

COUNTY OF LEHIGH, PENNSYLVANIA
RESOLUTION NO. 2019 - 27
SPONSORED BY COMMISSIONERS BRACE & OSBORNE
REQUESTED DATE: APRIL 15, 2019

**STATEMENT OF THE BOARD OF COMMISSIONERS REGARDING THE
EXTENSION OF THE ARTICLES OF INCORPORATION
OF LEHIGH COUNTY AUTHORITY**

WHEREAS, in accordance with the Pennsylvania Municipality Authorities Act and the Lehigh County Home Rule Charter, the Lehigh County Authority proposed a fifty-year extension to its Articles of Incorporation through Commissioners Bill 2018-09; and

WHEREAS, on April 11, 2018 the Board of Commissioners defeated Commissioners Bill 2018-09; and

WHEREAS, on June 13, 2018 the Board of Commissioners appointed Commissioners Osborne and Brace to a Lehigh County Authority Working Team (LCA Working Team); and

WHEREAS, in addition, the Board of Commissioners approved the following “charge” for the LCA Working Team. The LCA Working Team shall investigate and report back to the full board on the following items:

- The sustainability of LCA’s financial plan for both the Allentown and Suburban divisions, including consideration of rates and asset management.
- Determine whether an independent financial study is necessary or desirable to assess current viability and long-term sustainability.
- Recommend ways to improve communications, specifically regarding informational items, upcoming decisions, or key indicators on success of financial plan implementation.
- Method of sewer system overflow reporting and plan for reduction.
- A recommendation on the need to extend LCA’s charter, for how long and under what conditions.

WHEREAS, the LCA Working Team has prepared and distributed to all Commissioners a "Summary of Findings", a copy of which is attached as Exhibit A.

WHEREAS, some of the highlights from the "Summary of Findings" include:

- The Working Team believes the best course of action for the LCA charter is to extend it to a full 43 years.
- The Working Team believes the LCA charter needs to provide a requirement for an annual public presentation to the BOC and a semiannual review of environmental impact.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH, PENNSYLVANIA THAT:

1. The above Whereas clauses are incorporated by this reference.
2. The Board of Commissioners supports the LCA Working Team's proposed "Summary of Findings" and its conclusions. The Board requests that the Lehigh County Authority incorporate the "Summary of Findings" in a future request to extend the Authority's term of existence, as attached hereto as Exhibit A.
3. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Resolution.
4. Any resolution or part of resolution conflicting with the provisions of this resolution is hereby repealed insofar as the same affects this resolution.

5. The County Executive shall distribute copies of this resolution to the proper officers and other personnel whose further action is required to achieve the purpose of this resolution.

ADOPTED BY THE LEHIGH COUNTY BOARD OF COMMISSIONERS

on the _____ day of _____, 2019, by the following vote:

Commissioners

AYE

NAY

Geoff Brace
Nathan Brown
Percy H. Dougherty
Marc Grammes
Dan Hartzell
Amanda Holt
Marty Nothstein
Brad Osborne
Amy Zanelli

ATTEST:

Clerk to the Board of Commissioners

LCA Working Group Report

April 19, 2019

Executive Summary

The information below is intended to function as an executive summary of the Lehigh County Authority (LCA) Working Group's findings and recommendations to the Lehigh County Board of Commissioners (BOC). The report is provided to assist the County Commissioners in fulfilling its due diligence in determining a response to the LCA's request for a charter extension. It includes appendices of meeting notes, financial information and supplemental materials to document the rationale used in providing these findings and recommendations. The LCA Working Group consisted of Commissioner Geoff Brace, Commissioner Brad Osborne, Lehigh County Director of General Services Rick Molchany and Lehigh County Authority CEO Liesel Gross. The findings and recommendations come with the support of Commissioners Brace and Osborne, as well as Rick Molchany.

This document contains multiple-page appendices which have been condensed to one page for electronic purposes. You can click on the images to open a PDF to view the full document.

Legal Matters

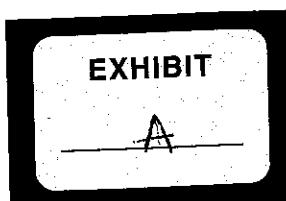
The Lehigh County Department of Law (DOL) provided guidance on the Board of Commissioners' responsibilities and liabilities for the LCA request for a charter extension. That response is included as Appendix F.

Financial Matters

One of the concerns articulated by the BOC when rejecting the LCA charter extension request in 2018 was related to finances of LCA. Given the importance of the topic to the community and the very large financial implications of continued borrowing to ratepayers, several members were concerned with the operating philosophy related to LCA's debt and capital planning process. An additional concern raised was whether or not the finances of the City of Allentown (COA) lease agreement was jeopardizing the LCA's ability to secure financing for Suburban division capital projects.

LCA's leadership was instrumental in providing the information to the Working Group to draw conclusions about LCA's finances. Information detailing the separation of these operations can be found in the meeting notes found in Appendixes B, C, D, E.

When considering LCA's finances, it is important to view LCA's rates in context with other water service providers. LCA provided a rate comparison illustration in Appendix L.



Capital Planning

LCA's capital planning process requires extensive forecasting for infrastructure needs, population growth and revenue. In the past, much of the forecasting placed an emphasis on borrowing for what the Working Group viewed as routine maintenance of existing infrastructure. The most recent capital plan, however, shows movement away from such borrowing and begins to anticipate rate adjustments to pay for routine maintenance. Any planned borrowing focuses on growing regional assets and one-time expenditures. As such, LCA's leadership believes it is demonstrating a much more fiscally responsible financial plan for capital improvements. Appendix H provides summaries for the capital plans for Suburban Waste Water, Suburban Water and COA system and is supplemented by the full capital plan for each division.

