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IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY  
PENNSYLVANIA

CIVIL COURT

\* \* \* \* \* No. 5400-19  
\*  
CHESTER WATER AUTHORITY \*  
\*  
VS. \*  
\*  
AQUA PENNSYLVANIA, INC. AND \*  
CITY OF CHESTER \*  
\*  
\* \* \* \* \*

Media, PA, July 1, 2019, 9:47 a.m.

\*\*\*

Courtroom Number 10

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TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE JUDGE JAMES P. BRADLEY  
  
JOSEPH JESIOLOWSKI, ESQUIRE  
MEGAN GUERNSEY, ESQUIRE  
For the Plaintiff, Chester Water Authority  
  
KENNETH SCHUSTER, ESQUIRE  
KEVIN GREENBERG, ESQUIRE  
JOEL EADS, ESQUIRE  
GEORGE FARRELL, ESQUIRE  
For the Defendant, City of Chester  
  
JOEL FRANK, ESQUIRE  
JOHN CUNNINGHAM, ESQUIRE  
ROCCO IMPERATRICE, III, ESQUIRE  
For the Defendant, Aqua Pennsylvania

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39  
40  
41

INDEX

DIRECT CROSS REDIRECT RECROSS

ON BEHALF OF THE PLAINTIFF:

Cynthia Leitzell	35J	44G	51J	
James Turner	52J	60G	67J	68G
		65F		
Thomas Chiomento	71J	74G		
		75F		
	[As on cross]			
Gregory Cary	78J	85G	87J	
		87F		
Christopher Luning	96J			
Candace Thompson	101J	111G	119J	120G
		119F		
Thaddeus Kirkland	121J	149G	156J	
		156F		

ON BEHALF OF THE DEFENDANT AQUA:

Christopher Luning	164F	165J		
Cynthia Leitzell	166F			

ON BEHALF OF THE DEFENDANT CITY OF CHESTER:

James Turner	177G			
--------------	------	--	--	--

EXHIBITS

		MARKED	ADMITTED
<u>ON BEHALF OF THE PLAINTIFF:</u>			
Exhibit B	letter of 6/11/19	36	37
Exhibit C	letter to Mayor	41	41
Exhibit D	agenda of 6/12/19	53	54
Exhibit E	resolution #15	55	56
Exhibit F	RFP	105	106

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5  
6  
7  
8

ON BEHALF OF THE DEFENDANT CITY OF CHESTER:

City-1	Resolution	112	113
City-2	Amended RFP	114	115
City-3	deliberative agenda	116	116
City-4	6/29/19 minutes	117	118

1 P R O C E E D I N G S

2 July 1, 2019, 9:47 a.m.

3 JUDGE ANGELOS: Good morning, everyone.  
4 Please be seated. Kindly sit down. May we see  
5 counsel in the Robing Room?

6 \*\*\*

7 [Robing Discussion held off the record: 9:47  
8 a.m. to 9:51 a.m.]

9 JUDGE ANGELOS: Kindly be seated. All  
10 right; I'm calling the matter of Chester Water  
11 Authority vs Aqua Pennsylvania, Inc., and City  
12 of Chester. And today we're dealing with the  
13 request for an injunction. And counsel, let me  
14 have everybody -- counsel, for the record,  
15 first, identify themselves for the record. So  
16 why don't we just start over here?

17 MR. JESIOLOWSKI: Good morning, Your  
18 Honor, Joseph Jesiolowski of Conrad O'Brien for  
19 Chester Water Authority.

20 MS. GUERNSEY: Good morning, Your  
21 Honor, Megan Guernsey from Conrad O'Brien for  
22 the Chester Water Authority.

23 JUDGE ANGELOS: Good morning.

24 MR. SCHUSTER: Good morning, Your  
25 Honor, Kenneth R. Schuster, 37666, on behalf of

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1 the City of Chester and City Solicitor.

2 MR. GREENBERG: Good morning, Your  
3 Honor, Kevin Greenberg, Greenberg Traurig,  
4 82311, on behalf of the City of Chester.

5 JUDGE ANGELOS: Good morning.

6 MR. EADS: Good morning, Your Honor,  
7 Joel Eads on behalf of the City.

8 MR. FARRELL: Good morning, Your  
9 Honor, George Farrell from Greenberg Traurig on  
10 behalf of the City.

11 JUDGE ANGELOS: Good morning,  
12 gentlemen.

13 MR. FRANK: Good morning, Your Honor,  
14 Joel Frank, from ----- on behalf of Aqua  
15 Pennsylvania, along with my partner, John  
16 Cunningham.

17 MR. IMPERATRICE: Good morning, Your  
18 Honor, Rocco Imperatrice, attorney ID #32181, on  
19 behalf of Aqua.

20 JUDGE ANGELOS: Good morning,  
21 gentlemen. Now counsel, you wish to --

22 MR. GREENBERG: Your Honor, before we  
23 get to the recusal matter, which I know is  
24 there, we just have to lodge that the City has  
25 not been served original process in this matter.

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1 We think there's a matter to resolve that here,  
2 but we have to wait, obviously, to deal with  
3 whatever it is. But we want to lodge it at the  
4 very outset.

5 JUDGE ANGELOS: Understood.

6 MR. FRANK: Likewise, Your Honor, Aqua  
7 has not been served.

8 JUDGE ANGELOS: All right; understood.  
9 All right, counsel, to begin with as we had our  
10 discussions on the telephone the other day and  
11 then today, there is a potential conflict that  
12 has arisen with me handling this matter. So I  
13 am going to recuse myself from this matter  
14 today. His Honor Judge Bradley has agreed to  
15 hear the matter. And he will do so. He's been  
16 briefed on the matter, has all the materials  
17 that I had on the matter. So he's had an  
18 opportunity to review them all. He's ready to  
19 proceed. So with that I have signed a formal  
20 recusal that I'll enter as an Order today with  
21 regards to this matter here today. And with  
22 that, I'll turn it over to Judge Bradley. Thank  
23 you all, counsel.

24 \*\*\*

25 THE COURT: Ladies and gentlemen, as Spike just

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1 said, Judge Angelos said I am going to be taking  
2 over from this point. Mr. Frank, you said there was  
3 a problem with service, but you had an idea how it  
4 could be resolved. Do you want to share that with  
5 everybody?

6 MR. GREENBERG: Yes, Your Honor; Kevin  
7 Greenberg, sorry.

8 THE COURT: Oh, sorry.

9 MR. GREENBERG: Yes. The City is prepared  
10 to waive formal service of process. It was hand  
11 delivered to my office as counsel but not to the  
12 City. It was emailed to us. They didn't ask for  
13 permission to have counsel accept. We would have  
14 had they asked. Presuming they would make that  
15 request now and serve us now we will accept it as of  
16 now, subject to all of our rights under 1028.

17 THE COURT: Okay. Now Aqua, I think you  
18 also had a problem?

19 MR. FRANK: No, not a problem, just the  
20 issue, Your Honor. We concur with Mr. Greenberg's  
21 proposed resolution.

22 THE COURT: Okay. I assume the Water  
23 Authority does not have any problem with the  
24 proposed resolution of the alleged issue of service?

25 MR. JESIOLOWSKI: No, Your Honor.

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1           THE COURT: Okay. With that said, you are  
2 the Petitioning party. Do you wish to -- I don't  
3 know whether it's you or your colleague that will be  
4 being first chair here this morning. Do you want to  
5 proceed?

6           MR. JESIOLOWSKI: With the Court's  
7 permission, a brief opening statement?

8           THE COURT: Certainly; emphasis on brief.

9           MR. JESIOLOWSKI: Would you prefer that I  
10 stand, Your Honor?

11          THE COURT: Yes. Whatever you're  
12 comfortable with.

13          MR. JESIOLOWSKI: Your Honor, we're here  
14 today on Plaintiff Chester Water Authority's request  
15 for preliminary injunction against the Defendants,  
16 the City of Chester and Aqua, Pennsylvania, from  
17 prohibiting them from illegally selling the Chester  
18 Water Authority. The evidence we will show today  
19 will be this. Aqua tried to acquire the Chester  
20 Water Authority in 2017 with an unsolicited bid for  
21 320 million dollars. The bid was ultimately  
22 unsuccessful but it apparently sparked in the minds  
23 of the government of Chester, the idea that Chester  
24 should seek to monetize or sell the Water Authority  
25 to help Chester's beleaguered finances. I should

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1 say at the outset that the Authority's position is  
2 that Chester does not own the Authority and,  
3 therefore, Chester can't sell the Authority. That's  
4 a legal question for another day. But for our  
5 purposes right here, the issue is the way Chester is  
6 trying to sell the Authority is illegal. Why is  
7 this attempted sale illegal? It is illegal because  
8 Chester has arranged for the sale behind closed  
9 doors, in a non-public fashion, without subjecting  
10 the sale to competitive bidding. How did that  
11 happen? At a Chester City Council meeting on June  
12 12 of this year the City Council announced a request  
13 for proposal seeking bids for the acquisition of the  
14 Chester Water Authority. The RFP was opened June 12  
15 and set to close July 1. That's only 13 business  
16 days. That's a ludicrously short time for an RFP of  
17 this scale, complexity and scope. The illegality  
18 occurred because the Chester City Council meeting  
19 was held without giving prior public notice that the  
20 Chester Water Authority would be on the agenda that  
21 night. The RFP was also approved that night without  
22 an opportunity for meaningful public comment. The  
23 RFP, itself, as I mentioned, is highly aberrant from  
24 normal RFPs. We'll compare through the course of  
25 the day the Chester RFP versus other RFPs for water,

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1 utilities in the eastern half of Pennsylvania in the  
2 last several years. We'll see that a normal RFP of  
3 this scale is open for months because there is a  
4 significant amount of diligence required. No normal  
5 competitive water system RFP would be structured in  
6 the way Chester has. Together with the way Chester  
7 conducted the City Council meeting and rolled out  
8 the RFP without prior notice, and the fact that the  
9 RFP is so short that no normal entity would ever  
10 issue an RFP like that, is a suggestion that Chester  
11 has preordained a winner in the process. The winner  
12 Chester seemed to pick is Aqua. Aqua had done the  
13 bid in 2017 and already had a diligence file in the  
14 Chester Water Authority. Aqua had a head start  
15 against any other competitor. Only Aqua could make  
16 a meaningful response on a 13 business day  
17 timeframe. The implication that Chester had already  
18 preselected Aqua became explicit on June 19 of this  
19 year. On that day Chester made a filing in a  
20 related litigation between these same parties in  
21 this very Court. The filing said, on page 12, that  
22 Chester argued Pennsylvania Act 12 "was designed to  
23 promote the very transaction that Chester and Aqua  
24 intended to consummate." I'll repeat that. "The  
25 very transaction that Chester and Aqua intended to

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1 consummate." Well how would Chester and Aqua intend  
2 to consummate a transaction a week and a half before  
3 Aqua's bid was even due? How would Chester know  
4 what Aqua's bid would even say? How would Chester  
5 know what other bids it might receive that might be  
6 better than Aqua's bid? This was an admission in  
7 the midst of a supposedly public RFP process that  
8 "Chester and Aqua intend" to consummate the  
9 transaction. It's an admission that the sale was  
10 prearranged by Chester behind closed doors without a  
11 competitive bidding process. But the RFP was a  
12 sham, a fake, a front to give legal cover to a  
13 transaction that Chester had already arranged.  
14 There's no way for Chester to now dispute this  
15 admission, though I imagine their able counsel will  
16 try. We've quoted it fully and faithfully. It came  
17 from a central part of Chester's Brief. It wasn't  
18 pulled from some footnote to some appendix. It  
19 wasn't a simple drafting error, otherwise Chester  
20 would have withdrawn that filing. And they haven't.  
21 This wasn't Chester floating a hypothetical or  
22 responding to a straw man. This wasn't Chester  
23 taking facts that it must assume as true in the  
24 pleading stage. This was Chester, for the very  
25 first time, mentioning that it intends to close the

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1 deal with Aqua in the middle of a supposedly public  
2 bidding process and before Aqua's bid was even  
3 submitted. There's only one conclusion on Chester's  
4 admission. That Chester negotiated the sale behind  
5 closed doors without competitive bidding. Now why  
6 was this sale illegal? It's illegal because there's  
7 two Pennsylvania good governance laws requiring a  
8 sale like this to be conducted in the open. It's  
9 the Pennsylvania Sunshine Act and the Third Class  
10 City Code to which Chester is subject. Provision of  
11 the Third Class City Code says that Chester only has  
12 the power to sell real estate valued in excess of  
13 \$1,500 dollars through a competitive public bidding  
14 process. Sunshine Act and the Third Class City Code  
15 set forth a very clear way that this sale should  
16 have been done. Chester gives public notice that at  
17 the City Council meeting it is going to consider an  
18 RFP on the Water Authority. At the City Council  
19 meeting Chester holds public comment before issuing  
20 the RFP. The City Council approves the RFP to go  
21 out. The RFP stays out. Bids are to be received by  
22 Chester. Bids are to be evaluated. And then  
23 Chester is supposed to have a second City Council  
24 meeting to award the winning bid. None of that  
25 procedure happened here. These good governance laws

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1 are important. They're meant to foster government  
2 transparency and accountability to insure that when  
3 the City of Chester sells assets it gets the highest  
4 possible return for its citizens. What is the  
5 remedy for these violations? The remedy is also  
6 very clear. The Sunshine Act, itself, authorizes  
7 this Court to issue an injunction to block laws --  
8 block violations of that law. That injunction is  
9 what we're asking of the Court today. A preliminary  
10 injunction, preserve the status quo of the parties,  
11 as it has always been, to prevent Chester and Aqua  
12 from closing on the sale or otherwise interfering  
13 with the operations of the Authority, followed by,  
14 at some point in the near future, a permanent  
15 injunction hearing at which the Court can decide  
16 once and for all whether these laws have been  
17 violated. If the Court makes that determination, at  
18 that point the Court simply sends Chester back to  
19 the beginning of the process to start the sale  
20 again, publically and correctly from the outset.  
21 The harm to Chester and Aqua from issuing an  
22 injunction is nil. Issuing an injunction simply  
23 preserves the status quo as it has always been. The  
24 harm to the Authority from failing to issue the  
25 injunction is existential. The Authority serves

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1 200,000 customers with life sustaining water. It is  
2 an irreplaceable asset. If the Authority is sold,  
3 it cannot be taken back. A violation of State Law  
4 is considered per se irreparable harm under  
5 Pennsylvania Supreme Court precedent. I'll also  
6 conclude by mentioning that the well known  
7 evidentiary standard on a preliminary injunction  
8 does not require the Authority today to fully prove  
9 its case. The Authority only needs to demonstrate a  
10 likelihood of success on the merits. We believe  
11 there can be no stronger case given the aberrant  
12 nature of the RFP coupled with the admission by  
13 Chester in the middle of that process that it had  
14 preselected Aqua. That's all; thank you.

15 THE COURT: Thank you. City of Chester?

16 MR. GREENBERG: Yes, Your Honor, good  
17 morning. Thank you, very much. I'm going to lay  
18 out a responsive argument to the fiction you just  
19 heard.

20 THE COURT: Okay. Could you put your name  
21 on the record?

22 MR. GREENBERG: Kevin Greenberg for the  
23 City of Chester, Your Honor.

24 THE COURT: All right; thank you.

25 MR. GREENBERG: And I'll lay out an

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1 argument in response to the fiction we just heard.  
2 There are four elements I would like you to keep in  
3 mind throughout this -- this argument and throughout  
4 this case. First, the CWA is here prematurely.  
5 There are --

6 THE COURT: I'm sorry?

7 MR. GREENBERG: They are here prematurely.

8 THE COURT: Okay.

9 MR. GREENBERG: This case is not right.  
10 They are arguing against the City selling the Water  
11 Authority. Putting aside that we aren't doing that,  
12 the fundamental question is does the City have the  
13 right to solicit bids? Even if everything they just  
14 said was true, and it's not, but even -- I feel  
15 compelled to say that given how they took our  
16 pleadings out of context. But if everything they  
17 said is true, there would be a contract that would  
18 come at some later date, which would be subject to a  
19 challenge from the Third Class City Code. There is  
20 a process to deal with at that time, not now. All  
21 the City is doing is asking for bids and it is done  
22 so according to law. Second, there is no deal,  
23 period, end, stop. There has never been a deal  
24 between the City and Aqua. We are hoping to open  
25 the RFPs to see what the market is. Two-and-a-half

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1 years ago -- well I'll get to the history in a  
2 second. Third, the City complied fully with the  
3 Sunshine Act. There's some arguments they're making  
4 about things that aren't there, but to the extent  
5 that the Act applies, and it unquestionably did to  
6 the issuance of the RFP, the City followed the  
7 Sunshine Act to the letter in its ordinary course it  
8 always does. And the fourth and the real heart of  
9 this matter is their entire injunction rests on this  
10 conspiracy about a conspiracy. They allege that one  
11 sentence, one fraction of a sentence taken out of  
12 context from a preliminary injunction what we are  
13 required to take as true the nonsense fiction that  
14 they put in their Complaint is dispositive. And  
15 what we were arguing in that section, which by the  
16 way wasn't simple. It was one more argument about  
17 the Act 12, but what we argued in that sentence was  
18 even if you accept as true the fiction they were  
19 spinning in their Complaint that the Pennsylvania  
20 Legislature in Act 12 specifically encouraged this  
21 kind of transaction to take Water Authority assets  
22 to private in certain situations. We don't have to  
23 do it, but the City is certainly acting in  
24 Legislative guidance to do so. So let me back up to  
25 the beginning so you understand where this all comes

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1 from. And I'll try to shorten my argument to the  
2 extent that he's already discussed this. But CWA is  
3 crafted in March of 2017; Aqua stepped forward,  
4 presumably spurred by passage of Act 12 of 2016,  
5 which was the Legislative encouragement for this to  
6 happen. And they said to CWA, hey, we'd like to buy  
7 the Authority. They didn't even talk to the City,  
8 at least as far as I know. We weren't part of that  
9 discussion. We found out about it in a public  
10 process after it was rejected or about the time it  
11 was rejected. For two plus years we have a dispute  
12 going. And we negotiated with them. We went back  
13 and forth. Eventually there was what we hoped was  
14 an agreement in principle last fall. And we  
15 negotiated up until in reality a letter -- an offer  
16 was received on I think it was June 4. It was a  
17 settlement negotiation, so I don't want to get in  
18 details of them. But we continued to negotiate with  
19 CWA in good faith trying to proceed. Now that was  
20 going on. And on March 1, CWA ran to this Court in  
21 the Orphans Court matter, we'll call it, and  
22 prematurely filed an unright action. How do we know  
23 it's not right? Aqua has objected to it  
24 preliminarily saying it was not right. We have  
25 objected to it, saying it's not right. It's about a

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1 contract that has not been executed. Then on April  
2 1, they served us all with that Complaint. And  
3 apparently on April 3 -- well not apparently,  
4 apparently response to it, but on April 3, I think  
5 it was, or maybe it was the 4th, Aqua filed its own  
6 action. That, too, wasn't right. Aqua was  
7 objecting to that action. Aqua filed that and said  
8 it wasn't right. And the CWA objected to that. How  
9 do we know it was not right? Because the CWA said,  
10 hey, there's not been a contract executed. It's not  
11 right. So CWA said it's not right. The City also  
12 objected to the Aqua lawsuit, saying it's -- and we  
13 spent a lot of time on that preliminary objection,  
14 which we would not have done if the deal was in.  
15 And Aqua, in its own matter, said look, all three of  
16 us agree that until there's a signed contract it's  
17 not right to adjudicate what the process was. But  
18 yet we're here today without a signed contract  
19 adjudicating it because CWA has run back to Court  
20 now. But, anyway, in those two actions I mentioned  
21 briefly -- I'll come back to those preliminary  
22 objections, which were June 19, in a second. On  
23 June 7, or thereabouts, the City determined that the  
24 June 19 deadline for filing those POs made it  
25 necessary for it to pursue with Plan B, having

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1 rejected the last CWA offer. And it needed -- it  
2 now had the June 19 deadline; that we couldn't agree  
3 to proceed with the fiction that CWA was spinning  
4 that we had an agreement; that we decided to go  
5 forward and go with an RFP. And about June 7 the  
6 City did this and then started going through the  
7 processes as required by the Third Class City Code.  
8 So to issue the RFP the City Council has to approve.  
9 Everybody agrees to that. City Council met on June  
10 12. There's all this argument that meeting wasn't  
11 scheduled. It was regularly scheduled meeting. It  
12 was approved by resolution in December of 2018. It  
13 was advertised. And I think it was December of 2018  
14 or January of 2019. It was on the City Council  
15 website. It was their regularly scheduled meeting.  
16 Now we knew this was going to happen in advance of  
17 that meeting. So on or about June 10 or 11, and we  
18 had some transmission issues at our end, the Mayor  
19 of the City wrote to the president of the CWA Board  
20 and -- the Chairwoman of the Board, I apologize, and  
21 made clear to her that we were going a different  
22 way. That we had taken their last offer on June 4  
23 as something that was a retrenchment and we were  
24 going to see what the market had to bear. We didn't  
25 foreclose negotiations with CWA. We just said

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1 before we accept the terms they were offering that  
2 were flatly unacceptable, we wanted to make sure  
3 there wasn't a better deal in the marketplace for  
4 the City, its residents and its neighbors and, for  
5 that matter, the working men and women who were here  
6 today who work for CWA, who the City has always been  
7 committed to protect. So he wrote to them. And  
8 about the same time counsel reached out to counsel  
9 for Aqua who we were in settlement discussions  
10 around all of this because at the end of the day,  
11 from the time they filed their thing on April 3 and  
12 they filed their -- served it on April 1, we knew we  
13 couldn't get this deal done unless all of three of  
14 us were working together. Well we came to a  
15 conclusion we couldn't get it done. So we let them  
16 know we were going with an RFP. We let them know we  
17 were going with an RFP. And we had a meeting.  
18 Meeting was regularly advertised. At the beginning  
19 of that meeting, they complied -- the whole meeting  
20 complied with the Sunshine Act. It was a regularly  
21 scheduled meeting. At the beginning of the meeting  
22 Mayor Kirkland offered an opportunity to comment on  
23 any matter on the agenda. He then, by the way,  
24 there was another comment period at the very end of  
25 the meeting. But the minutes of the meeting

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1 demonstrate completely it was there. If you notice,  
2 Your Honor, in their pleading at no point do they  
3 allege there wasn't a comment opportunity at the  
4 beginning of the meeting. They allege only that  
5 after resolution #15 was read, before it was voted  
6 on, there wasn't a comment period. That's fine.  
7 But that's not relevant. They don't have to have  
8 notice of comment for each of, on that night, 16  
9 resolutions that were being addressed. It would  
10 seem sort of silly to offer employment -- to agree  
11 to approve employment for snacks and then have a  
12 comment; employment for wine and then have a  
13 comment. So the way the City does it, as is  
14 expressly permitted by the Sunshine Act, is to take  
15 comment on agenda matters at the beginning of the  
16 meeting and then a public comment on anything else  
17 at the end of the meeting. And that is what the  
18 Mayor and the City Council did to the letter. They  
19 then -- the three requirements in the Sunshine Act,  
20 one, that you advertise the meetings; which they  
21 did. Two, that you offer an opportunity to comment  
22 before official action is taken, which they did.  
23 And the third is that the vote be taken in public,  
24 that there be no deliberative action away from the  
25 public forum. And again, there is nothing in the

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1 Complaint, because it could not be true that City  
2 Council took any such action outside the meeting.  
3 City Council voted on the record, 4 to nothing, 1  
4 member was late, but voted 4 to nothing unanimously  
5 to proceed with an RFP. Again, it's proceed with an  
6 RFP to learn what the market value is. And the  
7 reason that is so important is because all of these  
8 allegations about how the RFP is too short, well of  
9 course it's short. We didn't have the information.  
10 The Allentown RFP they point to was 27 pages. Now  
11 that includes pretty pictures. It includes a form  
12 contract and it includes pages and pages of data  
13 about the system that the City does not have,  
14 because the CWA would never give it to us. Time and  
15 time again we've asked for information. Time and  
16 time again they've refused to provide us  
17 information. So the reason we did this was we said  
18 we don't have the information. So what we said was  
19 this. And this is unusual and in fact it used the  
20 word unusual in the RFP. And it says to the market,  
21 hey, we don't have all the information. Go look at  
22 their public filing because they do a lot with the  
23 securities, compliance, go look it up. That's a  
24 Municipal Standard Board that published all their  
25 financial statements on a regular basis every time

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1 they raise money. So we told people to go look it  
2 up. We told people to do their due diligence. And  
3 by the way, this process has been going on for 2 1/2  
4 years so everybody knew it was going on. So we said  
5 it was unusual. So we expect to get back from you  
6 conditional offers, offers with required further  
7 information because here's the thing, if the City  
8 decides to pursue this route and if we send notice  
9 of -- if we resolve to terminate the authority,  
10 which is the step, then they are required by a whole  
11 series of case law to comply with us and work with  
12 us in that process. Again, that's a matter for  
13 another day. But we can provide that information at  
14 a later time. We can't do it today. But everybody  
15 knows how many rate payers they have; everybody  
16 knows what the market pays for a rate payer,  
17 roughly. And everybody knows what they publically  
18 disclose. So tell us if we're in the right ballpark  
19 because if the right number is 320 million dollars,  
20 great. If the right number is the 61 million that  
21 they talked about publically or 60.2 million they  
22 talked about publically, great. Let's see what the  
23 market is. Let's see what the opportunities are.  
24 Let's see what protections are offered for  
25 employees. Let's see what protections are offered

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1 for rate payers. The CWA Board has been eager to  
2 come up with a 10 percent rate hike that's much  
3 larger than what is needed to fund a settlement.  
4 But they're pursuing down that road, and that's  
5 fine. That's their choice. But that's what is  
6 there. Now on June 19, coming forward from that, we  
7 filed the objections I talked about. These were not  
8 even verified pleadings. They were arguments from  
9 counsel. We must, as you know, Your Honor, take for  
10 purpose of preliminary injunctions everything  
11 alleged as true with a few minor exceptions for  
12 government records. If they allege it, we have to  
13 accept it as true. So we did. We, in fact,  
14 expressed it. Look at paragraphs 14 and 15, talked  
15 about how we disagreed with their characterization.  
16 We go on at length. Would it have been better if we  
17 added the word allegedly in this one paragraph on  
18 page 12 for like the 18th time? We could have said  
19 that, yes, if it would have solved this. I guess  
20 they offered it for us to withdraw it or refile it.  
21 We could withdraw and refile it, if that would make  
22 them happy. It seems silly to be here today to ask  
23 us to add the word allegedly, but we're happy to do  
24 it because there is no deal. And that's sort of  
25 where we are. So at the end of the day we get back

