



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 26, 2022

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
Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing is the **Joint Petition for Approval of Settlement** in the above-captioned proceeding as well as the following Appendices: (1) Appendix A – Proposed Ordering Paragraphs; (2) Appendix B – the Bureau of Investigation and Enforcement’s Statement in Support; and (3) Appendix C – the Statement in Support of the East Dunkard Water Authority.

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/jfm
Enclosure

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*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**JOINT PETITION FOR
APPROVAL OF SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and the East Dunkard Water Authority (“Authority”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to the above-docketed I&E Formal Complaint (“Complaint”) proceeding alleging violations of the Public Utility Code, which were raised in connection with the provision of water service by the Authority to municipalities who had not joined the Authority or otherwise evidenced approval of the Authority’s water service. As part of this Settlement Agreement, I&E and the Authority (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission approve the Settlement without modification for the public interest reasons stated herein. Proposed Ordering Paragraphs are attached hereto as **Appendix A**. Statements in Support of the Settlement expressing the individual views of I&E and the Authority are attached hereto as **Appendix B** and **Appendix C**, respectively.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, 400 North Street, Harrisburg, PA 17120, and the East Dunkard Water Authority with a principal place of business at 2790 South Eighty Eight Road, Dilliner, PA 15327.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code ("Code"), 66 Pa.C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

5. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law, regulation, or order that the Commission has jurisdiction to administer.

6. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code, the Commission's regulations and orders. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s).

7. The Authority is a “municipal corporation” as that term is defined in Section 102 of the Code, 66 Pa.C.S. § 102, in that it is an “authority . . . created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.” The Authority furnishes water service to the public for compensation in Cumberland, Dunkard, Greene, Monongahela, Perry, and Whiteley Townships in Greene County, Pennsylvania.

8. Pursuant to Section 1102(a)(5) of the Code, 66 Pa.C.S. § 1102(a)(5), municipal corporations are required to first obtain a Certificate of Public Convenience issued by the Commission prior to 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 the municipal corporation’s corporate limits.

9. Pursuant to Section 1501 of the Code, 66 Pa.C.S. § 1501, public utility service that is furnished or rendered by a municipal corporation beyond its corporate limits is subject to regulation and control by the Commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility.

10. The Authority does not hold a Certificate of Public Convenience issued by the Commission.

11. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission had jurisdiction over the subject matter and actions of the Authority at the time of the filing of the Complaint as a municipal corporation that provided water service to the public for compensation outside of its corporate limits.

II. BACKGROUND

12. On September 16, 2020, I&E initiated an informal investigation of the Authority to examine whether the Authority impermissibly provided water service beyond Dunkard Township, which is the Authority's incorporating municipality, without first obtaining a Certificate of Public Convenience.¹

13. Subsequently, on November 16, 2020, the Commonwealth Court of Pennsylvania issued an unreported Opinion in *East Dunkard Water Auth. v. Southwestern Pa.*, No. 116 C.D. 2020, 2020 Pa. Commw. Unpub. LEXIS 547* (Pa. Cmwlth. 2020), finding, *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.

14. The findings of I&E's informal investigation substantiated violations of the Code and, pursuant to 52 Pa. Code § 3.113(b)(2), I&E filed a Formal Complaint ("Complaint") initiating the instant matter on August 2, 2021.

15. I&E's Complaint was served on the Authority *via* Secretarial Letter dated August 3, 2021.

16. On August 27, 2021, the Authority filed an Answer to I&E's Complaint.

17. On September 13, 2021, I&E filed a Motion to Strike the Authority's Answer, averring that it was untimely filed.

¹ Prior to I&E's investigation of the Authority, I&E investigated the East Dunkard Water Association ("Association"). I&E terminated its investigation of the Association as the investigation's findings demonstrated, *inter alia*, that the Association ceased operating as a water provider in 2011.

18. On October 12, 2021, the Authority filed a Reply to I&E's Motion to Strike.
19. On October 20, 2021, I&E filed a Motion to Strike the Untimely Filed Reply of the Authority.
20. On November 9, 2021, the Authority filed a Reply to I&E's Motion to Strike its Untimely Filed Reply.
21. By Interim Order dated December 9, 2021 regarding Motion to Strike Answer and Motion to Strike Reply, presiding 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.
22. By Notice dated December 10, 2021, an initial telephonic prehearing conference was scheduled for February 2, 2022 at 10:00 a.m. and a prehearing order was served on December 16, 2021. A corrected prehearing order was served on January 18, 2022.
23. On January 18, 2022, I&E filed a Motion for Summary Judgment, averring that there are no material facts in dispute and that I&E is entitled to summary judgment as a matter of law.
24. On February 1, 2022, I&E and the Authority filed their respective prehearing conference memoranda.
25. A prehearing conference was held as scheduled on February 2, 2022, wherein a litigation schedule was established.
26. On February 7, 2022, the Authority filed a Reply to I&E's Motion for Summary Judgment.

