

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

**Joint Petition Of Pennsylvania-American
Water Company And The
Department Of Environmental
Protection Requesting An Ex Parte
Emergency Order In Regard To
Receivership Of East Dunkard Water
Authority**

Docket No. P-2023-3043950

EX PARTE EMERGENCY ORDER

On October 30, 2023, the Pennsylvania Department of Environmental Protection (DEP) and Pennsylvania American Water Company (PAWC) filed a Joint Petition (Joint Petition) pursuant to 52 Pa. Code § 3.2 seeking an emergency order directing PAWC to act as a receiver to operate the East Dunkard Water Authority (Authority).

The Authority is a municipal water authority that owns, operates, and maintains a municipal drinking water system serving approximately 1,800 households, businesses and schools and a population of approximately 4,200 in the following municipalities: Dunkard Township, Greene Township, and portions of Monongahela, Cumberland, Perry, and Whiteley Townships (Water System or System). The Water System consists of a surface water source (the Monongahela River), a conventional filtration water treatment plant including disinfection, water pumping facilities, water storage facilities, and a distribution system. Joint Petition at 1.

In the Joint Petition, PAWC and DEP averred that, since July 2021, DEP has conducted numerous inspections and issued multiple Orders to the Authority for violations of the Safe Drinking Water Act (SDWA) and its regulations. *Id.* Among the conditions underlying the violations identified at the Authority's Water System are

conditions that threaten to render portions of the water treatment process inoperable or ineffective, which would endanger public health, safety, and welfare. *Id.* at 1-2.

The Joint Petition explains that, on August 25, 2022, pursuant to the SDWA, DEP issued an order to the Authority (August 2022 Order) requiring a series of corrective actions to address deficiencies in the System, including requirements for: (1) all process control decisions to be made by a certified operator, staff in consultation with the certified operator or staff using Standard Operating Procedures; (2) continuous staffing of the treatment plant until automatic shutdown controls are installed; (3) filter-to-waste operations after each backwash and each startup until certain criteria are satisfied; (4) utilization of Individual Filter Effluent turbidity readings from all active filters for determination of compliance with SDWA regulations; (5) sampling for iron and manganese; (6) evaluation of all filters at the treatment plant; (7) evaluation of the filters, followed by preparation and implementation of a filter corrective action plan; (8) preparation and implementation of an emergency response plan; (9) submission of an uninterrupted system service plan; (10) evaluation of the clarifier system, followed by preparation and implementation of a clarifier corrective action plan; and (11) preparation and implementation of a filter bed evaluation program. *Id.* at 2.

Due to the Authority's failure to comply with the August 2022 Order, DEP initiated an action in Commonwealth Court to enforce its August 2022 Order. On December 15, 2022, the Commonwealth Court issued an Order (Commonwealth Court Order) requiring the Authority, among other things, to perform an evaluation of its filters and clarifier system and submit a report to DEP detailing the results of the evaluation (Report); submit a Corrective Action Plan for its filters and clarifier system to address the deficiencies identified in the Report and implement each Plan; implement a filter bed evaluation program and submit a copy of the results to DEP; and install an overflow and a receiving basin or drain capable of receiving accidental spills or overflows for its chemical tanks and drums. *Id.*

The Joint Petition states that, most recently, beginning on October 22, 2023, the Authority's System exhibited signs of potential failure, beginning with elevated levels of turbidity of the water that was leaving the water treatment plant's filters. On October 23, 2023, DEP reviewed the data submitted by the Authority, which showed that the elevated levels of turbidity were above the regulatory limits. In response to the Data submitted by the Authority, DEP immediately issued an order to the Authority directing it to issue a boil water advisory and investigate the cause of the elevated turbidity. On October 24, 2023, the Authority's System experienced a major upset resulting from operational failure of the filters at the water treatment plant. Shortly thereafter, the clarifier system at the water treatment plant ceased proper operation, and the Authority's System's water treatment plant ceased producing water. *Id.* at 2-3.

Additionally, since September 15, 2023, the Authority has been without a Certified Operator qualified to properly operate the Water System. Currently, no person at the Authority is legally authorized to make decisions concerning the Authority's System, including those affecting the quality or quantity of water being provided and the operation of the clarifier system and filters. *Id.* at 3.

