

Water Wars: Chester Water, city, Aqua due back in court this week

By Colin Ainsworth Special to the Times Oct 13, 2019

CHESTER — Litigation between the City of Chester and Chester Water Authority related to a proposed sale of authority assets to Aqua Pennsylvania by the city continues to make its way through the Delaware County Court of Common Pleas, with court proceedings set to continue this coming Wednesday.

In the meantime, questions regarding the sale dominated a CWA question-and-answer session with local elected officials and residents at the Penn Township Municipal Building in Chester County Thursday night, according to authority Solicitor Francis J. Catania. “There’s general disbelief that this is happening ... (Attendees) asked that we post a list of phone numbers for the governor’s office, state representatives and state senators. They’ve never heard of a hostile takeover of a government entity and frankly they’re outraged by it.”

The meeting attracted the attention of Upper Chichester resident John Orndorff, who has made a point of talking with fellow ratepayers about his opposition to the sale. Orndorff said event organizers told him there was not adequate seating for him to attend as an outside resident, but that he had friends present with whom he had shared information. Orndorff has compiled a binder of reports and documents on the proposed sale he that he takes to public meetings and other events.

Orndorff said he is attempting to gather rallies in support of the embattled authority and oppose a sale.

“We’d like to have a peaceful organization of customers ... we’re going to protest in front of CWA headquarters on Welsh Street (in Chester); get CWA employees

to participate. We want to keep it the way it is – a nonprofit municipal authority.”

Orndorff echoed the sentiments Catania reported hearing from attendees at the Penn Township meeting.

“Everyone who is interested in stopping the sale should call their legislator, and especially the governor, and voice their concerns about not selling, because it does not belong to Chester, it belongs to the customers,” he said. That question may actually be decided in court.

All of this is part of the fallout after the Chester Water Authority board back in 2017 rejected an unsolicited bid of \$230 million from Aqua to buy the private utility. Then Chester Water cut a deal with the city of Chester, which was making rumblings of having the right to sell all or part of the company’s assets as they struggle to escape state Act 47 distressed city status. The deal would see Chester Water kick in \$60 million to the city coffers. In exchange, the city would relinquish all rights to sell off any part of the firm for 40 years. To raise the money, Chester Water Authority would raise rates by 10 percent. That caught the attention of Aqua, which went to court to block the deal, saying as a ratepayer they were getting nothing from the deal but increased costs. In the meantime, the city, frustrated by delays, decided to advertise for bids to buy Chester Water again. That drew Aqua back into the pursuit for Chester Water.

In a statement Friday, Aqua America spokesperson Donna Alston said that “Aqua is not aware of the (Penn Township) meeting. With pending legal proceedings, we are limiting our commentary, but would encourage those

who are interested to refer to our earlier news releases and media statements.”

There are four lawsuits related to the sale currently before the county Common Pleas Court: A request by CWA to establish a trust for authority assets; a lawsuit from CWA claiming the City of Chester violated the Pennsylvania Sunshine Act in its bid requests for perspective buyers of the authority; a lawsuit by Aqua against a proposed settlement between the city and CWA (approved by CWA but never voted on by city council); and a lawsuit by the city seeking to exercise control over CWA’s ability to borrow money and other operations.

According to Catania, the city has filed seven appeals related to the cases currently before the Commonwealth and Superior courts. “The courts themselves have been transferring back and forth. I’m not sure where all seven are now,” he said. Attorneys for the city could not provide official comment Friday.

The summer saw a flurry of legal action related to the city council approving requests for proposals on potential buyers of the authority. Common Pleas Court Judge James P. Bradley issued a July 3 order stating the city is “enjoined from alienating any assets owned by or allegedly owned by the Chester Water Authority” and “is further enjoined and prohibited from taking any legal action dissolving, or attempting to dissolve, the CWA or in any way attempting to interfere with the day to day operations of the CWA.”

The order followed a June 26 complaint from CWA outside counsel, the Philadelphia-based Conrad O’Brien PC, alleging violations of the Pennsylvania

(continued)

DAILY TIMES

Sunday, October 13, 2019

\$1.50 FACEBOOK.COM/DELCODAILYTIMES

delcotimes.com

Sunshine Act, among others, in the city's issuing of the RFP by not stating the nature of the resolution on a June 12 city council meeting agenda.

The city then had to return six unopened bids stemming from the RFP, upon which the city promptly authorized reissuing the RFPs at a mid-August meeting, prompting an Aug. 18 order from Common Pleas Court Judge Spiros Angelos to preserve the status quo. The order came after a flurry of activity, as the city filed appeals to

an Aug. 6 injunction (continuing Bradley's July 3 injunction) early morning on Aug. 16; passed resolutions pertaining to city control of CWA projects and reissued a request for proposals for a potential buyer of the CWA at Aug. 16's 10 a.m. council meeting. In addition the court called a hearing at 1 p.m. Aug. 17 to review the matters.

According to a motion filed late Aug. 16 by CWA attorneys, city attorneys filed appeals to the Aug. 6 injunction (applying to two

separate cases the parties are involved in) at 8:24 a.m. and 9:29 a.m. Wednesday. This would cause what the CWA motion called "invoking an allegedly automatic supersedeas to shield its disregard of the Court's jurisdiction over the matter." Chester, as a municipality, would be free from the constraints of the Aug. 6 order after filing the appeal until the appeal is heard. Angelos' Aug. 18 order revoked the automatic supersedeas and stated the status quo should be kept until the ongoing legal questions are resolved.