27. On March 30, 2022, I&E served I&E Statement No. 1, the written Direct Testimony of Clinton T. McKinley, as well as accompanying exhibits Appendix A and I&E Exhibits 1 through 18.

28. Also on March 30, 2022, the Authority served the written Direct Testimony of Michelle Popernack, James Sokol, Kenneth Kiger, Frank Basile, and Jeffrey Raddish, as well as Authority Exhibits A-EE.

29. On April 27, 2022, I&E served I&E Statement No. 1-R, the written Rebuttal Testimony of Clinton T. McKinley.

30. Also on April 27, 2022, the Authority served the written Rebuttal Testimony of Paul Bierer.

31. On May 2, 2022, I&E filed a letter requesting that the litigation schedule be modified to allow I&E to present the oral surrebuttal testimony of Clinton T. McKinley at the evidentiary hearing to address the rebuttal testimony of Paul Bierer, as the Authority had not identified Mr. Bierer as a witness in this proceeding and did not present direct testimony from Mr. Bierer.

32. The Authority filed a letter on May 10, 2022, responding to I&E's request to present oral surrebuttal testimony.

33. By email dated May 17, 2022, ALJ Guhl granted I&E's request to present the oral surrebuttal testimony of Clinton T. McKinley at the evidentiary hearing and indicated that the Authority would have the opportunity to cross-examine Mr. McKinley.

34. By Evidentiary Telephone Hearing Notice dated May 17, 2022, a telephonic hearing was scheduled for June 30, 2022.

35. On June 7, 2022, I&E presented an unopposed request to modify the litigation schedule by postponing the filing of Joint Stipulation of Facts until July 13, 2022, and the evidentiary hearing until August 25, 2022, to allow the parties additional time to finish conducting discovery. ALJ Guhl granted the request on June 8, 2022.

36. By Notice dated June 13, 2022, the Initial Telephonic Hearing was rescheduled for August 25, 2022.

37. A Joint Stipulation of Facts was filed on July 13, 2022, and a corrected Joint Stipulation of Facts, which addressed a non-substantive, formatting concern, was filed on July 14, 2022. The corrected Joint Stipulation of Facts is incorporated by reference pursuant to 52 Pa. Code § 1.33(a). In addition to the Joint Stipulation of Facts filed on July 14, 2022, the Parties further stipulate that Monongahela Township passed a resolution on August 8, 2022, authorizing the Authority to provide water service to customers located in Monongahela Township.

38. On August 23, 2022, ALJ Guhl issued an Order denying the I&E's Motion for Summary Judgment and stated that the Complaint shall be heard as scheduled on August 25, 2022 beginning at 10:00 a.m.

39. On August 24, 2022, the Parties advised ALJ Guhl that they reached a settlement-in-principle that fully and amicably resolves I&E's Complaint proceeding. The Parties jointly requested a stay of the litigation schedule, including a postponement of the evidentiary hearing scheduled for August 25, 2022, until a Joint Petition for Approval of Settlement is filed. The Parties conveyed that they expect to file a Joint Petition for Approval of Settlement on or before September 26, 2022.

40. By Notice dated August 24, 2022, the Evidentiary Call-In Telephonic Hearing scheduled for August 25, 2022 was cancelled.

III. SETTLEMENT TERMS

41. Pursuant to the Commission’s policy of encouraging settlements that are reasonable and in the public interest,² the Parties held a series of discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to resolve this matter in a fair and reasonable manner without further litigation.

42. It is understood that this Settlement is a compromise of the allegations in the Complaint, which I&E intended to prove, and that the Authority intended to disprove. The Parties recognize that their positions and claims are disputed and, given that the outcome of a contested proceeding is uncertain, the Parties further recognize the more immediate benefits of amicably resolving the disputed issues through settlement as opposed to time-consuming and expensive litigation.

43. I&E and the Authority, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement shall create the following rights and obligations:

- a. On or before September 1, 2023, the Authority shall pay a civil penalty in the amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000), pursuant to 66 Pa.C.S. §§ 3301(a)-(b), to resolve the violations alleged in I&E’s Complaint. Said payment shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania” and sent to:

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

² See 52 Pa. Code § 5.231(a).

