

## CWA ratepayers want say in Aqua lawsuit

By Alex Rose July 16, 2019

A group of Chester Water Authority customers has filed a petition to intervene in a lawsuit filed by for-profit water company Aqua Pennsylvania Inc. against the non-profit Chester Water Authority and city of Chester over a proposed 10 percent rate hike.

The eight petitioners from Delaware and Chester counties, which include former Chester Upland School Board President Wanda Mann and Upper Chichester Commissioner Nicole Whitaker, argue their constitutional rights are being threatened by a conspiracy between the city and Aqua to unlawfully dissolve CWA and sell its assets.

“No party to the instant litigation has raised the issue that Section 5622(a) (of the Municipalities Authorities Act) does not authorize the seizure of the CWA by the City of Chester and your petitioners have standing to raise that issue under both the Municipalities Authorities Act and the Pennsylvania Constitution,” according to the petition filed by attorney Kathy Luce Labrum.

“(CWA) has never been taxed by the federal government or the state government,” Labrum noted Monday. “They operate as an advantage over commercial enterprise and it’s all because it’s a public trust.”

Labrum argues in the petition that CWA is essentially a trustee of public surface and ground water contained at the Octoraro Reservoir and that the petitioners are beneficiaries of that trust. Authority Solicitor Frank Catania said CWA has made much the same argument in a trust petition filed in the Common Pleas Court’s Orphan Court Division in March.

The petitioners argue they are endowed by rights under the Pennsylvania Constitution to enforce the duties of the commonwealth in vindicating the common ownership of that water, “including future generations,” according to the petition.

“I respect their legal position,” Catania said Monday. “I think the board of the Chester Water Authority is doing this to act in the benefits of the ratepayers, so I don’t think they would be in opposition to (the petitioners) getting into the suit and having their voices heard.”

Aqua’s lawsuit stems in part from a contentious relationship between the water company and CWA that goes back to 2017, when Aqua Pennsylvania’s parent company, Aqua America, offered to purchase the CWA system for \$320 million.

The city’s receivership consultant, Econsult Solutions, recommended the sale as a way to help pull Chester out of its financially distressed status. The CWA rejected Aqua’s offer, however, finding it would ultimately increase rates for its approximately 42,000 customers.

The city and CWA instead entered into a \$60.2 million settlement in March 2018 and the CWA board unanimously approved the 10-percent rate hike to pay for that deal. City officials, in exchange, agreed not to raise a claim to terminate or acquire any project of CWA for 40 years and that the assets of CWA would be placed into a trust for that same time period.

Aqua filed suit in the Delaware County Common Pleas Court in April, alleging the hike would result in \$75,000 being directly passed on to their customers

with no corresponding benefits.

Meanwhile, Chester City Council approved a resolution at a June 12 board meeting to issue a request for proposal to value CWA assets. That has effectively nixed the \$60.2 million deal from the city’s perspective and prompted CWA to file its own lawsuit June 26 seeking an injunction against a sale to Aqua or any other buyer.

Catania noted that attorney Kevin Greenberg, representing the city in the Aqua suit, has put forward the position that the city would never accept the negotiated \$60.2 million deal, though Catania added that he has not heard that directly from either the mayor or city council.

Greenberg declined to comment on the record for this story. Joel Frank, the attorney representing Aqua in the suit, did not return a call for comment.

The petition filed Friday asserts the city and Aqua have conspired to sell CWA and its assets unlawfully. The petition argues the city has looked to the Municipalities Authorities Act to justify a sale, but no language in that act grants Chester the right to sell the authority or its assets.

The petitioners note CWA serves 17 municipalities in Delaware County and 16 municipalities in Chester County, but argue it is a governmental entity that “enjoys an existence separate and apart from its incorporator, the City of Chester,” as well as the other municipalities it serves.

The petition points out that the CWA board is made up of nine members – three from Delaware County, three from Chester County and three from the city

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– and denies any powers the city might believe it holds to unilaterally transfer the CWA's assets to itself, sell those assets or disband the authority.

The petition further argues that the MAA specifically bars the use of any money raised from the sale of the authority for any purpose other than a service or project related to the authority's mission

or purpose, and grants petitioner the right to recover that money from the recipient, i.e. the city.

Labrum argues the petitioners' rights and interests have not been and cannot be represented by any other party to the litigation. She said she also intends to file petitions to intervene in the other two pending court actions, all three of which

are pending before Delaware County Common Pleas Court Judge Spiros Angelos.