



CWA Chester Water Authority
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August 10, 2021

VIA EMAIL

Mayor Thaddeus Kirkland
City of Chester
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RE: The State has Failed the City of Chester

Dear Mayor Kirkland:

Recently uncovered internal emails and letters reveal that the state-appointed Act 47 recovery consultant did everything possible to interfere with your work, limit the City's options for exiting financial distress, and derail a settlement that would have provided a significant cash infusion to the City many years ago. For example, in an email the DCED executive director explicitly told her subordinates to keep you out of the loop regarding major developments in your City. The DCED and its consultants also gave you directives that were illegal under state tax law.

By way of background, since 1995 the City has been in "financial distress" under the state law known as Act 47. Under that law, the state Department of Community and Economic Development has been required to oversee the City's fiscal recovery. DCED has hired a series of consultants to help in this work, including a firm called Econsult.

DCED and Econsult have abjectly failed in their mission to aid the City. More than 20 years after being placed into state oversight, the City remained mired in financial distress. In fact, the City's condition had only worsened under the watch of DCED and Econsult.

However, in 2018 a new solution emerged that would allow the City to finally emerge from financial distress. That year, the City and the Chester Water Authority became engaged in serious negotiations that would resolve a major legal dispute with a settlement benefiting both parties. The CWA would pay the City \$60 million as part of the settlement. That sum was large enough to allow the City to immediately emerge from

financial distress, shedding the ineffective oversight of DCED and Econsult. The settlement would also have locked in CWA's low water rates going forward. This would be a huge benefit to the residents and businesses of the City, where water affordability is a major concern. The settlement was thus a major win for the City and for your constituents.

From the CWA's perspective at the time, these settlement discussions were productive and serious. A deal seemed close at hand, and you were poised to deliver the City from fiscal distress.

But it now appears out that DCED and Econsult were working against you, the City's interests, and the CWA ratepayers' interests the entire time. We know this because CWA now has access to DCED and Econsult's internal emails, *in which they openly discuss thwarting your efforts in the negotiations.*

For years, DCED refused to produce these public documents. But DCED can no longer hide what it was doing because the Pennsylvania Supreme Court recently ordered the DCED to produce these documents to the Authority after nearly four years of litigation. The documents are quite revealing.

For example, on February 16 and March 13, 2018, Econsult sent you two letters berating you for negotiating a settlement with CWA. Econsult complained that you were not getting sufficient input from them. Econsult, with DCED's approval, threatened you with putting the City into receivership or bankruptcy if you continued to negotiate. And in both letters, Econsult bluntly told you that "it is better that there is no [CWA] deal at this time . . ." Exhibit A. This "advice" could not have been more wrong. As you were well aware, if you had been allowed to finish negotiating the settlement, the City would have gotten \$60 million many years ago, emerged from financial distress, and locked in low water rates for residents and businesses. It would be a win all around. Instead, because the DCED apparently undermined you, the City got nothing and is now in receivership.

On January 15, 2019, Econsult sent a letter to the City's solicitor regarding the City's proposed \$60 million settlement with CWA. Continuing its push to derail the deal, Econsult questioned whether the City could even get the settlement approved by a court: "Or worse, the Court could affirmatively state that the City does not have the right to dissolve the authority." Exhibit B. Here again, Econsult's advice could not have been more wrong. The City was forced to cease negotiations and instead litigated against CWA. On April 24, 2020, a court ruled against the City and in favor of CWA. The City is therefore left with nothing, when it could have gotten \$60 million more than two years ago.

Another example of DCED and its consultants' bad advice was the handling of the City's tax on commuters. In the 2018, DCED and its consultants drafted an "exit plan" that was supposed to get the City out of financial distress. One component of this exit plan was the imposition of a 1% distressed pension tax on commuters working in the City. No additional tax was levied on City residents. This was illegal: "According to Pennsylvania law, the City cannot levy the distressed pension tax solely on commuters" Exhibit C, Receiver's April 7, 2021 Amended Recovery Plan, 41. The City's receiver had to un-do this unbalanced tax structure three years later.