The civil penalty shall be deposited in the General Fund pursuant to 66 Pa.C.S. § 3315. The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- b. In the event that the Authority sells or agrees to sell its operations, water facilities, or anything connected to its provision of water service prior to the September 1, 2023 payment deadline, said agreement shall include language whereby the purchaser acknowledges and agrees to pay the aforementioned civil penalty.
- c. In its Statement in Support of the Settlement, the Authority agrees to support the additional time to make the civil penalty payment and justify the need for an extended September 1, 2023 civil penalty payment deadline by thoroughly explaining the improvements and repairs that the Authority intends to make to its water system over the course of the next year.
- d. The Parties shall submit Proposed Ordering Paragraphs in conjunction with the Joint Petition for Approval of Settlement which, *inter alia*, provide that the Commission may refer this matter to the Pennsylvania Office of Attorney General consistent with 71 P.S. § 732-204(c) should the Authority or its successors and assigns fail to pay the aforementioned civil penalty.
- e. I&E agrees to forgo requesting that the Authority file an application for Certificate of Public Convenience given that the governing bodies of Cumberland Township, Greene Township, Monongahela Township, Perry Township, and Whiteley Township have now evidenced approval by resolution of the Authority's provision of water service going forward to each of those respective municipalities, pursuant to 53 Pa.C.S. § 5607(b)(3)(i).
- f. I&E agrees to forgo requesting that the Authority issue refunds pursuant to 66 Pa.C.S. § 1312(a) to customers located in Cumberland Township, Greene Township, Monongahela Township, Perry Township, and Whiteley Township, as the customers received water service in exchange for rates paid to the Authority.

44. Upon Commission approval of the Settlement, I&E shall be deemed to have released the Authority from all past claims that were made or could have been made for monetary and/or other relief based on the allegations averred in I&E's Complaint concerning

the unlawfulness of the Authority's extraterritorial service as well as the reasonableness of the water service provided to the Authority's then-extraterritorial customers.

45. I&E and the Authority jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E Complaint proceeding and avoids the time and expense of litigation, which entails hearings, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as **Appendix B** and **Appendix C** are Statements in Support submitted by I&E and the Authority, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

IV. CONDITIONS OF SETTLEMENT

46. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

47. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty (20) days after entry of an Order modifying the Settlement.

48. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact, or conclusions of law rendered in this Complaint proceeding.

49. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this matter.

50. If either party should file any pleading, including comments, in response to a tentative or final order of the Commission, the other party shall have the right to file a reply.

51. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the matter in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement does not preclude the parties from taking other positions in any other proceeding but is conclusive in this proceeding.

52. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and the East Dunkard Water Authority respectfully request that the presiding Administrative Law Judge issue an Initial or Recommended Decision, and the Commission issue an Order approving the terms of this Settlement Agreement in their entirety as being in the public interest.

Respectfully Submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

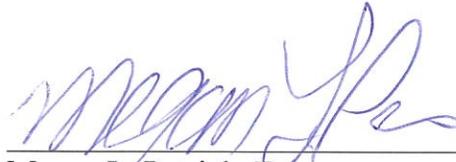
East Dunkard Water Authority

By:

By:



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Date: September 26, 2022

Date: September 26, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Settlement Petition filed on September 26, 2022 between the Commission’s Bureau of Investigation and Enforcement and the East Dunkard Water Authority is approved in its entirety without modification.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301(c), on or before September 1, 2023, the East Dunkard Water Authority shall pay a civil penalty of Two Hundred Twenty-Five Thousand Dollars (\$225,000). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

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

3. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

4. That the Bureau of Administration refer any unpaid civil penalty to the Pennsylvania Office of Attorney General consistent with 71 P.S. § 732-204(c).

5. That the above-captioned matter shall be marked closed upon receipt of the civil penalty or referral to the Pennsylvania Office of Attorney General.

**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	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:

Pursuant to 52 Pa. Code §§ 5.231(a), 5.232, and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and the East Dunkard Water Authority (“Authority” or “Respondent”).¹ I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

¹ I&E and the Authority are collectively referred to herein as the “Parties.”

I. BACKGROUND

The following is a summary of the background of this matter. I&E also incorporates the procedural history of this proceeding as set forth Paragraphs 12 to 39 of the Joint Petition for Approval of Settlement.

This matter involves alleged violations of the Public Utility Code as it relates to the provision of water service beyond the Authority's corporate limits. The Commission's Office of Legislative Affairs ("Legislative Affairs") referred this matter to I&E based on complaints that it received concerning the condition of the Authority's water. Prior to the referral from Legislative Affairs, I&E was unaware of the Authority.

