April 20, 2020

STATEMENT FROM THE CHESTER WATER AUTHORITY REGARDING THE DECLARATION OF FISCAL EMERGENCY FOR THE CITY OF CHESTER

The Chester Water Authority feels alarm and outrage that the Governor has seemingly endorsed a looting of the Chester Water Authority to solve the City of Chester's long-running financial problems. The Authority's sole mission is to provide clean and affordable water to its customers throughout Southeastern Pennsylvania – a job the Authority has done exceptionally well for generations. The Authority does not exist to serve as the City's bailout of last resort. The City has never contributed any funding to the Authority. The Commonwealth should not be endorsing the City's attempts to steal something for which it never paid.

Likewise, it appears that the Commonwealth is continuing its statewide policy of advocating the permanent removal of water assets from public control through sales to for-profit investor-owned utilities as a short-term band aid to cover up the Commonwealth's own oversight failures and as a means for repayment of loans to the Commonwealth, a creditor of the City.

I. The Chester Water Authority is not the City's asset.

The Commonwealth's characterization of the Authority as a City asset, which clearly appears to have been made in concert with and at the urging of the City, is simply false and at odds with the facts.

a. The City states in each and every one of its audits that the Authority is not a City asset.

The City itself recognized, as it had to, in every one of its audited financial statements that the Authority is not a City asset. For example, the City's most recent audit, which covers 2016, states that the Authority is not a "component unit" of the City and is therefore "excluded from the reporting entity [the City]." City Audit for 2016, page 24. This audit was issued on July 10, 2019 under the supervision, and with the approval, of the state-appointed Act 47 Team. (It is a blistering indictment of the City and the Act 47 Team that it took three years to prepare the City's 2016 audit.)

An identical disclaimer – confirming that the Authority is not a City asset – is in every one of the City's audits undertaken while the Pennsylvania Department of Community and Economic Development and the Act 47 Team it appointed were involved. Here are some examples going back decades:

2015 City Audit, page 25;

2014 City Audit, page 26;

2013 City Audit, page 26;

2012 City Audit, page 27;

2011 City Audit, page 27;

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2003 City Audit, page 21.

These statements in the audits are the City's own position, arrived at with the input of what DCED itself calls "the Act 47 Team." They are not merely the auditors' position. The City itself does not, has not, and cannot carry the Authority as an asset on the City's books. The City, under the supervision of the Act 47 Team, provided that underlying financial information to the auditors through the City's own financial statements. Then the City explicitly endorsed and approved the audited financial statements, each containing such a disclaimer. Those same audited financial statements were similarly endorsed by the Act 47 Team acting at DCED's behest.

The City cannot claim in every single one of its audited financial statements going back decades that the Authority is not a City asset, and then suddenly reverse course and now claim it owns the Authority. Likewise, the Act 47 Team cannot sign-off just a few months ago on the 2016 Audit explicitly stating the Authority is not a City asset, and now claim that it is.

Again, and again, and again, the City went out of its way to explicitly say that the Authority is not a City asset. If the City ever really thought it owned the Authority, the City would have carried that valuable asset on its books. The City did not, because it does not own the Authority, as confirmed by the City's auditors and the Act 47 Team.

Indeed, if the Authority was an asset of the City, it would mean that all of the City's financial statements are fraudulent and false for leaving the Authority completely off the City's books for decades. Because the City has outstanding municipal bonds, the City posted these financial statements on the Security and Exchange Commission's EMMA website, the official source for municipal securities data and disclosure documents. The City also provided these financial statements to lenders and other third-parties. The City and the Act 47 Team would certainly face civil, and possibly even criminal, liability for knowingly understating the City's assets by several hundred million dollars and providing false financial statements in official, regulated securities disclosures.

b. The City has never contributed any funds to the Authority, covers only a small portion of the Authority's service area, and by law does not control the Authority's board.

The Authority is a regional entity, and the idea that the City "owns" it is ludicrous.

