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Pa. court opens path for Chester city to sell regional water utility to Aqua Pa. to get the city out of hock

A dissenting judge wrote that it is "patently unconscionable" to allow the city of Chester to sell off a regional water utility that serves 33 towns to pay off the city's debt.

The Chester Water Authority headquarters on Welsh Street in Chester, Pa.

ELIZABETH ROBERTSON / Staff Photographer

by Andrew Maykuth
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The contested sale of one of the region's largest public water systems got a big lift after a

owner of the Chester Water Authority (CWA), and can entertain sale offers for the utility despite objections from suburban interests that represent the vast majority of customers.

The Commonwealth Court handed a victory to Chester and to potential buyer Aqua Pennsylvania, which has offered $410 million to acquire the authority and capture a sprawling water system that serves 49,000 customers in 33 towns in Delaware and Chester Counties. The CWA has contested the sale, saying the authority, not the city, controlled the assets. It says that customer rates will rise significantly under private ownership.

A 5-2 majority of the court ruled that Chester's longstanding ownership of the authority — it created CWA in 1939 — was unchanged by a 2012 state law that expanded the CWA's board to include a majority representation from Delaware and Chester Counties. The 2012 law "merely intended to reconfigure" the authority's governing body," but did not change existing law that establishes that the municipality that creates the authority owns the assets, Justice Patricia A. McCullough wrote in the majority opinion.

The court seemed to downplay the significance of the opinion, and said its decision was of a "very limited nature" concerning only the ownership of an authority's assets. "We do not decide the manner or extent to which a municipality can utilize or exercise such authority," it said in its opinion, delivered last week, nearly 10 months after it heard arguments in the case.

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But Justice Michael H. Wojcik, in a dissenting opinion, said that once the court determines that the City of Chester controls the assets, "the city's ability to dissolve the authority and sell the assets is a foregone conclusion."

The city, which has flirted with insolvency and is under the control of a state receiver, has

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"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," wrote Wojcik. He said the General Assembly, which approved the 2012 law expanding the authority's board membership, aimed to prevent "the city from looting the authority, and using the sale of the authority's assets as its own municipal piggy bank."

The Philadelphia Inquirer

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According to the state receiver's reports, Chester has about $20 million in long-term debt and faces tens of millions in unpaid pensions and retiree health costs. The receiver, Michael T. Doweary, did not respond to requests for comment on the court's decision.

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The Commonwealth Court is an intermediate appeals court that hears cases involving administrative law or public civil law disputes.

The Chester Water Authority, which had rejected Aqua's initial unsolicited purchase offer of $320 million four years ago, immediately appealed to the state's highest court, the Pennsylvania Supreme Court.

Francis J. Catania, the CWA's solicitor, said he feared that Aqua Pennsylvania and the state receiver under the direction of the Department of Community and Economic Development would pressure the city to quickly sign a sale agreement.

"Now is the time for legislative action," Catania said. "We ask that the public and the ratepayers continue to write to their elected officials. It is in our elected officials' hands to save CWA."

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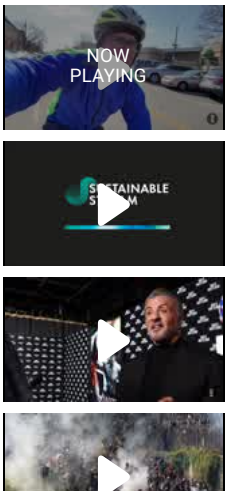

Christopher Franklin, chief executive of Essential Utilities Inc., the Bryn Mawr parent company of Aqua Pennsylvania, said he was pleased with the decision. The city argued that that if the 2012 law reduced Chester's ownership stake, it would have amounted to an unconstitutional taking of property.

Franklin likened Chester's ownership position to that of a landlord.

"If I buy a house and you rent it from me for 30 years, just because you paid all those 30 years, do you think you're entitled to all the proceeds from the sale of that house?" he said. "I don't think so."

Much of the heated debate over the proposed sale now concerns what is in the best interests of Chester's impoverished population -- to sell the utility to Aqua and get out of debt, or, as CWA contends, to possibly face unaffordable water rates in the future.

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Franklin blamed CWA solicitor Catania for "ginning up" opposition to the sale that he said has put political leaders in Chester and Delaware Counties in a bind.

"I think the counties now have to look at this court decision, and they need to now look at the social justice aspect of this, as well — they're all under Democratic control — and determine what's fair here," he said.

As a counter proposal, the Chester Water Authority has proposed giving the City of Chester $60.2 million to pay off the impoverished city's debt in exchange for a 40-year-agreement by the city to drop efforts to sell the water authority. Aqua has moved to block that agreement, and the matter is in litigation.

Aqua has proposed that after the authority's debt and the city's debt are paid down, remaining proceeds from the sale be put into a trust fund, which would be used to reduce the rate impact on CWA customers for about a decade.

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Catania, the CWA solicitor, has ridiculed that plan.

“The idea of rate freeze is like inducing a crab into the pot of water and then only raising the temperature one degree at a time,” he said. “They’re still going to get boiled. The only question is when.”

The sale of the Chester Water Authority is one of two contested acquisitions of Delaware County public utilities by Aqua Pennsylvania. The company in 2019 signed a deal with outgoing Delaware County Republican leaders to buy the DELCORA wastewater system, which serves more than 40 towns in Delaware and Chester Counties.

The two Delaware County acquisitions are among the largest of a frenzy of water and wastewater system privatizations in Pennsylvania. Those purchases are being driven by a 2016 state law that encourages the consolidation of smaller systems under private ownership.

The law, called Act 12, allows investor-owned utilities to pay an appraised fair-market value for an acquired system, rather than its lower depreciated cost or “book value,” and then to recoup the costs through higher rates.

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