

Chester Water Authority

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March 18, 2024

VIA CERTIFIED MAIL – RRR and OVERNIGHT MAIL
9589-0710-5270-0700-6965-48

DATE OF DEPOSIT

Rosemary Chiavetta, Secretary
PA Public Utility Commission
400 North Street
Harrisburg, PA 17120

MAR 18 2024

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Re: Pennsylvania Public Utility Commission ("Commission")
Tentative Supplemental Implementation Order regarding four (4)
revisions to the Commissions existing procedures for applications filed
under section 1329 of the Pennsylvania Public Utility Code; 66 Pa. C. S.
1329. Valuation of Acquired Municipal Water & Wastewater Systems –
Act 12 of 2016
Docket number M-2016-2543193 ("Order")

Dear Secretary Chiavetta,

I serve as the Chairman of the Board of the Chester Water Authority ("CWA"), a Pennsylvania Municipal Authority located in the southeastern corner of Pennsylvania, serving over 200,000 people every day with award winning drinking water. CWA has, since May of 2017, been pursued by uninvited for-profit utilities who are using Act 12 to attempt a hostile takeover of CWA, a governmental entity. For-profit utilities in Pennsylvania are weaponizing Act 12 against CWA and are attempting to use it to boost their profits at the expense of ratepayers and citizens in Delaware and Chester County. If successful, their hostile takeover attempts could significantly burden the community. Therefore, the repeal of Act 12 is imperative to prevent this ongoing exploitation of the Commonwealth's citizens. Sadly, the legislature (except for the State Representatives and Senators whose constituents reside in the CWA service area) has avoided taking action on the request for a repeal, despite widespread public support for a repeal.

I appreciate the Commissions willingness to encourage public discussion about the problem that the legislature created in 2016 when it amended Act 12.

I recently (January 22, 2024) appeared at a hearing, also attended by the Commission Chairman, sponsored by the Pennsylvania Senate Democratic Policy Committee titled, Reining in Water Rates: The Unintended Consequences of Act 12 of 2016. Attached to this letter are the 26 pages of my written comments presented at that Committee Hearing. I ask that these written comments be treated as part of this letter and submitted to the assigned reviewing departments of the Commission as set forth in the Order.

This letter also contains further comments on the above referenced Order, which was filed for public inspection February 16, 2024, and published in Notices format in the Pennsylvania Bulletin on February 17, 2024. Please file this letter with the assigned reviewing departments of the Commission as set forth in the Order. What follows are specific recommendations and suggested changes to the Order as published, arranged by topic.

Notice Requirement

The selling utility shall notify the selling utility's customers of the public hearing.

At least one public hearing should occur in every quarter that a sale of a respective public utility is being planned or contemplated.

Notice to all residents and ratepayers must be given twice; at least 6 weeks prior to a public hearing as follows:

1. Direct outreach to current ratepayers through:
 - a. Letters or postcards
 - b. Information in bill inserts
and at least one other method such as,
 - Emails
 - Texts
 - Phone Calls

Notice to all residents in the municipality must be delivered twice, at least 6 weeks prior to a public hearing as follows:

1. Prominently advertising in approved local newspapers of general circulation and at least three of the following methods of advertising:
 - Posting in areas of high foot traffic, community newsletters, faith community bulletins, public service announcements, social media posts shared with community groups and municipalities, local radio and television stations, communications to local community groups, and posting shared with local community centers.

Public Asset Classification and Respective Valuation

Public Utility Assets should be classified as:

- a. Distressed, or
- b. Non-Distressed

A distressed public utility is a utility that is facing severe challenges or conditions that hinder its ability to function effectively and can be characterized as follows:

1. It is a utility that is rapidly failing or facing significant and unsustainable **operational and/or financial issues** that impact its ability to provide essential services to its service area.
2. It is a utility that is in a state of functional crisis or significant disrepair, requiring immediate attention and intervention to address its challenges and ensure the provision of vital services to the community.

The proposed valuation method could be as proposed for distressed assets, however, valuation for non-distressed assets should be an RRR of 1.0.

Bidding and Post Sale Rate Transparency and Commitments

Any public utility being considered for sale must issue a public bid notice. Respondents to the bid process are expected to not only submit their bid offers but

also provide a detailed analysis of the projected rates for 10 years after a proposed sale and the rationale behind these projections. All bids should be made accessible to the public for review before any scheduled public hearings.

Furthermore, the selling utility is mandated to conduct an independent assessment of all offers and rate projections by an entity skilled in providing such assessments. This analysis should be shared through public notices and hearings, allowing input and rebuttal from all ratepayers and residents of the municipality.

The rate projections that are part of any agreement that is based on the acceptance of an offer to purchase a utility must also be honored without change by the PUC for a 10-year period post sale.

Municipal Referendum Requirement

Any municipal utility sale agreement must receive approval through a majority vote of the residents registered to vote, in a local referendum held during a scheduled local election event before it can be finalized.

Cicero v. Pa. PUC, 2023 WL 5302323 (Pa. Cmwlth. 2023)

Finally, I agree with Commissioner Zerfuss, in her statement appended to the Notice where she recommends that “this Commission must carefully evaluate each of these cases and determine whether the acquiring public utility has established its burden of proof under the applicable balancing test. Commissioner Zerfuss points out that the Commonwealth Court in the *Cicero* case upheld prior precedent that the substantial affirmative public benefit of the proposed acquisition must outweigh the acknowledged harms resulting from the acquisition. All acquisitions under Section 1329 of the Pennsylvania Public Utility Code must be reviewed under this standard.

I appreciate the opportunity to share these comments and recommendations with the Commission. Thank you.

Very truly yours,

/s/ Noel Brandon

Noel Brandon
Board Chairperson
Chester Water Authority

Attachments

M-2016-2543193



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(610) 876-8181
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MAR 18 2024

January 22, 2024

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU
WRITTEN TESTIMONY

TO THE PA SENATE DEMOCRATIC POLICY HEARING
Reining in Water Rates: The Unintended Consequences of Act 12 of 2016

Noël Brandon, Board Chairperson, Chester Water Authority

Since 1939, Chester Water Authority (CWA) has operated as a ratepayer-owned utility. Throughout this period, CWA has never experienced operational or financial distress. In fact, it has garnered numerous awards, including the prestigious jury prize for **Best Tasting Water in Pennsylvania** awarded by the Pennsylvania American Water Works Association (PA AWWA) in 2023. CWA also secured the title of **Best in Pennsylvania** in the People's Choice Taste Test competition. PA AWWA organizers acknowledged that this marked a historic moment as CWA became the first water provider to win both the judge's and people's selections in the same competition.

Additionally, CWA received the 10-Year Phase IV Excellence Award for the Octoraro Treatment Plant. This recognition highlights CWA's commitment to maintaining Phase IV, the highest level achievable in the Partnership for Safe Water. Notably, CWA stands as one of only two systems in the entire state of Pennsylvania to attain Phase IV. The highest Aqua and American Water have ever attained is Phase III.



