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August 29, 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 Nos. R-2021-3027385 and R-2021-3027386

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Motion for Leave to File Reply 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 Motion for Leave to File Reply, 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 29, 2022

Karen O. Moury

Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pa. Public Utility Commission, <i>et al.</i>	:	R-2021-3027385, <i>et al.</i>
	:	R-2021-3027386, <i>et al.</i>
v.	:	
Aqua Pennsylvania, Inc. and Aqua	:	
Pennsylvania Wastewater, Inc., <i>et al.</i>	:	

NOTICE TO PLEAD

To: Michael W. Hassell, Esq.
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You are hereby notified that an Answer to the Motion for Leave to File of the New Wilmington Municipal Authority must be filed within 20 days of the date of service.

/s/ Karen O. Moury

Karen O. Moury, Esquire

Date: August 29, 2022

Counsel for
New Wilmington Municipal Authority

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pa. Public Utility Commission, *et al.* : R-2021-3027385, *et al.*
 : R-2021-3027386, *et al.*
Aqua Pennsylvania, Inc. and Aqua :
Pennsylvania Wastewater, Inc., *et al.* :

**MOTION OF
NEW WILMINGTON MUNICIPAL AUTHORITY
FOR LEAVE TO FILE REPLY TO ANSWER**

Pursuant to 52 Pa. Code §§ 5.103, the New Wilmington Municipal Authority (“NWMA” or “Authority”) files this Motion for Leave to File a Reply to the Answer filed by Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (“Aqua”) with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) on August 19, 2022. By this Motion, NWMA is proffering the Reply, attached to this Motion as Appendix A. Aqua’s Answer responded to NWMA’s Petition for Modification filed on August 9, 2022 requesting that the Commission modify the Order entered on May 16, 2022 Order (“*May 2022 Order*”) to permit NWMA to remain on contractually negotiated rates under Rider DRS – Demand Based Resale Service (“Rider DRS”) for a period of time, affording the Authority a meaningful opportunity to explore viable competitive alternatives. In support hereof, NWMA further avers as follows:

I. BACKGROUND

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 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

2. On August 20, 2021, Aqua filed Tariff Water-Pa P.U.C. No. 3 (“Tariff Water No. 3”) and Tariff Sewer-Pa P.U.C. No. 3 (“Tariff Sewer No. 3”). Under Tariff Water No. 3, Aqua proposed to increase its total annual operating revenues for its water service by approximately \$86,118,612, or 16.9%. Under Tariff Sewer No. 3, Aqua proposed to increase its total operating revenues for its wastewater service by approximately \$11,566,212 or 31.2%.

3. By Order entered on October 7, 2021, the Commission suspended the rate filings until May 19, 2022 and directed an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules and regulations contained in the rate filings.

4. 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.

5. 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.

6. 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 for 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.

7. On August 9, 2022, NWMA filed a Petition for Modification of the *May 2022 Order* requesting that the Authority be permitted remain on negotiated rates under Rider DRS until the next rate case so that it has a meaningful opportunity to 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 regarding abrogation of the contract before the issuance of the *May 2022 Order*.

8. On August 19, 2022, Aqua filed an Answer to NWMA's Petition for Modification.

9. By this Motion, NWMA requests leave to file a Reply to the Answer and attaches the proffered Reply as Appendix A.

II. BASIS FOR REQUESTED RELIEF

10. NWMA seeks leave to file a Reply to Aqua's Answer on the grounds that the Company refers in its Answer to correspondence sent to NWMA in January 2021 prior to the filing of the base rate case. Aqua Answer ¶¶ 33-35. The January 2021 letter is an incomplete recounting of the communications between NWMA and Aqua. While the pre-filing correspondence discusses the need for evidence of competitive alternatives, it should not be viewed in a vacuum.

11. To the extent that the Commission determines to consider the January 2021 correspondence in adjudicating NWMA's Petition for Modification, the record should be reopened so that the Authority may present evidence of follow-up communications. Such reopening would provide NWMA with an opportunity to present testimony indicating that: (a)

upon receipt of the letter, the Authority advised Aqua that it would pursue a competitive alternative with Pennsylvania American Water Company (“PAWC”); and (b) Aqua representatives expressly requested that the Authority not make any inquiries with PAWC and instead let the Company handle the issue with the Commission.

12. In any event, pre-rate filing communications do not cure the lack of due process provided to NWMA during the rate case. While NWMA does not recall or have any records establishing receipt of the rate increase notice, the Authority does not dispute those portions of Aqua’s Answer. The rate increase notices disseminated by Aqua refer to the proposed rate increase and describe how the proposal may be modified by the Commission. However, they do not provide any information about possible effects on Rider DRS customers taking service under negotiated rates. Although Aqua points to language in the notices indicating that the Commission may change the amount of the rate increase or decrease requested by the utility for each customer class (Aqua Answer ¶ 24), NWMA’s contractually negotiated rates were not proposed to increase or decrease.

