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June 2, 2022

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**RE: Aqua Pennsylvania Wastewater, Inc.'s Application for the
Acquisition of Delaware County Regional Quality Control
Authority, Docket No. A-2019-3015173**

Dear Secretary Chiavetta:

Enclosed please find the Petition for Intervention, Verification and Certificate of Service, electronically filed on behalf of Michael Doweary, the Receiver for the City of Chester, in the above-captioned proceeding.

Copies will be served on all known parties as indicated on the attached Certificate of Service.

Sincerely,

Tiffany R. Allen

Enclosures

cc: Parties of Record

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application Of Aqua Pennsylvania Wastewater :
Inc. Pursuant To Sections 507, 1102 and 1329 :
Of The Public Utility Code For, *inter alia*, :
Approval Of The Acquisition Of The : A-2019-3015173
Wastewater System Assets Of The Delaware :
County Regional Water Quality Control :
Authority :

**PETITION TO INTERVENE BY MICHAEL DOWEARY, THE RECEIVER FOR THE
CITY OF CHESTER**

Michael Doweary, in his official capacity as the Receiver for the City of Chester (the “City”), by and through undersigned counsel, hereby files this Petition to Intervene in the above-captioned matter pursuant to 52 Pa. Code §§ 5.71-5.74. The Petition is filed in connection with the application of Aqua Pennsylvania Wastewater, Inc. (“Aqua”), in which Aqua is seeking approval from this Commission for the acquisition of the Delaware County Regional Water Quality Control Authority (“DELCORA”). The purpose of this filing is also to notify the Commission of the City’s automatic and self-effectuating reversionary interest in the City’s sewer system, and related property, which prevents both the transfer of those assets to Aqua, and the approval of any transfer or acquisition of those assets until the City consents, which it is not, or is compensated for those assets and its reversionary interest.

In support of the instant Petition, the Receiver avers as follows:

1. Intervenor, Michael Doweary is the duly appointed Receiver (the “Receiver”) for the City of Chester pursuant to the Order of the Commonwealth Court dated June 22, 2020 which is attached hereto as Exhibit 1.
2. The Receiver’s appointment was made pursuant to the provisions of Section 705 of the Municipalities Financial Recovery Act (“Act 47”), 53 P.S. §§ 11701.101-11701.712.

3. The City of Chester (the “City”) is a city of the third class operating under its Home Rule Charter.
4. The Receiver files this petition pursuant to his authority under Sections 704(a)(1) and (2) and 706(a)(1)(5) to achieve the goals of the Receiver’s Recovery Plan and to restore the City’s ability to provide vital and necessary services and its financial viability.
5. The City of Chester was designated as a distressed municipality under Act 47 in 1995.
6. On April 13, 2020, Governor Tom Wolf issued a Declaration of Fiscal Emergency as to the City.
7. On June 1, 2020, the Secretary of the Pennsylvania Department of Community & Economic Development (“DCED”) petitioned the Governor to declare a state of fiscal emergency in the City pursuant to 53 P.S. § 11701.607(b) and appoint the Receiver pursuant to sections 702 and 705 of Act 47.
8. In its June 22, 2020 Order, the Commonwealth Court determined that a state of fiscal emergency exists in the City and declared the City to be in Receivership pursuant to Section 702 (e)(2) of Act 47.
9. Chester is a city in Delaware County, Pennsylvania, with its principal place of business 1 Fourth Street, Chester, PA 19013.
10. The Receiver is responsible for reviewing the City’s contracts and ensuring the City’s financial stability to improve its current financial position.
11. Considering the ongoing financial struggles of the City of Chester, DCED has authorized the Receiver to file for bankruptcy.
12. The Attorneys for the Receiver are:
John McLaughlin, Esq., (Pa. I.D. No.: 49765)
Tiffany R. Allen, Esq., (Pa. I.D. No.: 323629)
Benjamin Patchen, Esq., (Pa. I.D. No.: 316514)

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Brief Summary of the City/DELCORA Agreement of Sale and Service

13. The City is a retail customer of DELCORA at the above service address.
14. The City, residents, and businesses located in the City are served under a rate schedule that is only for customers located within the City limits. Aqua Application, Exhibit H, page 2, 138-40.
15. On February 12, 1973, the City of Chester and DELCORA entered into an Agreement of Sale and Service which, *inter alia*, provided for the sale of the City's sewer system and related property, to DELCORA, subject to a reversionary interest in favor of the City of Chester. Aqua Application, Exhibit F119.
16. The Agreement of Sale was amended on January 21, 1986. The Amendment did not make any material change to the City's reversionary interest. *Id.*
17. The contract states that "all agreements, representations, and warranties contained in this Agreement will survive completion of the Closing hereunder." *Id.* at Section 13.
18. The contract requires DELCORA to "operate and maintain the Collection System and make such improvements thereto as it may deem desirable and financially feasible to construct and operate." *Id.* at section 15.2.
19. The contract specifically states that "if at any time in the future during the term of this Section 15 or at the end thereof, Buyer ceases to operate the system being purchased by it hereunder, then the fixed assets and the Real property, other than the Treatment

