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Subject: [External] Public Utility Commission, Docket No. C-2021-3027615

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To the Honorable Judge Guhl,

The customers of East Dunkard Water Authority have found in the joint settlement documents that the proposed agreement between the I&E and the EDWA states that with the adoption of the agreement, the PUC will “no longer” have jurisdiction over the EDWA. The words “no longer” are important, because it has clearly been established and accepted that the PUC currently has jurisdiction over the EDWA.

Based on the Commission’s continued refusal to acknowledge customer complaints in spite of having jurisdiction over the EDWA now and having had it for the last decade, many of us are becoming resigned to the fact that the final judgment against the EDWA will involve not only a fine that comes directly out of the pocket of EDWA customers, but also the closing of the only avenue they potentially had to dispute it.

Still, none of us intend to allow the Commission to make its final decision on the complaint against the EDWA without hearing customers to plead their own case, as futile as we expect that to be. To that end, I’d like to present what hopefully really is my final prohibited *ex parte* communication, which must be included as a matter of public record. (Though, for that record, I and every person that has reached out to the Commission wholly deny that these communications are intended to benefit one party over another. They are sent in hopes to influence the decision to benefit the customers, and neither the I&E nor the EDWA’s legal counsel are looking out for their interests.)

From the Joint Petition for Approval of Settlement, Appendix B, page 8

“...the Authority failed to furnish and maintain adequate, 5 66 Pa.C.S. § 1102(a)(5). Appendix B Page 9 of 16 9 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.”

Of the two complaints outlined by the I&E, the water quality issues are far more egregious and should have been both the focus of the investigation and the corrective measures. The I&E’s characterization of the EDWA’s violations from the Pennsylvania Department of Environmental Protection for “discolored, leaking and low in water pressure” is a flagrant misrepresentation of the nature of the Department’s findings, all of which were readily available to the Commission.

From the DEP’s Administrative Order which was hand delivered to the East Dunkard Water Authority on August 25, 2022:

L. (I) On July 20 and 21, 2021, the Department conducted an inspection of the East Dunkard System (July 21, 2021 inspection). On July 27, 2021, the Department conducted an administrative inspection of the East Dunkard System, including telephone conversations with the Authority’s consulting engineer and certified operator (July 27, 2021 inspection)...

O. During the July 21, 2021 inspection, the Authority informed the Department that it failed to report to the Department, within one hour of discovery, that the variable speed mixer in the East Dunkard System's clarifier was inoperable, and had been inoperable for at least one year, in violation of 25 Pa. Code § 109.701(a)(3)(iii)(B)...

P. On July 20, 2021, the Authority informed the Department that the chlorine analyzer at the Griffin Tank entry point had been disabled on July 17, 2021 during a storm, which the Authority failed to report to the Department within one hour of discovery, in violation of 25 Pa. Code § 109.701(a)(3)(iii)(B)...

R. During the July 21, 2021 inspection, the Authority informed the Department that the Authority had neither been continuously monitoring and recording the chlorine residual disinfectant concentration at the East Dunkard System nor collecting grab samples every four hours since the chlorine analyzer at the Griffin Tank entry point had become disabled on July 17, 2021, in violation of 25 Pa. Code § 109.301 (1)(i)(D)...

U. On July 21, 2021, the Department reviewed the Authority's records, which showed that the Authority had been chronically failing to perform sampling and analysis for chlorine residual disinfectant concentration in accordance with EPA Method 334.0 by not completing analyst demonstrations of capability, initial/routine verification of handheld/benchtop analysis equipment, and initial/routine verification of on-line analysis equipment, in violation of 25 Pa. Code § 109.304(a). The Department also cited this violation in its July 21, 2021, 2021 Sanitary Survey and January 18, 2022 inspection reports. Additionally, during the January 18, 2022 inspection, the Authority's staff was not yet using SOPs approved by its certified operator, in violation of 25 Pa. Code § 109.304(c).