First, other than as a ratepayer, the City has never contributed money to the Authority. Rather, generations of the Authority's ratepayers throughout Chester and Delaware Counties (including the ratepayers in the City of Chester) are the sole source of the Authority's funding. The City cannot lay unilateral and total claim to several hundred million dollars of water infrastructure for which the City never paid anything.

Second, 78% percent of the Authority's service area, and well over 160,000 of its customers, are outside of the City's limits. This includes the most significant of the Authority's

assets, its treatment plant and reservoir, which are 35 miles outside the City, in Lancaster and Chester Counties. The City cannot lay claim to property that does not serve the City's customers, is outside of its jurisdiction, and operates well-beyond the City's limits.

Third, by law known as Act 73, the City only appoints 3 of 9 members to the Authority's board. Chester County and Delaware County, where most of the Authority's water infrastructure and customers exist, each appoint three seats as well. In 2012, the General Assembly passed Act 73 unanimously, including the vote of Thaddeus Kirkland, now-Mayor of the City. This was the General Assembly's recognition that the Authority serves large areas of Southeastern Pennsylvania far beyond the City's borders, and so these other areas must have a say in the Authority's governance. The Commonwealth's belated characterization of the Authority as a "City asset" is a slap in the face to those counties and the 160,000 non-City ratepayers in them that have helped create and maintain the Authority for generations.

II. A forced sale of the Authority will cause water rates to skyrocket.

The Authority is a non-profit organization and its current water rates are among the lowest in the region. They are far below the water rates of the major investor-owned utilities in the area, Pennsylvania American Water and Aqua Pennsylvania.

Even if the City could sell the Authority – and it cannot – a sale to a for-profit utility company would cause a massive and permanent spike in water rates. According to their own projections, Pennsylvania American Water and Aqua Pennsylvania would raise rates by at least 40-100% over the next decade. In all likelihood, the real increase would be even higher. This massive rate increase would raise water bills for large commercial and industrial customers by more than a million dollars per year. The average residential customer would see an annual water bill increase of $500. These rate increases would cripple economic development that is vital to the City's recovery and crush the City's residents, who are already struggling financially. And, all of the money that is extracted from these local businesses and residents would go directly to the shareholders of the for-profit utilities.

Even at the Authority's low rates, water affordability is a significant issue for the poorest of the City's residents. Because many residential incomes are very low, a little over 20% of the City's population does not earn enough to meet the threshold the EPA has set for water affordability. At the astonishingly high rates of the for-profit companies, 87% of the households in the City could not afford safe drinking water under the EPA's metric.

None of these statistics are hyperbole or speculation. They are indisputable facts drawn directly from public water rates.

The low water rates in the City are one of the few attractors for business. Is the Governor prepared to ruin that by pushing the Authority's sale to Wall Street?

Is the Governor prepared to endorse a course of action that will put affordable water out of reach for almost every City resident, particularly in the midst of a pandemic?

The idea that the Authority is the panacea to the City's problems is short-sighted government thinking at its worst.

III. The Authority tried to help the City, and the City refused.

The Authority's steadfast position is that it does not belong to the City. Its position is supported by the law. However, in an effort to avoid protracted litigation over that issue, over a year ago on January 24, 2019, the Authority's board approved a proposed settlement agreement that would end this dispute (and would have done so before any formal litigation actually began). The proposed settlement agreement provided that the Authority would make a one-time payment to the City of $60,285,000. In exchange, the City would agree, for a forty-year period, to release any purported claim that it could sell the Authority. The Authority would take out bonds to cover the payment to the City. The Authority would pay for the bonds through a proposed 10% rate increase on customers. The Authority's board reasoned that a 10% water rate increase was ultimately better for customers than an ongoing dispute with the City about its threat to sell the system outright to a for-profit company that would double rates.

The Authority essentially offered the City $60 million in free money, and the City turned it down. The DCED and the Act 47 Team, who were intimately involved in the City's finances at the time, did nothing but sit idly by.

