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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 for Modification 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 for Modification, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: August 9, 2022

Karen O. Moury

Karen O. Moury, Esq.

alternatives available to the Authority. However, NWMA received no notice of the rate filing, which is understandable since Aqua was not proposing any change to Rider DRS – Demand Based Resale Service (“Rider DRS”) or to NWMA’s negotiated rates. More importantly, NWMA received no notice of the proposal advanced by the Bureau of Investigation and Enforcement (“I&E”) during the proceeding to move NWMA from negotiated rates to full tariff rates. Similarly, the Authority was not notified about the issuance of a Recommended Decision (“R.D.”) by the Office of Administrative Law Judge (“OALJ”) recommending adoption of the I&E proposal. Absent notice of the I&E proposal and the OALJ recommendation that would significantly impact its rate, NWMA had no opportunity to present evidence or otherwise defend itself against this proposed increase, including the consideration of the viability of any competitive alternatives. A modification of the *May 2022* Order to permit NWMA to remain on the negotiated rate until the next base rate case would give NWMA an opportunity to explore its competitive alternatives and determine whether they are viable. This relief would also permit NWMA to intervene in and monitor the next base rate proceeding to protect its interests.

Not only would a reprieve of the shift from negotiated rates to full tariff rates give the Authority an opportunity to explore and present evidence of viable competitive alternatives, it would also allow residents and businesses receiving water from NWMA to prepare for the possibility of a significant increase if the Commission ultimately finds that evidence of a viable competitive alternative is insufficient. In further support hereof, NWMA further avers as follows:

I. BACKGROUND AND REQUEST FOR RELIEF

1. 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 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.

2. NWMA purchases the water that it delivers to residents and businesses of the Borough from Aqua under a 30-year contract negotiated in 2008 pursuant to the DRS Rider.

3. 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.

4. 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.

5. During the proceeding, initially through the submission of testimony on November 10, 2021, 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 to Aqua by the Authority.

6. The OALJ issued an R.D. on February 18, 2022, recommending, *inter alia*, 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 of the recommendation that NWMA

be required to immediately begin paying full tariff rates to Aqua for water that it has been receiving under a negotiated contract entered into in 2008.

7. On May 16, 2022, the Commission entered the *May 2022 Order*, which approved an annual revenue increase for water of approximately 9.88% and adopted the recommendation in the R.D. to move NWMA from the negotiated rate to a full tariff rate. Under the Commission's Order, NWMA's rate increased 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 did not serve the *May 2022 Order* on NWMA. Nor did the Commission designate this aspect of the *May 2022 Order* as tentative so that NWMA would have an opportunity to file comments.

8. Aqua notified the Authority on June 24, 2022 about the Commission's Order, which was the first that NWMA became aware of the existence of the *May 2022 Order* and the effect it would have on the water rates it would pay to Aqua. A copy of Aqua's 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 billed in July 2022 based upon similar consumption.

9. By this Petition, NWMA respectfully requests that the Commission modify its *May 2022 Order* to remove the directive for Aqua to move the Authority from negotiated rates to full tariff rates and, instead, direct that this issue be revisited in Aqua's next base rate case. In the alternative, NWMA proposes that the Commission modify the *May 2022 Order* to delay the effective date on which NWMA must move from negotiated rates to full tariff rates by a nine-month period, thereby affording the Authority a meaningful opportunity to present evidence of a viable competitive alternative supporting the continuation of negotiated rates. At the very least,

this delay would give NWMA, as well as the residents and businesses of the Borough of New Wilmington, time to prepare for the possibility of extremely significant increases in the event that the Commission is not satisfied with NWMA's evidence of a viable competitive alternative.

