

August 9, 2023

**Via Electronic Filing**

Rosemary Chiavetta,  
Secretary PA Public Utility  
Commission PO Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (Commission) please find the Exceptions of the East Dunkard Water Authority in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

If you have any questions with regard to this matter, please do not hesitate to contact me.

Very truly yours,

TURTURICE & ASSOCIATES, LLC

By: 

Lane M. Turturice  
Attorney at Law

LMT/bsf

cc:

Enclosure

Michael L. Swindler, Esquire (Via electronic means)  
PUC Office of Special Assistants (Via electronic means at [Ra-OSA@pa.gov](mailto:Ra-OSA@pa.gov))

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY  
COMMISSION**

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

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that this day I served a copy of the **Exceptions of the East Dunkard Water Authority** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only to:  
Michael L. Swindler  
Pennsylvania Public Utility  
Commission  
Bureau of Investigation and  
Enforcement  
Commonwealth Keystone  
Building  
400 North Street  
Harrisburg, PA 17120  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

TURTURICE & ASSOCIATES, LLC



Date: August 9, 2023

\_\_\_\_\_  
Lane M. Turturice, Esquire  
*Attorney for East Dunkard Water  
Authority*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY  
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**EXCEPTIONS OF THE EAST  
DUNKARD WATER  
AUTHORITY**

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## I. INTRODUCTION

This matter originated before the Pennsylvania Public Utility Commission (hereinafter the PUC) as a result of a Complaint that was filed by a customer of the East Dunkard Water Authority (hereinafter the Authority and/or the EDWA) alleging various violations. Typically, exclusive jurisdiction over the rates and service of municipal authorities rests within the Courts 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)

Ultimately, following a protracted period of litigation, all participants in this case filed a Joint Petition for Settlement on September 26, 2022. As part of the Joint Settlement, the parties agreed that the Authority would pay to the PUC a fine in the amount of \$225,000.00 on or before September 1, 2023 to resolve the alleged violations, among other things. Furthermore, it was also contemplated

that if the Authority sells or agrees to sell its operations, water facilities, or anything connected to its provisions of water service prior to the payment deadline, that the Agreement must include a provision that the purchaser acknowledges and agrees to pay the agreed upon civil penalty of \$225,000.00. Administrative Law Judge, Marta Guhl issued the Initial Decision that is the subject of these Exceptions on June 27, 2023, (hereinafter referred to as “I.D.”)

It is important to note that since this matter was initiated, the Authority has taken all appropriate legal steps to ensure that it obtains authority to operate in all municipalities in which it operates. In fact, every municipality within the Authority’s 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. So, at this time, the PUC no longer has jurisdiction over the Authority, other than to enforce the decision of the Office of Administrative Law Judge regarding the initial complaint filed against the Authority.

While the Authority does not seek to escape compliance of the recent June 27, 2023 decision of the Administrative Law Judge, it does however, seek to alter the payment timeline for the fine and if the PUC feels it is appropriate to also modify the amount of the fine to a more manageable amount for the Authority,

which also ensures that as much money as possible is spent on upgrades to the water plant. Since the entry of the June 27, 2023 I.D. of the Administrative Law Judge, the Authority has entered into an Agreement to sell all of its assets to the Pennsylvania American Water Company. The civil penalty of \$225,000.00 was disclosed to the purchaser and the Agreement makes provision for the fine to be paid by the Authority on or before the transfer of any assets to Pennsylvania American Water Company. It is expected that a closing on this transaction will not occur for at least 12-18 months, maybe longer.

Right now, the Authority is faced with having to make immediate upgrades to its treatment plant as well as distribution system. While one might think that the Authority could wait until Pennsylvania American Water Company takes over operation of the Authority before these upgrades are made, the Pennsylvania Department of Environmental Protection has made it abundantly clear that the Authority must make immediate upgrades to its treatment/processing facilities, immediately. Right now, the Authority does not have ample funds to make these upgrades, let alone sufficient funds to continue to operate on a day-to-day basis. The Authority does have some grant funding available to it but given the upgrades that the DEP is demanding to occur, immediately those grant funds need to be repurposed and the scope of work modified and then approved by the funding sources. The immediate upgrades that are needed are set forth on the

attached Exhibit “A”. Overall, the approximate cost of all needed immediate upgrades is nearly \$700,000.00, all of which is either part of a DEP Consent Order or which is also the subject of a DEP Field Order. A recent conference with counsel for the DEP confirmed that the Department is expecting these upgrades be made, immediately and that the Authority has no choice whether to complete the needed upgrades. Most particular, the DEP confirmed that the Authority cannot under any circumstance wait until Pennsylvania American Water Company takes over operation of the Authority. In the end, the Authority is asking the PUC to consider either modifying the timetable for the payment of the fine and/or modifying the amount of the fine or eliminating it, altogether.