- Plant and those facilities in the Collection System described in Section 2(d) shall revert to the Seller's ownership rather than to the County of Delaware or any other agency." *Id.* at section 15.7.
20. The term of Section 15 remains in full. *Id.* at section 15.6.
21. Neither DELCORA nor the City of Chester has acted to terminate the provisions of Section 15.
22. The contract prohibits either party from assigning its interest in the Agreement. *Id.* at section 16.3. The City's reversionary interest is an automatic and self-effectuating reversionary interest in the City's sewer system and related property which prevents the transfer of those assets and the approval of any transfer or acquisition of those assets until the City consents, which it is not, or is compensated for those assets and its reversionary interest.
23. If DELCORA desires to stop operating the wastewater system, then the collection system and real property within the City of Chester reverts to the ownership of the City, without limitation, or exclusion of any parts of the collection system repaired, replaced, or otherwise serviced by DELCORA.
24. Subject to the terms of the Agreement between DELCORA and the City, DELCORA has no right to sell the collection system.
25. All parties are aware of the City's reversionary interest but to date have not taken any action to address that interest in order to protect the interests of the City and its residents, which has necessitated this filing by the Receiver.

Brief Procedural History of Aqua's Application

26. On or around March 3, 2020, Aqua filed an Application with the Commission seeking approval to acquire DELCORA and provide wastewater service to the DELCORA service area(s), including the City of Chester.
27. On or around June 11, 2020, the Commission conditionally accepted Aqua's application.
28. Notice of Aqua's Application was published in the Pennsylvania Bulletin on August 15, 2020, and a deadline of August 31, 2020 was established for the filing of protests or petitions to intervene. 50 Pa. B. 4220.
29. On October 30, 2020, Administrative Law Judge Angela T. Jones opined in her Order Denying Summary Judgment that "if any municipal corporation should determine that it will exercise its rights, which are protected by contract with DELCORA, then DELCORA does not possess the rights to transfer the facilities or the customers it serves to Aqua at this time."
30. The Office of Administrative Law Judge (OALJ) held evidentiary hearings in this matter on November 9 and 10, 2020, and the record closed on December 14, 2020, after the submission of the Parties' Main and Reply Briefs.
31. On March 10, 2021, after the parties submitted numerous filings containing newly raised averments, and "extra-record material," Aqua filed an Extension Letter voluntarily waiving the statutory deadline in this matter.

32. On March 30, 2021, Secretary Chiavetta recognized that the Extension Letter filed by Aqua allowed the Commission the opportunity to reopen the record and remand the matter the OALJ for further proceedings.

33. As such, it is the Receiver's understanding that the record in this matter remains open.

The Receiver's Request for Intervention

34. On April 11, 2022, the Receiver informed counsel for Aqua, DELCORA, Delaware County, and Secretary Chiavetta that the City has not consented to waive its reversionary interest.

35. The Receiver's letter was filed on the docket in this instant matter as an *ex parte* communication.

36. On May 2, 2022, Marc A. Lucca, President of Aqua, responded to the Receiver's April 11th letter stating that he did not believe it necessary to file a formal protest in this action. While Mr. Lucca acknowledged the City's reversionary interest, it is Aqua's position that the scope of the interest will "under no circumstances be an impediment to consummating the underlying transaction between Aqua and DELCORA." May 2, 2022 letter attached hereto as Exhibit 2. The Receiver notified Aqua of his disagreement with its position.

37. It is clear to the Receiver that Aqua has no interest in resolving the issue without court intervention.

38. The Receiver submits this petition as formal notice, to the extent it is deemed necessary notwithstanding the clear contractual language noted above, that the City's reversionary interest is automatic and self-effectuating and must be resolved before any plan or sale is approved by the Commission.

39. The Receiver also submits this petition to advance the City's interest in the DELCORA agreement.
40. The Receiver has substantial interest in the outcome of the Application submitted by Aqua and the instant proceeding as the financial valuation of the system directly relates to the Receiver's ability to guide the City through its fiscal emergency.
41. Aqua's application violated the City's rights under the Chester/DELCORA Agreement because the City did not waive its reversionary interest.
42. The interests of the City in the Application, its impact on the Receiver's responsibility to lift the City out of financial distress and the City's rights under the Agreement are significant and substantial and not adequately represented by any party to this proceeding.
43. This instant action is currently stayed pending outcome of litigation pending in the Delaware County Court of Common Pleas and the Commonwealth Court. The Receiver is aware that an evidentiary hearing has occurred in this instant action and does not wish to confuse the record, but the Receiver will engage in all procedural requirements as ordered by the Commission.
44. The Receiver respectfully requests intervention to preserve and protect the City's interests and the value of its system.
45. In *Application of Artesian Water Pennsylvania, Inc. for Approval to Begin to Offer, Render, Furnish or Supply Water Service to the Public in a portion of Franklin Township*, Chester County, Docket No. A-210111F0003, this Commission set forth four standards to determine whether a petitioner has shown good cause for intervention. In addition to the above averments, the Receiver addresses each factor below.

