



# Water Wars in Pennsylvania:

*How Corporations Play the Long Game*

## Acknowledgements

*In the Public Interest would like to thank Katherine McFate, who researched and authored this report. Any errors or omissions in this report are the sole responsibility of In the Public Interest.*

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## Introduction

On Sept 6, 2022, after growing opposition from residents, community groups, and neighboring townships, the Commissioners of Bucks County in Pennsylvania rejected a \$1.1 billion bid by Aqua Pennsylvania to purchase its municipal water and sewer authority (BCWSA). Had the sale gone through, it would have been the largest water and sewer privatization deal in U.S. history. Calling it a huge win for clean water, public input, and democracy itself, Ginny Marcille-Kerslake, eastern Pennsylvania organizer with Food & Water Watch said, “This was a backroom corporate deal from the start, and it only stopped because local residents started to ask questions, voice their concerns, and hold their elected County Commissioners...accountable.”<sup>1</sup>

Bucks County’s rejection of Aqua’s offer was a major defeat for the Pennsylvania-based corporation, which has grown into one of the largest private water companies in the country by using its political influence to dismantle the guardrails put in place a century ago to protect the public access to affordable, clean water.

Over two decades (1996 to 2016), Aqua’s leadership pursued legislative reforms that whittled away the powers of state Public Utility Commissions, reducing their ability to ensure “just and reasonable” water rates or prevent predatory purchasing.

Over the past eight years, in the wake of new rules, Pennsylvanians have grown increasingly skeptical of the promised benefits of private water provision.

Communities across the Commonwealth are mobilizing to retain control of municipal water and

sewer authorities even in the face of powerful forces against them. They are using the tools of participatory democracy, such as right-to-know laws, public hearings, referendums, and voting, to demand that public officials protect public control over their water systems. And they are beginning to win.

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The goal of this report is to expose the political and acquisition strategies that private water companies employ so residents, advocates, and policymakers can successfully push back and keep their water safe, affordable, and under public control. It provides historical context to the struggles over water today, describing the fragmented character of local water systems in the U.S. today, the growth of Public Utility Commissions in the Progressive Era, the establishment of municipal water authorities in the 1940s, and the Commonwealth’s early commitment to protecting its water supplies from industrial and agricultural pollution.

In the 19th and 20th centuries, Pennsylvania was a leader in regulating and protecting the water systems that served its residents. In the 21st century, Pennsylvania has become a place where the Public Utilities Code has been “reformed” to facilitate rising rates for consumers and the privatization of public water systems. The report explains how these reversals occurred through the successful adoption of corporate-driven policy agendas, which we term “extractive innovations.” The report also describes how Pennsylvanians are working to prevent private takeovers of publicly owned water systems, and to repeal rules that allow predatory pricing and exorbitant rate increases. It concludes with a discussion of the lessons learned from Pennsylvania’s experience with water privatization.

## SECTION 1 | The Historical and Political Landscape of Water Provision in Pennsylvania

### Early History of Water in Pennsylvania

#### *Water Distribution in the U.S.: A Fragmented Landscape*

All water systems are local, shaped by their physical environment, governing institutions, and political culture.<sup>2</sup> Today, about 50,000 community water systems provide American households with drinking water. About 4,300 large systems<sup>3</sup> provide water to 256 million customers (83 percent of the population)<sup>4</sup> while 45,000 small systems<sup>5</sup> provide water to the remaining 54 million (17 percent).<sup>6</sup> Most states have at least one large urban system amid a sea of small systems.

The vast majority (87 percent) of Americans who receive piped water receive it from publicly owned municipal systems; only about 10 percent of the population relies on private providers.<sup>7</sup> Before 1990, most privately owned water systems were small and had local owners. But in recent decades, a handful of private companies have been buying up systems and now own more than 2000 water systems.<sup>8</sup> Their activities are concentrated in nine states.<sup>9</sup> Pennsylvania has birthed one of those companies, and its state policy environment has become an incubator for privatization innovations.

#### *Pennsylvania’s Oversight of Water*

In many ways, Pennsylvania is an unlikely laboratory for water privatization. It is rich in natural water resources, including 83,000 miles of river and streams, more than any other state.<sup>10</sup> Philadelphia established a publicly financed water system in 1801,<sup>11</sup> the first of its kind in the nation. Pittsburgh followed suit in 1802.<sup>12</sup>

Pennsylvania was an early protector of its water resources, passing its first Clean Water Act in 1905, although actual penalties for industrial pollution were not added until the Clean Streams Act was passed in 1937.<sup>13</sup> In 1971, a year *before* the federal Clean Water Act passed, Pennsylvanians overwhelmingly ratified the Environmental Rights Amendment to their

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state constitution, which states, “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment” and “as trustee of these resources, the commonwealth shall conserve and maintain them for the benefit of all the people.”

In 1913, the Pennsylvania legislature created the Pennsylvania Public Services Commission,<sup>14</sup> which was replaced by the Public Utility Commission (PUC) in 1937, to ensure that private companies providing essential goods and services to the citizens of the state would not engage in fraud, corruption, or price gouging.<sup>15</sup>

Its five commissioners appointed by the Governor were given the authority and responsibility to:

- settle conflicts over utility rates;
- review the issuance of stocks, debt, and securities by utilities;
- establish the fair value of a utility for sale; and
- review accounting and auditing reports by said utility.

The commission had the power to issue subpoenas and call witnesses.<sup>16</sup> In 1976, Administrative Law Judges were added to oversee public hearings and issue initial rulings on utility rate increases.<sup>17</sup> In 1986, an Office of Trial Lawyers was created to represent the public in utility rate challenges. Today, the PUC has a staff of more than 500 and is still governed by five commissioners, appointed by the Governor and approved by the state senate, for five-year, staggered terms.<sup>18</sup>

**Pennsylvanians overwhelmingly ratified the Environmental Rights Amendment to their state constitution, which states, “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment” and “as trustee of these resources, the commonwealth shall conserve and maintain them for the benefit of all the people.”**

And yet, even with a history of public ownership of municipal water systems, a state constitution that asserts clean water is a right, and a Public Utilities Commission tasked with ensuring that clean water is available and affordable to of its residents, an increasing number of Pennsylvania’s residents pay private companies for their water, and the rates are the costliest in the country; private water in Pennsylvania is 84 percent more expensive than public water.<sup>19</sup> How did this happen?

## How Pennsylvania Got Here

### *Diverse, Decentralized Local Government*

Pennsylvania has a varied and cross-cutting set of local institutions involved in financing, owning, and operating local water and sewer systems. Beneath the state government are 67 counties, of which most are governed by three elected county supervisors. Beneath county government are three other kinds of local governments or “municipal corporations”—cites, boroughs, and townships—and any of the four sub-state government entities, or a



combination of several, may have established a water and sewer system.<sup>20</sup> Any local entity that wants more control over its operations can draft and vote to establish home rule and create a unique charter.<sup>21</sup>

The 1935 Municipality Authorities Act<sup>22</sup> created a new way for Pennsylvania “to finance and/or operate specific public works projects” by relying on user fees rather than the general taxing powers of local government. Any township, borough, city, or county, or some configuration of them, can create a special purpose authority and appoint a board to five-year overlapping terms to govern the authority.<sup>23</sup> However, the authority is not a part of the local government that just created it; it is an “independent agency” of the commonwealth of Pennsylvania, a separate legal entity with the power to incur debt, own property, and finance its activities by means of user charges or lease rentals. It can be a financing agent for a capital project, an operating entity, or both. Authorities do not pay corporate taxes or sales taxes when they purchase supplies, and they can issue tax-exempt debt at a lower rate than private corporations.

Water and sewer authorities in Pennsylvania commonly serve more than one municipality to take advantage of economies of scale, natural watersheds, and drainage areas. Multi-municipal authorities are those created by only one municipality but serving other political subdivisions (usually by a contractual agreement); a joint authority is one created by several municipalities to serve their residents, and potentially other political subdivisions. An estimated 1500 authorities are active in Pennsylvania today.

### *Fluctuating Federal Standards and Investment*

The 1972 Clean Water Act and the 1974 Safe Drinking Water Act included new funding from the federal government to build better waste management systems and water treatment facilities; federal money would cover up to 75 percent of local construction costs. But the amount of funding for local water and sewer systems spiked in 1977 and then declined dramatically.

During the administration of President Ronald Reagan, who promised to cut the size of the federal government and return more functions to the states, the Environmental Protection Agency (EPA) immediately sliced overall federal funding for Clean Water Act grants, reduced the federal portion allowed for construction from 75 percent to 55 percent, and pushed local water systems to use full cost charging to upgrade their systems.<sup>24</sup> After intense debate,<sup>25</sup> Congress passed the Water Quality Act in 1987, which continued to fund the construction of local sewage treatment facilities through a much smaller level of grants and a revolving state loan fund which cities would have to pay back. In 1996, Congress established a parallel revolving loan fund to help local communities finance upgrades needed to comply with the new federal drinking water regulations that covered an expanded list of toxins to be removed from water. Congress has continued to fund both loan programs, but at levels that represent a fraction of water infrastructure needs.<sup>26</sup>

Promising to “reinvent government,”<sup>27</sup> President Clinton promoted “public-private partnerships” at all levels of government to entice private capital to provide funds for

public projects. Governors and mayors of both major parties began looking for “win/win” partnerships with private companies. These political ideas were blowing around the country when Philadelphia Suburban Water Company hired Nick DeBenedictis as its new CEO.<sup>28</sup>

## The Corporate Drive for Water Privatization

The Philadelphia Suburban Water Company (PSWC) and its predecessors had serviced the suburbs southeast of Philadelphia since 1868. In 1968, it reinvented itself as a holding company,<sup>29</sup> which allowed its shareholders liability protection if one of its subsidiaries failed; three years later, it listed itself on the New York Stock Exchange to gain access to national capital markets. But the promise of these changes wasn’t realized until DeBenedictis became its leader.

In the 1990s, a score of private water companies around the country had begun buying up and consolidating small water systems in the states where they were already operating<sup>30</sup>, taking advantage of the new rhetoric of “public-private partnerships” and the difficulty some community water systems were having in meeting new federal drinking water standards.

Pennsylvania is a large state with a relatively dense population. It has two very large municipal water systems (Philadelphia and Pittsburgh); 17 others serve more than 100,000 people, dozens that serve between 10,000 and 100,000, and many small townships with a few thousand or just hundreds of customers.