## **II. EXCEPTIONS BY EAST DUNKER WATER AUTHORITY (EDWA)**

EDWA’s Exceptions to the I.D. of Administrative Law Judge Marta Guhl (“ALJ”) request that the Commission reject portions of the I.D. due to circumstances which arose either just before or immediately following the entry of the I.D.

### **A. Exception 1: The timetable for the payment of the civil penalty is excessive, unduly burdensome and contrary to the best interest and welfare of ratepayers and general public.**

1. The Authority should concentrate its efforts on paying for upgrades to its filtration and processing system and not paying a civil fine, which does nothing to ensure the health, safety and welfare of the public.

The question presented is truly whether it would be better for the Authority and general public for the Authority to focus its scant monetary resources on the payment of civil fines or penalties, which in no way ensure that the public will receive safe drinking water, as opposed to appropriating all available funds to upgrading the water filtration and processing facilities to perhaps, ensure that the Authority delivers a better, quality product for consumption by the consumers? Considering the amount and cost of the upgrades outlined on Exhibit "A", these upgrades are badly needed, now. Whether these upgrades are paid through the Authority's general fund or whether grant funding is obtained and/or repurposed, the public's money is better well spent on the much-needed upgrades needed at the Authority's water plant than paying a civil penalty, which does nothing to solve the overall problem of the poor water quality that is consistently identified in the water that the Authority provides to the public.

The Authority is under the direction of a new and very deliberate Board of Directors. A Board of Directors that is very hands on in the operations of the Authority and which are also customers of the Authority. The current Board of Directors does not simply accept information about the Authority operations from their consultants without inquiring about the specifics of any proposed action. In fact, some board members which possess the necessary mechanical expertise are actively in the field working to improve the distribution system of the Authority,

which also desperately needs a multimillion-dollar upgrade. In this economy, the government and its regulators need to be practical, but measured. While the Authority understands the government's frustration with the past actions of the Authority and its prior Board of Directors, the Authority is under new management and is now conducting business as it should and taking swift action to make the necessary upgrades to its water system. A \$225,000 penalty at this time is not practical, nor is it wise, especially when that public money could be allocated to better protect the public and keep the public safe. The Commission should consider eliminating the civil penalty, modifying the amount to a more manageable amount, or directing that the civil penalty be paid directly out of the proceeds from the closing of the transaction with Pennsylvania American Water Co. After all, the Commission has broad discussion in this instance, because PUC permission is necessary for Pennsylvania American Water Company to acquire the EDWA and hence has the authority to mandate payment of the penalty as a condition of the approval of the acquisition by Pennsylvania American Water Company.

**B. Exception 2: The East Dunkard Water Authority should not be held liable for the payment of a civil penalty, as it was acting solely on the advice of its counsel.**

The reason why the PUC became involved in this matter at all was because EDWA was providing water service to geographic areas outside its approved service area, without a Certificate of Public Convenience from the PUC. Moreover, the

Authority was operating in at least five municipalities without any authority to do so, either in law or fact. The Authority believes and therefore avers that it was only acting on the advice of its counsel at the time, Dennis M. Makel. Attorney Makel had been made aware of the need for a Certificate of Public Convenience or “concern about the possibility of PUC Regulations if there is just one township or an authority made up of multiple townships.” (See Exhibit “B”) In fact, Makel was alerted to this concern through a colleague representing one of the other Townships involved in the East Dunker Water Association. In response to said concern, Makel told the colleague that he “would review the same and would get back to him if there was a problem with the PUC”, which Makel then said that he did “not believe there is.” A copy of the letter dated April 14, 2010 wherein Makel confirms all of the latter is attached hereto and marked as Exhibit “B”. So, based on information and belief, the Authority believes and therefore avers that Makel advised the Authority to proceed and conduct business as usual without obtaining a Certificate of Public Convenience, before extending water service into Cumberland Township, Greene Township, Monongahela Township, Perry Township and Whitely Township, despite being urged to do so from another municipal solicitor.