In addition to repeatedly giving the City advice that was flat out wrong, DCED and its consultants callously disregarded the importance of locking in low water rates for the beleaguered residents and businesses of the City. For example, on January 7, 2019, a lawyer from the McNees firm, Adam Santucci, wrote to DCED executive director Kim Bracey about potential rate increases. Santucci noted that to fund its \$60 million payment to the City, CWA planned a modest, one-time rate increase of 10%. This would still keep CWA's rates at less than half of Aqua's. Alternatively, Santucci noted that if the City did not settle and instead sold the CWA to Aqua, "then the rate increases would have been out of the City's control. Rates could jump higher than 10 percent thereafter and could be increased every few years...[Aqua could impose] significant increases into the future." Exhibit D.

Rates came up again in DCED discussions a year later. On March 26, 2020 – shortly before the court ruled against the City – the City was still exploring its options regarding CWA. The City had received bids from Aqua Pennsylvania and Pennsylvania America to purchase CWA. Separately, the CWA challenged the legality of the RFP process, and reiterated its outstanding offer to settle and pay the City \$60 million. Dan Connelly of Econsult sent an email to DCED executive director Kim Bracey evaluating these three options. Econsult conceded that "Generally, *the higher the bids the higher the rate payers will be charged.*" Exhibit E (emphasis added). He was purposefully understating the problem: If the City sold the CWA to Aqua or American, the rate shock they would inevitably impose would be *huge*. This is precisely why it was always in the best interests of the City's residents and businesses to settle – it would lock in low water rates.

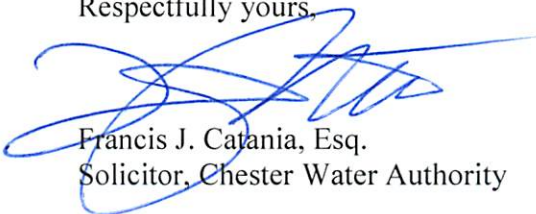
To avoid crippling rate increases that would inevitably follow a CWA sale, DCED should have pushed for the settlement. But instead, DCED was always against the settlement and hindered your negotiations with CWA. The only conclusion is that DCED simply did not care if the City's residents and businesses were forever saddled with ruinously high water rates. You live in the City and care about its people, but the DCED bureaucrats and their consultants clearly have no such concerns.

The DCED also seems to have no regard for your role as the duly elected mayor of the City. For example, on April 10, 2020, DCED executive director Kim Bracey emailed Econsult and specifically directed that you be kept out of the loop regarding the DCED's plans *for your own City*: "I will schedule to talk with the Mayor sooner than later . . . *I don't think we want to arm him with too much regarding our desired next steps.*" Exhibit F, 001492A (emphasis added).

While we have had our differences, the CWA does not doubt your commitment to the citizens and businesses of the City. It is clear that you have fought as hard as you could, only to have DCED and its consultants work against you, marginalize you, and ignore major rate concerns for your constituents. DCED has failed the City for decades. DCED and Econsult let the City come perilously close to the cliff's edge. When the situation reached a breaking point, they tried to cover their own ineffectiveness by blaming the pandemic and forcing your acquiescence with threats of bankruptcy, receivership, and disincorporation.

Since the impossible position DCED, and now DCED's receiver, has put you in has been revealed in DCED's own documents, we hope that you will re-engage with the CWA to jointly work toward a sensible solution to our differences without the DCED's and the receiver's interference. I want you to have a copy of the July 29, 2021 letter that I sent to the Receiver, I will send it to you under separate email. As of today, the Receiver has not responded. Given that the City recently received \$32 million in federal aid and is not in danger of imminent insolvency, we seriously question the Receiver's power to act over the City at this point.

Respectfully yours,



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

Attachments