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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**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 REPLY**

**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**

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**RESPONDENT’S REPLY TO MOTION TO STRIKE UNTIMELY FILED REPLY**

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 Reply and support thereof, avers as follows:

1. Admitted in Part and Denied in Part. The averments contained in Paragraph 1 are admitted to the extent that the proceedings arise from the August 2, 2021 Complaint filed by the I&E. The remaining averments or inferences therefrom are specifically denied and strict proof thereof is demanded.

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). 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 allegations contained in 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 relief requested in the Complaint. The remaining averments or any inferences therefrom are specifically denied and strict proof thereof is demanded.

5. Admitted in Part and Denied in Part. The averment contained in Paragraph 5 of the Motion is admitted to the extent that the complaint was served on August 3, 2021. Any remaining averment or inference therefrom is 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 Answer on August 23, 2021.

6. Admitted. 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. Nonetheless, Counsel for Respondent e-mailed the Answer to Counsel for I&E on August 23, 2021.

7. Admitted in Part and Denied in Part. The averments contained in Paragraph 7 of the Motion is admitted to the extent that the I&E filed a Motion to Strike the Authority's Untimely Filed Answer. Any remaining averments or inferences therefrom are specifically denied and strict proof thereof is demanded.

8. Admitted.

9. Admitted.

10. Admitted in Part and Denied in Part. The averments contained in Paragraph 10 of the Motion are admitted to the extent that twenty (20) days from September 13, 2021 is October 4, 2021. The remaining averments and any inferences therefrom are specifically denied and strict proof thereof is demanded. By way of further answer, there was no date set for argument on any of the filings, and the I&E has not been prejudiced nor have they shown or claimed that they have been prejudiced in any manner by the filings of the Respondent.

11. Admitted in Part and Denied in Part. The averment contained in Paragraph 11 of the Motion is admitted to the extent that the Authority filed a Reply to I&E's Motion to Strike on October 12, 201. The remaining averments and inferences therefrom are specifically denied and strict proof thereof is demanded.

12. Admitted in Part and Denied in Part. The averments contained in Paragraph 12 of the Motion are admitted to the extent that they are a restatement of the Commission regulations. All other averments or inferences therefrom are specifically denied and strict proof thereof is demanded.

13. Admitted in Part and Denied in Part. The averments contained in Paragraph 13 of the Motion are admitted to the extent that they are a restatement of the Commission regulations. All other averments or inferences therefrom are specifically denied and strict proof thereof is demanded.

14. Admitted.

15. Admitted.

16. Denied. The averment contained in Paragraph 16 of the Motion is specifically denied and strict proof thereof is demanded. By way of further answer, the Authority timely provided a copy of the Answer to the Complaint to the I&E on August 23, 2021. The Authority further reached out to the I&E on via email on August 26, 2021 advising the I&E of the rejected filing due to incomplete case number and seeking a full docket number to utilize for the filing. The correspondence is attached hereto as **Exhibit B** and made a part hereof. Furthermore, the Authority provided ample response to the first Motion to Strike distinguishing the present case from caselaw alleged by the I&E to support its request to strike the pleading. The I&E's supporting arguments included reference the *Fauso v. Pa. Pub. Util. Comm'n*, 382 A. 2d 794 (Pa. Cmwlth. 1978) case where an answer had never been filed, which does not apply in this matter, as well as reference to the *Hickory Hollow Farms c/o Lamar Harnish v. Liberty Power Holdings LLC and United Energy Alliance LLC*, Docket C-2016-2559494 case where the I&E filed for default judgment, which also does not apply in this matter.

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, the Authority timely provided the I&E with a copy of the Answer that was being filed by the Authority, as evidenced by **Exhibit A** which is attached hereto and made a part hereof. The Answer was rejected due to the lack of full case number being included on the filing, a mere technicality which, again, did not prejudice the I&E in any way, as it was already provided a timely copy of the Answer via email. The I&E's arguments in all pleadings subsequent to the filing of the Complaint relate back to the I&E's allegations of the Authority failing to timely file the Answer; however, the I&E was provided a timely copy of the Answer on August 23, 2021, which is the same Answer that was ultimately and successfully filed.

18. Denied. The averments contained in Paragraph 18 of the Motion are specifically denied and strict proof thereof is demanded. By way of further answer, the I&E has not shown or argued that any filing of the Authority has prejudiced the I&E in any manner. Further, Section 5.61(c) of the Commission's regulations provide:

(c) *Failure to file an answer to a complaint.* A respondent failing to file an answer within the applicable period *may* be deemed in default, and relevant facts stated in the pleadings may be deemed admitted.

52 Pa. Code § 5.61(c) (emphasis added).

Additionally, Sections 5.61(a)(1) and 5.103(c) of the Commissions regulations are similar to Rule 1026(a) of the Pennsylvania Rules of Civil Procedure which states that all pleadings subsequent to the complaint must be filed within 20 days after service of the preceding pleading. This Rule has been interpreted by the court in *Gale v. Mercy Catholic Medical Center Eastwick, Inc.*, 698 A. 2d 647, 649 (Pa. Super. 1997), which held that it is left to the sound discretion of the trial court "to permit a late filing of a pleading where the opposing party will not be prejudiced and justice so requires." citing *Ambrose v. Cross Creek Condominiums*, 412 Pa. Super. 1, 10, 602 A. 2d 864, 868 (1992). Again, there has been no allegation that the I&E has been prejudiced in any way by any of the filings of the Authority.

[INTENTIONALLY LEFT BLANK]

**WHEREFORE**, Respondent respectfully requests the presiding officer deny the I&E's request to strike the Authority's Reply to Motion to Strike Untimely 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.

11-04-2021  
Date

  
Larry Vincie

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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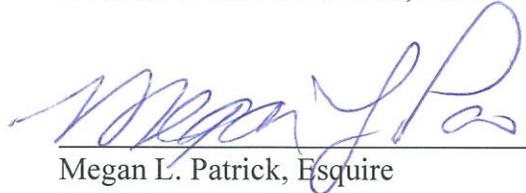
**Pennsylvania Public Utility Commission** :  
**Bureau of Investigation and Enforcement,** :  
 : **Docket No. C-2021-3027615**  
 : **Complainant,** :  
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 :  
**East Dunkard Water Authority,** :  
 :  
 : **Respondent.** :

**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  
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Telephone: (724) 222-7639

11/09/21  
Date

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

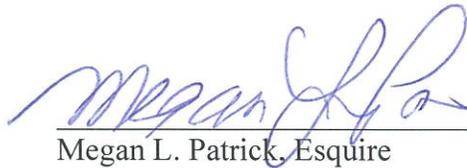
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**CERTIFICATE OF SERVICE**

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 9<sup>th</sup> day of November, 2021, via email as addressed below.

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

  
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Megan L. Patrick, Esquire