



COMMONWEALTH OF PENNSYLVANIA

December 7, 2018

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Joint Application of Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Peoples Gas Company LLC for all of the Authority and the Necessary Certificates of Public Convenience to Approve a Change in Control of Peoples Natural Gas Company LLC and Peoples Gas Company LLC by Way of the Purchase of All of LDC Funding LLC's Membership Interests by Aqua America, Inc. / Docket Nos. A-2018-3006061, A-2018-3006062, A-2018-3006063

Dear Secretary Chiavetta:

Enclosed please find the Notice of Intervention, Protest, and Verification, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceedings.

Copies will be served on all known parties in these proceedings, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erin K. Fure".

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

Enclosures

cc: Robert D. Knecht
Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Peoples Gas Company LLC for all of the Authority and the Necessary Certificates of Public Convenience to Approve a Change in Control of Peoples Natural Gas Company LLC and Peoples Gas Company LLC by Way of the Purchase of All of LDC Funding LLC's Membership Interests by Aqua America, Inc.	: : : : : : : : : : : : : :	Docket No. A-2018-3006061 Docket No. A-2018-3006062 Docket No. A-2018-3006063
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**NOTICE OF INTERVENTION AND PROTEST
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Office of Small Business Advocate (“OSBA”) files this Notice of Intervention and Protest with respect to the above-captioned Joint Application (“*Joint Application*”) pursuant to Sections 5.51(a) and 5.71(a)(1) of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code §§ 5.51(a) and 5.71(a)(1). In support of this Notice of Intervention and Protest, the OSBA avers as follows:

1. The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interests of small business consumers as a party in proceedings before the Commission.

2. Representing the OSBA in this proceeding is:

Erin K. Fure
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3. The *Joint Application* was filed by Aqua America, Inc. (“Aqua America”), Aqua Pennsylvania, Inc. (“Aqua PA”), Aqua Pennsylvania Wastewater Inc. (“Aqua PA Wastewater”), Peoples Natural Gas Company LLC (“Peoples Natural Gas”) and Peoples Gas Company LLC (“Peoples Gas”) (collectively, the “Applicants”) on November 13, 2018. The *Joint Application* proposes a “plan of acquisition” whereby Aqua America would obtain control of the Peoples Companies by purchasing all of the membership interests of LDC Funding LLC (“Funding”), the parent company of the Peoples Companies. *Joint Application*, at Paragraph 1.

4. Aqua America is a water and wastewater utility holding company that currently provides service through its operating subsidiaries, Aqua PA and Aqua PA Wastewater (collectively, the “Aqua Companies”), to various classes of customers in designated service territories throughout Pennsylvania. Aqua PA and Aqua PA Wastewater are Commission-certificated operating public water and wastewater utilities that provide service to various classes of customers in designated service territories within Pennsylvania. *See Joint Application*, at Paragraphs 8, 11, 12, 13, and 14.

5. Peoples Natural Gas and Peoples Gas (collectively, the “Peoples Companies”) are Commission-certificated operating public natural gas utilities that provide service to various

classes of customers in designated service territories within Pennsylvania. *See Joint Application*, at Paragraphs 15–20.

6. Section 1102(a) of the Public Utility Code, 66 Pa. C.S. § 1102(a), permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. Among the activities that require Commission approval is the following:

(3) For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 Pa. C.S. § 1102(a)(3).

7. When a certificate of public convenience is required under Section 1102, Section 1103(a) of the Public Utility Code, 66 Pa. C.S. § 1103(a), allows the Commission to issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.” According to the Pennsylvania Supreme Court, satisfying this standard requires the Commission to find that a proposed acquisition would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 141, 295 A.2d 825, 828 (Pa. 1972). In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.”

8. The *Joint Application* raises a variety of issues that may require the Commission to reject the *Joint Application*, or to approve it only after imposing strict conditions.

9. Specifically, the OSBA observes that the *Joint Application* proposes a purchase price that appears to exceed the book value of the Peoples Companies. The *Joint Application* proposes a base price of \$4.275 billion to acquire Funding's membership interests. *Joint Application*, at Paragraph 38. However, the current total book asset value for the Peoples Companies reported by the Applicants is approximately \$2.6 billion. *Joint Application*, at Appendix J and Appendix K. In addition, the OSBA observes that on October 23, 2018, the date that the planned acquisition was announced, Aqua America's stock price fell significantly, resulting in what OSBA estimates to be an over \$800 million loss in market capitalization from October 22, 2018, to October 26, 2018. The adverse market reaction, which may reflect an inflated purchase price, raises questions about the financial stability of the resulting entity. Moreover, the proposed acquisition would represent a significant overall increase in the size of Aqua America, which may also impact overall financial risk. Any such increased financial risks resulting from the proposed transaction will likely be borne, both directly and indirectly, by consumers.

