

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held October 19, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman, Conflict Statement
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement

C-2021-3027615

v.

East Dunkard Water Authority

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by the East Dunkard Water Authority (Authority or EDWA) on August 10, 2023,¹ to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Marta Guhl, issued June 27, 2023, in the above-

¹ A review of the Commission's case management system, InfoMAP, shows that the Authority's Exceptions were E-filed around 7:00 a.m. on August 10, 2023, the morning after the due date of August 9, 2023. We will exercise our discretion and treat the Exceptions as being timely filed in order to provide for the just, speedy, and inexpensive determination of this proceeding, pursuant to 52 Pa. Code § 1.2.

captioned proceeding.² The Initial Decision approved, without modification, the Joint Petition for Settlement (Settlement) filed by the Parties on September 26, 2022. A Reply to the Exceptions was filed by the Bureau of Investigation and Enforcement (I&E) on August 18, 2023. For the reasons stated below, we shall deny the Exceptions and modify the ALJ's Initial Decision, consistent with this Opinion and Order.

I. History of Proceeding

I&E commenced this action on August 2, 2021, by filing a Formal Complaint (Complaint) alleging that since 2011, the Authority has impermissibly furnished water service to the public for compensation without holding a Certificate of Public Convenience (Certificate) issued by the Commission to customers located in Greene, Monongahela, Cumberland, Perry, and Whiteley Townships, which are municipalities beyond the Authority's corporate limits, in violation of 66 Pa. C.S. § 1102(a)(5). In addition, I&E argued that the Authority failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities to customers located beyond its corporate limits, in violation of 66 Pa. C.S. § 1501, because it provided discolored or dirty water, no water or low water pressure, and facilities that leaked. I.D. at 2; Complaint at 9.

The Authority filed an untimely Answer to the Complaint. *Id.*

On September 26, 2022, the Parties filed the Settlement. *Id.*

On November 15, 2022, a Formal Complaint was filed by Clarissa Eggers (Ms. Eggers) against the 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

² An extension of time was granted for the filing of Exceptions by August 9, 2023.

water service. 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 Settlement because the fine was the result of the Authority providing service outside of its municipal boundaries and she should not be responsible for the fine. Due to the filing of the Complaint, the ALJ held the consideration of the Settlement in abeyance. *Id.* at 2-3.

During a telephonic conference on December 13, 2022, Ms. Eggers indicated that she wished to withdraw her Complaint, and on December 28, 2022, she requested to withdraw her Formal Complaint. There was no objection to the request to withdraw; therefore, on March 31, 2023, the request to withdraw the Formal Complaint of Ms. Eggers' was granted and the abeyance on the case was lifted. Also, the record closed on that same date. *Id.* at 3.

In the Initial Decision issued on June 27, 2023, ALJ Guhl approved the Settlement, without modification. *Id.* at 1, 16.

As noted, *supra*, the Authority filed Exceptions on August 10, 2023. I&E filed a Reply to the Exceptions on August 18, 2023.

II. Description and Terms of the Settlement

The Authority and I&E, agreed to a full settlement covering all of the issues in the Complaint. The terms and conditions of the Settlement, set forth at Paragraph No. 43, are as follows:

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.

Settlement at 8-9.

In addition, the Settlement includes the usual additional terms and conditions that are typically included in settlements, which, among other things, protect the Parties' rights to elect to withdraw from the Settlement and proceed with litigation if the Commission modifies it. *Id.* at 10. 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. *Id.* at 9-10.

The Parties submit that the Settlement is in the public interest and should be approved. *Id.* at 8-14.

III. Discussion

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Legal Standards

1. Jurisdiction

Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs. *Riedel v. The Human Relations Comm'n of the City of Reading*, 559 Pa. 33, 739 A.2d 121 (1999). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. PUC*, 157 Pa. Super. 595, 43 A.2d 348 (1945). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Cf., Hughes v. Pa. State Police*, 152 Pa. Cmwlth. 409, 619 A.2d 390 (1992), *app denied*, 536 Pa. 633, 637 A.2d 293 (1993). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967). Neither silence nor agreement of the parties will confer

jurisdiction where it otherwise would not exist, *Commonwealth v. VanBuskirk*, 303 Pa. Super. 148, 449 A.2d 621 (1982), nor can jurisdiction be obtained by waiver or estoppel. *Scott v. Bristol Twp. Police Dep't.*, 669 A.2d 457 (Pa. Cmwlth. 1995).