10. As the negotiated rates have been in place for over 15 years under a 30-year contract, and the amount paid to Aqua by NWMA in water rates is a tiny fraction of Aqua's overall water revenues, the Authority does not believe that a brief delay would be prejudicial to Aqua or other customers. Indeed, the approximate one-half million dollar increase to NWMA's rates resulting from the *May 2022 Order* is .093% of Aqua's overall water revenues, which were recently increased to \$560,516,879. By contrast, the effect of the *May 2022 Order* on NWMA is significant in that it represents an approximate 148% increase when other Aqua customers' rates are being increased by 10%. Particularly since NWMA had no notice and opportunity to be heard on the proposal adopted by the *May 2022 Order*, the relief requested is necessary to cure the notice deficiency and is otherwise a fair resolution of this matter.

II. APPLICABLE LEGAL STANDARDS

11. Section 703(g) of the Public Utility Code authorizes the Commission any time, after notice and an opportunity to be heard, to rescind or amend any order made by it. 66 Pa.C.S. § 703(g).

12. In adjudicating petitions for reconsideration, the Commission expects to hear new and novel arguments not previously heard or considerations which appear to have been overlooked. *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, Order entered December 17, 1982; 56 Pa. P.U.C. 553 (1982).

13. Administrative agencies are required to provide due process to the parties appearing before them. *Schneider v. Pennsylvania Public Utility Commission*, 83 P. Cmwlth.

306, 315, 479 A.2d 10 (1984). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016).

14. Because an increase in rates involves a substantial property right, ratepayers are entitled to notice of and opportunity to be heard in a Commission proceeding in which a decision is made to increase rates. See *Barash v. Pennsylvania Public Utility Commission*, 119 Pa. Cmwlth. 81, 546 A.2d 1296, 1305-1306 (1988).

15. The Pennsylvania Superior Court has enunciated the criteria that must be established to satisfy due process. *Wilkes v. Phoenix Home Life Mutual Insurance Company*, 851 A.2d 204, 211 (2004), *rev'd on other grounds*, 587 Pa. 590, 902 A.2d 366 (2006). Notice must be reasonably calculated to apprise interested parties of the proposal and afford them an opportunity to present their objection. It is further required that the notice contain an adequate description of the proceedings and include information that a reasonable person would consider material in making an informed, intelligent decision of whether to participate or risk being bound by the final judgment.

16. In *Snyder Brothers, Inc. v. Pa. PUC*, 224 A.3d 450 (Pa. Cmwlth. 2020), the Commonwealth Court reversed a decision of the Commission on the basis that due process was violated. Citing *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, the *Snyder Brothers* Court considered not only whether the entity was entitled to due process, but also “what process is due.” The Court found that the entity in *Snyder Brothers* was deprived of property without a meaningful hearing and/or opportunity to adequately protect its interests.

III. BASIS FOR REQUESTED RELIEF

This Petition presents several valid bases for a modification of the *May 2022 Order* due to issues that appear to have been overlooked when the Commission moved NWMA from negotiated rates under Rider DRS to full tariff rates.

a. No Notice to Authority

17. The *May 2022 Order* did not consider whether the Authority was on notice as to I&E's proposal or the R.D.'s recommendation to move NWMA from negotiated rates to full tariff rates, or as to the impact of such a shift on the water rates paid to Aqua by NWMA. In fact, NWMA did not receive notice of either the I&E proposal or the R.D. recommendation prior to issuance of the *May 2022 Order* and did not receive notice of the existence of or the impact of the Commission's decision on the Authority's rates until Aqua informed the Borough Superintendent on June 24, 2022.

18. Absent notice and an opportunity to be heard, the *May 2022 Order* deprived NWMA of its fundamental rights of due process under the case law cited in Paragraphs 13-16 of this Petition. While the *May 2022 Order* relies on what the Commission perceives as a lack of evidence regarding NWMA's competitive alternatives to move from negotiated to full tariff rates, the Authority had no opportunity to explore these options or to present evidence as to the viability of any competitive alternatives.

19. The lack of notice or an opportunity to be heard can be remedied only by granting the requested relief so that the Authority is able to explore its competitive alternatives, if any, and present evidence regarding their viability.

b. No Consideration of Impact on Residents and Businesses

20. In addition, the *May 2022 Order* overlooked the impact on residents and businesses served by NWMA of a decision to move the Authority from negotiated rates to full

tariff rates. Indeed, the *May 2022 Order* contains no discussion as to how the rate increase would affect NWMA or its customers.

