



CWA Chester Water Authority

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VIA EMAIL ONLY

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Receiver City of Chester
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Mayor Thaddeus Kirkland
City of Chester
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RE: **September 22, 2021 Receiver Meeting Regarding Chester Water Authority**

Dear Gentlemen,

Thank you for meeting September 22nd to take a first step in addressing potential resolution of the disputes involving the City of Chester and the Chester Water Authority. As you will recall, I spent a good bit of time at the meeting answering Mr. Kapoor's questions, providing background and, frankly, raising a host of potential partnership and other revenue-producing opportunities the

Receiver has not explored and/or explored fully. I also requested a copy of the “Order” that the receiver mentioned precluding the City from taking action towards “monetizing” the CWA’s system, but have yet to receive a copy. Needless to say, I was disappointed the very next day to read the Receiver publicly commit to a “monetization” of CWA’s water system “*since the City does not have any other asset that would come close to generating the level of proceeds the City needs...*” I am also disappointed that we received word, through the attached email (see Attachment 1), that the City plans on moving forward with a resolution approving an APA with Aqua, yet I still have not received a copy of the Receiver’s directive precluding the City from entering an APA. Putting aside CWA’s disagreement with the Receiver’s implication of the water system as a City asset, allow me to again summarize and develop means in which proceeds may be realized *without the attendant detriment a private monetization will have on City residents.*

I. CWA’s Settlement Offer Meets the Receiver’s Stated Objectives While Protecting the Ratepayers

First, CWA submitted a settlement offer to the City of Chester that included a significant lump sum up-front payment. Despite the years of litigation that followed, CWA did not withdraw this offer. While we take from Mr. Schuster’s statements that offer should be deemed denied by the City’s silence, we believe it remains the most viable option to meet Mr. Dowear’s ends.

A. CWA’s Settlement Offer Provides a Fair Sum to Resolve this Matter and in light of the System’s Value

Understanding that the Receiver believes the value of the system may be \$385 – \$400 million, this sum is by no means what would be exclusively available to the City, and certainly not anytime soon.¹

¹ Litigation remains pending over the dispute, with certain issues presently before the Pennsylvania Supreme Court through CWA’s petition for allowance of appeal. Further issues are

As we all agreed and understood at the meeting (and assuming, *arguendo*, that the City could even take the requisite steps under Section 5622), at the very outset, the Municipalities Authorities Act requires the authority's debt be retired. This reduces the total sum by approximately \$100,000,00.00 (or whatever the value of the authority's outstanding debt may be at the time) right off the top.²

The system is governed by and serves three distinct territories: the City of Chester, Delaware County and Chester County. The City and Receiver would be remiss to believe the counties – home to the majority of the ratepayers who have funded the growth and operations of CWA and home to the majority of the physical assets of the CWA system – would not lay claim to these funds. Understanding that board representation is equally apportioned among these jurisdictions, service area and assets located therein are not. Along these lines, an (a) *eventual* and (b) *permissible* allocation to the City is likely no more than \$60,000,000.³

B. CWA's Settlement Offer Provides a Significant Upfront Payment

With these realities in mind, CWA's settlement offer not only provides a fair and reasonable sum to the City that takes into consideration CWA's legal obligations and the additional jurisdictions interests under the MAA, it is the *only offer* that also meets Mr. Doweary's second claimed need in obtaining a

before the trial court for disposition, with those determinations then subject to appeal by any aggrieved party.

² This is not to say that the ratepayers themselves may not seek to recoup their investments in the system from any sum the City purports to obtain.

³ Ratepayers in the City comprise approximately twenty percent (20%) of CWA's service area, yet the value of assets located within the surrounding counties greatly exceeds eighty-percent (80%). For this reason we believe it is likely the City would be entitled to a relatively small percentage of any total purchase price, likely \$50,000,000 or less.

significant upfront payment. Aqua's inflated offer does not, and we appreciate the Receiver's acknowledgement of the issues inherent in its proffered \$11.8 million dollar advance. CWA's offer provides the City with substantial funds now, not at the final conclusion of the pending litigations, and any more that may be filed by interested parties thereafter, assuming the City is successful.

C. CWA's Settlement Offer Protects the Ratepayers

I also note that CWA's offer meets a need not addressed by Mr. Doweary at our meeting: ensuring that water rates remain affordable for the residents of the City of Chester. Although Vice Chairperson Paul Andriole detailed this in his September 24, 2021 correspondence to Mayor Kirkland, all meeting attendees should be aware of the statistics that have been compiled on this issue.

A typical household in the City uses 4,000 gallons of water each month. For this amount, CWA charges \$30.54 per month, or \$366.48 per year. Under Aqua's existing water rates, the bill would be \$67.48 per month, or \$809.76 per year. That is a 121% increase over CWA's rates. Pursuant to Aqua's August 20, 2021 filing with the Pennsylvania Public Utility Commission to increase its approved-rates, if Aqua's request is granted the average residential water bill would jump further to \$81.32 month, or \$975.84 per year. That is a 166% increase over CWA's rates.