*CWA was founded in 1939, but dates back to 1866.
CWA is financially and operationally sound and has no need to be sold or privatized.*

Given CWA's well-established reputation as a well-run, well-maintained, and award-winning water authority, one might assume it is immune to hostile takeover attempts. However, due to the provisions of Act 12, which permits for-profit, private water companies to target healthy, public systems, CWA's successes have not guaranteed its future.

Instead, these accomplishments have made it a coveted prize and target for water profiteers.



Aqua's Hostile Takeover Attempt: A Timeline

2017

In 2017, shortly after Act 12 passed in 2016, Aqua made a \$320M unsolicited bid to purchase CWA. CWA's board unanimously rejected that offer after determining that there was no benefit to ratepayers from the sale. The CWA board's rejection of this bid has saved ratepayers \$304,444,191 as of May 18, 2023 compared to Aqua's pricing. If CWA were sold, not only would rates dramatically rise, but also the public could lose access to CWA's two-billion-gallon Octoraro Reservoir. From fishing and hiking to boating and kayaking, the reservoir is free and open to the community for enjoyment and recreation. CWA also maintains over 2000 acres of land around the reservoir that protects the water source and watershed. This untouched land creates our community's bucolic setting that is much loved and sought after. It is also the home to wildlife, including bald eagles, herons, wild turkeys and more. As with its other reservoirs, such as the [Springton Reservoir in Delaware County](#), it can be expected that Aqua will fence-off the Octoraro reservoir from the community and prohibit recreational activities, and even turn the public reservoir into a private reserve by selling off the land to developers.

2019

Since 1995, the City of Chester has been in the Act 47 Program for distressed communities under Pennsylvania's Department of Community and Economic Development (DCED). In 2019, in an attempt to protect CWA from future hostile takeover bids by private corporations and to support the City of Chester, CWA offered the city a one-time \$60M payment in exchange for placing the authority in a trust for 40 years. The City of Chester never responded to this offer. However, as a corporate ratepayer, Aqua sued CWA. They did not want CWA to bail out the distressed city with the \$60M offer making the city solvent and less susceptible to accepting a corporate buyout. What should be the City of Chester's arguments are often made by Aqua's legal counsel.

2020

In February 2020, the City of Chester put out a Request for Proposals for the acquisition of the assets of CWA, despite CWA not being an asset of the City. The City received three bids: Aqua Pennsylvania, Pennsylvania American Water, and CWA that repeated its offer from 2019. COVID-19 struck and the City of Chester subsequently lost millions of dollars in revenue when the casino closed. On April 13, 2020, Governor Wolf declared a fiscal emergency and placed the City of Chester into receivership with the DCED.



November 3, 2020 ~ SAVE CWA volunteers talk to voters on election day at over a dozen polling places.

On April 24, 2020, Delaware County Common Pleas Court Judge Spiros Angelos issued an order indicating any sale of CWA assets must be approved not only by the city, but also by Chester and Delaware counties, where 80% of CWA's customers live. The City of Chester appealed. The case went up to the Commonwealth Court, who heard oral arguments in the case en banc. They reversed the lower Court's decision. CWA appealed the case.

2022

In 2022, the case went up to the Supreme Court. However, that case was never heard because on November 10, 2022, the DCED-Appointed Receiver for the City of Chester filed for bankruptcy in federal court. This put a stay on state cases, including the PA Supreme Court case that was scheduled for oral arguments on Nov 30, 2022.

Previously, in February 2022, through Right-to-Know (RTK) requests, CWA obtained a draft of the Asset Purchase Agreement (APA) that the DCED, Governor's Office, Chester Receiver, City of Chester and AQUA have been secretly negotiating since mid-2020. In the APA, there is NO mention of rate freezes or rate stability funds, NO mention of protecting the reservoir. Further RTK requests reveal email exchanges that the Governor's Office and DCED had a policy in place to attempt to sell the water and sewer assets of distressed communities in order to resolve pension debts.

Today, CWA finds itself in a plethora of costly legal battles to keep the authority in public hands and



*October 26, 2021 ~
SAVE CWA volunteers talk
to legislators in Harrisburg
at a Lobby Day.*

fighting for the life of CWA. For the past six years, Aqua has been vigorously working to acquire CWA by any means possible. What began as an unsolicited offer from Aqua to purchase CWA has become a multi-pronged assault. The CWA board unanimously rejected Aqua's offer because it recognizes the devastating effect the sale would have on its ratepayers and the surrounding community. What we've learned, however, is that Big Water profiteers don't understand that "no means no."

Because of the incredible activism of CWA ratepayers and the public, CWA has not been forgotten. Legislation has been sponsored in the PA House and PA Senate by:

John Lawrence, PA House District 13

- HB 2597 (2020)
- HB 97 (2021)
- HB 1936 (2021)
- HB 626 (2023)
- HB 627 (2023)
- HB 628 (2023)
- HB 629 (2023)

Christina Sappey, PA House District 158

- HB 2746 (2020)
- HB 144 (2021)
- HB 1205 (2023)

Leanne Krueger, PA House District 161

- HB 1936 (2021)
- HB 1308 (2023)

Robert F. Matzie, PA House District 16

- HB 1862 (2023)
- HB 1863 (2023)
- HB 1864 (2023)
- HB 1865 (2023)

Lisa Borowski, PA House District 168

- HB 1442 (2023)

Carol Kazeem, PA House District 159

- HB 1423 (2023)
- HB 1424 (2023)

John Kane, PA Senate District 9

- SB 452 (2021)
- SB 432 (2023)
- SB 866 (2023)

