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July 22, 2022

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

**Re: Application of Aqua Pennsylvania Wastewater, Inc., pursuant to Sections 507,
1102 and 1329 of the Public Utility Code for Approval of the Acquisition by
Aqua of the Wastewater System Assets of Willistown Township,
Docket No. A-2021-3027268**

Dear Secretary Chiavetta:

Pursuant to 52 Pa.Code § 5.572, enclosed herewith for electronic filing is the following pre-served Petition for Stay Pending Judicial Review by *Pro Se* Intervenor Robert Swift.

Very truly yours,

/s/ Robert A. Swift
Robert A. Swift

RAS:yr
Enc.

CERTIFICATE OF SERVICE

Via E-Mail

I hereby certify that I have served a true and correct copy of the foregoing Petition for Stay Pending Judicial Review by *Pro Se* Intervenor Robert Swift to the following individuals in accordance with the requirement of § 1.54 (relating to service by a party.)

Dated: July 22, 2022

/s/ Robert A. Swift
Robert A. Swift

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, : A-2021-3027268
Inc., pursuant to Section 1102 and 1329 of the :
Public Utility Code for Approval of the :
Acquisition by Aqua of the Wastewater System :
Assets of Willistown Township :

**INTERVENOR ROBERT SWIFT'S
PETITION FOR STAY PENDING JUDICIAL REVIEW**

Pro Se Intervenor Robert Swift ("Petitioner") respectfully files this Petition for Stay Pending Judicial Review ("Petition"), pursuant to Pa. R.A.P. 1781(a) and 52 Pa. Code § 5.572, requesting that the Commission grant Intervenor a stay pending the disposition of his Petition for Review in the Commonwealth Court, or Pennsylvania Supreme Court, from the Commission's July 8, 2022 Opinion and Order (collectively, the "Order") in the above-captioned matter.

The Order approved issuance of a certificate of public convenience to Aqua Pennsylvania Wastewater, Inc. (Aqua") to acquire the sewer system of Willistown Township. Petitioner intends to file a Petition for Review of the Order in the Commonwealth Court. This Petition seeks to preserve the *status quo* pending action by the Commonwealth or Pennsylvania Supreme Court.

In support of this Petition, Petitioner aver as follows:

Background

1. Petitioner is a resident of Willistown Township whose residence is connected to the Willistown sewer system. For many years, each has paid sewer usage fees to Willistown Township.

2. On August 3, 2021, Aqua filed an Application for approval of the purchase of the Willistown sewer system.

3. On January 14, 2022, the Commission notified Aqua that its Application was accepted for filing.

4. On January 25, 2022, Administrative Law Judge Watson permitted Petitioner to Intervene to oppose the sale of the sewer system to Aqua.

5. In a 220-page Recommended Decision entered April 21, 2022, ALJ Watson denied Aqua's Application making 144 individual findings of fact and 32 conclusions of law.

6. By Order dated July 8, 2022 (entered at a public hearing on July 14, 2022), the PUC approved the Application, subject to certain conditions, and granted Aqua a Certificate of Public Convenience.

7. Petitioner contacted Aqua's and Willistown's attorneys seeking their consent to a stay, but they did not consent thereto.

Legal Standard

6. The Commission has authority to entertain this Petition pursuant to Pa.R.A.P. 1781(a), which states that: "Application for a stay or supersedeas of an order or other determination of any government unit pending review in an appellate court on petition for review shall ordinarily be made in the first instance to the government unit." See also Pa.R.A.P. 1701(b)(1).

7. A stay is appropriate and necessary when a party demonstrates that (1) it is likely to prevail on the merits; (2) it will suffer irreparable injury without the requested relief; (3) issuance of a stay will not substantially harm interested parties in the proceedings; and (4)

issuance of the stay will not adversely affect the public interest. *See PUC v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983).

