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VIA EMAIL AND U.S. FIRST CLASS MAIL

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Dear Counsel,

On April 29, Pennsylvania Supreme Court entered judgment in favor of the Chester Water Authority (the "Authority" or "CWA"), entitling it to communications among the Commonwealth's Department of Community and Economic Development ("Department"), the private firm appointed as Act 47 coordinator, Econsult Solutions, Inc. and its various subcontractors, regarding their surreptitious attempts to sell the Authority to private interests over the objections of the Authority and its ratepayers. After nearly four years of litigation, the Supreme Court ruled that such communications are not exempt from disclosure as the Department had argued, reversing decisions to the contrary by the Commonwealth Court and Pennsylvania's Office of Open Records.

The long battle to obtain these records began in 2017 with requests issued under Pennsylvania's Right to Know Law, 65 P.S. § 67.101, *et seq* (hereinafter, the "RTKL"). In December 2019, the Pennsylvania Supreme Court granted allocator in the matter of *Chester Water Authority vs. Pennsylvania Department of Community and Economic Development*, Supreme Court of Pennsylvania Nos. 44 and 45 EAP 2019 (the "2017 Chester Water Authority Litigation"), to determine the proper scope of the internal designation within the predecisional deliberative exception of the RTKL, 65 P.S. § 67.708(b)(10)(i)(A) (the "Predecisional Deliberative Exception"). The Court's review followed protracted litigation concerning the Authority's requests for records relating to, *inter alia*, the Department's involvement in an attempted forced sale of the Authority to bail out the City of Chester on the backs of the

Authority's ratepayers. The decisions of the Office of Open Records and Commonwealth Court had allowed the Department to improperly hide, over a period of years, records the Authority asserted were public– and not subject to any legal exception from disclosure.

On April 29, 2021 the Court issued its decision, ***holding the Predecisional Deliberative Exception "does not serve to insulate communications exchanged between a Commonwealth agency and a private consultant from the [Right to Know] Law's general requirement for openness.***" Decision at 13. With this decision, agencies such as the Department can no longer use relationships with private third parties as a shield and to withhold materials the agency shared beyond its strict confines. This important decision is now the law of this Commonwealth, and will have a significant impact in furthering the presumption of openness and access to records under Pennsylvania's RTKL.

For purposes of the 2017 Chester Water Authority Litigation, the Court's April 29, 2021 Decision finally mandates the Department turn over a host of previously withheld or heavily redacted records about the Act 47 process, including discussions to orchestrate a takeover of the Authority by private interests behind the Authority's back. The Department must produce to the Authority each and every record it shared with Econsult Solutions, McNees Wallace & Nurick[1] and Fairmount Capital Advisors, and then withheld on the basis of the unsuccessfully asserted Predecisional Deliberative Exception. Those records must now be produced and done so promptly, as the Authority and its ratepayers have waited unduly long for this public information.

We look forward to the prompt production of these documents in accordance with the judgment of the Supreme Court of Pennsylvania, and attendant confirmation that all responsive materials have been produced. To this end, with the production kindly provide a sworn certification evincing the Department's compliance with the Supreme Court's final judgments.

Very truly yours,

/s/ *Megan A. Guernsey*

Megan A. Guernsey

MAG/swa

cc: Frank J. Catania, Solicitor
Kevin Dooley Kent, Esquire

[1] As the Supreme Court noted, the Department turned over a host of records withheld on the basis of attorney-client privilege on the eve of the Commonwealth Court argument, which the Department contended mooted the attorney-client privilege dispute regarding the requests at issue, so at this point the Department should not be withholding any further records responsive records on an attorney-client privilege basis.