

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held November 9, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair, Concurring in result only
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

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

RATIFICATION ORDER

BY THE COMMISSION:

On November 1, 2023, Chairman Stephen M. DeFrank issued an *ex parte* Emergency Order (Emergency Order) of the Pennsylvania Public Utility Commission (Commission), in response to the Joint Petition filed by Pennsylvania American Water Company (PAWC) and the Department of Environmental Protection (DEP) Requesting an *Ex Parte* Emergency Order in Regard to Receivership of the East Dunkard Water Authority (Authority). By issuing the Emergency Order, the Commission took immediate, affirmative action to protect 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. Emergency Order at 7.

The Emergency Order noted 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. 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 Emergency Order explained that on August 25, 2022, pursuant to the SDWA, DEP issued an order to the Authority requiring a series of corrective actions to address deficiencies in the System. Due to the Authority's failure to comply, DEP initiated an action in Commonwealth Court. On December 15, 2022, the Commonwealth Court issued an Order requiring the Authority to take certain corrective actions. The Authority also failed to comply with DEP Orders issued on February 8, 2023, and September 8, 2023, requiring the Authority to retain the services of a qualified, properly certified drinking water system operator. Furthermore, on multiple occasions, the Authority 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 DEP or the Commonwealth Court, and (3) employ a Certified Operator. *Id.* at 2, 3, 5.

Because the Authority's actions threaten immediate harm to public health and safety, DEP prepared an application to be filed in the Commonwealth Court seeking the appointment of a receiver for the Authority's Water System. PAWC has agreed to be named as receiver to take control of and operate the Authority's Water System, as described in Appendix A of the Emergency Order, conditioned upon receipt of an Order from the Commonwealth Court placing the System in receivership. *Id.* at 5, 6.

The Emergency Order noted the unusual facts and circumstances of this case and addressed the Commission's determination that, based upon the specific facts and circumstances in this matter, it was necessary and prudent to take action establishing the rights, duties and obligations of a jurisdictional utility if and when it is appointed by the Commonwealth Court to be the receiver for this non-jurisdictional entity. The Emergency

Order stated that this action was necessary because this immediate case presented a serious public health and safety threat that the Commission could not ignore. *Id.* at 8.

Appendix A to the Emergency Order, however, requires modification. In particular, we modify Appendix A of the Emergency Order so that it is clear that:

1. PAWC, in its capacity as receiver of the Authority, shall be authorized to take the actions identified in Appendix A and serve as the Receiver of the Authority subject to the conditions contained in Appendix A;
2. Operating expenses and DEP mandated capital expenses incurred by PAWC as Receiver are eligible for deferred accounting treatment and may be charged to a deferred expenses account;
3. PAWC conduct an evaluation of the system, identify the deficiencies in the system's physical conditions, facilities and operational procedures, identify and prepare a plan of capital and operational improvements and report the results of such evaluation, as well as any DEP mandated capital improvements, to the Commission;
4. PAWC as Receiver has the authority to receive and utilize grant funds in the name of the Authority and borrow money in the name of the Authority necessary for the implementation of corrective actions and continued provisions of adequate, efficient, safe and reasonable service to the customers of the system;
5. PAWC has the authority, but is not required, to file a petition for bankruptcy and participate in any such proceedings on behalf of the Authority; and

6. Any costs incurred by PAWC in providing emergency assistance to the Authority before it is appointed by the Court as Receiver shall be eligible for the deferred expense account.

Upon review of the circumstances surrounding the issuance of the *ex parte* Emergency Order, we conclude that it is in the public interest to make such action the action of the full Commission with the modifications to Appendix A of the Emergency Order as set forth herein; **THEREFORE,**

IT IS ORDERED:

1. That the *ex parte* Emergency Order issued November 1, 2023, at Docket No. P-2023-3043950, is hereby ratified with the modifications to Appendix A of the Emergency Order as set forth in this Ratification Order.

2. That a copy of this Ratification Order and the modified Appendix A to the Emergency Order be served upon all parties served with the *ex parte* Emergency Order issued November 1, 2023.

BY THE COMMISSION


Rosemary Chivetta
Secretary

(SEAL)

ORDER ADOPTED: November 9, 2023

ORDER ENTERED: November 20, 2023