On September 16, 2020, I&E initiated an informal investigation of the Authority. During the pendency of I&E's investigation, the Commonwealth Court of Pennsylvania issued an unreported Opinion on November 16, 2020 in *East Dunkard Water Auth. v. Southwestern Pa.*, No. 116 C.D. 2020, 2020 Pa. Commw. Unpub. LEXIS 547* (Pa. Cmwlth. 2020), finding, *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.

The findings of I&E's investigation substantiated violations of the Public Utility Code. Pursuant to 66 Pa.C.S. § 702 and 52 Pa. Code § 3.113(b)(2), I&E filed a Formal Complaint ("Complaint") on August 2, 2021, alleging that the Authority impermissibly furnished water for compensation to the public outside of its corporate limits in violation of 66 Pa.C.S. § 1102(a)(5), and that the Authority failed to furnish and maintain

adequate, efficient, safe, and reasonable service to customers located outside of its corporate limits, in violation of 66 Pa.C.S. § 1501.

Specifically as it relates to the provision of unlawful water service, I&E alleged that Dunkard Township is the incorporating municipality of the Authority and that no other municipality joined the Authority.² Furthermore, at the time of the filing of I&E's Complaint, no other municipality evidenced approval by resolution of the Authority's provision of water service.³

For relief, I&E requested in its Complaint that the Authority be ordered to pay a civil penalty of Five Hundred Thousand Dollars (\$500,000), that the Authority be directed to refund customers located in Cumberland, Greene, Monongahela, Perry, and Whiteley Townships the total amount paid by customers over the previous four (4) years with interest, and that the Authority be directed to apply for a Certificate of Public Convenience.

The matter proceeded to be fully litigated, including the filing of several Motions and responses thereto, as well as the service of written direct and rebuttal testimonies. An evidentiary hearing was scheduled for August 25, 2022. On August 24, 2022, the Parties achieved a settlement-in-principle that fully resolves I&E's Complaint proceeding.

Of significance, on February 7, 2022, Cumberland Township and Greene Township each passed resolutions authorizing the Authority to provide water service to

² 53 Pa.C.S. § 5604(b).

³ 53 Pa.C.S. § 5607(b)(3)(i).

customers located in their respective Townships. On February 8, 2022, Perry Township and Whiteley Township each passed resolutions authorizing the Authority to provide water service to customers located in their respective Townships. Finally, on August 8, 2022, Monongahela Township passed a resolution authorizing the Authority to provide water service to customers located in Monongahela Township. Therefore, the issuance of a Certificate of Public Convenience for the Authority to furnish water service to the aforementioned Townships going forward is no longer necessary. Nevertheless, violations regarding the past unlawful provision of water service to these townships remain.

On September 26, 2022, I&E and the Authority filed a Joint Petition for Approval of Settlement resolving all issues between I&E and the Authority in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,⁴ the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to the instant I&E Complaint proceeding.

I&E intended to prove the factual allegations set forth in its Complaint at hearing, to which the Authority would have disputed. This Settlement Agreement results from the compromises of the Parties. Although I&E and the Authority may disagree with respect

⁴ 52 Pa. Code § 5.231(a).

to I&E's factual allegations, the Authority, in facilitating the recent passing of municipal resolutions that evidence approval of the provision of the Authority's water service and addressing issues present at its water treatment plant and in its facilities, recognized the need to prevent similar allegations from reoccurring.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits of amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and achieves a preferable outcome compared to one that would have been reached through litigation in that the time and expenditure of litigation has been eliminated, allowing the Authority to concentrate on improvements and repairs to its water treatment system. As such, I&E respectfully submits that the Settlement is in the public interest and requests that the Commission approve the Settlement without modification.

III. TERMS OF SETTLEMENT

Under the terms of the Settlement, I&E and the Authority have agreed as follows:

- a. On or before September 1, 2023, the Authority shall pay a civil penalty in the amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000), pursuant to 66 Pa.C.S. §§ 3301(a)-(b), to resolve the violations alleged in I&E's Complaint. Said payment shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