- a. Does the petitioner have a reasonable excuse for missing the protest due date?
 - i. The Receiver was appointed by the Commonwealth Court on June 22, 2020 and learned of Aqua's Application after the August 31, 2020 deadline for interested parties to file petitions and/or protests elapsed.
 - ii. Additionally, the Receiver learned of the City's contract with DELCORA and Aqua's Application with this Commission after the November evidentiary hearings were held.
 - iii. Considering the timing of the Receiver's appointment, and the late notice to the Receiver of this action, there is a reasonable excuse for missing the protest due date, and the submission of this late filing.
- b. Was the proceeding contested at the time of the filing of the protest?
 - i. This instant proceeding was widely contested both prior to the filing of this petition, and currently, as evidenced by the extensive twenty-seven-page docket containing over 650 filings between the parties. Additionally, the OALJ and Commission have not been able to fully resolve the Application, or underlying issues, as the issue was remanded by Secretary Chiavetta, and is currently on appeal in state court.
- c. Will the receipt of the late filed protest delay the orderly progress of the case?
 - i. This petition will not unduly delay the orderly progress of the case as it is necessary for the OALJ and the Commission to resolve the reversionary interest of the City prior to determining whether to approve Aqua's application. As ALJ Jones recognized in her October 30, 2020 Order, "if any municipal corporation should determine that it will

exercise its rights, which are protected by contract with DELCORA, then DELCORA does not possess the rights to transfer the facilities or the customers it serves to Aqua at this time.” The City’s reversionary interest exists regardless of this proceeding and that interest is automatic and self-effectuating. As such, no party has any right to transfer the assets covered by the City’s reversionary interest unless the City’s interest is addressed and resolved.

ii. Moreover, the Receiver has a significant interest in defending the self-effectuating, contractual rights of the financially distressed City of Chester.

d. Will the late filed protest significantly broaden the issues or shift the burden of proof?

i. This petition will not broaden the issue as several municipalities have come before the Receiver to asserts its individual reversionary interests against DELCORA. The issue is not new for the OALJ or the Commission to consider as the contract provisions, many of which are identical, have been before this tribunal.

46. The Receiver’s filing is reasonable considering the totality of the circumstances and the current status of the Application and pending litigation in state court.

WHEREFORE, Michael Doweary, in his official capacity as the Receiver for the City of Chester, requests that the Pennsylvania Public Utility Commission grant its Petition to Intervene, providing the Receiver with full party status in this proceeding, as well as any other relief as it deems necessary.


Respectfully submitted,



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VERIFICATION

I, Vijay Kapoor, Chief of Staff for the Receiver for the City of Chester, verify that the statements made in the foregoing *Petition For Intervention* are true and correct to the best of my knowledge and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

By: 
Vijay Kapoor

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Certificate of Service

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Date: May 27, 2022



Tiffany R. Allen
Counsel to the Receiver

EXHIBIT 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dennis M. Davin, in his capacity as :
Secretary of the Department of :
Community and Economic :
Development, :
Petitioner :
v. : No. 336 M.D. 2020
City of Chester, :
Respondent. :

MEMORANDUM & ORDER

The instant matter, filed in this Court’s original jurisdiction, involves application of the Municipalities Financial Recovery Act, 53 P.S. §§11701.101-11701.712 (Act 47)¹ to the City of Chester (City). Dennis M. Davin, in his capacity as Secretary of the Department of Community and Economic Development (DCED), filed a “Petition for Appointment of Receiver for the City of Chester and Related Relief Pursuant to Subsection 702 of [Act 47]” (Petition) now before the Court for disposition. For the following reasons, this Court grants the Petition and appoints the designee Michael Doweary as Receiver for the City.

I. Background

The City, located in Delaware County, Pennsylvania, is a home-rule city of the third class. Its governing body, the City Council, is comprised of five members, including Mayor Thaddeus Kirkland (Mayor).²

The City's designation as a distressed municipality under Act 47 is long-standing. In 1995, the then Secretary of DCED (Secretary) determined that the City met the criteria necessary to issue a Determination of Municipal Financial Distress pursuant to the provisions of Act 47. The City adopted an initial Recovery Plan in 1996; however, due to difficult economic conditions it was compelled to adopt subsequent Recovery Plan amendments in 2006, 2013, and 2016. As part of the 2016 Recovery Plan, the City created the position of Chief Financial Officer.

