



Chester Water Authority

P.O. Box 467
Chester, Pennsylvania 19016-0467
Tel: (610) 876-8185

November 3, 2017

VIA ELECTRONIC AND REGULAR MAIL

Thaddeus Kirkland
Mayor, City of Chester
City Hall
1 Fourth Street
Chester, Pennsylvania 19013-4400

Re: Chester Water Authority

Dear Mayor Kirkland:

I am in receipt of your October 25, 2017 letter regarding the Chester Water Authority ("the Authority"). I write because I am surprised by some of its content, and I am concerned that the City of Chester ("City") may be receiving misleading information from other sources.

As you know, I have been Chairperson of the Authority's Board of Directors since 2012. It has been, and it continues to be, my great pleasure to serve on the Board of the Authority, for the benefit of Authority ratepayers, both present and future.

When the Authority was formed, it provided water services to sixty-seven (67) customers in the south end of the City. Today, over 150 years later, the City makes up 22% of the Authority's customer and asset base. The Authority is no longer an asset of the City, but rather of present and future ratepayers throughout Southeastern Pennsylvania, particularly following the 2012 amendments to the Municipal Authorities Act. The Authority serves more than 200,000 residents and businesses in Chester County, Delaware County, and the City. It operates 673 miles of water mains, and its storage facilities have the capacity to hold approximately 106 million gallons of treated water. The Authority continuously strives to invest in and improve its water treatment and distribution infrastructure, and Authority water consistently meets or exceeds the criteria established by the Pennsylvania Department of Environmental Protection (PA DEP), the United States Environmental Protection Agency (US EPA), and the American Water Works Association (AWWA).

The Authority has grown and funded its investments and improvements through its ratepayers; it does not receive (and has not received) funds from the City, Chester County, or Delaware County to support its endeavors. Rather, since 1996, the City has *received* over \$13.5 million *from* the Authority. In addition, the Authority does not

charge the City for use of the Authority's fire hydrants, which results in savings to the City of approximately \$130,000 per year.

The Authority has been, and it continues to be, open to working with and communicating openly with the City for the benefit of Authority rate payers.

I do not understand the basis for the City's "disappointment" with the Authority's response to requests for public information. The Authority is unaware of any other requests for information by the City, or on its behalf, for Authority records, with the exception of the recent request made pursuant to Pennsylvania's Right to Know Law, 65 P.S. §§ 67.101, *et seq.* ("RTKL") by Buchanan Ingersoll & Rooney PC, which you reference in your October 25, 2017 letter. That request is being addressed in accordance with the timelines set forth in the RTKL. In addition, you have attended our Board meetings and are welcome to do so in the future to raise any concerns you may have. We welcome anyone to do so.

I understand the pressures that can be exerted by outside entities on cities in Act 47 status. I am concerned, however, that your letter appears to be a prelude, at the behest of other entities, to an attempted unilateral termination of the Authority for purposes of raising cash for the City's general fund in order to pay its debts. Such action would be contrary to controlling law, including the Pennsylvania Constitution, and detrimental to present and future ratepayers. I certainly hope the City is not endorsing such action, or demanding that anyone it has appointed or appoints in the future to the Authority's Board, support such action as a condition of retaining or obtaining that appointment.

I also do not understand your reference to the City being treated by the Authority as "a passenger in this process." We recently learned that over a year ago, in May 2016, a consultant for the Commonwealth's Department of Community and Economic Development ("DCED") requested copies of the Authority's articles of incorporation and articles of amendment. It appears that this was done in connection with the DCED's attempts to find sources of cash for the City to pay down the City's debts.

Notwithstanding the apparent analysis of the Authority's records over a year ago by the City's Act 47 consultants, and likely discussions between them and DCED about the potential monetization of the Authority over the course of a year without contacting the Authority, there is no mention of the monetization of the Authority in the multiple versions of the City's Act 47 plan. The potential monetization of the Authority appears to be a more recent topic forced upon the City by DCED and the Act 47 consultants as they struggle to find any potential sources of cash outside of the City's or the Commonwealth's funding sources in order for the City to exit Act 47 status before the deadline. It appears that if the City is being treated as "a passenger in this process," whatever that "process" is, it is not by the Authority; rather, it appears that the City and the Authority are both being treated as passengers by the DCED and the City's Act 47 consultants.

Additionally, you may be aware that the law firm which made the recent RTKL request to the Authority represented the Scranton Sewer Authority (“SSA”) as transaction counsel during its asset sale to Pennsylvania American Water in 2016. Proceeds from the sale were divided, in part, between the City of Scranton and the Borough of Dunmore.


Following that transaction, the City of Scranton has become the subject of numerous lawsuits, including a lawsuit filed this month by Scranton ratepayers alleging that the SSA asset sale violated Section 5612(a.1) of the Pennsylvania Municipality Authorities Act by providing proceeds of the sale to Scranton and Dunmore for their general funds. Section 5612(a.1) precludes money of an authority from being used for any purpose not directly related to the mission or purpose of that authority, and provides ratepayers with a cause of action against the recipient of that money to seek the return of any funds expended in violation of Section 5612(a.1). See 53 Pa.C.S. § 5612(a.1).

The SSA lawsuit seeks the return of all money from the SSA asset sale, and it requests that all funds from the sale be placed in trust. It is widely reported in the media that the litigation Scranton faces following the SSA asset sale could derail Scranton’s three-year plan to exit Act 47 distressed status.¹

For these reasons and others, I hope that an attempted unilateral termination of the Authority for purposes of monetizing it for the City’s use is not what you have in mind when you mention the “evolution of the Authority.” To that end, I appreciate your offer to include the Authority in discussions with the City. To date, the Authority has not been included in any discussions with other governmental entities about the Authority’s own future. It is incumbent that we be included so that we, the City, and other governmental entities are compliant with our shared fiduciary obligations imposed by the Pennsylvania Constitution to conserve and maintain water resources for the public benefit, including future generations. It is also my hope that the Authority may clear up any other misconceptions the City may have about the Authority from third parties. Further, I am confident there is a resolution that is not detrimental to the City’s Act 47 concerns, mitigates legal risk, and ensures that present and future Authority ratepayers receive the same high quality water at low rates that they have received for over 150 years.

Please contact me at your earliest convenience. I look forward to hearing from you.

Very truly yours,



Cynthia F. Leitzell

cc: Francis J. Catania, Esquire

¹ It is alleged that the SSA’s transactional counsel was paid approximately \$1.7 million in 2016 for its work on the sale.