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August 9, 2022

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
400 North Street
Harrisburg, PA 17120

Re: PA Public Utility Commission v. Aqua Pennsylvania, Inc.
Docket No. R-2021-3027385

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Petition to Intervene of the New Wilmington Municipal Authority with regard to the above-referenced matters. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Karen O. Moury

Karen O. Moury, Esq.

KOM/lww

Enclosure

cc: Hon. Mary D. Long, w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Petition to Intervene, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

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Dated: August 9, 2022

Karen O. Moury

Karen O. Moury, Esq.

3. Following the exchange of pre-served written testimony, the conducting of hearings, and the filing of briefs, the Office of Administrative Law Judge issued a Recommended Decision (“R.D.”) on February 18, 2022. An extensive procedural history is set forth on pages 1-4 of the R.D.

4. Exceptions and Reply Exceptions were filed to the R.D. On May 16, 2022, the Commission entered the *May 2022 Order* adopting the R.D., as modified. Through the *May 2022 Order*, the Commission, *inter alia*, directed that Aqua remove NWMA from Rider DRS – Demand Based Resale Service (“Rider DRS”) and shift the Authority from negotiated rates to full tariff rates. *May 2022 Order* at pages 53-63.

5. On June 8, 2022, the Commission entered an Order granting the Petitions for Reconsideration and Clarification of the *May 2022 Order* filed by Aqua, the Coalition of Affordable Utility Services and Energy Efficiency in Pennsylvania and the Office of Small Business Advocate, pending further review of, and consideration, on the merits. The Commission has not yet ruled on the merits of the Petitions for Reconsideration and Clarification.

6. NWMA is seeking to intervene for purposes of requesting a modification of the *May 2022 Order* that affords the Authority an opportunity to remain on negotiated rates Under Rider DRS until the next rate case so that it may explore the availability of competitive alternatives and present evidence as to the viability of the same. This modification would cure the lack of notice that NWMA had before the issuance of the *May 2022 Order*.

II. PROPOSED INTERVENOR

7. NWMA is a municipal authority that, *inter alia*, delivers water to residents and businesses of the Borough of New Wilmington (“Borough”) through its distribution system. The Borough of New Wilmington has a population of approximately 2,000 and the NWMA’s

customer base includes large water users such as Westminster College, Wilmington Area School District and two long-term nursing facilities, Shenango On the Green and The Grove at New Wilmington. Since 2008, NWMA has purchased the water that it delivers to residents and businesses of the Borough from Aqua under a 30-year contract.

8. The attorneys for NWMA in this matter are:

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III. NWMA MEETS THE STANDARDS FOR INTERVENTION

9. The Commission’s regulations require potential intervenors to demonstrate an “interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding” or an “interest of such nature that participation of the petitioner may be in the public interest.” 52 Pa. Code § 5.72(a)(2)-(3).

10. NWMA is a municipal authority that, *inter alia*, delivers water to residents and businesses of the Borough through its distribution system. The Borough has a population of approximately 2,000 and NWMA’s customer base includes large water users such as Westminster College, Wilmington Area School District and two long-term nursing facilities, Shenango On the Green and The Grove at New Wilmington.

11. NWMA purchases the water that it delivers to Borough residents and businesses from Aqua. Since 2008, the Authority has purchased this water from Aqua under a negotiated rate pursuant to the DSR Rider.

12. On August 20, 2021, Aqua filed a request with the Commission for an increase in its total annual operating revenues for water service by approximately 16.9%. NWMA did not receive any notice of this filing, which is understandable since Aqua did not propose any changes to the DRS Rider or to NWMA's negotiated rates.

13. The matter proceeded to litigation, unbeknownst to NWMA, through the service of written testimony, the conducting of hearings, the filing of briefs, the issuance of a recommended decision, the filing of exceptions and reply exceptions and the entry of a Commission order.

14. During the proceeding, initially through the submission of testimony on November 10, 2021, the Commission's Bureau of Investigation and Enforcement ("I&E") raised an issue regarding contracts under which various customers were receiving service under Aqua's Rider DRS and recommended that several customers, including NWMA, be moved from negotiated rates to full tariff rates. NWMA was not notified of I&E's recommendation or provided any notice of how adoption of I&E's proposal would affect the rates paid by the Authority.