Carolyn Comitta, PA Senate District 19

- Bill memo 3/17/23, not introduced

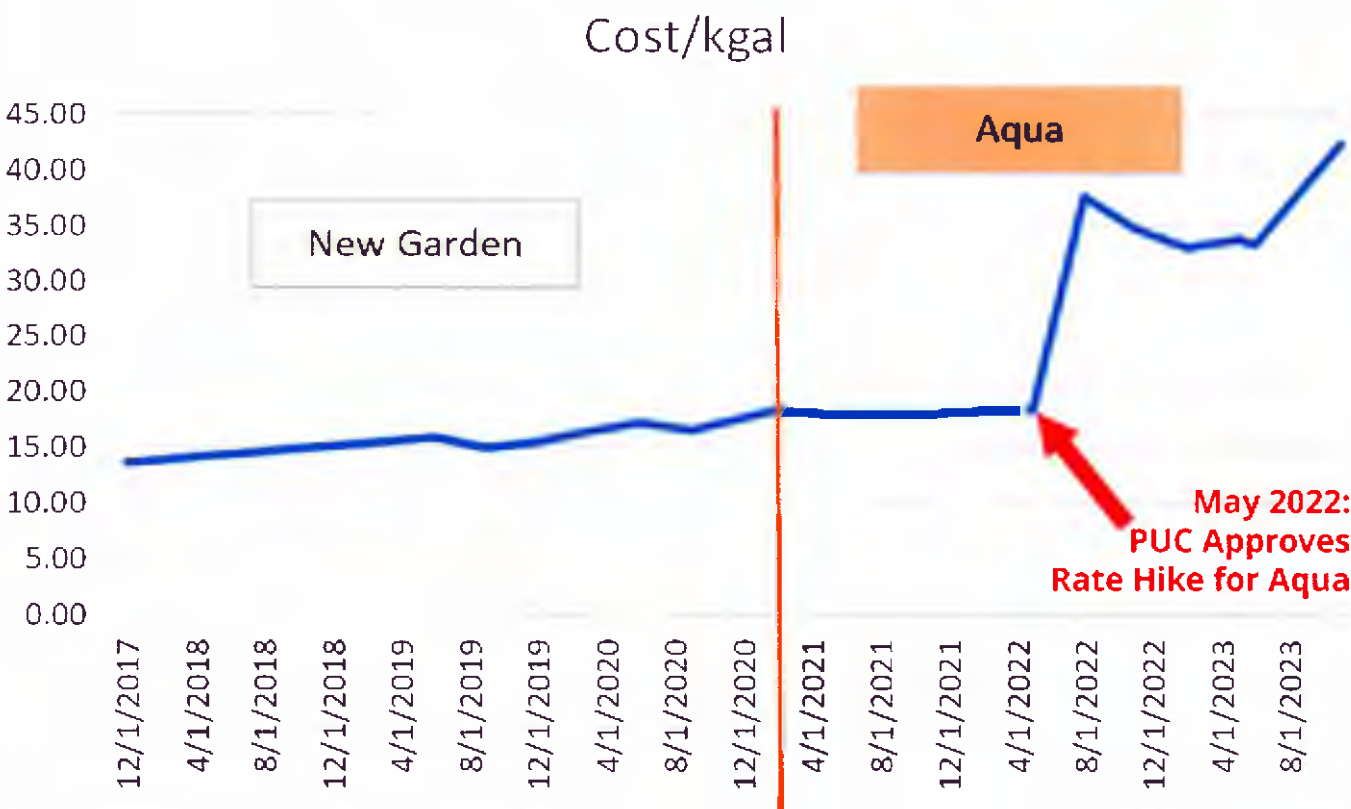
None of this legislation has come up for a vote in any session in either the PA House or PA Senate. It is time for this to change.

Big Water Tactics: Propaganda and Misinformation

CWA continues to be a major acquisition target for Aqua. CWA services residents and businesses in three major service areas—Chester County, Delaware County, and the City of Chester. The 200,000 people in the CWA service area that depend on CWA’s safe, reliable, affordable, and award-winning water have been quite vocal that they don’t want Aqua, or any private water company, to take over CWA. They don’t want their water rates skyrocketing, and they don’t want to lose control over their water like they have seen with their other utilities that have been acquired.

In the past, Big Water has successfully used dubious methods to entice municipalities to sell their public utilities across Pennsylvania. Communities that sold their utilities find that, despite pre-sale promises, their residents are paying exorbitant prices for the same or lesser quality water and wastewater services. The wave of post-sale complaints and regrets are now being heard and felt in a significant way by ratepayers who live in many of the Aqua-serviced areas. Recently, both Bucks County and Willistown Township rejected bids by Aqua to acquire their sewer systems. They have seen the aftermath and financial pain that residents of other sold municipalities are feeling, and they do not want that burden for their citizens.

Further, New Garden Township sold their sewer system to Aqua in December 2020 and today, only about 3 years later, ratepayers are paying well over 200% more for their sewer services than they did when it was a public utility. One resident, who is a senior citizen on a fixed income, shared their sewer bills with the CWA Board to show that they have less sewer flows, but have experienced an exponential increase in price.



Actual New Garden sewer rate data sent to CWA by a mutual customer.

Make no mistake, Aqua is a for-profit company. Unlike a publicly-owned authority, they face constant shareholder pressure to increase earnings and revenue to fuel positive stock price performance year over year. Aqua now trades on the stock market as Essential Utilities (NYSE: WTRG). They must aggressively seek ways to generate higher sales and profits each year. They accomplish this by being relentless and ruthless in acquiring municipal utilities and subsequently rapidly raising rates, making water, a valuable natural resource fundamental to life, unaffordable for their customers.

Privately-owned and publicly-traded utility companies are known to push capital projects overzealously and many times into gray areas of justification. They promote these projects as an absolute need, even if they cannot be substantiated by good engineering practices and standards. They need a reason for the Public Utility Commission (PUC) to allow rates to increase significantly each year so that their revenue and earnings goals can be achieved.

Taxing Through The Tap

Citizens in Aqua-acquired service areas should view their exponential utility rate increases for what they are—taxing through the tap. Any deal offered by investor-owned utilities, like Aqua, is simply a “bait and switch” tactic where what is initially offered to the municipal seller is ultimately not even close to what is received. Ratepayers will ultimately be the recipients of a very bad deal. Residents must recognize that elected municipal leaders, who they voted into office to serve and protect them, are making deals that are not in ratepayers’ best interests now or their community’s best interest in the future. The funds gained by selling off their water and wastewater are used to cross off various line items in their hometown municipal budgets and avoid tax increases. For municipal leaders, this may appear to be a “good deal” for the municipality on the short-term or mid-term time horizon. However, in the long term, Aqua gets back their acquisition fee multiple times over by continuing to gouge ratepayers out of their hard-earned money in perpetuity.

It is estimated that if CWA were sold, one billion dollars would leave our local economy every 20 years. This is unsustainable.

Unfortunately, sales of public utilities to investor-owned, for-profit utilities occur without ratepayer input and the revenues these investor-owned utilities rake in from ratepayers year after year, leave the local economy where ratepayers reside. Any such sale should not only prove to have a vetted and sustainable benefit to ratepayers and be approved by a utility’s governing body, but also it should require a referendum for the ratepayers to agree for such a sale to be approved.

The Disproportionate Impact of Water Privatization on the Poor and Particularly on Black Households

Looking at CWA’s current customer base, it reveals a striking picture that the sale of CWA to Aqua will disproportionately impact Black families. Under Aqua’s ownership, the monthly water bills for CWA’s typical customers, who use 4,000 gallons of water per month, will double. Currently, CWA charges \$30.54 per month or \$366.48 per year for this amount of water. However, if CWA is sold to Aqua, customers will be billed \$69.35 per month or \$832.20 per year for the same water and water service, resulting in a more than twofold increase in the price of water.

The affordability of water is a crucial factor, and the U.S. Environmental Protection Agency (EPA) has set a “water affordability threshold” that considers water rates exceeding 2.5% of a community’s median household income as “unaffordable.” Under CWA’s current rate of \$30.54 per month, a household would need an annual income of \$14,659 to afford water according to the EPA’s standard. However, if CWA is sold to Aqua, the required annual income to afford water under Aqua’s approved rates would be \$38,113. This means CWA customers would need an additional \$23,454 per year to

afford water if the system is sold to Aqua.

The impact is further magnified when considering the demographic distribution of CWA's customer base. Among the 70,675 households receiving water from CWA, 70.5% are White households, and 17.8% are Black households. Applying the EPA's 2.5% threshold, 20% of White households will be unable to afford water under Aqua, while a striking 49% of Black households will face affordability challenges. Despite constituting only 17.8% of the entire CWA customer base, almost half of the Black customer base (49%) will find it difficult to afford water under Aqua's increased rates. This underscores the disproportionate impact of Aqua's rate increases on Black households within the CWA customer community.

