

July 6, 2018

**VIA FIRST CLASS MAIL**

Christopher C. Houston, Chief Counsel  
Governor's Office of General Counsel  
The Department of Community and  
Economic Development  
Office of Chief Counsel  
Commonwealth Keystone Building  
400 North Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17120

RE: The Chester Water Authority

Dear Mr. Houston:

We represent the Chester Water Authority (the "Authority" or "CWA").

Econsult Solutions, Inc. ("Econsult"), the recovery coordinator for the City of Chester as appointed by the Department of Community and Economic Development (the "Department") has acted *ultra vires* with regard to the Authority as it relates to Chester's distressed status, and has exceeded the scope of statutory authority under the Municipal Financial Recoveries Act, 53 P.S. § 11701.101, *et seq.* (the "Act"). The Department has statutory oversight of the coordinator's actions under the Act. I write to put the Department on notice of these statutory and contractual violations, and to inquire how the Department intends to address them.

Econsult assumed the rights, duties and obligations under the Act as coordinator for the City of Chester in February 2016. Generally and as it relates to Chester, the Act requires Econsult engage in a multiphase process to relieve Chester's financial distress, including formulating and amending a plan; reporting on the financial condition of the municipality; and preparing an exit plan for the municipality. *See* 53 P.S. 11701.242(a); 11701.255; 11701.256). Each of these steps has specific statutory requirements. Each also is governed by strict due process guidelines with regard to the public's notice and opportunity to be heard.

On May 22, 2018 Econsult presented its Financial Condition Assessment of Chester (herein, the “Report”) concluding in large part that “the potential monetization [of the Authority] is the only option [Econsult] can identify that could produce sufficient funds to allow the City to achieve long-term fiscal balance.” The Report continues that the city must “explore the monetization of municipal assets, including a potential transaction involving the Chester Water Authority,” because fiscal challenges are “more severe than known” when the 2016 recovery plan was drafted.<sup>1</sup> The recommendation is inconsistent with Act 47 and unsupportable.

Econsult failed to include in the 2016 Recovery Plan<sup>2</sup> (“Recovery Plan”) any recommendation regarding the Authority and/or substantive analysis to support its current directive. This was mandatory; at the plan stage the coordinator must include “recommendations which will eliminate deficits, balance the budget and avoid fiscal emergencies in the future” as well as “an analysis of whether functional consolidation or privatization of existing municipal services is appropriate and feasible and recommendations for where and how this could be done.” 53 Pa.C.S. § 11701.241(2) and (8). While the Recovery Plan contains nearly 150 recommendations, none discuss or mention the CWA. It also lacks the predicate public analysis upon which any such recommendation might be based.

With these omissions Econsult has been able to operate outside of the due process protections inherent in the Act. Notably, the recommendations and requisite analysis was to be filed (53 P.S. § 11701.242(a)); subject to public written comment (53 P.S. § 11701.243); and presented at a public meeting (53 Pa.C.S. § 11701.244). This process serves significant objectives in providing interested parties and the public at large with an understanding of relevant financial considerations, attendant recommendations and the validity of both. It also allows the public and interested parties the opportunity to be heard and to provide input into the plan ultimately adopted by ordinance.<sup>3</sup> Having failed entirely to address the now-recommended disposition of the CWA in the Recovery Plan, Econsult denied the CWA and general public due process with regard to its recent recommendation.

Through certain Right-to-Know Requests (the “Requests”) the CWA is aware that Econsult met with Aqua America in April 2017. This effort – and any others to this end – was beyond the scope of Econsult’s statutory authority, which became limited to implementation of the Recovery Plan upon its adoption in August 2016. 53 P.S. § 11701.247(a). In addition, the private nature of the meeting appears inconsistent with the

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<sup>1</sup> Econsult’s attempted justification is unbelievable in light of its statutory oversight and mandatory involvement with tailoring Chester’s budget for each fiscal year it has served as recovery coordinator. 53 P.S. § 11701.247.1

<sup>2</sup> Either in the initial version filed on June 15, 2016 or the Amended plan filed on August 12, 2016.

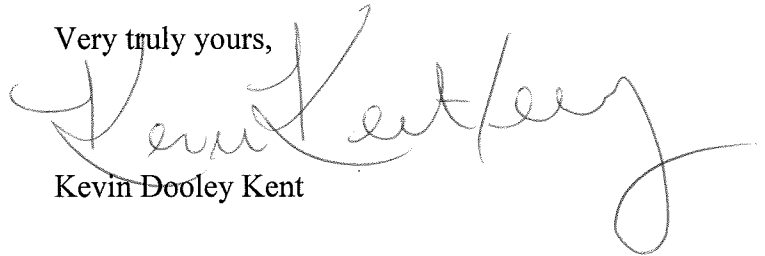
<sup>3</sup> The importance thereof with Econsult’s involvement in Chester’s Act 47 process cannot be understated as it is this process that generated revisions to the plan as ultimately adopted by ordinance in August 2016.

requirements of the Act and the provisions of Econsult's contract with the Department.<sup>4</sup> While the coordinator is permitted to take private meetings with individual creditors, all other meetings are to be held in public pursuant to the Sunshine Act, 65 Pa.C.S. § 701 *et seq.* See 53 P.S. §11701.223. As Aqua is not a creditor of Chester, this meeting – similar to any meeting between the State appointed Coordinator and an Investor Owned Utility– would have to be conducted in strict compliance with the Sunshine Act's provisions. There is no evidence that this was done; despite the few emails received by the CWA in response to its Requests, no documentation reflecting notice, meeting minutes, agendas, etc. was produced. To the extent this documentation exists, it is responsive to the Requests and should have been produced. Its absence to date however stands as clear indicia of Econsult's violations in this regard.

Regardless of Econsult's current view on a disposition of the CWA's assets there can be no doubt that serious errors have occurred in the process; that these omissions with regard to the Recovery Plan and the due process rights of the CWA and public, attendant therewith, are both material and actionable; and that the Department retains an independent obligation to address and remedy the recovery coordinator's statutory and contractual non-compliance. 53 P.S. § 11701.224.1.

The Authority reserves all of its rights and remedies.

Very truly yours,

A handwritten signature in black ink that reads "Kevin Dooley Kent". The signature is written in a cursive style with a large, sweeping flourish at the end.

Kevin Dooley Kent

cc: Francis J. Catania, Esq.  
Chester Water Authority Board Members

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<sup>4</sup> Permitting Econsult's involvement with meetings at the direction of the Department alone.