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

The civil penalty shall be deposited in the General Fund pursuant to 66 Pa.C.S. § 3315. The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- b. In the event that the Authority sells or agrees to sell its operations, water facilities, or anything connected to its provision of water service prior to the September 1, 2023 payment deadline, said agreement shall include language whereby the purchaser acknowledges and agrees to pay the aforementioned civil penalty.
- c. In its Statement in Support of the Settlement, the Authority agrees to support the additional time to make the civil penalty payment and justify the need for an extended September 1, 2023 civil penalty payment deadline by thoroughly explaining the improvements and repairs that the Authority intends to make to its water system over the course of the next year.
- d. The Parties shall submit Proposed Ordering Paragraphs in conjunction with the Joint Petition for Approval of Settlement which, *inter alia*, provide that the Commission may refer this matter to the Pennsylvania Office of Attorney General consistent with 71 P.S. § 732-204(c) should the Authority or its successors and assigns fail to pay the aforementioned civil penalty.
- e. I&E agrees to forgo requesting that the Authority file an application for Certificate of Public Convenience given that the governing bodies of Cumberland Township, Greene Township, Monongahela Township, Perry Township, and Whiteley Township have now evidenced approval by resolution of the Authority's provision of water service going forward to each of those respective municipalities, pursuant to 53 Pa.C.S. § 5607(b)(3)(i).
- f. I&E agrees to forgo requesting that the Authority issue refunds pursuant to 66 Pa.C.S. § 1312(a) to customers located in Cumberland Township, Greene Township, Monongahela Township, Perry Township, and Whiteley Township, as the customers received water service in exchange for rates paid to the Authority.

In consideration of the Authority's payment of a monetary civil penalty, I&E shall be deemed to have released the Authority from all past claims that were made or could have been made by I&E for monetary and/or other relief based on allegations that the Authority failed to comply with the obligations claimed in the Complaint for the time periods covered by I&E's Complaint.

IV. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231(a). Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code §

69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission’s Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). The violations alleged in I&E’s Complaint are twofold: (1) that, since 2011, the Authority unlawfully furnished water service to the public for compensation without holding a Certificate of Public Convenience issued by the Commission to customers in Greene, Monongahela, Cumberland, Perry, and Whiteley Townships in Greene County in that these municipalities are beyond the Authority’s corporate limits;⁵ and (2) that the Authority failed to furnish and maintain adequate,

⁵ 66 Pa.C.S. § 1102(a)(5).

efficient, safe, and reasonable service and facilities to customers located beyond its corporate limits in that it was the recipient of several Notices of Violation and Field Orders from the Pennsylvania Department of Environmental Protection (“DEP”) concerning the state of its water, and 119 customers complained to the Authority about experiencing water that was discolored, leaking, and low in water pressure.⁶

I&E submits that the alleged conduct is serious. A municipal authority that provides service beyond its corporate limits requires Commission oversight to protect customers who are not residents of the incorporating municipality.⁷ These “outside customers” lack the ability to vote for the officials who manage the municipal authority, and the officials who manage the municipal authority are not beholden to “outside customers” for their power. “It is the consumer outside the corporate limits, who has no right to participate in the governmental affairs of the municipality and, therefore, in its selection of management, who needs protection against the natural inclination of management to favor its constituents at the expense of the outsider who has no voice.”⁸ For eleven (11) years, I&E alleges that the Authority provided water to customers outside of its corporate limits without a Certificate of Public Convenience. The seriousness of this allegation far exceeds that of an administrative error.

I&E further alleges that these same “outside customers” experienced unreasonable service and facilities. Public utility service furnished by a municipal corporation beyond

⁶ 66 Pa.C.S. § 1501.

⁷ *County of Dauphin v. Pa. Pub. Util. Comm’n*, 634 A.2d 281, 283 (Pa. Cmwlth. 1993).

⁸ *Id.* citing *State College Borough Authority v. Pa. Pub. Util. Comm’n*, 31 A.2d 557, 562 (Pa. Super. 1943).

its corporate limits is subject to regulation and control by the Commission as if the service were provided by a public utility.⁹ Outside customers complained of experiencing brown and dirty water, and water facilities that provided low pressure. During the same time, the Authority was the subject of several DEP Notices of Violation and Field Orders, some of which resulted in Boil Water Advisories that remained in effect until DEP authorized that they be lifted. I&E submits that the quality of the Authority's water fell beneath the level of reasonable service that "outside customers" are entitled to receive. Therefore, I&E avers that the seriousness of the alleged conduct was considered in arriving at the civil penalty in the Settlement Agreement.

The second factor considered is whether the resulting consequences of the Respondent's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). No consequences such as personal injury or property damage occurred with respect to the allegations advanced by I&E in its Complaint. Customers, however, were forced to boil the Authority's water prior to using it.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Whether the Authority's alleged

⁹ 66 Pa.C.S. § 1501.

conduct was intentional or negligent does not apply since this matter is being resolved by a Settlement Agreement.

The fourth factor to be considered is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). During the litigation of the I&E Complaint proceeding, the Authority gradually obtained resolutions from municipalities that were once outside of the Authority's corporate limits. The resolutions authorized the provision of water service by the Authority to residents in each respective municipality. On February 7, 2022, Cumberland Township and Greene Township passed resolutions. On February 8, 2022, Perry Township and Whiteley Township passed resolutions. Finally, on August 8, 2022, Monongahela Township passed a resolution. Therefore, the Authority has achieved compliance with the Public Utility Code in that it is no longer serving customers deemed outside of its corporate limits.