The Commission has jurisdiction over municipal utilities providing service outside of their political boundaries. Section 1102 of the Code, 66 Pa. C.S. § 1102, provides that it shall be lawful for any municipal corporation to provide public utility service beyond its corporate limits so long as it obtains a Certificate from the Commission. Section 1301 of the Code, 66 Pa. C.S. § 1301, establishes Commission jurisdiction over the rates charged by municipal corporations when those entities provide public utility service outside their corporate limits. Section 102 of the Code, 66 Pa. C.S. § 102, defines a “municipal corporation” as:

All cities, boroughs, towns, townships, or counties of this Commonwealth, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.

66 Pa. C.S. § 102. Also, Section 1501 of the Code, 66 Pa. C.S. § 1501, provides the Commission with jurisdiction over the quality, reliability, and adequacy of services of those entities under similar terms.

The Commission’s jurisdiction, however, does not extend to municipal authorities. Section 5607(d)(9) of the Municipality Authorities Act of 1945, 53 Pa. C.S. § 5601, *et. seq.* (Municipality Authorities Act), states:

Any person questioning the reasonableness or uniformity of a rate fixed by an authority or the adequacy, safety, and reasonableness of the authority’s services, including extensions thereof, may bring suit against the authority in the court of common pleas of the county where the project is located or, if the project is located in more than one county, in

the court of common pleas of the county where the principal office of the project is located. The court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service.

53 Pa. C.S. § 5607(d)(9).

2. Settlements

It is the policy of the Commission to promote and encourage settlements. 52 Pa. Code §§ 5.231. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case. *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2015-2468056, *et al.* (Order entered December 3, 2015) at 6-7.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without determining whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). The Commission must, however, review proposed settlements to determine whether the proposed terms and conditions are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

In this regard, the Commission’s *Policy Statement* at 52 Pa. Code § 69.1201 sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The *Policy Statement* sets forth ten factors we use when determining whether, and to what extent, a civil penalty is warranted in litigated and non-litigated settled cases. In settled cases, while many of the same factors may still be considered, the settling parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

B. ALJ’s Initial Decision

In her Initial Decision, ALJ Guhl made seven Findings of Fact and reached four Conclusions of Law. I.D. at 3-4; 16. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As a preliminary matter, the ALJ concluded that the Commission has jurisdiction over the parties and the subject matter of this proceeding. I.D. at 16, citing 66 Pa. C.S. §§ 501, 701, and 1101-1103. Upon review, the ALJ concluded that the Settlement is reasonable and in the public interest, and she approved the Settlement, without modification. *Id.* at 1, 14, 16. The ALJ found that the Settlement is a just and fair compromise of the serious issues raised in this proceeding for all Parties involved. *Id.* at 14.

The ALJ noted that the Parties engaged in a lengthy investigation and extensive litigation, and that the Authority cooperated with the investigation and has

taken steps to remedy the alleged misconduct. The ALJ acknowledged the Authority's obtaining of resolutions from the other municipalities for approval by the local governments to provide water service to customers within their municipal limits. Furthermore, the ALJ stated that the Authority has indicated that it is moving forward with system upgrades and improvements to address quality of service concerns of customers. The ALJ recognized the benefit of cost savings due to the reduction in litigation costs and time, especially, for customers of the Authority, who would likely have those costs passed on to them. *Id.* at 14-15.

With respect to the \$225,000 civil penalty, the ALJ concluded that the amount is consistent with the Commission's Regulations. Moreover, the ALJ noted that the civil penalty is in the public interest because it will deter the Authority from engaging in similar conduct in the future. *Id.* at 15.