¹ Act of July 10, 1987, P.L. 246, *as amended*.

² In addition, comprising City Council are Councilman William Morgan, Councilwoman Elizabeth Williams, Councilwoman Portia West, and Councilman William A. Jacobs.

On September 17, 2018, the Recovery Plan Coordinator, Econsult Solutions, Inc. (Econsult) submitted a three-year exit plan (Exit Plan). “Although [it] contained numerous recommendations addressing revenue enhancement, the City’s assets, cost containment, and economic development, the Exit Plan recognized that the City continued to suffer a significant (though smaller) structural deficit with the additional fiscal strain caused by a large amount of unpaid expenses, most notably the unpaid annual pension payments.” Joint Stipulation (Jt. Stip.) ¶3 (citing City’s Act 47 Exit Plan at 3).³ City Council adopted the Exit Plan⁴ on October 10, 2018.

On April 13, 2020, Governor Tom Wolf issued a Declaration of Fiscal Emergency as to the City (Declaration). Therein, Governor Wolf reviewed the City’s 25-year history of distressed and recovery status under Act 47. Governor Wolf also recognized the impairing effect of “a novel coronavirus (now known as “COVID-19”) [that] began infecting humans in December 2019, and has since spread to over 180 countries, including the United States.” See Ex. P-2. In early March, the Governor proclaimed the existence of a disaster emergency throughout the Commonwealth. Relevant here, on March 23, 2020, the Governor issued a stay at home order and closed non-life sustaining businesses in several counties, including Delaware County, adversely affecting local government revenues. Governor Wolf emphasized in the Declaration the ongoing fiscal distress of the City “jeopardizes the health, safety and welfare of its citizens and threatens the fiscal stability of neighboring communities,” acknowledging the City “is projected to be insolvent within 180 days.” *Id.*

The day after the Governor issued the Declaration, the Mayor issued a press release advising: “the members of [City] Council, support[s] the declaration of a fiscal emergency. This declaration is necessary to protect the [City] from financial devastation that could potentially bankrupt the City.”

Under Section 602(b)(1) of Act 47, the Governor adopted the Concise Statement of Facts supporting the existence of a fiscal emergency in the City. See Ex. P-1 (Statement). The Secretary notified the City of the Statement.

In accordance with the Declaration, DCED prepared an emergency action plan (EAP). See Ex. P-3. The EAP laid out a series of cost-saving measures, including, a hiring freeze, overtime restrictions, and DCED approval of debt obligations. In cooperation with DCED, the City began implementing the EAP.

³ The Exit Plan is posted on DCED’s website at: <https://dced.pa.gov/download/chester-city-act-47-exit-plan-adopted-2018-10-10/?wpdmdl=88894>.

⁴ The Exit Plan recommended a number of corrective actions including exploring the monetization of City assets. It identified two significant business-type assets, the water system owned by the Chester Water Authority (CWA), and the parking system owned by the City.

II. Procedural History

On June 1, 2020, the Secretary filed the Petition alleging, among other things, that Governor Wolf declared a state of fiscal emergency existing in the City pursuant to Section 602(b) of Act 47, 53 P.S. §11701.602(b). In the Declaration, the Governor directed the filing of this Petition seeking the appointment of a Receiver.

The City did not file an answer or oppose the Petition.⁵ This Court scheduled a hearing and held a pre-hearing conference attended via WebEx by counsel for the parties, DCED and the City, and the Chester Water Authority (CWA) which received notice of the proceedings.⁶

Pursuant to the statutory timeline, this Court held a hearing via WebEx on the Petition within 15 days, on June 15, 2020.⁷ *See* Section 702(c) of Act 47, 53 P.S. §11701.702(c). Through WebEx, a livestream video platform, this Court was able to hear and observe all participants.

In support of its Petition, DCED presented testimony of four witnesses: Andrew Sheaf, DCED's Local Government Policy Manager and Project Manager for Act 47 Program; Dan Connelly of Econsult, who has served as the City's Act 47 Coordinator since 2005 (Coordinator); the City's Chief Financial Officer (CFO) Nafis J. Nichols, appointed in 2016; and Michael Doweary, the designated Receiver (Designee). DCED proffered pre-marked exhibits uploaded prior to the hearing for admission into evidence. This Court admitted the proffered exhibits without objection,⁸ and placed the Joint Stipulation on the record.

⁵ Despite that it is not currently a party to the action, CWA filed an answer to the Petition.

