



CWA Chester Water Authority
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July 29, 2021

VIA EMAIL

Michael T. Doweary
Receiver for the City of Chester
c/o John P. McLaughlin, Esquire
Campbell Durrant, P.C.
One Belmont Avenue, Suite 300
Bala Cynwyd, PA 19004
jmclaughlin@cdblaw.com

RE: Does the City have an Agreement to Sell CWA?

Dear Mr. Doweary:

DCED has been tasked with coordinating the City of Chester's economic recovery since the City went into Act 47 financial distress in 1995. Over the last few years, the Chester Water Authority has sent the DCED requests under Pennsylvania's Right to Know Law. The Authority sent these requests seeking to better understand DCED's work and, in particular, how it may impact the Authority. In a case brought by the Authority against the DCED, the Pennsylvania Supreme Court recently ordered the DCED to produce unredacted copies of these requested documents to the Authority after nearly four years of litigation. The documents are quite revealing. Lets review some of them but first some context.

On April 24, 2020 the Honorable Judge Angelos issued an Order in the matter *In Re: Chester Water Authority Trust*, No. 217-2019 Orphans' Court Division – Equity, which included the statement "this Court concludes that any transfer of all CWA assets be conducted solely by the governing body, to wit, the City of Chester, Delaware County and Chester County **in unison** ..." (emphasis added). The April 24, 2020 Order (6 pgs.) is attached hereto and incorporated herein and labeled as Exhibit "A".

Recently produced emails show that from July through November 2020, Essential/Aqua's CEO Chris Franklin and Essential/Aqua's counsel had discussions with the Receiver and City about the sale of CWA. Essential/Aqua even sent the Receiver and the Mayor a draft Asset Purchase Agreement. These discussions occurred **after** a Delaware County Court ordered that the City could not unilaterally sell the CWA to Essential/Aqua. Copies of these emails are attached hereto and labeled as Exhibits "B – F".

All of the emails listed below were exchanged after the April 24, 2020 Order and none of the emails listed below include all of the parties which the Order directed must act "in unison".

- Exhibit "B" - 7/21/20 Franklin to Doweary, copying others as listed

"Thanks again for taking the time to meet with us last week. I felt it was a great discussion and **we look forward to taking the next steps with the City of Chester regarding the Chester Water Authority.**" (Emphasis added)

"will provide an updated version of the Asset Purchase Agreement to you and the Chester City team within the next two days."

- Exhibit "C" - 7/22/20 Doweary to Franklin, copying others as listed

"a pleasure to meet you and Joel as well. We look forward to continued discussions and resolving the myriad of open matters as soon as possible."

"Despite the added complication of coordination with the Receiver's office, Kevin will continue to run point. We'll need a little time to digest the information provided **in addition to getting up to speed on the terms in the latest offer.**" (Emphasis added)

- Exhibit "D" - 7/23/20 Aqua Attorney to City Attorneys, copying Doweary

"we thought it prudent to provide you with Aqua's suggested draft of the Asset Purchase Agreement"

"Aqua's next board meeting is on August 5th so if **we could use these next two weeks to hammer out the final details of the deal, any additional**

“asks” by the City/Receiver could be presented to the board for its’ consideration and approval at that time, so we could then promptly execute the APA. Lastly, you’ll note that I copied Michael directly as I’m unsure of the current status of the City’s/Receiver’s legal representation.” (Emphasis added)

- Exhibit “E” - 10/26/20 Doweary to Franklin

“Thank you for reaching out last week. I have been concerned with returning your call so I decided to put my response in writing.”

“With all that is going on, it would **probably be best for us to limit our interactions outside of the prescribed channels.** PFM and I are very **appreciative of the responsiveness and information sharing to date.** ... However, if needed, I can introduce our legal counsel as well but **I would hate to involve lawyers on every communication”** (Emphasis added)

“I hope this is not offensive in any way. In the end, **my intention is to protect both of us.**” (Emphasis added)

- Exhibit “F” - 11/10/2020 Franklin to Doweary

“I appreciate the sentiment and agree that all interactions should remain in prescribed channels”

“Our last offer of \$410 million was made in June of this year so I’m sure you understand the Essential board of directors is anxious for some feedback.”

“...it is important that we receive some guidance on your timeline for a decision on the RFP.”

The Receiver (and the Pennsylvania Department of Community and Economic Development “DCED”) have been consistently and publicly saying that no decision has been made regarding the sale of the Chester Water Authority. These emails tell a very different story. Please address the following questions and kindly make your responses publicly available:

- Is there an agreement for the sale of CWA?

- Did the Receiver brief the City and/or DCED on all meetings and exchange of information between himself and Essential/Aqua?
- Did the Receiver have authorization from the City and/or DCED to pursue discussions about the sale of CWA? The DCED says it has no such knowledge. Have you been conducting negotiations without informing DCED?
- Please provide a definition or more fulsome explanation of the following quotes from the email traffic:
 - “prescribed channels” what did you mean since you have regularly and publicly said that no decision has been made regarding the sale of the Chester Water Authority?
 - “added complication of coordination with the Receiver’s office” what does that mean?
 - “probably be best for us to limit our interactions outside of the prescribed channels”. Why? What is the reason for the requested secrecy?
 - “PFM and I are very appreciative of the responsiveness and information sharing to date.” Why was it burdensome to do so. Did they take a risk in doing so? What are the risks?
 - “From a financial perspective, they will continue to be my intermediary...I would hate to involve lawyers on every communication” Who are the lawyers that you do not want to involve and why do you not want to involve them? Why so furtive? It sounds sinister.
 - “I hope this is not offensive in any way.” What in the email are you worried about that Mr. Franklin would find offensive?
 - “In the end, my intention is to protect both of us.” Mr Franklin is his response email thanks you for this sentiment but what about

protecting the residents of the City of Chester. Is it not your job to protect them?

- Has the City received any money, or has any money been paid or deposited for the benefit of the City, from Essential/Aqua for the sale or potential sale of CWA? We ask this question because in the document titled "Receiver for the City of Chester Status Update", filed December 2, 2020 in Commonwealth Court of Pennsylvania matter No. 336 MD 2020, you state that the City's draft 2021 budget included Aqua deposit money, but then you took those funds out of your draft of the 2021 budget. Page 2, footnote 2 states "The payment from Aqua was an initial \$12 million payment to be non-refundable unless the City sold the CWA to another entity..." Why was the Aqua payment included in the budget in the first place? Why was it then taken out of the budget? (Pages 1 and 2, including footnote 2, of the "Receiver for the City of Chester Status Update" are attached hereto and labeled as Exhibit "G".)
- Has Essential/Aqua placed money in trust for the sale or potential sale of CWA?

The emails show that what you have been repeatedly and publicly saying: "no decision has been made regarding the sale of the Chester Water Authority" is false.

I look forward to your response. Thank You.

Respectfully yours,

/s/ Francis J. Catania

Francis J. Catania, Esq.
Solicitor, Chester Water Authority

Attachments as indicated above