The Governor's April 13 Declaration of Fiscal Emergency for the City conspicuously omits these facts. Astoundingly, the Governor seems to characterize the ongoing litigation as one of the impediments to the City's recovery. This is utter nonsense. The Authority offered to end this dispute over a year ago by giving the City a huge sum of no-strings-attached money, and the City rejected it.

IV. Selling the Authority would exploit the 160,000 customers who do not live in the City as well as the residents of the City.

The Authority's rates are very low. The Authority meets or exceeds all governmental standards for water quality and consistently wins water quality awards. The Authority is fiscally sound. The Authority is well-capitalized and has an excellent bond rating. The Authority's pension is fully funded. The Authority's infrastructure is properly and comprehensively maintained. The Authority has an excellent customer satisfaction rating from the Better Business Bureau (far better than Pennsylvania American Water or Aqua Pennsylvania). And the Authority's reservoir and the surrounding watershed are widely used for non-polluting public recreation, such as fishing, bird watching, and hunting.

Since the Authority is already performing at such a high level, selling it will not improve service for customers. They will be saddled with huge – and in many cases unaffordable – rate increases with no corresponding benefit. This injustice is especially acute for the 160,000 customers of the Authority who live outside of the City, many of whom are in economically challenged areas with very low median household incomes. They, and their children and grandchildren, would be exploited forever so that the City could get a short-term bailout. <u>And within the City, the giant rate increase would make water unaffordable for 87% of residents.</u>

These residents who pay for, and whose parents and grandparents paid for, the Authority's water system did not cause or contribute to the City's problems. To the contrary, they, along with City resident ratepayers, created one of the few economically viable entities that maintains

operations in the City and that provides one of the most attractive economic aspects in the City – clean water at low rates. The Authority's ratepayers are not a convenient piggy-bank to be raided by the DCED as the City's solution.

V. Using the Authority to bail-out the City would be the ultimate shirking of the Commonwealth's responsibility for a mess of its own making.

As discussed above, the Authority is indisputably well run and a shining example of a regional water authority at its best. Now contrast the Authority with the City's state overseers. For 24 years, the City's state-appointed Act 47 Team has been unable to solve the City's financial problems. Over this time, the Act 47 Team has issued four recovery plans. The Act 47 Team would do little to nothing to ensure they were complied with, and the situation would worsen.

This tragedy has now apparently reached a breaking point.

The irony is rich. In a doomed attempt to "save" a City government that the Commonwealth has abysmally failed for decades, the Governor is now pushing to sacrifice a different governmental entity that is one of the most viable in Southeastern Pennsylvania – the Authority.

The City's problems have persisted, in no small part, because of the State's apathy and refusal to hold itself to account. Any state-backed attempt to sell the Authority would be the culmination of these failures. It would be another attempt to let the Commonwealth and its Act 47 Team skirt their own responsibilities for this sordid mess by cravenly targeting the Authority, an innocent bystander.

If the Governor thinks the City needs a massive cash infusion, he should ask the General Assembly to authorize a check. Or he should have ensured that the City took the $60 million settlement the Authority had already offered over a year ago.

The City's financial problems are severe. But selling the Authority is not the solution. It will only make matters worse when the for-profit utilities impose huge permanent rate increases that will cripple residents and businesses in the City. A sale to an investor-owned utility will not further the goal of creating jobs in the City when it will cost existing industrial and commercial customers millions of dollars per year in rate increases, and similarly act as another deterrent for any other businesses to locate in the City.

VI. The City's attempt to monetize the parking authority by saturating Widener University with parking meters was an illegal shakedown. The Commonwealth must not push for the same type of shakedown of the Authority.

The Governor's Declaration of Fiscal Emergency for the City grossly misstates the facts surrounding the City's illegal attempt to monetize the parking authority. This seems to be an attempt to cover-up the Commonwealth's own oversight failures that led to that embarrassing and shambolic episode.

