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Pennsylvania Supreme Court takes appeal in Chester Water Authority sale

Headquarters of the Chester Water Authority.

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On Monday, the Pennsylvania Supreme Court granted the approval of appeal for the case centering on whether the city of Chester owns the assets of the Chester Water Authority.

A date has not yet been set for the appeal.

This case is only one of several stemming from a 2017 unsolicited bid then-Aqua, now Essential Utilities, made to buy the Chester Water Authority for $320 million, which the authority rejected.

At issue is who actually owns the assets of the Chester Water Authority – the more than 673 miles of water main in its service territory, its water storage tanks, the Octoraro Treatment Plant and its ancillaries, its workforce and its ratepayers.

The Chester Water Authority was initially created by the city of Chester in 1939 to provide water services to 67 customers. That has grown to more than 43,000 customers, serving 200,000 residents in 33 municipalities throughout western Delaware County, the city of Chester and parts of Chester County.

About 20 percent of the customers remain in the city, another 20 percent are in Chester County and the remaining 60 percent are in western Delaware County.

Through 2012, Chester City officials appointed the five members of the authority board. In August 2012, that changed to Chester appointing three members and Delaware and Chester counties each appointing another three to the expanded nine-member board.

Two years after the authority rejected the $320 million bid in May 2017, they filed a motion to create a trust with the intent to transfer the water system assets into this trust. In March 2019, the CWA filed a petition with the Delaware County Court of Common Pleas to approve the trust.

Aqua and the city filed separate motions asking the court to deny the request, as they contended only the city of Chester had the authority to transfer these assets.

In April, 2020, the Delaware County court agreed with the CWA interpretation The matter was then taken before the Commonwealth Court.

On Sept. 16, 2021, Commonwealth Court Judge Patricia A. McCullough issued the majority opinion in the appeal of the City of Chester and Aqua Pennsylvania Inc. vs. the Chester Water Authority in determining that the law does allow a municipality to obtain the assets of the water authority it creates.

In the decision, McCullough wrote that the court "conclusively establishes that section 5622(a) of the (Municipality Authorities Act) vests it (the City) with the unfettered power to unilaterally transfer the Authority, and all of its assets, on the City's own free will and terms without any input from the Authority itself."

A day later, the Chester Water Authority petitioned the Pennsylvania Supreme Court to hear the case. In that petition, the CWA wrote, "the Commonwealth Court took an 'unconscionable' step towards vitiating over (80) years of the Chester Water Authority's autonomy and existence, ostensibly allowing a municipality that does not own or operate the Authority, has not contributed monies to it, and which is a mere super minority both on its board and within its service area, to pilfer the assets funded by Authority's 200,000 ratepayers throughout southeastern Pennsylvania for the City of Chester's own purposes unrelated to the Authority's mission of providing clean and affordable water."

Now, the state Supreme Court says it will look at two issues.

One, can the city of Chester seize the assets of the CWA and sell those assets to address its own unrelated financial distress, while overriding representational rights to Delaware and Chester counties as granted by Act 73 of 2012 – the legislation that expanded the authority board to nine members from varying geographies.

And, two, did the Commonwealth Court error in failing to follow case law that says only an authority to authorize a transfer. The case in point was *Burke v. N. Huntingdon Twp. Mun. Auth.* from 1957.

Some of the parties responded to the court's granting of appeal.

"We're very happy that they decided to hear the case," Francis Catania, solicitor for the Chester Water Authority, said. "It'll give us clear direction and that's what needed here."

He said the authority always believed the legislative intent was clear, although the city's Receiver held the opposite position. Through this appeal, Catania said that will be resolved.

"It will give clarity to that issue," Catania said.

Vijay Kapoor, Chief of Staff of the Chester Receiver's Office, released a statement regarding the order.

“Given the importance of this matter, we always expected litigation to continue,” he said. “We’re confident that the Pennsylvania Supreme Court will uphold the Commonwealth Court’s decision. As we’ve repeatedly said, for Chester to address its pension issues, it needs to both monetize the Water Authority and to reduce retiree benefit costs. The PA Supreme Court taking up this case doesn’t change that reality.”

Chester Solicitor Kenneth Schuster did not respond to requests for comment.

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