13. Particularly since Aqua’s rate case filing did not propose any changes to Rider DRS, protection of NWMA’s right to due process required that the Authority be afforded official notice of proposals made during the proceeding to eliminate the Authority’s rate negotiated in 2008 and contained in a 30-year contract. *See 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); *Snyder Brothers, Inc. v. Pa. PUC*, 224 A.3d 450 (Pa. Cmwlth. 2020) (what process is due).

14. Based upon its communications with Aqua following the January 2021 correspondence, NWMA believed that no further action was required on its part to preserve the contractually negotiated rate that had been in place since 2008. As this information affects the adequacy of notice received by NWMA, either the Commission should refuse to consider the January 2021 correspondence or reopen the proceeding so that evidence of communications between NWMA and Aqua can be submitted to make the record complete.

IV. CONCLUSION

WHEREFORE, the New Wilmington Municipal Authority respectfully requests that the Commission grant this Motion for Leave to File Reply to Answer and any other relief in the public interest.

Respectfully submitted,

Karen O. Moury

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August 29, 2022

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pa. Public Utility Commission, *et al.* : R-2021-3027385, *et al.*
: R-2021-3027386, *et al.*
Aqua Pennsylvania, Inc. and Aqua :
Pennsylvania Wastewater, Inc., *et al.* :

**REPLY OF NEW WILMINGTON MUNICIPAL AUTHORITY TO THE ANSWER
FILED BY AQUA PENNSYLVANIA, INC. AND AQUA PENNSYLVANIA
WASTEWATER, INC.**

Pursuant to the Motion for Leave to File a Reply to Answer filed on this date, the New Wilmington Municipal Authority (“NWMA” or “Authority”) proffers this Reply to the Answer filed by Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”) with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) on August 19, 2022. Aqua’s Answer responded to NWMA’s Petition for Modification filed on August 9, 2022 requesting that the Commission modify the Order entered on May 16, 2022 Order (“*May 2022 Order*”) to permit NWMA to remain on negotiated rates under Rider DRS – Demand Based Resale Service (“Rider DRS”) for a period of time, affording the Authority a meaningful opportunity to explore viable competitive alternatives. In support hereof, NWMA further avers as follows:

I. BACKGROUND

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 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

2. On August 20, 2021, Aqua filed Tariff Water-Pa P.U.C. No. 3 (“Tariff Water No. 3”) and Tariff Sewer-Pa P.U.C. No. 3 (“Tariff Sewer No. 3”). Under Tariff Water No. 3, Aqua proposed to increase its total annual operating revenues for its water service by approximately \$86,118,612, or 16.9%. Under Tariff Sewer No. 3, Aqua proposed to increase its total operating revenues for its wastewater service by approximately \$11,566,212 or 31.2%.

3. By Order entered on October 7, 2021, the Commission suspended the rate filings until May 19, 2022 and directed an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules and regulations contained in the rate filings.

4. 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.

5. 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.

6. 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 for 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.

7. On August 9, 2022, NWMA filed a Petition for Modification of the *May 2022 Order* requesting that the Authority be permitted remain on negotiated rates under Rider DRS until the next rate case to give it an opportunity to explore the availability of competitive alternatives and to 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. REPLY TO ANSWER

8. In its Answer, the Company refers to correspondence that Aqua sent to NWMA in January 2021 prior to the filing of the base rate case in August 2021. Aqua Answer ¶¶ 33-35. The Commission should not rely on the January 2021 pre-filing correspondence in adjudicating NWMA's Petition for Modification.

9. Importantly, the communications between the Authority and the Company identified in Aqua's Answer are incomplete. To the extent the Commission desires to consider the January 2021 correspondence, it is critical that the Authority be given the opportunity to present evidence of follow-up communications including: (a) the Authority's response that it would pursue the possibility of a competitive alternative with Pennsylvania American Water Company ("PAWC"); and (b) Aqua's request that the Authority not make any inquiries with PAWC and instead let the Company handle the issue with the Commission.

10. In any event, the pre-filing communications do not afford due process protections to which NWMA was entitled once the rate case was filed. While NWMA does not recall or have any records establishing receipt of the rate increase notice, the Authority is not disputing those portions of Aqua's Answer. However, the general rate increase notices disseminated by

Aqua refer to the proposed rate increase and how the Commission may modify the amount, but they do not provide any information about possible effects on Rider DRS customers taking service under negotiated rates. For instance, notice that the Commission may change the amount of the rate increase or decrease requested by the utility for each customer class (Aqua Answer ¶ 24) does not equate to notice of the possibility that a customer on a negotiated rate pursuant to a 30-year contract executed in 2008 stands to lose the ability to remain in that status.