The facts are straightforward and readily available from the court papers filed in litigation about the parking authority dispute. After decades of ineffective and failed Commonwealth

oversight, in 2018 the City – under the supervision and knowledge of the Act 47 Team – decided to monetize the parking authority. The plan they selected was counterproductive and, more importantly, transparently illegal. The City would install parking meters in a few selected areas, with the largest concentration being a saturation of 1,200 newly installed parking meters on the streets surrounding the campus of Widener University. Widener employs many people. Widener also has worked as an engaged community member to help struggling City residents by creating a charter school in partnership with community and City leaders. Instead of being grateful for Widener's significant contributions to the community and City, the City and the Act 47 Team decided to squeeze Widener, to milk it for parking meter revenue simply because they thought Widener had the ability to pay. It was a shakedown, pure and simple.

While students were home on Christmas break in December 2018, the City began to install the parking meters. (Did the City and Act 47 Team really think this timing would go unnoticed?) But Widener refused to knuckle under and instead fought back by filing a lawsuit on January 2, 2019. Only a few days after the lawsuit began, President Judge Dozor of the Delaware County Court of Common Pleas preliminarily enjoined the City's plan to install parking meters around Widener (Widener University v. City of Chester, et al., No. 2019-11). Judge Dozor found overwhelming preliminary evidence that the City's parking meter plan was illegal. Among other things, Judge Dozor noted that the City's plan seemed to be an illegal attempt to raise revenue by selectively targeting Widener: "Generating revenue is obviously of an interest and important in any municipality. Okay. But in generating the revenue not any one community should be targeted or discriminated against." Transcript of Judge Dozor speaking at 1/09/2019 court hearing, page 17, lines 6-10.

In August 2019, the City ignored Judge Dozor's injunction and again tried installing parking meters around Widener. This led Widener to move to hold the City in contempt of court. It was an extraordinary but necessary legal maneuver given the City's unabashed refusal to comply with the law and Judge Dozor's preliminary injunction order. Given that the City was dead-to-rights on contempt of court, the City backed down and ceased further meter installations. For now, Widener appears to have successfully defended itself against the City's illegal attack. But the City's actions caused Widener to expend significant legal fees and costs to defend itself.

This half-baked illegal parking meter plan has also cost the City itself dearly. The City had entered into a contract with a for-profit vendor that was to perform parking meter collections. The vendor would have received a significant cut of the proceeds, but that has been stymied because the City was prevented from completing the illegal installations. Now, under the contract, the City owes a $12,120,000 penalty payment to the vendor. Between that $12 million penalty payment and the City's own expenditure of legal fees in this losing effort, the City is now much worse off than if it had simply done nothing with the parking authority in the first place.

This parking authority episode has several important lessons. First, it shows the dangers of the Act 47 Team's privatization agenda. One of their principal recommendations to the City – to monetize the parking authority – has so totally failed that it has cost the City money instead of generating it. Second, the parking debacle shows the Act 47 Team's willingness to recommend the selective targeting of a valued community member simply to get money the City needed. In the parking case, the attempt was to bleed Widener. In this case, the Act 47 Team is recommending that the City bleed the Authority, and ultimately, its customers. The Act 47 Team is utterly unable

to come up with actual constructive recommendations for the City that do not rely on skimming from third-parties. Third, this parking debacle shows the Act 47 Team's willingness to push for "solutions" to the City's problems that are transparently illegal. As President Judge Dozor said in the parking case, "in generating the revenue not any one community should be targeted or discriminated against." He was speaking about the targeting of Widener, but his ruling applies with equal force to the targeting of the Authority.

VII. Conclusion.

The recent federal COVID-19 relief package has provided significant federal funding for the Commonwealth to distribute to struggling municipalities. The Commonwealth should focus on steering that money to the City instead of targeting the Authority.

Forcing a sale of the Authority to bail-out the City of Chester is a counter-productive theft of hundreds of millions of dollars from ratepayers throughout Chester and Delaware Counties. It is mindboggling that the Governor would even consider endorsing the City's claim that the Chester Water Authority is a "City Asset."