

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

**Objections 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 these Objections pursuant to the Court’s Scheduling Oder 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. Finally, the system in place currently in the Borough is fully functional and financially sound as admitted in the proposed Settlement Agreement.

II. OBJECTIONS OF INTERVENOR.

1. IT IS NOT IN THE PUBLIC INTEREST TO SELL THE WATER RIGHTS.

The issuance of a public convenience certificate requires the Commission to find affirmatively that the public will benefit from the merger/sale. *See City of York v. Pa P.U.C.*, 293 A.2d 895 (Pa. 1972). Here, the Borough of Shenandoah residents will not benefit as the Water Authority is fully functioning and providing water at reasonable rates to the Borough residents. As set forth in paragraph 33 of the proposed Settlement Agreement, in the Borough would see an average increase of 44.87%. As the majority of Shenandoah residents are elderly and on a fixed income, this increase would be very deleterious to them. These rates will increase after settlement, should it occur.

2. DUE PROCESS WAS NOT AFFORDED IN THIS MATTER.

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. Cmwlt. 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.

3. A REVIEW OF PARAGRAPH 31 OF THE PROPOSED SETTLEMENT SHOWS THAT THE BOROUGH WATER SYSTEM IS FINANCIALLY SOUND BASED ON ITS REVENUES VERSUS OPERATING EXPENSES.

Based on the fact that the Borough's financials show that the current water system is sound, there is no reason for a sale to occur.

III. CONCLUSION.

Based on the foregoing Objections of the Intervenor, 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 19th day of April 2023:

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