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1735 Market Street, 51st Floor  
Philadelphia, PA 19103-7599  
TEL 215.665.8500  
FAX 215.864.8999  
www.ballardspahr.com

William C. Rhodes  
Tel: 215.864.8534  
Fax: 215.864.8999  
rhodes@ballardspahr.com

May 30, 2023

*Via electronic filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105

Re: **Docket No. A-2022-3034143– Application of Aqua Pennsylvania, Inc. to Acquire the Water System Assets of the Borough of Shenandoah and the Municipal Authority of the Borough of Shenandoah**

Dear Secretary Chiavetta:

We are counsel to the Municipal Authority of the Borough of Shenandoah (“MABS”) and the Borough of Shenandoah (the “Borough”) in the above-referenced matter and are submitting, with this letter, the Exception of MABS and the Borough to the Recommended Decision of Administrative Law Judge Jeffrey A. Watson.

This document is being served via electronic on the Honorable Jeffrey A. Watson and all parties of record.

Very truly yours,

*/s/ William C. Rhodes*

William C. Rhodes  
Counsel to the Municipal Authority of the Borough of Shenandoah

cc: Administrative Law Judge Jeffrey A. Watson  
Nick Miskanic, Legal Assistant for Office of the Administrative Law Judge  
All parties of record

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**The Honorable Jeffrey A. Watson, Presiding**

Application of Aqua Pennsylvania, Inc. (“Aqua”) under Sections 1102 1329 of the Pennsylvania Public Utility Code for (1) approval of the acquisition by Aqua of the water system assets of the Borough of Shenandoah (“Shenandoah” or “Borough”) and the Municipal Authority of the Borough of Shenandoah (“MABS” or the “Authority”) situated within the Borough, West Mahanoy Township, Mahanoy Township, Butler Township, Girardville Borough, and Union Township, Schuylkill County, Pennsylvania, (2) approval of the right of Aqua to begin to offer, render, furnish and supply water service to the public in the Borough of Shenandoah, West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough, Schuylkill County, Pennsylvania; (3) an order approving the acquisition that includes the ratemaking rate base of the Borough and MABS water system assets pursuant to Section 1329(c)(2) of the Public Utility Code; and (4) approval of a contract between Aqua, the Borough, and MABS, pursuant to Section 507 of the Public Utility Code.

Docket No. A-2022-3034143

**EXCEPTION OF THE MUNICIPAL AUTHORITY OF THE BOROUGH OF SHENANDOAH AND THE BOROUGH OF SHENANDOAH TO THE RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON**

William C. Rhodes, Esquire (PA I.D. 63029)  
**BALLARD SPAHR LLP**  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103-7599  
rhodes@ballardspahr.com  
Tel.: (215) 864-8534  
Fax: (215) 864-8999  
Email: rhodes@ballardspahr.com  
*Attorney for the Municipal Authority of the Borough of Shenandoah and the Borough of Shenandoah*

Dated: May 30, 2023

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## I. INTRODUCTION

Pursuant to the procedural schedule established and in accordance with the regulations of the Public Utility Commission (the “Commission”) at 52 Pa. Code Section 5.533, the Municipal Authority of the Borough of Shenandoah (“MABS”) and the Borough of Shenandoah (the “Borough,” and together herein with MABS, “Shenandoah”) hereby submit this Exception to the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, (“Judge Watson”) in connection with Application of Aqua Pennsylvania, Inc. (“Aqua”), filed with the Commission pursuant to section 507, 1102 and 1329 of the Public Utility Code (the “Application”) that is the subject of this proceeding.

Aqua’s Application, filed with the Commission on October 26, 2022, seeks (1) approval to acquire the water system assets of Shenandoah (the “System”), (2) approval of the right of Aqua to begin to offer, render, furnish and supply water service in the Borough of Shenandoah, West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough, Schuylkill County, Pennsylvania; and; (3) an order approving the acquisition that includes the ratemaking rate base of the Shenandoah water system assets pursuant to Section 1329(c)(2) of the Public Utility Code and request for Approval of the Contract, 66 Pa.C.S. § 1329, between Aqua, the Borough and MABS, pursuant to Section 507 of the Public Utility Code, 66 Pa.C.S. § 507 (hereinafter, the “Proposed Transaction”). The Application was assigned Docket No. A-2022-3034143 by the Commission with Judge Watson presiding.

Judge Watson convened the evidentiary hearing on March 28, 2023, as scheduled. On April 11, 2023, Aqua, MABS, Shenandoah, the Office of Consumer Advocate, and the Bureau of

Investigation and Enforcement<sup>1</sup> filed a Joint Petition for Settlement (the “Settlement”) which included a revised *pro forma* tariff that reflects the terms of the Settlement (“Settlement Tariff”). By Recommended Decision dated May 18, 2023 (the “Recommended Decision”), Judge Watson recommended that the Settlement be approved, as modified in the Recommended Decision. Specifically, Judge Watson rejected the Settlement Tariff to the extent it permits or requires Aqua to provide free water service to eight enumerated fire companies. *See, e.g.*, Recommended Decision, p. 46. Shenandoah respectfully submits the following exception to the Recommended Decision.

