

To the Honorable Members of the Pennsylvania Senate and House of Representatives who represent ratepayers in the Chester Water Authority service area

**RE: Chester Water Authority (“CWA”) Update No. 15
October 12, 2021**

TITLE: As predicted the attempted looting of CWA’s assets is in progress.

In their recent Commonwealth Court dissenting opinion (page 13) Judge Wojcik and Judge Jubelirer correctly predicted the DCED and Receiver’s actions that are being voted on by Chester City Council tomorrow:

“Thus, contrary to the Majority’s assertion that the Authority’s assets may hypothetically come up for sale by the City based on our holding in this case, the City has already started the RFP process to “monetize” the Authority’s assets, and there is already a Court-approved plan in place for the use of the proceeds of the City’s sale of those assets. It is patently unconscionable to permit the City to pay off its own municipal debt by selling the Authority’s assets that were paid for by its ratepayers, the vast majority of whom reside in the Counties and elsewhere. In fact, the General Assembly granted the Counties “seats at the table” to prevent the City from looting the Authority, and using the sale of the Authority’s assets as its own municipal piggy bank, by enacting Section 5610(a.1).”

The Pennsylvania Department of Community and Economic Development (DCED) continues its open and hostile take-over attack on the Chester Water Authority (CWA) and tries to make it look like the City Council is to blame.

Attached is a resolution to be considered by the Chester City Council tomorrow and discussed by them today. DCED’s hand-picked City Receiver has demanded that the City Council give him the sole power to sign the Agreement of Sale with Aqua/Essential. The Receiver has been

secretly negotiating this agreement with Aqua/Essential for at least the past year, while publicly denying that he has been doing so. The Receiver has adopted the “results” of an illegal bidding process. He does not care what the Legislature or the Courts say or do.

CWA immediately asked the Pennsylvania Supreme Court to take jurisdiction over the case after the Commonwealth Court decision because of its past experience with DCED and the Receiver. CWA knew that the DCED, its Act 47 consultants and the City Receiver are trying to cover up the disastrous past 25+ years that the DCED team has mismanaged the Act 47 program in the City.

From inception the DCED and the Receivers plan has been to sell the Chester Water Authority. No other option was ever considered.

Questions that need answering are:

- Why does the Legislature allow itself to be ignored by it's supposedly co-equal executive branch of government (DCED)?
- Why does the Legislature allow your constituents' needs of the highest quality water at the lowest price be ignored by the DCED and Aqua/Essential?
- Are the constituents entitled to rely on the DCED team being required to follow the rule of law?

We will advise you when the Pennsylvania Supreme Court decides if it will take control of the case at this time.

Until then the struggle continues.

Any questions or comments should be directed to Chester Water Authority. It is best to communicate with CWA via email, info@chesterwater.com

RESOLUTION

NO. 166-2021

WHEREAS, in or about 1939, the City of Chester (the “City”) organized the Chester Municipal Authority under the Municipality Authorities Act (the “MAA”), which entity is now known as the Chester Water Authority (the “Authority”); and

WHEREAS, litigation is ongoing regarding to the City’s interest in the water system currently run by the Chester Water Authority (the “System”) and the City has determined that it is in the City’s best interest to sell the System conditioned upon a resolution of the legal dispute over the rights of the City under the Municipality Authorities Act (the “Litigation”); and

WHEREAS, in furtherance of the City’s desire to sell the System, the City issued a request for proposals on June 12, 2019 to sell the System but, due to the Litigation and out of an abundance of caution, all six proposals received were returned to the offerors without having been opened, other than to identify the person to whom they should be returned; and

WHEREAS, the Delaware County Court of Common Pleas on February 3, 2020, entered an order that permitted the City’s issuance of a request for proposals (the “RFP”) and allowed the City to undertake a bid process to sell the System (the “Assets Sale”), provided that, after such process, the consummation of any agreement to sell the System or other transaction, if any, is conditioned upon a resolution of the Litigation that affirms the City’s right to take back the System assets and to sell the System; and

WHEREAS, the City issued a second request for proposals on February 12, 2020, to solicit bids from interested companies and entities to purchase the System; and

WHEREAS, in response to the February 12, 2020 RFP, the City received three (3) responses and, after the opportunity to review the bids submitted, the City has determined that Aqua Pennsylvania, Inc. (“Aqua”) has submitted a bid that is in the best interest of the City and offers the greatest value to the City, as determined by the Mayor and City Council in consultation with the City’s financial advisor; and

WHEREAS, in July, 1995 the City was placed into Act 47 status; and

WHEREAS, on April 13, 2020, Governor Wolf declared a fiscal emergency for the City; and

WHEREAS, on June 22, 2020, Michael Doweary was named Receiver for the City; and

WHEREAS, on August 20, 2020, the Receiver filed an Initial Recovery Plan which was approved by Commonwealth Court on October 19, 2020; and

WHEREAS, on April 7, 2021, the Receiver filed an Amended Recovery Plan with the Commonwealth Court (“the Amended Plan”), which was approved by the Commonwealth Court on June 7, 2021; and

WHEREAS, in the Amended Plan the Receiver:

- 1) directed the City to continue the Litigation to establish its right to take back the System assets and sell the assets;
- 2) authorized the City to continue with the RFP process (in compliance with any Court Order); and
- 3) authorized the City to continue to consult with its counsel and financial advisor regarding the best approach to monetizing the water system; and

WHEREAS, on September 16, 2021 the en banc Commonwealth Court issued an Order and Opinion confirming that the City has the unilateral right to take back the assets of the Authority; and

WHEREAS, on September 23, 2021 the Receiver issued a public statement in part specifically declaring that the City “must monetize the water system”; and

WHEREAS, because the City has determined that it is in the best interests of the City to sell the System to Aqua on the terms set forth in Aqua’s bid, upon approval by the Receiver the City intends to execute and deliver an Asset Purchase Agreement (the “APA”), the consummation of which is contingent upon the resolution of the Litigation on terms that affirm the City’s rights asserted under the MAA; and

WHEREAS, under the APA, the City will transfer to Aqua the assets of the System through the execution and delivery of all necessary and required bills of sale, instruments of assignment, consents to transfer, deeds, and other agreements, documents, and instruments of conveyance; and

WHEREAS, the City will pass on all System and billing information, and any rights of the City in connection therewith, to Aqua and cooperate with Aqua as is required for the continued operation of the System.

NOW, THEREFORE, the City Council of the City of Chester resolves as follows:

1. It is the intent of the City Council of the City of Chester to promptly enter into an APA with Aqua Pennsylvania, Inc., upon receipt of the Receiver’s approval to do so; and
2. The City Council of the City of Chester requests the Receiver to expeditiously provide his approval for City Council to do so.

Effective Date

This Resolution shall take effect and be in force immediately.

WE HEREBY CERTIFY that this Resolution passed Council this 13th day of October, A.D. 2021.

MAYOR

Attest: _____
CITY CLERK