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1 to the question of whether or not we did this. And  
2 so the question is whether or not we admitted that  
3 and, obviously, we did. We're getting bids. The  
4 City goes forward here and is getting bids, is  
5 complying with law and exploring its option.  
6 Hopefully these RFPs are open today. The City could  
7 be delivered of them. We expect multiple offers, at  
8 least based on who has shown interest in this  
9 proposal, one of them maybe from CWA. We don't  
10 know. We certainly gave them notice of everything  
11 along the way. And at that point we will go ahead  
12 and figure out what the right path is and go through  
13 the remaining portion of the process as need be.  
14 What I hear them saying is you got to bid this but  
15 we're enjoining you from bidding this. Well I'm  
16 sorry, that's not -- this is an attempt to  
17 perpetuate the status quo, which is a perpetual  
18 existence of the CWA Board as the deciding and  
19 contracting authorities. That is not the relevant  
20 issue here. Whatever happens, these 200,000 rate  
21 payers will receive water and it will be provided by  
22 the same men and women who do it today. At the end  
23 of day whatever happens to the deciding corporate  
24 board is and what happens to the profits from that  
25 rent, does it turn into something that the City and

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1 other neighbors can use or does it become the  
2 management of CWA gets to allocate to its people.  
3 So let me just make sure I hit everything else  
4 before I sit down. Oh, wait, and the last question  
5 here is this. I talked a lot about the likelihood  
6 of success on the merits. That is the relevant --  
7 the key element here today. But to be clear,  
8 there's nothing about enjoining an RFP that advances  
9 the public interest. There is nothing about an RFP  
10 that would create irreparable harm. There's nothing  
11 about an RFP that changes the status quo ante, which  
12 is we're fighting over the right to terminate the  
13 Authority if we choose to do so. There's nothing  
14 about this remedy that's not otherwise available of  
15 law because here's the thing, let's presume there  
16 nonsense is true. The City opens the bids today and  
17 immediately signs on and calls up the other party  
18 and said -- one of the parties and, again, their  
19 example is Aqua. We were to call a party and say,  
20 hey, we like your offer, let's sign the document  
21 without negotiating, without talking about it,  
22 without doing anything other than sign the form, the  
23 document that comes over the transfer. As a lawyer,  
24 I would not accept that, but that's a different  
25 problem. But even were we to do that, there's an

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1 action at that point to stop that contract. And  
2 that is why an injunction to stop a government from  
3 taking an action it is expressly permitted to do  
4 under State law, in fact, required to do under State  
5 law if it wants to follow this course of conduct, is  
6 absolutely inappropriate. Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. FRANK: Good morning, Your Honor; once  
9 again, Joel Frank for Aqua Pennsylvania. Your  
10 Honor, there's a lot of rhetoric, quite honestly, in  
11 the CWA's filings for public and public relations  
12 purposes by CWA. But when you analyze it, there's  
13 really truly no substance to CWA's claims and  
14 arguments. It's smacks of desperation and truly  
15 without any kind of foundation. CWA's entire claim  
16 is premised upon speculation and conjecture. It  
17 goes right from A to Z without worrying about what  
18 happened between B and Y. It's truly one of the  
19 most egregious examples of a false start that I  
20 believe the Court may have seen. As eluded to by  
21 co-counsel, it's not ripe in any sense of the word  
22 for preliminary injunction at this time. There's  
23 nothing imminent that requires the Court's  
24 intervention here and now. Your Honor is well aware  
25 of the stringent requirements for properly issuing a

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1 preliminary injunction. There's no meeting of  
2 irreparable harm here. The subject meeting with  
3 which CWA takes, she took way back -- took place way  
4 back on June 12. And the RFP process began well  
5 over two weeks ago, yet this action was only filed  
6 two business days ago. Importantly, Your Honor,  
7 it's unknown whether any proposal bids will even be  
8 awarded, let alone to who. Even if the proposals  
9 and bids are accepted by the City, contracts need to  
10 be negotiated and signed and there are rights of  
11 appeals at that point in time. There's no urgency  
12 or emergency here now as we sit here. Further, CWA  
13 has no clear way to relief and is not likely to  
14 prevail on the merits. While Aqua was not involved,  
15 upon review of the City's vote to issue the RFP, it  
16 appears to us to be in full compliance with the  
17 requirements of the Sunshine Act. Even CWA admits  
18 in their filing that there was a public vote at a  
19 public meeting -- publically advertised meeting. In  
20 any event, CWA had a representative or designee, per  
21 paragraph 54 of their Complaint, at that meeting.  
22 So any notice issues as eluded to are consequently  
23 are of no import or significance. Further, the City  
24 has not violated this Third Class County Code --  
25 City Code, excuse me. The RFP was, in fact, in

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1 complete compliance with the City Code and no  
2 decisions had been made and, again, don't even have  
3 the bids as of yet. Let me address some of the kind  
4 of underlying premises because it's addressed in  
5 their pleadings, as well, Your Honor. The City, I'd  
6 like to be clear, has a clear, unfettered statutory  
7 right under the MAA, Municipal Authorities Act, to  
8 dissolve CWA and to reclaim CWA's assets. MMA  
9 Section 5622 provides that right and the proper  
10 basis, therefore, is actually set forth in Section  
11 13(c) of the RFP, itself, which is Exhibit F to  
12 CWA's Complaint, Your Honor. The Act 73 amendments  
13 don't alter or limit the City's rights as far as  
14 acquiring the assets or who has ownership thereof.  
15 All that did was pertain to governments, with three  
16 representative of the City, three representatives  
17 from Chester County, three representatives from  
18 Delaware County. Didn't affect ownership interest,  
19 whatsoever, simply governs. CWA also references the  
20 PEDF and the Robinson cases. But however, Your  
21 Honor, they're totally distinguishable. CWA doesn't  
22 own the water. They don't own the Susquehanna  
23 River. They don't even own the Octorara Creek.  
24 They only have an interest in the system that  
25 conveys that water and treats it. It's not an

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1 [inaudible] which is dissipated. Water is naturally  
2 replenished. So trying to rely upon those other two  
3 cases, you're talking about timber, gas and oil,  
4 which you're not naturally replenished is  
5 consequential and, again, distinctionable. CWA  
6 still said in treating -- in distributing the water,  
7 it, itself, is not unique. Other -- there are  
8 others out there who can readily perform that  
9 function, as well. Now there's three claims in  
10 their Complaint, three counts, only one of which is  
11 truly against Aqua. That is a so-called Conspiracy  
12 Count, Count 3 of the Complaint. That Complaint  
13 fails against Aqua on a Conspiracy basis, alone.  
14 There's no violation of the Sunshine Act, first of  
15 all, so you can't have any violation of -- you can't  
16 have Conspiracy at that point in time. Furthermore,  
17 Aqua is a private entity to which no Sunshine Act  
18 obligations attach. Furthermore, our research  
19 reveals that there's no claim like this has ever  
20 been upheld; that is, Conspiracy to Violate the  
21 Sunshine Act. You'd be creating new law finding  
22 such and such an action. In any event, and perhaps  
23 most importantly, Aqua had nothing to do with the  
24 noticing of the subject meeting or the conduct of  
25 that meeting, nor did Aqua have anything to do with

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1 the language of the RFP or the timeframe set forth  
2 therein. There were simply and admittedly several  
3 discussions between City and Aqua once the City  
4 recognized the legitimacy of Aqua's legal position  
5 in the two underlying cases in front of Judge  
6 Angelos, eluded to by prior counsel in their  
7 arguments, wherein importantly CWA and the City were  
8 aligned against Aqua. The City made an initial  
9 overture to Aqua to engage in some discussions of  
10 those matters which was the right to get into. And  
11 while settlement negotiations did occur between  
12 counsel, no City Council group, let alone a member,  
13 participated in any of those conversations.  
14 Importantly, there is no agreement. Aqua is  
15 currently, as we sit here today, is merely a  
16 participant in the RFP process like any other  
17 potential bidder of which we believe there are  
18 several. There's no greater harm to CWA at this  
19 time. Aqua and other bidders, Your Honor, are  
20 proceeding at their own peril and expense in  
21 submitting the bids. There's nothing that's been  
22 awarded. There's nothing that's entered. As is  
23 typically the case, there may be additional  
24 processes involved in qualified bidders before the  
25 City awards the bid to anyone, if anyone. So asked

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1 about public interest; the law already provides for  
2 remedies if the RFP process is ultimately and  
3 actually deficient in some process once the contract  
4 is awarded. In the meantime, the injunction would  
5 undermine the City's rights under MAA to dissolve  
6 CWA and reclaim its assets and potentially delays  
7 the City's exit from Act 47, as well. So Your  
8 Honor, both procedurally and substantively, we  
9 contend the subject request for preliminary  
10 injunction should be readily denied and the matter  
11 dismissed. Thank you, sir.

12 THE COURT: Thank you. CWA ready to  
13 proceed with the evidentiary portion?

14 MR. JESIOLOWSKI: Yes, Your Honor. With  
15 your permission we'll call our first witness.

16 THE COURT: Okay.

17 MR. JESIOLOWSKI: Your Honor, Chester Water  
18 Authority calls Cindy Leitzell.

19 MR. FRANK: Your Honor, obviously Ms.  
20 Leitzell has something to say. But if we could get  
21 some sense of what is planned and how and what offer  
22 of proof would be there? We have had no  
23 submissions, at all, from them as to what is  
24 planned.

25 THE COURT: Okay; well you've been asked

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1 for an offer of proof and you'll put it on the  
2 record for us, please?

3 MR. JESIOLOWSKI: Your Honor, Cindy  
4 Leitzell is the chairperson of the Chester Water  
5 Authority's Board. She can testify to the fact of  
6 Aqua's bid in 2017. She can also testify to the  
7 interactions she had with the City of Chester on  
8 June 11 and June 12.

9 MR. FRANK: Your Honor, we have no -- I  
10 think -- we have no problem with that. What I'm  
11 asking for is for him to lay out what the plan is  
12 for today in terms of all the evidence or at least  
13 they're planning to present because I think what --  
14 we'd like to know where this is going. There have  
15 been -- I mean, there's no substantive pleadings, at  
16 all. This is -- we have not reached the point of  
17 preliminary objections because we just got served  
18 today. But this conspiracy claim has been so  
19 inspecifically [sic] pled that we can't even know  
20 what we're defending against.

21 THE COURT: I'm going to overrule the  
22 objection and permit the witness to testify. Ms.  
23 Leitzell, please come forward and be sworn.

24 MR. FRANK: And Your Honor, for the Court's  
25 edification, we'll stipulate that there was an offer

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1 by Aqua in 2017, for the record, so stipulated.

2 THE COURT: Okay. That may shorten the  
3 testimony, somewhat. Have the witness sworn,  
4 please?

5 \*\*\*

6 [Witness sworn: 10:27 a.m.]

7 \*\*\*

8 MR. JESIOLOWSKI: Your Honor, permission to  
9 provide Your Honor -- to approach and provide Your  
10 Honor with a series of exhibits that we may use  
11 throughout the day and to leave one on the witness  
12 stand, as well, Your Honor.

13 THE COURT: Okay. Permission granted.

14 MR. FRANK: Your Honor, we have not seen  
15 these exhibits. If he's going to leave them on the  
16 witness stand, we'd like to see them.

17 MR. JESIOLOWSKI: We have copies for both  
18 counsel, as well.

19 THE COURT: Okay. Do you want to do that  
20 right now, take care of that?

21 MR. FRANK: Your Honor, until we discern  
22 whether or not there's anything to be objected to --  
23 obviously we have no problem with you seeing it, but  
24 providing it to a witness, I think, is a problem.  
25 We can look at it exhibit by exhibit or we can have

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1 a break to look at them all.

2 THE COURT: Well let's take it piece-by-  
3 piece here and see what counsel proceeds with.

4 MR. JESIOLOWSKI: Certainly, Your Honor.

5 \*\*\*

6 PLAINTIFF:

7 CYNTHIA LEITZELL,  
8 having been first duly sworn, was called as a  
9 witness herein and was examined and testified as  
10 follows:

11 \*\*\*

12 DIRECT EXAMINATION [10:29 a.m.]

13 BY MR. JESIOLOWSKI:

14 Q Ms. Leitzell, what is your title with regards to  
15 the Chester Water Authority?

16 A I am chair of the Chester Water Board.

17 Q How long have you had that role?

18 A Since 2012.

19 Q Would you describe the composition of the  
20 Chester Water Board?

21 A The Board is comprised of three members from the  
22 City of Chester, three members from the County of  
23 Delaware, and three members of the County of  
24 Chester.

25 Q And you say from the County --

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1 A From the County.

2 Q What decides that?

3 A County Council appointed the three people from  
4 the County of Delaware, of which I am one.

5 Q Thank you. Ms. Leitzell, we're going to talk  
6 about your interactions with the City on June 11 and  
7 June 12. Did you have any interactions with the  
8 City of Chester on June 11, 2019?

9 A I received a letter from the City of Chester on  
10 that date.

11 \*\*\*

12 MR. JESIOLOWSKI: Your Honor, the letter  
13 Ms. Leitzell is referring to is tabbed as Exhibit B  
14 in your binder. May Ms. Leitzell be handed a copy  
15 of that letter?

16 THE COURT: Okay. I've actually read it,  
17 so --

18 MR. FRANK: Your Honor, with all due  
19 respect, the one attached to the Complaint was  
20 incorrect, partial of page two. So you may want to  
21 look at Exhibit B.

22 THE COURT: Okay.

23 MR. JESIOLOWSKI: Your Honor, that's  
24 actually a subject that we will be asking Ms.  
25 Leitzell about.

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1 THE COURT: All right; I've got Tab B.

2 \*\*\*

3 BY MS. JESIOLOWSKI:

4 Q Ms. Leitzell, what is -- do you recognize this  
5 document?

6 A I do.

7 Q And what is this document?

8 A This is a letter that I received from Mayor  
9 Kirkland on June 11, indicating to us that they were  
10 unhappy with the negotiations and were going out for  
11 an RFP for the sale of the Chester Water Authority.

12 \*\*\*

13 MR. JESIOLOWSKI: Your Honor, I request to  
14 move this letter into evidence.

15 THE COURT: Any objections?

16 MR. FRANK: No, Your Honor.

17 MR. GREENBERG: None, Your Honor.

18 THE COURT: It will be moved into evidence.

19 \*\*\*

20 BY MR. JESIOLOWSKI:

21 A Ms. Leitzell, would you read the last sentence  
22 of page one through the first sentence of page two  
23 of this letter?

24 A Excuse me, "through its negotiation and  
25 litigation strategy the Authority has unfortunately

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1 continued its practice of treating the City as a  
2 passenger in this process despite my explicit  
3 attention to issue a request" -- I'm sorry, that  
4 doesn't read right. "Despite my explicit attention  
5 to that, to issue a request for proposals from the  
6 marketplace so that we get a sense of all possible  
7 alternatives."

8 Q Ms. Leitzell, did I hear you say that doesn't  
9 read right?

10 A Yes. I'm sorry, when I was reading it, it says  
11 "despite my explicit attention to that to issue a  
12 request for proposals from the marketplace so we get  
13 a sense of all possible alternatives."

14 Q Does it appear that a page is missing in there?

15 A Well --

16 \*\*\*

17 MR. FRANK: Objection, Your Honor.

18 THE COURT: Basis?

19 MR. FRANK: It's one thing to say if  
20 there's a sentence missing; is a word missing. To  
21 assume a whole page is a fact that she can't have  
22 any basis of.

23 THE COURT: Overruled.

24 THE WITNESS: I can't tell. I just felt  
25 that it didn't read -- flow into the next sentence,

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1 possibly. But it -- the way I'm reading this is  
2 that the -- has the -- alleged that the Authority  
3 had not treated the City appropriately despite his  
4 intention to issue a request for proposal. So I'm  
5 not sure where that was going with that.

6

\*\*\*

7

BY MR. JESIOLOWSKI:

8

Q Is the format of the letter you're reading now  
9 the format in which you received the letter?

10

A I originally received -- when you say format,  
11 you mean hard copy?

12

Q In other words, you didn't receive a letter with  
13 some of the language in between what's --

14

A No. I believe this is what I received, I  
15 believe.

16

Q Thank you. On June 12 did you conduct any  
17 business on behalf of the Chester Water Authority?

18

A We had our -- we had a meeting on June 12 for  
19 the Authority, yes.

20

Q At what time of the day?

21

A I believe it was 1:00 in the afternoon -- in the  
22 afternoon.

23

Q What, if anything, happened after that meeting?

24

A After that meeting I received a telephone call  
25 from our solicitor indicating that one of our Board

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1 members was spoken to by a member of Aqua after the  
2 meeting.

3 \*\*\*

4 MR. FRANK: Objection, hearsay, Your Honor.

5 THE COURT: Sustained.

6 MR. JESIOLOWSKI: Your Honor, I'm not  
7 offering that for the truth of the conversation,  
8 just that Ms. Leitzell heard this before.

9 THE COURT: Okay. Why is it relevant?

10 MR. JESIOLOWSKI: We'll get to that in a  
11 moment. It's relevant to testimony that at least  
12 two other witnesses we plan to call, the  
13 conversation from the Aqua representative to members  
14 of the Authority's Board after that meeting.

15 MR. FRANK: Objection, Your Honor, if they  
16 want to call them, they can, Your Honor.

17 THE COURT: I'll allow it for now.

18 THE WITNESS: I'm sorry. Would you repeat  
19 the question?

20 \*\*\*

21 BY MR. JESIOLOWSKI:

22 Q Why don't we just do this. Ms. Leitzell, did  
23 you have any communications with the City of Chester  
24 on June 12?

25 A I did.

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1 Q Would you turn to what is marked as Exhibit C in  
2 the binder?

3 A Yes. I have it.

4 Q Do you recognize this document?

5 A Yes.

6 Q What is this document?

7 A This is a letter that I sent to Mayor Kirkland  
8 following our Board meeting that afternoon.

9 \*\*\*

10 MR. JESIOLOWSKI: Your Honor, I request to  
11 move this exhibit into evidence?

12 THE COURT: Any objection?

13 MR. FRANK: No objection.

14 MR. GREENBERG: No, Your Honor.

15 THE COURT: It shall be admitted.

16 \*\*\*

17 BY MR. JESIOLOWSKI:

18 Q Ms. Leitzell, would you read the last paragraph  
19 on page one of this letter through the end of the  
20 letter?

21 A "I dictated this letter before I called you. As  
22 I indicated, an Aqua representative arrived late at  
23 our Board meeting today and asked a departing CWA  
24 person if we were sending someone to the meeting  
25 tonight. I called you and you indicated to me in

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1       our call that there was no item on the City Council  
2       agenda tonight concerning the Chester Water  
3       Authority but that Council would be discussing the  
4       RFP."

5       Q     Ms. Leitzell, would you walk us through the  
6       phone call you had with the Mayor of Chester that  
7       you just described in this letter?

8       A     I called the Mayor that afternoon and identified  
9       myself and told him that an Aqua representative had  
10      said something to one of my Board members and that I  
11      wanted to know was I coming to the meeting tonight,  
12      which led me to ask him is CWA on the agenda this  
13      evening? His answer to me was no, it is not, but we  
14      are going to be discussing the RFP.

15      Q     And the RFP, did you have any reason to believe  
16      at that point the RFP related to the Water  
17      Authority?

18      A     I did.

19      Q     I'm sorry, say that, again?

20      A     Yes, because of his letter. He mentioned an RFP  
21      in the letter. But he said he was discussing the  
22      RFP, which led me to believe that they were  
23      discussing issuing it or discussing the content of  
24      the RFP. But the CWA, itself, was not on the agenda  
25      and was not going to be discussed.

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MR. JESIOLOWSKI: No further questions,  
Your Honor.

THE COURT: Okay.

\*\*\*

CROSS EXAMINATION [10:36 a.m.]

BY MR. GREENBERG:

Q Good morning, Ms. Leitzell. So let's just start  
with the easiest -- you did get the letter  
referencing the RFP, correct, that was already moved  
into admission?

A Yes.

Q And again, I'm not going to give you the whole  
thing, but if you can read, again, on page two --  
again, after whatever was truncated, missing and I  
agree with you something is missing, just read that  
partial sentence at the very top of the page.

A "To issue a request for proposals from the  
marketplace so we get a sense of all possible  
alternatives."

Q Do you have regular dealings with Mayor  
Kirkland?

A Me, personally?

Q Yes.

A No.

1 Q About anything other -- have you ever dealt with  
2 him about anything other than the Water Authority?

3 A No.

4 Q So do you believe that the Mayor writing to you  
5 about a request for proposals from the marketplace  
6 and the context of this letter pertain to a request  
7 for proposals relating to CWA?

8 A Yes.

9 Q Okay. And so when you spoke to him on June 12  
10 and you asked him if the CWA was on the agenda, were  
11 those the exact words or was that a rough  
12 paraphrase?

13 A I asked him -- yes; I asked him if CWA -- were  
14 we on the agenda that evening.

15 Q Is it possible that he might have thought that  
16 he was referring to your offer to settle the  
17 lawsuit?

18 A I don't believe so.

19 Q Possible, a motion to terminate the Water  
20 Authority?

21 A I'm sorry, ask that --

22 Q Is it possible that he meant that he was  
23 referring to a motion to terminate the Water  
24 Authority and eliminate and go forward with a sale  
25 at that moment?

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1 A I don't know.

2 Q Okay. And when he said to you, no, but there's  
3 the RFP, you testified earlier that related to CWA  
4 RFP, is that correct? That was your perception?

5 A That was my perception, yes.

6 Q Okay. Now why did you make that call?

7 A I made the call because an individual had come  
8 up to one of our Board members and had asked, I  
9 assume or are you going to the City Council meeting  
10 this evening? And that led us to believe that there  
11 was something relative to us on the City Council  
12 meeting, which is why I called. He said no, and  
13 that was the end of my conversation with the Mayor.

14 Q So let me get this right; somebody said there --  
15 told -- did this person speak to you or speak to  
16 somebody else?

17 A Spoke to a person on my Board.

18 Q Okay. So who on your Board relayed that  
19 conversation to you?

20 A Well the conversation was relayed to me by my  
21 solicitor. And the Board member relayed it to him.

22 Q So what you're telling is you made this call in  
23 response to your solicitor talking to a Board member  
24 talking to a third party and yet you knew enough and  
25 felt enough to call the Mayor to talk about being on

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1 the agenda that night and then specifically heard  
2 him talk to you about an RFP that you took to mean  
3 relating to the Water Authority, correct?

4 A I'm a little confused with what your question --  
5 could you remind repeating that, please?

6 Q Sure. So let's take them one at a time. You  
7 had no firsthand knowledge as to this conversation?

8 A I was not party to that conversation with my  
9 Board member, yes.

10 Q But the relay of that conversation led you to  
11 call the Mayor. Specifically -- when you called the  
12 Mayor was it specific to the ongoing dispute and  
13 negotiation between the City and the Water  
14 Authority?

15 A No. It was one question regarding whether we  
16 were on the -- the agenda that evening. I wasn't  
17 getting into the dispute with the Mayor.

18 Q That's fine. So let's talk about the Board  
19 meeting that happened before that. Did you take any  
20 action with respect to the City in response to the  
21 letter that you received?

22 A I'm trying to understand your question; I'm  
23 sorry.

24 \*\*\*

25 MR. JESIOLOWSKI: Your Honor, slight

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1 objection. I don't believe she's required or  
2 allowed to disclose action taken in executive  
3 session. There was an executive session.

4 THE COURT: Well I don't think he asked  
5 anything about executive question. But I'm confused  
6 by the question. If you'd restate it? I'm not sure  
7 what letters you're referring to.

8 \*\*\*

9 BY MR. GREENBERG:

10 Q Okay. So on June 11 you received a letter.  
11 What is the June 12 meeting called in response to  
12 the letter of the Mayor or was it a regularly  
13 scheduled meeting?

14 A We had had it scheduled; and it was not a direct  
15 response to the letter because the letter only  
16 occurred the day before. We would not be able to do  
17 that.

18 Q So in the public meeting portion of that  
19 session, putting aside any executive sessions, did  
20 you have any discussion, at all, about the Mayor's  
21 correspondence with the CWA?

22 A I don't believe at the public session. I don't  
23 recall. I don't recall.

24 Q So you took no -- did you vote on any resolution  
25 or take any other action at that meeting as it

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1       pertains -- in a public session, as it pertains to  
2       the City of Chester?

3       A     I don't believe so. I don't recall.

4       Q     Or the -- or anything related to the dispute  
5       with the City of Chester, however tangentially?

6       A     Firstly, I'm not sure what dispute you're  
7       referring to. We were still in negotiations. So --  
8       but I believe at that meeting I was directed to --  
9       or it may have been earlier, directed to have  
10      conversations with the Mayor. We were ongoing  
11      conversations with the City on this issue.

12      Q     Who directed you to have that conversation?

13      A     The Board.

14      Q     Okay. So they did earlier or in the meeting?

15      A     Earlier.

16      Q     So in executive session is what you're  
17      testifying? I just want to understand. I don't  
18      want to get into executive session. I just want to  
19      understand what you mean by earlier.

20      A     Yes. In executive session.

21                                                               \*\*\*

22                       MR. JESIOLOWSKI: Objection, Your Honor, he  
23                       can't ask about the executive session.

24                       MR. GREENBERG: I'm trying to clarify what  
25                       she meant by earlier, Mr. --

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1 THE COURT: Well the executive information  
2 is privileged. She doesn't have to respond to that.

3 MR. GREENBERG: She testified she was  
4 instructed earlier. I'm trying to figure out when  
5 that was, if it was in a prior Board meeting, if it  
6 was in -- if it were some time that she can't talk  
7 about the nature of that. She did testify she was  
8 instructed earlier.

