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MEMO

To: Cumberland County Utility Authority Commissioners

CC: Cumberland County Commissioners, Mayor Albert Kelly, Mayor Benjamin Byrd Sr., and Mayor James P. Crilley

From: Jocelyn Sawyer, New Jersey Organizer, Food & Water Watch

Date: June 17, 2021

Re: Serious concerns with proposed RFQ for a study of the monetization of the CCUA

Dear Chair Jones and Commissioners Dawson, Rajacich, Smith-Bey, Edwards, Edwards, and Andre,

Food & Water Watch, a national nonprofit organization that works to ensure clean water and safe food, is writing to raise serious concerns with your proposed Request for Qualifications (RFQ) to study the monetization of the CCUA. Food & Water Watch is a leading consumer advocacy organization that specifically studies the consequences of water and wastewater privatization on consumers and works with communities across the country to protect public water resources.

CCUA ratepayers have reached out to us because they fear the CCUA is having a fire-sale of their public utilities to a private equity firm or water corporation. Given the timing of the recent RFQ right after the unsolicited proposal from an out-of-state private equity firm, Bernhard Capital Partners, they have informed us that you appear to be rushing into a 30-year concession deal or long-term sale of the system. The RFQ indicates that the implementation may begin in less than a year ("Responses to this RFQ may be used by the CCUA to formulate an implementation program that will commence in late 2021 or early 2022" p. 1). It would be reckless and counter to the public interest to sell or lease a utility asset on such a rapid timeline.[1]

The CCUA is embarking on a major change in its financial structure, one that could cost ratepayers millions of dollars over decades. In order to protect the interests of the public, such

[1] The CCUA has recently extended the RFQ timeline to provide more time for due-diligence of this evaluation contract. This is an improvement over the original RFQ procurement schedule, which gave less than a month to receive proposals and a mere two days to review them.

an arrangement would require at the minimum a professional evaluation of all options with public input in the process prior to moving forward. Although on its surface the CCUA's RFQ expresses a goal of having an objective evaluation by experts, the actual language of the solicitation and scope of work undermines this very goal. The language of the RFQ expresses bias and desire to pursue a long-term concession or sale of the system regardless of its impact on the public.

Flawed Contracting Process

The RFQ,[2] which is requesting proposals to conduct an evaluation of the system and monetization options, has numerous red flags that undermine the neutrality and accuracy of any resulting evaluations or proposals:

- **The solicitation is not neutral**. It fails to ask the firm to evaluate whether privatization is in the public interest. The first task under the scope of work explicitly requests responders to "design a program to allow the CCUA to leverage private sector expertise to plan, engineer, finance, construct, and operate water and wastewater infrastructure improvements" (p. 2). This indicates that the CCUA has already decided to proceed with privatization, and is soliciting a firm to design the privatization program and "provide options to the CCUA through the monetization process" (p. 3).

- **The process encourages conflicts of interest in the scope of services and requests that the respondents confirm their ability to "implement and sustain" an infrastructure program.** The RFQ implies that a potential concessionaire or buyer could be selected to evaluate their own proposed concession or sale deal with CCUA.
  - It solicits proposals from service providers instead of the professional firms that perform studies, evaluations and valuations of utility assets: "This RFQ seeks responses from local and national private sector service providers that offer innovative solutions for funding and implementing an affordable and sustainable asset management program for the County infrastructure" (p. 1).
  - It does not have a clause indicating the firm that evaluates the system cannot bid to buy or lease the system, and in fact, the scope of services asks the responding companies to "provide options for any other services or recommended services that could be provided through a relationship with your organization" (p. 3).

[2] Note: the standard procurement process for public-private partnerships is to solicit qualifications in order to pre-qualify firms before requesting proposals from those qualified firms. This RFQ solicits actuals proposals from responding firms, not just qualifications: "sealed proposals will be received," (p. 1) and it says "the contents of the proposal" could become actual contract language (p. 8).

- The RFQ requests information in the proposal that "confirms the proposer's ability to implement and sustain a long-term comprehensive infrastructure program" (p. 6).
- The RFQ even asks this potential concessionaire or buyer to tell CCUA what the system is worth instead of seeking an outside independent appraisal and valuation: "Provide an economic evaluation that will specifically consider the valuation of the facilities to be leased or purchased" (p. 3).

- **The RFQ has vague selection criteria.** Lack of explicit criteria for evaluating and selecting a winning bidder opens the door to concerns about objectivity. The criteria, for example, include the open-ended item: "Any other relevant factors" (p. 4).

You should abandon the monetization and privatization process. The process is marred with confusing and unclear RFQ language that blurs the lines between professional evaluations and corporate pitches. It dangerously opens the door to allow a corporation or private equity firm to evaluate its own proposal for a 30-year concession deal or asset sale.