Finally, the ALJ stated that resolution of this proceeding by settlement removes the uncertainties of litigation. The ALJ further concluded that the Settlement in lieu of litigation will benefit the Parties by the reduction in case expense and conservation of resources. By negating the need to file additional testimony, briefs and other pleadings and participate in hearings, the savings in case expense will benefit the Parties and the Authority's ratepayers. Instead, the ALJ concluded that those funds would be better spent on system upgrades and improvements. *Id.*

C. Exceptions and Reply to Exceptions

EDWA, in its Exceptions, states that this matter originated before the Commission as a result of a Formal Complaint filed by a customer of the Authority. The Authority states:

Typically, exclusive jurisdiction over the rates and service of municipal authorities rests within the Court of Common Pleas. However, in the course of the investigation of the water quality complaints that were made by the Complainant about the Authority, it was discovered that the Authority was operating in the municipalities of Cumberland Township, Greene Township, Monongahela Township, Perry Township and Whitely Township, all situate in Greene County, Pennsylvania. The PUC was granted jurisdiction in this matter, because the Authority was operating within those municipalities without ever applying for or obtaining a Certificate of Public Convenience, which is absolutely required of the Authority before it can offer service in those areas, pursuant to 53 P.S. § 5607(b)(3)(i).

EDWA Exc. at 5.

EDWA continues to briefly describe the Settlement and the \$225,000 civil penalty that the Authority would pay, as agreed to by the Parties. The Authority notes that the Settlement contemplated that, if the Authority sells or agrees to sell its operations, water facilities, or anything connected to its provision of water service prior to deadline for the payment of the civil penalty, that such an agreement must include a provision that the purchaser acknowledges and agrees to pay the \$225,000 civil penalty. *Id.* at 5-6.

Moreover, the Authority avers that, since this matter was initiated, it “has taken all appropriate legal steps to ensure that it obtains authority to operate in all municipalities in which it operates.” *Id.* at 6. The Authority states that “every municipality within its service area has enacted the proper resolution and/or ordinance permitting the Authority to provide water service within the various geographic areas within which the Authority now operates.” *Id.* EDWA maintains that due to this action, the Commission no longer has jurisdiction over the Authority, other than to enforce the ALJ’s Initial Decision. *Id.*

The Authority states that it does not seek to escape from complying with the ALJ's Initial Decision, but it does seek to alter the payment deadline for the civil penalty and modify its amount so it is more manageable for the Authority. The Authority avers that, since the issuance of the Initial Decision, it has entered into an agreement to sell all of its assets to Pennsylvania American Water Company (PAWC). To that end, the Authority notes that the \$225,000 civil penalty was disclosed to PAWC and the purchase agreement makes provisions for it to be paid by the Authority on or before the transfer of any assets to PAWC. The Authority states that it expects closing on this transaction will not occur for at least twelve to eighteen months, or longer. *Id.* at 7.

The Authority submits that it is faced with the need to make immediate upgrades to its treatment plant and distribution system, and the Pennsylvania Department of Environmental Protection (DEP) is requiring that the upgrades must be made immediately and cannot wait until after PAWC takes over operation of the Authority. The Authority avers that it does not have ample funds at this time to make the necessary upgrades and continue to operate on a daily basis. *Id.* at 7-8.

1. EDWA Exception No. 1 and I&E Reply

In its Exception No. 1, the Authority argues that the timetable for the payment of the civil penalty is excessive, unduly burdensome and contrary to the best interest and welfare of ratepayers and the general public. The Authority contends, that it should concentrate its efforts on paying for upgrades to its filtration and processing system, as discussed above, rather than paying a civil penalty which does nothing to ensure the health, safety and welfare of the public. The Authority avers that it is better to utilize its financial resources to pay for badly needed system upgrades so that a better

quality product can be delivered to customers rather than for a civil penalty which does not ensure that the public will receive safe drinking water. *Id.* at 9.

The Authority states that it is under the direction of a new and deliberate Board of Directors that is very hands on with regard to the operations of the Authority, and inquires about the specifics of proposed actions rather than simply accepting information from consultants. The Authority avers that this new management is properly conducting business and taking swift action to make the needed upgrades to its water system. The Authority argues that a \$225,000 civil penalty at this time is not practical or wise because the money could be spent to protect and keep the public safe. As such, the Authority requests that the Commission consider eliminating or modifying the civil penalty, and direct that it be paid directly from the proceeds of the sale of its assets to PAWC. The Authority notes that Commission approval is necessary for PAWC to acquire the Authority, and it requests that payment of the civil penalty be mandated as a condition of the approval of this acquisition. *Id.* at 10.

