UPDATE NO. 8

Sent to: To the Honorable Members of the Pennsylvania Senate and House of Representatives that represent ratepayers in the Chester Water Authority service area

To the Elected Officials in the Townships and Boroughs that represent ratepayers in the Chester Water Authority service area

To the Honorable Council of Delaware County and Commissioners in Chester County because you represent ratepayers in the Chester Water Authority service area

Date Sent: May 6, 2020

TITLE: Who is in charge here? And what is the Pennsylvania Democratic Party Vice-Chairman's connection to the City's continuing attempt to sell CWA?

AttachmentS to Update No. 8

1. Judge Angelos' Order dated April 24, 2020
2. Two graphs (Chester City Fund Bal. and Budget) taken from information in the City's published audited financial statements
3. See email from Aqua to DCED Act 47 Team of April 24, 2017 at 7:51 p.m.

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NOW is the time to have your constituents contact the Governor's office, your State Representative and your State Senator to stop the sale of CWA. Your constituents can find the contact information here for the Governor, their State Representative and State Senator: https://chesterwater.com/wp-content/uploads/2020/01/Chesco-Delco-State-Reps-Senators-2020-012720-web.pdf

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IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

IN RE: CHESTER WATER AUTHORITY TRUST	**No. 217 – 2019** **ORPHANS' COURT** **DIVISION - EQUITY**

ORDER

AND NOW, this 24th day of April, 2020, this Court having before it the following matters;

1.) Intervenors', Nicole Whitaker, Wanda Mann, Michelle Conte, Tyler Therriault, Esquire, Kathryn A. Townsend, James & Diane Bohr, Wolf Equity, L.P. and Victor S. Mantegna Motion for Partial Judgment on the Pleadings, and the responses of the Commonwealth of Pennsylvania, Department of Environmental Protection ("DEP"), and Aqua Pennsylvania, Inc., ('Aqua") thereto;

2.) Petitioner Chester Water Authority's ("CWA") Motion for Judgment on the Pleadings, and the responses of the City of Chester, Aqua, DEP, the County of Chester and the County of Delaware thereto;

3.) Aqua's Motion for Judgment on the Pleadings and the responses of the CWA and the County of Chester thereto, and;

4.) The City of Chester's Motion for Judgment on the Pleadings and the responses of the CWA, Aqua and the County of Chester thereto;

And this Court having examined the memorandum in support and opposition submitted by able counsel for all parties, the following is hereby issued:

RECORD AND PLEADINGS

1.) CWA filed on March 1, 2019 a Petition for Approval of Declaration of Trust Under Pennsylvania Law and the Transfer of Legal Title to Certain Assets of the Trust.

2.) The Petition cited Article I, Section 27 of the Pennsylvania Constitution – the Environmental Rights Amendment ("ERA") and Section 5620 of the Municipality Authorities

Act ("MAA") (53 Pa. C.S.A. §§ 5601 to 5623) and sought to transfer legal title of "any real and/or personal property, as further defined by the express designation of the Solicitor and CWA personnel, that comprise and make up the generation; transmission and storage-related assets of the CWA" to the Chester Water Authority Trust ("CWA Trust") (Proposed Final Decree).

3.) The Petition in paragraph 87 named as Parties in Interest, the City of Chester, Delaware County, Chester County, DEP, the Susquehanna River Basin Commission, the Delaware River Basin Commission, the 43,850 CWA ratepayers, the proposed Trustees of the CWA Trust and Wells Fargo Bank, N.A. in its capacity as Trustee for Outstanding Bonds.

4.) Attached as Exhibit A to the Petition is the January 24, 2019 document establishing the CWA Trust which subjects final implementation to Court approval. Three of the nine CWA Board members are named as the initial Trustees.

5.) Aqua filed an Answer with New Matter on June 19, 2019. The Intervenors filed an Answer with New Matter on August 2, 2019. After this Court denied Preliminary Objections filed by the City of Chester, the City filed an Answer with New Matter on October 8, 2019. Chester County and Delaware County also filed answers to the CWA petition. The CWA has filed three Ancillary Petitions which are not addressed in this Order.