Y. During the 2021 Sanitary Survey inspection, the mechanical equipment for the variable speed mixing system was not functioning, and as of the January 18, 2022 inspection, the Authority had not resolved this violation. During the April 7, 2022 inspection, the mixing system was functional. During an April 11, 2022 call with the Department, the Authority informed the Department that it had taken temporary measures to restore the mixer to service but was awaiting parts and equipment fabrication to be able to effect long-term repair. During the August 3, 2022 inspection, the clarifier was not functioning properly. As of the August 3, 2022 inspection, the parts and fabricated equipment were still not obtained....

AG. During the July 21, 2021 inspection, the Authority informed the Department that it had capped the individual filter effluent (IFE) turbidimeters at 2.5 NTU and the CFE turbidimeter at 1.0 NTU, preventing the turbidimeters from consistently determining and indicating the actual turbidity of the East Dunkard System's water, in violation of 25 Pa. Code §§ 109.602(a) and 109.602(c).

AH. In preparation for the July 21, 2021 inspection, the Department reviewed the Authority's records, which showed that the East Dunkard System had experienced numerous turbidity spikes recorded on both the IFE and CFE turbidimeters during the previous twelve months. During the July 21, 2021 inspection, the Authority was unable to demonstrate that it had investigated or corrected the cause(s) of the turbidity spikes, in violation of 25 Pa. Code §§ 109.4(2), 109.4(3), and 109.4(4).

BE. During the 2021 Sanitary Survey inspection, in addition to the filter-related violations observed during the July 21, 2021 inspection, the East Dunkard System had: 1) a significant lack of filter waste-holding capacity in the clarifier and the sludge and backwash lagoon; 2) mud balls forming on the filter(s)

The precise language of the Department's report does not do justice to the severity of their findings. The staff of the Authority admitted to tampering with the turbidity monitors, whose proper functioning is imperative to ensuring adequate disinfection of water being distributed to the public. This tampering was not negligent, haphazard or in poor judgment. It was criminal.

Additionally, the authority was not properly monitoring chlorine levels. The turbidity spikes repeatedly occurring at the plant were compromising the disinfection process, and this combined with the lack of residual chlorine monitoring would have made it impossible for the Authority to prevent waterborne pathogens from reaching the customers. For years, the customers of East Dunkard Water Authority believed that the water was making them sick. I want to assure you of the level of confidence in which I state this: It was. This water was making people sick and it could have killed someone.

The DEP requires safeguards to protect the public in case of such occasional failures of treatment or monitoring, and the turbidity spikes occurring in the plant should have triggered multiple boil water orders over the years. In fact, the customers will attest to never having had a boil water order in the years leading up to the DEP inspection in July. As soon as the turbidity monitors were restored to proper functioning, the EDWA experienced its first boil water order *within a matter of days*. This would be the first of three boil orders in less than a year, each lasting several weeks.

The inspection that revealed these deficiencies happened days before the Authority was served with the PUC complaint, but the I & E was clearly aware of them as evidenced by their statement in the Joint Petition for Approval of Settlement:

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.

These boil water orders did not happen until after the tampering of the monitors had been discovered by the DEP, which means this statement was written long after the inspection. Still, the commission investigated and presented nothing more thorough than can be found in an article in the local paper.

It should be noted that an administrative order is a much more serious matter than the violations that the Authority had been collecting prior to the AO being served. The Department only resorted to an administrative order after months of inadequate progress and lack of cooperation from the Authority.

It must also be noted that during the decade that these issues were occurring, the Commission did have, as they now acknowledge, jurisdiction over the EDWA. Countless complaints were made to the Public Utility Commission about the East Dunkard Water Authority. Each was kicked back with a statement that the Commission does not have jurisdiction over the Authority. It appears now that the Commission will not only not address their lack of action after they first discovered they had jurisdiction over the EDWA, but they also intend to wash their hands of these people after this complaint is closed.

The I & E asserts:

I&E maintains that the purpose of subjecting a municipally operated public utility which renders service beyond its corporate limits to the Commission's jurisdiction is to protect users of the service who are not residents of the municipality.

Not mentioned in the proposed agreement between the I&E and the EDWA is that the customers who reside outside of Dunkard Township will still have no opportunity to elect the supervisors and therefore no say in the appointment of the board. None of the terms of the proposed agreement address this issue.