Over the next couple of decades, PSWC embarked on an aggressive acquisition strategy, focusing on the smaller and mid-sized systems. DeBenedictis used his political connections to create a pro-privatization policy environment in Pennsylvania,<sup>31</sup> and then spread his staff and lobbyists to other states. The company’s success is reflected in its name changes: the holding company Philadelphia Suburban Water Company became Aqua America in 2004 and then Essential Utilities in 2019.<sup>32</sup>

PSWC developed a very effective playbook for buying local water systems: First, identify a city or town with a general budget shortfall and/or a water system with leaky pipes or water quality issues; quietly approach the Mayor and/or Council and begin a conversation about how PSWC could “solve” their water authority’s problems; offer a large upfront payment that can be used to fill the budget gap (at least temporarily) and fund a few visible town projects (like a community center or new courthouse); promise minimal rate increases—at least until the elected officials are out of office; demand “confidentiality” about whether negotiations are taking place and the details of the deal until the documents are ready to be signed.

“Despite many aspects of the deal being in Essential’s favor, including the company’s local connections, supportive authority board leadership, and a sizable price tag, the deal fell through in less than two months.”

The strategy was clear: get the necessary public officials sold on the deal before the residents know anything is in the works. Keep community input at a minimum.



For elected officials, it seemed like a win/win arrangement: the town received an influx of funds, residents didn't have to approve a new bond, and financial responsibility for the water authority was offloaded.

The Pennsylvania Public Utilities Commission has a legal responsibility to "establish a fair value of a utility for sale," defined in the PUC code as the original cost of the property when first devoted to the public service less the applicable accrued depreciation. Given that a truly distressed system might not be worth very much, the PUC rules allowed Commissioners to offer a higher price as a "fair value" for distressed systems so their initial rate base after the purchase would allow them to recoup rate charges high enough to start fixing the system. So "sweeteners" or "goodwill" payments above and beyond the depreciated value were allowed—but only for distressed systems. Healthy, well-managed water authorities could only be purchased for the original depreciated cost of the property.

**Privatization "is a loan, disguised as a gift, wrapped up with empty promises that must be paid back with exorbitant rate increases resulting in no better service to the customers."**

The PUC is also responsible for reviewing and authorizing requests from private companies<sup>33</sup> to increase water charges on their customers. The PUC conducts hearings to review information provided by the company on all of their costs, including operating, maintenance, depreciation and interest. The company is then allowed to add a profit that lets them earn a 7 to 7.5 percent return on their investment. This total is used to determine what rate increases are justifiable. Profit is by far the biggest cost paid by ratepayers. It represents over 40 percent of every dollar paid for a water or sewer bill.<sup>34</sup>

When PSWC purchased a local water system, it immediately filed with the PUC to set an initial rate base which was essentially the purchase price. And then it went back to the PUC as often as possible to request further rate increases.<sup>35</sup>

After the initial rate base is set, the next way to increase the rate base of a particular system is to document new investments in it (a new treatment plant, replacing pipes and meters, extending service lines). The more money a private company invests, the higher the rates it will be allowed to charge customers.

Note that the profit rate a private company receives is fixed. But increasing the rate base with new investments produces larger absolute profits for the company<sup>36</sup> that can then be used to increase dividends to shareholders or to purchase new water systems.

The Pennsylvania Public Utilities Commission is supposed to guard against private companies "gilding the lily," or in other words, making expensive, unnecessary investments in order to increase the rate charges. It is meant to review requests for a rate base increase with a skeptical eye to ensure the investments are sound and necessary. But what a private company deems most urgent may not be what customers feel is most important. For example, it is not unusual for private companies to focus first on replacing water meters and improving billing systems before replacing leaky or toxic lead pipes.<sup>37</sup>

The PUC typically gave private companies about two-thirds of the rate base hikes they requested. Consumer advocates complained that Aqua inflated its costs, knowing the Commission would knock down their requests. DeBenedictis said his strategy was to ask for rate increases as often as possible.<sup>38</sup> After three or four rate review cycles, residents of the systems purchased by Aqua would find their water rates were much higher than their neighbors with municipally owned water systems.

“They’re not buying the pumps and pipes and treatment plants. What they’re buying is the customer, which is a long-time forever revenue stream.”

Still, DeBenedictis complained openly to his political allies about the “regulatory lag” between PSWC’s capital outlays and the higher rates it was allowed to recoup them. Waiting for the Public Utilities Commission to review and approve his rate increase requests slowed his ability to gather new funds to buy new systems.

DeBenedictis argued that his company was providing the capital to repair and upgrade struggling community water systems, and that faster reimbursements would allow PSWC to “help” more communities. PSWC gave generous campaign contributions to both political parties and DeBenedictis personally lobbied state power brokers and politicians, becoming a familiar face in the state Capitol. In the final hours of the 1996 Pennsylvania legislative session, a piece of legislation that became known as “Nick’s Law” was tacked onto an unrelated bill and passed into law.<sup>39</sup> It authorized automatic water infrastructure surcharges, also called the Distribution System Improvement Charge (DSIC).

Private water companies across the country lauded the passage of the DSIC, heralding it as “the holy grail” and a “major coup”<sup>40</sup> for privately owned water utilities.<sup>41</sup> Nine states eventually passed DSIC legislation laws.<sup>42</sup> This was the first of several “extractive innovations” that private water companies successfully lobbied for to create a legal and regulatory environment that helped facilitate privatization deals. The DSIC was just one of the extractive innovations that have directly contributed to the increase in privatized water systems in the state.

SECTION  
2Extractive Innovations —  
Creating the Legal Conditions to Help  
Facilitate Water Privatization**EXTRACTIVE INNOVATION #1 (1996):**

## Automatic “temporary” surcharges on water users



The Distribution System Improvement Charge allows private water companies to immediately add “temporary surcharges” for capital investments to their customers’ monthly water bills before the PUC approves a rate base increase. This is an end run around the PUC’s review power, allowing private water companies to “ask forgiveness rather than ask permission” for hiking fees. The company would roll the “temporary” surcharge into its next request for a rate base increase.

The “temporary” automatic surcharge increased customer water rates more quickly and inflated the base rate over time.<sup>43</sup> Examining base rate increases between 1997 and 2010, Food & Water Watch researchers showed that the automatic surcharges inflated PSWC/ Aqua’s base rates by between 7 and 14 percent a year. The company’s “authorized revenue” in Pennsylvania increased by \$224 million over this period, \$80 million of which came from DSIC surcharges. By mid-2010, 20 percent of Aqua’s entire annual operating revenue came from the DSIC surcharge.<sup>44</sup>

To understand its significance, compare this pricing to the way a municipal water authority operates. A municipal water authority issues low-cost bonds at a 3-4 percent interest rate to make needed repairs and improvements and then pays off the loan over a specified period, usually 10-20 years. Capital improvements in the infrastructure of an aging water system should lower operating costs over time (by reducing leaks, pipe breakages, energy costs, etc.). The savings from improvements could go back into a maintenance fund for future repairs or new projects. A privately owned water company makes repairs that save it money, charges customers for the repairs, and then keeps asking for new additions to the rate charges with every rate review.<sup>45</sup>

As the Bush-Cheney administration moved into the White House in 2001 with an “unalloyed enthusiasm for privatization”<sup>46</sup> DeBenedictis developed a more ambitious expansion plan. Building on its solid growth in Pennsylvania, PSWC began targeting states in the Midwest and South with regulatory environments that were “corporate friendly” (or could be shaped to become so).

In 2004, PSWC changed its name to Aqua America to reflect its national ambitions and created subsidiaries in the contiguous states of New York, New Jersey, and Ohio; reached into the Midwest (Missouri, Minnesota, Illinois), and pushed southward into rapidly growing suburban and exurban communities in Florida, Georgia, Texas, North and South Carolina, and Virginia.<sup>47</sup>

By the time the 2008 mortgage and banking crisis tanked the world economy, Aqua America had purchased 200 water and wastewater systems serving three million people in 13 states.<sup>48</sup> As the Great Recession threw tens of millions of Americans out of work and homes, the crisis created new opportunities for the water sector.

The 2009 American Recovery and Reinvestment Act earmarked little funding for local water system investments,<sup>49</sup> and DeBenedictis correctly predicted that as municipal revenue fell and social needs increased, local elected officials might be willing to entertain offers to buy their water and sewer systems.

But Aqua's strategy was not without challenges. Between 2007 and 2011, the company was cited for violating drinking water quality standards 76 times and waste water regulations 39 times.<sup>50</sup> Stories circulating in the media linked water privatization to overbilling, contaminated water, and broken promises.<sup>51</sup> Responding to citizen complaints, Fort Wayne, Indiana used eminent domain to take back a water and sewer system north of the city from Aqua in 2008, but it took five years to finalize the price of \$67 million.<sup>52</sup> And the regulators and public officials in some of Aqua's target states like Florida were proving less pliable than expected.

When Aqua Florida, after buying water systems serving over 110,000 residents, proposed a \$7.3 million rate increase in 2007 that would have doubled some users' bills, customers protested, and the Florida Public Services Commissioners listened. One called the increase "unjustified and very excessive." Aqua had to withdraw the request and refund over a million dollars in unapproved interim charges.<sup>53</sup>

The next year, Aqua hired a former supervisor of the Florida Public Service Commission as its chief liaison to the Commission to try to repair its relationship. But citizen complaints continued<sup>54</sup> and customers, many of whom were retirees on fixed incomes, organized. In 2012, the Florida Public Service Commission took the unprecedented step of reducing Aqua's authorized return rate (i.e., its profit) due to poor service. With this, Aqua threw in the towel and by 2013 had sold all its assets in the state.<sup>55</sup> This example demonstrates how dependent Aqua's expansion strategy was on a pro-privatization policy environment, cooperative Public Utilities Commissioners, and an unengaged customer base.

Aqua America began pruning states with "lower earnings potential"—i.e., places with effective public oversight and active community opposition to privatization—from its portfolio and doubling down on eight states: Ohio, Texas, Illinois, North Carolina, New Jersey, Indiana, Virginia, as well as Pennsylvania. (Five of these states had adopted DSIC laws that allowed automatic interim rate increases.) Yet Aqua management reported to its board that it was pursuing 40 water deals around the country in 2010.<sup>56</sup>

**EXTRACTIVE INNOVATION #2 (2012):****Spread the cost of acquisitions across the entire customer base**

Although local officials—especially the people running municipal water systems—were becoming more skeptical of the benefits promised by privatizers, DeBenedictis’ network of sympathetic state legislators were embracing privatization. In 2012, the Pennsylvania state legislature passed an extraordinary piece of legislation, Act 11, with surprisingly little notice.

Act 11 allows private water companies to spread the cost of a newly acquired water or sewer system to all its ratepayers across the state. So, if a sewer system in the eastern part of the state was purchased, the price could be included in the rate base/rate increases of water customers across the state, including people far away who were receiving no benefits from the service system. Spreading the cost of any single acquisition to all a company’s customers would reduce the “rate shock” customers of newly acquired systems previously faced. It was designed to reduce public resistance to private buyouts that always resulted in rate increases.

Aqua Pennsylvania and Pennsylvania American Water<sup>57</sup> were the direct beneficiaries of this legislation because they were the only private companies with large customer bases. At the time Act 11 passed, they had a combined total of over 25 percent of the state’s water customers. The law created an incentive for these two companies to go after larger municipal, already-consolidated systems to expand their base of customers more quickly.