21. In Aqua's original filing, the customer notice for the Main Division indicated that residential customers with a 5/8-inch meter using 4,000 gallons per month would experience an increase from \$67.49 to \$81.32 per month, which is approximately a 20% increase. Similarly, commercial customers with a 5/8-inch meter using 33,900 gallons per month would see an increase from \$403.59 to \$480.73 per month, which is approximately a 19% increase.

22. Under the *May 2022 Order*, Aqua's overall increase in water revenues is approximately 9.88%. By contrast, under the *May 2022 Order*, a residential customer receiving water from the Borough with a 5/8-inch meter using 4,000 gallons of water per month would experience an increase in the monthly bill from \$22.64 to \$56.07, which is approximately a 148% increase. Similarly, a commercial customer in the Borough with a 5/8-inch meter using 33,900 gallons per month would experience an increase in the monthly bill from \$191.87 to \$475.18, also about 148%.

23. Importantly, this is not a hypothetical percentage increase but one that would actually be experienced by residents and businesses in the Borough. The impact on residential customers would be twofold – both on their own bill and through paying higher prices to the businesses in the Borough that they patronize.

24. Based upon the Borough's review of the consumption patterns of the four largest water users on its system from August 2021 through July 2022, NWMA estimates that the approximate impact on these customers from the *May 2022 Order* will be the following annual increases: (a) Westminster College from approximately \$80,489 to \$193,330; (b) The Grove at New Wilmington from approximately \$49,714 to \$123,118; (c) Shenango on the Green from

approximately \$13,230 to \$32,764; and (d) the Wilmington Area School District from \$6,053 to \$14,990.¹

c. No Application of Principles of Rate Shock and Gradualism

25. Further, in approving a shift from negotiated rates to full tariff rates, the Commission made no mention of the long-standing ratemaking principles of rate shock and gradualism. Historically, the Commission has considered the impact of rate increases on customers in an effort to avoid rate shock and used principles of gradualism to move rates to cost of service. *See Lloyd v. Pa. P.U.C.*, 904 A.2d 1010 (2006).

26. Here, while NWMA and its customers would experience increases in their monthly bills of about 148%, compared to other customers served by Aqua seeing roughly 10% increases, no doubt exists that rate shock should be moderated through a gradual phase-in, if NWMA is ultimately unable to show the viability of competitive alternatives to the Commission's satisfaction.

27. By contrast, when Aqua acquires water systems, the Commission recognizes the need to avoid rate shock through the application of gradualism principles. For instance, under Aqua's current Water Tariff, which contains the effects of the rate increase approved by the *May 2022 Order*, the customers of several acquired systems pay rates that are below the rates charged to other customers. Of note, NWMA's negotiated rate is in the range of the rates paid by many of these customers, such as Beech Mountain Lake customers with a consumption charge of \$6.158 per 1,000 gallons, Sun Valley customers with a consumption charge of \$5.000 per 1,000

¹ NWMA is presenting the annual dollar impact of the 148% increase on these customers for illustrative purposes only. Although the Authority has sought to present as accurate of information as possible, NWMA omitted the effect on customers billed minimum charges in some or all months and may have inadvertently overlooked some of the accounts of these customers. Nonetheless, these calculations provide insight to the magnitude of the rate increases on NWMA's largest users.

gallons and Phoenixville customers paying consumption charges well under \$5.000 per 1,000 gallons.²

d. Reprieve Would Allow NWMA to Explore Alternatives

28. Given all of the above, NWMA should be given a reprieve from paying full tariff rates until the next base rate case to give the Authority an opportunity to meaningfully explore the availability of viable competitive alternatives.

29. This reprieve would also enable the Authority to consider whether other options would permit NWMA to keep the water rates for residents and businesses of the Borough of New Wilmington from suddenly skyrocketing in the manner they would under the *May 2022 Order*.