The Joint Petition notes that the Authority has failed to comply with two successive Orders issued by DEP on February 8, 2023, and September 18, 2023, which required the Authority to retain the services of a qualified, properly certified drinking water system operator (Certified Operator). *Id.*

Similarly, the Authority has failed to comply with an Order issued by DEP on March 31, 2023, which required the Authority to, among other things, employ the services of a qualified professional to evaluate and correct data errors with the Authority's computerized data collection and reporting system, or Supervisory Control and Data Acquisition ("SCADA") system. *Id.*

Although the Authority has submitted a Clarifier Corrective Action Plan that can be approved by DEP, the Authority, almost eight months after the deadline set forth in the Commonwealth Court's Order, has yet to submit a Filter Corrective Action Plan that the Department is able to approve. *Id.*

In addition, the Authority failed to implement a filter bed evaluation program and submit copies of the filter evaluations to DEP. Moreover, the Authority has failed to install an overflow and a receiving basin or drain capable of receiving accidental spills or overflows for its chemical tanks and drums. The Authority's failure to take measures to ensure the proper operation of its System resulted in approximately 4,200 users across 1,800 households, businesses, and schools losing daily access to clean and safe water beginning on October 24, 2023. *Id.*

Between October 24, 2023 and October 29, 2023, the Authority attempted to supply water through its System by trucking tanker loads of water to the water treatment plant and pumping the trucked water into the Water System. Unfortunately, for a period of time between October 24, 2023 and October 27, 2023, some of the tanks that store water in the Water System were empty, and it is believed that, at times, *all users* of the Authority's System were without any water service. The lack of even non-potable water service, renders users of the Authority's System without water for basic sanitary and hygienic purposes, including bathing, dishwashing, and toilet flushing. *Id.* at 3-4.

On or about October 27, 2023, the Authority was able to restore partial function of the System's water treatment plant and began providing water to some users. On or about October 29, 2023, the Authority informed DEP that water service was restored to all users. However, all customers are under a boil water advisory and must continue to boil their water before consumption for an unknown amount of time until the Authority is able to demonstrate that its Water System is meeting all applicable monitoring and treatment standards. *Id.* at 4.

Even if the Boil Water Advisory may, at some point, be lifted, the Authority's failure to continually employ the services of a Certified Operator, failure to comply with the laws and regulations of this Commonwealth, failure to comply with the Commonwealth Court Order and DEP Orders indicate that the Authority's control over the water system's functioning will repeatedly endanger public health. *Id.*

On multiple occasions, the Authority has made representations to DEP that it does not have the financial resources to (1) effectively and properly operate its Water System, (2) comply with the Orders of the DEP or the Commonwealth Court, and (3) employ a Certified Operator. *Id.*

Because the Authority's actions threaten immediate harm to public health and safety, DEP has prepared an application to be filed in the Commonwealth Court seeking the appointment of a receiver for the Authority's Water System. DEP states that in light of the Authority's failure and apparent inability to properly operate and maintain the System in compliance with the requirements of the SDWA, DEP will seek to hold the Authority in contempt of the Commonwealth Court's Order and seek a court appointed receiver to manage the Authority, its property and assets. The appointed receiver would undertake corrective actions to address and resolve the Water System's deficient conditions pending approval and consummation of the Acquisition Transaction. *Id.*

The Authority has previously agreed to sell the East Dunkard System to PAWC pursuant to an Asset Purchase Agreement dated as of July 23, 2023, subject to a series of conditions, including approval of the acquisition by the Commission and satisfaction of certain covenants and conditions precedent to closing as set forth in the Purchase Agreement (the "Acquisition Transaction"). Pending satisfaction of such conditions and approval of the Acquisition Transaction by the Commission, the Authority continues to own and operate the East Dunkard System and is responsible for operating the System in compliance with all applicable environmental, health and safety laws, including the

Pennsylvania Safe Drinking Water Act and regulations adopted pursuant to the SDWA as contained in 25 Pa. Code Chapter 109. Joint Petition, Proposed Order at 1.

The Joint Petition states that while Pennsylvania's two largest regulated water utilities, PAWC and Aqua Pennsylvania, Inc., would be suitable candidates to serve as a receiver to manage the Authority, as a result of the pending Acquisition Transaction and its due diligence and inspections conducted in association with the Acquisition Transaction, PAWC has greater familiarity with the conditions of the System. Additionally, PAWC has experienced personnel and substantial public water system operations in southwestern Pennsylvania and has resources and capabilities to oversee and manage the East Dunkard System as a receiver for the Authority. *Id.* at 5.

Further, DEP has notified the Commission that it desires that PAWC be appointed to serve in the capacity of a receiver for the Authority, and requests that the Commission authorize PAWC to serve as a receiver for this non-jurisdictional entity. DEP believes and the Commission concurs that PAWC has the familiarity and understanding of the circumstances to work in an effective manner toward planning and executing corrective actions to restore safe, adequate, and reliable service to the public.

PAWC has agreed to be named as receiver to take control of and operate the Authority's Water System, conditioned upon receipt of an order from the Commonwealth Court placing the Authority's Water System in receivership and the issuance of this Emergency Order and attached Appendix A, which outlines its rights, duties and obligations as the duly-appointed receiver of the Authority.

Pursuant to 52 Pa. Code § 3.2, petitions for emergency orders must be supported by a verified statement of facts which establishes the existence of an emergency, including facts to support the following: (1) the Petitioner's right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and (4) the relief requested is not injurious to the public interest.