In reply, I&E does not contest the Authority's request to modify the timeframe for payment of the agreed-upon civil penalty from that specified in the Settlement. I&E proposes that the Initial Decision be amended to require payment of the civil penalty thirty days after the Commission issues a Final Order adopting the Initial Decision. I&E R. Exc. at 1, 6.

I&E avers that initial decisions regarding settlements usually will include a provision that an agreed-upon civil penalty shall be paid within a certain timeframe following the entry of a Final Order by the Commission, generally thirty days. I&E states that the Settlement achieved in September 2022 included a due date to pay the civil penalty by September 2023 because it was expected that twelve months would provide the Authority extra time to make the payment as compared to the thirty days after the entry of a Final Order. I&E further avers that modifying the time for the Authority to pay

the \$225,000 civil penalty until thirty days following the entry of a Final Order does not negatively affect the Settlement. *Id.* at 1-2.

2. EDWA Exception No. 2 and I&E Reply

In its Exception No. 2, the Authority avers that it should not be held liable for the payment of a civil penalty because it was acting solely on the advice of its legal counsel. The Authority states that the Commission became involved in this matter because the Authority was providing water service to municipalities in geographic areas outside of its approved service area without authority to do so. However, the Authority avers that it was only acting on the advice of its previous legal counsel at the time. The Authority avers that the prior counsel was made aware of the need for a Certificate and concerns about Commission Regulations, and that the prior counsel said he would review the issues and concluded that he did not believe there was a problem with the Commission. The Authority avers that it believes that the prior counsel advised the Authority to proceed and conduct business as usual without obtaining a Certificate from the Commission before extending water service into other townships. Based on this, the Authority submits that it and its Board of Directors is less culpable, and it argues that the Authority and its prior Board of Directors did not knowingly or intentionally act or violate the law when it provided service to customers outside of its service area without a Certificate. The Authority submits that these facts and information, which were contained in a letter, were not known to the Authority when the Settlement was filed, which was later discovered during the due diligence process associated with the negotiations with PAWC. The Authority states that the prior counsel did not remind the Authority of this correspondence or his previous advice during the litigation of this matter; however, the prior counsel advised the Authority to join the Settlement, which resulted in the \$225,000 civil penalty against the Authority. *Id.* at 10-12.

In reply, I&E contends that the \$225,000 civil penalty that the Authority agreed to pay is fair and reasonable, and the Authority's argument alleging that it relied on the advice of counsel is without merit and is not a defense to its violation of 53 P.S. § 5607(b)(3)(i). I&E argues that the Authority's argument that it failed to seek a Certificate from the Commission to provide water service to five townships beyond its municipal boundaries because it was acting on the advice of counsel is a frivolous argument. I&E submits that the Authority failed to provide any citation to a court that has held that a municipal authority may escape penalty for violating 53 P.S. § 5607(b)(3)(i) or any Commission law, rule, or regulation because it relied on the advice of counsel. Rather, I&E states that the Authority concedes this point because it stated in its Exceptions that such a defense is not necessarily exculpatory in nature. In addition, I&E avers that this argument by the Authority would be more appropriately considered in the Commission's evaluation of the third Rosi factor, under 52 Pa. Code § 69.1201; however, this factor is only considered in evaluating litigated cases, which is not the case here. I&E R. Exc. at 3, 6.

Furthermore, I&E argues that the Authority "pleads poverty to now get out from paying the civil penalty it has already agreed to pay." *Id.* at 4. I&E avers that the Authority's Exceptions support that, contrary to its claims, the Authority has enough funds available to pay for the needed updates to its water treatment facilities and the civil penalty. I&E points out that the Authority notes that the system upgrades will cost \$700,000, and that the amount of grant funding the Authority has received from the Community Development Block Grant-CARES Act program is nearly \$2,000,000. *Id.*

In addition, I&E notes that PAWC is aware of the civil penalty, and that the purchase agreement between the Authority and PAWC provides for the fine to be paid by the Authority on or before the transfer of assets to PAWC. I&E points out that the Settlement does not dictate the funding source from which the civil penalty should be paid, and that the Authority has the discretion to arrange its finances in the way that best

suits it and its customers, which could include using grant money to pay the civil penalty, obtaining a loan, rearranging the purchase agreement with PAWC to require PAWC to pay the civil penalty ahead of the takeover, or other funding sources or financial arrangements. *Id.* at 4-5.