9 MR. JESIOLOWSKI: Objection, Your Honor,  
10 this is also beyond the scope of the direct  
11 examination.

12 THE COURT: Overruled. You can answer the  
13 question if you understand it.

14 THE WITNESS: I don't.

15 THE COURT: Okay.

16 \*\*\*

17 BY MR. GREENBERG:

18 Q Ma'am, you testified you were instructed by the  
19 Board earlier to call the Mayor. When was that?

20 A It was before -- not in executive -- we have had  
21 ongoing discussions that we had wanted to sit down  
22 with the Mayor and his negotiating group to continue  
23 discussions. That's what I meant by earlier. We --  
24 and then when I got the letter, it was decided that  
25 we would, you know, continue our negotiations with

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1 him, try to set up a meeting which -- and then I  
2 called the Mayor that afternoon.

3 Q So when you called the Mayor did you ask to set  
4 up that meeting?

5 A No. I did not, because by that time we knew  
6 that there was a meeting that evening.

7 Q This is beyond the scope, so I can either recall  
8 her or I can ask now, but I'd like to know what she  
9 did after the call with the Mayor. Did she direct  
10 somebody to attend the meeting?

11 A I did not direct anyone to attend the meeting.

12 Q Were you part of a discussion about someone  
13 being directed to attend the meeting?

14 A I don't recall.

15 \*\*\*

16 MR. JESIOLOWSKI: Your Honor, if I may --

17 THE COURT: She's already answered. She  
18 says she doesn't recall.

19 MR. GREENBERG: Okay. Nothing else, Your  
20 Honor, at this time.

21 THE COURT: Okay; Mr. Frank?

22 MR. FRANK: Your Honor, no questions at  
23 this time, but we'd like to reserve the right to  
24 call Ms. Leitzell in our case, assuming we have to  
25 put one on.

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1 THE COURT: Understood.

2 MR. FRANK: Thank you, sir.

3 THE COURT: Okay; anything on redirect?

4 MR. JESIOLOWSKI: No, Your Honor -- one  
5 moment; actually, yes, Your Honor.

6 \*\*\*

7 REDIRECT EXAMINATION [10:44 a.m.]

8 BY MR. JESIOLOWSKI:

9 Q I just want to clarify, one moment, Ms.  
10 Leitzell. When the Mayor said -- am I  
11 characterizing your testimony right? You asked the  
12 Mayor is Chester Water on the agenda that night and  
13 the Mayor said no?

14 A That's correct.

15 \*\*\*

16 MR. GREENBERG: Objection.

17 THE COURT: You're leading the witness,  
18 obviously, counsel.

19 MR. JESIOLOWSKI: No further questions,  
20 Your Honor.

21 THE COURT: Okay. You may step down.

22 MR. JESIOLOWSKI: Your Honor, the Water  
23 Authority calls James Turner.

24 MR. FRANK: Offer of proof, Your Honor?

25 THE COURT: Okay.

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1 MR. JESIOLOWSKI: Mr. Turner was -- is a  
2 Water Authority employee and resident of Chester.  
3 He attended the Chester City Council meeting the  
4 evening of June 12. We intend to ask him about the  
5 proceedings of the Chester City Council Meeting on  
6 June 12.

7 THE COURT: Okay. Please come forward and  
8 be sworn, sir.

9 \*\*\*

10 [Witness sworn: 10:44 a.m.]

11 \*\*\*

12 JAMES TURNER,  
13 having been first duly sworn, was called as a  
14 witness herein and was examined and testified as  
15 follows:

16 \*\*\*

17 DIRECT EXAMINATION [10:45 a.m.]

18 BY MR. JESIOLOWSKI:

19 Q Mr. Turner, who is your current employer?

20 A Chester Water Authority.

21 Q What is your title?

22 A Marketing.

23 Q And what City do you live, sir?

24 A City of Chester.

25 Q Did you attend the Chester City Council meeting

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1 the evening of June 12?

2 A Yes. I did.

3 Q Were you present for the entire meeting, sir?

4 A Yes. I was.

5 Q Did you hear all of the proceedings clearly and  
6 follow along?

7 A Yes. I did.

8 Q Can you testify about those proceedings here  
9 today?

10 A Yes.

11 Q Mr. Turner, was any type of agenda handed out at  
12 the meeting?

13 A There was an agenda available at the podium  
14 before the meeting.

15 Q Would you turn to Exhibit D in the binder, sir?  
16 Mr. Turner, do you recognize this document?

17 A Yes.

18 Q What is this?

19 A This is the agenda that was on the podium.

20 \*\*\*

21 MR. JESIOLOWSKI: Your Honor, we move to  
22 enter this exhibit into evidence.

23 THE COURT: Any objection?

24 MR. GREENBERG: No objection, Your Honor.

25 MR. FRANK: No objection, Your Honor.

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1 THE COURT: Okay. It will be admitted into  
2 evidence.

3 \*\*\*

4 BY MR. JESIOLOWSKI:

5 Q Mr. Turner, would you tell me where on this  
6 agenda it mentions the Chester Water Authority?

7 \*\*\*

8 MR. GREENBERG: Objection, Your Honor, the  
9 document speaks for itself.

10 THE COURT: Sustained.

11 THE WITNESS: There's no place that I see  
12 --

13 THE COURT: It's been sustained; you don't  
14 have to answer the question, sir.

15 THE WITNESS: Thank you, sir.

16 MR. JESIOLOWSKI: Will Mr. Greenberg  
17 stipulate that this agenda does not mention the  
18 Chester Water Authority?

19 MR. GREENBERG: No, Your Honor.

20 THE COURT: It speaks for itself and I can  
21 read it, sir.

22 MR. JESIOLOWSKI: Very well, Your Honor.

23 \*\*\*

24 BY MR. JESIOLOWSKI:

25 Q Mr. Turner, at some point on the June 12 City

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1 Council meeting did Chester Water Authority come up  
2 as a subject?

3 A Yes. It did.

4 Q Do you recall when in the meeting that occurred?

5 A Yes, sir, #15.

6 Q Can you describe those circumstances for us?

7 A Yes. The City Clerk read through the  
8 resolutions. She got to #15 and she -- the  
9 resolution started with whereas the City of Chester  
10 formed the Chester Water Authority and it kind of  
11 went on from there.

12 Q Would you take a look at Exhibit E in the  
13 binder, sir, page two? Do you recognize this  
14 document or at least what it stated on this  
15 document?

16

\*\*\*

17 MR. FRANK: Objection, Your Honor.

18 THE COURT: Basis?

19 MR. FRANK: Basis for -- well let me -- I'd  
20 like to know how he would have a copy of the  
21 resolution unless it was provided by counsel. And  
22 if so, that's fine.

23 THE COURT: You can cover that on cross  
24 examination if you feel it's relevant, sir,  
25 overruled.

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1

\*\*\*

2

BY MR. JESIOLOWSKI:

3

Q Mr. Turner, does this document describe the resolution you just testified about, beginning with whereas the City of Chester?

4

5

A Yes. This is the words that I heard, yes.

6

Q Very well.

7

\*\*\*

8

MR. JESIOLOWSKI: Your Honor, we request to move this document into evidence at this time.

9

10

MR. FRANK: Objection, authentication -- well you know what, we'll stipulate this is a copy of the resolution; that's fine.

11

12

13

MR. GREENBERG: No objection, Your Honor.

14

THE COURT: Okay. It will be moved into evidence.

15

16

\*\*\*

17

BY MR. JESIOLOWSKI:

18

Q Mr. Turner, what happened immediately after this resolution was read?

19

20

A Immediately after the resolution was read there was a call for votes by members of Council.

21

22

Q Do you recall the results of the vote?

23

A The votes were for -- all four positive for this to proceed.

24

25

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1 Q I'd like to drill down on the timing. After the  
2 resolution was read but before the vote was taken,  
3 did City Council have any debate on this proposed  
4 resolution?

5 A No. They did not.

6 Q Similar question; after the resolution is read  
7 but before the vote, did City Council open the floor  
8 to public comment on the proposed resolution?

9 A No. They did not.

10 Q Was there any point in the June 12 City Council  
11 meeting where public comment was allowed?

12 A Prior to the reading of the resolutions on  
13 agenda items, only.

14 Q The point of public comment had the subject of  
15 Chester Water Authority even been mentioned?

16 A No. It had not.

17 Q I guess I'm confused. How could you comment on  
18 something that hadn't been mentioned even yet?

19 \*\*\*

20 MR. FRANK: Objection, Your Honor.

21 MR. GREENBERG: Objection, Your Honor.

22 THE COURT: Sustained, argumentative.

23 \*\*\*

24 BY MR. JESIOLOWSKI:

25 Q Looking back on the proceedings do you feel like

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1 a fair opportunity was given for public comment on  
2 the Chester Water Authority resolution?

3 \*\*\*

4 MR. FRANK: Objection, Your Honor.

5 MR. GREENBERG: Objection, Your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: No. There -- can I answer  
8 that?

9 THE COURT: You've answered; you said no.

10 \*\*\*

11 BY MR. JESIOLOWSKI:

12 Q And why not, sir?

13 A Because if you look at the agenda there was no  
14 -- a regular -- a normal person would not have seen  
15 Chester Water Authority there and known what that  
16 was, what any of those items on that agenda had to  
17 do with the Authority. So therefore, you could not  
18 comment.

19 \*\*\*

20 MR. JESIOLOWSKI: One moment, Your Honor.

21 \*\*\*

22 BY MR. JESIOLOWSKI:

23 Q Would an opportunity to comment had been  
24 meaningful to you as either a citizen of Chester or  
25 an employee of the Water Authority?

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1 A Yes.

2 Q Did anyone, in fact, offer public comment at  
3 that time on the Chester Water Authority resolution?

4 \*\*\*

5 MR. GREENBERG: Objection, Your Honor.

6 THE COURT: Overruled.

7 MR. GREENBERG: At that time, I'm not sure  
8 what he's speaking to.

9 THE COURT: At the meeting.

10 MR. JESIOLOWSKI: At the time of the public  
11 comment period.

12 THE WITNESS: In the time of the public  
13 comment meeting in regards to agenda items, no.

14 \*\*\*

15 BY MR. JESIOLOWSKI:

16 Q Do you think the City wanted public comment on  
17 the Water Authority resolution?

18 \*\*\*

19 MR. FRANK: Objection.

20 MR. GREENBERG: Objection.

21 THE COURT: Sustained.

22 MR. JESIOLOWSKI: No further questions,  
23 Your Honor.

24 THE COURT: Cross examination?

25 \*\*\*

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1 CROSS EXAMINATION [10:50 a.m.]

2 BY MR. GREENBERG:

3 Q Good morning, Mr. Turner. Do you normally  
4 attend Chester City Council meetings?

5 A From time to time, yes.

6 Q From time to time; in the last year how many of  
7 you have you attended?

8 A Four.

9 Q Okay. And of those four, how many of them were  
10 times you were directed to attend by someone who  
11 employed you?

12 A I've never been told --

13 \*\*\*

14 MR. JESIOLOWSKI: Objection, Your Honor.

15 THE COURT: Overruled.

16 THE WITNESS: -- to go to a meeting.

17 \*\*\*

18 BY MR. GREENBERG:

19 Q Were you ever asked to attend a meeting by  
20 somebody who employed you or by one of their agents,  
21 presuming it was one of the --

22 A I was asked if I was available to go to a  
23 meeting, yes.

24 Q So in this case were you specifically asked by  
25 some -- by this Chester Water Authority or one of

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1 its agents to attend the meeting?

2 A I was asked if I was available to attend the  
3 meeting, yes.

4 Q Who asked you?

5 A Thomas Moore.

6 Q And who is Mr. Moore?

7 A He's one of my coworkers.

8 Q What's his title?

9 A Director of IS.

10 Q So Mr. Moore asked you if you were available.  
11 And when you said yes -- well let me say, what did  
12 you say to him in response to him asking if you were  
13 available?

14 A I could go.

15 Q And then did he say, okay, please do so? What  
16 was his response to that?

17 A I don't remember.

18 Q Did you take from that a request that you  
19 attend?

20 A Yes.

21 Q And did you record the meeting?

22 A Yes. I did.

23 Q Who gave you the recording technology?

24 A It's my own technology.

25 Q How did you record it? On what device?

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1 A ZOOM recorder.

2 Q ZOOM recorder that you own, personally?

3 A Correct.

4 Q Okay. Do you have a copy of that for us?

5 A Of the entire session?

6 Q Yes, please.

7 A Actually, I do.

8 Q Okay.

9

\*\*\*

10 MR. GREENBERG: Your Honor, we'd like to  
11 authenticate this and play at least the start of it  
12 so that you can hear the opportunity for public  
13 comment.

14 THE COURT: We're not going to do that  
15 right now. If you want to review it at some point  
16 in time and then recall him, that's a different  
17 story. But I'm not going to let you do it as part  
18 of the Water Authority case.

19 MR. GREENBERG: Can we direct the counsel  
20 for the Authority to provide us a copy of that  
21 electronically as soon as possible?

22 THE COURT: Can that be done?

23 MR. JESIOLOWSKI: Certainly; if Mr. Turner  
24 has it here we'll take it and we'll get copies made.

25 THE COURT: Okay.

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1 MR. GREENBERG: May I approach, Your Honor?

2 THE COURT: You may approach, sir.

3 \*\*\*

4 BY MR. GREENBERG:

5 Q I'm handing up a document to you, Mr. Turner.  
6 It's a certified copy of the minutes of the meeting.  
7 We will -- I'm not asking you to adopt them for the  
8 purpose of their authenticity. Those will come in,  
9 otherwise. I'm just asking you to read for us  
10 everything following -- actually just the top of the  
11 first page before the first word resolution.

12 \*\*\*

13 THE COURT: Is there a Bench copy of same?

14 MR. GREENBERG: Oh, sorry, Your Honor.

15 THE COURT: Thank you.

16 \*\*\*

17 BY MR. GREENBERG:

18 Q If you'd start with the regular meeting?

19 A "The regular meeting of the Council of the City  
20 of Chester was held on the above date at 7:05 p.m.,  
21 with Mayor Thaddeus Kirkland presiding. A prayer  
22 was followed by Pledge of Allegiance. The role was  
23 called and the following were present: Elizabeth  
24 Williams, William Morgan, Portia West, absent until  
25 7:35, William L. Jacobs, Mayor Thaddeus Kirkland.

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1 On the motion of the Council -- motion by Councilman  
2 Morgan, seconded by Councilman Jacobs, the minutes  
3 of the previous meeting were approved as submitted.  
4 The following vote was taken, yea, Williams, Morgan,  
5 Jacobs, Mayor Kirkland, nay, zero. Mayor Kirkland  
6 asked if anyone in the audience had any comments on  
7 agenda items, only. Mayor Kirkland says Council met  
8 in executive session on June 7 for litigation  
9 matters and was also -- also had an executive  
10 session on June 10 to discuss employment matters.  
11 The City Clerk proceeded with the reading of the  
12 resolutions."

13 Q Having read that, does that refresh your  
14 recollection to the Mayor giving an opportunity for  
15 comment at that time?

16 A I heard that, yes.

17 Q Okay. Did you stay to the end of the meeting?

18 A To the end of the meeting until the awards, yes.

19 Q And the public comment afterwards, did you stay  
20 through that, too?

21 A No. I did not.

22 Q So did you hear them begin the process of public  
23 comment at the end?

24 A I did.

25 Q So why did you feel it was appropriate to leave

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1 at that point at the end of the meeting?

2 A Because I had church.

3 Q You had church; so why did you believe you were  
4 attending the meeting? Did you have any reason --  
5 were you given any reason, at all, to attend this  
6 meeting at this time?

7 \*\*\*

8 MS. GUERNSEY: Objection, Your Honor, asked  
9 and answered.

10 THE COURT: Sustained.

11 MR. GREENBERG: I'm just trying to  
12 understand, Your Honor, what purpose -- what we  
13 heard was Mr. Moore sent him. We didn't ask him if  
14 he was told why. I'd like to know if he was told  
15 anything about the purpose of --

16 THE COURT: The objection was sustained,  
17 counsel, let's move on.

18 MR. GREENBERG: Okay. Nothing else at this  
19 time, Your Honor.

20 THE COURT: Okay.

21 \*\*\*

22 CROSS EXAMINATION [10:56 a.m.]

23 BY MR. FRANK:

24 Q Mr. Turner, good morning; only a couple of quick  
25 follow-ups, sir. The vote, itself, on the

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1 resolution, et cetera, and the acceptance of the  
2 agenda, that was done in public, was it not, sir?

3 A Yes.

4 Q Okay. And did you happen to ask what item 15  
5 pertained to?

6 A No; no one did.

7 Q You were given the opportunity, though, were you  
8 not?

9 A Actually, no.

10 Q How so?

11 A Because the Mayor, the way that he asked the  
12 question was are there any comments in regards to  
13 agenda items? One lady got up, said that there --  
14 she was asking something else. And he said that we  
15 will close that and go to the resolutions. So there  
16 was no -- there was no delay from one point to the  
17 other, even if I had looked down to #15 to find that  
18 it had something to do with the Chester Water  
19 Authority.

20 Q Did you stand up and object and say, whoa, whoa,  
21 whoa, time out. I have something I want --  
22 question, as well, Mayor?

23 A No, sir.

24 Q You were here for -- I don't know when you came  
25 in, sir. Were you here for Ms. Leitzell's testimony

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1 when she started off today?

2 A Yes, I was.

3 Q Okay. And you heard her testify that she  
4 understood that the RFP reference on the agenda  
5 pertained to CWA, correct?

6 A I heard her say that, yes.

7 Q Thank you.

8 \*\*\*

9 MR. FRANK: No further questions.

10 THE COURT: Okay; anything on redirect?

11 \*\*\*

12 REDIRECT EXAMINATION [10:57 a.m.]

13 BY MR. JESIOLOWSKI:

14 Q Mr. Turner, why didn't you give a comment at the  
15 public comment period with regards to Chester Water  
16 Authority?

17 A At the end?

18 Q At the beginning, when public comment period was  
19 offered?

20 A Because there was nothing on the agenda that  
21 stated anything about Chester Water Authority.

22 \*\*\*

23 MR. JESIOLOWSKI: No further questions,  
24 Your Honor.

25 THE COURT: Okay.

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RE CROSS EXAMINATION [10:57 a.m.]

BY MR. GREENBERG:

Q Did you ask whether any of these things pertained to the Chester Water Authority?

A No.

\*\*\*

MR. GREENBERG: Thank you.

THE COURT: Okay. You may step down, sir. Thank you.

MR. JESIOLOWSKI: Your Honor, at this time we would like to call on cross Cindy Thompson, Chester City Clerk.

THE COURT: Okay. Is she here?

MR. GREENBERG: Your Honor, first of all it's Candice Thompson, the City Clerk. She is not here. My understanding is that service had not been perfected and that there would be an opportunity to call her, which we can at some point today, since --

MR. JESIOLOWSKI: Your Honor, we noticed her attendance on Friday, which is two days after we personally served these counsel with copies of the Complaint. They were fully aware that we intended to call this witness. They've known about it all weekend. They've had a fair opportunity to prepare

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1 her, to prepare any response to any question we  
2 should ask.

3 THE COURT: Where is she right now,  
4 counsel?

5 MR. FRANK: Your Honor, I believe she is in  
6 the City of Chester.

7 THE COURT: Okay. Is there any reason you  
8 can't call her and get her here today?

9 MR. FRANK: No. I will call -- I will go  
10 out and call her.

11 MR. GREENBERG: We'd like time to prepare  
12 her, Your Honor, because we had not --

13 THE COURT: I understand. I want to get  
14 her on the way and moving here, though.

15 MR. GREENBERG: That's fine.

16 THE COURT: Okay.

17 MR. FRANK: May I be excused to call her,  
18 Judge?

19 MR. JESIOLOWSKI: One moment, Your Honor.  
20 We also noticed the attendance of Mayor Kirkland. I  
21 presume that based on counsel's conversations they  
22 need to also bring Mayor Kirkland here?

23 MR. FRANK: I'll call both, the Clerk and  
24 Mayor. I suspect they're available, Your Honor, to  
25 make them available. They're only not here because

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1 our position was --

2 THE COURT: Forget why they're not here. I  
3 would like to get them here rather than argue about  
4 why they're not here.

5 MR. JESIOLOWSKI: Your Honor, we also  
6 noticed the attendance of a Chester representative,  
7 knowledgeable to testify about the RFP to the extent  
8 that the Mayor or Ms. Thompson don't have that  
9 knowledge. We're not sure if that's necessary,  
10 because we haven't heard the Mayor or Ms. Thompson's  
11 testimony. But we did notice that, as well.

12 MR. FRANK: With all due respect, Your  
13 Honor, you can notice an official. You can't notice  
14 the City to attend with a knowledgeable  
15 representative that --

16 MR. JESIOLOWSKI: I would just --

17 THE COURT: Agreed; agreed.

18 MR. JESIOLOWSKI: A designee from the City  
19 of Chester to testify.

20 THE COURT: Okay. Let's see what the other  
21 two individuals have to say, if anything.

22 MR. JESIOLOWSKI: Your Honor, at this time  
23 we'd like to call Thomas , Chester Water Authority.

24 MR. FRANK: Offer of proof?

25 MR. JESIOLOWSKI: Mr. can testify to the

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1 conversation the chairperson eluded to after the  
2 meeting on June 12.

3 THE COURT: Okay; have the witness sworn.

4 \*\*\*

5 [Witness sworn: 11:00 a.m.]

6 \*\*\*

7 THOMAS CHIOMENTO,

8 having been first duly sworn, was called as a  
9 witness herein and was examined and testified as  
10 follows:

11 \*\*\*

12 DIRECT EXAMINATION [11:00 a.m.]

13 BY MR. JESIOLOWSKI:

14 Q Mr. Chiomento, what is your role with respect to  
15 the Chester Water Authority?

16 A I'm a member of the Board.

17 Q And did you attend the Board meeting at the  
18 Water Authority the afternoon of June 12?

19 A I did.

20 Q What happened after that meeting?

21 A I exited the meeting, was in the parking lot and  
22 Greg Cary pulled up in the parking lot, asked if he  
23 had missed the meeting. I said, you did. And I  
24 know Greg. I told him he did miss the meeting.

25 Q You say you know Greg. How long have you known

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1 him?

2 A A number of years, a decade, at least.

3 Q And who is Greg Cary?

4 A Greg Cary, as I understand it, is representative  
5 for Aqua.

6 Q Mr. Cary regularly attend Chester Water Board  
7 meetings?

8 A He does.

9 Q Does he hold himself out as a representative of  
10 Aqua at those meetings?

11 A Yes, sir.

12 Q Describe to us, again, the conversation you had  
13 with Mr. Cary?

14 A Sure; as I -- as I walked to my car I saw Greg.  
15 He pulled up. He rolled his window down, asked if  
16 he missed the meeting and if I -- I think the  
17 meeting had changed a number of times or it was  
18 noticed or something. It was a different time than  
19 normal. So Greg had asked if he had missed it. And  
20 I said, yeah, you missed it. And he said, well did  
21 anything come up related to Chester and I said, no.  
22 I didn't recall anything from in the regular meeting  
23 coming up. And he said -- in part of the  
24 conversation he said will you guys be sending  
25 somebody tonight to Council. And I didn't know what

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1 Greg was talking about, responded that I didn't  
2 know.

3 Q What did you do next?

4 A Well on the way home I had missed the executive  
5 session prior to the meeting, so in thinking about  
6 what Greg had told me I thought, oh, maybe I missed  
7 something in executive session related to this. So  
8 I called Frank Catania, our solicitor, and said, hey  
9 is there something going on related to us at City of  
10 Chester, because I had walked in very late to the  
11 executive session, almost immediately to walk into  
12 the regular meeting. And he said, no, why? And --

13 \*\*\*

14 MR. FRANK: Objection, hearsay.

15 THE COURT: Sustained.

16 \*\*\*

17 BY MR. JESIOLOWSKI:

18 Q Don't talk about privileged information.

19 A Don't talk about what?

20 Q Privileged information.

21 A Okay, got it.

22 Q Before the conversation with Mr. Cary, did you  
23 personally have any information to indicate whether  
24 the City Council meeting later that evening Chester  
25 Water Authority would be on the agenda?

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1 A I don't recall that, at all. I had no  
2 information of that, no.

3 \*\*\*

4 MR. JESIOLOWSKI: I have no further  
5 questions, Your Honor.

6 THE COURT: Any questions?

7 \*\*\*

8 CROSS EXAMINATION [11:03 a.m.]

9 BY MR. GREENBERG:

10 Q Good morning.

11 A Good morning.

12 Q You testified that you were not there for  
13 executive session so you do not know what was said  
14 at executive session?

15 A That's correct.

16 Q You do not know what was said before executive  
17 session, is that correct?

18 A That's correct.

19 Q Did you have any conversation after your  
20 conversation with Mr. Catania relating to the City  
21 of Chester and City Council sessions that day?

22 A I'm sorry.

23 \*\*\*

24 MR. JESIOLOWSKI: Your Honor, can he  
25 rephrase the question?

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1 THE WITNESS: Yes, I'm sorry.

2 \*\*\*

3 BY MR. GREENBERG:

4 Q Following your discussion with Mr. Catania, did  
5 you have any other discussions about the City of  
6 Chester and its relation to CWA, City Council  
7 session, anything of the sort?

8 A Not that I recall, no.

9 Q So your testimony is the only conversations you  
10 had that day about this were you missed -- after you  
11 missed the earlier meetings were the conversation  
12 with the representative -- the alleged  
13 representative of Aqua --

14 A Right.

15 Q The representative of Aqua, as far as we know,  
16 and with Mr. Catania, and nobody else?

17 A That's what I recall.

18 Q Okay. You do not speak to Ms. Leitzell?

19 A No.

20 Q Okay. Thank you.

21 \*\*\*

22 CROSS EXAMINATION [11:04 a.m.]

23 BY MR. FRANK:

24 Q In what formal capacity, Mr. Chiomento, was Mr.  
25 Cary reportedly representative of Aqua?

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1 A As -- to my knowledge, I think he's -- as I  
2 understand it, he attends our meetings to understand  
3 -- you know, to report back what occurred at our  
4 meetings.