Notably, this extortionate increase provides no commensurate benefit; CWA has a proven track record as a first-class provider of water service that is well-maintained and serviced.

And most concerning is the disproportionate impact City residents will face when Aqua's increases are imposed.⁴ The EPA has set a threshold to

⁴ The proposed rate freeze/trust concept is nothing more than an illusory band-aid. As Mr. Franklin acknowledged in his recent media statements, Aqua has committed to nothing more than taking "some of the proceeds" and offsetting its rates some undisclosed extent – perhaps nominally – for a limited and finite period of time. Assuming the City residents receive any

determine if water service is “affordable” for a customer, and considers an annual water bill of less than 2.5% of Median Household Income to be affordable.⁵ The below table details households within the City by income level.

Table 1: Income Brackets and Households in the City of Chester			
Range Low	Range High	Midpoint	Households
\$0	\$9,999	\$5,000	1,959
\$10,000	\$14,999	\$12,500	1,064
\$15,000	\$24,999	\$20,000	1,878
\$25,000	\$34,999	\$30,000	1,628
\$35,000	\$49,999	\$42,500	1,703
\$50,000	\$74,999	\$62,500	1,751
\$75,000	\$99,999	\$87,500	770
\$100,000	\$149,999	\$125,000	499
\$150,000	\$199,999	\$175,000	160
\$200,000		\$200,000	90
Total Households			11,502

With CWA’s current rates, water service is only unaffordable to a household taking in less than \$14,659.20 per year.⁶ Under Aqua’s current rates, water service

benefit during the ten-year term of any trust, the devastating fallout facing these households and their future generations is all but assured. Just ask the residents of Limerick Twp., who’s sewer system was acquired by Aqua in 2018 and who now face the prospect of a **ninety-percent increase in most residential bills**. Or ask the residents of New Garden Twp., to whom Aqua promised such a rate freeze for its newly acquired sewer customers, an illusory promise that was overruled by Aqua’s regulators once the system was sold.

⁵ <https://www.awwa.org/Portals/0/AWWA/ETS/Resources/AffordabilityAssessmentTool.pdf>

⁶ CWA’s proposed 10% rate increase to finance its settlement offer would not materially alter these statistics.

becomes unaffordable to any household taking in less than \$32,390.40 per year, or more than one half of the households in the City. Under *Aqua's requested rates*, water service is unaffordable to any household taking in less than \$39,033.60 per year, which is now 61% of the households in the City. How does pricing a majority of City households out of their receipt of clean, affordable water help City residents? Similarly, how does it meet the Receiver's statutory mandate to ensure the continuing provision of vital and necessary services, which necessarily subsumes water supply and distribution? In addition to the two stated parameters touted by the Receiver, we see water affordability as an absolute prerequisite.

I watched with interest the "Water System Monetization Update" presentation the Receiver's office gave at the City of Chester Municipal Financial Recovery Advisory Committee meeting on September 28, 2021.⁷ In the twenty-slide presentation, the Receiver and his staff did not once mention the devastating water rate increases that would happen if the CWA system is sold to Aqua. As discussed above, the ramifications are too significant to ignore; Mr. Doweary owes it to the people and businesses of the City of Chester to provide an honest, up-front discussion of the rate issues as they are not abstract or hypothetical, they are inevitable. Again, look to Limerick Township. Residents and businesses are facing a 90% rate increase just three years after Aqua acquired the municipal sewer system. See September 16, 2021, Pottstown Mercury Article, "Limerick residents oppose 90% sewer rate hike by Aqua PA," (*available at <https://www.timesherald.com/2021/09/16/limerick-residents-oppose-90-sewer-rate-hike-by-aqua-pa/>*). Such a result cannot be one sanctioned by the Office of the Receiver for Chester.

⁷<https://static1.squarespace.com/static/5f721f5325ced83982f1d194/t/6154f9e0cd108478aca94ae8/1632958945170/MFRAC+Presentation+on+Water+System+Monetization+Update+-+9-28-21.pdf>

D. CWA's Settlement Offer May be Further Developed

While CWA's written settlement offer addressed a lump-sum payment, CWA remains willing to discuss and develop its offer further including specifically, to address a spin-off and leaseback arrangement for the City operations. Such an arrangement has been successful in Erie, Pennsylvania, where Erie Water Works has operated the water system on the city's behalf under a long-term lease agreement that provides approximately \$4 million dollars per year, and for which a lump-sum prepayment is expected to provide a significant influx of revenue to the city. A similar concept was raised initially by Corvias, who believed millions of dollars in annual revenue could be produced through such an arrangement. While Corvias' proposal was deeply flawed (not least because Corvias wanted to pay itself an exorbitant fee), we do see potential for mutual benefit in the City's separation of its operations from the overall system to allow the City to independently direct its proceeds.