Based on the matters described herein, the Commission determines that the facts as presented in the Joint Petition satisfies the Section 3.2 requirements. In addition, the Commission concurs that PAWC has the familiarity and understanding of the circumstances to work in an effective manner toward planning and executing corrective actions to restore safe, adequate, and reliable service to the public. Accordingly, in response to the request in the Joint Petition, and in light of the conditions described above, conditioned upon appointment by a court of competent jurisdiction to serve as a Receiver for the Authority and manage and operate the Authority pending approval and consummation of the Acquisition Transaction, this Order and Appendix outlines the rights, duties and obligations of PAWC as the duly-appointed receiver for the Authority.

The Public Utility Code authorizes the Commission to regulate the conduct of public utilities in the Commonwealth. 66 Pa.C.S. § 501. The Commission also has the authority to grant petitions for emergency order under our regulations at 52 Pa. Code § 3.2-3.3. As such, due to the Authority's failure to effectively and properly operate its Water System, which ultimately endangers the public health, safety, and welfare of the approximate 1,800 households, businesses and schools and the population of approximately 4,200 located in the Dunkard Township, Greene Township, and portions of Monongahela, Cumberland, Perry and Whiteley Townships, the Commission has determined it is appropriate to set forth the rights, duties and obligations of PAWC acting as a receiver of the Authority in order to manage and operate its Water System.

The Commission takes immediate affirmative action here, subject to revision in a subsequent Ratification Order, to protect the public interest and all members of the public affected by the ineffective services of the Authority. We note that the facts and circumstances of this case are unusual, yet, based upon the specific facts and circumstances in this matter, we determine that it is necessary and prudent to take this unprecedented action of establishing the rights, duties and obligations of a jurisdictional utility if and when it is appointed by the Commonwealth Court to be the receiver of this non-jurisdictional entity. We note specifically that PAWC is a regulated public utility corporation that is engaged in the business of collecting, treating, storing, supplying, distributing, and selling water to the public, and collecting, treating, transporting, and disposing of wastewater and sewage for the public. PAWC owns, operates, and maintains potable water production, treatment, storage, transmission and distribution systems, and wastewater collection, pumping, and/or treatment systems, for furnishing water and wastewater services to approximately 760,000 residential, commercial, industrial, and governmental customers in communities located in 37 of the 67 counties across Pennsylvania.

We also note that PAWC has had an asset purchase agreement with the Authority regarding this System since July 2023, which means it has great familiarity with this system. Since PAWC is a regulated entity that has expertise in operating a water system and already has a pending contract with this failing entity, we determine it is prudent to establish its rights, duties, and obligations if PAWC is appointed as a receiver by the Commonwealth Court. However, in order to ensure that the Authority's customers obtain long-term relief in the near term and no longer have concerns regarding access to clean and safe drinking water, we encourage PAWC, pursuant to 66 Pa.C.S. § 1102, to file an Application for a Certificate of Public Convenience to serve this territory. Accordingly, we undertake this emergency action where this immediate case appears to present a serious public health and safety threat that the Commission will not ignore;

THEREFORE,

IT IS ORDERED THAT:

1. The Commission pursuant to Section 501 of the Public Utility Code authorizes Pennsylvania-American Water Company to serve as a Receiver for the East Dunkard Water Authority and Assets in accordance with and subject to the conditions set forth in Appendix A to this Order.

2. Upon the issuance of a valid Court Order appointing Pennsylvania-American Water Company to serve as a Receiver for the East Dunkard Water Authority and its property, assets, and facilities (“Assets”), this Emergency Order shall become effective.

3. Utilities serving the East Dunkard Water Authority and facilities comprising the East Dunkard System are permitted and directed to initiate and maintain utility service to the Authority’s Assets and East Dunkard System facilities that are used to serve Authority’s customers in the name of the Receiver for the Authority.

4. Pennsylvania-American Water Company will continue to provide bottled water to the East Dunkard System customers as required in the interim between this Order and the entry date of the Commonwealth Court Order appointing Pennsylvania-American Water Company the Receiver for the East Dunkard Water System.

5. Pennsylvania-American Water Company, acting as the Receiver, shall not assume any debt incurred by the East Dunkard Water System unless such assumption is approved through an Order of this Commission.

6. Pennsylvania American Water Company, acting as the Receiver, shall not be liable for preexisting conditions, defects, or regulatory or statutory violations occasioned by the East Dunkard Water Authority.

7. The Commission authorizes PAWC to continue to provide such services as a Receiver until the termination of any Court Order appointing the Receiver or the consummation of the Acquisition Transaction.

8. A copy of this Order shall be served on the East Dunkard Water Authority, Pennsylvania-American Water Company, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Southwest Regional Office of the Pennsylvania Department of Environmental Protection, and all proximate municipalities and authorities providing water service in and around Dunkard Township, Greene Township, Monongahela Township, Cumberland Township, Perry Township and Whiteley Township, Green County, Pennsylvania.

9. A copy of this Order shall be posted on the Commission's website at www.puc.pa.gov.

DATE: November 1, 2023



Stephen M. DeFrank,
Chairman