5 Q You have no information as to whether he's  
6 formally an employee --

7 A I do not. I do not have that information.

8 \*\*\*

9 MR. FRANK: Very good, thank you, sir.

10 THE WITNESS: Thank you.

11 THE COURT: Anything on redirect?

12 MR. JESIOLOWSKI: Nothing else, Your Honor.

13 THE COURT: You may step down, sir, thank  
14 you.

15 MR. JESIOLOWSKI: Your Honor, Chester Water  
16 Authority calls Greg Cary.

17 THE COURT: Okay.

18 \*\*\*

19 [Witness sworn: 11:05 a.m.]

20 \*\*\*

21 THE COURT: Before we start with the  
22 questions of the witness, do you have a copy of the  
23 witness list that you served on the other counsel?

24 MR. GREENBERG: Nothing was served, Your  
25 Honor.

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1 THE COURT: Well I thought you got  
2 something that said whatever.

3 MR. GREENBERG: We got notices to attend  
4 for our two folks who were not parties at that  
5 point.

6 THE COURT: Okay. Do you have --

7 MR. JESIOLOWSKI: Your Honor, I could pull  
8 up the email on my cellular phone, if you would like  
9 to see it. I sent these notices by PDF to counsel.

10 THE COURT: I just want to have an idea how  
11 many witnesses I'm going to be listening to, today.

12 MR. JESIOLOWSKI: Yes, Your Honor; it's the  
13 Mayor of Chester, City Clerk of Chester --

14 THE COURT: So people that are presumably  
15 on their way?

16 MR. JESIOLOWSKI: A designee of the City of  
17 Chester knowledgeable about the RFP.

18 THE COURT: Okay.

19 MR. JESIOLOWSKI: A designee of Aqua  
20 knowledgeable about the RFP.

21 THE COURT: Okay. Well we'll deal with  
22 that --

23 MR. JESIOLOWSKI: And Your Honor, we also  
24 have an expert witness we will be putting on.

25 THE COURT: Okay.

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1                   MR. FRANK: Your Honor, we have not seen an  
2 expert report. We have not even gotten a name of an  
3 expert witness. We have not seen a witness list.

4                   THE COURT: Let's wait until we get to that  
5 part that we can put the objection on.

6                   MR. FRANK: Our two city officers should be  
7 here about 2:00, Your Honor.

8                   THE COURT: Okay.

9                   MR. JESIOLOWSKI: Your Honor, I'd just like  
10 to begin with Mr. Cary to say that we called him in  
11 response to a subpoena. So we will be taking him on  
12 cross.

13                  THE COURT: Okay.

14                  MR. JESIOLOWSKI: And I'd like to thank Mr.  
15 Cary for coming.

16                  THE WITNESS: You're welcome.

17                  MR. JESIOLOWSKI: I appreciate your  
18 attendance today.

19                                           \* \* \*

20                                           GREGORY CARY,  
21 having been first duly sworn, was called as a  
22 witness herein and was examined and testified as  
23 follows:

24                                           \* \* \*

25                                           DIRECT EXAMINATION [As on cross 11:07 a.m.]

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1 BY MR. JESIOLOWSKI:

2 Q Mr. Cary, did you attend the -- do you attend  
3 Chester Water Authority Board hearings, regularly?

4 A I attend as many as I can. I cannot get -- I  
5 have -- probably out of a two year period I missed  
6 maybe a handful.

7 Q Are you a Chester Water Authority customer?

8 A No.

9 Q So why do you attend their Board meetings?

10 A I'm hired as a contractor for Aqua and -- to do  
11 multiple tasks, but mainly to attend different types  
12 of public meetings.

13 Q And is that the capacity you attended the  
14 meeting or part of the meeting or after the meeting  
15 on June 12?

16 A Yes, sir.

17 Q Mr. Chiomento testified about a conversation he  
18 had with you. I'd like to hear your side of the  
19 conversation, sir?

20 A Sure. I received a call around 10 of 1 from an  
21 Aqua employee that I report to.

22 Q Is this June 12?

23 A Yes. On June 12; I'm sorry. And asking me if I  
24 was aware of a meeting with the Chester Water  
25 Authority Board meeting that they were holding. And

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1 I said, no, I wasn't. And he said, can you attend?  
2 And I said well what time is it? And he said he was  
3 just going -- eating his lunch and he was going  
4 through the Internet and the Chester Water Authority  
5 website, and he said the monthly meeting is today at  
6 1:00. And I said well it's 10 of 1 right now. I  
7 said I'll go if you'd like me to. But it's going to  
8 take me awhile to get there, because I live in Honey  
9 Brook, Chester County. I said but -- I found it  
10 unusual because if it's the monthly meeting it was  
11 scheduled for June 20. So I left. And as I arrived  
12 into the parking lot of the Concord Township  
13 Building where the meetings are now held, I saw Mr.  
14 Chiomento walking into the parking lot. I pulled up  
15 to him. I asked if the meeting was over. And he  
16 said, yes, it had just finished. And I had said --  
17 I want to make sure when I ask this question that  
18 the question only refers to the public session. I  
19 don't want to know anything about any executive  
20 session or something I should not know about that  
21 either one of us would get -- the word I used was  
22 jammed up. So if there was anything important or  
23 relevant to Aqua, was there anything relevant? And  
24 he said, no, there wasn't. And at that point I said  
25 was there any mention of a meeting in Chester

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1 their deliberative meeting.

2 Q One moment.

3 A And it was much -- it was item 15, I believe, on  
4 that date and mentioned an RFP for the water system.  
5 Excuse me, but I'm getting over a cold here. It's  
6 hard to talk.

7 \*\*\*

8 THE COURT: That's okay. Do you need a  
9 glass of water?

10 THE WITNESS: Yes. I would. That would be  
11 nice. Thank you, Your Honor.

12 \*\*\*

13 BY MR. JESIOLOWSKI:

14 Q Would you turn to Exhibit D, sir? I'll wait  
15 till you get it. Is this the agenda you have just  
16 testified about?

17 A I believe it is.

18 Q And you mentioned agenda item #15?

19 A Yes, sir.

20 Q Agenda item 15 does not say the Chester Water  
21 Authority, correct?

22 \*\*\*

23 MR. FRANK: Objection, Your Honor, document  
24 speaks for itself.

25 THE COURT: Sustained.

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BY MR. JESIOLOWSKI:

3

Q How did you know that agenda item 15 concerned the Chester Water Authority?

4

5

A I'm not sure I did, but I did know that the evening of the 12th.

6

7

Q I believe you just testified that you knew based on the agenda the Chester Water Authority was going to come up as item 15 at the City Council meeting, is that not your testimony?

8

9

10

11

A Yes. It is. And I assumed.

12

13

Q You assumed based on this agenda that 15 -- item 15 would concern the Chester Water Authority?

14

What's the basis for that assumption?

15

\*\*\*

16

MR. GREENBERG: Objection, asked and

17

answered.

18

THE COURT: Overruled; it hasn't been

19

answered.

20

\*\*\*

21

BY MR. JESIOLOWSKI:

22

Q What's the basis for your assumption that agenda item 15 related to the Water Authority?

23

24

A Sprang about two years ago in monitoring

25

meetings of the Chester Water Authority and what's

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1 this document wasn't created until the afternoon of  
2 the 12th.

3 \*\*\*

4 CROSS EXAMINATION [11:14 a.m.]

5 BY MR. GREENBERG:

6 Q Would -- does this reflect the conversation that  
7 occurred on the 10th, potentially? I mean, I'm just  
8 trying to understand what happened here, because  
9 I've never met you before but you just testified  
10 that you saw a document that wasn't in existence on  
11 the 10th. Were you at the meeting of the  
12 deliberative session on June 10?

13 A Yes.

14 Q At the session on June 10 --

15 \*\*\*

16 MR. JESIOLOWSKI: Your Honor, objection.  
17 He has not established through testimony when this  
18 document was created.

19 THE COURT: No. He has not. I assume  
20 that's what he's about to do now.

21 \*\*\*

22 BY MR. GREENBERG:

23 Q So let me ask you this, on June -- did you  
24 attend the City Council session on June 10?

25 A Yes.

1 Q On June 10 did they run down the items that  
2 would be discussed at the session of June 12?

3 A Yes. They run down each one and ask for  
4 approval.

5 Q Did they discuss the resolution pertaining to  
6 the valuation of the assets to be acquired from the  
7 Chester Water Authority at the meeting on June 10?

8 A I don't recollect them using the word Chester  
9 Water Authority. But they did mention water.

10 Q So did the mention this with respect to water  
11 assets?

12 A Right; although it does not say water assets.  
13 The Mayor did use the word water.

14 Q And that's a public meeting that you attended?

15 A Yes.

16 Q Were you invited specially by the City to  
17 attend?

18 A No. I've attended some of theirs in the past.  
19 But a year prior or so.

20 Q So and was this document there on June 10?

21 A This document -- there was a document similar to  
22 this. I'd have to see that to --

23 Q So there was a prior draft of this is what your  
24 testimony is, but not this document?

25 A Yes. But at that meeting on the 10th they had

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1 noted that there were several -- there was an item  
2 or two that came up that they needed to add to the  
3 agenda, although I believe they verbally approved  
4 it, if my recollection is correct.

5 \*\*\*

6 MR. GREENBERG: Nothing else, Your Honor.

7 \*\*\*

8 CROSS EXAMINATION [11:16 a.m.]

9 BY MR. FRANK:

10 Q Mr. Cary, did you attend the June 12 meeting at  
11 City Council?

12 A Yes, sir.

13 Q And isn't it true that the Mayor provided an  
14 opportunity for questions about all agenda items at  
15 the outset of that meeting?

16 A Yes, sir.

17 \*\*\*

18 MR. FRANK: No further questions, thank  
19 you.

20 THE COURT: Counsel?

21 \*\*\*

22 REDIRECT EXAMINATION [11:16 a.m.]

23 BY MR. JESIOLOWSKI:

24 Q Mr. Cary, did you attend the June 12 City  
25 Council meeting on behalf of Aqua?

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1 A Yes, sir.

2 \*\*\*

3 MR. JESIOLOWSKI: We'd like the minutes  
4 from that June 10 meeting if that's okay with  
5 counsel?

6 MR. SCHUSTER: Your Honor, the City Clerk  
7 will be here this afternoon with certified copy of  
8 the minutes.

9 THE COURT: Okay. Do you have an  
10 uncertified copy at this point that might serve the  
11 purpose?

12 MR. SCHUSTER: Your Honor, let's just be  
13 clear. What date are we referring to?

14 THE COURT: June 12.

15 MR. SCHUSTER: The meeting on the 10th or  
16 the regular meeting on the 12th?

17 THE COURT: The 12th, I think.

18 MR. JESIOLOWSKI: The June 10 meeting that  
19 established the agenda for June 12.

20 THE COURT: Oh, okay.

21 MR. SCHUSTER: Your Honor, recordings and  
22 minutes are not kept of deliberative meetings;  
23 they're kept of regular meetings.

24 MR. JESIOLOWSKI: If June 10 was a  
25 deliberative meeting then how is this witness at

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1 June 10th's meeting?

2 THE COURT: Let's not argue. If it doesn't  
3 exist, it doesn't exist.

4 MR. SCHUSTER: The June 10 meeting -- the  
5 June 10 meeting, like all other deliberative  
6 meetings prior to a regular meeting are published in  
7 December for the entire year. There was a calendar  
8 of all these events.

9 THE COURT: But nothing other than that?

10 MR. SCHUSTER: Nothing other than that  
11 exists.

12 THE COURT: Okay.

13 MR. JESIOLOWSKI: I believe the witness  
14 testified to seeing a document on June 10. That's  
15 all we're asking for.

16 THE COURT: Well just ask the question,  
17 again, if he saw such a document.

18 \*\*\*

19 BY MR. JESIOLOWSKI:

20 Q Did I misunderstand your testimony, Mr. Cary?

21 A An agenda.

22 Q On June 10?

23 A Yes.

24 \*\*\*

25 MR. JESIOLOWSKI: We would like a copy of

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1       that.

2                   MR. SCHUSTER: We will produce that. We do  
3       prepare an agenda that day for the deliberative  
4       meeting. Nothing in advance, Your Honor. And I'll  
5       look for that and produce that. My suspicion is  
6       that it's very similar to this agenda. Maybe they  
7       added one or two; I don't know.

8                   THE COURT: Okay. When you see that --  
9       when that document is produced I'll give you an  
10      opportunity to recall this witness.

11                  MR. JESIOLOWSKI: Thank you, Your Honor,  
12      nothing further.

13                  THE COURT: Okay. Any additional questions  
14      by either counsel?

15                  MR. GREENBERG: No, sir.

16                  MR. FRANK: No, Your Honor.

17                  THE COURT: You may step down.

18                  THE WITNESS: Thank you, Your Honor.

19                  MR. JESIOLOWSKI: Your Honor, the only  
20      witness we have left who is here in the Court is  
21      Howard Woods, an expert witness we had planned to  
22      put on at the end of our presentation. We're  
23      certainly happy to put him on out of turn given the  
24      absence of the Chester and Aqua witnesses that we  
25      had noticed.

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1                   MR. FRANK:  Objection to any expert  
2 witness, at all.  We've not not only seen the  
3 report, we didn't even know he existed until a few  
4 minutes ago.

5                   THE COURT:  Okay.  Well let's start with  
6 what type of expert are we talking about, why is he  
7 being called?

8                   MR. JESIOLOWSKI:  Mr. Woods is a veteran of  
9 the water industry.  He's familiar with water  
10 industry RFPs for the acquisition of water assets.  
11 He's consulted on them.  He's reviewed the Chester  
12 Water Authority -- sorry, the Chester RFP of June  
13 12.  He's prepared to testify about whether the RFP  
14 meets industry standards and about the timeframe for  
15 a standard RFP.  These issues were fully disclosed  
16 in our pleadings when we filed them, that the  
17 Chester Water Authority's contention is that the RFP  
18 of June 12 is grossly deficient.  Counsel has been  
19 put on notice that this would be an issue to come  
20 up.

21                   THE COURT:  Yes.  I understand that.  But  
22 did you specifically mention Mr. Woods being called  
23 as an expert witness?

24                   MR. JESIOLOWSKI:  No, Your Honor, the  
25 entire case began four days ago.  We haven't had

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1 time to do anything with that.

2 THE COURT: Okay. I'll see counsel at  
3 side-bar.

4 \*\*\*

5 [Sidebar Discussion: 11:20 a.m.]

6 THE COURT: Okay. If I allow this witness  
7 to testify then I have to give them an  
8 opportunity to produce their own expert witness.  
9 I doubt if they're going to be able to do that  
10 today. But maybe they are.

11 MR. GREENBERG: No way, Your Honor.

12 MR. FRANK: No.

13 THE COURT: That's what I thought.

14 MR. FRANK: Given the exigencies of the  
15 timeframe, Your Honor, in an attempt to provide  
16 a witness, do we have assurance from the Court  
17 that the proceedings will at least be stayed  
18 pending that prior witness?

19 THE COURT: I'll entertain argument on that  
20 at the appropriate time.

21 MR. FRANK: Thank you, Your Honor.

22 [End Sidebar Discussion: 11:21 a.m.]

23 \*\*\*

24 THE COURT: Ladies and gentlemen, you can  
25 stand up and stretch, if you'd like.

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[Off the record 11:21 a.m.]

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THE COURT: Counsel, did you have an opportunity to confer with your client?

MR. JESIOLOWSKI: We have, Your Honor. A brief preliminary matter that counsel has discussed, that we do not believe there will be any need for Mr. Chiomento and Mr. Cary to testify and may they be excused as witnesses, Your Honor?

MR. GREENBERG: No objection, Your Honor.

THE COURT: Certainly.

MR. JESIOLOWSKI: And Mr. Turner, as well, who attended City Council?

MR. GREENBERG: No. We may need to recall him.

MR. FRANK: We're still waiting on the tape.

THE COURT: Okay.

MR. JESIOLOWSKI: Your Honor, we, at this point, would defer calling Mr. Woods until we have the opportunity to question the Chester Mayor and the Chester City Clerk. At that point, based on the presentation from the Chester Mayor and the Chester City Clerk, we may or may not decide to call Mr.

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1 Woods.

2 THE COURT: All right; well the ruling of  
3 the Court as of right now is that the Court is not  
4 going to permit Mr. Woods to testify.

5 MR. JESIOLOWSKI: So are we either able to  
6 ask for it now or we lose that opportunity, is that  
7 my understanding, Your Honor?

8 THE COURT: You can make another request at  
9 the conclusion, but I don't see anything that would  
10 change the Court's opinion in the matter.

11 MR. JESIOLOWSKI: That's fine, Your Honor,  
12 then. The Authority needs an Order today and if  
13 calling Mr. Woods would delay that proceeding of  
14 that Order then we have no choice.

15 THE COURT: Okay. You still have two,  
16 perhaps three witnesses that you wish to call,  
17 correct?

18 MR. JESIOLOWSKI: Potentially four, Your  
19 Honor, an Aqua representative, a Chester  
20 representative, the Mayor of Chester and the City  
21 Clerk of Chester.

22 THE COURT: Okay. And they're not  
23 available until --

24 MR. SCHUSTER: They're coming out. They'll  
25 be here at 2:00, Your Honor.

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1 THE COURT: Okay. Then we will adjourn.

2 MR. FRANK: Your Honor, if I may; sorry to  
3 interrupt you, Your Honor. Aqua representative has  
4 been here from the outset of the matter. He's ready  
5 to testify when called.

6 THE COURT: Okay. We can take him out of  
7 turn.

8 MR. JESIOLOWSKI: One moment, Your Honor.  
9 We'll call the Aqua representative, Your Honor.

10 MR. FRANK: And Your Honor, just so  
11 everybody has expectations, we're not producing  
12 anyone other than the Mayor. The Mayor is the  
13 knowledgeable person on behalf of the City of  
14 Chester. Well Candace -- specific to your notice,  
15 the Clerk is specific to your notice, but we don't  
16 believe the Aqua representative meets the standard.

17 THE COURT: Let's get the first things  
18 first here. We have an Aqua individual. Let's have  
19 him sworn.

20 \*\*\*

21 [Witness sworn 11:33 a.m.]

22 \*\*\*

23 CHRISTOPHER LUNING,  
24 having been first duly sworn, was called as a  
25 witness herein and was examined and testified as

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1 follows:

2

\*\*\*

3

DIRECT EXAMINATION [11:34 a.m.]

4

BY MR. JESIOLOWSKI:

5

Q Mr. Luning, what is your role with Aqua?

6

A I'm executive vice president and general  
7 counsel.

8

Q Mr. Luning, do you direct any Aqua employees,  
9 representatives or otherwise to attend Chester Water  
10 Authority Board meetings?

11

A I do not.

12

Q Do you direct anybody on behalf of Aqua to  
13 attend the City of Chester meetings?

14

A I do not.

15

\*\*\*

16

MR. JESIOLOWSKI: That's all we have,

17

Judge.

18

THE COURT: Okay.

19

MR. FRANK: No questions, Your Honor.

20

THE COURT: Okay. You may step down.

21

THE WITNESS: Thank you, Your Honor.

22

MR. JESIOLOWSKI: Those are the only

23

witnesses we have present in the Courtroom, Your  
24 Honor.

25

THE COURT: Okay.

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1                   MR. JESIOLOWSKI: We're happy to adjourn  
2 until the Chester witnesses are available.

3                   THE COURT: Okay. We'll adjourn then until  
4 2:00, gentlemen.

5                   MR. EADS: Your Honor, can I have one  
6 housekeeping matter, please?

7                   THE COURT: Certainly.

8                   MR. EADS: There's been a suggestion of a  
9 notice --

10                  THE COURT: Can you identify yourself for  
11 the record, please?

12                  MR. EADS: I'm sorry. Joel Eads, on behalf  
13 of the City. There's been a written suggestion by  
14 the Water Authority that they would call Mr.  
15 Greenberg as a witness today. And it appears  
16 they've abandoned that stated intention. But I'd  
17 like to make sure that that is understood and we  
18 will proceed without opening up the can of worms of  
19 calling opposing litigation counsel.

20                  MS. GUERNSEY: Your Honor, Megan Guernsey  
21 for the Chester Water Authority. I can speak to  
22 that. Your Honor, the issue that has been raised  
23 with respect to the evidence is a statement that was  
24 made in a pleading that was filed by Mr. Greenberg.  
25 There were subsequent statements made in the media

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1 that attempted to retract from that. And to the  
2 extent that that was going to be put at issue before  
3 the Court, we did let Mr. Greenberg and the Court  
4 know that it would be our intent to call Mr.  
5 Greenberg. We have not noticed Mr. Greenberg's  
6 appearance and we do not intend to call him at this  
7 point in time.

8 THE COURT: Okay.

9 MR. EADS: Okay. Well we're not going to  
10 make him part of our case-in-chief, and so I don't  
11 understand the caveat not at this time. I think we  
12 need a more unequivocal statement that Mr. Greenberg  
13 is not going to be a witness in this case.

14 THE COURT: Well they're not going to call  
15 him, so unless you put him on the stand --

16 MR. EADS: Fair enough, okay, as long as  
17 that's the understanding, I'm happy with that.

18 THE COURT: Okay.

19 MR. EADS: Thank you, sir.

20 THE COURT: Okay. Anything further before  
21 we adjourn? One last -- there was -- and again, I'm  
22 not sure on this point, something about a 1:00  
23 deadline. I don't know whether that's part this  
24 thing or not. But if it was, we're going to extend  
25 it till the conclusion of this hearing.

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1                   MR. EADS: Your Honor, one more thing. I  
2 have to be before His Honor Saltz [ph] in Montgomery  
3 County at 1:30. May I be excused.

4                   THE COURT: You may be excused.

5                   MR. SCHUSTER: I do, as well. May I be  
6 excused.

7                   THE COURT: Okay.

8                   MR. GREENBERG: Your Honor, as to the 1:00  
9 deadline, that's an RFP process. I'm not sure  
10 there's even been a prima facie showing of an  
11 argument that the RFP should be opened because, at  
12 the end of the day, any opening of the RFPs is  
13 different than entering into some contract that  
14 would be irreparable harm. So I think -- we're  
15 willing to stipulate we won't take any further  
16 action as the City Council.

17                   THE COURT: Okay. That's all I need.  
18 That's all I need.

19                   MR. GREENBERG: But we can open it,  
20 correct, Your Honor? We can receive an open note at  
21 1:00? That's just the deadline. We won't vote to  
22 do anything or take any permanent action following  
23 that.

24                   THE COURT: Counsel?

25                   MR. JESIOLOWSKI: I believe that's the

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1 entire point of why we're here is to stop any action  
2 from taking place this very afternoon. That's why  
3 this hearing was scheduled for this morning. There  
4 is no harm to Mr. Greenberg to wait three hours to  
5 open the envelope until --

6 THE COURT: The Court concurs. There will  
7 be no opening, no anything with respect to the RFPs  
8 until the conclusion of the hearing today.

9 MR. FRANK: But Your Honor, Your Honor's  
10 not extending the 1:00 deadline. The submissions  
11 still need to be in by 1:00, Your Honor?

12 THE COURT: Nothing gets opened.

13 MR. GREENBERG: Right; thank you.

14 MR. GREENBERG: But our deadline can occur  
15 at 1:00? The deadline to receive is 1:00; that is  
16 not being extended by the Court Order. I just want  
17 to be clear. We won't open it, but the deadline to  
18 receive is still 1:00.

19 THE COURT: Okay; that's up to you. Okay,  
20 counsel, we'll see you at 2:00.

21 \*\*\*

22 [Off the record 11:38 a.m.]

23 \*\*\*

24 THE COURT: Is the Chester Water Authority  
25 ready to proceed?

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1 MR. JESIOLOWSKI: Yes, Your Honor.

2 THE COURT: Please call your next witness.

3 MR. JESIOLOWSKI: Your Honor, the Water  
4 Authority calls Candace Thompson, City Clerk of  
5 Chester.

6 THE COURT: Okay. Please have the witness  
7 sworn.

8 \*\*\*

9 [Witness sworn 2:18 p.m.]

10 \*\*\*

11 CANDACE THOMPSON,  
12 having been first duly sworn, was called as a  
13 witness herein and was examined and testified as  
14 follows:

15 \*\*\*

16 DIRECT EXAMINATION [2:18 p.m.]

17 BY MR. JESIOLOWSKI:

18 Q Ms. Thompson, are you employed by the City of  
19 Chester?

20 A Yes.

21 Q What is your title, ma'am?

22 A City Clerk.

23 Q How long have you had that role?

24 A Eight years in October.

25 Q Okay. So that would be 2011?

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1 A Yes.

2 Q Thank you; were you present at the Chester City  
3 Council Meeting on June 12 of this year?

4 A Could you speak up a little bit? I can't hear  
5 you.

6 Q Were you present at the Chester City Council  
7 Meeting on June 12 of this year?

8 A Yes.

9 Q Did the Chester Water Authority come up as a  
10 subject at that meeting?

11 A Yes.

12 Q Ms. Thompson, earlier in the day an exhibit was  
13 entered. If you could turn to Tab D in the binder  
14 in front of you, ma'am?

15 A You'll have to bear with me. I don't have my  
16 readers with me, so -- did you say D?

17 Q D, yes.

18 A Okay.

19 Q Do you recognize this document, ma'am?

20 A Yes. That's the agenda for the June 12 meeting.

21 Q Is this agenda handed out at the beginning of  
22 the June 12 meeting?

23 A Yes.

24 Q Is there a reason this agenda does not mention  
25 the Chester Water Authority?

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MR. GREENBERG: Objection.

THE COURT: Overruled.

MR. GREENBERG: Your Honor, she didn't prepare it. There's no basis for her having any knowledge about whether or not it says that or not.

THE COURT: Well she can testify to that. But your objection is overruled.

\*\*\*

BY MR. JESIOLOWSKI:

Q Is there a reason this agenda does not mention the Chester Water Authority?

A I can't answer that.

Q Why is that?

A I don't prepare the agenda.

Q Were you aware prior to June 12 that the Chester Water Authority was going to be discussed at that City Council meeting?

A I don't recall. We had deliberative the Monday before. I know I went to that meeting, but I don't remember what all was discussed.

Q Are you aware of the City's dispute with the Chester Water Authority?

A Yes.

Q How long have you been aware of that dispute?

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1 A Once I read it in Council.