⁶ A court reporter was engaged for the pre-hearing conference. However, as neither party to the action requested the inclusion of the transcript of the pre-hearing conference in the record, it is not included.

⁷ Section 702(d) of Act 47, 53 P.S. §11701.702(d), requires the Court to render a determination on the Petition within 60 after the filing of the Petition.

⁸ The City stipulated to the authenticity of the exhibits, and it acknowledged their admissibility. *See* Jt. Stip. ¶1. The admitted exhibits follow: P-1 (Concise Statement of Facts); P-2 (Governor's Declaration of Fiscal Emergency); P-3 (DCED's Emergency Action Plan); P-4 through P-6 (March, April and May 2020 Budget v. Actual); P-7 (Spreadsheet of Daily/Weekly Cash Flow); P-8 through P-10 (Cash Flow Projections for March, April and May); P-11 through P-13 (Cash Reports dated May 1, May 26, and June 1); P-14 (April Fire Pension Statement-redacted form); P-15 (April Police Pension Statement- redacted form); P-16 (April Officers and Employees Pension Statement- redacted form); P-17 (May Fire Pension Statement-redacted form); P18 (May Officers and Employees Pension Statement- redacted form); P-19 (May Police Pension

The parties stipulated that the conditions precedent to receivership under Act 47 have been met. *See generally* Jt. Stip. (filed June 11, 2020); Ex. P-26. Specifically, the parties stipulated the conditions set forth in Section 702(d)(1), (d)(2)(i), and (d)(3) of Act 47 exist as of the time of this hearing. The City admitted it did not adopt an ordinance or consent agreement under Chapter 6 of Act 47. *See* Jt. Stip. ¶34. Further, the City stipulated it had no objections to the relief sought in the Petition and that Designee meets the qualifications for a Receiver set forth in Section 705(b) of Act 47. *See* Jt. Stip. ¶36.

Sheaf testified regarding the development of the EAP and the City's steps in implementing same. He emphasized the impending insolvency of the City before the end of the year, particularly given its inability to fund the police pension with minimum municipal obligations (MMOs). As to the fiscal emergency, Sheaf confirmed that as shown in Exhibit P-24, it is projected that in October 2020, the City will have a negative cash balance so it will be unable to meet payroll or fund pensions. That negative cash balance "deepens by December" 2020. Hr'g Tr., 6/15/20, at __. Sheaf was integral to preparing the EAP, the purpose of which is to ensure vital and necessary services are continued. He reviewed the eight main points of the EAP, including a hiring freeze, a freeze of grants and discretionary spending and several restrictions requiring DCED approval for overtime, undertaking debt or selling assets. He testified that the pension fund balances contained in the bank statements for the pension funds of the police (Exs. P-15, P-19), firefighters (Exs. P-14, P-17) and officers and non-uniformed employees (Exs. P-16, P-18), show that the City has to choose between making payroll and making mandatory pension contributions.

CFO testified about the financial affairs of the City, both current and projected. He emphasized the pension fund shortfall, particularly the police pension fund, noting the City has been unable to meet its MMOs since 2013. He noted that the police pension fund balance is currently approximately \$2 million, which is likely not sufficient to make beneficiary payments over the next four months. *See* Hr'g Tr. at __; *see also* Jt. Stip. ¶32. He testified the pension funds constitute a \$540,000 expense per month; the City has insufficient assets to fund that expense, so it incurs a \$505,000 deficit per month. In many of the past several years, the City contributed only what it received in state pension aid. Also, the unpaid balances of the MMOs accrue interest at the rate of 7.5%, such that the current unfunded liability of the police pension alone is over \$25 million. *See* Hr'g Tr. at __; *see also* Jt. Stip. ¶31.

Statement); P-20 through P-23 (Econsult Monthly Reports dated March 11, April 3, May 21 and June 10); P-24 (Cash Flow Forecast through December 2020); P-25 (Resume of Michael Doweary); and P-26 (Joint Stipulation).

CFO also testified about the City's revenue stream. In particular, he emphasized the City's reliance on the Harrah's Casino for monthly and quarterly cash flow. As a result of the virus-related closure, the City lost a significant revenue stream, as revenues from Harrah's alone comprise 20% of the City's annual budget.

CFO also testified about the historically high real estate taxes and earned income taxes (EIT) in the City. He explained the collection rate of real estate/property taxes is low, at 81%. He testified that despite undertaking furloughs and layoffs, (of 127 employees, of which 39 were part time) the City is projected to be insolvent in October 2020. *See* Jt. Stip. ¶20.

Further, CFO testified the appointment of a Receiver is necessary because the City has been unable to fully implement the numerous recovery plans it has attempted over its 25-year history under Act 47. Streamlining the process through one person would allow the City to address its fiscal emergency.