## **II. EXCEPTION NO. 1 – MODIFICATION OF THE PROPOSED SETTLEMENT TARIFF**

***Shenandoah excepts to the conclusion that Aqua may not continue MABS’ practice to provide free water service until Aqua’s next base rate case to the fire companies who are currently charged \$0.00 for service under MABS existing rates. Recommended Decision, at 35-47, 74-75, 86-90, and Ordering Paragraph 7, 9 and 10. Aqua’s provision of free water service post-closing is consistent with public policy and the law.***

Shenandoah excepts to the Recommended Decision’s recommendation to reject the Settlement Tariff to the extent the Recommended Decision prohibits Aqua from providing free water service to the eight enumerated fire companies for a relatively short period of time. Shenandoah agreed to the Settlement as a complete package, and Judge Watson’s recommendation with respect to the free water service deviates from that agreement. Shenandoah recognizes the statute mandates that the Commission cannot permit a public utility to offer “any unreasonable preference or advantage,” *see* 66 Pa. C.S. § 1304; however, Shenandoah asserts that continuing the long-standing practice (as evidenced in its currently effective rates ordinance) of offering free water to the enumerated fire companies just until such time as meters can be installed and Aqua’s

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<sup>1</sup> The OSBA did not join in the Joint Petition, but noted its non-objection to same.

next rate case is approved does not constitute an “unreasonable preference or advantage.” The fire companies serve an essential public benefit to the residents of the Borough and customers of MABS. They provide life-saving service to the general public; therefore, supplying them with the tools they require to provide this service is not unreasonable. The fire companies rely on this practice and understood it would be preserved (at least in the short term) following the sale of the System to Aqua until such time as the Borough and the fire companies could agree on alternate arrangements. To that end, Shenandoah and Aqua agreed to adopt MABS’ existing rate in the asset purchase agreement and the Settlement Agreement until Aqua’s next base rate case following closing of the Acquisition.

Shenandoah’s understanding that this practice would be protected by the Commission is evidenced by Section 1329(d)(1)(v) of the Code, which mandates that the utility submitting an application under Section 1329(a) of the Code submit with its initial filing a “tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition.” As noted above, Shenandoah’s long-standing practice, evidenced in its effective rates ordinance, is to offer this free water service to the fire companies. The parties therefore appropriately included this concept in the Settlement Tariff. For this and the additional reasons cited by Aqua in its Brief on Exception, Shenandoah’s Exception No. 1 should be granted.

### **III. CONCLUSION**

Accordingly, Shenandoah respectfully submits that Judge Watson erred in concluding that the Settlement Tariff should be rejected, to the extent it requires Aqua to provide free water service to the eight enumerated fire companies. The Commission is presented with a record that fully demonstrates that the Settlement and Settlement Tariff should be approved based on numerous substantial affirmative public benefits. As such, Shenandoah respectfully requests that the

Commission grant the Exception submitted by Shenandoah regarding the Recommended Decision,  
and approve the Settlement and Settlement Tariff without modification.

Respectfully submitted,

/s/ William C. Rhodes

William C. Rhodes, Esquire (PA I.D. 63029)

**BALLARD SPAHR LLP**

1735 Market Street, 51st Floor

Philadelphia, PA 19103-7599

rhodes@ballardspahr.com

Tel.: (215) 864-8534

Fax: (215) 864-8999

Email: rhodes@ballardspahr.com

*Counsel for the Municipal Authority of the Borough  
of Shenandoah and the Borough of Shenandoah*

Dated: May 30, 2023

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Aqua Pennsylvania, Inc. for** : **Docket No. A-2022-3034143**  
**Approval of its Acquisition of the Water** :  
**System Assets of the Borough of Shenandoah** :  
**and the Municipal Authority of the Borough** :  
**of Shenandoah Pursuant to Sections 1102,** :  
**1329 and 507 of the Public Utility Code** :

**CERTIFICATE OF SERVICE**

I, William C. Rhodes, hereby certify that a true and correct copy of the foregoing Exception of the Municipal Authority of the Borough of Pennsylvania and the Borough of Pennsylvania to the Recommended Decision, in connection with the above-referenced docket was served on the following individuals on this 30th day of May, 2023, as indicated below.

**PA PUC – VIA E-FILE**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105  
rchiavetta@pa.gov

Jeffrey A. Watson, ALJ (via e-mail)  
Pennsylvania Public Utility Commission  
301 Fifth Avenue, Suite 220  
Pittsburgh, PA 15222  
jeffswatson@pa.gov  
nmiskanic@pa.gov

Office of Special Assistants (via e-mail)  
ra-OSA@pa.gov

**OSBA**

Sharon E. Webb  
Assistant Small Business Advocate  
swebb@pa.gov

**I&E**

Carrie Wright, Esq., Prosecutor  
carwright@pa.gov

**Aqua Pennsylvania, Inc.**

Alexander R. Stahl  
[ASTahl@aquaamerica.com](mailto:ASTahl@aquaamerica.com)

Courtney L. Schultz, Esq.  
Saul Ewing  
Centre Square West, 1500 Market Street,  
38th Floor  
Philadelphia, PA 19102-2186  
[Courtney.Schultz@saul.com](mailto:Courtney.Schultz@saul.com)

**OCA**

PA Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
David T. Evrard  
Harrison W. Breitman  
Erin L. Gannon  
Lauren Myers  
[OCAShenandoah@paoca.org](mailto:OCAShenandoah@paoca.org)

**INTERVENOR**

Maria Casey, Esq.  
207 Arlene Street  
Minersville, PA 17954  
[Mariacasey7@comcast.net](mailto:Mariacasey7@comcast.net)  
*Counsel for Donna Gawrylik*