Finally, I&E submits that the civil penalty amount was a compromise of what I&E could have sought if the parties had proceeded to litigation, and which I&E may still seek if the Authority's Exceptions are granted. I&E contends that it could have sought additional refunds of customer charges with interest or a higher civil penalty. I&E argues that the \$225,000 civil penalty already takes into consideration the Authority's small size, low customer base, and need for equipment upgrades and system improvements. *Id.* at 5.

D. Disposition

As a threshold matter, it is necessary to consider whether the Commission has jurisdiction with respect to municipal authorities, whether or not the authority is providing service outside of its incorporating municipal boundaries. In the Initial Decision, the ALJ found that the Authority, is a "municipal corporation" as defined at 66 Pa. C.S. § 102, and is providing extraterritorial service without a Certificate issued by the Commission. *I.D.* at 4. The ALJ also concluded, as a matter of law, that the Commission has jurisdiction over the subject matter and Parties in this case, pursuant to 66 Pa. C.S. §§ 501, 701, and 1101-1103. *Id.* at 16. As we explain below, this conclusion is incorrect.

On August 23, 2021, EDWA entered its "Articles of Incorporation" into the record certifying its compliance with the Municipality Authorities Act, under which it is authorized to provide water service to Dunkard Township and other geographic areas. EDWA Answer, Exh. A. This record evidence demonstrates that EDWA is a municipal authority authorized to provide water service in the Commonwealth.

Turning to the question regarding whether the Commission has jurisdiction over EDWA, upon our review of the relevant law, the courts of common pleas are vested with exclusive jurisdiction of the rates and services of such municipal authorities, beyond, as well as within, the limits of the municipality which created the authority.

Historically, as discussed, *supra*, Commission jurisdiction has existed over municipal utilities providing service outside of their political boundaries. Section 1102 of the Code, 66 Pa. C.S. § 1102, established that it shall be lawful for any municipal corporation to provide public utility service beyond its corporate limits so long as it obtains a Certificate from the Commission. Section 1301 of the Code, 66 Pa. C.S. § 1301, established Commission jurisdiction over the rates charged by municipal corporations when those entities provide public utility service outside their corporate limits. Section 102 of the Code, 66 Pa. C.S. § 102, defines a “municipal corporation” as:

All cities, boroughs, towns, townships, or counties of this Commonwealth, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.

66 Pa. C.S. § 102. Also, Section 1501 of the Code, 66 Pa. C.S. § 1501, provides the Commission with jurisdiction over the quality, reliability, and adequacy of services of those entities under similar terms. In addition, the Code contains other references and requirements for municipal corporations that offer service beyond their boundaries. *See, e.g.*, Pa. C.S. §§ 502, 507, 508, and 1304.

However, the Commission’s jurisdiction presently extends only to municipalities, not municipal authorities. The enactment of the Municipality Authorities Act in 1945 removed municipal authorities from Commission jurisdiction and, instead, vested the courts of common pleas with exclusive jurisdiction over rates and services of

municipal authorities. Specifically, Section 5607(d)(9) of the Municipality Authorities Act states:

Any person questioning the reasonableness or uniformity of a rate fixed by an authority or the adequacy, safety, and reasonableness of the authority's services, including extensions thereof, may bring suit against the authority in the court of common pleas of the county where the project is located or, if the project is located in more than one county, in the court of common pleas of the county where the principal office of the project is located. The court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service.

53 Pa. C.S. § 5607(d)(9).³ Therefore, the Commission has no authority over entities created and operating under the Municipality Authorities Act.

The Courts have reviewed and upheld this statutory language. For instance, the Superior Court of Pennsylvania found that the Municipality Authorities Act provided the courts of common pleas, not the Commission, with exclusive jurisdiction over the rates and service of a municipal authority within, and beyond, the corporate boundaries of the municipality which created it. *See, Rankin v. Chester Municipal Authority*, 68 A.2d 458 (Pa. Super. 1949) (*Rankin*). In addition, the Supreme Court of Pennsylvania reached a similar holding. *See, Elizabeth Twp. v. Mun. Auth. of McKeesport*, 447 A.2d 245 (Pa. 1982).⁴ In both of these cases, the Courts acknowledged that the provision of Section 5607(d)(9), 53 Pa. C.S. § 5607(d)(9), which was a result of an amendment to the Municipality Authorities Act in 1945, was intended to reject the Superior Court's holding in *State College Borough Authority v. Pa. PUC*, 31 A.2d 557

³ The Municipality Authorities Act was officially codified in 2001, as 53 Pa. C.S. § 5601, *et seq.*, and was intended as a continuation of the prior law, the Municipality Authorities Act of 1945. As a result, Section 4B(h) of the Municipality Authorities Act became 53 Pa. C.S. § 5607(d)(9).