The legal counsel for the Authority is equally at fault for the inadequate agreement between the I&E and the Authority. Their response to the complaint makes many factually incorrect statements, most of which could be confirmed or disproven by *any minimal attempt* by the Commission to do so either by discussion with the customers affected or by reviewing any of the multiple complaints submitted to the Commission itself.

The interim order dated Aug 23, 2022 notes the Authority's position:

Moreover, the Authority acknowledges the July 9, 2019 Notice of Violation from the DEP states that the Authority failed to monitor or report sample results from free chlorine residual within the distribution system on a weekly basis. The Authority notes that it is the Authority's public notification that states that there was a failure to report required coliform residuals. The Authority's public notice also included a statement that the resampling was completed and the resamples showed that the Authority was meeting regulated standards put in place by the DEP, and that the public did not need to take any action with regard to their water. The Authority states that it worked to immediately rectify the issue presented by the DEP to ensure that the water quality was meeting the DEP requirements and safe to drink.

The violations referenced in this statement occurred before the July, 2021 inspections by the DEP, which revealed not just significant deficiencies in the state of the water treatment plant, but chronic, ongoing issues that would have existed before, during and after 2019 and that the Authority's legal counsel would have been aware of when this statement was made. Any implication that the Authority improved the water quality issues after the 2019 violations is a misrepresentation of the facts.

To preempt any attempt the counsel would make to claim that they are working on the best information provided to them, solicitor Dennis Makel was well aware of the failure of the Authority's attempts to remedy the water quality issues in 2019, as he himself was overseeing the DEP compliance plan. It is not common practice to have a law firm oversee the water quality improvements of a failing system, nor should it be. He is comically unqualified to do so, as evidenced by the continued water quality issues, the findings of the 2021 inspection, and, most importantly, the fact that *he's a lawyer*.

On a positive note, the plan did work out well for at least two people. According to my sources, both the engineer and the law firm did quite well financially off of this arrangement. The Authority, being on the receiving end of those bills, unfortunately did not.

In the same document, the Authority goes on:

Finally, the Authority maintains that not all of the customer complaints deal with water quality issues, and each of the complaints were handled and addressed by the Authority in a timely manner. All but a few of the complaints contain action items and results of the Authority's actions to address the complaints and/or any follow up that may be necessary. In addition, the Authority provided customers with the phone number for its appointed engineer so that the engineer could immediately respond to customers' homes to test water when any concerns were raised by customers, and it further purchased additional testing equipment to be able to detect smaller quantities of contaminants.

From January of 2022 to the time this document was published, the customers complaints were being handled primarily by the EDWA board's vice chair, Tracy Pekar. As noted in a previous communication to the Commission, this board member (and to be clear, it was only this board member) had engaged in months of condescending, abusive, petty, and dismissive responses to EDWA customers' complaints. This includes telling an elderly woman to "go to the river" if she wants to wash her clothing, telling a disabled woman to "go to the river with a bucket" in response to a request for bottled water, explaining illnesses during a boil water order by saying that customers do not practice proper hand washing, and repeatedly telling customers to disconnect from the EDWA and dig a well if they do not like the way it is run.

The EDWA's legal counsel would have been well aware of this behavior as they were claiming that the EDWA was addressing customers' concerns, as they sat in on the meetings in which the customers tried to address the vice chair's behavior and proceeded to *defend said behavior* by stating that the vice chair is also a customer and as such may say what she wants.

This same board member has not only blamed the Department of Environmental Protection for the condition of the system, but she actively interfered with their work by discouraging customers from allowing the DEP to test their water. While claiming that the EDWA was better equipped to test the water than the DEP, she was offering incomprehensible, meaningless test results to the customers that were bringing water in to sample. The Department of Environmental Protection is the only agency with oversight authority and the only agency making any attempt to correct the water quality issues in the EDWA, and their work was being impeded by this board member.

The Commission's final decision is an opportunity to correct years of mismanagement and corruption, much of which is centered around the law firm that represented the Authority in this very case. The court has been repeatedly misled by the Authority's legal counsel, both in this case and in the case that triggered the investigation. I am fully aware of the gravity of these accusations and I do not make them lightly. There is much more at stake here than a \$16 fee on a water bill.

Respectfully,
Jessica Canty