This “gift” was only given to private companies. Larger municipal water and sewer companies were also consolidating, joining neighboring systems together. But if they had a large system providing processed wastewater at their treatment plant for some townships and a water pumping system that served other townships, they could only charge the customers for the services used. This is built into the rules for municipal authorities: they can only charge fees for services. Thus, Act 11 gave an advantage to private over public utilities.

By 2014, seven of the 19 largest water systems in Pennsylvania were privately owned<sup>58</sup> and the average annual cost of water in the four largest privately owned water systems in Pennsylvania had more than doubled. The largest private systems in Pennsylvania charged 84 percent more than public systems.<sup>59</sup>

### EXTRACTIVE INNOVATION #3 (2016): A “Fair Market Value” for Municipal Systems



In 2016, another change in the PUC codes was passed by the Pennsylvania legislature, after more lobbying from private water industry.<sup>60</sup> Act 12 amended the Public Utility Code by adding Section 1329, which allows utilities to charge ratepayers for the appraised “fair-market value” of an acquired municipal system instead of its (lower) original depreciated cost.

Why is a higher price better for Aqua and American? Because when a municipal authority is bought, the cost of the system becomes the base rate—that determines the fees that can be charged to the customers. A higher sale price allows for a higher rate base, which in turn allows for higher water/sewer charges that the Public Utilities Commission must now allow. Anthony Bellitto, executive director of the North Penn Water Authority, succinctly explained why private companies are willing to pay such high prices: “They’re not buying the pumps and pipes and treatment plants. What they’re buying is the customer, which is a long-time forever revenue stream.”<sup>61</sup>

Under Act 12, the new process for valuing a utility is to hire two “independent” valuers (one for the seller and one for the buyer), have each provide an estimate of the “fair market value” of a municipal system, and then negotiate until they agree on the price (or one party ends the negotiations).

This allows private companies to offer inflated prices for well-run, financially solvent municipal systems and then pass on the purchase cost “through the meter”

to consumers. A higher purchase price may seem like a boon to the city council of a local township, but the price, including interest, deal fees, profits, etc., will be passed along to their residents.

A New York finance official said about a privatization deal, “In my 35 years as an investment banker, I have never seen such an ill-conceived plan ... [selling off the public water system to reduce the county’s debt] is akin to using a credit card with a 15 percent interest rate to pay a home mortgage loan that has a 4 percent annual interest rate.”<sup>62</sup> Other observers have likened it to selling a house to pay for a leaky roof and then renting it back from the buyer who can recoup the cost of roof repairs in the rent you’re charged, and then keep raising your rent.

“ In my 35 years as an investment banker, I have never seen such an ill-conceived plan ... [selling off the public water system to reduce the county’s debt] is akin to using a credit card with a 15 percent interest rate to pay a home mortgage loan that has a 4 percent annual interest rate.”



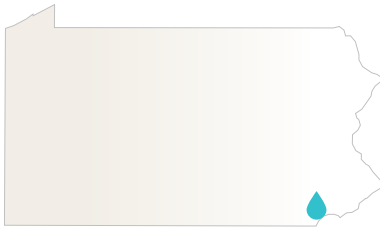
## WHY FINANCING COSTS MATTER

Typically, public money can be borrowed at a lower interest rate than private money. The long-term interest rate on municipal debt is usually about 4 percent. The average cost of privately borrowed capital is generally between 6 and 14 percent. Over 30 years, that difference in interest rates, passed on to consumers, can be huge. For example, at a 4 percent interest rate, citizens would pay \$1,734,903 on every \$1 million dollars spent on infrastructure investments. A private sector loan at 7.5 percent interest would cost \$2,540,137 for every million spent and a private sector loan at 14 percent interest would cost \$4,284,084.<sup>63</sup> This higher interest rate would be part of the private company's operating costs, and would be passed on to a user's bill, along with the profit rate the company is allowed.

The more expensive privatization deals are, the more likely it is that they will involve financing from private equity funds. When private equity gets involved in financing privatization, risks and costs explode.<sup>64</sup> Publicly traded private companies usually provide half their own money and borrow half to make acquisitions, while private equity firms typically put in less than 20 percent of their own funds and borrow the rest. They create complex financial ownership structures that make it difficult to hold them accountable, and look for short-term profits, typically selling off an investment within 5 to 10 years.

Private equity investment strategies are antithetical to the long-term goals of public utilities: to ensure that essential goods and services are widely available and affordable to all, now and in the future. Private equity firms have been actively investing in public sector deals for over a decade—especially in infrastructure and healthcare. Their involvement in financing the privatization of public services increases costs and risks.<sup>65</sup> Since they have a shorter time frame for expected profits, their involvement will push for more rapid rate increases.

By 2018, the *Philadelphia Inquirer* was reporting that Act 12 had set off a “feeding frenzy” over “who will own municipal water and wastewater systems—private operators or government—and who will be left paying the bill.”<sup>66</sup> Between 2016 and 2023, the Public Utilities Commission approved 23 municipal water and sewer facilities sales, 10 to Aqua Pennsylvania, 11 to Pennsylvania American Water, and two to Veolia. As of the date of this report, four more utilities have submitted the paperwork to the PUC for sales, but no decisions have been made. Industry analysts say wastewater/sewer systems are “the new frontier” because 97 percent of these systems are still municipally owned, most need significant new investments, and sewer ownership doesn't generate as strong a response as water ownership.<sup>67</sup>



### *New Garden Township Sewer System*

Aqua's first purchase under Act 12 was a \$29.5 million purchase of the New Garden Township's sewer system. The system needed \$12 million of new investments; if the township financed the improvements itself, sewer rates would increase 78 percent.<sup>68</sup> Ratepayers were told that the sale agreement would

freeze rates for two years and then cap them at four percent for ten years and that part of the sale proceeds would be used to mitigate rate increases. However, the rate freeze and caps were removed from the final sales contract.<sup>69</sup>

The state Attorney General's Office of Consumer Advocate sued the PUC to block the sale, arguing that the 2106 ratepayers in New Garden Township would see significantly higher rates for decades without receiving any commensurate benefits. PUC Vice Chair Andrew Place voted against the New Garden and Limerick<sup>70</sup> sales, agreeing with the state Consumer Advocate that current customers would not realize significant benefit from the "substantial costs" they would bear.

Since the purchase of the system, New Garden residents' sewer rates jumped 94 percent.<sup>71</sup> Residents created a coalition, Keep Water Affordable (KWA), to fight the deal, but they were unable to undo the contract. (KWA is now focused on helping others avoid New Garden's fate and repealing Act 12.) By 2024, Aqua had invested less than \$4 million of the \$12 million it estimated the system required in repairs and rates had increased by over 140 percent. In December 2022, the New Garden Township Board of Supervisors voted not to use any sales proceeds to mitigate rate increases or tax increases, and in 2023 increased real estate taxes by 127 percent.<sup>72</sup> The failure to share information about the contract, broken promises on rate freezes, and whopping rate increases have been repeated in subsequent sales.

Many residents across the state have complained about the speed and secrecy with which deals have been negotiated. Residents want to understand the rationale for selling, review the deals, and weigh in on the decision to sell or not. But municipal authorities can be created by any, or combinations of, the four kinds of sub-governments, which can lead to conflicts about who possesses ownership and selling rights for the authorities. Decision-making can be complicated and political concerns permeate the process.



### *Chester Water Authority*

Chester Water Authority (CWA) is a regional public water authority supplying 45,000 customers (over 200,000 people) in 37 municipalities in two counties in Pennsylvania, plus Rising Sun, Maryland, and northern Delaware. In 2017, Aqua approached the nine-person board of the Chester Water Authority with an

unsolicited offer of \$320 million to buy the water authority. The CWA Board unanimously rejected the offer.

To service its water customers, CWA had created<sup>73</sup> and maintained the two-billion-gallon Octoraro Reservoir and a surrounding woodland of over 2,000 acres that has become a

popular public recreational area and nature preserve. Besides concerns about rising water rates and diminishing water quality, staff at CWA feared that Aqua would limit public access to the reservoir and sell the parkland to developers. Aqua did just that in the early 2000s, when the company blocked public access to their Springton's reservoir, and sold 23 acres on the lakefront of the reserve to developers who created an exclusive retirement community of luxury homes.<sup>74</sup>

Stymied by the CWA board's rejection of its bid, Aqua started negotiations with the city of Chester, a distressed municipality, to buy the water system. Chester had filed the incorporation paperwork for the water authority 80 years ago but had not been involved in its management for decades. CWA invested tens of millions in building out the water infrastructure in the counties outside of the city's boundaries, where 80 percent of its customers now live.

CWA challenged the city's right to sell the authority. A county court judge ruled that all three municipal entities (each represented on the CWA board) had to approve a sale. The city of Chester appealed to the Commonwealth Court<sup>75</sup> and the ruling was overturned. CWA appealed to the state Supreme Court.

As the litigation was wending its way through the courts, COVID-19 closures collapsed the city of Chester already teetering economy.<sup>76</sup> Then-Governor Tom Wolf<sup>77</sup> put the city of Chester under the authority of a receiver chosen by the Department of Community and Economic Development (DCED). In 2022, this receiver filed for bankruptcy for Chester in federal court—just days before the Supreme Court was scheduled to hear the CWA case. This stopped all state legal claims.

Through a Right to Know request, CWA found that representatives of Aqua and the Pennsylvania DCED<sup>78</sup> had secret conversations as early as 2016 about using the sale of CWA to retire the city of Chester's debt without including representatives of CWA or the city. A subsequent Right to Know request revealed the Governor's Office, DCED, the Chester receiver, the city of Chester, and Aqua had been secretly negotiating an Asset Purchase Agreement since mid-2020.

There are at least 16 lawsuits in play over the sale, and litigation is likely to continue for years. Eight members of the Pennsylvania House and Senate have introduced 22 different bills to resolve the conflict, but none has yet made it to the floor for a vote.<sup>79</sup>



### *The Delaware County Water Quality Control Authority*

Established in 1970 with the acquisition and upgrade of the city of Chester's wastewater treatment plant, the Delaware County Water Quality Control Authority (DELCORA) owns and operates pump stations, force mains, and sewers that serve 165,000 customers (half a million people) in 46 municipalities

in Delaware and Chester Counties. It pumps waste to two sewage treatment facilities: the Western Regional Treatment Plant (WRTP), which it owns in Delaware County, and the Philadelphia Water Department's Southwest Water Pollution Control Plant (PSWPCP), which carries wastewater from the eastern part of its service area.

In 2019, polls were predicting that three of the five seats on the Delaware County Council would be taken by Democrats. Republicans had held a majority of Council seats in the county for 150 years and had appointed the board members of DELCORA for 50 years.