Debt Load

Based on a review of information provided by LCA leadership and conversation about Debt Service throughout the Working Group's process, it is clear LCA's philosophy on debt has changed. LCA leadership provided an illustration of this change in philosophy in the Condensed Cash Flow Projections for the Capital Plan 2020-2024, which demonstrates a shift from financing capital plan activities for routine maintenance to user charges. This contrasts with the information in Appendix K, which shows a significant reliance on borrowing for routine maintenance and includes commentary about LCA's not meeting full payment on debt service in the 2008 bond issue and Pennworks loan. This debt load will certainly have bearing on future user charges, but the Working Group believes that LCA's leadership and Board of Directors has shown commitment to scrutinizing what is considered debt-worthy activity, thereby taking pressure off future debt needs.

Firewall between COA and Suburban Divisions

During the course of the conversations, the Working Group critically probed to better understand the financial picture for LCA and to ensure a firewall exists between the COA operations and the Suburban operations. With the information provided, the Working Group feels confident LCA both illustrated, and commits to, a clear firewall between the COA and suburban divisions today and into the future.

The capital planning process demonstrates an impenetrable firewall between the COA and Suburban divisions, detailing revenue for the divisions and substantiated by annual independent audits. Further, the COA lease agreement creates a trustee (through M&T Bank) to ensure disbursal of revenue collected by the COA operation is applied through requisition by LCA. This ensures revenue paid by Allentown customers can only go toward Allentown operations. All revenue collected from Suburban customers is deposited in a different institution, is managed separately, and audited as such. Refer to the notes from the March 26, 2019 Working Group Meeting in Appendix E and the Trust Indenture Language from the COA lease in Appendix G.

- Articulate the picture of the LCA finances as understood by the working group.
- Provide a simple, but verifiable illustration of the suburban economic picture isolated from the Allentown concession business
- How does LCA allocated debt service for the two distinct operations (Allentown and Suburban).

Governance Matters

The Working Group, the Lehigh County administration and LCA spent considerable time discussing governance. A recommendation related to questions raised by the BOC is detailed below.

Since 2014, the composition of the LCA BOD has experienced approximately 50% turnover, some forced by the BOC and others a product of attrition. Further, the entire leadership team is comprised of new, competent and dedicated staff committed to collaboration with the BOC and the administration.

The Working Group believes LCA's critical governance need is in the form of competent board members who exercise due diligence and who take their responsibility to work effectively with LCA management in acting as good stewards of this critical public utility. In that regard, all legal duties must be fulfilled by board members and all board members must feel and be empowered to fulfill those duties.

Periodically, this will mean challenging LCA management. This will require the BOD to effectively set and communicate the direction of LCA and its vision to the community. The Working Group is pleased with the direction taken by this current LCA BOD in exhibiting the characteristics of effective board governance, but cautions future board nominations and confirmations must include individuals experienced in challenging the status quo.

Recommendations for Board of Commissioners

Continue Legal Obligation toward LCA

The BOC must continue to exercise its due diligence toward LCA. As such, it needs to evaluate requests to amend the charter and carefully review individuals being appointed or re-appointed to the LCA BOD. However, this recommendation also comes with a very strong belief that the Lehigh County Board of Commissioners must not disband LCA. The best possible management of a critical public sector utility is through a board constituted specifically to govern that utility.

Charter Amendments

The Working Group believes the best course of action at this time for the LCA charter is to extend it to a full 43 years. This will allow the LCA BOD to explore the full range of financing options to address its long-term capital needs. This may or may not include federal financing opportunities (WIFIA) or even traditional bond financing. The timeline for either option does not require the full 50 years of existence permitted under law, but does warrant a number allowing for that flexibility. Based upon information provided by LCA leadership, 43 years is the likely scenario to allow for that flexibility. See Appendix M for more information.

The purpose of this extension is exclusively linked to the long-term capital financing needs of the LCA Suburban division. Without the extension, even traditional bond financing with a 30-year term is not possible.

Additionally, the LC BOC should be prepared in the future to make adjustments to the charter further extending it when doing so makes sense and the extension can be justified with concrete information such as what was provided for this recommendation. It is simply not sufficient to provide the extension for the sake of providing an extension.

BOC Representation on LCA Board

The Working Group does not believe the charter should be amended to require the inclusion of a member of the BOC on the LCA BOD. Periodically, such an appointment might be necessary or desirable, but may not be necessary all the time. Such a requirement would likely, over the long-term, cause problems for the LCA BOD being able to conduct normal business (issues with quorums, turnover in BOD composition). When the BOC wants to have one of its members to serve on the LCA BOD, it can communicate its desire to the Executive. No amendment to the LCA charter is necessary to achieve this outcome. The only requirement is cooperation between the administration and the BOC.

Reporting Requirements

The Working Group believes the LCA charter extension request needs to include a requirement for a semi-annual public presentation to the BOC regarding environmental performance and system overflows, and an ongoing plan for reductions. In addition, an annual presentation is to include capital plans, rate projections, demonstration of firewall compliance, and all information reasonably requested by the Lehigh County Board of Commissioners seated at the time.

Communications

The Working Group believes LCA's communication efforts with the BOC over the last year have improved dramatically. This trend needs to continue. While the semi-annual and annual presentations to the BOC will provide a forum for communication to occur, it cannot be the exclusive method for communication. Information and explanation of news and media accounts, and general trends related to LCA business, need to be shared directly with the BOC and the administration as they occur.