



**SENATE INTERVENORS' ANSWER TO PETITIONER'S  
JURISDICTIONAL STATEMENT**

Senate Intervenors<sup>1</sup> file this Answer to Petitioner's Jurisdictional Statement pursuant to Pennsylvania Rule of Appellate Procedure 911, Pa.R.A.P. 911. The Supreme Court is without jurisdiction to hear this appeal because the stay issued by the Commonwealth Court on April 5, 2022 (the "Stay") is not a final order nor is it an appealable interlocutory order. The Stay amounts to a temporary order issued to facilitate the briefing schedule requested by Petitioner before the full hearing on the preliminary injunction, which is scheduled for May 4, 2022.

By way of background, on March 25, Senate Intervenors filed an Application for Special Relief in the Nature of a Preliminary Injunction ("Application for Relief"), along with a Brief in Support, seeking an order from the Commonwealth Court enjoining all government officials employed by the Pennsylvania Department of Environmental Protection, the Environmental Quality Board ("EQB"), the Legislative Reference Bureau, and the Pennsylvania Code and Bulletin, from promulgating and/or publishing the EQB Rulemaking #7-599, entering Pennsylvania into the Regional Greenhouse Gas Initiative, also referred to as the "RGGI Rulemaking."

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<sup>1</sup> Senate Intervenors are Senator Jake Corman, Majority Leader Kim Ward, Environmental Resources and Energy Committee Chair Gene Yaw, and Appropriations Committee Chair Pat Browne.

On March 28, the Commonwealth Court ordered Petitioner and the other Respondents to file their respective answers to Senate Intervenors' Application for Relief by 4:00 p.m. on March 30. On March 30, Petitioner filed his Answer, therein requesting "30 days from the service of the [Senate] Intervenors' brief to file his reply brief." Petitioner's Answer to Application for Relief at 1.

On April 1, Senate Intervenors concurred in Petitioner's request for more time on the condition that the Commonwealth Court enter an interim order staying publication of the RGGI Rulemaking until all parties have fully briefed the court and, if deemed necessary by the court, a hearing could be held.

In an order received by the parties on April 4, the Commonwealth Court granted Petitioner's request for an extension of time, giving Petitioner until Monday, April 25 to file his brief. The same order scheduled a hearing on Senate Intervenors' Application for Relief for Wednesday, May 4.

On April 5, the Commonwealth Court entered the following order:  
"NOW, April 5, 2022, processing of the Regional Greenhouse Gas Initiative Regulation for publication in the Pennsylvania Bulletin is stayed pending further order of the Court." *See* Petitioner's Jurisdictional Statement at Exhibit A.

On April 6, the Commonwealth Court scheduled a status conference for Tuesday, April 12.

Before this status conference, Petitioner, on April 7, filed a Notice of Appeal

to this Court attempting to appeal the Stay. However, the Supreme Court is without jurisdiction to hear this appeal because the Stay is not a final order nor is it an appealable interlocutory order. *See* Section 723 of the Judicial Code, 42 Pa.C.S. § 723; Pennsylvania Rule of Appellate Procedure 311, Pa.R.A.P. 311.

In its Jurisdictional Statement, Petitioner attempts to characterize the Stay as a final order. Petitioner's Jurisdictional Statement at 1. The Stay is clearly not a final order as it does not dispose of any claims of the parties or end the case before the Commonwealth Court. *Probst v. Dep't of Transp., Bureau of Driver Licensing*, 849 A.2d 1135, 1131-42 (Pa. 2004). Petitioner also attempts to characterize the Stay as a preliminary injunction. Petitioner's Jurisdictional Statement at 1. This is not a correct characterization of the Stay as generally interim stay orders are not tantamount to preliminary injunctions. *See Commonwealth v. Morris*, 771 A.2d 721, 729 (Pa. 2001); *see also Young J. Lee v. Dep't of Revenue, Bureau of State Lotteries*, 474 A.2d 266, 268 (Pa. 1983) (setting forth that "[a]s a practical matter, [the Court] cannot interpret Rule 311(a)(4) to also permit interlocutory appeals as of right from the grant . . . of a stay . . . by the Commonwealth Court.>").

Senator Intervenors acknowledge that "Pennsylvania courts have treated stay orders as preliminary injunctions under limited circumstances." *Morris*, 771 A.2d at 729. When examining whether a stay rises to the equivalent of a preliminary injunction, this Court has articulated the following test:

Whether ... a stay order should be considered final for appeal purposes depends to a large extent upon the practical effect and impact the stay order might have on the relief requested by the litigants. If the effect of the stay order is tantamount to a dismissal of the cause of action or amounts to a permanent denial of relief requested, the party aggrieved should undoubtedly be afforded the opportunity to appeal on the basis that such stay order is a final disposition of some, if not all, of the rights involved.

*Philco Corp. v. Sunstein*, 241 A.2d 108, 109 (Pa. 1968).

Here, Petitioner attempts to characterize the Stay as an injunction preventing publication of the RGGI Rulemaking. This is not an accurate characterization. The practical effect of the Stay is that the RGGI Rulemaking will not be published before the preliminary injunction hearing scheduled for May 4. In just a few weeks, the Commonwealth Court will hold that hearing to address the merits of Senate Intervenors' request for a preliminary injunction until all claims can be briefed and decided on their respective merits. Thus, the Stay from which Petitioner attempts to appeal is not a permanent denial nor a final disposition of whether to enjoin publication of the RGGI Rulemaking. As such, the Stay is not tantamount to a preliminary injunction. *See id.*

The Commonwealth Court has acted diligently in response to the parties' respective requests in this litigation to date. The Commonwealth Court is allowing adequate time for full briefing—at the specific request of Petitioner—and scheduled a full hearing on Senate Intervenors' request for a preliminary injunction. Despite

these efforts, Petitioner remains unsatisfied and seeks this Court's time and attention for what amounts to a temporary stay.

As the Stay is not a final order nor an appealable interlocutory order, Petitioner has not established jurisdiction. Accordingly, Senate Intervenors respectfully request the appeal be quashed.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

Dated: April 13, 2022

By:  \_\_\_\_\_

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**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

I further certify this filing complies with Pennsylvania Rule of Appellate Procedure 911(a), Pa.R.A.P. 911(a), and does not exceed 1000 words.

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**CERTIFICATE OF SERVICE**

Pursuant to Pennsylvania Rule of Appellate Procedure 121, Pa.R.A.P. 121, I hereby certify that I have caused a true and correct copy of the foregoing document to be served on this 13th day of April, 2022, upon the persons and at the addresses below via the Court's PACFile System and U.S. Mail, First Class, postage prepaid, as follows, in accordance with Pennsylvania Rules of Appellate Procedure 121 and 1514(c), Pa.R.A.P. 121, 1514(c):

McNEES WALLACE & NURICK LLC

Dated: April 13, 2022

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