In July 2019, the DELCORA board announced it had signed a letter of intent to negotiate a sale to Aqua Pennsylvania. This was the first public notification that DELCORA was for sale. Three months later DELCORA announced it was selling the regional sewer system to Aqua Pennsylvania for \$276.6 million.<sup>80</sup> It would be the largest privatization of a water or waste system in the state to date.

Democrats charged it was a "hasty no-bid deal to a politically connected company"<sup>81</sup> to keep an "important patronage stronghold" in Republican hands.<sup>82</sup> They argued that DELCORA was not in financial difficulty and that there was no need to sell. Robert Willert, DELCORA's executive director, also president of the Ridley Township Board of Commissioners, and head of the Ridley Republicans,<sup>83</sup> said that the sale was necessary because both the sewage treatment facilities DELCORA uses are under a consent order to reduce discharges of untreated water and improve their treatment capacity. The Chester/WRTP facility needed costly upgrades. Philadelphia had notified the Authority in 2017 that, based on the volume of waste it sent to their system (9.4 percent), their share of Philadelphia's upgrades would cost \$605 million over 25 years or \$24 million a year.<sup>84</sup>

To avoid contributing to the costs of upgrading Philadelphia's treatment facility, the board decided to sell its system to Aqua Pennsylvania. Aqua would then expand the WRTP facility and build a new pipe to pump the sewage that now flows to Philadelphia to its own treatment plant. The estimated cost of separating the DELCORA system from Philadelphia was estimated to be \$700 million.<sup>85</sup> The decision to spend \$700 million to separate from Philadelphia does not seem to have been up for public discussion.

Democrats did take control of the Delaware County Council in November 2019 and immediately voted to dissolve DELCORA and block the sale to Aqua. The Commonwealth Court ruled in March 2020 that Delaware County Council could take control over DELCORA but also ruled that the 2019 sale agreement with Aqua was a valid contract and could proceed. In 2021, a state administrative law panel recommended that the full PUC reject the DELCORA sale, citing legal problems with the agreement, the lack of a rate stabilization plan,

and a failure to fully outline the public benefits of a sale.<sup>86</sup> The full PUC rejected that ruling, but as of the date of this report, ownership is still being contested.



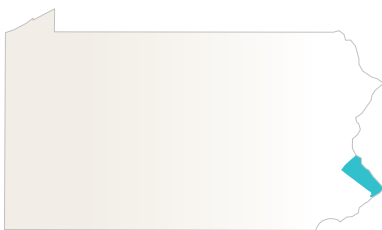
### *Norristown Sewer System*

In the spring of 2020, residents of Norristown heard that the borough council was in exploratory talks about selling their sewer system, and by June council members announced they had accepted a bid from Aqua, would advertise that fact for seven days, and then vote on the deal.

Norristown is one of a few dozen municipalities with a home rule charter, which includes a provision that allows voters to repeal or create council ordinances through ballot initiatives—in essence, a local referendum process. David McMahon and a small group of residents created NOPE (Norristown Opposed to Privatization Efforts) and tried to gather the 2,000 signatures needed to repeal the ordinance in seven days. Failing, they then tried to collect enough signatures to create a ballot question on the topic. That failed too, but by speaking to hundreds of residents during the early months of the pandemic, they shifted public opinion on the issue.

When the Authority itself tried to back out of the deal with Aqua, the borough council of Norristown moved to dissolve the sewer authority and accept the Aqua bid. NOPE collected twice the number of signatures needed to create a ballot initiative repealing the dissolution of the Authority and stopped the sale of the sewer system.<sup>87</sup> The Norristown sewer remained publicly owned.

The group changed its name to Neighbors Opposed to Privatization Efforts, and linked up with other public water advocates, including Food and Water Watch, the Community Environmental Legal Defense Fund, Chester Water Authority activists, and unions to educate other municipalities about the dangers of privatization. They found receptive locals in the townships of Conshohocken,<sup>88</sup> Willistown<sup>89</sup>, and Towamencin.



### *Bucks County Water and Sewer Authority*

Bucks County Water and Sewer Authority (BCWSA) is one of the largest consolidated public authorities in Pennsylvania, now serving about 100,000 customer accounts (525,000 people) in 31 townships and boroughs in Bucks, Chester, and Montgomery counties. Established in 1962, it had long been practicing public

consolidation of small sewer and water systems that allowed for economies of scale and efficiencies without the endlessly escalating rate hikes of private companies.

At the end of 2020, Aqua Pennsylvania submitted an unsolicited bid of \$600 million to buy BCWSA and then started attending closed BCWSA board meetings through 2021. (BCWSA closed out 2020 with \$232 million in debt.) During 2021, the BCWSA board refused to publicly discuss negotiations, saying it was doing its due diligence on the value of their system<sup>90</sup> and their appraisers said the combined water and sewer system was worth \$1.4 billion.

By early 2022, three other companies had put in bids.<sup>91</sup> Employees at BCWSA and the two unions that represented them were anxious, but no information about the state of negotiations was forthcoming. When confronted at a Board meeting in April, the Board chair, John Cordisco, promised that a deal that laid off workers or reduced their pension funds would not be considered, but refused to reveal more.

On July 13, 2022, the BCSWA board voted to give Aqua the exclusive right to negotiate the terms of a \$1.1 billion sale (of the sewers only) —which would have been the highest price ever paid to take over a public sewer system public in the country.<sup>92</sup> Protests began in earnest.

A set of anti-privatization activists (including NOPE, Food and Water Watch, Keep Water Affordable, and the public employee union AFSCME) organized an outreach campaign to the public and public officials in the 31 townships of BCWSA's service area. Tom Tosti, director of AFSCME District Council 88 and a former Middletown supervisor, urged his township to oppose privatization and to urge other supervisors to do the same. The North Penn and North Wales water authorities announced they would stop sending their treated water to BCSWA if Aqua took over. Anthony Bellitto, the executive director of the North Penn Water Authority, said privatization "is a loan, disguised as a gift, wrapped up with empty promises that must be paid back with exorbitant rate increases resulting in no better service to the customers."<sup>93</sup>

Other townships that had sold their sewer systems to BCSWA in recent years condemned the sale, reminding BCSWA that they were told their systems would stay public.<sup>94</sup> Municipalities that were part of the BCSWA system, but outside of Bucks County, complained that they would receive no benefits from the \$700 billion windfall that would come to Bucks County from the sale after BCSWA's debt was retired, but they would still have to suffer higher rates to pay for it.

Alarmed at the negative response, the BCSWA Board Chair announced a series of public hearings. Meanwhile, a consortium of municipalities issued resolutions against the sale, noting that customers' rates would almost double under Aqua ownership, and pledged to sue to fight the sale.

On September 6, 2022, a planned protest at the Bucks County Commission turned into a victory celebration when all three County commissioners and the BCSWA chairman announced their opposition to the sale. Later in the day, the CEO of Aqua successor company Essential Utilities issued a statement saying talks were over and that he was "surprised and disappointed by the sudden turn of events."<sup>95</sup>

Following the decision to stay public, the Authority began raising \$210 million for capital improvements through traditional bond issuances. In December, S&P Global Ratings gave BCSWA an A-plus credit rating. It secured an interest rate of just under four percent on the revenue bonds that will be used to expand and modernize its four wastewater treatment facilities, and the Neshaminy Interceptor, a major pipe system carrying wastewater from Lower Bucks County to a treatment plant in Philadelphia. The authority will increase sewer rates by 10 percent over the next three years,<sup>96</sup> likely a mere fraction of what it would have been had the sale gone through.



Aqua's inability to close the deals to buy the biggest consolidated public systems—DELCO, CWA, and BCWSA—did not go unnoticed by investors. An influential water industry analyst for Northcoast Research Partners, Ryan Connors, wrote that the collapse of the BCWSA deal was a “major blow” to Essential Utilities/Aqua: “Despite many aspects of the deal being in Essential’s favor, including the company’s local connections, supportive authority board leadership, and a sizable price tag, the deal fell through in less than two months.” He then reduced his estimated target price for Essential Utilities/Aqua stock.<sup>97</sup>

As Aqua was negotiating with BCWSA, Pennsylvania American Water closed a \$235 million deal for the York City Sewer Authority. When it was approved by the PUC, it became the most expensive privatization deal in the state so far. Pennsylvania American began the purchase of the Butler Area Sewer Authority in western Pennsylvania for almost as much—\$231.5 million—and began bidding for two other authorities in Butler County.<sup>98</sup> The PUC approved the sale, but it has been appealed to the Commonwealth Court.

By now, public opinion had shifted against privatization. The *Philadelphia Inquirer* praised the Bucks County Commissioners for rejecting privatization and had this commentary about the York system sale:

“*The [York City] deal provided the county a one-time cash infusion, but it leaves residents at the mercy of a profit-driven company that is all but guaranteed to jack up customers’ bills in the coming years. In fact, the deal is crafted in a way to buy elected officials time before the public realizes what hit them. American Water can’t raise rates for three years. But after that, rates can go up by nearly 50 percent. In return, York gets a one-time cash windfall that it plans to use to close a budget gap, while also freeing itself from the future maintenance of its water system. But the short-term gain will result in long-term pain for customers.*”<sup>99</sup>

In fact, despite the promised three-year freeze on rates, by 2023—just two years after the sale—the PUC reported that the average sewer rates had increased 84 percent, from \$385 to \$707 a year.

And rates across their combined customer bases kept rising. In May 2022, the PUC approved Aqua Pennsylvania’s request to raise water rates 12 percent and sewer rates 59 percent.<sup>100</sup> In December 2022, the PUC unanimously approved a rate increase of \$138 million to Pennsylvania American, which would increase water bills for its customers by 14.5 percent and sewer rates by 39 percent in 2023.<sup>101</sup> This is on top of a 2021 rate increase of 8.6 percent for its water customers and 30 percent for its sewer customers.



### Towamencin Township Sewer System

In February 2022, Towamencin Township, a suburban community of 18,000 in Montgomery County (with 7,500 sewer customers), received five bids for its municipal sewer system, which includes its own wastewater treatment facility. The top bid of \$115.3 million came from NextEra, a Florida energy utility,

looking to break into the water sector<sup>102</sup> in Pennsylvania.

This shocked observers since it was eight times the town's entire operating budget of \$15 million a year. One township supervisor called the deal "a generational opportunity to reboot and reset our finances for the foreseeable future." They claimed they could retire the town's debt, forestall property tax increases and stash \$87 million in a reserve fund to subsidize future rate increases.<sup>103</sup> They voted in May to accept the bid, without any public hearings and over vocal protests by residents.

Opponents pointed out the sewer system brings in \$5 million a year by treating the waste from outside the township. They objected to NextEra's plan to bring in a Florida contractor to manage operations. They questioned the neutrality of the valuator for the township, Public Financial Management, Inc. (PFM). The firm would earn \$807,000 if the deal closed; without a deal, it made a \$9,500 fee.<sup>104</sup> The treatment facility's largest customer, Clemens Food Group, said its sewer fees would double to \$1.6 million if the sale went through and it would actively look for alternatives.

