

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2021-3027615
	:	
East Dunkard Water Authority	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Joint Petition for Settlement (Settlement) in this matter. The Settlement indicates that on or before September 1, 2023, the East Dunkard Water Authority (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 the Bureau of Investigation and Enforcement’s Complaint. Further, the Settlement states that the Bureau of Investigation and Enforcement (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). Lastly, the Settlement also states that 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.

HISTORY OF THE PROCEEDING

The Public Utility Commission's (Commission) Bureau of Investigation and Enforcement (I&E) commenced this action on August 2, 2021 by filing a Formal Complaint (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, 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.

I&E's Complaint further alleges that the Authority failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities to customers located beyond its corporate limits in that it provided discolored or dirty water, no water or low water pressure, and facilities that leaked. I&E alleges that such action violates 66 Pa.C.S. § 1501.

The Authority filed an untimely Answer to the Complaint.

After extensive litigation, the parties filed a Joint Petition for Settlement on September 26, 2022.

After the Joint Petition for Settlement was filed, the presiding officer received multiple emails from East Dunkard Water Authority customers in opposition to the settlement.

On November 15, 2022, a Formal Complaint was filed by Clarissa Eggers (Complainant or Ms. Eggers) against East Dunkard Water Authority which indicated that there were incorrect charges on her bills and that she was having reliability, safety or quality of service issues with her water service. Specifically, the Complainant requested that the charge marked as "PUC" be removed from her bill related to the fine agreed to by the parties in the Joint Petition

for Settlement as she was not responsible for the actions of the Authority. She stated that the fine was the result of the Authority providing service outside of the municipal boundaries and that she should not be held responsible for the fine.

Based upon the new Formal Complaint that has been filed and concerns with the terms of the Settlement, a teleconference was scheduled and the Joint Petition for Settlement was held in abeyance.

By hearing notice dated December 2, 2022, a further telephonic conference was scheduled for December 13, 2022 at 2:30 p.m.

On December 6, 2022, East Dunkard filed an Answer to Ms. Egger's Formal Complaint.

The telephonic conference was held on December 13, 2022 and I&E, East Dunkard and Ms. Eggers participated in the conference. At the telephonic conference, Ms. Eggers indicated that she wished to withdraw her Complaint.

On December 28, 2022, I received a written request from Ms. Eggers to withdraw her Formal Complaint. There was no objection to the request to withdraw.

By Interim Order dated March 31, 2023, the request to withdraw the Formal Complaint of Ms. Eggers' was granted and the abeyance on the case was lifted. The record closed on that date.

FINDINGS OF FACT

1. The Complainant is I&E, by its prosecuting attorneys, 400 North Street, Harrisburg, PA 17120.

2. The Respondent is the East Dunkard Water Authority with a principal place of business at 2790 South Eighty-Eight Road, Dilliner, PA 15327.

3. 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. §§ 101–3316.

4. 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).

5. 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.”

6. The Authority furnishes water service to the public for compensation in Cumberland, Dunkard, Greene, Monongahela, Perry, and Whiteley Townships in Greene County, Pennsylvania.

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

TERMS AND CONDITIONS OF THE SETTLEMENT

The Joint Petitioners have agreed to a Full Settlement covering all issues addressed in the Formal Complainant.

The terms and conditions of the Settlement are set forth fully below, beginning at numbered paragraph 43 of the Joint Petition for Settlement filed on September 26, 2022. The Settlement also includes the usual “additional terms and conditions” that are typically included in settlements. These terms, which, among other things, protect the parties’ rights to file exceptions if any part of the Settlement is modified, condition the agreement upon approval by the Commission. The Settlement also indicates that 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. These additional terms and conditions will not be repeated here verbatim. The reader is directed to the petition itself.

The Joint Petitioners to the Settlement include I&E and the Authority.

The settlement terms among the Joint Petitioners consist of the following terms and conditions:

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

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.

DISCUSSION

The Commission encourages parties in contested on-the-record proceedings to settle cases.¹ Settlements eliminate the time, effort and expense of litigating a matter to its

¹ See 52 Pa. Code § 5.231.

ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.² In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves most of the contested issues in this case, fairly balances the interests of the company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

Under Section 69.1201 of the Commission's regulations, the factors and standards that will be considered by the Commission when issuing civil penalties against a public utility include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue 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.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

² *Pa. Pub. Util. Comm'n v. CS Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991). See also *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201(c); *See also Rosi v. Bell-Atlantic-Pa., Inc.*, Docket No. C-00992409 (Order entered Mar. 16, 2000).