15. The Office of Administrative Law Judge issued a Recommended Decision ("R.D.") on February 18, 2022, recommending that NWMA be moved from its negotiated rate to full tariff rates. Despite the fact that such movement would result in an increase to NWMA's rate, not to mention an extremely significant one, NWMA was not notified of the issuance of this

R.D. or the recommendation that NWMA be required to pay full tariff rates to Aqua for water that it has been receiving under a negotiated contract entered into in 2008.

16. The Commission entered the *May 2022 Order*, which approved an annual revenue increase for water of approximately 9.88% and adopted the portion of the R.D. recommending the movement of NWMA from the negotiated rate to a full tariff rate. Under the Commission's *May 2022 Order*, NWMA's rate would increase from \$5.66 per 1,000 gallons to \$14.017 per 1,000 gallons – an increase of nearly 150%. NWMA's yearly charges for water are expected to rise from approximately \$350,000 to \$870,000. Despite this exorbitant impact on NWMA's rates, the Commission's *May 2022 Order* was not served on NWMA. Nor was this aspect of the Commission's *May 2022 Order* designated as tentative so that NWMA would have an opportunity to file comments.

17. Aqua notified the Authority on June 24, 2022 about the Commission's *May 2022 Order*, which was the first that NWMA became aware of its effect on the water rates it would pay. A copy of the bill issued on July 18, 2022 is attached as Appendix A, which shows that the last monthly bill was for \$27,697.90, compared to \$59,766.24 that is due on August 9, 2022 based upon similar consumption as a result of the *May 2022 Order*.

18. NWMA's interests are directly and adversely affected by the *May 2022 Order* in this proceeding. The impact of the *May 2022 Order* is significant in that it increases NWMA's water rates from \$5.66 per 1,000 gallons to \$14.017 per 1,000 gallons.

19. As NWMA purchases water from Aqua to deliver to residents and businesses of the Borough of New Wilmington, it is in the public interest for the Commission to permit the Authority's participation in this proceeding. If the *May 2022 Order* remains intact, the impact on Borough residents and businesses would be significant. This includes large water users such

as Westminster College, Wilmington Area School District and two long-term nursing facilities of Shenango On the Green and The Grove at New Wilmington, whose impacts would be felt by college students, Borough residents and businesses and families with loved ones receiving services at the nursing facilities. Additionally, Borough residents patronizing local businesses would be affected by increases in products and services, besides experiencing their own impacts at their homes.

20. NWMA seeks to intervene in this proceeding for the purposes of filing its Petition for Modification of the *May 2022 Order*, which is being simultaneously filed today, requesting that the Commission suspend its directive for Aqua to move the Authority to full tariff rates until the next rate case, or alternatively, for a period of nine months. Such a suspension will provide NWMA with an opportunity to explore its competitive alternatives to determine whether they are viable, or at the very least afford its residents and businesses with notice of impending significant rate changes if those efforts are unsuccessful.

21. NWMA's intervention in the proceeding will not result in any delays or scheduling issues since the matter has been resolved by the *May 2022 Order*, which continues to remain under requests for reconsideration and clarification. NWMA's focus is on addressing its status under Aqua's Rider DRS going forward.

IV. CONCLUSION

WHEREFORE, the New Wilmington Municipal Authority respectfully requests that the Commission grant this Petition to Intervene and any other relief in the public interest.

Respectfully submitted,

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August 9, 2022


**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pa. Public Utility Commission	:	R-2021-3027385
	:	
v.	:	
	:	
Aqua Pennsylvania, Inc.	:	

VERIFICATION

I, Dennis Miller hereby state that: (1) I am Treasurer for the New Wilmington Municipal Authority (“NWMA”); (2) I have reviewed the statements set forth in NWMA’s Petition as to their accuracy; and (3) the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief. I understand that statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: August 2, 2022



Dennis Miller, Treasurer
New Wilmington Municipal Authority