



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

October 20, 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 Reply

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's ("I&E") **Motion to Strike the Untimely Filed Reply of the East Dunkard Water Authority** ("Authority") that the Authority filed on October 12, 2021 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
Bureau of Investigation and Enforcement
PA Attorney ID No. 207522
(717) 772-8839
stwimer@pa.gov

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 Reply of the East Dunkard Water Authority in the above-captioned matter. Pursuant to 52 Pa. Code §§ 5.61(a)(1) and 5.103(c), you are hereby notified to file a written response within twenty (20) days of service of the Motion.

Any Answer must be verified pursuant to 52 Pa. Code § 1.36 and filed with the Commission, with a copy electronically served on the I&E prosecutor.

Pursuant to Waiver of Regulations Regarding Service Requirements, Docket No. M-2021-3028321 (Order entered September 15, 2021), parties are encouraged to open and use an e filing account through the Commission’s website at www.puc.com or, to ensure timely arrival, submit the filing by overnight delivery to: Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, Pennsylvania 17120. Emailed or faxed submissions are not acceptable. If a filing contains confidential or proprietary material, the filing should be submitted by overnight delivery to ensure arrival. Large filings containing confidential or proprietary material may also be submitted through the Commission’s Share Point File system. These filings should be followed by a hard copy with a flash drive or CD for the Commission’s file. Filers should contact the Secretary’s Bureau in advance to set up a Share Point File before submitting the filing.



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: October 20, 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
REPLY 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, hereby moves to strike the untimely filed Reply of the East Dunkard Water Authority (“Authority”) that was filed on October 12, 2021 and responds to I&E’s Motion to Strike the Authority’s Untimely Filed Answer to I&E’s Formal Complaint (“Complaint”).

As is evident from the above description, the Authority, which is represented by legal counsel, has a pattern of defying the Commission’s procedural regulations by routinely filing pleadings beyond the deadlines established in the regulations. The Authority’s Reply to I&E’s Motion to Strike was not filed within the 20-day timeframe pursuant to 52 Pa. Code §§ 5.61(a)(1) and 5.103(c), and thus must be denied. In support thereof, I&E respectfully represents as follows:

I. RELEVANT BACKGROUND

1. This proceeding arises from the August 2, 2021 Complaint filed by I&E 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.

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. On August 3, 2021, the Complaint was served by Secretarial Letter upon counsel for the Authority through email and the twenty (20) days to file an Answer to the Complaint pursuant to 52 Pa. Code § 5.61 expired on August 23, 2021.

6. The Authority's Answer was deemed filed on August 27, 2021 at 4:00 PM.¹

7. Such untimely filing prompted I&E to file on September 13, 2021 a Motion to Strike the Authority's Untimely Filed Answer.

8. I&E's Motion to Strike properly contains a Notice to Plead that clearly advises the Authority to file a written response within twenty (20) days of service of the Motion.

9. Consistent with the Commission's Order concerning *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), I&E served the Motion to Strike to counsel for the Authority on September 13, 2021 *via* email. A copy of this email has been attached as I&E Exhibit 1.

10. The twenty (20) day period of time in which to file a responsive answer expired on Monday, October 4, 2021.

11. On October 12, 2021, the Authority filed its untimely Reply to I&E's Motion to Strike.

¹ Indeed, the Authority made no attempt to file its Answer to I&E's Complaint until August 24, 2021. *See* Exhibit 2 of the Authority's October 12, 2021 Reply to Motion to Strike Untimely Filed Answer.

II. THE AUTHORITY'S UNTIMELY REPLY IS PROCEDURALLY IMPROPER AND SHOULD BE STRICKEN

12. Section 5.61(a)(1) of the Commission's regulations provides as follows:

(1) Answers to motions *shall be filed* within the 20 days provided by §§ 5.102 and 5.103 (relating to motions for summary judgment and judgment on the pleadings; and motions).

52 Pa. Code § 5.61(a)(1) (emphasis added).

13. Section 5.103(c) of the Commission's regulations provides as follows:

(c) *Response to motions.* A party has 20 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.

52 Pa. Code § 5.103(c).

14. The Authority was duly notified of the 20-day responsive time period by the Notice to Plead attached to I&E's September 13, 2021 Motion to Strike.

15. The Authority's Reply to I&E's Motion to Strike was filed on October 12, 2021, which is eight days beyond the 20-day responsive time period.

16. The Authority provided no explanation let alone good cause for its untimely filing.

17. The instant late-filed Reply is the second time in which the Authority failed to timely file responsive pleadings in this proceeding.

18. The Authority, which is represented by legal counsel, should not be afforded any leniency for its failure to comply with Commission procedural regulations.

WHEREFORE, for the foregoing reasons, the Reply to Motion to Strike Untimely Filed Answer filed by the East Dunkard Water Authority on October 12, 2021 should be stricken.

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: October 20, 2021

I&E EXHIBIT 1

Claypool, Alicia

From: Claypool, Alicia
Sent: Monday, September 13, 2021 3:12 PM
To: megan@makelandassociates.com
Cc: Wimer, Stephanie M; Swindler, Michael
Subject: C-2021-3027615 (East Dunkard Water Authority) - I&E Motion to Strike
Attachments: C-2021-3027615 (East Dunkard) I&E Motion to Strike Untimely Filed Answer FINAL.pdf

Good Afternoon,

On behalf of the Bureau of Investigation & Enforcement (I&E), please find the attached **Motion to Strike the Untimely Filed Answer of the East Dunkard Water Authority** for the above-referenced docket that was e-filed this afternoon with the Secretary's Bureau.

Should you have any questions, please contact Stephanie M. Wimer at stwimer@pa.gov.

Thank you,
Alicia Claypool
Legal Assistant
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
(717) 787-4886
alclaypool@pa.gov

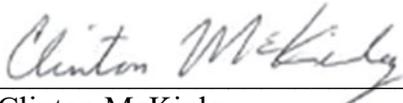
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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: October 20, 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	:	
	:	
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	:	
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:²

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

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stwimer@pa.gov

Dated: October 20, 2021

² See *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered September 15, 2021) (permitting electronic service by Commission staff on parties).