A. General Position of the Parties

Generally, the Joint Petitioners submit that the Settlement is in the public interest for the following reasons: substantial litigation and associated costs will be avoided; the Settlement amicably and expeditiously resolves a number of important and potentially contentious issues; the Settlement is consistent with Commission policies promoting negotiated settlements; and the Settlement is a reasonable resolution.³

³ Joint Petition for Settlement ¶ 10.

B. Party Positions

1. I&E's Position

I&E submits that approval of the Settlement Agreement in this matter is consistent with the Commission's Policy Statement regarding the *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement").⁴ 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. I&E notes that the Commission will not apply the factors as strictly in settled cases as in litigated cases.⁵

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. I&E argues that the alleged conduct in this case 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.⁶ 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."⁷ For 11 years, I&E alleges that the Authority provided water to customers outside of its corporate limits without a Certificate of Public

⁴ 52 Pa. Code § 69.1201; *See also Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered Mar. 16, 2000).

⁵ I&E Statement in Support at 7-8.

⁶ *County of Dauphin v. Pa. Pub. Util. Comm'n*, 634 A.2d 281 (Pa. Cmwlth. 1993).

⁷ *Id* at 283 (citing *State College Borough Authority v. Pa. Pub. Util. Comm'n*, 31 A.2d 557, 562 (Pa. Super. 1943)).

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 its corporate limits is subject to regulation and control by the Commission as if the service were provided by a public utility.⁸ 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.⁹

I&E maintains that no consequences such as personal injury or property damage occurred with respect to the allegations advanced in its Complaint. Customers, however, were forced to boil the Authority’s water prior to using it.¹⁰

I&E also contends that 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.¹¹

⁸ 66 Pa.C.S. § 1501.

⁹ I&E Statement in Support at 9-10.

¹⁰ I&E Statement in Support at 10.

¹¹ I&E Statement in Support at 11.

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.¹² With the recent passage of the municipal resolutions, I&E states 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.¹³

I&E notes that 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 2022.¹⁴

Under the sixth factor, 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.¹⁵

I&E states that under the seventh factor the Authority cooperated with I&E's investigation and timely responded to I&E's data requests. I&E also submits that a civil penalty of \$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 adding customers located in

¹² Mike Jones, [East Dunkard Water Authority receives \\$2M grant for upgrades](https://observer-reporter.com/news/localnews/east-dunkard-water-authority-receives-2m-grant-for-upgrades/article_80714e20-e116-11ec-a908-ffe2aa4b8c26.html), Observer-Reporter (Jun. 1, 2022), https://observer-reporter.com/news/localnews/east-dunkard-water-authority-receives-2m-grant-for-upgrades/article_80714e20-e116-11ec-a908-ffe2aa4b8c26.html.

¹³ I&E Statement in Support at 11.

¹⁴ I&E Statement in Support at 12.

¹⁵ I&E Statement in Support at 12.

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.¹⁶

Additionally, I&E notes that it could have sought and the Commission could have directed the Authority to refund four 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 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.¹⁷

Under the ninth fact, I&E submits that the instant Settlement, which resolves allegations relating to eleven 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.¹⁸

¹⁶ I&E Statement in Support at 12-13.

¹⁷ I&E Statement in Support at 13.

¹⁸ 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 Aug. 29, 2019), 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 customers located outside of the municipality. Pursuant to the Settlement Agreement, the municipality was prohibited from collecting payment from these twenty-nine customers until a tariff was in effect. Additionally, the municipality was ordered to provide nearly \$62,000 in refunds to customers.

Nevertheless, I&E asserts that this Settlement is consistent with past Commission actions in that a civil penalty sufficient to deter future violations will be paid.¹⁹

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.²⁰

2. East Dunkard Water Authority's Position

The Authority argues that the Settlement meets the factors for civil penalties. Specifically, the Authority contends that its actions were not willful fraud or misrepresentation. The Authority also maintains that any alleged misconduct was the result of the acquiescence of the other municipalities that it provided services to and not based on intentional misconduct. The Authority notes that the other municipalities have passed resolutions in 2022 to allow it to continue to provide water services to the customers in their municipal limits. The Authority had indicated that it has taken steps to come into compliance with regulations and deal with water service quality issues and has cooperated with I&E during its investigation into this matter. The Authority also asserts that the fine is not necessary to ensure its future compliance as it has already taken those steps and it is a small system with a limited customer base. The Authority contends that it will continue to work with the DEP and other agencies to maintain its system and

¹⁹ I&E Statement in Support at 14.