Coordinator described his familiarity with the City, having served as its Act 47 Recovery Plan Coordinator since 2005. He noted the long-term systemic economic problems that have been recently exacerbated by the reduced collections of its EIT and other tax revenue. He emphasized the City had insufficient funds to continue making payroll, and was consistently underfunding the police, fire and officer and employee pensions. He also underscored the reliance on Harrah's as a revenue stream, the interruption of which has, in part, caused a fiscal emergency.

III. Discussion

DCED bears the burden of proving the fiscal emergency the Governor declared continues to exist in that the City is projected as insolvent⁹ within 180 days.

Having observed each witness' demeanor via livestream video, and their evident first-hand knowledge, this Court finds the testimony of each witness credible. To the extent there is any conflicting testimony, this Court relies on the testimony that is consistent with the documentary evidence.

Based on the record, this Court is required to consider: (1) whether DCED established that the City meets the conditions in Section 602(b) for receivership, and, if so, (2) whether the Designee meets the statutory qualifications to serve the City as Receiver.

⁹ Act 47 defines "insolvent" as: "[u]nable to meet all financial obligations as they become due, including payment of debt obligations," which are defined as "[a]ny obligation to pay money, including amounts owed for payments relating to lease rental debt, debt service, bonds, notes, guarantees for bonds or notes, trust indentures, contracts or other agreements." 53 P.S. §11701.701.

1. Conditions for Receivership

Pursuant to Section 702(d) of Act 47, this Court shall issue an order under Section 702(e) of Act 47, 53 P.S. §11701.702(e), if it finds by a preponderance of the evidence that all of the following apply:

(1) Thirty days have passed since the declaration of a fiscal emergency.

(2) There has been a failure by:

(i) the governing body of the distressed municipality to adopt an ordinance under [S]ection 607;

(ii) the governing body of the distressed municipality to implement an ordinance under [S]ection 607;

(iii) an elected or appointed official of the distressed municipality or authority to strictly comply with an order issued by the Governor under [S]ection 604; or

(iv) (Reserved).

(3) *A fiscal emergency under Section 602(a) continues to exist.*

Section 702(d) of Act 47, 53 P.S. §11701.702(d) (emphasis added).

Thirty days have elapsed since Governor Wolf declared a fiscal emergency for the City on April 13, 2020. *See* Ex. P-2. The Joint Stipulation also establishes the City did not adopt an ordinance under Section 607 of Act 47, and so did not implement such an ordinance. Thus, this Court considers whether a fiscal emergency under Section 602(a) of Act 47, 53 P.S. §11701.602(a), continues to exist.

Section 602(a) sets forth two grounds constituting a fiscal emergency. Either the distressed municipality: “(1)(i) is insolvent or is projected to be insolvent within 180 days or less; *and* (ii) is unable to ensure the continued provision of vital and necessary services; *or* (2) has failed to adopt or implement: (i) the [C]oordinator’s plan in accordance with Subchapter C or C.1 of Chapter 2; or (ii) an alternative plan that the [S]ecretary has approved under [S]ection 246 [of Act 47].” 53 P.S. §11701.602(a) (emphasis added). Here, DCED posits the City meets the first test.

The testimony, corroborated by the documentary evidence, establishes that the City is projected to be insolvent within 180 days, and is unable to ensure the continued provision of vital and necessary services. *See also* Jt. Stip. ¶23. Act 47 defines vital and necessary services as: “Basic and fundamental municipal services, including any of the following:

- (1) Police and fire services.
- (2) Ambulance and rescue services.
- (3) Water supply and distribution.
- (4) Wastewater services.
- (5) Refuse collection and disposal.
- (6) Snow removal.
- (7) Payroll and pension obligations.
- (8) Fulfillment of payment of debt obligations or any other financial obligations.

53 P.S. §11701.701 (definitions). Sheaf, CFO and Coordinator all agreed the City is projected to be insolvent by October 2020. *See also* Jt. Stip. ¶25. Essentially, the City will be placed in the position of being unable to fund payroll to pay any employees or make the MMOs on any of the three pension accounts. This Court recognizes that within the next 180 days the City likely may not be able to provide *any* services, much less vital and essential services, when it cannot pay its employees.

As to vital and necessary services, CFO testified that the City cannot meet its financial obligations in that it cannot pay its refuse collection vendor or meet the MMOs for the pension accounts for uniformed (police and fire) personnel. Its inability to pay its outside refuse collection vendor, and reduced staffing for waste disposal, compromise the City's ability to ensure proper refuse collection.

DCED established that the City, as projected, will have a negative cash balance (*see* Jt. Stip. ¶26) and so will be unable to meet payroll to pay employees or to fund its pension obligations by October 2020. The record shows the City regularly finishes the year with narrow margins of cash to cover payroll, the police pension fund is nearly depleted, and it lacks capacity to address mounting capital needs.