6.) The instant action is one of four related proceedings in this Court between the City of Chester, CWA, Aqua, and the Intervenors. The related cases are;

(1.) *City of Chester v. Chester Water Authority, Intervenors Nicole Whitaker, Wanda Mann, Michelle Conte, Tyler Therriault, Esquire, Kathryn A. Townsend, Victor S. Mantegna, James D. Neary, Diane and James Bohr and Wolf Equity, L.P., Delaware County Common Pleas Court, Civil Division No. 2019-005976.*

(2.) *Chester Water Authority v. Aqua Pennsylvania, Inc., and City of Chester, Delaware County Common Pleas Court, Civil Division No., 2019-5400.*

(3.) *Aqua Pennsylvania, Inc., v. Chester Water Authority and City of Chester, Delaware County Common Pleas Court, Civil Division No.: 2019-002924.*

7.) This Court has conducted numerous hearings and conferences with the parties in the instant and related actions and has issued Orders granting and vacating preliminary injunctions, entering preservation of status quo, preliminary objections, discovery matters and scheduling issues. The CWA and the City of Chester currently have eight appeals from these Orders pending in the Commonwealth Court of Pennsylvania. This Court has issued opinions in support of its Orders dated December 2, 2019 at the instant docket and dated September 19, 2019 and December 2, 2020 at *No.: 2019-005976.*

8.) Pursuant to Pa. O.C. Rule 7.2, any party may move for judgment on the pleadings after the relevant pleadings are closed but within such time as not to unreasonably delay the trial. The Court is mandated to enter such judgment or order as shall be proper on the pleadings. Pa. O.C. Rule 7.2. A Court may grant a motion for judgment on the pleadings where the pleadings establish that no genuine issue of fact exists and the moving party is entitled to judgment as a matter of law. *Mun. Auth. of Borough of Midland v. Ohioville Borough Mun. Auth., 108 A.3d 132 (Pa. Cmwlth. 2015).*

9.) CWA moves for a final decree approving the terms for the creation of the CWA Trust Charter and transferring into the Trust all generation, transmission and storage related real and/or personal property as designated by the Solicitor and Authority personnel.

10.) The Intervenors seek partial judgment declaring that the City of Chester lacks authority under the MAA to dissolve or seize assets of the CWA, that the ERA prohibits the City

of Chester and the Counties of Chester and Delaware from seizing certain assets of the CWA, and that the Public Trust Doctrine of 1915 and the Dedicated or Donated Property Act, 53 Pa.C.S.§§ 3381-3386, prohibit the sale of CWA assets without Court approval.

11.) The City of Chester moves for judgment on the pleadings and requests a final decree that the CWA's Petition be denied and that the Intervenors' claims be dismissed. The City of Chester submits that as the incorporating municipality, it alone pursuant to Section 5622 of the MAA possesses the authority to transfer the assets of the CWA and that the City has announced its intention to acquire the assets (53 Pa.C.S.A.§ 5622). The City of Chester submits that the Commonwealth of Pennsylvania General Assembly in promulgating Act 12 in 2016 established a concise procedure for valuation of acquired water and wastewater systems by public utility companies and expressed "clear support and encouragement of municipal wastewater acquisitions at valuation levels higher than traditional original cost measures." 66 Pa.C.S.§1329, *McCloskey v. Pa. PUC, 195 A.3d 1055, 1062 (Pa. Cmwlth. 2018).*

12.) Additionally, the City of Chester cites the ERA and in argument supported by Aqua, submits that the CWA assets consisting of generation, transmission and storage related property are inapplicable to the natural resources intended to be protected by the constitutional provision.

13.) Aqua also motions for judgment that the CWA petition be denied and that the Intervenors new matter be dismissed. Aqua supports the potential sale of CWA assets by the City of Chester and endorses the legal submissions of the City of Chester.

14.) The County of Chester and the County of Delaware have filed responses in support of the CWA petition.

15.) DEP has responded succinctly "It is admitted that Pennsylvania's surface and groundwater are public natural resources. However, this case involves the transfer of infrastructure and real estate used by the CWA for the limited purpose of the provision of potable drinking water to the public, not the transfer of the waters of the Commonwealth. CWA does not own the water in the Octoraro Creek or the Susquehanna River. *See City of Philadelphia v. Spring Garden Commissioners, 7 Pa. 348 (1847)* which held that a grant of the use of water from a navigable stream does not pass title to the corpus of the water from the stream. (₱ 44 of DEP Answer to Intervenors' Motion for Partial Judgment on the Pleadings.)