Moreover, it is I&E's understanding that the Authority was the recipient of nearly \$2 million in funding from the Community Development Block Grant of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, which will presumably be used to improve the Authority's water treatment plant and water facilities.¹⁰ With the recent passage of the aforementioned municipal resolutions, I&E opines that the Authority is no longer subject to the Commission's jurisdiction going forward and acknowledges that the Authority's water service and facilities should improve after the upgrades are completed.

¹⁰ [East Dunkard Water Authority receives \\$2M grant for upgrades | Local News | observer-reporter.com](#)

The fifth factor to be considered relates to the number of customers affected by the Respondent's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Approximately 1,592 customers located in Greene, Monongahela, Cumberland, Perry, and Whiteley Townships were affected by the Authority's unlawful provision of water service. The alleged unlawful service violations endured from 2011, when the Authority commenced service, to 2022, when all of the previously extraterritorial municipalities passed resolutions. I&E's Complaint alleges that "outside customers" experienced unreasonable service from 2019, and such unreasonable service continued during the Spring of 2022.

The sixth factor to be considered relates to the Respondent's compliance history with the Commission. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* The Authority had not been subject to the Commission's oversight since, as I&E alleges, the Authority failed to obtain a Certificate of Public Convenience prior to furnishing water service for compensation beyond its corporate limits. Therefore, the Commission's records do not reflect any compliance history related to the Authority.

The seventh factor to be considered relates to whether the Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). "Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty." *Id.* The Authority cooperated with I&E's

investigation and timely responded to I&E's data requests.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The size of the company may be considered to determine an appropriate penalty amount. *Id.* I&E submits that a civil penalty of Two Hundred Twenty-Five Thousand Dollars, (\$225,000), which may not be claimed as a tax deduction by operation of law, is sufficient to deter the Authority from committing future violations, such as by adding customers located in municipalities outside of the Authority's corporate limits. Pursuant to 66 Pa.C.S. § 3301(a)-(b), I&E could have sought and the Commission could have imposed a civil penalty of \$1,000 for each day the Authority provided water service beyond its corporate limits and a civil penalty of \$1,000 for each day the Authority provided unreasonable service, subject to the three-year statute of limitations set forth in 66 Pa.C.S. § 3314(a). The agreed-upon civil penalty of \$225,000 is much lower than the statutory maximum civil penalty that could have been imposed. Moreover, I&E has not dictated the funding source from which the civil penalty would be paid. This provides the Authority with managerial discretion to best determine how to pay the civil penalty, whether from obtaining a loan, exploring the possibility of utilizing recently-received grant money, or employing some other source.

Additionally, pursuant to 66 Pa.C.S. § 1312(a), I&E could have sought and the Commission could have directed the Authority to refund 4-years of customer charges with interest. I&E recognizes that the Authority collected fees from outside customers

unlawfully over a period of time. However, the size of the Authority, its strained financial resources, and the need for the Authority to make improvements to its infrastructure to better serve its customers - combined with the realization that those customers, while served unlawfully, were nevertheless provided water service - all outweigh any consideration that the Authority be forced to process refunds as part of this Settlement and should not deter the Commission from finding that the Settlement is in the public interest.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). I&E submits that the instant Settlement, which resolves allegations relating to eleven (11) years of unlawful water service being provided to approximately 1,592 customers, combined with the unreasonable water service that was provided at certain points during the eleven-year time period, is unique and should be viewed on its own merits.¹¹ Nevertheless, in looking at the relevant factors that are comparable to other enforcement proceedings, the instant Settlement is consistent with past Commission actions in that a civil penalty sufficient to deter future violations will be paid.

¹¹ I&E is only aware of one other I&E enforcement proceeding involving a municipal entity providing water or wastewater service outside of municipal limits. In *Application of Exeter Township for Certificate of Public Convenience to Offer, Furnish, Render, and Supply Wastewater Service to the Public in Certain Portions of Lower Alsace Township, Berks County, Pennsylvania*, Docket No. A-2018-3006505 (Final Order entered August 29, 2019, adopting the July 25, 2019 Recommended Decision), the Commission approved a Settlement Agreement that, *inter alia*, resolved an I&E Complaint proceeding at Docket No. C-2019-3007920, alleging that the municipality furnished unlawful wastewater service to twenty-nine (29) customers located outside of the municipality. Pursuant to the Settlement Agreement, the municipality was prohibited from collecting payment from these twenty-nine (29) customers until a tariff was in effect. Additionally, the municipality was ordered to provide nearly \$62,000 in refunds to customers.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can allow the parties to move forward and focus on implementing remedial actions. Specifically, with the instant Settlement, the Authority is able to save costs associated with a fully litigated proceeding and redirect its attention and money to improving its water system.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the presiding Administrative Law Judge and Commission approve the Joint Petition for Approval of Settlement, including all the terms and conditions set forth therein, without modification.