A majority of the board was determined to sell, in spite of significant constituent opposition to it, so a group of activists organized a ballot initiative asking voters to create a commission to determine whether the town should rewrite its governing charter in an effort to block the sale. In November 2022 the initiative was approved with 61% of the vote. Voters elected seven members to the panel, each of whom was aligned with a slate called Neighbors Opposing Privatization Efforts.<sup>105</sup> They then asked voters to approve a referendum for a home rule charter, which specifically prohibited "the sale or long-term lease of potable water, wastewater, and stormwater systems to nongovernmental entities," which passed in May 2023.

**Opponent questioned the neutrality of the valuator for the township, Public Financial Management, Inc. (PFM). The firm would earn \$807,000 if the deal closed; without a deal, it made a \$9,500 fee.**

With the sale now mired in controversy, NextEra withdrew but assigned its contractual rights to Pennsylvania American Water Inc. The supervisors approved a new deal with Pennsylvania Water for \$104 million. The township's five-member Board of Supervisors is moving ahead with a sale with Pennsylvania American, asserting that canceling the contract would violate state law and the state constitution. Two residents sued in August 2023, asking for a court order compelling the supervisors to terminate the contract. The town supervisors voted to spend tens of thousands of public dollars to defend the sale. Pennsylvania American filed for approval of the sale with PUC but no decision has been made as of the date of this report.

The deal-making activity that “galloped along<sup>106</sup>” in 2021 and 2022 has generated more intense public scrutiny of the details of deal offers, the local officials negotiating the deals, the secrecy and speed of the negotiations, and the decisions of the Public Utility Commissioner. Local and state news organizations are covering conflicts within and between local townships and examining the “revolving door” between state legislators and the water industry, and campaign contributions by the industry. As public understanding of the issue deepens, so has resistance to the idea of privatization.



## The Water Quality Accountability Act (SB 597): One more pro-privatization “innovation” hovering in the wings

In 2022, an innocuous-sounding bill, “The Water Quality Accountability Act,” promoted by Aqua Pennsylvania/Essential Utilities and Pennsylvania American Water/American Water Works, started wending its way through the Pennsylvania state legislature.<sup>107</sup> Senate bill 597 would require all public water authorities with more than 750 customers—but not privately owned water systems—to produce “an asset management plan that includes a schedule for identifying and replacing infrastructure like old pipes and meters, as well as the estimated cost of such projects and the projected rate increases needed to afford them.”<sup>108</sup> The municipal systems would have to submit these plans and an implementation timeline to the state Department of Environmental Protection for review.

Municipal leaders and managers of public water systems opposed the bill, charging it was nothing more than ratepayer-funded market research for private water companies searching for their next deal. When American Water Works executive Walter Lynch was asked in a February 2021 call with investors about emerging legislation that would facilitate mergers and acquisitions, he immediately cited the Water Quality Accountability Act as an example.<sup>109</sup>

As Cornell University Professor Mildred Warner explains, the Water Quality Accountability Act “amounts to intimidating local governments with new requirements before private companies swoop in and offer a big check.”<sup>110</sup> Public water authorities already release water quality reports annually and are subject to a host of other state and federal oversight rules, so additional and excessive reporting requirements could divert staff from focusing on local priorities. Anthony Bellitto, executive director of the North Penn Water Authority, noted that the bill singles out water meter replacement as a priority even though a broken meter isn’t a top concern to customers.<sup>111</sup> Environmental groups have also opposed the new bill.<sup>112</sup>

A spokesperson for then-Gov. Tom Wolf said the bill would “impose significant new obligations on municipally owned water systems without a clear demonstration that the costs of those obligations are justified by the expected benefits” and he would not support it in its current form.<sup>113</sup>

Even the Republican chair of the environmental committee questioned the need for such legislation: “I’m normally against government regulating more than they already are and I am for rolling back regulations and not imposing new ones. So, what are we fixing?” The Water Quality Accountability Act passed the State Senate but not the House in 2022 and has not been reintroduced.

David McMahon of NOPE believes that Act 12 gave private water companies the ability to dangle a “carrot” (a pile of money via inflated sale prices) in front of local governments, and SB 597 is the “stick” with which to beat municipal water and sewer authorities (by increasing reporting requirements). The intention is to pressure local municipalities to “give up” and “get out of the business of water provision.” At a public hearing in January 2024, McMahon warned state senators to “Be on the lookout for that [SB 597]. It’s probably coming back as a standalone cybersecurity measure, but the intent is to foster privatization.”<sup>114</sup>

## Resistance to Privatization Moves to State Government

Over the past eight years, the intended outcomes of the reforms of the Pennsylvania Public Utility Code with the enactment of Act 11 and Act 12 are materializing: More local water and sewer authorities are being consolidated under the ownership of Pennsylvania American Water and Aqua Pennsylvania. Sales prices are reaching record levels and monthly water and sewer service charges are soaring.

Pennsylvania Consumer Advocate Patrick Cicero<sup>115</sup> estimates that between 2016 and 2022, Pennsylvania American Water Company increased its average rate base per customer for wastewater from \$7,162 to \$12,458 or 174%, and Aqua Pennsylvania increased its average rate base per customer for wastewater from \$3,795 to \$9,449 or 249%.<sup>116</sup> He further states that since Act 12 took effect, consumers have paid \$85 million more per year for water and wastewater services than they would have if Act 12 had not been passed.<sup>117</sup>

For residential customers of the systems that have been sold, this has translated into increases in their monthly bill by 44 percent (East Bradford Township average annual water bills rose from \$895 to \$1188) and 167 percent (Exeter Township’s average annual sewer bills rose \$516 to \$1368). New Garden Township residents have seen their annual sewer bills increase from \$780 to \$1524 under Aqua’s management. Under Pennsylvania American, the Municipal Authority of the City of McKeesport saw its annual average residential sewer charges rise from \$600 to \$1380.<sup>118</sup>

These are significant increases, especially for people on fixed incomes. Large families use more water and face even higher rates. Residents testifying about the impact of rising rates report that some people in their townships are paying more for water and sewer services than for heat or electricity. Consumer Advocate Cicero reported that over 25,000

**For-profit companies have to charge customers much higher rates because they have to pay shareholder dividends and high executive compensation. In 2022, the CEO of Aqua Pennsylvania received \$4.5 million in salary, stocks, and bonuses. The head of North Penn Water Authority said that his entire staff of 52 at the North Penn Water Authority earned that in 2022.**

customers in Pennsylvania lost access to water or sewer because they could not pay their bills in 2023.<sup>119</sup>

As residents see their bills escalate, they have asked their representatives in Harrisburg to help. Some are responding. In May 2023, Senator Michele Brooks, a Republican, called for a legislative study of the acquisitions that have taken place under Act 12, and the subsequent rate increases that occurred. No Senate bill for the study was approved, but the PUC did conduct such an analysis.

Nineteen Democratic House members have co-sponsored four bills<sup>120</sup> to reform Act 12. The House Committee on Consumer Protection, Technology, and Utilities held a public hearing on them December 12, 2023, and on January 22, 2024, the Senate Democratic Policy Committee held another public hearing.

The Pennsylvania Municipal Authorities Association (PMAA) supports the complete repeal of Act 12, because public water authorities can operate, finance capital improvements, and consolidate systems at least as well as private companies but at much lower costs. PMAA presented evidence showing that Aqua Pennsylvania charged a family of four \$2,042 for water annually in 2022<sup>121</sup> and Pennsylvania American charged \$1,782; public water authorities charged far less: North Penn Water Authority and Mifflin County Water Authority charged \$700 a year; and Lehigh County Authority charged only \$516 a year.<sup>122</sup>

Anthony Bellitto, executive director of the North Penn Water Authority, argued municipal authorities can provide high quality service, make needed capital investments, and still charge their customers low rates because they have a nonprofit business model. He argued that for-profit companies have to charge customers much higher rates because they have to pay shareholder dividends and high executive compensation. In 2022, the CEO of Aqua Pennsylvania received \$4.5 million in salary, stocks, and bonuses. Bellitto said that his entire staff of 52 at the North Penn Water Authority earned that in 2022.<sup>123</sup>

James Cawley, a Commissioner at the PUC for 15 years (1979-85 and 2005-2015) was especially forceful in his condemnation of damage Act 12 had done:<sup>124</sup>

*Act 12 makes a sham of public utility regulation by restoring pre-1913 monopoly pricing and eliminating the PUC's fundamental authority to ensure that utility rates are "just and reasonable." ... Section 1329 is irredeemable because its key provisions cannot be amended or curtailed without destroying the section's purpose.*<sup>125</sup>

Almost every witness at both hearings has called for the complete and immediate repeal of Act 12. However, they worry that entrenched interests in the legislature and campaign cash will obstruct progress in restoring the PUC code to its original intent.

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## SECTION 3 | Defending Public Water Systems — What Pennsylvania Can Teach Us

Aqua America and American Water play the long game at the state and national levels. They have spent the past 30 years carefully making the case that community water systems in Pennsylvania need their resources and expertise, while cultivating relationships with politicians, spreading campaign dollars, and quietly looking for political openings to push through legislation to help facilitate water privatization deals. Defenders of public water must be prepared to play the long game, too. The Pennsylvania experience with private water corporations and numerous water privatization battles can teach us important lessons in how to push back against corporate interests to defend public water.



### **Understand the rules that govern and protect water systems.**

Aqua staff understood the key clauses in the Public Commission rules that stood in the way of their acquisition strategy, and steadily worked to remove them. Defenders of publicly owned utilities should have similar deep knowledge of key clauses that define and protect the public interest. Understanding the history of the debates and actions that led the legislature to create the PUC rules and powers can also be useful in “framing the conversation,” as former Commissioner James Cawley demonstrated in his testimony.



### **Cultivate relationships with and engage public water authority staff.**

Water authority staff may hear rumors of calls and appointments with private companies early and can alert the press, allies, and customers. They have comparative data that can shame private companies; they have the reach, information, and resources to mount statewide educational campaigns highlighting the importance of retaining public control over water and sewer systems. When dynamic and competent directors and staff of public water authorities speak out, they can become the heroes of a public water campaign, instead of the imagined incompetent or corrupt public officials that private water companies often try to portray them as.