To what end? Is the Pennsylvania government expected to subsidize water for all customers of Aqua through LIHEAP/LIHWAP as water becomes more and more unaffordable for the citizens of our Commonwealth?

*Note: These figures are based on 2022 CWA and Aqua rates and census data.
For further information, see our annual water rates map at chesterwater.com/map*

*Note: For further information regarding Race and Water Affordability, please see report: **Water/Color: A Study of Race & The Water Affordability Crisis in America's Cities**, A Report by the Thurgood Marshall Institute At the NAACP Legal Defense and Educational Fund, Inc.*

Repeal Act 12 NOW

Act 12 may have seemed to be a good idea when it came into law in 2016, however, it has proved to be a perpetual, unfair cost burden on ratepayers. Act 12 has not only become an affordability issue for a large number of residents, including many of the senators' own constituents, especially low-income residents and persons of color, but also it will ultimately be deleterious to property values in the areas where these private utilities serve. Who wants to move their home or business to an area where water rates are doubled and tripled when they could find a location with reasonable rates? Simply put, Act 12 has failed the citizens of Pennsylvania and must be repealed. We implore the PA Senate to pass Senator John Kane's SB 866.

In a speech to union members at a wastewater treatment plant in Oakland, Vice President Kamala Harris warned that our next wars will be fought over water, not oil. At CWA, we understand this war all too well. CWA is the proverbial canary in the coal mine. Unlike oil wars that are fought between nations, the water war is fought between the ratepayers who support public water authorities and corporations with their unquenchable, profit-driven shareholders and executives.

Rising water costs and lack of water access affects the weakest and poorest among us; that means it disproportionately affects people of color, children, and the elderly. It also seeps into America's middle class. CWA's water war is unrelenting as Aqua will stop at nothing in their pursuit to steal our public water and water resources from our community. As Chris Franklin, CEO of Essential Utilities, Inc. (parent company of Aqua) stated in a call to shareholders, the COVID-19 pandemic has caused economic pressures, thereby creating "a strong pipeline of acquisitions," which will be a boon for profits. Not only is Aqua going after distressed municipalities to entice them to sell their water utilities, but they are also going after well-managed and thriving public utilities, such as CWA. They are focused on this strategy because acquiring as many public utilities as possible is arguably their most valuable method for growing their revenue and earnings. This strategy is disaster capitalism that is detrimental to citizens who depend on affordable drinking water.

The CWA board, along with our employees, ratepayers, and grassroots SAVE CWA community organizers, have bravely stood against Big Water. Although some issues, such as abortion and gun control, wedge Americans apart, CWA is proof that the issue of water is the great unifier. Our CWA supporters and our CWA board members are right, middle, and left on the political spectrum; we find common ground in water. We desperately need your leadership, support and guidance to help us win CWA's water war. A win for CWA is a win for the residents and businesses that we serve. It is also a win that they will remember. We have been told many times over that saving CWA is the number one thing that voters want.

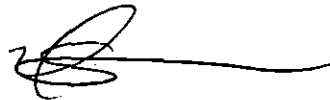
Attached is an article by Gabrielle Gurley "Something in the Water," published in **The American Prospect**. Ms. Gurley does an excellent job explaining the history of CWA's water war, the detrimental effects of water privatization, and the need to support publicly-controlled water systems. We are also including an article published in **The Guardian** about our fight.

CWA is an integral part of the community. We kept the water flowing for children, seniors, and single moms during the pandemic when our community members were unable to pay their bills and we *protect and support Pennsylvania families and Pennsylvania workers by providing well-paying union jobs*. However, what makes us most proud is our mission to provide clean, affordable water to residents and businesses in Chester County, Delaware County, and the City of Chester because quite simply, providing water is providing life.

The assets belonging to CWA are a true jewel for Pennsylvania and beyond. The loss of CWA to water privatization would have devastating ramifications now and for generations to come.

Therefore, as PA Senators, you must ask yourselves the question, "Why would any state legislature in America, pass a law where the buyer and seller are incentivized to negotiate the highest price possible for a sale of a vital natural resource without the input of the people who are going to have to pay the bills?" The time is now to Repeal Act 12.

Respectfully yours,



Noël Brandon
Chester Water Authority
Board Chairman



June 3, 2023 ~ CWA ratepayers and elected officials attending Public Water Independence Day at the Octoraro Reservoir. The event celebrated six years since the CWA Board unanimously rejected Aqua's unsolicited offer; in that time CWA saved ratepayers \$304,444,191 over Aqua prices.

Something in the Water

Should a water authority be privatized to rescue a municipality's finances? The story of Chester, Pennsylvania, and its environs is an alarming harbinger of things to come.

BY GABRIELLE GURLEY MARCH 23, 2021



Octoraro Reservoir, the drinking water source for Chester, Pennsylvania, and neighboring towns

Only a few lawmakers were on hand for a February budget hearing in the palatial chamber of the Pennsylvania House of Representatives. Dennis Davin, the state secretary of community and economic development, appeared remotely on a large monitor, for a second round of questions about the bid for the public Chester Water Authority (CWA) by Aqua, a private water company.

The first round of questions with state Rep. John Lawrence, a testy Chester/Lancaster Republican, did not go well and the secretary's mood had not improved. Asked to share his department's view on the sale, Davin claimed that he did not know what it was. Lawrence, irritated, reminded the secretary that he had been trying to get some answers for more than a year. Davin agreed to get back to him, later, with an answer. As Lawrence's time at the podium wound down, Davin continued his evasive tactics. Finally, Lawrence noted he and his constituents opposed the sale, as did every Democratic and Republican legislator in the counties served by the CWA.

Chester, a depressed city 20 miles from Philadelphia, has been in fiscal receivership since 2020, a victim of poverty, mismanagement, and the impact of the pandemic. The Department of Community and Economic Development appoints and supervises the receiver. Many at the department are said to view the one-time cash infusion from sale of the public water utility as a needed fiscal boost for the city.

The battle over the Chester Water Authority is a departure from the more familiar scenario of a private enterprise parachuting into a struggling community to salvage a utility that has fallen into such disrepair that privatization is the least-bad option—the worse off the utility and the more desperate the city, the easier the acquisition for a private company. But CWA is well run and award-winning. Four years ago, the authority's board of directors rejected a bid by Aqua 9 to 0. The company then did an end run around the water utility and initially offered to buy CWA directly from the hard-pressed city for about \$400 million. Whether it can do so, and on what terms, is now tied up in court.

The drinking water authority is now Exhibit A in a web of lawsuits, petition drives, and wars of words to determine who controls this vital natural resource. It's a cautionary tale, too, about how private companies prime the pump in statehouses to capture public goods like water from residents who are mostly disengaged from state and local politics. But that disengagement comes with a high price for the region's residents in the debate to preserve access to drinking water at affordable rates.

