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November 22, 2017

**VIA CERTIFIED MAIL AND EMAIL**

Email: gmb@pa.gov

Certified Mail: 7016-3010-0000-4180-2494

Gladys M. Brown, Chairman  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17120

**Re: Aqua America, Inc. Promises to Potential Customers of Rate Freezes**

Dear Chairman Brown:

I am the solicitor for the Chester Water Authority (“the Authority”), a viable municipal authority located in Chester, Pennsylvania that provides life-sustaining water services to approximately 200,000 individuals throughout Chester County, Delaware County, and the City of Chester. I write to request guidance from the Pennsylvania Public Utility Commission (“the Commission” or “PUC”) regarding pledges Aqua America, Inc., a PUC regulated entity, is making through advertisements throughout Southeastern Pennsylvania.

In May 2017, the Authority received, reviewed, and rejected an unsolicited proposal from Aqua seeking to purchase substantially all of the Authority’s assets pursuant to Act 12 of 2016, 66 Pa. C.S. § 1329 (“Act 12”).

Although the Authority rejected Aqua’s offer, Aqua has been sending letters to the board members of cities and townships in which the Authority provides its water services, telling those board members that if Aqua succeeds in purchasing the Authority and its assets, Aqua “will hold current [Authority] customer rates constant at the current [Authority] level for at least 10 years from closing.” See Exhibit A.

Further, on November 19, 2017, Aqua took out a full page advertisement in the Delaware County Daily Times, which simply stated: “Flowing Water, Frozen Rates. Aqua Pennsylvania pledges to Chester Water Authority customers to freeze rates for 10 years. **Can any other utility offer that?**” See Exhibit B (emphasis in original).

The PUC is responsible for setting and approving rates and is not bound by pledges Aqua makes to potential customers. As a result, it is my belief that Aqua’s pledge of a ten (10) year rate freeze is misleading and legally unenforceable.

By way of example, the Asset Purchase Agreement in the 2016 acquisition of the Sewer Authority of the City of Scranton (“Scranton Sewer”) by Pennsylvania-American Water Company (“PAWC”) stated that PAWC would not propose a rate increase for Scranton Sewer customers to be effective in 2018. The Commission’s Order approving the sale, however, stated that PAWC’s promises regarding its rates “do[] not . . . bind the Commission in any way.” *Joint Application of Pennsylvania-American Water Co. and the Sewer Authority of the City of Scranton*, Docket No. A-2016-2537209, at 70 n.16 (Pa. PUC Oct. 19, 2016). On October 16, 2017, the parties filed a settlement joined by all active parties that permitted an increase of Scranton Sewer’s rates by more than 12% in 2018. *See Pa. PUC v. PAWC*, Docket No. R-2017-2595853, Joint Petition for Settlement, dated Oct. 16, 2017, Appendix C.

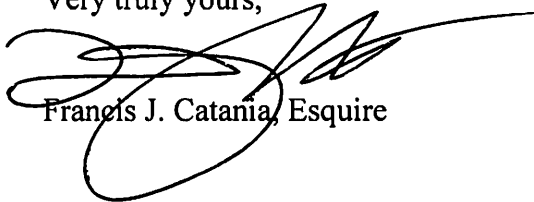
Further, such a pledge to one group of customers, if permitted, would unfairly shift Aqua’s costs of operation to other customers that have not been made such a promise. As the Commission’s website states: “Consumers must pay for the service they use, which includes a share of the reasonable cost of utility company expenses such as operating and maintenance expenses, administrative expenses, depreciation and taxes.” Aqua’s pledge, if enforceable, would permit Aqua to choose its own rates in a manner that inevitably treats its customers inequitably.

What laws or regulations permit Aqua to advertise promises that would shift costs from one group of ratepayers whose rates are frozen to other Commonwealth citizens? I respectfully request that the PUC provide guidance on this issue immediately so that ratepayers throughout the Commonwealth – both those served by authorities that investor owned utilities (“IOUs”) are seeking to acquire and those already served by IOUs – understand the legality (or lack thereof) and impact of such promises by the private sector.

Aqua and similar IOUs have been open regarding their plans to embark on “growth through acquisition strategies,” particularly in light of the recent passage of Act 12. See, e.g., Aqua America, Inc. and Subsidiaries, Management’s Discussion and Analysis of Financial Condition and Results of Operations, at 4. As such, it is unlikely that Aqua’s aggressive strategies to lure customers, using misleading methods that could inequitably shift costs to existing Aqua customers, will abate, absent PUC guidance on this issue.

Thank you very much for your consideration of this matter, Chairman Brown.