⁴ *See also, Calabrese v. Collier Twp. Mun. Auth.*, 240 A.2d 544 (Pa. 1968).

(Pa. Super. 1943), that permitted the Commission to hear challenges to the rates of municipal authorities.⁵ Also, the Commonwealth Court has similarly held that the courts of common pleas, not the Commission, have exclusive jurisdiction of the rates and service of municipal authorities, both within and outside, their corporate boundaries. *See, Graver v. Pa. PUC*, 469 A.2d 1154 (Pa. Cmwlth. 1984) (*Graver*);⁶ *Borough of Sewickley Water Authority v. Mollica*, 544 A.2d 1122 (Pa. Cmwlth. 1988); and *White Rock Sewage Corp. v. Pa. PUC*, 578 A.2d 984 (Pa. Cmwlth. 1990).⁷

⁵ The Superior Court in *Rankin* acknowledged that [now codified 53 Pa. C.S. § 5607(d)(9)] was inconsistent with certain sections of the Public Utility Law, now the Code, that provided the Commission with jurisdiction over the reasonableness of rates charged by a municipal authority to consumers residing outside the municipality which created the authority. However, the Court concluded that where there is a “positive repugnancy” between laws enacted at different times, the earlier provision is impliedly repealed. Therefore, the Court held that it was clear that “a definite limitation [was] imposed upon the operation and effect” of the provision of the Public Utility Law by the Municipality Authorities Act, which resulted in “the determination of issues involving reasonableness of rates beyond the corporate limits of the municipality creating the Authority – as well as within – now lies exclusively with the court of common pleas.” *Rankin* at 461.

⁶ Like *Rankin*, the Court in *Graver* also explained that the Municipality Authorities Act modified the Code. *See, Graver* at 1157.

⁷ The Commonwealth Court, in an unreported opinion in November 2020, affirmed the Greene County Court of Common Pleas’ Order granting the preliminary objection of the Southwestern Pennsylvania Water Authority and dismissing the complaint filed by the EDWA in a territorial dispute regarding the provision of water service in their service areas under the Municipality Authorities Act because EDWA failed to produce evidence of the Commission’s approval of its provision of service beyond the boundaries of Dunkard Township. *See, East Dunkard Water Authority v. Southwestern Pennsylvania, Water Authority*, 2020 Pa. Cmwlth. Unpub. LEXIS 547 (Pa. Cmwlth. 2020). It does not appear that this unreported opinion can be relied upon in the instant matter because it is not relevant under the doctrine of law of the case, *res judicata*, or collateral estoppel. Additionally, the cases cited in this decision regarding Commission jurisdiction over extraterritorial service, including *Ridgway v. Pa. PUC*, 83 Pa. Cmwlth. 379, 480 A.2d 1253 (Pa. Cmwlth. 1984) (*Ridgway*), as discussed further below, dealt with municipalities, and not municipal authorities, providing the service. However, the Commonwealth Court’s conclusion that EDWA was obligated to submit to Commission jurisdiction to seek a Certificate authorizing it to operate beyond the

Furthermore, the Commission has held that the jurisdiction over the rates and service of municipal authorities, within and outside of the limits of the municipality which created the authorities, lies with the courts of common pleas, and not the Commission. The ALJ explained this conclusion in *Schneider v. Borough of New Wilmington and New Wilmington Water Authority*, Docket No. C-00924506 (Order entered March 23, 1993, adopting the Initial Decision dated February 8, 1993), 1993 Pa. PUC LEXIS 4 (*Schneider*), as follows:

Municipal authorities are organized under and governed by the Municipality Authorities Act. Municipal authorities are not creatures, agents or representatives of municipalities which organize them, but rather are independent agencies of the Commonwealth and a part of its sovereignty.” *White Rock Sewage Corp. v. Pennsylvania Public Utility Commission*, 133 Pa. Commonwealth Ct. 608, 614-15, 578 A.2d 984, 987 (1990); accord section 4A of the Municipality Authorities Act, 53 P.S. § 306A.