Privatization of the Chester Water Authority is under consideration only because of special-interest legislation enacted by the state legislature in 2016, known as Act 12. The measure amended the state public-utility statute to allow municipalities to sell public utilities at fair market value—rather than their depreciated value. Act 12 was a gift for firms like Aqua. In 2017, the company made its bid for the Chester Water Authority. So pleased was Essential Utilities, Aqua's parent company, with this result that officials took the show on the road to encourage “fair market value” legislation in other states, especially ones where they operate, including Ohio, Texas, and Virginia. A second change struck out the prohibition on the sale of public utilities by municipalities in distress.

The change in the law meant that a distressed municipality could sell any public utility regardless of its financial condition. “With the economic pressures that are undoubtedly arising from the COVID-19 crisis, we are anticipating that many more municipalities will be looking for solutions to their financial problems,” Essential Utilities CEO Chris Franklin said last May in a 2020 Q1 earnings call.

“I estimated that the privatization of CWA, the potential privatization of DELCORA, our wastewater company, and the creation of a new stormwater authority [means that] people who used to pay a combined \$100 a quarter may be paying \$100 a month overnight,” says Stefan Roots, a community blogger running for city council who works for the Delaware County

Regional Water Authority (DELCORA), a wastewater system Aqua is fighting to acquire. “That’s a lot to ask for a poor community.”

GOVERNMENT EFFORTS to provide safe and abundant water supply for citizens date to antiquity. In 18th- and 19th-century America, water was seen as a public good. The first public waterworks was established not far from Chester, in Bethlehem, Pennsylvania, in 1755. In the 19th century, as cities grew, New York, Boston, and Baltimore pioneered municipal water systems, though some city systems remained private.

Renewed water privatization began in the 1980s, one part ideology, one part corporate opportunism, and one part a response to fiscal stress. In the aftermath of the 2008 financial collapse, the **International Monetary Fund** and the European Union conditioned financial aid to **Greece and Portugal** on drinking water and wastewater privatization.



Shoshana Draine (lower left), a Save CWA volunteer, goes door-to-door in Chester with her children and a friend to spread the word about keeping the water supply public.

Chile under the Pinochet dictatorship privatized the country’s water systems. Last October, Chileans **voted to replace** the 1980 document, and the right to water is a key issue that a constitutional convention is set to re-examine this spring. Venezuela’s now contaminated drinking water **shows** how disinvestment and political chaos can destroy vital infrastructure.

In the United States, most of the country’s water systems are public but need significant upgrades. Where government investment lags, water systems are primed for privatization. The federal government provided 63 percent of funding for capital improvements to water systems in 1977; in 2017, that figure was just 9 percent. The 2021 Infrastructure Report Card

from the American Society of Civil Engineers gave American drinking water infrastructure a C-. Wastewater and stormwater systems are in worse shape.

In healthier communities, a private company can **assume** maintenance costs or arrange contracts for specific services in a public-private partnership. But when an entire water system is sold by a distressed city, ratepayers are in for a shock. Private water systems must make profits, as well as earn back what they paid to acquire the water system, and shareholders always come before ratepayers. Quality can suffer. The Pittsburgh Water and Sewer system contracted with a private water company that fired employees charged with budget, engineering, and water safety elements and then used a **cheaper chemical** to counteract corrosion. Lead levels in the water increased.

Pennsylvania is a petri dish for public-utility privatization. It has many municipally owned utilities, a huge swath of distressed communities, and lawmakers at all levels who can't get adequate funding for maintenance and upgrades. Just 1 percent of the state's general fund expenditures could be met by existing **rainy day funds**, one of the smallest in the country. Pennsylvania local and state officials tolerate an alarming amount of fiscal negligence and mismanagement.

While citizens may not grasp all the details of legislative corruption, they are suspicious of government. "Pennsylvania is a very hard place to have a penny increase in taxes," says Beverly Cigler, a professor emerita of public policy and administration at Penn State Harrisburg.

AQUA IS A SUBSIDIARY of Essential Utilities, a **\$10 billion** drinking water, wastewater, and natural gas infrastructure company, headquartered in Bryn Mawr, a suburb west of Philadelphia. It has **1.4 million customers in 32 counties in Pennsylvania** and operates in ten states.

More political operators than captains of industry, Essential officials have a deep understanding of the state's key players. They can scout out the best political deals, and craft legislative strategies that can speed up their acquisitions or provide new opportunities.

Nicholas DeBenedictis, Essential Utilities' **chairman emeritus** of the board of directors, is a former state secretary of environmental resources (now environmental protection) in the 1980s and served on Democratic Gov. Tom Wolf's 2014 transition team. The firm (then Aqua America) contributed \$10,000 to his 2015 inaugural festivities. DeBenedictis's protégé Chris Franklin, the current CEO, succeeded him when he retired in 2015.

That same year, Rep. Mike Turzai, a Trump Republican, became Speaker of the House of Representatives. A fracking champion from the Western Pennsylvania town of McCandless, he once pushed through a law forcing communities to allow fracking that some localities have ignored. Act 12, promoting privatization of water systems, soon followed.

Last June, after Essential Utilities bought **People's Gas** of Pittsburgh, Turzai resigned from the legislature. The next day, Turzai, a Franklin confidant, announced his new job, general counsel of Essential Utilities.



SAVE CWA

Lawn signs to save the Chester Water Authority were as ubiquitous during the 2020 presidential campaign as Trump and Biden signs.

SITUATED BETWEEN Philadelphia and Wilmington on the banks of the Delaware River, Chester sounds familiar notes of urban decline. During the First Great Migration after World War I, African Americans moved to Chester to escape Jim Crow and find jobs in the bustling riverside shipyards. Employment surged again during World War II in industries like steel and iron manufacturing, and the Korean War provided another boomlet. Beginning in the 1950s, the Rust Belt patina spread as jobs disappeared and the people who could left for Philadelphia or Pittsburgh.

Racial tensions long plagued the city. Martin Luther King spent 1948 to 1951 at Chester's Crozer Theological Seminary (now the Colgate Rochester Crozer Divinity School in New York), navigating white elites and the Black churches where he preached. Major race riots broke out in 1917 and exploded in the "Birmingham of the North" during the **1960s**. Black people lay down in the streets to integrate schools and strode into movie theaters to desegregate those public places. After King's assassination in 1968, Chester spiraled into the decline that it is still trying to escape. One-third of the 34,000 residents in the overwhelmingly African American city live below the poverty line.

Republicans had dominated Chester government since the early 20th century, bringing in economic-development prizes like the Philadelphia Union soccer stadium and Harrah's Casino. For the last decade, City Hall has been run by Democrats.

Chester has several elements that an up-and-coming city needs: Widener University, Crozer-Chester Medical Center, a waterfront ripe for development, and Philadelphia, the state's eastern economic engine, less than 20 miles away. What the city lacks is the leadership to pull these elements and residents together and move forward.

The current mayor, Thaddeus Kirkland, a former state representative, took office in 2016 with old-school Democratic Party-boss ways of doling out favors and knuckle raps. Budget deficits exploded. Pension plan payments went unmet. Municipal employee health insurance payments were late. When the pandemic first hit Chester, soccer fans and gamblers stayed home, delaying anticipated revenues.