2 Q And when would that be?

3 A The June 12 meeting.

4 Q Have you -- are you aware that the City has been  
5 in settlement negotiations with the Chester Water  
6 Authority?

7 \*\*\*

8 MR. GREENBERG: Objection, relevance and  
9 408.

10 THE COURT: Overruled.

11 THE WITNESS: I'm sorry, ask me that,  
12 again?

13 \*\*\*

14 BY MR. JESIOLOWSKI:

15 Q Yes, ma'am; are you aware that some time the  
16 City of Chester and Chester Water Authority have  
17 been in negotiations for proposed settlement?

18 A No.

19 Q Would you consider the Chester Water Authority  
20 resolution of June 12 to be the most important  
21 business City Council conducted that day?

22 A No. I believe all of them were important.

23 Q In dollar value, what was the largest dollar  
24 value piece of business that Council discussed that  
25 night?

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MR. GREENBERG: Objection, basis?

THE COURT: I'll sustain the objection.

\*\*\*

BY MR. JESIOLOWSKI:

Q Ma'am, would you turn to Tab F in the binder, please? Do you recognize this document, ma'am?

A I just know it's an RFP for the acquisitions of the assets for the Chester Water Authority.

Q Would you turn to page -- what's listed as page one of ten, Section I-2.

A In the same document?

Q Yes, ma'am.

A And what was it, again?

Q Page one of ten, Section I-2, the second paragraph on page one of ten.

A Okay.

Q Does this list you, Candace Thompson, Clerk, as the point person for this RFP?

A Yes.

\*\*\*

MR. JESIOLOWSKI: Your Honor, we request to move this document into evidence at this time.

THE COURT: Any objection?

MR. GREENBERG: No objection, Your Honor.

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1 MR. FRANK: None, sir.

2 MR. GREENBERG: Your Honor, I do just want  
3 to point out that this document is an -- there has  
4 been an addendum since this time. So this was the  
5 RFP as it was issued on June 12. It is not a  
6 complete RFP. That said, we have no objection to  
7 this being moved into evidence.

8 THE COURT: Okay. It will be moved into  
9 evidence.

10 \*\*\*

11 BY MR. JESIOLOWSKI:

12 Q Ms. Thompson, what was the date this RFP was  
13 issued? It's on the first page if you don't  
14 remember.

15 A I'm sorry, I'm trying to focus my eyes because  
16 these did not work. Thank you, anyway. It says  
17 June 12, 2019.

18 Q And it's set to close today, July 1, is that  
19 correct?

20 A Yes.

21 Q As the point person are you knowledgeable about  
22 this RFP?

23 A Now when you say knowledgeable, what do you  
24 mean, exactly? Like what's in it?

25 Q Why don't we just -- why don't we just ask you a

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1 couple questions about it and we'll see if you can  
2 answer them, how about that?

3 A Okay.

4 Q Can you turn to page two of ten of the RFP,  
5 Section I-4.

6 A Okay.

7 Q Can you read for us the first sentence?

8 \*\*\*

9 MR. GREENBERG: Your Honor, the document  
10 speaks for itself. If all he's going to do is have  
11 her read from it, this is sort of pointless.

12 THE COURT: I agree. You can read it to  
13 yourself silently and then answer any questions he  
14 may have about it.

15 \*\*\*

16 BY MR. JESIOLOWSKI:

17 Q The RFP is open from June 12 to July 1. Do you  
18 consider that to be a reasonable timeframe for an  
19 RFP of this type?

20 \*\*\*

21 MR. GREENBERG: Objection, Your Honor.

22 MR. FRANK: Objection.

23 THE COURT: Sustained.

24 THE WITNESS: I'm familiar how long an RFP  
25 should be out.

1 MR. GREENBERT: Objection.

2 MR. JESIOLOWSKI: He sustained, so you  
3 don't --

4 THE COURT: Oh, I'm sorry.

5 \*\*\*

6 BY MR. JESIOLOWSKI:

7 Q Are you familiar with other RFPs the City of  
8 Chester has issued?

9 A No.

10 Q You've never worked on any other Chester RFPs?

11 A No.

12 Q How did you come to be listed as the point  
13 person on this RFP?

14 A You'll have to ask the solicitor's office on  
15 that.

16 Q Did anyone tell you in advance they were listing  
17 you as the point person on this RFP?

18 A Yes.

19 Q Who was that?

20 A I believe Kevin Greenberg told me, along with --

21 Q I don't need to know the substance of the  
22 conversation.

23 A No. I was going to tell you -- I was trying to  
24 think -- I can't believe -- remember if it was him  
25 or either Ken Schuster, one or other.

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1 Q And when -- when did those conversations occur?

2 A I don't recall.

3 Q So why are you listed as the point person on the  
4 RFP if you weren't knowledgeable about Chester RFPs  
5 and you weren't involved in drafting this?

6 \*\*\*

7 MR. GREENBERG: Objection, Your Honor.

8 THE COURT: Sustained.

9 \*\*\*

10 BY MR. JESIOLOWSKI:

11 Q What would you think -- what would you say is  
12 your role as the point person on the RFP?

13 A I was instructed that if I got any questions  
14 regarding the RFP to forward them to the solicitor's  
15 office, Ken Schuster.

16 Q Were you instructed to do anything beyond that?

17 A No.

18 Q Were you instructed about how responses would be  
19 made to questions on the RFP?

20 A No.

21 Q Were you instructed about the criteria under  
22 which the RFP would be evaluated?

23 \*\*\*

24 MR. GREENBERG: Objection, Your Honor.

25 THE COURT: Overruled.

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1                   THE WITNESS: All I can tell you about the  
2 RFP is that I know that if I received any questions  
3 that I were to forward them to Ken Schuster's office  
4 and that I knew that the deadline was July 1 for  
5 them to be turned in for the Office of the Mayor.

6                                           \*\*\*

7 BY MR. JESIOLOWSKI:

8 Q     Would there be other people in the Chester City  
9 Government who were more knowledgeable about this  
10 RFP than you?

11                                           \*\*\*

12                   MR. GREENBERG: Objection, Your Honor.

13                   THE COURT: Overruled.

14                   THE WITNESS: I don't know.

15                                           \*\*\*

16 BY MR. JESIOLOWSKI:

17 Q     Do you know who drafted the RFP?

18 A     No.

19 Q     Do you know who else would be point person on  
20 other RFPs from the City of Chester?

21 A     I'm not familiar with other RFPs.

22 Q     Have you received any questions from potential  
23 bidders on this RFP?

24 A     Yes.

25                                           \*\*\*

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1                   MR. GREENBERG:  Objection, Your Honor, I  
2 would like to keep the process confidential for  
3 obvious --

4                   THE COURT:  All she said was yes.

5                   MR. GREENBERG:  Okay.

6                                           \*\*\*

7 BY MR. JESIOLOWSKI:

8 Q     When did you receive those questions?

9                                           \*\*\*

10                  MR. GREENBERG:  Objection, Your Honor.

11                  THE COURT:  I'm going to sustain that.

12                                          \*\*\*

13 BY MR. JESIOLOWSKI:

14 Q     Well if you don't know anything else about the  
15 RFP, I guess I'm done with my questioning, thank  
16 you.

17 A     You're welcome.

18                                          \*\*\*

19                  THE COURT:  Counsel?

20                  MR. GREENBERG:  Thank you.

21                                          \*\*\*

22                                          CROSS EXAMINATION [2:28 p.m.]

23 BY MR. GREENBERG:

24 Q     Good afternoon, Ms. Thompson.  Let me ask you to  
25 first turn to Exhibit E in this binder in front of

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1 you. Would you please review Exhibit E?

2 A Okay.

3 Q Is this the resolution -- certification of a  
4 resolution that you prepared in connection with the  
5 resolution issued on June 12?

6 A Yes.

7 Q Is this a true and correct copy of the  
8 resolution with the RFP attached, presuming the RFP  
9 had been attached.

10 A Yes.

11 Q So --

12 \*\*\*

13 MR. GREENBERG: May I approach, Your Honor?

14 THE COURT: You may approach, sir.

15 \*\*\*

16 BY MR. GREENBERG:

17 Q Ms. Thompson, can you please look at that  
18 resolution that I just handed up? Can you tell us  
19 what that resolution is?

20 A A copy of the schedule of the record of meetings  
21 for Chester City Council.

22 Q Is that the resolution that was adopted in  
23 December of 2018, setting forth the regular meetings  
24 for 2019?

25 A Yes.

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1 Q Is that your signature at the bottom attesting  
2 to its accuracy?

3 A Yes.

4 \*\*\*

5 MR. GREENBERG: Your Honor, I move this as  
6 City Exhibit 1.

7 THE COURT: Okay. Any objection?

8 MR. JESIOLOWSKI: No, sir.

9 MR. FRANK: None, Your Honor.

10 THE COURT: It shall be admitted.

11 \*\*\*

12 BY MR. GREENBERG:

13 Q Does that say -- does that show the June 12  
14 meeting on there?

15 A Yes.

16 Q Thank you, very much.

17 \*\*\*

18 MR. GREENBERG: Your Honor, while I'm here  
19 can I ask to admit what was Exhibit E, the  
20 resolution that she has verified -- authenticated as  
21 being the resolution of June 12?

22 THE COURT CLERK: It's already in the  
23 record.

24 MR. GREENBERG: It's already in the record,  
25 okay, thank you. And the RFP is already in the

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1 record, the addendums. I apologize, Your Honor.

2 \*\*\*

3 BY MR. GREENBERG:

4 Q Ms. Thompson, can you look at this stuff that I  
5 just handed you and identify it for the Court?

6 A This says City of Chester RFP, 2019-CWA-01,  
7 addendum #1, June 21, 2019.

8 Q So is this the addendum that your office  
9 processed and put out for the RFP team on or about  
10 June 21 in response to the questions received?

11 A Yes.

12 \*\*\*

13 MR. GREENBERG: Your Honor, I move this as,  
14 I guess, City 2.

15 THE COURT: Any objection?

16 MR. FRANK: No, sir.

17 MR. JESIOLOWSKI: Your Honor, if you could  
18 give us just one minute. This is the first we're  
19 seeing of this. How was this distributed?

20 MR. GREENBERG: We emailed it to your  
21 client, actually, as well as everybody else who  
22 registered as a --

23 THE COURT: Counsel, address your remarks  
24 to the Bench, please.

25 MR. JESIOLOWSKI: I apologize, Your Honor.

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1 No objection, Your Honor.

2 THE COURT: Okay. It's admitted.

3 \*\*\*

4 BY MR. GREENBERG:

5 Q Oh, did you testify -- I believe you testified  
6 that you may or may not have been at the June 10  
7 deliberative session, is that correct? I'm just  
8 trying to refresh what you said.

9 A Okay. I was only asked about the Council  
10 meeting.

11 Q The deliberative session on June 10, did you  
12 attend that session?

13 A Yes.

14 Q Do you have any recollection about the  
15 discussion of the -- I do apologize. This came in  
16 over the break. So let's get this down.

17 \*\*\*

18 MR. GREENBERG: I'm handing up a copy of  
19 the -- what was the tentative agenda for June 12  
20 that was the agenda of the June 10 session that was  
21 requested by opposing counsel before lunch.

22 \*\*\*

23 BY MR. GREENBERG:

24 Q Can you identify this for the Court?

25 A It says agenda, June 10, 2019, deliberative

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1 meeting.

2 Q So -- and you said you attended that meeting?

3 A Yes.

4 Q And what is the normal practice at a  
5 deliberative meeting? Do you read the entire  
6 resolution; does the -- how is that meeting  
7 presented?

8 A For deliberative, our City Solicitor reads each  
9 agenda item.

10 Q And do they summarize what's behind it or --

11 A If there's a question on it, yes.

12 Q Do you recall specifically the discussion on  
13 what was item 11 to this deliberative agenda?

14 A No.

15 Q Okay. So I'm going to pass up -- well before  
16 you --

17 \*\*\*

18 MR. GREENBERG: Let's move the deliberative  
19 agenda as City-3, Your Honor, may I?

20 THE COURT: Any objection?

21 MR. JESIOLOWSKI: No, sir.

22 MR. FRANK: No, Your Honor.

23 THE COURT: Okay.

24 \*\*\*

25 BY MR. GREENBERG:

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1 Q So before you there are some minutes of the  
2 Council meeting of June 12. They are outside the  
3 binder. They were put up there earlier, I believe.

4 A I think this is it right here, attached with a  
5 certification?

6 Q Yes.

7 A Yes.

8 Q Okay. Did you prepare that certification?

9 A Yes.

10 Q Can you identify for the record what those  
11 minutes are?

12 A It's for a regular Council meeting for June 12,  
13 2019.

14 Q And did you prepare these minutes?

15 A Yes.

16 Q And is it your signature on the back page  
17 certifying to their accuracy, as well as on the  
18 front page of the certification?

19 A Yes.

20 Q And were these minutes approved by City Council  
21 at their next regular session?

22 A Yes.

23 \*\*\*

24 MR. GREENBERG: I move their admission.

25 THE COURT: Any objection?

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1 MR. JESIOLOWSKI: No, Your Honor.

2 MR. FRANK: No, Your Honor.

3 THE COURT: They shall be admitted.

4 \*\*\*

5 BY MR. GREENBERG:

6 Q Oh, yes, as part of your duties were you there  
7 to receive the RFPs as they came in over the last  
8 couple days?

9 A Yes.

10 Q Okay.

11 A Until the time I was called to come to Court.

12 Q When you were called down here, how many had  
13 come in?

14 A Approximately five.

15 Q And since you've been called have you spoken to  
16 anybody at your office?

17 A No.

18 Q Any other City officials about how did any  
19 others come in since you've come down?

20 A I called the Acting City Clerk.

21 Q And what did the Acting City Clerk say?

22 A She received one.

23 Q So you believe there were six that were received  
24 prior to the deadline?

25 A Yes.

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1 Q Have they been opened?

2 A No.

3 Q Thank you.

4 \*\*\*

5 CROSS EXAMINATION [2:35 p.m.]

6 BY MR. FRANK:

7 Q Ms. Thompson, I don't know if we can see each  
8 other over the bench there, but just one quick  
9 question. In your role, ma'am, did you have any  
10 direct communications with anyone from Aqua  
11 Pennsylvania?

12 A Not that I know of.

13 \*\*\*

14 MR. FRANK: Thank you; no questions, Your  
15 Honor.

16 THE COURT: Okay.

17 \*\*\*

18 REDIRECT EXAMINATION [2:35 p.m.]

19 BY MR. JESIOLOWSKI:

20 Q A few brief questions, ma'am. On the agenda,  
21 City-3, the agenda of June 10, there's no reference  
22 to the Chester Water Authority, correct?

23 \*\*\*

24 MR. GREENBERG: Objection, the document  
25 speaks for itself.

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1 MR. FRANK: Objection, Your Honor.

2 THE COURT: Noted; written document speaks  
3 for itself.

4 \*\*\*

5 BY MR. JESIOLOWSKI:

6 Q Ms. Thompson, on June 12, at the City Council  
7 meeting, did City Council engage in any debate  
8 before voting on the Chester Water Authority RFP  
9 resolution?

10 A No.

11 \*\*\*

12 MR. JESIOLOWSKI: That's all, Your Honor.

13 THE COURT: Okay.

14 MR. GREENBERG: Your Honor, I do have one  
15 clarification that I want to just ask.

16 \*\*\*

17 RE CROSS EXAMINATION [2:36 p.m.]

18 BY MR. GREENBERG:

19 Q Ms. Thompson, I believe under the RFP they were  
20 supposed to -- prospective bidders were supposed to  
21 email you or identify themselves to you if they  
22 wanted to receive notices about the RFP. Just to  
23 avoid a misrepresentation on the record, did you  
24 receive a notice from somebody at Aqua registering  
25 according to that process, as well as the other

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1 prospective bidders?

2 A I'm going to be honest, as soon as I saw RFP, I  
3 just took and forwarded it. I don't recall at the  
4 time.

5 Q So -- but your answer to Mr. Frank is you don't  
6 recall seeing one, but you might have seen one and  
7 not remembered it?

8 A Exactly.

9 Q Okay, thank you.

10 \*\*\*

11 THE COURT: Okay. You may step down.

12 MR. JESIOLOWSKI: Your Honor, the Chester  
13 Water Authority calls the Mayor of Chester, Thaddeus  
14 Kirkland.

15 \*\*\*

16 [Witness sworn: 2:37 p.m.]

17 \*\*\*

18 THADDEUS KIRKLAND,  
19 having been first duly sworn, was called as a  
20 witness herein and was examined and testified as  
21 follows:

22 \*\*\*

23 DIRECT EXAMINATION

24 BY MR. JESOLIOLOWSKI:

25 Q Good morning, sir.

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1 A Good morning.

2 Q How long have you been the Mayor of Chester?

3 A Three-and-a-half years.

4 Q Were you present at the City Council meeting,  
5 June 12?

6 A Yes. I was.

7 Q You just heard your City Clerk say that there  
8 was no debate or deliberation before voting on the  
9 Water Authority RFP resolution, is that correct?

10 \*\*\*

11 MR. GREENBERG: Objection, Your Honor,  
12 that's not what the Clerk said. She said she didn't  
13 hear anything immediately before or after they read  
14 the resolution, not that there wasn't an opportunity  
15 for comment or debate.

16 THE COURT: Your objection is overruled.  
17 You can answer the question, sir.

18 THE WITNESS: Could you -- could you repeat  
19 it?

20 \*\*\*

21 BY MR. JESIOLOWSKI:

22 Q Yes, sir; after the resolution was read on the  
23 Chester Water Authority but before City Council  
24 voted -- so after it was read but before the vote,  
25 did City Council engage in any debate or discussion

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1 concerning the resolution?

2 A The City Council did not, but what we do is we  
3 always offer an opportunity for residents or anyone  
4 else who wants to make comments on the resolutions  
5 that are put forth by Council and Mayor.

6 Q Yes, sir, we heard some of that in testimony  
7 this morning. At what point in the meeting of June  
8 12 was that public comment period offered? Is that  
9 before or after the Water Authority resolution was  
10 read?

11 A Both. It's always -- the opportunity is always  
12 put forth before we read the resolutions for public  
13 comment.

14 Q Let's talk about the public comment period that  
15 occurred before the vote. At the time of the  
16 comment period what information was provided to  
17 anyone in the audience to indicate that later in the  
18 meeting one of the resolutions would concern the  
19 Chester Water Authority?

20 \*\*\*

21 MR. GREENBERG: Objection, Your Honor, what  
22 resolution? I mean, that's a -- everybody in the  
23 audience has all sorts of information. I'm not sure  
24 what's being asked.

25 THE COURT: Restate the question.

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1

\*\*\*

2

BY MR. JESIOLOWSKI:

3

Q At the time of the public comment period that occurred before the Water Authority resolution vote, what information was provided by the City to indicate to somebody now is your time to stand up and comment on a Water Authority resolution?

4

5

A At each Council meeting, after we do the Pledge of Allegiance and the prayer.

6

7

\*\*\*

8

THE COURT: I think he's just talking about this one specific Council meeting, June 12 meeting.

9

10

THE WITNESS: Yes, Your Honor. During that meeting every time we -- during that meeting we offer those persons, the residents, the opportunity to speak on the resolutions prior to us reading the resolutions.

11

12

13

14

15

\*\*\*

16

BY MR. JESIOLOWSKI:

17

Q I understand. That's not my question. What information was provided earlier in the meeting, at the time of the public comment, that said the words Chester Water Authority?

18

19

20

21

A We don't do that with any of our resolutions.

22

Q How would a person know at that point to give

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1 comment on a resolution that hadn't yet been  
2 occurred or disclosed?

3 \*\*\*

4 MR. GREENBERG: Objection, Your Honor, in  
5 this case they had a handwritten letter from the  
6 Mayor. There's a whole --

7 THE COURT: Counsel, if you want to object,  
8 fine. I don't want you to give a speech so the  
9 witness picks up the answer, all right? Objection  
10 is overruled.

11 \*\*\*

12 BY MR. JESIOLOWSKI:

13 Q Answer the question, sir.

14 A Could you repeat the question, sir?

15 Q At the time of the public comment what  
16 information would have been given by the City to  
17 indicate to anybody there, now is your chance to  
18 stand up and speak about the Chester Water  
19 Authority?

20 A Well once again, sir, what we do is -- myself  
21 and Council, what we do is we give persons an  
22 opportunity to speak on the resolutions that are  
23 presented to them. They have the resolutions. They  
24 have the information in front of them at the podium.

25 Q Well let's look at those resolutions. We

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1 discussed them this morning. If you turn to Tab D  
2 in the binder, sir. I'm sorry, that's the -- I  
3 misspoke. Do you recognize what Tab D is, sir?

4 A I know the letter D.

5 Q I'm sorry, the document behind Tab D.

6 A Are you talking about this booklet or here?

7 Q The binder in front of you, sir.

8 A Thank you.

9 \*\*\*

10 THE COURT: At the top it says agenda, June  
11 12, 2019, correct, counsel?

12 MR. JESIOLOWSKI: Correct, Your Honor.

13 THE WITNESS: I have it right here.

14 MR. JESIOLOWSKI: I think I just called  
15 this the resolutions, but I meant to say this is the  
16 agenda, Your Honor.

17 \*\*\*

18 BY MR. JESIOLOWSKI:

19 Q Is the agenda that was distributed at the  
20 beginning of the June 12 City Council meeting?

21 A Yes.

22 Q Where on this agenda does it say Chester Water  
23 Authority?

24 \*\*\*

25 MR. GREENBERG: Objection, Your Honor.

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\*\*\*

MR. GREENBERG: Your Honor, is the stipulation directed toward counsel or to the witness?

MR. JESIOLOWSKI: Sorry.

\*\*\*

BY MR. JESIOLOWSKI:

Q Mr. Mayor, do you recognize what this is?

A Are we still on the agenda piece?

Q No. We've moved on to the next tab, Tab E.

A If I'm correct, this is the certification from Ms. Thompson.

Q And how was this resolution presented at the June 12 meeting?

A The resolution is read by the City Clerk. It's usually read in its entirety. And after the City Clerk reads the resolution there's a motion and a second and then I ask are there any questions concerning the resolution. If there are none, we move to vote on the resolution.

Q Was this document provided in advance to the audience?

A No.

Q Was this document provided in advance to anyone outside of the City of Chester?

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1 A I'm not sure.

2 Q Was this document provided to Aqua in advance?

3 A Not to my knowledge.

4 Q Did City Council discuss before June 12, in any  
5 way, the passing of this resolution, debate the  
6 resolution?

7 \*\*\*

8 MR. GREENBERG: Objection, Your Honor.

9 THE COURT: Basis?

10 MR. GREENBERG: To the extent that there's  
11 conversations in executive session that did not go  
12 to the merits of the resolution and with no votes,  
13 that is not subject for him to testify to.

14 THE COURT: He's not talking about  
15 executive session, correct?

16 MR. JESIOLOWSKI: Correct, Your Honor.

17 THE COURT: You don't have to disclose --  
18 and must not disclose anything that was discussed in  
19 executive session.

20 THE WITNESS: Could you repeat the  
21 question?

22 \*\*\*

23 BY MR. JESIOLOWSKI:

24 Q Setting aside anything discussed in executive  
25 session, before June 12 did City Council discuss in

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1 any open session a resolution concerning an RFP for  
2 the Chester Water Authority?

3 A On the -- when we do our deliberatives on the  
4 Monday before our regular sessions we have  
5 discussions.

6 Q And at that Monday before was the word Chester  
7 Water Authority mentioned?

8 A Yes.

9 Q How?

10 A Part of the resolution.

11 Q Please elaborate?

12 A We were just reading the resolution and talking  
13 about the RFP and the Water Authority -- concerning  
14 the Water Authority.

15 Q Sorry, so I'm clear, is your testimony that on  
16 June 10 this resolution was discussed in a  
17 deliberative session?

18 A Yes.

19 Q You have any documents to support that or  
20 recordings?

21 A We don't do -- record the deliberatives. But we  
22 have -- you know, we discuss documents, especially  
23 something like this, at our deliberatives.

24 Q So if I understand your testimony, on June 10  
25 the Chester Water Authority was discussed, if I take

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1 that correctly, then why was Chester Water Authority  
2 not mentioned on the agenda for June 12?

3 \*\*\*

4 MR. GREENBERG: Objection, Your Honor.

5 THE COURT: Basis?

6 MR. GREENBERG: The document for June 11 --  
7 asked and answered, among other things. We've been  
8 over this a number of times. The document says what  
9 it says. The City's position is that it is  
10 sufficient.

11 THE COURT: Objection is overruled.

12 \*\*\*

13 BY MR. JESIOLOWSKI:

14 Q Why was the agenda of June 12 without reference  
15 to the Chester Water Authority?

16 A My understanding is this, we -- when we went to  
17 deliberation on Monday and we discussed it, we put  
18 it out on the table. I had a clear -- maybe the  
19 persons in the audience, the citizens may not have a  
20 clear understanding of what was there. But we're  
21 pretty sure they did because a number of persons  
22 from the Chester Water Authority in that hearing.

23 Q That's not an answer to my question, sir. My  
24 question is very simple. The agenda for June 12  
25 that was handed out at the beginning of the June 12

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1 meeting does not mention Chester Water Authority.

2 \*\*\*

3 MR. GREENBERG: Is he testifying or asking.

4 MR. JESIOLOWSKI: I want to know why.

5 THE WITNESS: There's no real reason.

6 There's no mystery or hidden reasons for why or why  
7 not.

8 \*\*\*

9 BY MR. JESIOLOWSKI:

10 Q What was the state of the discussion on June 10  
11 regarding the Water Authority?

12 A The discussions are brief. What happens is we  
13 open up the deliberative. We turn it over to the  
14 Solicitor. The Solicitor gives a brief overview of  
15 what the resolution is. After the Solicitor  
16 finishes reading the resolutions, we are asked -- I  
17 ask Council if they have any questions concerning  
18 any of the resolutions. If they don't have any  
19 questions concerning the resolutions we ask those in  
20 attendance if they have any questions concerning the  
21 resolution. If there are no questions raised, we  
22 move on.

23 Q Would it be fair to characterize the Chester  
24 Water Authority resolution the most significant  
25 piece of business conducted by City Council at the

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1 June 12 meeting?