### **Understand that water privatization companies often move fast and silently.**

At the local level, private water companies often move fast and silently to push forward privatization proposals to avoid public opposition of the deal. The strategy often follows a familiar path. In Pennsylvania, both Aqua Pennsylvania and Pennsylvania American have taken advantage of the variety of local government structures that created municipal water and sewer authorities. The private company often approaches the leadership of the relevant jurisdiction(s) offering large sums of money, which may be multiple times the local government’s budget. These companies often present non-disclosure agreements to further ensure secrecy of details about the proposal. At some point the board of the municipal authority



(appointed by the county/borough/city) is brought into the discussions. The company may promise executive directors of the public authority that they will remain employed or given a generous retirement package if the authority is privatized. This is all to keep momentum moving towards negotiations occurring as quickly as possible with no public notice. Once negotiations have occurred, then there is a public announcement that the jurisdiction has entered into a legally binding agreement to negotiate exclusively with the buyer for some period or until a deal is agreed.

As discussed earlier, two appraisers are hired to represent the buyer and the seller and to agree on a mutually agreeable “fair-market value,” i.e. price, of the system. The company might recommend an appraiser to the public jurisdiction. A clause in Act 12 states that the combined fee of the two appraisers can equal up to 5% of the deal fee. This type of arrangement means both appraisers have a vested interest in the price being high. A company called Public Financial Management Inc (PFM) appears to be regularly used by public officials to “appraise” the price of assets.<sup>126</sup>

Once negotiations start, if there are concerns from residents about future rate increases, the company may promise rate freezes and/or rate caps. However, these clauses may not actually be included in the final contract, or the contract can be written to exclude Distribution System Improvement Charge (DSIC) amounts and other special fees.



### **Have a plan, including having residents vote on a sale, to respond to unsolicited offers.**

An effective response to an unsolicited offer to buy a municipal authority is to slow down the process; make residents partners in taking bids, gathering information, and comparing costs; and demand that those who depend on the authority for services can vote on the sale. Norristown stopped the sale of their municipal authority because it has a home rule charter that allows it collect signatures to initiate a ballot initiative, which activists used to stop the sale. Towamencin opponents of privatization organized a ballot initiative to create a commission to determine whether the town should rewrite its governing charter; it passed and the voters approved a referendum for a home rule charter that specifically prohibited “the sale or long-term lease of potable water, wastewater, and stormwater systems to nongovernmental entities.”

Any local jurisdiction can vote to create its own unique home rule charter and include language prohibiting the sale or long-term lease of municipal water to nongovernmental agencies in that charter. This requires a committed outreach campaign to knock on doors and engage residents, but these kinds of conversations are the most effective types of educational campaign.

Alternatively, a local jurisdiction can set up a better, more transparent, inclusive public process for selling a municipal authority, that ends with the community voting on the sale. Of note, current Pennsylvania House Bill 1862 proposes a more open and uniform sale process but doesn’t require a community vote.<sup>127</sup> This proposed bill focuses exclusively on the transparency of rate increases. However, directors of public

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authorities argue that a complete and robust lifecycle comparison of all the costs of the municipal authority (including labor costs, management costs, interest rates on loans, etc.) and the proposed costs of the privatized system should be requested. Such a comparison helps residents better understand the different priorities of public and private entities. Rewriting the language of the Public Utility Codes to include a template for a more transparent, inclusive public process for soliciting bids, and comparing those bids with the current municipal system, unmask the secrecy and back-room-deals that have characterized many Act 12 sales to date.

Additionally, local communities can protect themselves from predatory private buyers by assigning a “right of first refusal” to a neighboring public authority.

But perhaps the most important lesson is that local communities need to develop and implement a plan that ensures an accountable, inclusive, responsible process for responding to privatization offers *before* representatives of Aqua or American arrive to dangle bags of cash in front of your elected leaders. Prevention is better than cure.



## Endnotes

- <sup>1</sup> Mia DiFelice, Food and Water Watch, “Fighting Water Privatization in Pennsylvania and Beyond,” Sept. 14, 2022.
- <sup>2</sup> Private water systems served many large cities until the turn of the century, when cholera epidemics and destructive fires spurred a surge in public ownership. Between 1880 and 1920, thousands of cities “municipalized” water provision, following the example of Philadelphia, New York, Boston, and Baltimore. Public health and safety improved. Food and Water Watch, “The State of Public Water in the United States,” 2016.
- <sup>3</sup> Those with at least 100,000 customers.
- <sup>4</sup> The US EPA’s Safe Drinking Water Information System collects data on water systems serving more than 100,000 people. Among the 500 largest of water systems, 65 percent are government-owned, 24 percent are cooperatives, and 10 percent are investor-owned. Analyses of this data show that in 2015, water systems owned by the private sector had an average annual bill of \$501 compared to \$315 for publicly owned water systems. Low-income households also spend a higher percent of their income on water services if the utility is owned by the private sector (4.39% of income) than if it is owned by the public sector (2.84% of income). Zhang, Riva, Grant, Warner, “Water Pricing and Affordability in the US: Public vs. Private Ownership,” Cornell Working Paper, June 2021.
- <sup>5</sup> Sixty percent of these 45,000 systems serve fewer than 500 people. J. Beecher, Institute of Public Utilities, Michigan State University, “Corporate consolidation of water utilities: is fair market value fair?,” 11/4/19.
- <sup>6</sup> J. Beecher, Institute of Public Utilities, Michigan State University, 11/4/19. “Corporate consolidation of water utilities: is fair market value fair?”
- <sup>7</sup> Food and Water Watch, “The State of Public Water in the United States,” 2016.
- <sup>8</sup> Of these, 27,000 serve fewer than 500 people. J. Beecher, Institute of Public Utilities, Michigan State University, “Corporate consolidation of water utilities: is fair market value fair?,” 11/4/19.
- <sup>9</sup> By 2014, at least a quarter of the residents of NJ, PA, CT, WV, OH, KY, MO, ID, and AK relied on private water.
- <sup>10</sup> Eight rivers run through six major water sheds; the Susquehanna River carries water from upstate New York to the Chesapeake Bay as it meanders through central Pennsylvania, fed by many streams and tributaries.
- <sup>11</sup> <https://water.phila.gov/history/>
- <sup>12</sup> <https://www.pgh2o.com/about-us/our-history>
- <sup>13</sup> But coal mine discharges were exempted until 1945, and industries were not required to restore the rivers and streams they degraded until 1965. Additional amendments gave the Sanitary Water Board full regulatory authority over all industrial activities that contaminated water in 1970.
- <sup>14</sup> During the Progressive Era, 45 states established Public Utility Commissions to oversee private companies providing public goods and services. Five states also review rate increases by public authorities.

- <sup>15</sup> Pennsylvania established a Railroad Commission in 1907 to oversee transport rates on agricultural produce charged to farmers and small businesses by railroad companies after “sweetheart deals” to big oil companies and commodity brokers were exposed. The state legislature broadened the Commission’s remit and renamed it the Public Services Commission in 1913. Its mission was to “balance the interest of (private) public service companies with the welfare of the public.”
- <sup>16</sup> [www.puc.pa.gov/water-wastewater](http://www.puc.pa.gov/water-wastewater)
- <sup>17</sup> Ibid, In 1937, Act 43 changed the name again to the Public Utilities Commission. Five Commissioners with staggered terms were to be appointed by the Governor to supervise and regulate all public utilities doing business in the state. Two further reforms in 1976 (Acts 215 and 216) upgraded the Commissioners from part-time to full-time positions, increased the qualifications and compensation for staff, and added Administrative Law Judges to hold public hearings and issue initial decrees. In 1986, Act 114 established an Office of Trial Staff to represent the public in cases challenging utility rates.
- <sup>18</sup> The PUC has 526 staff and a budget of \$85 million. Of the 7000 private utilities the PUC oversees, only 150 are private water and wastewater companies.
- <sup>19</sup> Five of the ten water systems with the most expensive rates were in Pennsylvania. Only in New Jersey is a higher percentage of the state’s population dependent on private water.
- <sup>20</sup> “It has become very difficult to draw a meaningful line between urban and rural municipalities, and between cities, boroughs and surrounding townships, especially when considering police protection, refuse collection and disposal, sewage facilities, economic development, housing, flood control and water supply.” Borough Council Handbook, [www.blairco.org/Planning/Documents/PublicationsDownloads/borough\\_councilHB.pdf](http://www.blairco.org/Planning/Documents/PublicationsDownloads/borough_councilHB.pdf).
- <sup>21</sup> There are also 500 elected school districts, ranging in size from 200 to 140,000.
- <sup>22</sup> During the New Deal, the federal government granted money to states and municipalities for public works construction to stimulate employment and provide needed public facilities. The receiving entity had to match the federal funds, but many states and localities were unable to pay their share, because of restrictive debt limits and the depressed state of the economy. So, Pennsylvania and a number of other states created state “authorities” to use revenue bonds to borrow outside constitutional debt limits. Pennsylvania was one of three states that also passed enabling legislation to allow their municipalities to create authorities (Municipalities Authorities Act of 1935). The original act was revised in 1945 and 1951 and officially codified in the PA Consolidated Statutes in 2001. The latest version of the Municipality Authorities Act is contained in “Municipal Authorities in Pennsylvania,” April 2020, PA Governor’s Center for Local Government Services, April 2020.
- The revisions in 1945 clarified that an authority could “acquire, hold, construct, finance, improve, maintain, and operate projects (by owning or leasing, either as the lessor or lessee), provide financing for insurance reserves, make loans, and borrow money and issue bonds to finance them.” In 1951, the Pennsylvania Supreme Court ruled that municipalities could sign long-term leases with authorities; authorities could then borrow on the pledge of rentals made by the municipality over the term of a bond issue. The municipality would operate the project with its own employees and use the revenues collected to make the lease rental payments to the authority.
- <sup>23</sup> Board member appointments thus do not coincide with the shorter terms of municipal officials, in an effort to provide more board continuity on the planning-intensive and long-term projects they typically oversee.
- <sup>24</sup> Full-cost charging requires local governments to directly charge customers for the cost of infrastructure repairs and operations. The smaller and older the local water system, the higher the per capita costs of upgrading the water system. And these are precisely the kind of communities with customers least likely to be able to pay high rates. Because poorer families tend to live in older homes with older pipes that leak more, these families may already have higher water bills than residents with newer homes and newer water and sewer pipes.
- <sup>25</sup> Congressional Research Service, “Water Infrastructure Financing: History of EPA Appropriations,” 2018.
- <sup>26</sup> Ibid.
- <sup>27</sup> Clinton’s “reinventing government” initiative pushed the idea that private sector practices, metrics, and money could be used by government to improve services and save money. At the federal level, this meant opening up formerly “inherently government functions” to bids from private contractors or “outsourcing” without effective oversight (allowing more no-bid, cost-plus contracts, etc.). Many states and cities also embraced outsourcing, without understanding the management and accounting skills required for effective oversight. See Donald Cohen and Allen Mikaelian, “The Privatization of Everything,” chapters 1 and 2.
- <sup>28</sup> *Nicholas DeBenedictis came to Aqua from serving as SVP at a publicly traded nuclear utility, responsible for government relations, public policy, and environmental policies. He was an experienced lobbyist familiar with the state regulatory agencies involved with public utilities. He was at the EPA for the first eight years of its existence, leaving when Gorsuch took over, to work in Republican Governor Dick Thornburg’s cabinet. While he mostly worked for Republicans, he served on Democratic Governor’s transition team in 2016, and was a familiar figure in the state’s elite political and business networks.*
- <sup>29</sup> Food and Water Watch, “Aqua America: Strategies of a Water Privateer,” 2008.
- <sup>30</sup> In some places, small water authorities “municipalized” their water and sewer systems by joining with contiguous public systems to create economies of scale that allowed upgrades without exorbitant rate increases to users. As result, the total number of community water systems fell slightly between 2007 and 2015, and the overall number of people reliant on large municipal systems increased. Food & Water Watch, “The State of Public Water in the United States,” 2016.
- <sup>31</sup> Another company, American Water, headquartered in nearby New Jersey, tracked and supported Aqua’s policy innovations in Pennsylvania where it also had subsidiaries. In the early phases of privatization in Pennsylvania, it bought up very small systems but in the “wild west” era after Act 2, it acquired larger systems and now