The City's financial difficulties of the past 25 years, significantly exacerbated by the recent revenue reduction, evince a current fiscal emergency in the City under Section 602(a) of Act 47.

The Joint Stipulation sets forth facts that bind this Court. *See Com. v. Carheart Corp.*, 299 A.2d 628 (Pa. 1973); *George v. Dep't of Transp.*, 453 A.2d 717 (Pa. Cmwlth. 1982). Moreover, the declarations contained in the Joint Stipulation are buttressed by the considerable documentary evidence submitted, and corroborated by the livestream-video testimony of the witnesses. The stipulated facts and record developed during the hearing constitute sufficient and competent evidence that establishes the statutory requirements for appointing a receiver and declaring the City in receivership. As such, this Court considers Designee's qualifications to serve as Receiver.

2. Designated Receiver Qualifications

This Court is required to appoint the named receiver to the City provided the designated receiver meets the statutory qualifications in Section 705(b) of Act 47, 53 P.S. §11701.705(b). Section 705(b) requires a Receiver to:

(1) Have a minimum of five years' experience and demonstrable expertise in business, financial or local or state budgetary matters.

(2) Be a resident of this Commonwealth for at least one year prior to the appointment.

53 P.S. §11701.705(b). The record evinces that Designee meets both criteria.

Designee meets the residency requirement as a York, Pennsylvania resident for more than a year. Designee confirmed his attendance at Penn State University, where he earned a Bachelor of Science in Finance. He continued his graduate studies in finance, later receiving a Master of Business Administration in Financial Management from York College. He is an Enrolled Agent for the Internal Revenue Service since 2009, and is awaiting licensure as a Certified Public Accountant. In addition, he is a candidate for a Level II Certified Financial Advisor.

Designee attested to his considerable experience in finance over the past decade. Most recently, starting in August 2018, he served Capital Region Water as Director of Administration. In that position, he supervised procurement, developed and managed budgets, reviewed operating costs and developed cost-saving measures. He also worked with risk management and information technology. Prior to becoming Director, he briefly served as Interim Chief Executive Officer.

Prior to his employment with Capital Region Water in Harrisburg, Designee served as Business Administrator for the City of York for over four years. In that capacity, he supervised all administrative functions of York's many departments, and was responsible for the fiscal and administrative functions of the city. His duties included reviewing audits, preparing budgets and financial reports, directing departmental expenditures and ensuring payments were on time. He served on pension boards, supervised processing of York's disbursements, and assisted with establishing and implementing fiscal policies and a financial management system.

In addition to Designee's testimony, the Court reviewed Designee's resume, admitted as Exhibit P-25. The testimonial evidence, for which Exhibit P-25 adds further detail, demonstrates Designee's significant qualifications satisfy the statutory criteria. Designee also confirmed upon this Court's questioning that he is unaware of any conflicts of interest or bias that would interfere with his duties. Thus, this Court appoints Designee as Receiver for the City pursuant and subject to Act 47.

ORDER

AND NOW, this 22nd day of June 2020, upon consideration of the Joint Stipulation of the parties and the credible testimony of the witnesses presented during the hearing as well as the documentary evidence, it is hereby ORDERED and DIRECTED as follows:

1. The parties having agreed and stipulated to the existence of the conditions set forth in Section 702(d)(1), (d)(2), and (d)(3) of Act 47, and as established by the record evidence, this Court finds, by a preponderance of the evidence, that the following conditions apply and are established:

a. Thirty (30) days have elapsed from the date of the Governor's Declaration of Fiscal Emergency on April 13, 2020, in satisfaction of Section 702(d)(1) of Act 47, 53 P.S. §11701.702(d)(1);

b. There has been a failure by the Chester City Council, the governing body of the City of Chester, to adopt an ordinance under Section 607 of Act 47 in satisfaction of Section 702(d)(2)(i) of Act 47, 53 P.S. §11701.702(d)(2)(i); and

c. A fiscal emergency under Section 602(a) of Act 47, 53 P.S. §11701.602(a), continues to exist in the City of Chester in satisfaction of Section 702(d)(3) of Act 47, 53 P.S. §11701.702(d)(3).

2. The Pennsylvania Department of Community and Economic Development's (DCED) Petition for Appointment of Receiver for the City of Chester (City) is hereby GRANTED. The City is hereby DECLARED to be in receivership pursuant to Section 702(e)(2) of Act 47, 53 P.S. §11701.702(e)(2).

3. Michael Doweary is found qualified under Section 705(b) of Act 47, 53 P.S. §11701.705(b), has no known disqualifying conflicts of interest or bias, and is hereby APPOINTED to be the Receiver for the City for a period not to exceed two years, subject to extension under Section 710(b) of Act 47, 53 P.S. §11701.710(b).