30. In addition, permitting NWMA to remain on negotiated rates for this period of time would give residents and businesses an opportunity to take measures in preparation for the possibility of extreme and unprecedented increase in their water rates if the Commission is not persuaded by the existence of viable competitive alternatives.

31. Alternatively, NWMA requests that the Commission delay implementation of its directive for the Authority to be moved to full tariff rates by a period of nine months.

IV. CONCLUSION

WHEREFORE, the New Wilmington Municipal Authority respectfully requests that the Commission issue an Order modifying the May 16, 2022 Order as described in this Petition and grant any other relief in the public interest.

² Tariff Water-PA P.U.C. No. 3, Original Page [12.2](#). Commercial customers in the Phoenixville system likewise pay under \$5.000 per 1,000 gallons, as shown on Original Page [12.3](#).

Respectfully submitted,

Karen O. Moury

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August 9, 2022

APPENDIX A



Service To:
BORO OF NEW WILMINGTON
387 SUSAN TRACE
NEW WILMINGTON, PA 16142

Account Number
001046042 1471779
 SHENANGO
 1157850 PWSID # PA6430054

Aqua Pennsylvania, Inc.
 762 W. Lancaster Avenue
 Bryn Mawr, PA 19010-3489

Toll Free: **877.987.2782**
 Fax: **866.780.8292**
AquaAmerica.com

Questions about your water service? Contact us before the due date.

Bill Date
July 18, 2022

Total Amount Due
\$ 59,766.24

Current Charges Due Date
August 09, 2022

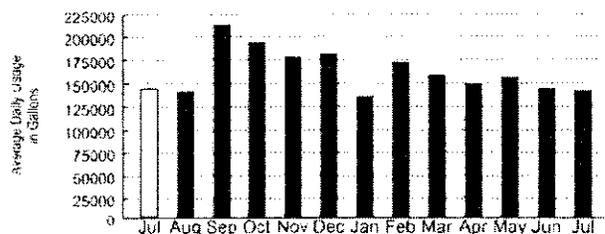
Meter Data

Meter	Size	Billing Period	Days	Read Type	Meter Readings	Usage	Units
215005H269	4"	07/14/22	30	Actual	134373700	4,225,600	Gallons
		06/14/22		Actual	130148100		
Average Daily Usage = 140,853 Gallons		Total Days: 30		Total Usage:		4,225,600	Gallons

Billing Detail

Amount Owed from Last Bill \$ 27,692.90
 Total Payments Received 27,692.90
Remaining Balance 0.00
 Customer Charge 536.00
 4,225,600 gallons @ \$0.014017 per gallon 59,230.24
 Total Water Charges 59,766.24
Amount Due \$ 59,766.24

Water Usage History



Read Types: Actual Estimated Customer

Message Center (see reverse side for other information)

- Coming soon: We are excited to announce that a new and improved Aqua website will be launching this summer! The new site will offer user-friendly enhancements and a new look. More details will be shared soon.
- Would you like to quickly and easily learn important information about your water? Please let us know how you want to be contacted via our new automated notification system by clicking on the WaterSmart Alerts button at www.aquaamerica.com.
- The due date refers to current charges and any deferred payment amount only. If you do not pay your bill on time, your service could be subject to interruption. To ensure proper credit, please remember to provide your full 16-digit account number when paying your bill.

RETURN THIS PORTION WITH YOUR PAYMENT



Aqua Pennsylvania, Inc.
 762 W. Lancaster Avenue • Bryn Mawr, PA 19010-3489

MAKE CHECK PAYABLE TO:
Aqua PA

Account Number
001046042-1471779

DUE DATE
08/09/2022

TOTAL AMOUNT DUE
\$59,766.24

Please do not remit payment to the above address

Cyc=155C 1up=3840592 EC 0406 5C 0408

Seq=20810

Amount Enclosed \$



BORO OF NEW WILMINGTON
 NEW WILMINGTON PA 16142-1104

AQUA PENNSYLVANIA
 PO BOX 70279
 PHILADELPHIA PA 19110-0279



00104604214717790000059766249

**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