- Pennsylvania American Water has a significantly larger customer base than Aqua Pennsylvania. Food & Water Watch, "American Water: A Corporate Profile," Nov 2013.
- <sup>32</sup> Food & Water Watch, "Aqua America: Strategies of a Water Privateer," 2008.
- <sup>33</sup> The PUC does not review operations of publicly owned water systems unless the system isn't working. The assumption is that public utilities are more accountable for poor service or high rate increases to citizens who could hold them accountable through electoral processes.
- <sup>34</sup> Food & Water Watch, "Aqua America: Strategies of a Water Profiteer," 2008.
- <sup>35</sup> DeBenedictis said: "Our theory has always been to go in for smaller rate cases but to go in more often." Food & Water Watch, "Aqua America: Strategies of a Water Profiteer," 2008.
- <sup>36</sup> For example, a private company operating a water system for \$2 million a year would add 10% for profits and ask for rate increase to cover a rate base of \$2,200,000. If the company invested \$1 million in a new filtration system and paid 9 percent a year in interest for that money (\$90,000), the company could add \$1,090,000 to its rate base of \$2,200,000 for a total of \$3,090,000 + 10% 10 percent profit (\$100,900) on the investment to create a new base rate to \$3,309,900. Although the profit rate remains 10%, the actual profits increase from \$200,000 to \$309,900.
- <sup>37</sup> Food & Water Watch, "Trends in Water Privatization," 2010.
- <sup>38</sup> Pennsylvania consumer advocate Sonny Popowski said PSWC would "ask for an excessive level...but they never get what they ask for." See Food & Water Watch, "Aqua America: Strategies of a Water Profiteer," 2008.
- <sup>39</sup> Robert Zausner and Rich Heidorn Jr, "How 'Nick's Bill' floated through and allowed hikes in water rates," *The Philadelphia Inquirer*, May 18, 1997.
- <sup>40</sup> *Ibid.*
- <sup>41</sup> Don Steinberg, "The water-supply cowboy: he corralled the largest U.S.-based publicly traded water company," *The Philadelphia Inquirer*, August 31, 2003.
- <sup>42</sup> Eight states adopted the DSIC: Connecticut, Delaware, Illinois, Indiana, Missouri, New York, Ohio, and New Jersey. Food & Water Watch, "The Distribution System Improvement Charge: A Rip-Off for Consumers," Fact Sheet. October 2011.
- <sup>43</sup> Food & Water Watch, "The Distribution System Improvement Charge: A Rip-Off for Consumers," Fact Sheet. October 2011.
- <sup>44</sup> *Ibid.*
- <sup>45</sup> *Ibid.*
- <sup>46</sup> E. Rubin, "The Possibilities and Limitations of Privatization," *Harvard Law review*, Vol-123. and J. Freeman and M. Minnow, "Government by Contract: Outsourcing and American Democracy," 2009. Besides its unprecedented use of private contractors in military supply chains in Afghanistan and Iraq, and the outsourcing of interrogations and security, the administration floated proposals for privatizing Medicare, the VA, the Post Office and even Social Security that went nowhere.
- <sup>47</sup> In a 2003 interview with the *Philadelphia Inquirer*, DeBenedictis said: "Why do we like the South? I'll tell you why. It's growing faster than the North. It's hotter, they water their lawns more, they take more showers. We don't have the problems with pipes freezing and breaking on Christmas Eve. There's less competition. We don't have 45 water companies like in New Jersey where every developer who wants to talk to a water company has a choice. It's nonunion. We think the South is going to be a completely different way of doing business." Don Steinberg, "The water-supply cowboy: he corralled the largest U.S.-based publicly traded water company," *The Philadelphia Inquirer*, August 31, 2003.
- <sup>48</sup> Food & Water Watch, "Aqua America: A Corporate Profile," May 2014.
- <sup>49</sup> Less than 1 percent of the \$831 billion eventually spent under ARRA from 2009-2016 supported local water infrastructure projects.
- <sup>50</sup> Food & Water Watch, "Aqua America: A Corporate Profile," May 2014.
- <sup>51</sup> The city of Atlanta signed a 20-year, \$428 million contract with United Water, a large private company, in 1999 to operate and maintain its municipal water system. Eight months later the French-owned company Suez purchased United Water, cut the number of employees from over 700 to just over 300 and decreased training. An epidemic of water breaks, brown water, and occasional "boil only" alerts followed. The city terminated its contract and returned to public ownership and operation in 2003. In 2011, after New York City contracted with foreign-owned Veolia to operate 14 wastewater treatment plants, after it promised annual savings of \$100-200 million. Veolia immediately cut the number of skilled sewage treatment workers—who test the quality of the water and are certified to handle dangerous chemicals—by 20 percent (120 workers were laid off). After Food & Water Watch and Corporate Accountability International exposed the company's poor health and safety record in the U.S. and abroad, the NY Dept of Environmental Quality stopped the contract in 2016.
- <sup>52</sup> Food & Water Watch, "Aqua America: A Corporate Profile," May 2014.
- <sup>53</sup> Food & Water Watch, "Aqua America: Strategies of Water Privateer," 2008.
- <sup>54</sup> Food & Water Watch, "Aqua America: A Corporate Profile," May 2014.
- <sup>55</sup> *Ibid.*
- <sup>56</sup> *Ibid.*
- <sup>57</sup> For more information about American Water, see the Food and Water Watch publication, "A Corporate Profile of American Water," 2013, <https://foodandwaterwatch.org/wp-content/uploads/2021/03/American-Water-Profile-FS-Nov-2013.pdf>.

- 58 In New Jersey and some other states, the authority to employ Fair Market Value estimates was limited to municipal systems in financial distress; this made it less attractive to investors. In Pennsylvania, every water system was a takeover target. Zhang, Riva, Grant, Warner, "Water Pricing and Affordability in the US: Public vs. Private Ownership, Cornell Working Paper, June 2021.
- 59 Food & Water Watch, "The State of Public Water in the United States," 2016.
- 60 By 2018, nine other states had passed similar laws. Five of those states were among Aqua's eight target states.
- 61 Peter Hall, "PA House panel revisits utility privatization law as consumers face soaring water and sewer bills," Pennsylvania Capital-Star, Dec 18, 2023.
- 62 Food & Water Watch, "Private Equity, Public Inequity: The Public Cost of Private Takeovers of U.S. Water Infrastructure," 2012.
- 63 Ibid.
- 64 Private equity firms are limited liability private partnerships that invest in other companies. They are more lightly regulated than publicly traded companies and are not required to publicly disclose much information. For a more thorough discussion of the risks they pose, see *These Are the Plunderers* by Gretchen Morgenson, 2023 and *Plunder* by Brendan Ballou, 2023.
- 65 Paradoxically, private equity firms and investment managers like water investments because they count as green investments.
- 66 A. Maykuth, "A pa. law sets off a feeding frenzy for public water systems. Will customers pay the cost?," Philadelphia Inquirer, Sept 2018.
- 67 Ibid.
- 68 Richard Gaw, "It's official: New Garden to sell its sewer system," Chester County Press, August 16, 2016.
- 69 Testimony of Peter Mrozinski to the Democratic Policy Committee hearing on January 22, 2024. He notes that "NGT continues to claim that the Office of Consumer Advocate (OCA) 'required' the removal of this clause. The public record including OCA filings and the Administrative Law Judge (ALJ) opinion do not support this claim. We have asked NGT several times to substantiate the claim. Not only have they failed to produce any substantiation, but they spent over \$20,000 on legal fees to avoid compliance with a Right to Know Request for any relevant documentation."
- 70 Aqua paid the Limerick Township 63% more for its sewer than its depreciated cost; this was \$23 million more than next closest bid.
- 71 Andrew Seidman, "Drowning in Water Bills Under New Utility Ownership," Philadelphia Inquirer, April 7, 2024.
- 72 Testimony of Peter Mrozinski to the Democratic Policy Committee hearing on January 22, 2024.
- 73 In the 1950s, the Chester Water Authority built a dam on the Octoraro Creek to create the reservoir and planted 30,000 trees a year for a dozen years, creating a healthy and protected watershed and a forest that is open to the public. Water from the Susquehanna River is also used. H. Thier, "The War Over Public Water in Pennsylvania," The Nation, August 8, 2022.
- 74 <https://chesterwaterfacts.com/case-study-of-springton-reservoir/>
- 75 The Commonwealth Court of Pennsylvania is one of two appellate courts in the state, comprised of nine judges elected in partisan elections and then facing a nonpartisan retention vote every ten years. Established in 1968, it is the only appellate court in country that only presides over civil actions brought against the commonwealth, state and local governments, and regulatory agencies. When lawsuits are filed by or against Pennsylvania, Commonwealth Court also acts as a trial court. Many of the state Supreme Court's most notable cases are initially heard by Commonwealth Court but may be overturned by the Supreme Courts. The Commonwealth Court has five Republican and four Democrats at this time.
- 76 See [chesterwaterfacts.com](https://chesterwaterfacts.com) for a very detailed narrative of the timetable here, replete with Freedom of Information collected documents.
- 77 DeBenedictis, chairman emeritus of Aqua/Essential Utilities' board of directors was on Wolf's transition team in 2014 and Aqua contributed to inaugural parties. His protégé Chris Franklin took over as CEO in 2015. G. Burley, "Something the Water," American Prospect, March 23, 2021.
- 78 Department of Commerce and Economic Development in the Governor's office.
- 79 Testimony of Noel Brandon, Board Chair of the Chester Water Authority, PA Senate Democratic Policy Hearing, "Reining in Water Rates: The Unintended Consequences of Act 12 of 2016," Jan 22, 2024.
- 80 Yet the price per customer was half the price Aqua had offered for several smaller systems. In an unusual public letter to the Delaware County Daily Times, American Water said it was a low figure; that they would have offered more than "\$400 million." A. Maykuth, "Was Philly region's largest water-utility sale a politically motivated sweetheart deal?," Philadelphia Inquirer, Oct. 1, 2019.
- 81 Ibid.
- 82 Aqua has proved to be a place where retiring Republican state officials could make a second career. DeBenedictis, the man who had taken a small suburban water company with a market cap of \$100 million in 1993 to the second largest private water company in the U.S., had started his career in the Pennsylvania Environmental Protection agency and lead state cabinet agencies. Aqua contracts with several "government affairs/lobbying firms" headed by former state officials. A former Pennsylvania Public Utilities Commissioner was tapped to become head of the National Association of Water Companies, a trade association for private water companies that helped Aqua's "innovations" spread to other states. The Republican speaker of the House, an advocate for

