



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

February 1, 2022

**Via Electronic Filing**

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

Re: Bureau of Investigation and Enforcement v.  
East Dunkard Water Authority  
Docket No. C-2021-3027615  
**I&E Prehearing Memorandum**

Dear Secretary Chiavetta:

Enclosed for filing please find the Bureau of Investigation and Enforcement's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served on the parties of record in accordance with the attached 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](mailto:stwimer@pa.gov)

SMW/ac  
Enclosures

cc: Hon. Marta Guhl, OALJ-Philadelphia (*via e-mail only*)  
Athena Delvillar, OALJ Legal Assistant (*via e-mail only*)  
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via e-mail only*)  
As 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	:	

---

**PREHEARING CONFERENCE MEMORANDUM OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

---

**TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:**

Pursuant to the Prehearing Conference Order that was issued on January 18, 2022 and Section 5.222(d)(1) of the Commission’s regulations, 52 Pa. Code § 5.222(d)(1), the Bureau of Investigation and Enforcement (“I&E”) hereby submits this Prehearing Conference Memorandum in the above-captioned proceeding in advance of the Prehearing Conference scheduled for February 2, 2022.

**I. BACKGROUND**

I&E commenced this action on August 2, 2021 by filing a Complaint alleging that since 2011, the East Dunkard Water Authority (“Authority”) has impermissibly furnished water service to the public for compensation without holding a Certificate of Public Convenience issued by the Commission to customers located in Greene, Monongahela, Cumberland, Perry, and Whiteley Townships in Greene County, Pennsylvania, which are

municipalities beyond the Authority's corporate limits. I&E alleges that such action violates 66 Pa.C.S. § 1102(a)(5), which prohibits municipal corporations from acquiring, constructing, or beginning to operate any plant, equipment, or other facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits.

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 in Greene County, Pennsylvania, beyond Dunkard Township, without demonstrating a right to do so *via* a Certificate of Public Convenience.<sup>1</sup>

I&E's Complaint further alleges that 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.

As a result of the above-described violations, I&E's 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.

On August 27, 2021, the Authority filed an untimely Answer to I&E's Complaint and on September 13, 2021, I&E filed a Motion to Strike the Authority's untimely filed Answer.

On October 12, 2021, the Authority filed an untimely Reply to I&E's Motion to Strike and on October 20, 2021, I&E filed a Motion to Strike the Untimely Filed Reply of the Authority.

The Authority filed a Reply to I&E's Motion to Strike its Untimely Filed Reply on November 9, 2021.

By Interim Order dated December 9, 2021 regarding Motion to Strike Answer and Motion to Strike Reply, Administrative Law Judge ("ALJ") Marta Guhl denied I&E's Motions to Strike, directed the parties to strictly adhere to future deadlines and due dates, and advised that the matter will be scheduled for a prehearing conference.

By Notice dated December 10, 2021, an initial telephonic prehearing conference is scheduled for February 2, 2022 at 10:00 a.m. A Prehearing Order for Telephone Hearing was served on December 16, 2021. A subsequent Prehearing Order was served on January 18, 2022.

---

<sup>1</sup> I&E cites to Commonwealth Court's November 16, 2020 unreported Opinion and Order for its persuasive value only.

Also on January 18, 2022, I&E filed a Motion for Summary Judgment, arguing that there is no dispute as to the material facts in this matter and I&E is entitled to judgment as a matter of law. I&E further requested that its Complaint be sustained.

I&E files this Prehearing Memorandum in preparation for the Prehearing Conference, pursuant to the Prehearing Order dated January 18, 2022 and 52 Pa. Code § 5.222(d)(1).

## **II. I&E PREHEARING CONFERENCE MEMORANDUM**

### **A. Service List and Distribution List**

The following I&E prosecutor should be entered on the service list for I&E:

Stephanie M. Wimer  
Senior Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
400 North Street  
Harrisburg, PA 17120  
(717) 772-8839  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

### **B. Presently Identified Issues**

I&E deems the question central to the disposition of this matter to be whether the Authority is operating as an uncertificated, *de facto* public utility providing water service to customers for compensation located in various Townships in Greene County, Pennsylvania. Such unlawful service appears to have commenced in 2011, when the Authority assumed the provision of water service to customers from the East Dunkard Water Association.

The second issue of significance in this matter relates to the quality of water service provided by the Authority to its customers, which I&E alleges is inadequate, inefficient, and unreasonable based on the Pennsylvania Department of Environmental Protection's Notices of Violation that were served on the Authority as well as numerous consumer complaints alleging that they experienced water that was dirty, yellow, orange or brown in color, leaking water, and little to no water pressure.

Ancillary issues include the appropriate remedies to be imposed. I&E avers that the Authority should be directed to apply for a Certificate of Public Convenience, pay a civil penalty pursuant to 66 Pa.C.S. 3301 § (a)-(b), and issue refunds to customers located outside of Dunkard Township, pursuant to 66 Pa.C.S. § 1312(a).

C. I&E Witnesses

I&E expects to present the testimony of the following witness:

Clinton McKinley  
Fixed Utility Valuation Engineer - 3  
Pennsylvania Public Utility Commission  
Bureau of Technical Utility Services  
400 North Street  
Harrisburg, PA 17120  
(717) 783-6161

I&E anticipates that Mr. McKinley will testify that the Authority is subject to the Commission's jurisdiction as a public utility furnishing or distributing water to or for the public for compensation. I&E further anticipates that Mr. McKinley will testify that the Authority has failed to furnish and maintain adequate, efficient, and reasonable service and facilities to the public. I&E expects that Mr. McKinley's testimony will lend support to the relief in the form of civil penalties and refunds that I&E intends to seek, as well as

I&E's request that the Authority be directed to apply for a Certificate of Public Convenience.

I&E reserves the right to call other witnesses as necessary to address any issues that have been or are later raised during the course of this proceeding and will identify such additional witnesses within a reasonable period of time prior to the commencement of hearings.

D. Proposed Litigation Schedule

The parties conferred and have agreed upon the following proposed litigation schedule:

<u>Date</u>	<u>Event</u>
March 30, 2022	Written Direct Testimony Due (all parties)
April 27, 2022	Written Rebuttal Testimony Due (all parties)
May 27, 2022	Discovery Ends
June 8, 2022	Stipulations Due
June 30, 2022	Evidentiary Hearing

I&E does not anticipate requiring more than one day for the evidentiary hearing in this matter.

E. Statement Regarding Possible Settlement of Case

On January 18, 2021, I&E filed a Motion for Summary Judgment in this proceeding. Settlement discussions have not yet occurred given that the deadline for the

Authority's response to I&E's Motion for Summary Judgment has not yet passed and no judicial ruling has been issued. Nevertheless, I&E is willing to engage in settlement discussions with the Authority at the appropriate time.

F. Discovery

I&E does not propose any modifications to the Commission's discovery regulations. Additionally, I&E does not anticipate requiring a Protective Order for the evidence it intends to present at the evidentiary hearing held in this matter.

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](mailto:stwimer@pa.gov)

Date: February 1, 2022

**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 as indicated:**

**Notification by Electronic Mail:**<sup>2</sup>

Megan L. Patrick, Esq.  
Makel & Associates, LLC  
98 E. Maiden Street  
Washington, PA 15301  
[megan@makelandassociates.com](mailto:megan@makelandassociates.com)  
*Counsel for East Dunkard Water Authority*



---

Stephanie M. Wimer  
Senior Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 207522  
(717) 772-8839  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

Dated: February 1, 2022

---

<sup>2</sup> 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).