

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 19, 2018

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
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 No. A-2018-3006061
Docket No. A-2018-3006062
Docket No. A-2018-3006063

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Protest and Public Statement in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J.D. Moore".

J.D. Moore
Assistant Consumer Advocate
PA Attorney I.D. #326292
E-Mail: JMoore@paoca.org

Attachment

cc: Office of Administrative Law Judge
Office of Special Assistants (e-mail only: ra-OSA@pa.gov)
Bureau of Technical Utility Services (email only)
Certificate of Service

*263751

CERTIFICATE OF SERVICE

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 : Docket No. A-2018-3006061
the Authority and the Necessary Certificates of : Docket No. A-2018-3006062
Public Convenience to Approve a Change in : Docket No. A-2018-3006063
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. :

I hereby certify that I have this day served a true copy of the following documents, the Office of Consumer Advocate's Protest and Public Statement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 19th day of December 2018.

SERVICE BY E-MAIL AND INTER-OFFICE MAIL

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/s/J.D. Moore

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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	:	Docket Nos. A-2018-3006061
for all of the Authority and Necessary	:	A-2018-3006062
Certificates of Public Convenience to	:	A-2018-3006063
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.	:	

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) submits this Protest in the above-captioned Application proceeding pursuant to 52 Pa. Code Sections 5.51-5.53, and Chapters 11, 13, 21 and 22 of the Public Utility Code. 66 Pa. C.S. §§ 1101 *et seq.*, 1301 *et seq.*, 2101 *et seq.*, 2201 *et seq.* On November 13, 2018, 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) filed the instant Application seeking Commission approval of the following:

(1) the transfer of 100% of the issued and outstanding membership interests in LDC Funding, LLC (LDC Funding), an indirect parent company of Peoples Natural Gas and Peoples Gas, from LDC Parent, LLC (LDC Parent) to Aqua America, and

(2) the change in control of Peoples Natural Gas and Peoples Gas that would result from Aqua America acquiring LDC Funding from LDC Parent. The Applicants further seek all other

approvals or certificates appropriate, customary, or necessary under the Code to carry out the acquisition contemplated in this Application in a lawful manner.

Through this Application, Aqua America will acquire LDC Funding from LDC Parent. LDC Funding is a subsidiary of LDC Parent and owns all of the authorized, issued, and outstanding membership interests in LDC Holdings, LLC (LDC Holdings). LDC Holdings owns all of the authorized, issued, and outstanding membership interests in PNG Companies, LLC (PNG). PNG is the sole owner of all authorized, issued, and outstanding membership interests of Peoples Natural Gas and Peoples Gas. Accordingly, through this Application, Peoples Natural Gas and Peoples Gas will become indirect subsidiaries of Aqua America. If the Application is approved, the Applicants state that the current employees and daily operations of both Peoples Natural Gas and Peoples Gas will be unaffected by the change in ownership and control. Under the Purchase Agreement, Aqua America will acquire LDC Funding from LDC Parent for \$4.275 billion, which includes approximately \$1.3 billion of debt assumed by Aqua America.

The OCA submits this Protest in order to ensure that the Application is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to the ratepayers of Aqua PA, Aqua PA Wastewater, Peoples Natural Gas, and Peoples Gas; (3) it does not adversely affect retail natural gas competition in Pennsylvania; and (4) it is in accordance with the Public Utility Code.

Specifically, the OCA avers as follows:

1. The Protestant is Tanya J. McCloskey, Acting Consumer Advocate, 555 Walnut Street, 5th Floor, Forum Place, Harrisburg, PA 17101. Protestant's attorneys for receiving service of all documents in this proceeding are Darryl A. Lawrence and Christine Maloni Hoover, Senior

Assistant Consumer Advocates, and Harrison W. Breitman and J.D. Moore, Assistant Consumer Advocates.

2. The OCA is authorized by law to represent the interests of utility consumers in all proceedings before the Commission. 71 P.S. §§ 309-1 *et seq.* The OCA submits this Protest to ensure the interests of Aqua PA, Aqua PA Wastewater, Peoples Natural Gas, and Peoples Gas's consumers are protected in the proposed acquisition.

3. The Application must be examined pursuant to Chapters 11, 13, 21, and 22 of the Public Utility Code. 66 Pa. C.S. §§ 1101 *et seq.*, 1301 *et seq.*, 2101 *et seq.*, 2201 *et seq.*

4. Section 1102 requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to offering service, abandoning service and certain property transfers by a public utility or their affiliated interests. 66 Pa. C.S. § 1102(a)(1)-(3). As set forth below, the Commission must also examine this transaction under the provisions of Chapters 21 and 22 of the Code.

5. The Code requires that a certificate shall only be granted upon findings that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a). The Supreme Court has found that this section of the Code requires a finding that a proposed merger will affirmatively benefit the public and “affirmatively promote the ‘service, accommodation, or convenience or safety of the public’ in some substantial way.” City of York v. Pa. P.U.C., 295 A.2d 825, 828 (Pa. 1973); see Popowsky v. Pa. P.U.C., 937 A.2d 1040, 1054 (Pa. 2007).

6. Additionally, Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa. C.S. § 1103(a). Section 1103(a) of the Code provides: “The Commission, in granting such certificate, may impose such conditions

as it may deem to be just and reasonable.” The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

7. Further, Section 2102 of the Code states that prior to any arrangement providing for the furnishing of certain services, *e.g.*, management, supervisory, construction, engineering, accounting, legal, or similar services, between a public utility and any affiliated interest, Commission approval must be obtained. 66 Pa. C.S. § 2102(a).