Aqua's unwelcome bid in 2017 alarmed the independent CWA board of directors enough to come up with a plan they hoped would placate the city of Chester. They proposed a 10 percent rate increase, which suburban customers who comprise nearly 80 percent of CWA ratepayers supported, to raise the \$60 million to help Chester patch up its atrocious finances. But Aqua, which buys water from CWA for some of its customers, sued CWA and the city over the plan in 2019. In the meantime, Chester officials decided that they wanted to try to sell the utility outright for the one-time fiscal windfall. Both the rate hike and the proposed sale are now tied up in court.

State courts will decide whether the city alone can sell the authority and retain the money, or if it must do so in consultation with neighboring counties and redistribute the proceeds. If Chester sells, the city could end up with only enough money to cover its budget for about a year if it has to divide the \$400 million with all the CWA communities. A lower court ruled that the city had to obtain the consent of the suburban member communities. The city appealed and the case is now in Commonwealth Court, a step below the state Supreme Court. In all, 16 court cases related to Chester Water Authority are in play, including an expected Supreme Court decision on government transparency.

Despite Secretary Davin's coy testimony, the Department of Community and Economic Development is enthusiastic about the proposed sale. Aqua would get an attractive, healthy asset for its growing portfolio. State officials in Harrisburg would get a respite from the Chester headache and can steer state dollars to other distressed cities. It's a winning solution for everyone—except the humans who rely on CWA water.

Instead of stonewalling under oath in the legislature, Davin could have pointed Lawrence to the caveats in the DCED's own publication, *Municipal Authorities in Pennsylvania*:

The one-time influx of a large sum of money is just that, a one-time influx of cash. The decision of how to distribute, spend, or invest this windfall may determine the future financial fate of a municipality. However, now a prime cash-generating local asset is gone forever, as is the local control over the resource or project. *Any local control over rates to the customer base, rates which now may have to satisfy stockholders and private investors, is also lost. A private entity invariably raises the rates formerly charged by a public entity, often dramatically in a short period of time.* [emphasis added]

Essential Utilities CEO Chris Franklin says his company's offer represents "social justice" for "a very poor black community." "If the fathers of the city, the mayor, the city council, believe that this is the optimal path to get back in a situation where they're solvent," he told *The American Prospect*, "that is their right."

A REVIEW of about 150 Better Business Bureau complaints from Aqua customers in several states including Pennsylvania found rampant dissatisfaction with high bills and meter problems in the company's water systems. Asked about the complaints, Franklin says, "With the massive need for infrastructure rehabilitation in the country, water rates are coming up."

Social-justice declarations cannot obscure the fact that if the Pennsylvania courts rule in favor of the communities surrounding Chester, the city's mostly Black residents won't get much more than a year's worth of fiscal security. Even if Chester gets the entire pot, funds will evaporate quickly, while Chester residents will funnel many more of their hard-earned dollars to Aqua and its shareholders.

During the fall campaign season, Trump and Biden voters had one common element—"Save CWA" signs. New Garden Township resident Geoff Meyer, a retired corporate attorney in a CWA community whose sewer system has been acquired by Aqua (even before the Aqua sale was finalized, the rates went up 10 percent in 2018), helps circulate CWA petitions urging the governor and state lawmakers to support ratepayer referenda on proposed sales of public utilities to private companies and transparency measures to require utilities to publish annual reports. Most residents know few details about the fight over water. Meyer fills them in, and they sign on.

Construction worker Shoshana Draine, a Chester single mother, volunteers to talk to friends, neighbors, co-workers, and others. Few are aware of the proposed sale or the city's financial problems. "We are slowly getting to a better place," she says, "but families have their own things going on."

Last year, Norristown, a Philadelphia suburb, preserved its public wastewater utility from a sale to Aqua by digging deep into the city's home rule charter. Norristown Opposes Privatization Efforts (NOPE), the citizens group opposed to the sale, found that if they could get enough signatures on a petition to repeal two city ordinances (one that dissolved the sewer

authority and conveyed the assets to direct control of the municipality of Norristown, and a second that set up the purchase agreement between the municipality and Aqua Pennsylvania), they could stop the sale. They succeeded on their third attempt last November, and Aqua abandoned its bid. Each effort heightened public awareness and made residents more alert to when early moves to facilitate a sale (such as the conveyance of assets to the selling entity) have already been made. "These deals are best accomplished with no one knowing that they're going on," says NOPE volunteer David McMahon.

In another closely watched case, a state administrative law panel has recommended that the Pennsylvania Utility Commission reject an Aqua bid for DELCORA, which provides wastewater services for Chester and some of the communities that CWA also serves, citing legal problems with the agreement itself, the lack of a rate stabilization plan, and a failure to fully outline the public benefits, throwing a wrench in what would be the state's largest proposed transfer of a public water system to private control.

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Where government investment lags, water systems are primed for privatization.

The rate hikes that accompany these acquisitions promise to be even more devastating as people lose jobs and experience water shutoffs, tax liens, and other financial hardships as they try to recover from the pandemic recession. A community that pursues a one-time multimillion-dollar deal to plug budget holes could face the prospect of water flight of residents to communities with lower rates, and creeping gentrification that a soccer stadium, a casino, and interest in waterfront development represent, replacing longtime residents with people who can afford to pay higher rates.

"The situation in Chester speaks to a larger national issue about why we need to make sure that we're supporting publicly controlled water systems," says Mary Grant, the Public Water for All campaign director for Food and Water Watch, "and making sure our water systems have the resources they need to continue to operate and provide a service at rates that people can afford."

The threat posed by rising water bills prompted Congress to create the new Low Income Household Water Assistance Program (LIHWAP) last year.

LIHWAP would provide funds to public drinking and wastewater systems to lower rates and arrearages to assist low-income households. The latest COVID-19 relief package adds another **\$500 million** to the Department of Health and Human Services program. The **reintroduced** Water Affordability, Transparency, Equity, and Reliability (WATER) Act of 2021 includes nearly **\$35 billion** for a **trust fund** to address critical drinking water and sewer infrastructure upgrades and directs the EPA to study water equity issues.

The latest stimulus package steers \$31 million to Chester, which could take some financial pressure off the city. For the moment, however, all the parties—CWA, the city of Chester, and Aqua—have dug in for a protracted litigious journey. For Chester officials, the hundreds of millions that Aqua has offered sounds like deliverance, but the short-term infusion of funds only glosses over deep systemic problems that will re-emerge with a vengeance when the money is gone. Only then will city leaders and residents realize that they've given up local control of a natural resource of incalculable value for a one-time, one-shot deal that won't solve the city's problems but will force them to think long and hard about how they plan to keep water flowing from their taps.



GABRIELLE GURLEY

Gabrielle Gurley is The American Prospect's deputy editor.

The Guardian

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A lawn sign in support of Chester Water Authority (CWA) near the Octoraro reservoir in Kirkwood, Pennsylvania.

