



September 4, 2018

**VIA ELECTRONIC MAIL**

Stephen P. Mullin, Esquire  
Econsult Solutions Inc.  
143 Walnut Street, 4th Floor  
Philadelphia, PA 19102

RE: **Comments to the City of Chester Act 47  
Exit Plan**

Dear Mr. Mullin:

The Chester Water Authority (“the Authority”) files this Written Comment to the Exit Plan for the City of Chester (the “Exit Plan”) to address certain errors and misconceptions inherent therein regarding the Authority and its assets.

At the outset, the Authority appreciates the Exit Plan’s promotion of the ongoing negotiations with Chester City in an effort to benefit the Authority’s ratepayers and amicably resolve any differences between the City and the Authority regarding the Authority’s operations and assets. Pursuant to the Standstill Agreement entered into by the Authority and Chester City on March 14<sup>th</sup> and 15<sup>th</sup> of 2018, the parties continue to negotiate with the mutual goal of entering into an arrangement concerning future Authority operations that will be favorable to both parties and their constituents.<sup>1</sup>

We need to point out, however, that the Exit Plan’s vague contingent directives in Sections 5.2 and 5.4 run afoul of controlling law and would be detrimental to the present and future ratepayers.

First, if negotiations between the Authority and Chester City result in an up-front payment made to Chester City, the suggested placement and priority of any funds likely contradicts the Municipal Authorities Act (the “Act”) and Pennsylvania

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<sup>1</sup> The Authority also notes that the Exit Plan’s recommendation for the hiring of counsel and other professionals to represent Chester City’s interests in this process is a future cost that is unaccounted for in the proposed budget and unaddressed as to nature and extent of any source(s) of potential funding. We also hope that this recommendation is for purposes of facilitating the Authority’s and Chester City’s negotiations, and not to plan any future attempted unilateral monetization of the Authority by Chester City as had been suggested by DCED and the Recovery Coordinator in the past.

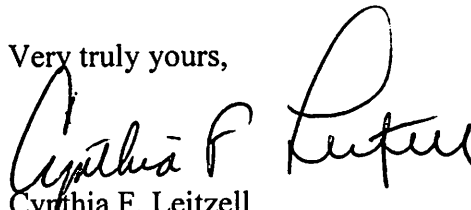
Constitution. Any payment made by the Authority, from Authority assets which are held in trust for the benefit of present and future ratepayers, must conform to the letter and intent of the Act and the Pennsylvania Constitution. Thus these funds cannot be applied to “first...the City’s pension problems, second to establish and fund a trust to address the City’s OPEB liabilities, third, to fund capital improvements to the City’s capital assets, fourth, to establish a General Fund reserve account, and fifth, in cooperation with a non-profit economic development corporation, to undertake economic development projects in the City.” To the contrary, Section 5612(a.1) of the Act 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). Any payment made by the Authority or with assets thereof would have to be applied consistent with the Authority’s mission of providing access to clean and affordable water to present and future ratepayers throughout Southeastern Pennsylvania.

All parties must also consider Article 1, Section 27 and Pennsylvania Supreme Court precedent which place them in the role of fiduciary of a public trust on behalf of present and future beneficiaries. To the extent any funds are afforded to Chester City by the Authority – either by agreement or otherwise, Chester City is subject to the same restrictions outlined above, as well as to potential challenges or causes of actions brought by ratepayers, the collective sum of which would be detrimental to the parties, the ratepayers and the citizens of Chester City.

Second, if negotiations are not fruitful, contrary to the Exit Plan’s implication Chester City is not permitted to unilaterally terminate or monetize the Authority. The enactment of Section 5610(a) of the Act expanded the Authority’s board to be more consistent with the longstanding expanded scope of service to ratepayers throughout large parts of Southeastern Pennsylvania beyond Chester City. This change made clear that, regardless of Constitutional issues or other laws, Chester City lost any purported ability under the Act to unilaterally terminate and/or collect the proceeds of any attempted monetization of the Authority.

Thank you for your consideration.

Very truly yours,



Cynthia F. Leitzell

Chairperson, Chester Water Authority