11. In addition, regardless of any notice that NWMA received prior to or at the time of the rate case filing, the Authority was not notified at any time during the pendency of the proceeding of the proposal offered by the Bureau of Investigation and Enforcement (“I&E”) to move NWMA from its long-standing negotiated rate to a full tariff rate, the recommendation of the Office of Administrative Law Judge (“OALJ”) to adopt this proposal, or the Commission’s adoption of the OALJ recommendation.

12. Indeed, despite Aqua’s knowledge of all of these developments, the Company did not apprise NWMA of any of them. Of note, Aqua did not notify NWMA of the *May 2022 Order* until June 24, 2022, more than twenty days after the Authority would have had to seek reconsideration by the Commission and more than a week after an appeal to the Commonwealth Court would have been due.

13. Suggesting that NWMA should have intervened in the base rate case to protect its interests is not a realistic option. Particularly as a small municipal authority, the time and resources that would have been necessary to pursue such an intervention would have been significant and difficulty to justify given the Authority’s understanding that Aqua would handle the matter. An expectation that municipal authorities intervene in base rate cases in the event that an issue is raised during the proceeding that would adversely affect a contractually

negotiated rate with the utility is not plausible. To the extent that all customers on negotiated rates must participate in rate case proceedings to preserve their contractual arrangements, NWMA submits that these proceedings, which are on compressed timeframes due to statutory deadlines, would become unwieldy.

14. A more rational approach would have been for Aqua, I&E, the OALJ or the Commission to put NWMA officially on notice of a proposal for the Authority's 2008 contractually negotiated rate to be eliminated. This scenario is not unlike a situation in which the Commission plans to vary, reform and revise contracts between public utilities and any person pursuant to Section 508 of the Public Utility Code, which explicitly provides for due process, including notice and an opportunity to be heard. 66 Pa. C.S. § 508.

15. The circumstances here are also similar to a scenario in which individual customers file complaints against proposed rate increases but then choose to be inactive in the proceeding. When the other parties reach a settlement, the public utility is required to serve the settlement on those inactive parties for their review and comment. *See, e.g., Pa. Public Utility Commission, et al. v. UGI Utilities, Inc. – Gas Division*, Docket Nos. R-2021-3030218, et al. (Recommended Decision issued July 28, 2022 at 1, footnote 1).

16. Further, in the Pittsburgh Water and Sewer Authority case cited by the Company in Paragraph 19 of its Answer, I&E went to great lengths to ensure that the City of Pittsburgh was notified of proposals advanced during the proceeding that may affect the City's interests. *See Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket Nos. M-20180-2640802; M-2018-2640803 (Order entered June 18, 2020, at 52-53). Yet, in this proceeding, no effort was made by any party or the

Commission to ensure that NWMA knew of the possible adverse effect on its long-standing negotiated rates.

17. Fundamental principles of due process required the issuance of a direct notice to NWMA regarding the proposals and recommendations offered in this proceeding prior to their adoption by the Commission. Had NWMA been placed on notice of these developments and been given an opportunity to be heard, the Authority would have been able to intervene in the proceeding, explore its competitive alternatives, and present evidence of any viable options rather than relying on Aqua to defend NWMA's ability to remain on the negotiated rate.

18. As to Aqua's concern about a loss of revenues, NWMA's intent in seeking modification of the *May 2022 Order* is not to have the revenues imputed to Aqua without any opportunity to recover them. To the contrary, NWMA's Petition for Modification sought to preserve the status quo as it existed prior to the *May 2022 Order*.

IV. CONCLUSION

WHEREFORE, the New Wilmington Municipal Authority respectfully requests that the Commission grant its Petition for Modification filed on August 9, 2022 and any other relief in the public interest.

Respectfully submitted,

Karen O. Moury

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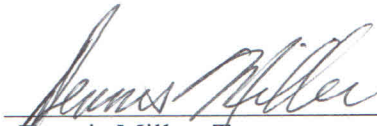
August 29, 2022

VERIFICATION

I, Dennis Miller, hereby state that: (1) I am the Treasurer for the New Wilmington Municipal Authority (“NWMA”); (2) I have reviewed the facts set forth in the foregoing filing; (3) these facts are true and correct to the best of my knowledge, information and belief; and (4) I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

August 29, 2022

Dated



Dennis Miller, Treasurer
New Wilmington Municipal Authority