10. Additionally, *City of York* requires the Commission to find that the proposed acquisition would "affirmatively promote the 'service, accommodation, convenience or safety of the public' in some substantial way." 449 Pa. 136, at 141. The OSBA respectfully submits that the *Joint Application* fails to meet this standard. While the *Joint Application* devotes Section VIII to outlining the benefits of the proposed acquisition (which essentially boil down to creating transparency, sharing infrastructure replacement practices and core competencies, maintaining

jobs in Pennsylvania, and maintaining a presence in the communities serviced by the Aqua Companies and the Peoples Companies), none of the benefits enumerated affirmatively promotes the public interest in a substantial way when compared to the status quo. *See Joint Application*, at Paragraphs 86, 88, 89, 91-93, 97, 99-100, 103, 104, 109, 112.

11. The *City of York* standard cannot be met by the proposed acquisition as it is currently set forth in the *Joint Application*. The Aqua Companies provide an entirely different utility service from that provided by the Peoples Companies. The Aqua Companies generally operate in an entirely different geographic region than the geographic region served by the Peoples Companies. Additionally, aside from vague references to future unidentified IT systems savings, the *Joint Application* is devoid of any proposals to combine management or administrative functions; rather, the *Joint Application* indicates “the employees of the Peoples Companies will be retained and, as a result, the existing, day-to-day operational expertise of the Peoples Companies will be unaffected.” *Joint Application*, at Paragraph 4. While maintenance of the status quo may not be harmful, it is not an affirmative benefit, nor does it promote the public interest in a substantial way.

12. The *Joint Application* asserts that Aqua America is presumed to be technically, legally, and financially fit to assume control of the Peoples Companies by virtue of its long-standing existence and its ownership of Aqua PA and Aqua PA Wastewater. *Joint Application*, at Paragraph 50. In support of its position, the *Joint Application* references *In re: Application of Pennsylvania Power & Light Company, PFG Gas, Inc., and North Penn Gas Company*, Docket Nos. A-120650F0006, A-122050F0003, 1998 Pa. PUC LEXIS 23, at *36-37 (“*Application of PPL*”), and argues that the presumption of fitness applies even where the acquiring public utility

provides service of a different nature than that of the public utility sought to be acquired. *Joint Application*, at Paragraph 50. The OSBA agrees that the *Application of PPL Order* is a noteworthy decision -- and one that should serve as a warning to the current Commission. Within a handful of years of the *Application of PPL Order*, PPL was forced to divest PFG Gas and North Penn Gas to a public utility that knew how to properly operate a natural gas utility. The OSBA respectfully submits that it is highly unlikely that a water utility, including Aqua America, is technically, legally, and financially fit to assume control of the Peoples Companies.

13. The proposed acquisition must meet the requirements of 66 Pa. C.S. § 2210. *Accord Joint Application*, at Paragraphs 53 - 56. Section 2210 requires the Commission to determine whether the proposed acquisition is likely to result in anticompetitive or discriminatory conduct which will prevent retail gas customers from obtaining benefits of a properly functioning and effectively competitive retail natural gas market. 66 Pa. C.S. § 2210(a)(1). The Applicants assert that the proposed acquisition will not violate Section 2201. *Joint Application*, at Paragraph 63. However, the Applicants provide no support for this legal conclusion. The *Joint Application* fails to include any argument as to how the proposed acquisition will avoid an anticompetitive or discriminatory result and ensure that retail natural gas customers continue to receive the benefits of a properly functioning and competitive market. This is a particularly significant issue as the Aqua Companies, being water utilities, are wholly unfamiliar with the competitive marketplace.

14. The OSBA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicants.

WHEREFORE, the OSBA respectfully requests that the Commission reject the *Joint Application* as filed.

In the alternative, the OSBA respectfully requests that the Commission conduct a full investigation, including evidentiary hearings, into the *Joint Application*.

Respectfully submitted,



Erin K. Fure
Assistant Small Business Advocate
Attorney I.D. No. 312245

For: John R. Evans
Small Business Advocate

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Date: December 7, 2018

VERIFICATION

I, John R. Evans, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that 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).

Date: December 7, 2018



(Signature)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua America,	:	Docket No. A-2018-3006061
Inc., Aqua Pennsylvania, Inc., Aqua	:	Docket No. A-2018-3006062
Pennsylvania Wastewater, Inc., Peoples	:	Docket No. A-2018-3006063
Natural Gas Company LLC and	:	
Peoples Gas Company LLC for all of	:	
the Authority and the Necessary	:	
Certificates of Public Convenience to	:	
Approve a Change in Control of	:	
Peoples Natural Gas Company LLC	:	
and Peoples Gas Company LLC by	:	
Way of the Purchase of All of LDC	:	
Funding LLC's Membership Interests	:	
by Aqua America, Inc.	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Charles E. Rainey Jr.
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DATE: December 7, 2018

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