Very truly yours,



Francis J. Catania, Esquire

FJC\dml

Attachments

cc: Andrew G. Place, Vice-Chairman, PA Public Utility Commission (via email only, [aplace@pa.gov](mailto:aplace@pa.gov))  
David W. Sweet, Commissioner, PA Public Utility Commission (via email only, [davsweet@pa.gov](mailto:davsweet@pa.gov))  
John F. Coleman, Jr., Commissioner, PA Public Utility Commission (via email only, [jfc@pa.gov](mailto:jfc@pa.gov))  
Norman Kennard, Commissioner, PA Public Utility Commission (via email only, [nkennard@pa.gov](mailto:nkennard@pa.gov))  
Tanya J. McCloskey, Acting Consumer Advocate,  
PA Office of Consumer Advocate (via email only, [tmcloskey@paoca.org](mailto:tmcloskey@paoca.org))  
John R. Evans, Small Business Advocate,  
Office of Small Business Advocate, (via email only, [jorevan@pa.gov](mailto:jorevan@pa.gov))  
Richard Kanaskie, Director and Chief Prosecutor,  
PA Public Utility Commission, Bur. of Investigation & Enforcement, (via email only, [rkanaskie@pa.gov](mailto:rkanaskie@pa.gov))  
Chester Water Authority

# **EXHIBIT A**



Christopher Franklin, President and Chief Operating Officer of Regulated Operations

O: 610.645.1081 • F: 610.645.1081 • chfranklin@aquaamerica.com

November 6, 2017

Supervisors Chairman James H. Raith  
Thornbury Township  
6 Township Drive  
Cheyney, PA 19319



Thornbury Twp. Del. Co.

Dear Supervisors Chairman Raith,

In May, Aqua extended an offer to acquire the assets of Chester Water Authority (CWA) and requested that Aqua and the CWA board enter into a conversation to fully vet this concept and its potential benefits for the customers, employees and other stakeholders of both utilities. On May 18, CWA rejected Aqua's proposal without dialogue or discussion with Aqua. Since that time, Aqua has taken no additional formal action to advance the discussion with CWA. However, the CWA board continues to make Aqua a primary topic of conversation at every board meeting. In addition, the CWA board has sent letters to customers and elected officials that mischaracterize our intentions. As a result, we feel compelled to share the facts.

First, there has been misleading information about: 1) the potential rates that would be charged to current CWA customers, and 2) the continued employment of current CWA employees. Marc Lucca, president of Aqua Pennsylvania, provided additional information at the CWA board meeting on Nov. 3 when he stated that, if Aqua were to acquire CWA, **Aqua will hold current CWA customer rates constant at the current CWA level for at least 10 years from closing AND will offer employment for all CWA employees.** As a representative of your constituents, please ask CWA if it will commit to maintaining rates at their current level for the next 10 years.

Second, there is a disagreement about who owns CWA. From before World War II until recent times, the city of Chester has owned and operated the water utility. During that time, CWA has grown to its current size to serve customers in the city of Chester and the counties of Delaware and Chester. Abruptly in 2012, legislation was passed in Harrisburg without consultation with the city that dramatically changed the governance of CWA. With that, a new board of directors was created with a required membership from the three entities (city of Chester, Delaware County and Chester County). It has been argued that the **assets** of CWA remain under the ownership of the city, but the **governance** of CWA is under the control of the new board. Some have suggested that this issue could end up in a protracted legal dispute. While Aqua is not involved in this dispute between the city and CWA, a sale to Aqua could be a potential solution providing benefits to all concerned constituencies.

Third, how would a CWA customer benefit from Aqua? We understand that CWA is currently in compliance with state and federal drinking water regulations. However, regulated utilities

have the expert technical and operational resources to address increasingly stringent regulations and complex matters such as lead, toxic algal blooms and contamination. Customers would further benefit from additional water supplies in case of drought, improved ability to recover from a natural disaster due to multistate resources, continued infrastructure investment, increased physical and cybersecurity programs, and regulation by the Pennsylvania Public Utility Commission. Aqua's customer service is reviewed by the PA PUC and held to regulatory standards.

Again, Aqua continues simply to seek to enter into a conversation with the authority board to explore the benefits mentioned above. We ask you to reconsider your resolution on this matter and allow the proposed dialogue to occur. We would be happy to schedule a meeting to discuss this issue.

Respectfully,

A handwritten signature in black ink, appearing to read "Chris Franklin". The signature is written in a cursive, flowing style with a large initial "C".

Christopher Franklin  
President & CEO  
Aqua America, Inc.

# **EXHIBIT B**

# FLOWING WATER, FROZEN RATES

Aqua Pennsylvania pledges to Chester Water Authority customers to freeze rates for 10 years. Can any other utility offer that?



LEARN MORE AT [WATERFORPA.COM](http://WATERFORPA.COM)