2 A I would say that every piece of legislation or  
3 resolution that we do in the City of Chester is  
4 significant.

5 Q On an approximate dollar value basis, what was  
6 the most significant resolution considered in the  
7 meeting of June 12?

8 A I don't know. I didn't add up anything.

9 Q What do you approximate the Chester Water  
10 Authority resolution to be?

11 \*\*\*

12 MR. GREENBERG: Objection, Your Honor,  
13 they're trying to get information that -- we're  
14 hoping to open these RFPs and find out the answer to  
15 that.

16 THE COURT: Sustain the objection.

17 \*\*\*

18 BY MR. JESIOLOWSKI:

19 Q Are you aware of the offer that Aqua made to  
20 acquire the Chester Water Authority in 2017?

21 A Yes.

22 Q Are you aware of the value of that offer?

23 A I'm not exactly sure of the correct amount.

24 Q Would it be fair to say that you're aware that  
25 it's at least in the hundreds of millions of

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1 dollars?

2 A Yes.

3 Q Would you consider an RFP for an asset worth  
4 hundreds of millions of dollars to be significant  
5 City business?

6 A Yes.

7 Q Now before this RFP was issued June 12, what was  
8 the state of the City's negotiations with Chester  
9 Water Authority?

10 \*\*\*

11 MR. GREENBERG: Objection, Your Honor.

12 THE COURT: I'm going to sustain the  
13 objection.

14 \*\*\*

15 BY MR. JESIOLOWSKI:

16 Q Was the City in discussions with the Chester  
17 Water Authority before June 12?

18 A Yes.

19 Q And roughly what were those discussions  
20 concerning?

21 \*\*\*

22 MR. GREENBERG: Objection, Your Honor.

23 MR. JESIOLOWSKI: I'm asking for  
24 communications between the City and the Water  
25 Authority. I'm not asking for --

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1                   THE COURT: I'm going to sustain the  
2 objection, counsel, let's move on.

3                                           \*\*\*

4 BY MR. JESIOLOWSKI:

5 Q     Mr. Mayor, if the Water Authority RFP was worth  
6 in the hundreds of millions of dollars, in hindsight  
7 do you think it would have been a good idea to  
8 mention the Chester Water Authority on the agenda?

9                                           \*\*\*

10                   MR. GREENBERG: Objection.

11                   MR. FRANK: Objection.

12                   THE COURT: Overruled.

13                                           \*\*\*

14 BY MR. JESIOLOWSKI:

15 Q     You can answer the question.

16 A     No.

17 Q     Why not?

18 A     Why -- I mean, I don't understand why.

19 Q     Do you think a piece of business that  
20 significant would require --

21 A     Well if I may, counsel, let me say this. I  
22 don't know what the cost or the -- what the value  
23 truly is. So for me to consider a number that you  
24 just put out there and put an answer to that, to me  
25 it doesn't make any sense.

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1 Q I still don't think that's an answer to my  
2 question.

3 \*\*\*

4 THE COURT: That's about all the answer  
5 you're going to get on that one, I'm afraid.

6 \*\*\*

7 BY MR. JESIOLOWSKI:

8 Q Mr. Mayor, why does the City of Chester want to  
9 sell the Chester Water Authority?

10 \*\*\*

11 MR. GREENBERG: Objection, relevance.

12 THE COURT: Sustained.

13 \*\*\*

14 BY MR. JESIOLOWSKI:

15 Q Mr. Mayor, let's look at the RFP. That's in  
16 your binder at Tab F, sir. I believe this has  
17 already been admitted into evidence. Mr. Mayor, are  
18 you familiar with this RFP?

19 A Yes.

20 Q Do you see on the first page that it's open from  
21 June 12 to July 1, is that correct?

22 \*\*\*

23 MR. GREENBERG: Objection, Your Honor, the  
24 document speaks for itself. If he wants to ask  
25 questions on the Mayor's position, that's fine. But

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1 again, are we reading the document?

2 MR. JESIOLOWSKI: I'll rephrase.

3 THE COURT: I'm not sure what the question  
4 is, at this point.

5 MR. JESIOLOWSKI: I'll rephrase.

6 \*\*\*

7 BY MR. JESIOLOWSKI:

8 Q Mr. Mayor, who decided on the timeframe to close  
9 this RFP on July 1?

10 A The conversation was held with myself and my  
11 legal counsel.

12 Q Without getting into any privileged discussions,  
13 what was the basis for closing at that time rather  
14 than a longer period?

15 \*\*\*

16 MR. GREENBERG: Your Honor, the  
17 conversation was between him and counsel.

18 THE COURT: It's privileged and the  
19 objection is sustained.

20 \*\*\*

21 BY MR. JESIOLOWSKI:

22 Q Mr. Mayor, would you turn to page two of ten of  
23 the RFP, Section I-4. I'm not going to ask you to  
24 read this but am I correct from this document that  
25 the City of Chester's position is that it -- it will

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1 move forward with this RFP transaction?

2 A When you say move forward with the RFP  
3 transaction, the opening of the RFPs?

4 Q Your counsel said earlier today that this whole  
5 case is premature because the City hasn't decided to  
6 close on anything yet. I'm asking you to look at  
7 paragraph I-4 and asking for the City's position on  
8 whether it intends to move forward with closing the  
9 RFP. I understand you haven't opened anything yet.  
10 But is the City's position that they're now in an  
11 RFP process and they're going forward with that?

12 A Yes.

13 Q Would you turn to page three of ten, sir,  
14 Section D. Take a moment to read that section, if  
15 you would, and let me know when you're ready.

16 \*\*\*

17 MR. GREENBERG: I'm sorry, counsel, did you  
18 say Section D?

19 MR. JESIOLOWSKI: D as in dog.

20 THE COURT: D as in dog.

21 MR. GREENBERG: Got you.

22 THE WITNESS: Yes.

23 \*\*\*

24 BY MR. JESIOLOWSKI:

25 Q So is it fair to say that in considering the RFP

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1 bids the City of Chester is sensitive to any  
2 potential rate increases that would be -- fall Water  
3 Authority customers following the sale of the  
4 Authority?

5 A Yes.

6 Q Why is that an important consideration for the  
7 City?

8 \*\*\*

9 MR. GREENBERG: Objection, Your Honor,  
10 relevance.

11 THE COURT: Sustained.

12 \*\*\*

13 BY MR. JESIOLOWSKI:

14 Q Are you aware of the Authority's rates currently  
15 in comparison to the rates of say Aqua?

16 \*\*\*

17 MR. GREENBERG: Objection, Your Honor,  
18 relevance.

19 THE COURT: Sustained.

20 \*\*\*

21 BY MR. JESIOLOWSKI:

22 Q It's in the RFP that the City of Chester is  
23 concerned about water rates, correct?

24 \*\*\*

25 THE COURT: It speaks for itself. If you

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1 want to have it admitted, be my guest.

2 MR. JESIOLOWSKI: Your Honor, I'd like to  
3 show the Mayor the rates of Chester and the rates of  
4 Aqua, if I may?

5 MR. GREENBERG: Objection, relevance to  
6 this action. There may be a reason to the  
7 underlying matter.

8 THE COURT: I'm not going to permit it,  
9 counsel.

10 \*\*\*

11 BY MR. JESIOLOWSKI:

12 Q Mr. Mayor, would you look at paragraph E of page  
13 three of ten. Let me know when you've had a chance  
14 to read it.

15 A Okay.

16 Q Why was it necessary to put this paragraph in  
17 the RFP?

18 \*\*\*

19 MR. GREENBERG: Objection, Your Honor.

20 THE COURT: I'm going to sustain the  
21 objection.

22 \*\*\*

23 BY MR. JESIOLOWSKI:

24 Q Does the City of Chester have access to any of  
25 the Water Authority's diligence materials at this

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1 time?

2 A Not to -- I don't know. Not to my knowledge.

3 Q So if the City can't provide bidders with access  
4 to the diligence materials, would that be a reason  
5 to extend the period of the bidding process?

6 \*\*\*

7 MR. GREENBERG: Objection, Your Honor.

8 THE COURT: Sustained.

9 MR. GREENBERG: Okay. I'll move on.

10 THE COURT: Thank you.

11 \*\*\*

12 BY MR. JESIOLOWSKI:

13 Q Mr. Mayor, the City of Chester is represented by  
14 attorneys in connection with its disputes with the  
15 Chester Water Authority, correct?

16 A Correct.

17 Q And Greenberg Traurig Law Firm is one of the  
18 City's attorneys?

19 A Correct.

20 Q And Greenberg Traurig has been authorized by the  
21 City to represent it in negotiations?

22 A Correct.

23 \*\*\*

24 MR. GREENBERG: Your Honor, can we get an  
25 offer of proof at side-bar, please?

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1 THE COURT: Let him finish his question,  
2 please. I don't think he's finished his question,  
3 are you, sir?

4 MR. JESIOLOWSKI: No, Your Honor.

5 THE COURT: Well let's finish it.

6 \*\*\*

7 BY MR. JESIOLOWSKI:

8 Q Has Greenberg Traurig been authorized by the  
9 City to file Court documents on behalf of the City?

10 A Correct.

11 Q I'd like to look at one of those Court  
12 documents. If you would turn to Exhibit Tab M, Mr.  
13 Mayor. And there's a couple of documents in there,  
14 but it should be the last -- I'm sorry, it should be  
15 after the second green page -- after the second  
16 green page of Tab M. It's entitled City of  
17 Chester's preliminary objections to Petition. Do  
18 you see that, Mr. Mayor?

19 A No. You said the second green one, right?

20 Q Yes. It's right after the second green page of  
21 Exhibit M.

22 \*\*\*

23 THE COURT: What exhibit number -- oh.

24 MR. JESIOLOWSKI: M, Your Honor.

25 THE WITNESS: City of Chester's preliminary

1 objections to Petition.

2 \*\*\*

3 BY MR. JESIOLOWSKI:

4 Q Yes, Mr. Mayor.

5 A Yes.

6 Q Do you recognize this document?

7 A Yes.

8 Q What is this document?

9 A This is the City of Chester --

10 \*\*\*

11 MR. GREENBERG: Objection, Your Honor,  
12 these documents speak for themselves. They're  
13 pleadings that the Mayor did not sign or verify.

14 THE COURT: I'm trying to find the document  
15 we're talking about. I'm at the Answer to Petition  
16 for approval in M. Where are the POs that you're  
17 talking about?

18 MR. JESIOLOWSKI: It's immediately after  
19 the second green page to the M tab, Your Honor.

20 THE COURT: Okay. My second page says  
21 notice of intervener joiner.

22 THE WITNESS: May I share mine with you,  
23 Your Honor? I'm already there.

24 THE COURT: Okay. That would be helpful.

25 MR. JESIOLOWSKI: Sorry, Your Honor.

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BY MR. JESIOLOWSKI:

Q Mr. Mayor, did the City of Chester authorize its lawyers to file this? And I don't need to know any substantive, any privileged discussions, just my limited questions, did the City of Chester authorize this filing to be made?

\*\*\*

MR. GREENBERG: Your Honor, that's not his position to do. I mean, the document is filed. If he's alleging that we acted improperly and I have to -- I'd like to go to side-bar and have a conversation about that.

MR. JESIOLOWSKI: That's not my implication or --

THE COURT: Let's go side-bar.

\*\*\*

[Sidebar Discussion: 2:59 p.m.]

THE COURT: Let's be clear on this. Anything that they filed in connection with this litigation is relevant. You can ask him questions about POs, he's not going to know what they are. He has no idea. But if you want to use them and say this indicates that they had knowledge of whatever, that's fine. I don't

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1 think we have to drag it out --

2 MR. JESIOLOWSKI: Very well, Your Honor.

3 THE COURT: -- of him, piece by piece,  
4 especially when we know he doesn't know the  
5 answers.

6 MR. JESIOLOWSKI: Very well, Your Honor.

7 THE COURT: All right?

8 MR. GREENBERG: Thank you.

9 [End Sidebar Discussion: 3:00 p.m.]

10 \*\*\*

11 BY MR. JESIOLOWSKI:

12 Q Mr. Mayor, the Petition is seven pages and  
13 immediately after that is a document called  
14 memorandum of law. Would you turn to page 12 of the  
15 memorandum of law?

16 A In the same section?

17 Q Yes, sir.

18 A I have it.

19 Q Mr. Mayor, take a moment and read the third  
20 paragraph of page 12 and then I'm going to ask you  
21 some questions about them.

22 \*\*\*

23 MR. GREENBERG: Your Honor, this is a  
24 pleading and a reference to a Petition that -- this  
25 document speaks for itself.

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1 MR. JESIOLOWSKI: Well that's fine, but --

2 THE COURT: Well I agree with that, but I  
3 don't know what the question is. I can't rule on  
4 your objection, yet.

5 MR. JESIOLOWSKI: I apologize for  
6 interrupting, Your Honor.

7 \*\*\*

8 BY MR. JESIOLOWSKI:

9 Q Mr. Mayor, your counsel said the document speaks  
10 for itself. So then I guess I don't need to ask too  
11 many more questions about the substance of it. What  
12 was the date this was filed? Was that June 19?

13 \*\*\*

14 MR. GREENBERG: Objection, Your Honor,  
15 basis? It is, but that's not relevant.

16 THE COURT: Well then if it is then there's  
17 need to object.

18 MR. GREENBERG: Well there's no reason for  
19 the Mayor to answer.

20 \*\*\*

21 BY MR. JESIOLOWSKI:

22 Q So this was seven days after the RFP was issued,  
23 is that correct?

24 A I assume so.

25 Q And this was filed in the midst of the RFP

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1 process which is set to close today, is that  
2 correct?

3 A I assume so.

4 \*\*\*

5 MR. JESIOLOWSKI: One moment, Your Honor.

6 \*\*\*

7 BY MR. JESIOLOWSKI:

8 Q Mr. Mayor, are you knowledgeable of other City  
9 of Chester RFPs, generally?

10 A If there are RFPs that are presented to Mayor  
11 and Council during our deliberative sessions or our  
12 Council sessions, yes. Are you asking me if I can  
13 pull one off the top of my head; no.

14 Q I have an RFP from 2016. May we show it to you  
15 and see if you're knowledgeable about it?

16 A Um-hum.

17 \*\*\*

18 MR. JESIOLOWSKI: Your Honor, may I  
19 approach with copies?

20 THE COURT: You may approach, sir.

21 MR. GREENBERG: Your Honor?

22 THE COURT: Yes?

23 MR. GREENBERG: We haven't seen them.

24 MR. JESIOLOWSKI: I have copies here.

25 THE COURT: Is this in my exhibit book or

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1 do you have a Bench copy?

2 MR. JESIOLOWSKI: No, Your Honor, I  
3 apologize. This is an addendum to your exhibit  
4 book.

5 THE COURT: Okay.

6 \*\*\*

7 BY MR. JESIOLOWSKI:

8 Q Mr. Mayor, I have only a few very brief  
9 questions. Mr. Mayor, is this an official record of  
10 the City of Chester?

11 \*\*\*

12 MR. GREENBERG: Objection, relevance.

13 THE COURT: I don't know whether it's  
14 relevance or not, at this point. Continue.

15 \*\*\*

16 BY MR. JESIOLOWSKI:

17 Q Mr. Mayor, what is the opening and closing date  
18 of this RFP?

19 \*\*\*

20 MR. GREENBERG: Objection, relevance.

21 MR. SCHUSTER: Foundation.

22 THE COURT: And where are we going with  
23 this?

24 MR. JESIOLOWSKI: I'd like to compare this  
25 RFP to the Water Authority RFP, get the sense of the

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1 City of Chester RFPs.

2 MR. GREENBERG: Your Honor --

3 THE COURT: One deals with municipal wide  
4 parks, trails, et cetera, and the other is talking  
5 about a municipal water authority?

6 MR. JESIOLOWSKI: Yes, Your Honor, this RFP  
7 --

8 THE COURT: Sounds like apples and oranges  
9 to me or more like watermelons and grapes.

10 MR. JESIOLOWSKI: If I may, Your Honor,  
11 this RFP is for \$60,000, but it was open for  
12 considerably longer than a hundred million dollar  
13 plus water authority --

14 MR. GREENBERG: Your Honor --

15 THE COURT: Please, relax, counsel; just  
16 relax. Take a breath, relax. I'm not going to  
17 permit it, all right; too remote.

18 MR. JESIOLOWSKI: Very well, Your Honor.  
19 No more questions at this time.

20 THE COURT: Okay. Redirect [sic]?

21 \*\*\*

22 CROSS EXAMINATION [3:06 p.m.]

23 BY MR. GREENBERG:

24 Q Good afternoon, Your Honor.

25 A Good afternoon.

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1 Q On June 12 were copies of all resolutions,  
2 including the resolution relating to #15, the  
3 Chester Water Authority, available at the dais for  
4 any resident who wanted to come look at them?

5 A Yes.

6 Q Is that the standard procedure is that anybody  
7 in the room can look at the agenda on their desk and  
8 if they want to see the actual text come up to the  
9 front of the room and review the entire text?

10 A Yes.

11 Q So in accordance with that, not only was the  
12 resolution an unsigned form, obviously, but the  
13 resolution, itself, with the attached RFP was at the  
14 front of the room for anybody who wanted to have  
15 notice of that at that meeting?

16 A Yes, to my knowledge.

17 Q So do you have any specific recollection to the  
18 opportunity on June 12 for people to come give  
19 comments at the beginning of the meeting?

20 A Yes.

21 Q Do you recall anybody coming up to speak about  
22 the Chester Water Authority resolution when you  
23 opened the floor for agenda?

24 A No. When we opened the floor for public  
25 comments prior to the reading of the resolutions, I

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1 -- if I recall, a young lady came up to discuss  
2 something that was not part of the agenda items and  
3 was told that was not the time.

4 Q And what was that, do you recall?

5 A I don't recall what it was.

6 Q Did anybody else come up to try to speak after  
7 her?

8 A No.

9 Q Did anybody raise any of their hands and ask any  
10 questions about what was on the agenda or show any  
11 confusion about what was on the agenda?

12 A No.

13 Q So let's go back one day in time then further to  
14 -- earlier that day, June 12, when you got called by  
15 the chairwoman of the Chester Water Authority. Walk  
16 us through the call?

17 A I'm trying to recall. As I was called by the  
18 chair of the Authority Board, the question was asked  
19 of me was there anything on the agenda on --  
20 concerning our resolutions about the Chester Water  
21 Authority. My response was, in one word, yes. And  
22 it was an RFP.

23 Q And that was the conversation you had with the  
24 chair of the Water Authority. And was that call  
25 presumably in response to a letter you sent the day

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1 before?

2 A I think the call was in response to a  
3 conversation concerning their Board meeting, their  
4 Board meeting and individuals being at that Board  
5 meeting.

6 Q So on June 11 did you send Ms. Leitzell a  
7 letter?

8 A Yes.

9 Q And was that letter designed to express -- well  
10 in your words please tell us why you sent that  
11 letter?

12 A We sent the letter out as a courtesy to let them  
13 know that we were going to be -- we were going to be  
14 exploring RFP.

15 Q So in the preparation for these RFPs going out  
16 and in the preparation of your dealings with the  
17 Chester Water Authority, had you asked for  
18 information from CWA over the years that would cause  
19 that information to be requested?

20 A We have -- I've been working with CWA for the  
21 last couple years, trying to come to a resolution.

22 Q Without getting into the meat of the discussions  
23 and the settlement discussions, which we want to  
24 stay away from, did you, at any point, ask for  
25 underlying information about the Authority's

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1 operations, its budget, anything like that?

2 A No.

3 Q So were you part of the decision to assign the  
4 Clerk as the person to receive the RFP?

5 A Yes.

6 Q And why did you have it go to the Clerk as  
7 opposed to the engineer or the police department or  
8 the streets department or some other department?

9 A Number one, because Ms. Thompson is very, very  
10 professional. And she keeps very good confidential  
11 records.

12 Q And normally with RFPs that come out of a single  
13 department, is that correct?

14 A I'm sorry?

15 Q Normally an RFP is originated by a specific  
16 department or facility, the parks department or  
17 something else, correct?

18 A Correct.

19 Q And this RFP was not originated by a single City  
20 department except for your office, is that correct?

21 A Correct.

22 Q Is there a deal in place with Aqua?

23 A A deal?

24 Q Yes.

25 A No; no, sir.

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1 Q If this hearing comes out in our favor, what's  
2 the next step with the RFP process, from your  
3 perspective?

4 A The next step with the RFP process is this. We  
5 -- our goal is to make sure that we look at all the  
6 proposals that are presented to Mayor and Council.  
7 And our goal is to make sure that we provide our  
8 citizenry, the workers, surrounding communities with  
9 the best possible service that they can receive  
10 without raising rates.

11 Q Other than Aqua's offer, which we heard about  
12 and I think it's been stipulated to by Aqua, from  
13 2017 and the settlement discussions with CWA which  
14 we won't talk about, have you had discussions over  
15 the last 2 1/2 years with Korgas [ph] or any other  
16 type of bidders who might have been trying to  
17 propose a solution to the Chester Water Authority  
18 situation?

19 A No. When you say propose --

20 Q Somebody came to you in 2018, 2017, and said  
21 let's talk about the Chester Water Authority?

22 A Oh, okay; down through the years -- down through  
23 the years we've been at the table. Korgas has been  
24 one of the players at the table to kind of lay out a  
25 plan along with the Water Authority.

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1 Q Did you hear from any of the other players in  
2 the markets without -- not asking you to run through  
3 all the names, but did you hear from various people  
4 over the years -- you or members of your staff?

5 A When you say various people, various?

6 Q Prospective bidders; I'm just trying to help the  
7 Court understand this wasn't Aqua and CWA only --

8 \*\*\*

9 MS. GUERNSEY: Your Honor, I'm going to  
10 object to that. Counsel is testifying.

11 MR. JESIOLOWSKI: Your Honor --

12 THE COURT: Sustained.

13 \*\*\*

14 BY MR. GREENBERG:

15 Q Who else have you heard from over -- well have  
16 you heard from others over the years?

17 A Yes. We've heard from -- I've gotten cards from  
18 American Water, from some other, I guess, companies  
19 that are sitting on my desk or in my desk, cards  
20 from various persons.

21 \*\*\*

22 MR. GREENBERG: Nothing further, Your  
23 Honor.

24 THE COURT: Okay.

25 MR. FRANK: Thank you, Your Honor.

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CROSS EXAMINATION [3:13 p.m.]

3

BY MR. FRANK:

4

Q Mr. Mayor?

5

A Yes?

6

Q At the June 12, 2019, meeting did anyone in the audience ask any questions or objections or lodge any objections in any fashion once the resolution set forth in Exhibit E which references the Chester Water Authority numerous times was read in that meeting, was read aloud?

12

A No.

13

Q Thank you, sir.

14

\*\*\*

15

MR. FRANK: No further questions, Your

16

Honor.

17

THE COURT: Okay. Any further questions?

18

MR. JESIOLOWSKI: A few brief questions,

19

Your Honor.

20

\*\*\*

21

REDIRECT EXAMINATION [3:13 p.m.]

22

BY MR. JESIOLOWSKI:

23

Q It was brought up by counsel on cross the conversation you had with Chairwoman of the Board from Chester Water Authority. Mr. Mayor, I'd like

25

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1 you to turn to Exhibit C. And I'd like to ask you  
2 about that conversation.

3 A Yes.

4 Q Mr. Mayor, take a moment and look at the bottom  
5 paragraph of page one. First of all, have you seen  
6 this document before, Exhibit C?

7 A Yes.

8 Q Is this the letter from Cindy Leitzell to you on  
9 June 12, correct?

10 A Yes.

11 Q Do you see that it says in the bottom paragraph  
12 that she asked you about the agenda, whether the  
13 Water Authority Board was on the agenda that night  
14 and you said no? I'm sorry, it's the bottom of page  
15 one to the top of page two.

16 A I see it.

17 Q Is it your testimony that that statement in that  
18 letter is incorrect?

19 A That's incorrect.

20 Q Is it also your testimony -- if I told you that  
21 Ms. Leitzell testified this morning under oath that  
22 this letter is an accurate recording of your  
23 conversation --

24 A This is not an accurate recording of our  
25 conversation. As a matter of fact, I even indicated

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1 that when the Daily Times reporter had called me and  
2 said the same thing. I -- unfortunately, I believe,  
3 the young lady misheard.

4 Q Did you ever reply to Ms. Leitzell's letter or  
5 email her or call her and say you've  
6 mischaracterized our conversation?

7 A No. I didn't.

8 Q So the only place you disputed it was in the  
9 media?

10 \*\*\*

11 MR. GREENBERG: Objection.

12 THE COURT: Overruled.

13 \*\*\*

14 BY MR. JESIOLOWSKI:

15 Q You can answer.

16 A Oh, the only place I disputed -- not only in the  
17 media; I disputed it in my heart.

18 Q Okay. But you haven't -- you know what, that's  
19 fine, Mr. Mayor.

20 A Thank you.

21 Q We talked a little earlier about how the  
22 diligence materials for the RFP are not in  
23 possession of Chester but in the Water Authority.  
24 Did anyone from Chester reach out to anyone at the  
25 Water Authority and say, hey, we're about to issue

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1 this RFP, can you give us access to your diligence  
2 materials?

3 \*\*\*

4 MR. GREENBERG: Objection, beyond the scope  
5 of cross.

6 THE COURT: Overruled.

7 THE WITNESS: No.

8 \*\*\*

9 BY MR. JESIOLOWSKI:

10 Q Why not?

11 A I didn't see any reason for it -- for that.

12 Q You didn't see any reason for potential bidders  
13 to have the most comprehensive access to diligence  
14 materials?

15 A I didn't see any reason for the question that  
16 you just raised.

17 Q I'm not following you, Mr. Mayor. You didn't  
18 see any reason for the City of Chester to give a  
19 heads up to the Water Authority to say we're going  
20 to solicit bids, can you open up your records room  
21 to us to help the bidding process?

22 A Well see, I don't get into the legal beagle  
23 stuff because the bottom line is we're asking for  
24 RFPs. I leave that to my counsel.

25 Q You're here as the designees on behalf of the

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1 City of Chester knowledgeable about the RFP, are you  
2 aware of --

3 \*\*\*

4 MR. GREENBERG: Objection, Your Honor; he's  
5 here because he was given notice to attend. We  
6 object to the idea of a knowledgeable notice.