Request for Stay Pending Appeal

Petitioner Is Likely to Succeed on the Merits

8. In *Process Gas*, the Pennsylvania Supreme Court noted that the tribunal which had just rendered an adverse decision could nonetheless determine that an applicant for stay had presented a substantial case on the merits even though that tribunal disagreed that its own order would likely be reversed. *See Process Gas*, 467 A.2d at 809, n.8 ("[T]here are ample instances where the lower tribunal could find that the applicant has presented a substantial case on the merits even though it disagrees.").

9. The Commission has said that the *Process Gas* criteria "require the balancing of all interests, including the public, where applicable." *PUC v. HIKO Energy, LLC*, Docket Nos. P-2015-2519419 and C-2014-2431410, Opinion and Order entered January 28, 2016 at page 11. Further, the Commission has observed that: "[I]n deciding whether to stay one of our orders pending appeal, this Commission should not indulge in a further review of the case. Rather, this Commission should concentrate solely on the effect our Order will have pending appeal." *PUC v. Makovsky Brothers, Inc.*, 53 Pa. PUC 510, 511 (1979).

10. Here, as in *Process Gas*, significant questions exist regarding the Commission's rejection of the Recommended Decision of ALJ Watson denying the sale of the sewer system. The Commission ignored or rejected the major findings of fact and conclusions of law in the Recommended Decision, frequently without explanation. The Commission gave undue weight to consolidation and regionalization, which have little application to Willistown's standalone sewer system, and gave little or no weight to substantial evidence of a likely 86% rate increase to

Willistown sewer users. Given the likelihood that the Commonwealth Court will find these challenges to the Order as significant, substantial and meritorious, Petitioner urges the Commission to stay any issuance of a certificate of public convenience to Aqua.

Irreparable Injury Will Occur Without a Stay

11. The Order permits consummation of the sale of the Willistown sewer system to Aqua. A sale will transfer all pumping stations, piping and operation of the system to Aqua as well as changing the billing system to customers so that users will be charged for external water usage (i.e. water usage that does not enter the sewer). Consummation will force customers to change who they contact in the event of a sewer malfunction and change the cost for remedial action if the malfunction includes a lateral sewer line.

12. Consummation of the sale will require Willistown to pay \$350,000 to PFM Advisors, whose 2% contingent fee is due upon closing of the transaction. Yordan Stat. 1, p.12, ll.16-21.

13. If the Commonwealth or Pennsylvania Supreme Court reverse the Commission, it will be difficult, expensive and time consuming to unwind the sale operationally, and Willistown may not be able to recover the \$350,000 paid to PFM Advisors.

14. Consummation of the transaction pending Petitioner's appeal from the Order constitutes irreparable harm. Unless a stay pending appeal is granted, the Order will deprive Petitioner of meaningful access to judicial process. Refunds to sewer customers from excess billing will be difficult and time consuming to recoup.

Other Interested Parties Will Not Be Substantially Harmed by a Stay

15. The issuance of a stay pending appeal will not substantially harm Aqua or Willistown. The purchase price of \$17.5 million can be placed in an interest-bearing account.

For 45 years, Willistown has ably and successfully operated its sewer system, and currently has employees knowledgeable in its operation. Willistown is fiscally able to continue operating the sewer system. There are no pending DEP violations, and customers will continue to pay their sewer bills using the Township's billing system. There will be no disruption to the sewer system or Willistown customers pending the ultimate disposition of Petitioner's appeal from the Order.

A Stay Will Not Adversely Affect the Public Interest

16. The issuance of a stay pending appeal will not adversely affect the public interest.

Conclusion

WHEREFORE, Petitioner respectfully requests that the Commission issue an Order:

- A. granting this Petition for Stay;
- B. entering an Order staying the issuance of a certificate of public convenience pending the ultimate disposition of Petitioner's appeal from the Order;
- C. granting such further relief in favor of Petitioner as may be just and reasonable under the circumstances.

Dated: July 22, 2022

By: /s/Robert A. Swift
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VERIFICATION

Robert A. Swift, hereby verifies that the statements made in the foregoing Petition are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa. Cons. Stat. 4904 relating to unsworn falsification to authorities.

Dated: July 22, 2022

/s/Robert A. Swift

Robert A. Swift