Respectfully submitted,



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Dated: September 26, 2022

Appendix C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**STATEMENT OF EAST DUNKARD WATER AUTHORITY IN SUPPORT OF
SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE MARTA GUHL:

East Dunkard Water Authority (the “Authority”) hereby submits this Statement in Support of Settlement that was entered into by the Commission’s Bureau of Investigation & Enforcement (“I&E”) and the Authority in the above-captioned matter. The Settlement resolves all issues related to the I&E’s formal complaint (“Complaint”) proceeding alleging violations of the Public Utility Code (“PUC”) which were raised in connection with the Authority allegedly providing extraterritorial water service to municipalities who had not joined the Authority.

I. Background

The Authority adopts the Background discussion set forth in the Joint Petition for Approval of Settlement.

II. Terms of Settlement

The Authority adopts the Terms of Settlement set forth in the Joint Petition for Approval of Settlement.

III. The Proposed Settlement is in the Public Interest and is in Consideration of the Factors Under the Commission's Policy Statements

The proposed settlement should be approved because it is consistent with the Commission's policy to promote settlements if possible and avoid protracted and costly litigation. 52 Pa. Code §5.231. Settlements decrease the time and expense that both parties would incur in preparing and litigating the action and also preserve administrative time and economy. "The results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding." 52 Pa. Code §69.401. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Public Utility Commission, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *See Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *See also Joseph A. Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2020).

The Authority submits that approval of the Settlement in this matter is consistent with the Commission's Policy for Litigated and Settled Proceedings Involving Violations of Code and

Commission Regulations (“Policy Statement”), 52 Pa. Code §69.1201; *See also Joseph A. Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2020). As it relates to the factors and standards considered by the Commission, the Authority offers the following:

- (1) The Authority has not engaged in any willful fraud or misrepresentation and there have been no allegations of such by the I&E against the Authority.
- (2) The Authority maintains that the allegations by the I&E against the Authority are not of a serious nature. Many of the customer complaints referenced by the I&E, and provided to the I&E by the Authority, were related to discolored water, low pressure, and or line breaks. The Authority is not required to provide perfect service to customers. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super 1987). The Authority need only provide adequate, efficient, safe, and reasonable service and facilities. 66 Pa. C.S. §1501. Inherent in the provision of water is an expectation that that leaks may occur, water pressure may diminish for various reasons for a short period of time, or that there may be discolored water requiring flushing or addressing. The Authority maintains that it made efforts to address any customers complaints to a satisfactory resolution and ensure the water was flushed and/or service was restored to the affected areas in as timely of a manner as possible.
- (3) The Authority maintains that any alleged wrongdoing is result of acquiescence of continued service by each municipality served and not any intentional wrongdoing or deceitful conduct. The Authority took over water service that was provided by East Dunkard Water Association and provided the water service to the same customer base and area without expansion into any new municipality

other than those already serviced by the East Dunkard Water Association. In February 2022 and August 2022, each municipality passed a resolution acknowledging and permitted past water service by the East Dunkard Water Association and the Authority and continued water service by the Authority.

- (4) The Authority made efforts to correct alleged wrongdoings by obtaining Resolutions from each municipality serviced by the Authority that had not created or joined in the creation of the Authority, namely Greene Township, Monongahela Township, Perry Township, Whiteley Township, and Cumberland Township. Said Resolutions acknowledged and permitted past water service by the East Dunkard Water Association and the Authority and continued water service by the Authority. The Resolutions were obtained in February 2022 and August 2022 after the filing of the Complaint. Additionally, the Authority continues to work closely with the Department of Environmental Protection (“DEP”) in order to ensure water service meets standards and regulations, including making changes to various control systems and operation procedures, as well as making improvements to the water plant.
- (5) The Authority maintains that it services approximately 1592 customers, both residential and commercial, and pending the above-captioned action, the Authority has taken steps to not only address allegations of extra-territorial service, but also to address allegations related to quality of service.
- (6) The Authority maintains that the instant action is the only violation initiated by the I&E, and this would be an isolated incident related to I&E involvement.