II. Additional Sources of Revenue to the City of Chester

As you'll recall, we also addressed a number of partnership-type initiatives to provide additional financial assistance to the City, that we do not believe the City or Receiver has yet explored or explored sufficiently.

A. The City's Contractual Reversionary Interest in the DELCORA System

First, the City's valuable interest in the DELCORA sewer system would yield approximately \$70,000,000.00 to the City should it exercise its clear, contractual reversionary rights to take-back (or obtain the fair market value of) its portion of this system. I promised to provide to you a copy of the letter CWA's Vice Chairperson sent to Mayor Kirkland to this end, which will be sent to you separately this afternoon. Exhibit B to that letter is the contract between the City and DELCORA which provides that certain highly valuable sewer assets revert to the City if DELCORA ceases to operate the system. *See* Para. 15.7.

Under the application pending before the Pennsylvania Public Utility Commission, Aqua will acquire all of “the assets, facilities, business, goodwill, properties and rights of DELCORA,” including all physical infrastructure and permits. Post-closing, no part of the system will be owned or operated by DELCORA. Indeed, multiple other municipal entities have already initiated litigation to enforce similar contractual reversionary rights, including Southwest Delaware County Municipal Authority, Lower Chichester Township, Trainer Borough, Edgemont, and Upland. Each of these municipal entities resolved their disputes with Aqua and DELCORA, and will receive compensation for their respective reversionary rights. The City can and must exercise its clear, contractual rights to obtain its fair value in the DELCORA system.

B. Development of DeShong Park

Second, the land surrounding the Deshong Museum in Chester is ripe for development which could generate a stream of regular income to the City.

C. Waterfront Development

Third, waterfront development. The Chester waterfront is an undervalued resource that could yield an eventual long-term revenue stream and possibly in the short-term, some type of Commonwealth assistance.

D. State Aid/ Lottery Assistance

Fourth, we discussed the Pennsylvania lottery and obtaining state assistance to direct a small portion of these proceeds to Chester and/or distressed cities throughout the Commonwealth. Even this small act could recoup those sums the state diverted beyond Chester in its online gambling legislation.

E. Formation of a “Super Authority”

We also touched briefly on the concept of a “super authority,” akin to what the Philadelphia Water Department owns and operates. While this concept is one that would require more development and input from other stakeholders, it is worthy of serious consideration, can be fast tracked, and offers the potential to meet the needs of the City itself, its residents, and the ratepayers throughout the service area, without the system forever being given over to a for-profit company.

III. CWA Should be Viewed as a Community Partner to the City of Chester and its Citizens

It should go without saying at this point, CWA is a community partner who wants to see the City of Chester’s fiscal integrity restored, but not on the backs of its ratepayers, including the residents and businesses within Chester. The discourse recently interjected in the media suggesting otherwise is unfortunate, unhelpful, and entirely inaccurate. Social justice is *not* served in forcing this community, each and every month, to question how it is going to pay for its water. Social justice is *not* served in lining the pockets of Mr. Franklin – who last year made more than \$4,000,000.00 in salary, bonus and stock – together with his associates, through the inevitable high rates and service disconnections fees they will obtain from this community that is already struggling.

Water unaffordability in impoverished minority communities is an historic, real and significant problem.⁸ To be sure, in 2019 the NAACP Legal Defense and Educational Fund issued a 104 page report titled “WATER/COLOR A Study of Race & the Water Affordability Crisis in America’s Cities” (“NAACP Report”) which demonstrates the “disproportionate impact of rising water bills on Black communities.” The NAACP Report concludes “that litigation may be

⁸ https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf

viable and appropriate to address municipal water practices ...which disproportionately impact Black communities.” See NAACP Report, pg. 5. The individuals elected and placed in charge of assisting Chester and its residents must work to avert this recognized social injustice, not embrace it.

In sum, Mr. Doweary’s goal of doing the right thing for the City’s residents is simply not met through a forced sale of CWA’s assets to a private utility; a sale – assuming it is allowed – that follows years of protracted and costly litigation and that results in higher direct costs placed on these residents for the very same service and product, in perpetuity. CWA can assist the City and Mr. Doweary to achieve a fair and equitable result for all stakeholders through:

- Providing directly a significant lump sum and timely payment; with potential spin-off of the City system to operate and produce annual revenue as it sees fit;
- Assistance in obtaining revenue from identified, third-party sources including DELCORA, through public/private initiatives at DeShong Park and the Chester Waterfront and state aid involving the lottery; and
- Exploring all other feasible options, including the concept of a “super authority” that provides revenue to the City while keeping vital and necessary services in public hands.

Most important, CWA can do all of this while continuing to supply the high quality water this community deserves, at the low cost that it needs. These are the bookends for which Mr. Doweary should be cognizant, as these are the realities of the situation before us all.

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As we believe all of Mr. Doweary's stated objectives can be met through further work and discourse, we look forward to the opportunity to continue our discussions.

Respectfully yours,

/s/ Francis J. Catania

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Solicitor, Chester Water Authority

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