megan L. Patrick, Esquire
PA ID #320066
98 East Maiden Street
Washington, PA 15301
Telephone: (724) 222-7639

10/12/21
Date

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
Bureau of Investigation and Enforcement, :

Complainant, :

v. :

East Dunkard Water Authority, :

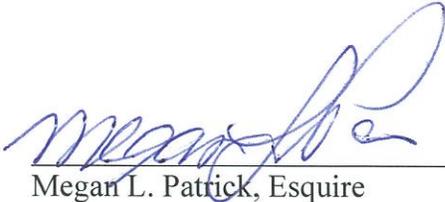
Respondent. :

Docket No. C-2021-3027615

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within Respondent's Answer to Formal Complaint was served on the following counsel, this 12th day of October 2021, via email as addressed below.

Stephanie M. Wimer, Senior Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
stwimer@pa.gov



Megan L. Patrick, Esquire

Megan Patrick

From: Megan Patrick
Sent: Monday, August 23, 2021 4:39 PM
To: Wimer, Stephanie M
Cc: East Dunkard Water Authority
Subject: PUC v. East Dunkard Water Authority C-2021
Attachments: 20210823 Answer to Formal Complaint.pdf

Ms. Wimer,

Please find attached an Answer to the PUC's Formal Complaint. Please contact my office if you would like to discuss this matter further.

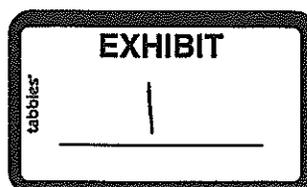
Kindly,

Megan L. Patrick, Esq.

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Megan Patrick

From: Megan Patrick
Sent: Thursday, August 26, 2021 3:17 PM
To: Wimer, Stephanie M
Subject: FW: E-file Confirmation for 2254013

Importance: High

Ms. Wimer,

Our office attempted to file the Answer to Formal Complaint that we emailed to you on Tuesday, August 24, 2021. However, it was rejected as evidenced below due to an incorrect docket number. The docket number utilized was C-2021, as that was the number that was on the Formal Complaint. I am unaware of the complete docket number to utilize, and it does not appear that a search option is available on the e-filing system unless a full docket number is known. Can you kindly provide the full docket number so that I can re-submit the Answer for filing? Additionally, would you kindly acknowledge the timely receipt of the Answer. If you would like to discuss this matter, please feel free to contact our office.

Kindly,

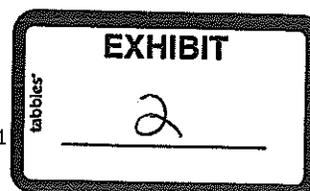
Megan L. Patrick, Esq.

Makel & Associates, LLC
98 E. Maiden Street
Washington, PA 15301
Telephone: (724) 222-7639

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From: eFile@pa.gov <eFile@pa.gov>
Sent: Wednesday, August 25, 2021 4:46 PM
To: Megan Patrick <megan@makelandassociates.com>
Cc: Dennis Makel <dennis@makelandassociates.com>
Subject: E-file Confirmation for 2254013
Importance: High



Dear Megan Patrick,

Your eFiling that was filed on Tue Aug 24 08:30:00 EDT 2021 has been rejected due to the following reason.
Incorrect Docket Number : Docket number must be on filing. Please add to the filing & re-file.

Following documents were rejected as a part of Filing

Communication-Answer to Formal Complaint.pdf

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.*