7 THE COURT: Okay. Just ask the question.

8 \*\*\*

9 BY MR. JESIOLOWSKI:

10 Q Mr. Mayor, are you -- if you're not aware of the  
11 nits and bits of the RFP, are you aware, at all, of  
12 whether anyone in the City of Chester said maybe we  
13 should give the Water Authority a heads up about  
14 this?

15 A No. I think the only heads up -- the  
16 conversation that I had with Ms. Leitzell was the  
17 heads up that I provided for her.

18 Q The day before the RFP was issued?

19 A Yes.

20 Q In that conversation with Ms. Leitzell did you  
21 say we're going to get some bids here; it would be  
22 really helpful to us if you could open up your  
23 records so they could do some diligence?

24 A No. I didn't say that.

25 Q Why not?

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THE COURT: The question has been asked and answered. Let's move on to another topic, counsel.

MR. JESIOLOWSKI: That's all, Your Honor.

THE COURT: Okay. Anything further, gentlemen?

MR. GREENBERG: Not from us, Your Honor.

MR. FRANK: No, Your Honor.

THE COURT: Okay. You may step down, Mayor, thank you.

THE WITNESS: Thank you.

MR. JESIOLOWSKI: Your Honor, we have no further witnesses at this time.

THE COURT: Okay. Any motions by the party Defendants?

MR. GREENBERG: Your Honor, we move to dismiss. There's been no evidence, at all, put forward for any elements of the injunction except arguably as to the contention on -- as to success on the merits; no evidence of irreparable harm, no evidence of balancing -- the -- I'm not going to run through them all. They have put no evidence on to any of these factors, the public purpose or any of that. The injunction shall only issue if all six elements are hit. And they have only argued as to

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1 one, I think fatally wrongfully they've only argued  
2 as to one. But to the other five they didn't even  
3 try. I think dismissal is required.

4 THE COURT: I assume you join in that  
5 motion?

6 MR. FRANK: And I'd like to add to it if  
7 Your Honor so indulges --

8 THE COURT: Certainly.

9 MR. FRANK: Your Honor, the Sunshine Act  
10 does not require actual script to be as specific as  
11 Plaintiffs would actually require. The Sunshine Act  
12 requires notice to the public, check, we have that  
13 here. They have more than notice to the public  
14 because they have the back and forth in the letters.  
15 The June 11 letter, specifically, from the City to  
16 CWA, informing them of what was transpiring. Then  
17 you have the actual June 12 events, themselves. You  
18 have the actual agenda which, yes, it does not say  
19 CWA. But it talks about in enough specificity to  
20 allow somebody that's there, to literally have a  
21 designee present on June 12 to ask a question or  
22 object. None of that had transpired. You then have  
23 the actual reading of the resolution into the  
24 record, which does multiple times talk about CWA.  
25 The whole injunction is premised upon Sunshine Act,

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1 that's been complied with. As far as the deal  
2 between this -- you know, this preordained deal,  
3 supposed deal between Aqua and the City, you heard  
4 the Mayor, himself, say there was no deal,  
5 whatsoever. And that's accurate. There is no such  
6 deal. You heard Ms. Leitzell's testimony get up and  
7 say, yes, I knew this was about CWA, the Chair of  
8 the Board. So Your Honor, I echo Mr. Greenberg's  
9 sentiments. They have not -- it's a big so what  
10 that's transpired. They have not met any of the  
11 objective criteria for the properties of an  
12 injunction. So we, likewise, join in the dismissal,  
13 sir.

14 THE COURT: Thank you, counsel; the motions  
15 are denied.

16 MR. GREENBERG: Your Honor, I don't know  
17 who you're asking to go next on this, but I'm happy  
18 to let Aqua go next and then we'll clean up. At  
19 this point, we aren't sure what, if any, other  
20 evidence we feel compelled to put on.

21 THE COURT: Okay. Counsel?

22 MR. FRANK: Thank you; I'd like to recall  
23 Mr. Luning, sir.

24 THE COURT: Okay.

25 THE COURT: You've already been sworn, sir,

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1 you're under oath.

2 THE WITNESS: Thank you, Your Honor.

3 \*\*\*

4 DEFENDANT AQUA:

5 CHRISTOPHER LUNING,

6 having previously been duly sworn, was called as a

7 witness herein and was examined and testified as

8 follows:

9 \*\*\*

10 DIRECT EXAMINATION [3:21 p.m.]

11 BY MR. FRANK:

12 Q Mr. Luning, did Aqua have anything to do with  
13 the noticing of the subject meetings on June 10 or  
14 June 12?

15 A No.

16 Q Did Aqua have anything to do with the conduct of  
17 the meetings on June 10 or June 12?

18 A No.

19 Q Did Aqua have anything to do with the language  
20 of the RFP?

21 A No.

22 Q Did Aqua have anything to do with the timeframe  
23 set forth in the RFP?

24 A No.

25 Q Is there a deal in place as we sit here at 3:22,

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1 between Aqua and the City for Aqua to acquire the  
2 assets of CWA?

3 A There is not.

4 \*\*\*

5 MR. FRANK: No further questions, Your  
6 Honor.

7 THE COURT: Okay. Any cross?

8 \*\*\*

9 CROSS EXAMINATION [3:21 p.m.]

10 BY MR. JESIOLOWSKI:

11 Q Mr. Luning, this morning your counsel said that  
12 Aqua's counsel and the City of Chester's counsel  
13 engaged in settlement negotiations or discussions.  
14 I don't want to get into any privileged discussions  
15 you have had with your counsel, but I would like for  
16 you to describe the substance of any communications  
17 from Aqua's side to the City of Chester's side.

18 \*\*\*

19 MR. GREENBERG: Objection, beyond the scope  
20 of direct, Your Honor.

21 THE COURT: Sustained.

22 MR. JESIOLOWSKI: Nothing further, Your  
23 Honor.

24 THE COURT: Okay. You may step down.

25 THE WITNESS: Thank you, Your Honor.

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1 MR. FRANK: I'd like to call Ms. Leitzell,  
2 Your Honor.

3 THE COURT: Okay.

4 MR. FRANK: With Your Honor's permission  
5 I'm going to go ahead and shift benches here.

6 THE COURT: Not a problem, sir.

7 MR. FRANK: Thank you.

8 THE COURT: You're under oath, Ms.  
9 Leitzell.

10 THE WITNESS: Thank you.

11 \*\*\*

12 CYNTHIA LEITZELL,  
13 having previously been duly sworn, was called as a  
14 witness herein and was examined and testified as  
15 follows:

16 \*\*\*

17 DIRECT EXAMINATION [3:22 p.m.]

18 BY MR. FRANK:

19 Q Good afternoon, Ms. Leitzell. Do you have a  
20 copy of your Complaint up there with you?

21 A No.

22 Q Let me hand you mine.

23 \*\*\*

24 MR. FRANK: May I approach, Your Honor?

25 THE COURT: You may approach, sir.

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1 MR. FRANK: Thank you, sir.

2 \*\*\*

3 BY MR. FRANK:

4 Q Now the Complaint and the Petition in this  
5 matter, Ms. Leitzell, you verified both of those,  
6 did you not?

7 A Yes.

8 Q And you admit that on June 11, the day before  
9 the subject Council meeting, you did personally  
10 receive the letter from Mr. Kirkland, Exhibit B,  
11 correct?

12 A Yes.

13 Q Okay. And that, in part, notified you that the  
14 City was going to issue a request for proposal,  
15 correct?

16 A Yes.

17 Q And you recognize, do you know, ma'am, that the  
18 City Council agenda, Exhibit D to your Complaint,  
19 specifically referenced an RFP or a RFP, correct?

20 A Yes.

21 Q And knowing such, CWA sent an agent to attend  
22 that June 12 meeting, correct?

23 A No. I don't agree with that. Knowing this was  
24 not why -- I did not send anyone. But one of our  
25 employees did attend the meeting but not because of

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1 this agenda, which I had not seen at that point.

2 Q Okay. Knowing that -- not the agenda, ma'am,  
3 knowing that the RFP was going to be discussed on  
4 June 12, CWA sent an agent there to the meeting,  
5 correct?

6 A I can't really say that, Mr. Frank.

7 Q All right; read paragraph 54.

8 A Where and which?

9 Q 54 of your Complaint, ma'am.

10 A 54 of what?

11 Q That's the Complaint.

12 A What section, which section, please?

13 Q Just turn to paragraph 54.

14 A Of what section, A, B, C?

15 Q No. That's the whole --

16 A Oh, okay, all right. I misunderstood.

17 Q That's okay.

18 A 54, okay, yes.

19 Q What does that say?

20 A You're right. The Authority sent a Chester  
21 resident to attend and record the Chester City  
22 Council meeting that night, authorizing a person  
23 attending a meeting of government entity to use  
24 recording devices to record all proceedings. I  
25 guess that's the section of the law you're referring

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1 to?

2 Q Thank you. Now are you aware of any statute,  
3 law or ordinance, Ms. Leitzell, which requires an  
4 RFP process to be open for any period over 10 days?

5 \*\*\*

6 MR. JESIOLOWSKI: Objection, Your Honor,  
7 she's a fact witness. She's not knowledgeable in  
8 the law. She's not here --

9 THE COURT: Well maybe she is; maybe she's  
10 not. If she doesn't know the answer, she can simply  
11 say she doesn't know.

12 THE WITNESS: I don't know.

13 \*\*\*

14 BY MR. FRANK:

15 Q Likewise, are you aware of any statute, law or  
16 ordinance that requires an RFP to be a certain  
17 length or number of pages in order to be legitimate  
18 or valid?

19 A I do not know.

20 Q Okay. Now in paragraph 63 you state, and I  
21 quote, "the only way a bidder can make a response on  
22 such an unreasonably short timeframe to such an  
23 unreasonably imprecise RFP as Chester's is if the  
24 bidder had a head start and an inside track," did I  
25 read that accurately, ma'am?

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1 A Yes.

2 Q Okay.

3 \*\*\*

4 MR. JESIOLOWSKI: Your Honor, the same  
5 objection, I guess, that counsel made when I tried  
6 to read out of pleadings. The pleadings say what  
7 they say.

8 THE COURT: Overruled.

9 \*\*\*

10 BY MR. FRANK:

11 Q Okay. Now you heard testimony earlier today by  
12 Ms. Thompson that, in fact, there were six bids that  
13 were received in response to this RFP, correct?

14 A I believe that was her testimony, yes.

15 Q Right; so are you contending that all six of  
16 those bidders had a head start and inside track?

17 A I making no contentions, at all, Mr. Frank.

18 Q Okay. Now you're also aware of Aqua's  
19 unsolicited bid in 2017, correct?

20 A Yes.

21 Q Okay. Do you think that Aqua did any due  
22 diligence in conjunction with making that 2017  
23 offer?

24 A I would have no knowledge of that.

25 Q Okay. Do you think that if Aqua did do due

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1 diligence in making that 2017 offer, some of that  
2 information that they acquired still may be relevant  
3 in the year 2019?

4 A I wouldn't know that.

5 Q Now you focus in your Complaint about the  
6 language from Mr. Greenberg's Brief that the -- at  
7 one time "Chester and Aqua intend to consummate a  
8 transaction," correct? That's in your Complaint  
9 multiple times?

10 A Where specifically are you looking that it's in  
11 the Complaint?

12 Q Again, you heard the testimony; it's there  
13 multiple times, ma'am.

14 A Yes.

15 Q Now intend to manifest a future action or future  
16 conduct, does it not?

17 A That's semantics. I'm not prepared to agree  
18 with or disagree.

19 Q And again, you have no specific knowledge of a  
20 final binding deal between the City and Aqua, do  
21 you, ma'am?

22 A No. I do not.

23 Q And in fact, there are many variables in play  
24 bringing an RFP such as this that the fruition --

25

\*\*\*

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1 does it?

2 A I would think not.

3 Q Okay. In fact, the RFP, itself, in Section I-8,  
4 states that any proposals or bids must remain valid  
5 for 270 days or until a contract is fully executed,  
6 does it not?

7 \*\*\*

8 MR. JESIOLOWSKI: Objection, Your Honor,  
9 the RFP document is self-evidence on its face.

10 THE COURT: Sustained.

11 MR. FRANK: I refer to the Court to Section  
12 I-8.

13 \*\*\*

14 BY MR. FRANK:

15 Q That same provision requires City Council's  
16 ultimate approval of the award, does it not?

17 \*\*\*

18 MR. JESIOLOWSKI: Same objection, Your  
19 Honor.

20 THE COURT: Overruled.

21 THE WITNESS: I don't have it -- I don't  
22 see it, but I'm sure it does.

23 \*\*\*

24 BY MR. FRANK:

25 Q Okay. And as we sit here at this moment, to

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1 your knowledge the City hasn't formally awarded the  
2 bid to anyone, has it?

3 A Not to my knowledge.

4 Q Now you contend that the City is subject to the  
5 Sunshine Act, correct?

6 A Yes.

7 Q You don't contend that Aqua is a private entity,  
8 do you?

9 A I don't have knowledge of that, but I don't  
10 believe so.

11 Q Okay. What evidence or facts do you or CWA have  
12 that Aqua had any role in the wording of this June  
13 12 Council agenda?

14 A I personally don't have that information.

15 Q Does anyone at CWA?

16 A I don't know what other people think or have.

17 Q Okay. What evidence do you or does anyone at  
18 CWA have that Aqua had any role in issuing the  
19 notice for the June 12 meeting, including the timing  
20 and wording thereof?

21 \*\*\*

22 MS. GUERNSEY: Objection, Your Honor, the  
23 witness can only speak to personal knowledge.

24 THE COURT: That's what she's doing; you  
25 may answer the question.

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1 timeline set forth therein?

2 A I have no personal knowledge of that.

3 \*\*\*

4 MR. FRANK: No further questions, Your  
5 Honor.

6 THE COURT: Okay. Anything, counsel?

7 MR. JESIOLOWSKI: No, Your Honor.

8 THE COURT: Okay. You may step down, Ms.  
9 Leitzell.

10 MR. FRANK: No further witnesses on behalf  
11 of CW -- excuse me, on behalf of Aqua, Your Honor.

12 THE COURT: Okay.

13 MR. GREENBERG: We'd like to recall Mr.  
14 Turner, please?

15 THE COURT: Okay. Mr. Turner.

16 MR. GREENBERG: Mr. Turner -- I don't know  
17 if the Court does this or I do. You remain under  
18 oath from before. I don't think we need to swear  
19 you in.

20 THE COURT: You are, in fact, under oath,  
21 sir.

22 \*\*\*

23 JAMES TURNER,

24 having been first duly sworn, was called as a

25 witness herein and was examined and testified as

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1 follows:

2

\*\*\*

3

DIRECT EXAMINATION [3:31 p.m.]

4

BY MR. GREENBERG:

5

Q Mr. Turner, at the meeting of June 12 did you go

6

up to the front of the room and look at the

7

resolutions that were at the front of the room

8

before the meeting?

9

A There were no resolutions at the front of the

10

room. There was only the agenda on the podium, was

11

the only document that I saw.

12

Q So the agendas were not on the individual seats

13

in the room and the resolutions in the front?

14

A There were no -- there was no resolutions on the

15

seat that I sat in, nor were there any other

16

documents other than the agenda on the podium that I

17

went and got.

18

Q I don't even know where to go with that since I

19

wasn't there.

20

\*\*\*

21

MS. GUERNEY: Objection, Your Honor.

22

MR. GREENBERG: I'm talking to myself. No

23

further questions.

24

THE COURT: Okay.

25

MR. JESIOLOWSKI: Nothing, Your Honor.

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1 THE COURT: You may step down.

2 MR. GREENBERG: Nothing further, Your  
3 Honor.

4 THE COURT: Is that it for both the  
5 Respondents?

6 MR. GREENBERG: Yes, sir.

7 MR. FRANK: Yes, Your Honor.

8 THE COURT: Okay. Are you ready for  
9 closing argument?

10 MR. JESIOLOWSKI: Yes, Your Honor.

11 THE COURT: We'll start with the City of  
12 Chester.

13 MR. GREENBERG: So we're going to start,  
14 Your Honor, with the Sunshine Act because I think  
15 these are two different buckets, obviously. The  
16 first question I think we've gone over much of the  
17 compliance. We have the testimony from the Mayor  
18 that the resolutions appeared at the front of the  
19 room. We have the testimony as to the resolutions  
20 being offered -- well let's start at the beginning.  
21 As Mr. Frank started earlier on -- stated earlier  
22 on, the Sunshine Act requires three essential  
23 elements of every act. First, notice of meetings  
24 and public notice of meetings. Second, that actions  
25 occur in public. And third, that there be an

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1 opportunity for public to comment on the subject of  
2 the substance of the meeting. So I think there's  
3 been no testimony that the June 12 meeting wasn't  
4 regularly scheduled. It was a publically scheduled  
5 meeting. We've introduced the resolutions to that  
6 effect. I think we've got testimony to that effect.  
7 The second element is there is vote taken in public.  
8 And we've submitted to the Court the minutes of that  
9 meeting, the document, the vote being taken in  
10 public. And there's been no evidence of any vote  
11 being taken at any other time. So check, that's  
12 handled, too. So we get to the third one which I  
13 think this brouhaha seems to be about from the CWA's  
14 perspective, which is that they didn't have notice  
15 of the meeting, somehow. Now while that might in  
16 theory have been true if it wasn't for the  
17 resolution -- I mean, there's some factual disputes.  
18 We have the resolutions in the front of the room.  
19 We have the Mayor's testimony. We have the reading  
20 of the process. We have the minutes to do this. So  
21 we've laid out a pretty strong case that they've  
22 complied with the process. It also is almost  
23 irrelevant here because unlike every other person in  
24 the world, the CWA got a hand delivered letter  
25 giving them notice. And they had a special call

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1 between their Chairwoman and the Mayor discussing  
2 it. And she told us today that she knew that the  
3 RFP was on the agenda. She told us that the Mayor  
4 told her that. She said, no, it's about the RFP.  
5 And she understood -- she testified that she  
6 understood that it was about the RFP related to the  
7 CWA assets. So even if somebody else might have  
8 this argument, the CWA doesn't. But the other piece  
9 that's most important here is that even if, even if  
10 they didn't give the opportunity to comment  
11 beforehand, it is not a fatal defect. If they  
12 didn't, then it is up to this Court to decide  
13 whether or not they need to redo that meeting,  
14 whether anything would change or not. And I'm going  
15 to point you to a couple of cases. Let me just find  
16 them. So under Section 713, the Sunshine Act says,  
17 "should the Court determine that the meeting did not  
18 meet the requirements of this chapter, it may, in  
19 its discretion find that any or all official action  
20 taken at the meeting shall be invalid." But I'm  
21 going to point to the Borough of East McKeesport vs  
22 The Special Temporary Civil Service Commission case  
23 from 2008, where the Pennsylvania Commonwealth Court  
24 went looking and said it would not invalidate an  
25 official action because somebody did not give notice

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1 at the hearing, specifically because the objectors  
2 had actual notice and were there. So it's not a  
3 gotcha test. The question is whether this party had  
4 notice. This party not only had notice, they had it  
5 multiple time. Apparently our comments to Aqua's  
6 counsel got relayed through -- counsel's comments  
7 got relayed through to them through some consultant.  
8 They got a call from the Mayor. They got a letter  
9 -- a call with the Mayor, a letter from the Mayor,  
10 and they had someone in the room sophisticated  
11 enough to bring a tape recorder and record it,  
12 whatever we've heard otherwise. And again, under  
13 the Commonwealth Court -- this is what the  
14 Commonwealth Court said, "we have not been able to  
15 locate a single case where lack of notice or  
16 defective notice has resulted in a decision to  
17 invalidate the Agency's action under the Sunshine  
18 Act when the complaining party was present at the  
19 meeting in question." That is from the case in the  
20 Commonwealth Court. The case is at 942 A.2d. 274,  
21 280. That quote appears on page 281. Not a  
22 particularly complicated case. As here, even if all  
23 of this fiction is true, they had notice and they  
24 appeared and the Court should choose to not  
25 invalidate the Sunshine Act action. So then we get

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1 to the question of whether or not there was some  
2 duty under the Third Class City Code. First, the  
3 idea that somehow we would be violating the Third  
4 Class City Code by bidding an RFP, which is the very  
5 first stage in that process, sort of belies the  
6 problem here. It's not clear -- the Third Class  
7 City Code specifically regulates the award of  
8 contracts. It does not regulate the bidding. It  
9 says you may not award contracts in certain  
10 situations. And specifically in Section 11901, it's  
11 about general contracts. And 12402.1, I believe it  
12 was -- 8.1, it's about first real property and then  
13 personal property. And we cannot award a contract,  
14 the City of Chester cannot award a contract under  
15 the Third Class City Code unless it has filed an RFP  
16 process -- a competitive bid process of some sort,  
17 different standards depending on the property  
18 involved, but a bid process. And that's what's  
19 done. And we heard, oh, my God, it's only 13  
20 business days. Well you know what the Third Class  
21 City Code requires? 10 days. 10 calendar days.  
22 And we meet that test. And that is the entirety of  
23 the thing. It is black letter law. Their  
24 allegation of some mysterious theory is just that,  
25 because at the end of the day when you look at the

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1 RFP, we acknowledge, the City knows it's not the  
2 last step in the process. It needs more  
3 information. The City doesn't have this. We heard  
4 testimony that the Mayor didn't ask for it. Other  
5 people have. But it doesn't matter, because what we  
6 say if it's an unusual situation. They're not  
7 cooperating; we've been around and around and around  
8 and they're not cooperating. And so as a result  
9 what we have said is, hey, look, let's get some bids  
10 in. We understand they're going to be conditional.  
11 If you look at the addendum that was presented, so  
12 if you look at the addendum, we deal with this in  
13 multiple places. Question three talks about the  
14 legal authority. And we, in fact, cited the answers  
15 to the underlying litigation on these matters, said  
16 go look at the litigation and you'll understand  
17 what's going on. And it says were the City to  
18 decide to pursue its options under the MAA, the City  
19 anticipates that it would seek to obtain more  
20 detailed records and information and hopefully  
21 cooperation from CWA management to ease the  
22 transition for customers, employees and other  
23 stakeholders in the process. Then we get to  
24 question four about the outstanding obligations.  
25 And this was reflecting the various different nature

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1 of the people involved. And we said the City is  
2 specifically not aware of any outstanding  
3 obligations. An offerer may want to retain, for  
4 example, leased equipment or supply contracts. An  
5 offerer may condition its offer or its price on some  
6 of the conditions, but the nature and extent of such  
7 conditions will be factors in considering -- to be  
8 considered by the City in evaluating a proposal.  
9 Were the City to decide to pursue its options under  
10 the Municipal Authority's Act, the City anticipates  
11 it would seek to obtain more details and records and  
12 information and hopefully cooperation from CWA  
13 management to ease the transition for customers,  
14 employees and all the other stakeholders. We then  
15 get to one that talks about the PAPUC process and we  
16 say that's a condition precedent. Now a wide  
17 variety -- question six, a wide variety of specific  
18 requests for information about CWA operations and  
19 history were submitted. As indicated in Section  
20 1-4E of the RFP, the CWA is not participating in  
21 this RFP process and has not shared any information  
22 in support of this process, nor has the City yet  
23 exercised its right to terminate the CWA under the  
24 MAA. As such, information about the activities of  
25 the CWA is limited to public records such as those

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1 available from the MS Service of Municipal  
2 Securities Rule Making Board and from the website of  
3 the CWA. For example, the official statement for  
4 the most recent bond issue of the CWA contains  
5 information about the CWA, its finances and  
6 operations that the CWA has disclosed subject to  
7 applicable law. Certain documents such as  
8 collective bargaining agreements, employee benefit  
9 plans, personnel lists, supply contracts and  
10 financial records are not in the possession of the  
11 City at this time. The City understands that the  
12 lack of cooperation from the CWA presents an unusual  
13 situation and thus some offers may require some  
14 additional post-selection or post-contract due  
15 diligence. The City expects offers to specify any  
16 proposal -- in any proposal conditions related to;  
17 one, the scope of diligence sought; two, possible  
18 adjustments to proposed consideration; three,  
19 documents to be sought after notice of termination  
20 is provided under the MAA; and four, any other  
21 relevant and material factors. The scope of such  
22 request pertaining to adjustments relating to  
23 subsequent discovery are elements for consideration  
24 in the City in evaluating the proposals. And then  
25 we have the paragraph about asking for cooperation,

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1 again. And it goes on and on and on. We understand  
2 this is an unusual situation. We're only here  
3 because for two years we weren't able to reach an  
4 agreement with the CWA. But we are where we are.  
5 And the City has these rights. And the cloud in the  
6 room of Act 47 and everything the City is going to  
7 try to do with these resources is there. But it's  
8 not what's driving the issue at Bar. At Bar is a  
9 very simple question. Was this transaction  
10 pretextual or are we complying with the Third Class  
11 City Code. Now as to the pretextual argument, what  
12 we have is a single sentence taken out of context in  
13 a pleading. And I'm not going to go through the  
14 pleading, Your Honor, and cite to every time where  
15 we say we're taking as given, they've done this,  
16 we're taking as given; we're taking as given. But I  
17 will point out that we are citing to paragraph 14  
18 and 15 where they spell out a very nefarious  
19 allegation that they've repeated again and again  
20 throughout. We are not -- we don't have a deal.  
21 What we said in our preliminary objections, however,  
22 was we had to take as given their contention that we  
23 had a deal. We had to take as given -- actually for  
24 the preliminary objection we had to take as given  
25 that we had a corrupt bargain going on or something

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1       like that, that we intended to consummate a  
2       transaction.  And that's why they were suing to stop  
3       us.  And our position is that's not right.  It's  
4       just simply not right, because at the end of the day  
5       preliminary objections have to take as given the  
6       facts alleged by the Complainant.  The fact that we  
7       disagree with them is irrelevant.  And that's why  
8       this pleading, unlike Ms. Leitzell's Complaint, was  
9       not signed by my client.  This was not an admission.  
10      Our Answer will come later if the preliminary  
11      objections are overruled.  There we will make  
12      statements of fact.  This is an allegation.  This is  
13      an argument from counsel, arguably inartfully done.  
14      I should have used the word allegedly.  But at the  
15      end of the day an argument based upon their argument  
16      which we heard over and over and over again.  But  
17      all of that goes out the door, Your Honor, because  
18      this matter is not ripe.  At the end of the day, to  
19      go back to what I was talking about earlier, the  
20      Third Class City Code only regulates contracts.  It  
21      does not regulate the process for bids.  If the City  
22      were to contract and if the Water Authority were to  
23      argue, at that time, that we had not followed the  
24      Third Class City Code, then the matter would be ripe  
25      for adjudication.  However, we are not there yet.