America's water crisis

Corporations are trying to privatize dozens of public water utilities around the US, capitalizing on the financial troubles of cities.

‘Corporate vultures’: how Americans fearing higher water bills are fighting takeovers

by **Nina Lakhani** in Chester and Delaware counties, Pennsylvania, photographs by **Michelle Gustafson**

The Octoraro reservoir is a lake in south-east Pennsylvania where locals fish, kayak and marvel at bald eagles and owls. It's a picturesque scene but in the neighbourhoods nearby there are placards that carry warnings.

“No to Big Water”, the signs say, and “Save CWA”.

The signs show the local opposition to a hostile takeover effort by Aqua Water, one of the country's biggest private water companies, against the public utility Chester Water Authority (CWA), which owns the reservoir and bordering woodland.

The CWA relies on the watershed to provide drinking water to about 200,000 people in Delaware and Chester counties. It's an award-winning public utility that is financially robust and delivers safe, clean and affordable water. It does not need a bailout.

Campaigners say the battle here, which started in 2017, should be a wake-up call for residents around the US, as privatization often means higher bills.

"This takeover is about putting money over people's needs - it's corporate greed," said Delaware county resident Santo Mazzeo, 42, a high school maths teacher with three children working two jobs to make ends meet.

"Water is the stuff of life, it's a fundamental human right which should be run by the people for the people, not for profits," added Mazzeo, who in his spare time delivers the anti-takeover signs to neighbours.



Left: The entrance to the Octoraro reservoir in Kirkwood, Pennsylvania. Right: Santo Mazzeo, who lives in Delaware county and is serviced by the Chester Water Authority, is campaigning against the Aqua Water takeover of CWA.

But CWA is vulnerable because the sale could help rescue one small city in Delaware county on the brink of bankruptcy.

Private companies mostly target financially distressed local governments and utilities looking for cash injections to clear debts, upgrade infrastructure or fund popular public services without raising taxes. Industry friendly laws means this often comes at a cost for residents: nationwide, one in 10 people currently depend on private water companies, whose bills are on average almost 60% higher than those supplied by public utilities.

In Pennsylvania, Aqua already owns numerous utilities and its most recent rates proposal would, if approved by the state regulator, lead to almost half a million households paying on average 17% more for their drinking water than they currently pay. Wastewater bills would rise by 33%.

CWA warns that the Aqua deal could cost its customers more than \$1bn in higher bills over the next 20 years - and threatens public access to the reservoir and its landholdings, 2,000 acres that protects the watershed and wildlife.

"We pride ourselves on providing quality water that our residents can afford. We're not in any trouble, and we're the best custodians of this precious natural resource because we don't have to worry about shareholders or dividends," said Cindy Leitzell, chair of the CWA board.

Nationwide, dozens of new privatisation deals are under consideration, according to Global Water Intelligence, with 14 major acquisitions (each worth at least \$10m) pending across five states, with a combined value of almost \$800m, according to S&P Global Market Intelligence.



Recreational boats and a sign for the 'outdoor code' at the shoreline of the Octoraro reservoir.

“For more than a decade, these corporations have waged a successful lobbying campaign to support state laws that facilitate privatisation and ensuing water rate hikes.... the public must be on the guard to protect their essential water services from the corporate vultures trying to exploit fiscal distress,” said Mary Grant, the right to water campaign director at Food and Water Watch (FWW).

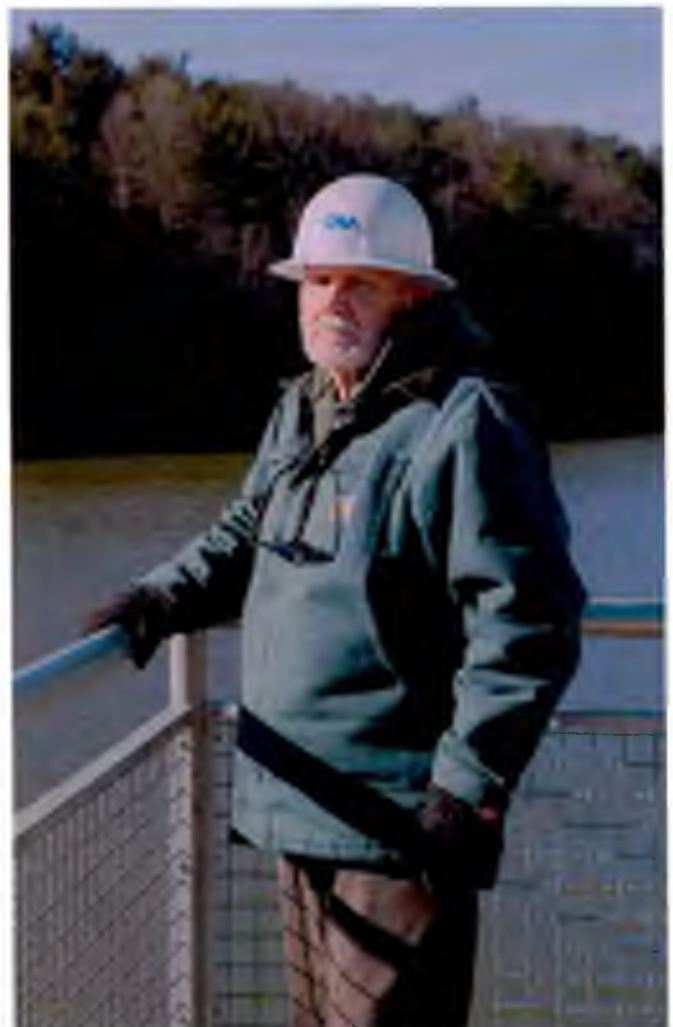
Analysis by FWW of four of Aqua’s largest Pennsylvania acquisitions found rates increased by an average of 280% - the equivalent of 8% per year - after adjusting for inflation.

“Water corporations have become increasingly aggressive and even the best-run water systems like CWA are under attack, which should sound the alarms for communities nationwide,” Grant said.

‘First class operation’

Federal funding for water systems peaked in 1977, and since then municipal utilities have mostly depended on rate hikes and credit to fund infrastructure upgrades, water safety mandates and climate adaptation. As a result, the cost of water and sewage has risen sharply over the past decade or so, making this basic service an increasing burden for many Americans, a Guardian investigation found.

Paul Andriole, board of directors vice-president for CWA, at the Pine Grove Dam in Nottingham, Pennsylvania. He believes Aqua Water is after the community’s municipal water supply because it is already well-functioning.



Still, the funding shortfall remains gob smacking, which has been further exacerbated by billions of dollars in unpaid bills during the pandemic.

According to the Environmental Protection Agency, drinking water, wastewater and stormwater systems need at least \$744bn over the next 20 years just to comply with existing federal law. An additional \$1tn is required by 2050 to protect water infrastructure from extreme weather events and sea level rise linked to global heating, according to the National Association of Clean Water Agencies.

But CWA is not struggling. Its well-planned upgrades – such as building a new pump station on higher ground to avoid flooding and a multimillion dollar state of the art leak detection system – have helped avoid unexpected costs and catastrophes. CWA recently increased its rates for the first time since 2010.