CONCLUSION

16.) This Court having reviewed the parties' respective Motions for Judgment on the Pleadings, it is **HEREBY ORDERED** and **DECREED** that the Motions for Judgment on the Pleadings filed by the Intervenors, CWA, the City of Chester and Aqua are **DENIED.**

17.) In *City of Chester v. Chester Water Authority, Intervenors et al., Delaware County Court of Common Pleas, Civil Division No.: 2019-005976,* this Court on this date is entering an Order that grants in part the Intervenors motion for judgment on the pleadings and dismisses the City of Chester complaint at that docket because this Court concludes that any transfer of all CWA assets be conducted solely by the governing body, to wit, the City of Chester, Delaware County and Chester County in unison pursuant to Sections 5610 (a.1) and 5622 (a) of the MAA (53 Pa.C.S.A.§ 5610(a.1), 5622(a)).

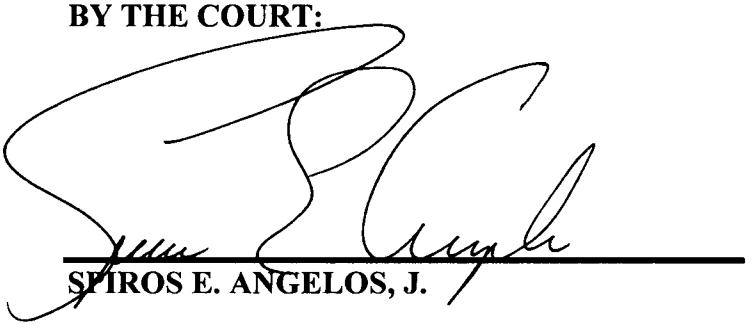
18.) The CWA herein is requesting without the development of a full record to transfer certain assets to the CWA Trust for a 40-year period without reservation or consent and acquiescence of the full governing body established in Section 5610 (a.1) which includes the

City of Chester which opposes the transfer. *See: Burke v. North Huntingdon Township 136 A.2d 310 (Pa. 1957).*