- DSIC, Act 1 and Act II, was hired to be General Counsel of Essential Utilities (the new name for the company after Aqua America acquired People's Gas) the week after he retired from the House.
- <sup>83</sup> A. Maykuth, "Was Philly region's largest water-utility sale a politically motivated sweetheart deal?," *Philadelphia Inquirer*, Oct. 1, 2019.
- <sup>84</sup> When the sale was announced, the Philadelphia Water Department and Mayor of Philadelphia said the city was still open to negotiating their contract with DELCORA, but Willert said the authority would only do so if it could bring Aqua with them.
- <sup>85</sup> A. Maykuth, "Aqua Pa. is fighting for a \$276 million deal in Delco after Bucks deal went sideways," *Philadelphia Inquirer*, Sept 15, 2022.
- <sup>86</sup> G. Gurley, "Something in the Water," *The American Prospect*, March 23, 2021.
- <sup>87</sup> McMahon notes that even in the face of public opposition, only 2 of the 7 Democrats controlling the council voted against the sale. Since most townships can't resort to referendums, he says it is important to reduce pressure on local municipal officials by "taking these huge sums of money off the table." Testimony before the Senate Democratic Policy Committee, Jan 22, 2024.
- <sup>88</sup> In Conshohocken, opponents of privatization created a petition, put up 100 lawn signs all over town, and filled a borough council meeting with opponents. The borough council unanimously voted down the sale, against the borough manager's advice. Conshohocken wastewater system remains public.
- <sup>89</sup> Willistown, another affluent township in Chester, was divided because half the town owned individual septic tanks, so the windfall offered by Aqua to the local government entity would be paid for by only half the town. The CEO of Essential Utilities, Chris Franklin, lived in Willistown. After heated discussion, the town did move forward with the sale and the PUC approved it in 2022, but the sale is not yet complete.
- <sup>90</sup> In July of 2021, Aqua bought the sewer system of Shenandoah Borough for \$12 million; in October acquired the Beaver Falls sewer system for \$41.25 million in October, and in January 2022, acquired Lower Makefield's 11,151 sewer customers for \$53 million.
- <sup>91</sup> A. Maykuth, "Bucks County may sell its massive water system, and that could cost ratepayers across the region," *Philadelphia Inquirer*, April 26, 2022. Pennsylvania American Water's bid came in second. Bernhard Capital Partners of Baton Rouge LA offered a 30-year lease to operate the system, with an upfront payment of \$190 million and capital investment of \$685 million and a rate limit of 2% a year over the 30 years. A. Maykuth, "Bucks County moves ahead on \$1.1 billion sewer system offer," *Philadelphia Inquirer*, July 13, 2022.
- <sup>92</sup> A. Maykuth, "Bucks County moves ahead on \$1.1 billion sewer system offer from Aqua Pa.," *Philadelphia Inquirer*, July 13, 2022.
- <sup>93</sup> Peter Hall, "PA House panel revisits utility privatization law as consumers face soaring water and sewer bills," *Pennsylvania Capital-Star*, Dec 18, 2023.
- <sup>94</sup> Upper Dublin Board of Commissioners in Montgomery County said they had sold their systems to BCWSA and expected it to stay public and that the sale could double their rates. Warrington Township Board of Supervisors sold their sewer system to BCWSA for \$16.4 million after rejecting an offer for twice as much from Aqua.
- <sup>95</sup> Franklin added "We respect the opinions of Bucks County elected officials and have offered to remain a resource to them. The professionalism of the staff at the BCWSA was exemplary and we hope to continue those collegial relationships as we work together to solve the water and sewer challenges in our region." In other words, no door is closed; Commissioners are elected. A. Maykuth, "Aqua Pennsylvania exits Bucks sewer talks after county officials snub sale," *Philadelphia Inquirer*, Sept 6, 2022.
- <sup>96</sup> Tom Sofield, "The Bucks County Water and Sewer Authority to borrow close to \$200 million for future Work," *Philadelphia Inquirer*, December 16, 2022.
- <sup>97</sup> A. Maykuth, "Aqua Pennsylvania exist Bucks sewer talk after county officials snub sale," *Philadelphia Inquirer*, Sept. 6, 2022.
- <sup>98</sup> A. Maykuth, "Pennsylvania American customers will see higher water and sewer bills starting in January," *Philadelphia Inquirer*, Dec. 8, 2022.
- <sup>99</sup> Editorial Board, "As Pa. municipalities sell water systems to for-profit companies, consumers are left paying the price," *Philadelphia Inquirer*, April 2022.
- <sup>100</sup> *Ibid.*
- <sup>101</sup> *Ibid.* American originally asked for a \$173.2 million increase and sought to shift \$73 million in costs from operating its new sewer systems to its water customers even though 90% of its water customers do not get sewer services from American. After PUC staff, the Office of Consumer Advocate, and other advocates complained the cross-subsidy was too much and not in the public interest, the Commissioners said only \$27 million of its sewer costs could be placed on its water customers. A. Maykuth, "Aqua Pennsylvania adds a Bucks County sewer system to its portfolio for \$53 million," *Philadelphia Inquirer*, Jan. 2022.
- <sup>102</sup> A. Maykuth, "A Florida company's \$115 million sewer bid stuns a suburban Philly Town," *Philadelphia Inquirer*, Aug. 21, 2022. NextEra began purchasing water utilities in 2021 when it acquired 23 water and 5 sewer systems in and near Houston. It tried to enter the bidding for BCWSA but was rebuffed by Bucks County officials when they chose to negotiate exclusively with Aqua, saying they preferred companies with a track record in Pennsylvania. NextEra's market valuation is \$179 billion, 13 times the market capitalization of Essential Utilities. It had \$17 billion revenue in 2021, three times the combined revenue of American Water and Essential Utilities.
- <sup>103</sup> A. Maykuth, "A Florida company's \$115 million sewer bid stuns a suburban Philly Town," *Philadelphia Inquirer*, Aug 21, 2022.



- <sup>104</sup> Ibid. During the Senate Policy Committee Hearing in January 2024, Bill Ferguson of Keep Water Affordable, suggested that PFM was a familiar actor in privatization deals and “invariably recommended that the municipality take the highest offer – because that would secure the largest fee for its services.”
- <sup>105</sup> A.Seidman, “The fight over a suburban Philly town’s proposed sewer sale is now in court,” Philadelphia Inquirer, Aug. 29, 2023.
- <sup>106</sup> Description of the activity by Chris Franklin, Essential Utilities/Aqua CEO.
- <sup>107</sup> S. Caruso, “Critics call water quality bill moving through Pa. legislature a back door to privatization,” Spotlight PA, Philadelphia Inquirer, Aug 5, 2022.
- <sup>108</sup> Ibid.
- <sup>109</sup> Ibid.
- <sup>110</sup> Ibid.
- <sup>111</sup> Ibid.
- <sup>112</sup> Ibid.
- <sup>113</sup> Ibid.
- <sup>114</sup> Testimony before the Senate Democratic Policy Committee, Jan 22, 2024.
- <sup>115</sup> Verbal testimony of Patrick Cicero before Senate Democratic Policy Committee Regarding Act 12 of 2016 (Section 1329 of the Public Utility Code), Jan 22, 2024
- <sup>116</sup> Ibid. Pennsylvania American increased its average water rate base from \$5,565 to \$7,423 or 133%; Aqua Pennsylvania increased its average rate base from \$7,177 to \$9,812 or 137%.
- <sup>117</sup> Peter Hall, “PA House panel revisits utility privatization law as consumers face soaring water and sewer bills,” Pennsylvania Capital-Star, Dec. 12, 2023.
- <sup>118</sup> See Table 2 from the Testimony of Stephen DeFrank, Chairman of the Pennsylvania Public Utility Commission, Jan. 22, 2024.
- <sup>119</sup> Video testimony of Patrick Cicero before the Senate Democratic Policy Committee Regarding Act 12 of 2016 (Section 1329 of the Public Utility Code), Jan. 22, 2024.
- <sup>120</sup> HB 1862: Would require a selling municipal corporation to issue notices to its residents and gather and share information on expected rate increases before the sale.
- HB 1863: Would repeal the requirement that the PUC issue a final order (approve/disapprove) a requested sale of a water or sewer system within 6 months of receiving filing materials.
- HB 1864: Would require the acquiring company to spread out rate base increases to pay for a newly acquired system over four rate case periods, instead of adding the entire cost in the first rate case after the sale is approved.
- HB 1865: Only allows a “fair-market” value to be if the municipal setter is a distressed system – go back to the way things were pre-2016.
- <sup>121</sup> The EPA estimates that an average family of four uses 10,000 gallons of water a month.
- <sup>122</sup> Testimony of Anthony Bellitto, Executive Director, North Penn Water Authority, testifying on behalf of PMAA, the Senate Democratic Policy Committee Public Hearing on Reining in Water Rates: The Unintended Consequences of Act 12 of 2016. Calculated from “Comparison of Quarterly Water Bills of Residential Customers.”
- <sup>123</sup> Verbal testimony, *ibid.*
- <sup>124</sup> The first sentence of the Public Utility Code Section 1301(a) (relating to rates to be just and reasonable; regulation), 66 PA.C.S. 1301 (a) provides: “Every rate made, demanded, or received by any public utility or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.”
- <sup>125</sup> Cawley goes on to argue that Public Utility Code Section 1327(a) already allows financial incentives to be given to truly distressed or non-viable municipal systems and includes essential customer protections absent from Section 1329 (Act 12). He suggests a slight amendment to Section 1327 would make Section 1329 unnecessary.
- <sup>126</sup> A. Maykuth, “A Florida company’s \$115 million sewer bid stuns a suburban Philly town,” Philadelphia Inquirer, Aug 21, 2022.
- <sup>127</sup> The current version of PA House Bill 1862 states: “A selling municipal corporation must issue and advertise requests for proposals. Each entity that submits a bid must estimate future rate increases that will ensue and the selling municipal corporation shall retain an actuary to review and . . . the estimates. It must update residents in monthly meetings about progress with the sale. A month before a vote on the sale, the municipality must send the estimates of the rate increases to all residents of said municipality.”