

Chester Seeks Potential Buyers for Water Authority

By Colin Ainsowrth June 14, 2019

Special to the Times

CHESTER >> City council added a new topic of conversation to the ongoing talks between the city and Chester Water Authority over a potential sale Wednesday night when it passed a resolution to explore the termination of CWA and issue a request for proposal seeking an interested buyer.

The resolution states the city's negotiations with CWA leadership since March 2018 have failed to yield an acceptable agreement to the city and that the city's best interests now lie in pursuing monetizing the CWA.

"I don't want to delve into the agreement portion of it because the conversations continue," Mayor Thaddeus Kirkland said by phone Thursday. "We have not said, 'No, we're not talking anymore ...' but we've put ourselves in exploratory mode."

The RFP, drafted by the city solicitor with input from mayor and council, according to Kirkland, states "the City intends to sell to the Offeror substantially all of the Water System Assets, including real and personal property, which it acquires from the Authority upon termination of the Authority as a matter of law," excluding "cash, cash equivalents, insurance policies, certain books and records, and any assets which may not be sold as a matter of law."

Kirkland said the city's goal in finding a potential buyer is "to not raise rates in a number of years" and continue "quality services for our ratepayers."

"They've obviously been working on (the RFP) for a while," said CWA Solicitor Francis J. Catania on Thursday. "We're happy to keep talking about a settlement,

but if they would prefer to litigate it, we'll do what we have to protect our ratepayers' interests."

The resolution and RFP hinges on the question at the core of the negotiations between the two parties since March 2018 – whether the city, as CWA's original incorporator, has the ability to terminate and sell the authority.

"It's a two part question: Can the city vote to terminate the authority by themselves? If they're wrong on that, then the water authority goes on as before," Catania said. "Even if they're right, the state Supreme Court (in a 2017 ruling on the Pennsylvania Environmental Rights Amendment) made it crystal clear who the money should go to – and the money should go to the ratepayers, not the government that put never put any money into it."

About 22 percent of the CWA's 42,000 customers are in the city of Chester. The remaining 78 percent are elsewhere in Delaware and Chester counties. The CWA board has three members from Chester City, three from Delaware County and three from Chester County.

The CWA Board of Directors approved a resolution in late January to enter a 40-year settlement with the city to avoid litigating the issue, approving a 10 percent rate hike to fund a one-time payment to the city of \$60,285,000 through a bond issuance. CWA assets would then be placed into a trust for the 40-year term. The city has not passed a resolution to enter the agreement.

Aqua America, whose unsolicited offer to buy the CWA in 2017 spurred the initial controversy, filed suit against the city and CWA in early April to block the settlement. Aqua cited the approximately

\$750,000 it pays CWA annual for four interconnections in the system and the impact the 10 percent rate increase would have on Aqua customers.

The two-year debate over a sale of CWA to a for-profit company has raised concerns from ratepayers over potential rate increases. Randahl Williams, speaking at the January CWA meeting, said he owns properties throughout the county in both CWA territories and in areas served by Aqua. "I pay more than twice for the same consumption rate with Aqua," he said, adding that a 4,000-gallon-a-month bill costs him \$80 quarterly in the Chester Water Authority area while in the Aqua region, it costs him close to \$180. A statement posted on the CWA website ahead of the January meeting estimated that if a sale were to happen and customers' rates were doubled based on CWA's gross 2017 revenues of \$47 million, customers would pay an additional \$1 billion for water service over the next 23 years.

In February, Aqua America Inc. Chief Executive Officer Chris Franklin rejected CWA's \$1 billion, 23-year projection as "silly," saying Aqua had proposed a 10-year moratorium on rate hikes as part of its offer. Catania said Thursday that the Pennsylvania Public Utilities Commission has denied Aqua the ability to guarantee a rate moratorium in all previous attempts.

In response to Wednesday night's resolution, Aqua Pennsylvania President Marc Lucca said in a written statement, "Aqua is aware of the city of Chester's intent to sell the Chester Water Authority assets. It is widely understood that the city

of Chester has been the owner of the Chester Water Authority assets for more than 100 years and we believe has the legal standing to sell the assets. In this light, we are reviewing the RFP and plan to submit a proposal in response to the city's RFP."

Lucca stated that Aqua's response would "provide a comprehensive outline of the benefits Aqua would bring to the city and to Delaware and Chester counties as we've done for many other systems and communities here in southeast Pennsylvania, and will include employment offers for all employees of CWA."

The prospect of a sale has been a concern of CWA employees, according to Ramee Davis, CWA distribution repairman and Service Employees International Union shop steward. "I think there's unfair confusion going on. You have guys taking care of their families for 30-40 years (as CWA employees); you have new guys thinking they were getting into a career, a lifetime job," he said by phone. "You're taking about over 70 families, and that's not including the nonunion members."

"More importantly, the customers are at stake as well," Davis said, encouraging ratepayers to independently research the potential for rate increases following a sale. "It's about all our customers, but in the city you're got a lot of senior citizens on a fixed income. They have water every month they can depend on. If you raise these rates you may have customers doing a balancing act with their utilities."

Catania raised questions Thursday about advantage knowledge of the RFP

resolution on Aqua's part. In a Tuesday letter from Kirkland to CWA Board Chairperson Cynthia Leitzell, Kirkland indicated the possibility of issuing an RFP "from the marketplace so we get a sense of all possible alternatives." In a Wednesday response, Leitzell stated Kirkland's letter was distributed to board members at a meeting that afternoon and requested a meeting before action on the RFP was taken.

Leitzell then wrote that an Aqua representative was present at the meeting and "asked a departing CWA person if we were sending someone to the 'meeting tonight.'" Leitzell then described a Wednesday phone call between herself and Kirkland, writing "I called you and you indicated to me in our call that there was no item on the City Council agenda tonight concerning the Chester Water Authority but that council would be discussing the 'RFP.'" Speaking with the Times Thursday, Kirkland said he told Leitzell "the RFP is on the agenda. I never said we were not voting... that was not completely accurate information that she provided (the Times) concerning our conversation."

Aqua responded Thursday afternoon with a statement from Lucca that "Aqua has had conversations with city of Chester about ongoing litigation surrounding the city and the Chester Water Authority and in connection with those discussions, counsel for the city informed our lawyers earlier in the week. Aqua is excited by the opportunity to participate in the city's RFP process and we believe our response will outline many benefits for the customers and communities CWA serves, as well as its employees."

The situation between the city and CWA began, in part, in with Aqua America's (Aqua Pennsylvania's parent company) unsolicited offer to purchase CWA, which the CWA board rejected. At issue throughout the situation has been Chester's status as a financially distressed municipality under Act 47, with a current exit deadline of 2021 to avoid potential state receivership. In August 2017, Kirkland sent a letter to CWA stating that state-appointed Act 47 consultants Econsult concluded that the only way the city's finances could be stabilized was if the authority were to be sold.

The controversy grew in late 2017 when a series of Right to Know requests from Catania revealed contact between Chester's Act 47 coordinators and forprofit water companies regarding potential monetization of the Chester Water Authority to relieve the city's financial troubles.