

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

**APPLICATION OF AQUA PENNSYLVANIA, INC.
FOR APPROVAL OF ITS ACQUISITION OF THE
WATER SYSTEM ASSETS OF THE BOROUGH OF
SHENANDOAH.**

A-2022-3034143

**Brief of Intervenor, Donna Gawrylik, regarding Aqua’s application in the
Shenandoah Borough Pennsylvania for the acquisition of water rights.**

The Intervenor, Donna Gawrylik, by her undersigned counsel, files this Brief pursuant to the Court’s Scheduling Order and in support thereof avers:

I. FACTUAL AND PROCEDURAL BACKGROUND.

On December 9, 2022, the Pennsylvania Public Utility Commission (“PUC”) conditionally accepted the application of Aqua of Pennsylvania (“Aqua”) for filing for approval to acquire the Borough of Shenandoah/Municipal Authority water rights. Donna Gawrylik has intervened in this matter citing that the Borough failed to abide by the Pennsylvania Election Code and the Third Class City Code by refusing to stay the sale and, instead, put a Referendum on the ballot. The Intervenor further claims that any acquisition by Aqua will have a very deleterious effect on the residents in the Borough due to the impending rate increases as the majority of these residents are elderly and on fixed incomes.

II. STATEMENT OF QUESTIONS PRESENTED.

- A. WHEHER SHENANDOAH BOROUGH COUNCIL IMPERMISSIBLY
REFUSED TO ALLOW A REFERENDUM ON THE BALLOT REGARDING
AQUA'S PROPOSED ACQUISITION?**

SUGGESTED ANSWER: YES.

- B. WHETHER AQUA'S PROPOSED ACQUISITION WILL HARM THE
RESIDENTS OF THE SHENANDOAH BOROUGH DUE TO THE DEFINITE
RATE INCREASES?**

SUGGESTED ANSWER: YES.

III. LEGAL ARGUMENT.

A sale of a waterworks may be the subject of a Referendum. *See* 25 P.S. 2742; Pennsylvania Election Code, Section 532.

In this case, the Shenandoah Borough Council enacted an Ordinance without allowing ten percent of the registered voters of the Borough to file a Petition to stay the Aqua sale. *See* 53 P.S. 47409; Borough Code Section 2409; In re. Petition of Werner, 662 A.2d35 (Pa. Cmwlth. 1995).

Moreover, Leo Pietkiewicz, Borough Council President, testified in sworn testimony previously provided to this Court, that Borough residents were not informed of their rights to sign a Petition or even informed of their right to do this within ten days of the

enactment of the Ordinance. *See* March 28, 2023 testimony of Leo Pietkiewicz at pp. 205-215.

A second important argument addressed by Joseph Boris of Shenandoah before the Public Portion with this Court is the devastating effect that a sale to Aqua would have on Borough of Shenandoah residents. Mr. Boris testified to rate increases of at least 15.9 percent per customer as well as the current upgrades to the existing infrastructure, thereby making a sale unnecessary. *See* testimony of Joseph Boris previously held before the Public Portion on March 21, 2023. Mr. Boris' testimony was unrefuted.

IV. CONCLUSION.

Based on the foregoing, it is respectfully submitted that the sale to Aqua be denied; or, in the alternative, that the registered voters in the Borough be permitted to have a Referendum on the ballot.

Respectfully submitted:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following have been served this 11th day of April 2023:

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