²⁰ I&E Statement in Support at 15.

water quality and will be able to allocate funds more effectively to continue to provide service to its customers.²¹

The Authority contends that the Settlement is in the public interest because it spares it the additional time and expense of litigation. The Authority also maintains that the Settlement eliminates that uncertainty it faced if the matter was litigated. The Authority notes that it is a small system with a limited customer base and it is already looking to make system improvements. The Authority will be able to more accurately allocate funds for infrastructure improvements if it does not have to litigate this matter.²²

Specifically, with the improvements that it intends to complete, the Authority notes that these improvements will address some of the customer concerns related to water quality, water outages and water pressure. The Authority plans to address spill containment, water filtration, and cleaning of water tanks. They also plan to make other system upgrades and institute regular testing of water to ensure regulatory compliance.²³

C. Analysis

The proposed Settlement is reasonable and in the public interest. I therefore will approve the Settlement without modifications. The Settlement represents a just and fair compromise of the serious issues raised in this proceeding. After considering the background of this case, the parties have achieved a reasoned accord on the issues resulting in a just and reasonable outcome for all parties involved.

In reviewing the settlement terms and the accompanying statements in support, the Settlement provides sufficient information to support the conclusion that the settlement terms are in the public interest. It should be noted that the parties in the matter have already engaged in

²¹ EDWA Statement in Support at 3-6.

²² EDWA Statement in Support at 2, 5.

²³ EDWA Statement in Support at 6-7.

a lengthy investigation and extensive litigation. The parties have noted that the Authority has cooperated with the investigation in this case and has taken steps to remedy any of the alleged misconduct. The Authority obtained resolutions from the other municipalities in 2022 and has been approved by the local governmental bodies to provide water service to customers within the municipal limits. The Authority has also indicated that it is moving forward with system upgrades and improvements that will address concerns that customers may have about the quality of service. The reduction in litigation costs and time will clearly benefit all the parties involved, especially, the Authority, who would likely have to pass those costs onto its ratepayers.

Further, the assessment of civil penalties in this matter is in line with the Commission's regulations and considers the factors for assessing civil penalties in a litigated case. The Authority ran the risk of having civil penalties assessed far beyond the \$225,000 that was agreed to by the parties in this matter. The civil penalties are in the public interest because they will deter the Authority from engaging in similar conduct in the future.

Resolution of this proceeding by negotiated settlement removes the uncertainties of litigation. In addition, all parties obviously benefit by the reduction in case expense and the conservation of resources made possible by adoption of the proposed Settlement in lieu of litigation. The acceptance of the Settlement will negate the need for the filing of additional testimony by all parties, participation at in-person hearings, the filing of main and reply briefs on the issues contained in the Settlement, exceptions and reply exceptions, and potential appeals. These savings in case expense serve the interests of the Authority and its ratepayers, as well as the parties themselves. Those funds would be better used for system upgrades and improvements rather than further litigating this case and potentially paying a much higher civil penalty.

For all the foregoing reasons, I find the terms embodied in the Joint Petition for Settlement are both just and reasonable and its approval is in the public interest. I approve the Settlement without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties in this case. 66 Pa.C.S. § 501, 701, 1101–1103.

2. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

3. Civil penalties imposed by the Commission and contained within a proposed settlement must be appropriate and reasonable, and the settlement agreement must be in the public interest. 52 Pa. Code § 69.1201; *See also Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered Mar. 16, 2000).

4. The Joint Petition for Settlement is in the public interest and is consistent with the requirements contained in *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010 (Pa. Cmwlth. 2006).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition for Joint Settlement filed by the Joint Petitioners on September 26, 2022 is approved without modification.

2. That on or before September 1, 2023, East Dunkard Water Authority shall remit a civil penalty in the amount of \$225,000.00 (TWO HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS) payable by certified check or money order to

“Commonwealth of Pennsylvania” with the docket number of this proceeding listed thereon, and send to:

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

3. That, if East Dunkard Water Authority fails to make the civil penalty payment required by Ordering Paragraph No. 2 above, on or before September 1, 2023, it is further ordered that the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for collection of the total set forth above and appropriate action.

4. That the Bureau of Investigation and Enforcement will forgo requesting that the East Dunkard Water 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).

5. That the Bureau of Investigation and Enforcement will forgo requesting that the East Dunkard Water 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.

6. That the record at Docket No. C-2021-3027615 shall be marked closed.

Date: June 27, 2023

/s/
Marta Guhl
Administrative Law Judge