Section 4B(h) of the Municipality Authorities Act, 53 P.S. § 306B(h),⁸ declares that

[a]ny person questioning...the adequacy, safety and reasonableness of the Authority’s services, including extensions thereof, may bring suit against the Authority in the court of common pleas of the county wherein the project is located...The court of common pleas shall have exclusive jurisdiction to determine all such questions involving rates or service.

(Emphasis added.) Consequently, pursuant to section 4B(h), “the courts of common pleas have exclusive jurisdiction concerning the utility services of municipal authorities beyond, as well as within, the limits of the municipality

municipal boundaries of Dunkard Township appears to be at odds with precedent establishing that the Court of Common Pleas retains jurisdiction for disputes involving the rates of and services provided by municipal authorities whether inside or outside of their municipal boundaries.

⁸ 53 P.S. § 306B(h) is now, 53 Pa. C.S. § 5607(d)(9).

which created the authorities.” *Borough of Sewickley Water Authority*, 118 Pa. Commonwealth Ct. at 246, 544 A.2d at 1124 (quoting *Graver v. Pennsylvania Public Utility Commission*, 79 Pa. Commonwealth Ct. 528, 531-32, 469 A.2d 1154, 1156 (1984)).

Accordingly, I conclude that the Commission lacks jurisdiction over Landowner’s complaint because it concerns a municipal authority’s provision of water service.

Schneider at 3-4. The Commission has similarly found that it does not have jurisdiction over municipal authorities providing extraterritorial service. *Paul E. Zimmerman v. Township of Whitpain et al.*, Docket No. C-00822905 (Order entered October 19, 1984). Also, in 2018, the Commission, in *Implementation of Chapter 32*, reviewed the background and history of the removal of municipal authorities from the Commission’s jurisdiction by the Municipality Authorities Act.

To the contrary, reliance on the Commonwealth Court’s ruling in *Ridgway* appears inapposite to the instant matter. *Ridgway* involved a municipality providing extraterritorial sewer service to the public, not a municipal authority. As discussed, *supra*, municipalities and municipal authorities are separate legal entities created by separate laws, and they are independent agencies of the Commonwealth. While the Commission has exclusive jurisdiction over municipalities which are providing extraterritorial service to the public, municipal authorities, as explained above, are different types of entities organized and existing under different laws. Inasmuch as the decision in *Ridgway* did not involve a municipal authority, its ruling does not appear to be applicable in the instant matter.

Based on the reasons set forth above, the Commission lacks jurisdiction over the rates and services of municipal authorities like EDWA. Rather, under the Municipality Authorities Act, that jurisdiction lies exclusively with the courts of common pleas. Therefore, the Commission lacks jurisdiction to consider both the Complaint and

resulting Settlement in this matter. Accordingly, we shall deny EDWA's Exception Nos. 1 and 2.

IV. Conclusion

Based upon our review of the record in this matter and the applicable law, we will deny the Exceptions of the EDWA and modify the ALJ's Initial Decision, consistent with this Opinion and Order. In addition, we shall reject the Settlement filed by I&E and the EDWA, and dismiss I&E's Complaint, for lack of Commission jurisdiction; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of the East Dunkard Water Authority, filed on August 10, 2023, to the Initial Decision of Administrative Law Judge Marta Guhl, issued on June 27, 2023, at this docket, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Marta Guhl, issued on June 27, 2023, at this docket, is modified, consistent with this Opinion and Order.
3. That the Settlement filed between the East Dunkard Water Authority and the Commission's Bureau of Investigation and Enforcement on September 26, 2022, is rejected for lack of Commission jurisdiction.
4. That the Formal Complaint filed by the Commission's Bureau of Investigation and Enforcement against the East Dunkard Water Authority on August 2, 2021, is dismissed for lack of Commission jurisdiction.

5. That the docket at C-2021-3027615 is hereby marked closed.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 19, 2023

ORDER ENTERED: November 1, 2023