- (7) The Authority has cooperated fully with the I&E, especially during its informal investigative process. Additionally, the Authority is working cooperatively with the DEP.
- (8) The Authority submits that no civil penalty would have been necessary to deter it from committing future; nonetheless, the agreed upon payment of \$225,000.00. The amount of the civil penalty will deter the Authority from future alleged violations in that the Authority is a very small utility with limited means and servicing only approximately 1,592 customers. The Authority has already taken steps to ensure it does come under the jurisdiction of the PUC in the future by receiving Resolutions from all municipalities currently serviced by the Authority and by continuing to work with the DEP to comply with statutes and regulations and ensuring quality water service. The civil penalty is detrimental to the Authority given the small size and limited customer base; however, the demand made by the I&E in the Complaint is far greater. The uncertainty of litigation and the potential outcome, coupled with current litigation costs, the expectant costs of future litigation and/or appeals, and the potential for millions of dollars in demanded civil penalties, refunds, and costs associated the filing of certificate of public convenience make a settlement a more desirable and required option for the Authority who already has limited means.
- (9) Additional relevant factors include the analysis of the costs related to protracted litigation and administrative review. A settlement avoids the necessity of the I&E to prove the allegations and driving up the already mounting costs of litigation. Further, it opens the docket for other matters to be litigated that cannot otherwise

be brought to amicable resolution. The Authority's benefit is a halt to litigation costs and a sum certain, lesser fine or penalty. Both parties negotiated from their initial litigation positions. This settlement allows the Authority to make plans for payment of the civil penalty, but also focus on implementation and execution of improvements and changes to the system to better serve the Authority customer base. Although the Authority and the customer base would benefit more from having no civil penalty or allowing the Authority to invest the civil penalty of \$225,000.00 into the system where the customers directly benefit, the uncertainty of litigated proceedings and potential resulting judgments are too great of a risk to the customers who ultimately suffer and bear the costs.

IV. Improvements and Repairs Anticipated to be Made

In support of additional time to provide full payment of the civil penalty, the Authority and the I&E have agreed that the Authority will provide information on improvements and repairs that the Authority intends to make to its water system over the course of the next year. These improvements are anticipated to benefit the entire system.

The Authority has already been awarded significant funding through the Community Block Development Grant Program. Currently being conducted is an environmental study, and upon completion of the environmental study, more specific scopes of work will be created, approved, and finalized. In accordance with statutes and regulations, projects receiving state and federal funding and/or those above the required threshold must be advertised and put out for public bidding. Upon opening and awarding of those bids, the projects will be slated for completion by the respective bidder. There are numerous factors that may increase or decrease the timelines for when projects are completed; however, the funding for various projects has

already been received, and engineering is being conducted for projects anticipated to be completed.

The Authority anticipates installing automatic shutdown valves at the water treatment plant or at one of the tanks so as to ensure water being disbursed to the customers through the system continues to meet regulatory requirements. The Authority's engineer is continuing to evaluate the system and work with the Department of Environmental Protection to determine the location best suited for the system. Also, the Authority will be obtaining a complete evaluation of all filters at the water treatment plant, including filter bed and media analysis, and will be taking any corrective action that may be necessary as a result of the evaluation, including but not limited to the replacement of media contained in the filters. Additionally, the Authority will be developing and implementing a comprehensive monitoring plan that meets regulatory requirements. Further, the Authority anticipates addressing spill containment at their operating plant with potentially custom-built containment or installation of an overflow and receiving basin or a drain capable of receiving accidental spills. Moreover, the Authority plans to have inspected and cleaned eleven (11) tanks. The engineering for this project is completed; however, prior to work being completed, an environmental study is required and the same is currently underway. Upon completion of the environmental study, the cleaning and inspection of eleven (11) tanks can be put out for bid.

The foregoing terms and basis for entering into this Settlement are the result of balanced compromises of the interests of both parties in this matter. The Authority believes that approval of this Settlement is in the public interest. Acceptance of this Settlement avoids the necessity of expensive, uncertain protracted litigation of both parties. For all of these reasons, the Authority

submits that this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

V. Conclusion

The foregoing terms and basis for entering into this Settlement are the result of balanced compromises of the interests of both parties in this matter. The Authority believes that approval of this Settlement is in the public interest. Acceptance of this Settlement avoids the necessity of expensive, uncertain protracted litigation of both parties. For all of these reasons, the Authority submits that this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

WHEREFORE, the Authority supports the Settlement and respectfully requests that the Commission adopt an order approving the terms and conditions of this Settlement.

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

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Counsel for East Dunkard Water Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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).

Service by Electronic Mail Only:

Megan L. Patrick, Esq.
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Dated: September 26, 2022