4. The Receiver is ordered to develop a recovery plan within 30 days of the date of this Order under Section 703 of Act 47, 53 P.S. §11701.703 (Recovery Plan), and submit the Recovery Plan to this Court, the Secretary for DCED, the Chester City Council, and the Mayor of Chester.

5. The Receiver is required and empowered to implement the Emergency Action Plan (EAP) developed by the Secretary of DCED under Section 602 of Act 47, 53 P.S. §11701.602, until a recovery plan developed by the Receiver is approved by this Court pursuant to Section 703 of Act 47, 53 P.S. §11701.703.

6. During the fiscal emergency, the Chester City Council, including the Mayor, shall continue to carry out its duties, including duties relating to the City's budget, subject to and consistent with the provisions of the EAP, any Recovery Plan developed by the Receiver and approved by this Court, and Chapter 7 of Act 47.

Jurisdiction retained.



J. ANDREW CROMPTON, Judge

Certified from the Record

JUN 22 2020

And Order Exit

EXHIBIT 2



An  Essential Utilities Company

Marc A. Lucca, President

O: 610.645.1059 • F: 610.527.7527 • E: MALucca@aquaamerica.com

May 2, 2022

VIA ELECTRONIC AND FIRST CLASS MAIL

Michael T. Dowearry
The City of Chester
419 Avenue of the States, Suite 401
Chester, PA 19013
Email: mdowearry@pa.gov

Re: City of Chester's Claimed Reversionary Interest

Dear Receiver Dowearry:

We are in receipt of your letters dated April 7, 2022 to the Secretary of the Pennsylvania Public Utility Commission ("PaPUC") and counsel for Aqua Pennsylvania Wastewater, Inc. ("Aqua"), regarding the Agreement of Sale and Service between the City of Chester (the "City") and DELCORA, dated February 12, 1973, and amended on January 21, 1986 (the "Agreement"). This correspondence responds to those letters.

We do not believe it will be necessary for the City to file a formal protest in the application proceeding before the PaPUC to resolve the City's concerns. As you are aware, Aqua is a party to a fully executed contract with DELCORA for the purchase of DELCORA's assets, which the Commonwealth Court recently held is binding and enforceable.

While we acknowledge that Paragraph 15.7 of the Agreement pertains to a reversionary interest to the City, the scope of that reversionary interest is quite limited. As such, and as you recognize, under no circumstances will this be an impediment to consummating the underlying transaction between Aqua and DELCORA.

The operative portion of the Agreement states as follows:

15.7 If at any time in the future during the term of this Section 15 or at the end thereof, Buyer ceases to operate the system being purchased by it hereunder, then the fixed assets and the Real Property, other than the Treatment Plant and those facilities in the Collection System described in Section 2(d) shall revert to Seller's ownership rather than to the County of Delaware or any other agency.


The Agreement itself does not clearly define the scope of the assets covered by the reversionary interest. Moreover, the Agreement does not contain a list of specific assets that were acquired from the City at the time the Agreement was executed. As a result, the scope of assets covered by the reversionary interest are even less clear.

The Agreement simply defines the scope of the assets subject to the reversionary interest as the "fixed assets" and the "Real Property." The term "fixed assets" is not defined and there was no list of "fixed assets" attached to the original Agreement, as amended, but the only reasonable interpretation of that provision would be those assets that were acquired by DELCORA from the city in 1973, excluding any assets acquired by DELCORA – inside or outside the City – after closing. Because most, if not all, of these assets have been replaced since 1973 due to old age, the City's reversionary interest in "fixed assets" likely has little-to-no value at this time. Does the City have a list of the "fixed assets" over which it believes it has a reversionary interest? If so, please forward the list for our review.

The term "Real Property" includes all interests in real estate (fee, easements, rights of way) conveyed to DELCORA at Closing. However, the reversionary interest provision expressly excludes: (1) the "Treatment Plant" and (2) any portion of the "Collection System used to transport in combination sewage from within the City limits of Seller and sewage from outside..." The term "Treatment Plant" is defined in Section 1(b) as the 23.9 acre tract specifically defined legally at Exhibit B to the Agreement, the improvements on it (i.e., the plant itself) and all "Personal Property" on that tract. "Personal Property" is defined, essentially, as anything located at the tract. The exclusion of a portion of the "Collection System" means that the only portion of the Collection System covered by the reversionary interest is the portion of the collection and conveyance system contained completely within the City limits and does not accept wastewater from any customer outside of the City. Again, if the City has a list of the Real Property that it contends is subject to the reversionary interest, and the value of those assets, we will consider that information.

If you have any additional questions, please feel free to reach out.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc A. Lucca", with a stylized flourish at the end.

Marc A. Lucca