“This is a first class operation which is not financially stressed in any shape or form because we’ve always looked ahead and don’t answer to shareholders. Quality and quantity are problems in this industry, but we have both, which makes us a prize that Aqua wants,” said Paul Andriole, CWA’s vice-chair.



The outdoor conventional treatment pools at the Chester Water Authority (CWA) treatment plant in Nottingham, Pennsylvania.

At its water treatment plant, where a dozen or more awards are displayed in the lobby, 60m gallons of water drawn from the reservoir and Susquehanna river are processed every day. It’s a 24/7 operation with an in-house laboratory to aid compliance with environmental standards.

“We meet or exceed EPA standards, we do not have quality or safety violations that could justify our sale. It’s a struggle but we can handle it,” said Anita Martin, chief lab technician.

Should CWA save Chester from bankruptcy?

CWA was created by the city of Chester – Pennsylvania’s oldest city and a former industrial powerhouse which has experienced significant economic and population decline since the mid 20th century.

The majority Black city is an environmental justice hotspot: its 32,000 or so residents are burdened with poor air quality caused by heavy industries including the country's largest trash incinerator, and have limited access to green spaces and healthy affordable groceries.

The city of Chester has been subject to state financial oversight since the mid-1990s due to mounting debts and inflated police pensions, but was pushed to the brink of bankruptcy in 2020 after a major revenue stream, the casino, was closed due to Covid.

A large cash injection – along with reducing retiree benefits – is crucial to making the city solvent, according to Michael Doweary, the court-appointed receiver. “This is a difficult situation but CWA is the city’s only asset large enough to generate enough money to meet its debt obligation and reinvest in the city, which for years has been on a shoestring budget.”

But, critics say the sale would hurt city residents, about a third of whom live in poverty.

Based on Aqua’s proposed statewide rate increase for its existing customers, Chester city residents could be saddled with bills more than double what they pay now, according to a comparison tool devised by CWA. The average water bill burden would be 3.3% of median household income, a level generally deemed unaffordable by the UN. (The mayor has said some of the sale money could be used to offset rate increases for a decade.)

Kearni Warren, 45, an energy justice organiser who lives in Chester, said: “We don’t have clean air, green spaces or healthy food options, but affordable clean water is the one healthy thing we do have, and the city wants to sell it off... It will harm residents and thousands of ratepayers outside the city.”

Chester city created CWA but the vast majority (81%) of its customers now live outside city boundaries – in the suburbs of Chester and Delaware counties which have separate local governments. Given this, the city’s right to sell CWA has been contested.

Last September an appeals court ruled that the fate of CWA rested in the hands of the city, as it created the utility. CWA lodged an appeal to the Pennsylvania supreme court.



Left: Water analyzing equipment at the Chester Water Authority treatment plant. Right: Water being tested for chlorine residuals.

In an amicus brief supporting the appeal, FWW argues that Aqua’s actions constitute a hostile takeover, and that CWA should be treated as a public trust responsible for managing water supplies for the benefit of the people, not as a commodity.

Why do private water customers pay more?

In 2016, Pennsylvania became the first state to pass legislation that allows private companies to buy public utilities for more than they are worth - relying on what's known as fair market value rather than depreciated value. Companies can recoup the over-priced investments by passing on the cost to all their customers through statewide rate hikes, meaning residents pay while shareholders reap the rewards.

The law led to a merger frenzy in Pennsylvania and at least 11 states have since passed similar laws, driving up water and wastewater bills, according to the Government Accountability Office. In some states, healthy public utilities - not just those in financial trouble - are eligible for takeover.

In Pennsylvania, a third of residents are served by private water companies - triple the national average - and their bills are on average 84% more than those with public providers.

In 2017, a year after the fair market law (Act 12) was passed, Aqua made an unsolicited bid to CWA for \$320m - which the nine-person board unanimously rejected after concluding there would be no benefit to its residents.



Multiple signs reading 'Save Octoraro Reservoir' and 'Stop Big Water', in support of the Chester Water Authority (CWA), posted near the Octoraro reservoir.

As Aqua persisted, in 2019 CWA made a counter offer worth \$60m to help bail out the city in exchange for protection from future hostile bids. Aqua filed a lawsuit to stop the deal.

There are now three offers on the table, including \$410m from Aqua - the second highest but city's preferred bid, which includes a \$12m advance irrespective of the litigation outcome. Michael Doweary, Chester city's court appointed receiver, said his team is exploring ways to keep the water authority in public hands, but CWA's \$60m bid isn't enough. (Aqua's rival, Pennsylvania American Water, has bid \$425m.)

With more than a dozen pending lawsuits, the case could be tied up in court for years. If sold, it would be up to the court to determine the city's share of the proceeds.

Aqua is now a subsidiary of Essential Utilities, the second largest publicly traded US water and wastewater corporation, currently valued at \$12.5bn.

It provides drinking water and wastewater to about 3.25 million people (1m households) in eight states, with over half in Pennsylvania, where the company is headquartered and has close ties to the state government.

Aqua has at least half a dozen new deals pending regulatory approval in the state. In addition, the Guardian understands that the company has approached Bucks county's water and sewer authority (BCWSA), another robust public utility, about a possible \$1bn offer, which would be among the biggest water privatisation deals in US history, affecting half a million residents. (Aqua said it has not made a bid; the county commissioner office and BCWSA declined to comment.)

In a statement, Aqua said its actions related to CWA did not amount to a hostile takeover and that it was committed to keeping the reservoir open to the public. It said that public utilities like CWA are unregulated and typically untransparent about rates and capital investments. "Aqua's rates reflect its true cost of service, which includes investments necessary to provide high quality service, safe working conditions and protection of the environment. Lower rates often indicate deferred maintenance and old, outdated facilities, which can lead to service interruptions and water quality and wastewater discharge violations."



Public picnic area on the Octoraro reservoir.

Below: Hallway inside the treatment plant outside the final filtration step of the treatment process.





Chester county residents Margo Woodacre, left, and Bill Ferguson, are against Aqua's takeover of CWA.

New Garden Township is a scenic rural area in Chester county with well-to-do families, retirement villages and migrant communities concentrated around multiple mushroom farms.

Its wastewater system, which supplies about half the township's residents, was Aqua's first in the state after the fair market law changes – in a deal worth \$29m. Some of the money was used to build a new police station and offset future tax increases.

If Aqua's rate hike is approved by the regulator, residents will see average wastewater bills rise by approximately 37% later this year – much higher than the rate cap promised during initial negotiations. This has generated anger and mistrust among residents opposed to the takeover. Going forward, residents will probably share the cost of Aqua's future acquisitions – including CWA, the community's water provider.

Margo Woodacre, 72, a retired social worker and part-time English teacher, said: "It's the dishonesty and unfairness that's made me go door to door educating businesses and residents, so they know what's coming if we lose CWA."

Learn more about CWA's fight against Aqua.

 savecwa.org

 savecwa@chesterwater.com

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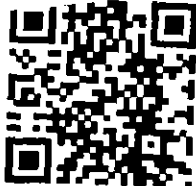
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