While not necessarily exculpatory in nature, the fact that the Authority may have been advised improperly could certainly explain why the Authority did what it did, which tends to make the Authority and its Board of Directors less culpable. It

also lends itself to an argument that the Authority and/or its prior Board of Directors did not knowingly or intentionally act as it did or violate the law as it did when it provided service to customers outside its service area without a Certificate of Public Convenience. All of the aforesaid facts were not known to the Authority when the Petition for Settlement was filed. It was only after the Petition for Settlement was filed in December, 2022 that the Authority discovered Exhibit “B” during the due diligence process as part of its negotiations with Pennsylvania American Water Company. Makel never reminded the Authority of this correspondence or his previous advice during the “extensive litigation” (quoting page 2 of the I.D.) of this matter, but nonetheless so advised the Authority to join in the Petition for Settlement, which resulted in the imposition of the \$225,000 civil penalty against his client.

### III. CONCLUSION

For the reasons set forth above, the EDWA respectfully requests that the Commission grant these Exceptions and reject the recommendations of the Initial Decision consistent with the foregoing discussion so that the civil penalty is either eliminated in its entirety, modified and/or the timetable for payment is altered.

Respectfully submitted,

TURTURICE & ASSOCIATES, LLC



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Lane M. Turturice, Esquire

ID # 85088

[lane@lmtlawyer.com](mailto:lane@lmtlawyer.com)

70 E. Wheeling Street

Washington, PA 15301

(724) 470-9640

Fax (724) 470-9639

*Attorney for East Dunkard Water  
Authority*

DESCRIPTION	PRICE	TOTAL	MANDATORY
FILTERMEDIA REPLACEMENT X-4 FILTERS TO HELP CORRECT W/ \$150,000 PER FILTER	\$800,000.00		YES
SECONDARY CONTAINER FOR EXTRA CHEMICAL STORAGE	\$2,000.00-\$5,000.00		YES
REPAIR 2000L STORAGE FOR LAB	\$4,000		YES
REPAIR LAB	\$10,000.00-\$15,000.00		YES
REPLACE CHEMICAL STORAGE LAB	\$500.00		YES
REPLACE CHEMICAL STORAGE LAB	\$500.00		YES
REPLACE AND RELOCATE PRATT VALVE	\$3,000.00 PER CONTR	\$3,000.00	YES
REPLACE 8200 CONTROL LENS FOR TURBIDITY METERS X-6	\$4,954.00 EACH	\$25,124.00	YES
REPLACE 1720 TURBIDIMETERS X-6 REPLACE WITH TU3030SC	\$7,000.00-\$8,500.00		YES
HIGH SERVICE PUMP # 1 REBUILD	\$7,000.00-\$8,500.00		YES
REPAIR 2 150 HP VFDS IN RAW AND HIGH SERVICE	\$15,000.00-\$25,000.00 EACH		YES



April 14, 2010

Barry Bennett  
EAST DUNKARD WATER ASSOCIATION  
P.O. Box 241  
2790 South Eighty Eight Road  
Dilliner, PA. 15327-0241

IN RE: East Dunkard Water Association/Dunkard Township

Dear Mr. Bennett:

I recently spoke with Attorney J. William Hook concerning the incorporation of EDWA as an authority. During our conversation, I advised him that the EDWA would save money, and I questioned the need to have more than one Township incorporate an authority. He advised me that his Opinion to the Township was that various options could be viewed by the Township as to whether to incorporate or not, which are as follows:

1. An authority incorporated by just Dunkard Township.
2. An authority incorporated by multiple townships.

He did not tell the Township that it was necessary to have a joint municipal authority. He did raise a concern about the possibility of PUC Regulations if there is just one township or an authority made up of multiple townships. I told him that I would review the same and would get back to him if there was a problem with the PUC, which I do not believe there is.

Once I get back to him on that issue, it would be prudent to schedule a joint meeting of the Association and Township to discuss the options.

In our discussions, he also advised me that EDWA was an association as a result of an attorney from West Virginia utilizing that concept and, over the years, there was some discussion about making the Association an authority. He does not appear to be dead-set against that concept. However, we will have to cross that bridge down the road.



Barry Bennett  
EAST DUNKARD WATER ASSOCIATION  
April 14, 2010 - PAGE 2

As always, if you have any questions or comments, please do not hesitate to contact my office. Thank you.

Very truly yours,



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Dennis M. Makel, Esquire  
Solicitor for East Dunkard Water Asso.

DMM/val

Verification

I, Theresa Helton, hereby declare that I am the Manager of the East Dunkard Water Authority; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Exceptions are true to the best of my knowledge, information and belief, as provided to me by my clients, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Dated: August 9, 2023

East Dunkard Water Authority

*Helton, Theresa*

\_\_\_\_\_  
Theresa Helton, Manager

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