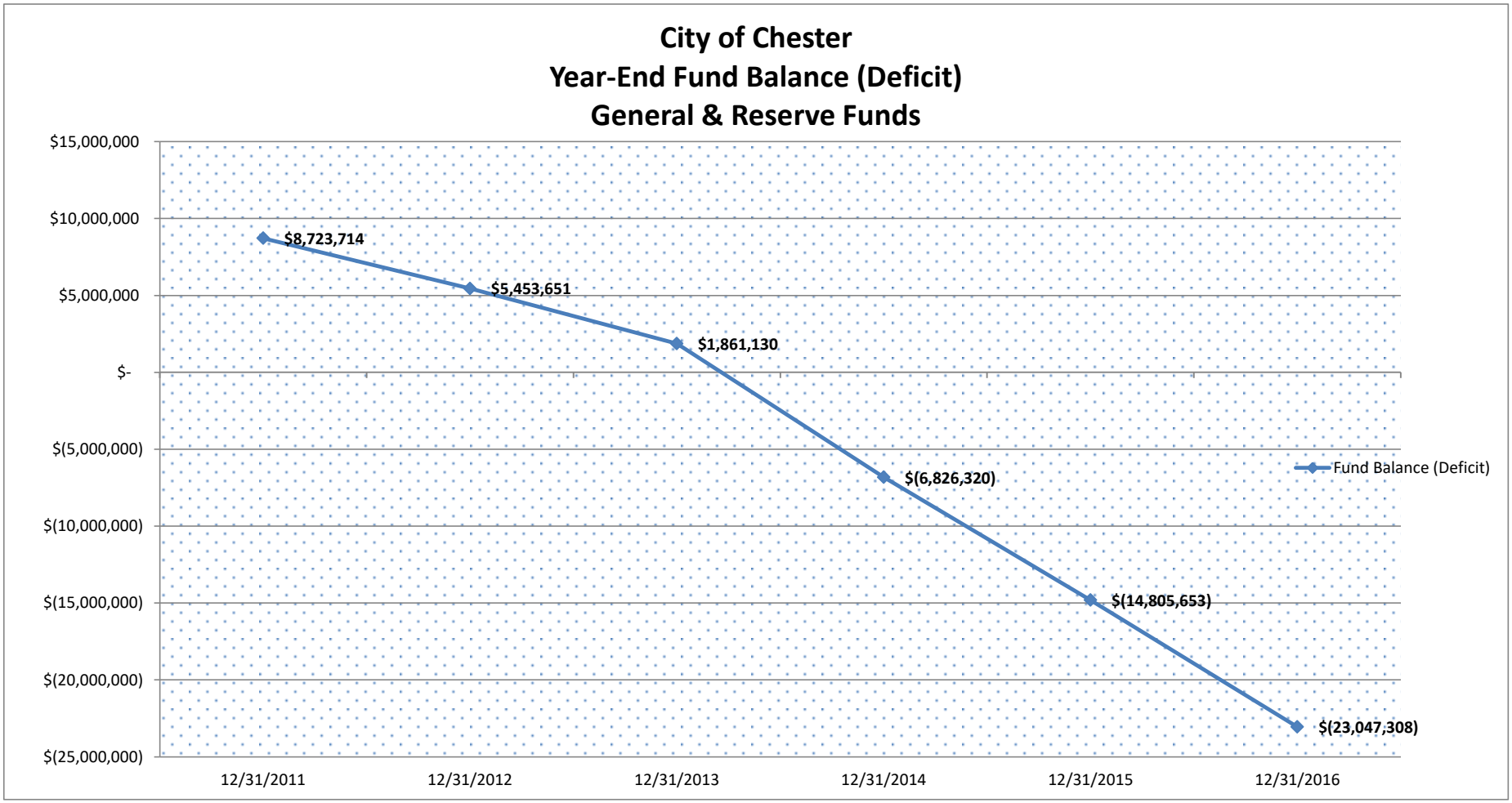
19.) The identification of the proposed real and/or personal property comprising generation, transmission and storage-related assets to be transferred to the Trust and the relation of the assets to the ERA, Article I Section 27 must be factually developed on the record.

20.) This Court recognizes the demands presented on each party by this litigation. This Court declines to enter a summary ruling without record evidence. This Court shall promptly schedule a conference for discovery deadlines related to the issued presented in this Order.

BY THE COURT:



SPIROS E. ANGELOS, J.



Sources:

City of Chester 2011 audited financial statements p. 15	*https://emma.msrb.org/IssuerHomePage/Issuer?id=18C5BE201522BBA347A13823C1B94941&type=G*
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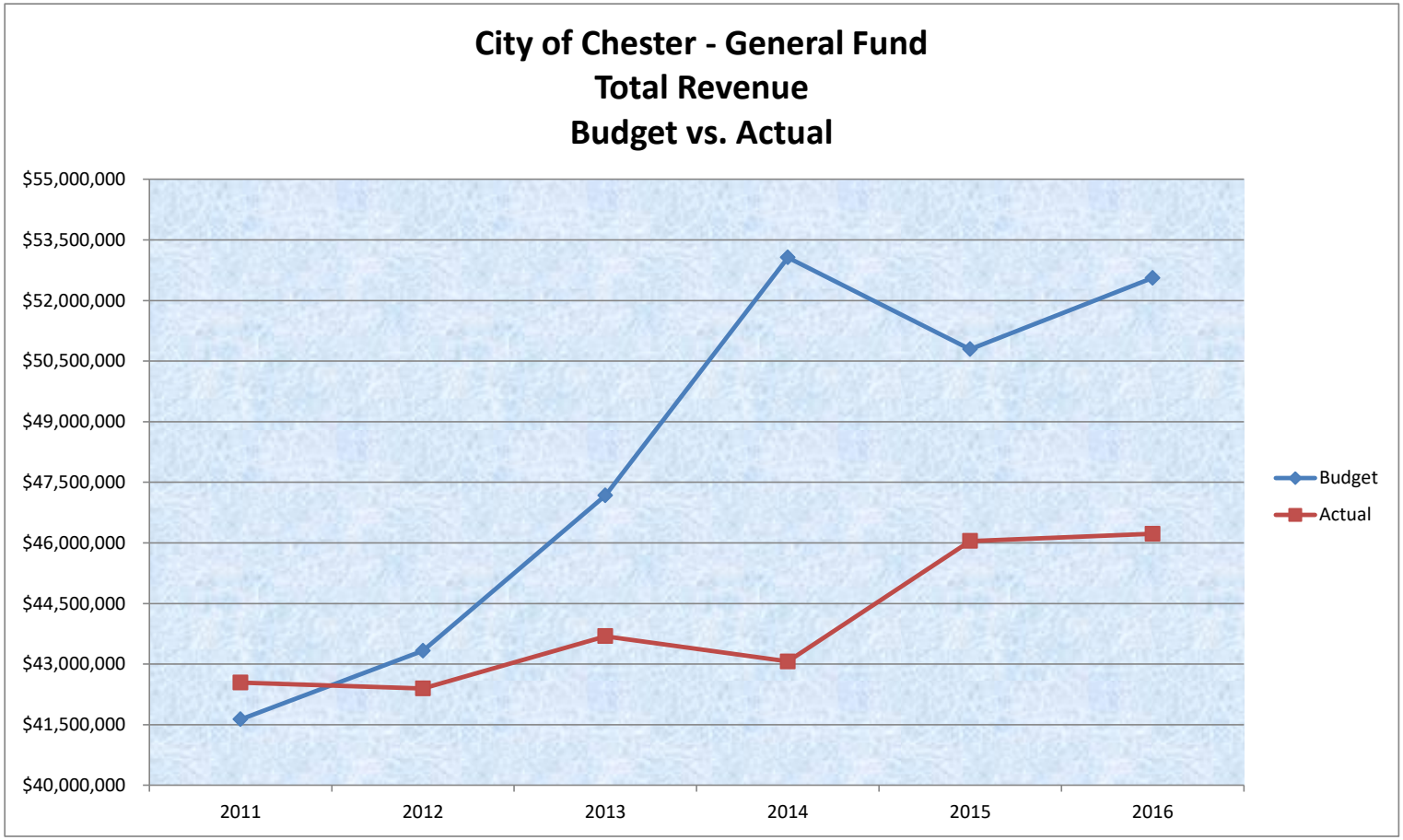
City of Chester

Total Revenue - General Fund

	Budget	Actual	Over (Under) Budget	% Variance
2011	$ 41,631,586	$ 42,540,217	$ 908,631	2.18%
2012	$ 43,328,754	$ 42,395,412	$ (933,342)	-2.15%
2013	$ 47,172,655	$ 43,689,738	$ (3,482,917)	-7.38%
2014	$ 53,064,490	$ 43,064,682	$ (9,999,808)	-18.84%
2015	$ 50,796,348	$ 46,045,683	$ (4,750,665)	-9.35%
2016	$ 52,556,261	$ 46,224,569	$ (6,331,692)	-12.05%



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City of Chester 2011 audited financial statements P. 62	*https://emma.msrb.org/IssuerHomePage/Issuer?id=18C5BE201522BBA347A13823C1B94941&type=G*
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From: Schuller, Daniel J. [mailto:DJSchuller@aquaamerica.com]
Sent: Monday, April 24, 2017 7:51 PM
To: Dan Connelly
Cc: Lucca, Marc A.; Davis, William B.; Luning, Christopher
Subject: City's Debt Balance

Dan:

We enjoyed meeting you and your colleagues today and look forward to continuing the dialogue. Your insights on Chester really helped us to understand the dynamics in the City. We didn't understand the interactions between you and the municipal leaders prior to today's lunch. Sounds like every day is interesting.

When you get a chance, could you please send us the City's outstanding debt balance?

Thanks and best regards,

Dan

AQUA.
Dan Schuller
Strategy & Corporate Development
Aqua America, Inc.
762 W. Lancaster Avenue, Bryn Mawr, PA 19010
O: 610.645.4266 M:917.376.2875