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1 We aren't even sure -- despite the bad blood that  
2 this arguments been created, we are not even sure we  
3 don't want to settle with the CWA. We want to open  
4 these RFPs and let the City understand its business  
5 situation, understand its options, understand if it  
6 can do a better job for rate payers on saving  
7 dollars. If it can protect the rights of these men  
8 and women who are here today from CWA. We aren't  
9 there, yet. And so it's not ripe. And there is  
10 nothing in this allegation that it is because at the  
11 end of the day the Third Class City Code they point  
12 to regulates contracts not bids. Now we would  
13 appreciate understanding if there was some  
14 procedural defect. And I guess we could go back and  
15 cure it all. But at the end of the day this matter  
16 is not ripe for adjudication. And I only point out  
17 to the Court that that is the exact argument that  
18 the CWA made in their preliminary objections to  
19 Aqua's suit against us and them. And it's the same  
20 objection that we made to both of their lawsuits.  
21 And it's the same objection that Aqua made in their  
22 lawsuit against CWA. Everybody seems to agree that  
23 nothing is ripe until the contract. But the City of  
24 Philadelphia is the only -- City of Chester, I'm  
25 sorry, is the only player in this room who hasn't

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1 run to Court time and time again to try to involve  
2 the Courts in a matter that's not yet ready for  
3 resolution. We might have a deal some day. We  
4 might be back before this Bench to talk about it.  
5 We're talking about something that could be weeks or  
6 months away. If there are six offers, you know, it  
7 might be possible that one of them is great and five  
8 of them are horrendous. Who knows? We haven't  
9 opened them yet. But this is not a situation where  
10 only one person can bid because it was precooked,  
11 because we now know there are six. And what we can  
12 find out when we open those six is that there's a  
13 definite need for information and, if so, frankly,  
14 then the burden under the MAA falls on us. And if  
15 we choose to send a termination notice then we have  
16 the right to force the CWA to collaborate. Then we  
17 have a process to go forward. Hopefully we can work  
18 it out and figure out a more orderly transition at  
19 that point. But it's also possible that those six  
20 offers are woefully insufficient and the City  
21 decides its best deal is to go back to the CWA and  
22 have a conversation or some combination of the  
23 three. We don't know, yet, because it's not ripe.  
24 And at the end of the day with it not being ripe,  
25 then we shouldn't be here, at all. And when it

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1 comes down to the six elements of the test, we still  
2 have not heard any evidence of public purpose. We  
3 still have not heard any evidence of preponderance  
4 of the harms. We still have not heard any evidence  
5 of irreparable harm. Again, what is the irreparable  
6 harm in opening an RFP and negotiating? If in fact  
7 a contract is entered into and a notice of  
8 termination is sent, that is where authority  
9 litigation gets filed. And that's what's happened  
10 dozens if not hundreds of times in the history of  
11 the Commonwealth. You've had some authorities try  
12 to fight this. You've had disgruntled bidders try  
13 to fight it. But it is always at that stage. A  
14 couple times they've tried to do it earlier, the  
15 Courts have rejected that move. This time I'm not  
16 even sure -- this is three steps before where the  
17 Courts have even had to weigh in before. We've  
18 never seen somebody try to enjoin an RFP. We look  
19 for cases, frankly, trying to enjoin an RFP and we  
20 can't find them because everybody in the world is  
21 going to say bring us your bids. The City expressly  
22 has the right not to take any of them. We have the  
23 right to counter. We have the right to interview.  
24 We have the right to ask for best and finals.  
25 There's a whole series of processes. And at this

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1 point all the City has done is said bring us your  
2 bids. Tell us what the situation is. We have, for  
3 two years, been getting information solely from the  
4 CWA. That did not lead to a successful negotiation.  
5 So the City wants more information to figure out a  
6 path forward. It can't get there quick with the CWA  
7 because of the Aqua lawsuit. It can't get there  
8 quick with Aqua because the CWA lawsuit. We want to  
9 know what we're doing so the City can make a wise  
10 choice for its residents, for its neighbors -- for  
11 itself with its budget, with its residents who are  
12 rate payers, for the neighbors who are rate payers,  
13 for the men and women who work in the City of  
14 Chester, every day, who it cares a lot about.  
15 They're important stake holders for the City. And  
16 so that's the City's agenda here. And we intend to  
17 go forward and we hope Your Honor allows us to go  
18 forward to find out what the situation is and let  
19 the Mayor and City Council figure out the best  
20 course for the people of Chester; thank you.

21 THE COURT: Thank you, counsel. Mr. Frank?

22 MR. FRANK: Yes, sir; I'll be comparatively  
23 brief.

24 MR. GREENBERG: Sorry.

25 MR. FRANK: Your Honor, at the very

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1 beginning of today's proceedings I made the comment  
2 that the pleadings of CWA were based upon conjecture  
3 and speculation. I think that claim has been worn  
4 out, you know, here today. None of their actual  
5 claims based on the evidence, the testimony or  
6 documentation have born out what they claim to be  
7 the case. Now after hearing CWA's case, I'm quite  
8 honestly left with a big so what. The Sunshine Act,  
9 as we talked about, is about notice. It's not about  
10 absolute perfection or about absolute, you know,  
11 specificity. And that's especially important  
12 because Ms. Leitzell, the Chair of the Board,  
13 understood what was transpiring on June 12. That's  
14 unequivocal and that's unrebutted. There's been no  
15 testimony or evidence, whatsoever, about any  
16 wrongdoing by Aqua. Aqua didn't have any input.  
17 Despite their, you know, 12 or 13 times in their  
18 pleadings about this alleged deal that's already in  
19 place between the two, where's that testimony?  
20 Where's that evidence? It's not there. No one has  
21 -- there is no deal and no one had any evidence or  
22 documentation to prove that. The fact is that  
23 claim's been rebutted and it's unequivocal to the  
24 contrary that Aqua had no role in establishing the  
25 meetings, running the meetings, the RFP itself,

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1 anything like that. Yet here they are defending  
2 against this "conspiracy." So for us, Your Honor --  
3 I've been doing this a long time, not as long as  
4 Your Honor, but I really don't see how a request for  
5 injunction can properly be granted. And again, we  
6 ask that it be denied; thank you, sir.

7 THE COURT: Thank you. Counsel?

8 MR. JESIOLOWSKI: Thank you, Your Honor.

9 THE COURT: I'd ask you to start with the  
10 alleged involvement of Aqua, since I think you've  
11 hear the arguments of counsel.

12 MR. JESIOLOWSKI: Yes, Your Honor, we heard  
13 testimony today that a representative of Aqua  
14 attends regularly the Chester Water Authority Board  
15 meetings and did attend the Chester Water Authority  
16 Board meeting the afternoon of June 12. At some  
17 point after that meeting he had a conversation with  
18 Chester Water Authority Board member, Mr. Chiomento,  
19 we heard from today. He said something to the  
20 effect of will I see you at the meeting later  
21 tonight, meaning the City Council meeting. There  
22 was an implication that something at the City  
23 Council meeting that night would concern the Chester  
24 Water Authority. Where did that implication come  
25 from because it hadn't been publically disclosed at

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1 that point, somehow Aqua knew about it before it  
2 even happened. Aqua certainly knew about it before  
3 Chester Water Authority and the RFP was on the  
4 Chester Water Authority. I'll address a couple of  
5 points that co-counsel has made. They said there's  
6 no evidence of this alleged conspiracy. The  
7 evidence is the statement that Chester made in its  
8 Brief before this very Court. Indeed, Chester's  
9 counsel said to take the Brief at face value.  
10 Chester's counsel is now claiming that he was  
11 responding to a hypothetical. We can look at the  
12 citation to which he's responding, says Pennsylvania  
13 Act 21 "was designed to promote the very transaction  
14 that Chester and Aqua intended to consummate" and  
15 that CWA alleges Act 73 forbade citing Petition,  
16 paragraph 41. That's a reference to Chester's  
17 Petition for the trust. When you look at Petition  
18 paragraph 41 there is no mention, whatsoever, of  
19 Chester and Aqua intending to consummate a deal.  
20 There's no admission there because at the time the  
21 Petition was filed the Chester Water Authority was  
22 in active negotiations to try and close a settlement  
23 with the City of Chester. Chester Water Authority  
24 at the time it filed that underlying Petition didn't  
25 even realize that Aqua was in the game. No, Chester

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1 means exactly what it says in the Brief. Chester  
2 made one mistake in the Brief, which is they told  
3 the truth. This wasn't a hypothetical. This wasn't  
4 a fact that they must accept as true at the pleading  
5 stage. It wasn't an afterthought to a footnote.  
6 This was essential part of Chester's argument in a  
7 Brief undersigned by no less than five lawyers from  
8 two different firms. All the Court has to do is  
9 take that at face value. It's an admission by  
10 Chester that in the middle of an otherwise public  
11 RFP process "there is the very transaction that  
12 Chester and Aqua intend to consummate." You can put  
13 all the issues, everything else aside. You put that  
14 statement against all the other conduct of Chester  
15 and it's perfectly in line. That statement is  
16 perfectly in line with the fact that Chester didn't  
17 mention on the City Council agenda that item 15 was  
18 an RFP on the Water Authority. How hard would it  
19 have been for Chester to add four words to the  
20 agenda? Consider RFP re Chester Water Authority.  
21 It would have been very easy for Chester to do, but  
22 they didn't do it. How hard would it have been for  
23 the City of Chester to call the Water Authority and  
24 say next week we're going to hold an RFP on you. Do  
25 us a favor, help us out, open up your files to

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1 diligence, help the bidders. It would have been  
2 very easy for Chester to hold an RFP open for 60 or  
3 90 days, like RFPs in the industry might be held.  
4 It would have been very easy for Chester to say we  
5 don't have access to the diligence materials. We  
6 recognize this is a unique situation, so we're  
7 giving bidders plenty of time, plenty of time, have  
8 till October 1 to give us a responsible bid, because  
9 it's important to the City of Chester to know that  
10 the responding bidders know what they're getting  
11 into and that they can run the Water Authority if  
12 they acquire it. Chester didn't do that. There was  
13 no reason for Chester to have an RFP on a 13  
14 business day timeframe. We intended to introduce  
15 expert testimony on that. But maybe we just over  
16 thought ourselves. Maybe we just say we, as  
17 laypersons, understand that 13 business days is not  
18 enough time to do an RFP on a 300 million dollar  
19 asset with no access to diligence materials. It's  
20 spatially absurd. Why would Chester assign as point  
21 person on the RFP someone who apparently testified  
22 that she knows nothing about the RFP, at all?  
23 Wouldn't it be in the City of Chester's interests if  
24 it was a bonafide public RFP to have someone as a  
25 point person who can speak about it, who can respond

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1 to questions, who was involved in putting it  
2 together, who knows the first thing about it or, for  
3 that matter, who was involved in prior City of  
4 Chester RFPs? Chester didn't do that. They put in  
5 a figurehead as the point person on the RFP.  
6 There's no reason for Chester to do that unless it  
7 didn't really care about going through a bonafide  
8 RFP process. So you put together the RFP which is,  
9 on its face, absurd. And you put that next to  
10 Chester's statement in a Brief filed before this  
11 Court, which it has not retracted, the very  
12 transaction that Chester and Aqua intend to  
13 consummate. And there's no other conclusion that  
14 can be drawn. Chester and Aqua are already doing  
15 the deal. Chester has decided before the bids were  
16 even in that it was going to do the deal with Aqua.  
17 A brief discussion on the law here. We've heard a  
18 lot about the Sunshine Act requires notice. Well  
19 that's only part of the Sunshine Act and that's only  
20 part of the Water Authority's claims. The Sunshine  
21 Act requires a lot more than notice. I will say  
22 that notice is also meaningless unless you've been  
23 told what is on the City Council's agenda. Notice  
24 is meaningless if the citizens don't know to stand  
25 up and say a half-hour from now they're going to be

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1 talking about the Water Authority. Such an Act also  
2 requires period for public comment at the meeting.  
3 There was no meaningful opportunity to public  
4 comment because at the time no one knew what to  
5 comment on. The Sunshine Act also requires that  
6 when a bidder is selected, that selection, that  
7 awarding of the bid must be done in public. Chester  
8 cannot say in a Brief on June 19 that it intends to  
9 do the transaction with Aqua. That, itself, is an  
10 independent Sunshine Act violation. The  
11 preselection, the awarding of a bid in private  
12 violates the Sunshine Act. It also violates the  
13 Third Class City Code for the same reason. The  
14 Third Class City Code is unequivocal, when Chester  
15 moves to sell real estate valued in excess of \$1,500  
16 it must do so subject to a public bidding process.  
17 Yes, Chester issued an RFP. That was totally  
18 meaningless. No one can respond meaningfully on 13  
19 days. I know Chester got six responses. It doesn't  
20 mean that they're meaningful. And if Chester had  
21 given 60 days, maybe it would have gotten a lot more  
22 responses or better responses. It's also  
23 meaningless if Chester says in the middle of the RFP  
24 process they intend to consummate the transaction  
25 with Aqua. I'll also say that nothing in the

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1 Authority's presentation today should be considered  
2 a concession that Chester has the ownership rights  
3 of the Authority and the ability to sell it. That's  
4 a legal question for a different day. We're here  
5 today because the way Chester is presently trying to  
6 sell the Authority is illegal. Co -- opposing  
7 counsel has talked to Your Honor about the  
8 injunction standards, irreparable harm. Under a  
9 line of Pennsylvania Supreme Court cases going back  
10 at least to the 1940s, a violation of State law is  
11 irreparable harm, per se. We've pointed that out in  
12 our papers. We need not show anything more, but we  
13 have. The Water Authority is a unique and  
14 indispensable asset to its 200,000 customers. If  
15 the Water Authority is sold in a rushed, compromised  
16 process it cannot ever be taken back. We've heard  
17 about public interest. Of course the public  
18 interest is served by upholding the Sunshine Act, by  
19 upholding the Third Class City Code. Of course the  
20 public interest is served by the citizens of Chester  
21 having a genuine RFP process that maximizes the  
22 possible return on any City assets. The public  
23 interest is not served by rushing headlong through a  
24 13 day process with serious questions on notice with  
25 the City admitting in the middle of the process it

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1 has preselected the winning bid. Public interest  
2 isn't served if the acquiring party isn't the best  
3 bidder in fact. The injunction the Authority seeks  
4 is extremely limited in scope. A preservation of  
5 the status quo pending a permanent injunction  
6 hearing. The evidentiary standard on a preliminary  
7 injunction is well known. The Authority is not  
8 required at this time to prove every element of its  
9 case. Of course there are items we don't yet know  
10 or fully understand. We haven't deposed anybody.  
11 We haven't seen any documents. All we have to show  
12 right now to get to the next stage, to get to a  
13 permanent injunction hearing, is the likelihood of  
14 the success on the merits. For that, all the Court  
15 needs to do is look at Chester's admission in its  
16 Court filing and look at the 13 day period of an RFP  
17 for 300 plus million dollars. Mr. Greenberg also  
18 said this action is premature. Let's talk about  
19 that for a moment. In multiple places in Chester's  
20 RFP and its filings in these various litigations,  
21 Chester has said that it is moving forward with the  
22 sale process. We heard testimony on that point from  
23 the Mayor. We heard opposing counsel ask if they  
24 could open the RFPs this very afternoon. There  
25 could be no better evidence of their eagerness to

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1       move forward with this transaction as soon as  
2       possible. Make no mistake, if there is no  
3       injunction they will move forward as expeditiously  
4       as possible to close this sale. This is not some  
5       hypothetical. They are doing it. There is  
6       absolutely no harm to Chester or to Aqua if the  
7       Court were simply to slow the process down until the  
8       evidence can be fully gathered and presented at a  
9       later hearing. Chester can keep on doing its  
10      operations. Aqua can keep on doing its operations.  
11     They can open the bids. They can look at them.  
12     They can look at financial projections on the bids.  
13     They can confer with the bidders who submitted them.  
14     What they can't do is move to close on this while  
15     these questions are still surrounding the RFP  
16     process. I'll also note that the harm to the  
17     Authority is real. The Authority has a lot of  
18     employees in attendance here because they're unsure  
19     who their employer is going to be. This RFP process  
20     has cast a cloud over the operations of the  
21     Authority. The Authority is currently seeking a 30  
22     million dollar bond financing --

23                   MR. GREENBERG: Objection, not in evidence.

24                   THE COURT: Sustained.

25                   MR. JESIOLOWSKI: Very well, Your Honor.

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1 We've not heard anything -- I'll conclude with this.  
2 We've not heard anything from Chester or Aqua to  
3 explain why this process is so needlessly quick.  
4 We've heard nothing from Chester or Aqua to explain  
5 the harm to them in a brief, temporary stay of the  
6 status quo, 30, 60 days at the Court's discretion,  
7 until evidence can be gathered to understand  
8 whether, in fact, laws have been violated. There is  
9 no harm to slowing this process down. There is  
10 significant possibility of harm if the transaction  
11 goes through in such a rushed process on an asset as  
12 important as the Chester Water Authority with  
13 questions as significant as these hanging over the  
14 proceedings. Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. GREENBERG: Your Honor, we've got a  
17 Bench Brief and we -- I'm happy -- if I get a minute  
18 just to rebuttal because we heard a lot about what  
19 we allegedly haven't talked about. I know I talked  
20 long, so --

21 THE COURT: He has the burden of proof. He  
22 gets the last speech, counsel.

23 MR. GREENBERG: Can I just submit the Bench  
24 Brief?

25 THE COURT: You may.

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1                   MR. GREENBERG: This predates the hearing,  
2                   so there's a few additional facts, obviously, that  
3                   have changed. But that's --

4                   THE COURT: Okay. Okay, ladies and  
5                   gentlemen, first of all, I want to thank you for  
6                   your cooperation, both in the morning and the  
7                   afternoon sessions. I know that there's an awful  
8                   lot at stake but everybody remained courteous  
9                   throughout. There was no yelling, jumping up and  
10                  down. At this point in time the Court is going to  
11                  take a very brief recess. I haven't had an  
12                  opportunity to look at this. I think I'm familiar  
13                  with most of it. But in fairness to the City of  
14                  Chester, I believe I have an obligation to see if  
15                  there's anything in there that would bear upon the  
16                  decision. I want you to keep in mind that if you  
17                  came here with the idea that this was going to be a  
18                  final decision as to whether the Water Authority was  
19                  going to be sold or not, this is not the day. This  
20                  is only a very preliminary hearing to determine  
21                  whether we should stop the process for some brief  
22                  period of time and before we go further with that  
23                  I'm going to adjourn. We'll come back at -- let's  
24                  see what time is it, 4:25.

25                  MR. JESIOLOWSKI: Thank you, Your Honor.

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[Off the record: 4:05 p.m.]

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THE COURT: Please be seated, everyone. Court would first like to thank all counsel for their cooperation, the manner in which they presented their case. This is not an easy case. It's obviously a very important case. First of all, with respect to Aqua, the Court has considered the testimony and arguments of all counsel. The Court does not believe that the requisite elements have been satisfied with respect to Aqua as far as this particular request for preliminary objection is concerned. So Aqua will be dismissed. With respect to the second -- second Defendant, City of Chester, an averment has been raised that the Sunshine Act was not complied with. You may recall that during the testimony two witnesses from Chester said when asked what was the value of the other matters on the agenda that night, they didn't know, didn't recall, but everything was basically the same, it was all important. I would hazard a guess, and I'm not sure what was the agenda that night, but I would suspect if you added the other 14, 13 items, whatever it was, and multiplied it by 10 and then took it to the

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1 8th power, you would far less than the amount of  
2 money that we're talking about here. Chester very  
3 well knew that this was essentially a nuclear bomb  
4 as far as finance is concerned. We're talking about  
5 hundreds of millions of dollars. The agenda didn't  
6 even mention the Chester Water Authority. An  
7 argument was made well the Chester Water Authority  
8 knew about it and Ms. Leitzell knew about it. I  
9 think that's debatable. But the standard under the  
10 Sunshine Act isn't whether one particular possible  
11 party has notice. The public has to have notice.  
12 In this particular case I think Chester City fell  
13 far short of satisfying the requirements for the --  
14 you know, the Sunshine Act. The Court has reviewed  
15 the Briefs of counsel. They're excellent on both  
16 sides. In general, a municipality does have  
17 authority to dissolve a municipal authority.  
18 However, that is not without -- it can't be done  
19 with impunity. The public interest has to be taken  
20 into account. There is a very large public  
21 interest. We have all the customers of the Water  
22 Authority, their employees, many of the customers  
23 apparently are not even in the City of Chester, not  
24 even in the County of Delaware. The Court feels  
25 that the Chester Water Authority did, in fact, meet

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1 their burden of proving the establishing the  
2 irreparable harm, which would be immediate and could  
3 not be compensated by monetary damages. The Court  
4 is going to issue the injunction for a period of 30  
5 days. The Court will then proceed with the basis of  
6 the litigation at a different date and most likely  
7 with a different Judge. With that said, we're now  
8 adjourned.

9 MR. GREENBERG: Your Honor?

10 THE COURT: Yes, sir.

11 MR. GREENBERG: May we speak to the scope  
12 of the injunction? We've heard -- we heard him in  
13 closing testify that they don't want us to not open  
14 the bid, not review, not think, not plan. We could  
15 be advertising in this 30 day period and proceed  
16 forward. We intend to re-advertise as soon as  
17 possible. Obviously this injunction would prevent  
18 us from doing any of those things, depending on the  
19 scope. If the injunction is limited to not  
20 executing a final closed deal, we understand that  
21 that preserves the status quo as their positioning  
22 it as such. We -- you know, we also need to  
23 understand the Court's position on the other  
24 elements of the injunction so that we can consider  
25 our other rights related to that. So we'd just ask

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1 for that to be in the opinion. But in the short  
2 term on the scope of the injunction, if it's limited  
3 to not signing a final agreement with someone to  
4 acquire the Authority's assets, 30 days is not a  
5 problem. That was never the City's plan. But we  
6 don't want to stop the ability to get information  
7 and figure out what the right path forward is.

8 THE COURT: Okay. Does the Authority care  
9 to respond?

10 MR. JESIOLOWSKI: Frankly, Your Honor, I  
11 don't think there's any objection from the Authority  
12 if Chester wants to open the envelopes and see what  
13 is said. Our only concern is that the actions not  
14 be taken to close on any of the bids or otherwise  
15 interfere with the operations of the Authority. But  
16 I believe the Court's injunction already speaks to  
17 that.

18 THE COURT: Counsel, assuming that the  
19 Court is agreeable to allowing you to open the bids,  
20 how much further down the road are you seeking to  
21 go?

22 MR. GREENBERG: Honestly, Your Honor, we  
23 don't know until we see what's in there. It may be  
24 that we need to hire some specialist to help us  
25 evaluate the quality of the operators if the high

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1        bidders are folks who are bringing in teams from  
2        elsewhere we need to understand. We just don't  
3        know. What we're saying is up until the point of we  
4        will not sign an agreement with anybody and we will  
5        not take an action of City Council to -- well we  
6        would propose that we not sign an agreement to sell  
7        the Authority on a final basis and we would not have  
8        City Council take a final --

9                THE COURT: Okay. Let me stop you there.  
10        There were some discussions prior to the afternoon.  
11        And there was a draft of a possible Order. Looking  
12        at that Order, does that satisfy the issue or the  
13        concerns of your client?

14                MR. GREENBERG: So Your Honor, the -- the  
15        last two -- the last sentence is the problem here.

16                THE COURT: I don't have that in front of  
17        me right now.

18                MR. GREENBERG: Your Honor, the last  
19        sentence says it is further understood that no RFPs  
20        will be opened pending the final resolution of all  
21        pending legal actions or until further Order of this  
22        Court.

23                THE COURT: Okay. Well let's assume that  
24        that's removed.

25                MR. GREENBERG: Then, Your Honor, the only

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1 question here is that the City further agrees it  
2 will not take any legal action dissolving or  
3 attempting to dissolve the CWA. It is possible we  
4 might Petition this Court or some higher Court to  
5 take some further action. I think that -- again, if  
6 this was limited to requiring action be filed in  
7 this Court or obviously Appellate situations, with  
8 those two constraints, Your Honor, that's the  
9 concern.

10 THE COURT: Okay. Sir?

11 MR. JESIOLOWSKI: Your Honor, I believe  
12 Your Honor said it perfectly. The injunction that  
13 you've already entered said that no action shall be  
14 taken by Chester to interfere with the operations of  
15 the Authority. No action means no action. It's  
16 self-evident. I'm not really sure, Mr. Greenberg,  
17 I'm not done.

18 THE COURT: It sounds like you're  
19 retreating from what you said earlier, counsel. In  
20 any event, the Court will fashion the Order. You  
21 can assume right now that you can open the RFPs and  
22 do nothing beyond that, at this point in time. And  
23 an Order will be issued tomorrow morning before  
24 noon.

25 MR. JESIOLOWSKI: Thank you, Your Honor.

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1 MR. GREENBERG: Thank you, Your Honor.

2 MS. GUERNSEY: Thank you, Your Honor.

3 THE COURT: All right; Court is adjourned.

4 \*\*\*

5 [End of proceedings: 4:28 p.m.]

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C E R T I F I C A T I O N

I, Richard Coogan, hereby certify that the proceedings and evidence are contained fully and accurately on multitrack recording; that the recording was reduced to typewriting by my direction; and that this is a correct transcript of the same.

Richard Coogan, Administrator  
Court Reporters

DIAZ TRANSCRIPTION SERVICES hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Court of Common Pleas of Delaware County, Pennsylvania, in the matter of:

CHESTER WATER AUTHORITY

v.

AQUA PENNSYLVANIA, INC. AND CITY OF CHESTER

#19-5400

BY:



Sharon L. Diaczun  
Transcriber for  
Diaz Transcription Services

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

Judge

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