Risks of Privatization: Deeply Expensive & Nearly Impossible to Exit

Wastewater privatization through sales or concession contracts must be rejected as an option. These schemes are high-risk loans that would trap generations of county residents with higher sewer bills.

Concessions and sales are expensive loans. The upfront concession fees or purchase prices may look enticing, but the simple truth is: there is no free money. Any money that the company pays in exchange for long-term control of the sewer system would be made back from households and local businesses along with a huge profit. That profit will be siphoned out of Cumberland County to Wall Street investors. Private equity dollars are considerably more expensive than public borrowing on the municipal bond market. The typically concession deal carries a cost of capital of more than 10 percent before taxes, and investor-owned utilities are allowed to make a 10 to 11 percent rate of return.

Excessive rate hikes are inevitable. Higher capital costs mean higher sewer bills for households and local businesses. These rate increases are not subject to review by the county or the CCUA. With a concession contract, the concessionaire would raise sewer rates based on the provisions of the concession contract without oversight by the Board of Public Utilities. Similar concession deals have provided clauses that allow for rate hikes to allow the investors to earn an automatic 11 percent rate of return on:

- Any capital improvement beyond the listed amount of base improvements;
- Any cost overruns for those improvements;
- Any unforeseen event like a new water quality regulation;

- Any “pre-existing environmental condition” like the presence of hazardous substances around the system; and
- For any “revenue adjustment event” – including water conservation leading to lower water usage and resultingly lower sewer bills based on that usage.

Sales are also associated with significantly higher sewer rates. Although the rate increases would be subject to BPU review, the BPU generally allows rate increases to ensure that investor-owned utilities can earn a rate of return of about 10 percent and can pass on all operating costs and taxes.

Privatization can trap communities in expensive deals. Sales of sewer systems are permanent, and concessions, which are usually for 30 to 40 years long, are extremely difficult to exit early. After taking office, the new municipal services director in Bayonne, NJ, posed as his first question: how do we get out of the city’s water concession contract? He was told the city would have to repay the $150 million concession fee that it no longer has. Since entering into a decades-long concession deal in 2012, Bayonne has experienced rate hikes of 50 percent despite promises of rate stabilization. According to the Hudson Reporter, a Board of Education Trustee recently told the new city council, “You didn’t sign the contract, and neither did the citizens of Bayonne, but everyone is suffering because of it.” Similarly, Middletown, PA, was unable to exit its water concession deal, and attempted to stop surcharges in court and lost.

The CCUA has a responsibility to fund its infrastructure in the most equitable way so that every person can have access to safe and affordable service. With federal infrastructure talks ongoing and American Recovery Plan money already appropriated for localities, there are more abundant federal resources available to help make public investments in high quality service – without giving an out-state private equity firm control over the system to make profit at the public’s expense.

Protect Cumberland County residents by suspending this process and rejecting privatization.

Attached documents:

- Recent article about the high cost of Bayonne’s water concession deal
- Private Equity, Public Inequity
- Borrowing Trouble
- A Guide to Understanding and Evaluating Infrastructure Public-Private Partnerships in the Water Sector
- Letter from Fayetteville Public Works Commission about Bernhard Capital Partners
    - In May, the Fayetteville PWC, NC, suspended negotiations with Bernhard Capital, saying “BCPM has not established the transparency and trust necessary for PWC to continue discussions or evaluations of this significant finance transaction that would potentially have had implications for decades to come.

PWC statement: Utility asks out of non-disclosure agreement with Bernhard Capital

April 27, 2021

By: Public Works Commission board

Editor's note: Bernhard Capital Partners, a private equity firm based in New Orleans, has offered a proposed "concession" arrangement involving the Fayetteville Public Works Commission. Under the agreement, the firm would pay potentially hundreds of millions to the City of Fayetteville for the rights to manage the utility and collect the revenue, for 30 years. The following statement was released on Saturday by the PWC board.

Since the (Raleigh) News & Observer published stories about Bernhard Capital and a proposed concession deal with PWC and other utilities in North Carolina, community discussions have started.

Bernhard representatives were guests on WIDU radio on Friday morning, sharing their overview of how such a deal would benefit Fayetteville. PWC currently is under a non-disclosure agreement with Bernhard that has allowed the two parties to provide each other with information to fully evaluate such a major decision, but it does not allow PWC to openly discuss with our community stakeholders.

Bernhard publicly stated this morning that they are committed to open and transparent communications around such an offer. PWC has asked Bernhard to release us from the restrictions of the NDA and allow us to share information contained within the proposed concession and the financial model that has been shared with PWC and City (of Fayetteville) officials.

This release would allow us to have a transparent conversation with our community about the full understanding of the concession offer and impact it would have on essential electric and water services, customer bills and the financial health of the PWC.

PWC has a long and successful history of reliably serving Fayetteville/Cumberland County with strategic, long-term prudent planning. It is important that the community see complete details for such a significant financial transaction that has implications for generations to come.