8. Finally, pursuant to Section 2210 of the Code, enacted as a provision of the Natural Gas Choice and Competition Act, the Commission, in exercising its authority to consider mergers, acquisitions, consolidations or dispositions, must consider:

(1) Whether the proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail gas customers from obtaining the benefits of a properly functioning and effectively competitive retail natural gas market.

(2) The effect of the proposed merger, consolidation, acquisition or disposition on the employees of the natural gas distribution company and on any authorized collective bargaining agent representing those employees.

66 Pa. C.S. § 2210(a).

Section 2210(b) also requires the Commission to approve such mergers, consolidations, acquisitions, and dispositions only upon terms and conditions “it finds necessary to preserve the benefits of a properly functioning and effectively competitive retail natural gas market.” 66 Pa. C.S. 2210(b).

9. Based upon the OCA’s preliminary review, the Application raises a number of important issues that must be resolved by the Commission before granting approval of this acquisition and issuing Certificates of Public Convenience in this matter. The OCA submits that the Application and proposals of the Applicants as filed may not support a conclusion that the acquisition will provide substantial, affirmative benefits to the public; affirmatively promote the

service, accommodation, convenience or safety of the public in some substantial way; or that it will not adversely affect retail natural gas competition in Pennsylvania.

10. Specifically, the OCA has preliminarily identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this acquisition:

a. Affirmative Ratepayer Benefits: The Application and its proposals may not demonstrate that this acquisition will provide substantial, affirmative ratepayer benefits in accordance with Pennsylvania law. The request for acquisition approval should not be approved unless and until the Applicants can demonstrate and provide affirmative, substantial ratepayer benefits from this acquisition, such as rate reductions, rate stability, and enhanced quality of service.

b. Savings/Synergies: The OCA submits that the Applicants' proposal must be examined to determine if the proposed acquisition will result in synergies and savings that will provide substantial, affirmative benefits to ratepayers. The Applicants' estimates of savings must be thoroughly reviewed and substantiated.

c. Costs to Achieve: Additional information regarding the costs to achieve the acquisition is necessary before the Commission can determine that these costs are reasonable. In addition, the allocation of costs to achieve between ratepayers and shareholders, and between corporate functions and subsidiaries, must be examined to determine whether ratepayers are receiving an appropriate share of the net benefits anticipated from this acquisition.

d. Acquisition Premium: The premium of above-book value that Aqua America will pay to acquire LDC Funding raises the issue of whether the Joint Applicants will

seek a rate adjustment to offset this charge. The OCA submits that no acquisition premium should be allowed in the natural gas, water, and wastewater cost of service for the Applicants' consumers.

e. Transaction/Transition Costs: The Applicants' consumers should not be forced to shoulder the costs of the proposed acquisition. The OCA submits that the Commission must prevent the Applicants from claiming in any future rate proceedings any Transaction and Transition costs to complete the proposed acquisition. Such Transaction and Transition costs should be borne solely by the Applicants and their shareholders.

f. Quality of Service: The Application provides no specific proposal to ensure that quality of service to Aqua PA, Aqua PA Wastewater, Peoples Gas, and Peoples Natural Gas's ratepayers improves because of this acquisition. The OCA submits that the Commission must, at a minimum, ensure that quality of service, including reliability, customer service, and billing service, is enhanced as a result of the acquisition.

g. Impact on Rates: The Application provides that the water and wastewater tariffs of Aqua PA and Aqua PA Wastewater, as well as the natural gas tariffs of Peoples Gas and Peoples Natural Gas, in effect at the time the proposed acquisition occurs will be unaffected by the acquisition and will remain in full force and effect. Application ¶ 59. The OCA submits that the Commission must examine the impact the proposed acquisition will have on the rates for Peoples Gas and Peoples Natural Gas, as well as the impact the proposed acquisition will have on the water and wastewater rates for Aqua PA and Aqua PA Wastewater.

h. Market Power and Effects on Competitive Markets: Under Section 2210 of the Code, the Commission must examine the effect of this acquisition on the competitive retail natural gas market. 66 Pa. C.S. § 2210(a)(1). The impact on the market should be further explored to ensure that the acquisition does not negatively impact the retail market.

i. Natural Gas Purchasing: As natural gas distribution companies, Peoples Gas and Peoples Natural Gas are required to obtain natural gas on behalf of their customers under a least-cost procurement policy. 66 Pa. C.S. § 1318(a), 1317(a), 1307(f)(c)(3). Such purchases must be just and reasonable. 66 Pa. C.S. § 1318(a). The OCA submits that the Commission should determine if this acquisition will affect the Applicants' natural gas purchasing practices.

j. Corporate Structure: The proposed corporate structure raises several issues that should be explored and resolved prior to approval of the acquisition. For example, appropriate accounting protocols may be needed to prevent the cross-subsidization of water customers by natural gas customers or the cross-subsidization of natural gas customers by water customers. In addition, appropriate Codes of Conduct must be in place to govern the relationships between the Aqua entities and the Peoples entities. The proposed corporate structure also must be reviewed to ensure that there are no adverse tax effects.

k. Universal Service: The Application does not discuss the continuation and improvement of Peoples Gas or Peoples Natural Gas's universal service programs or Aqua PA's Helping Hands program. The Commission must examine the universal service programs to ensure that these programs receive appropriate funding, local management attention, and continue to improve to meet the needs of low-income and payment-troubled customers in the Applicants' service territories.

l. Financial Separation: The Application does not provide any ringfencing or other similar provisions to protect the Applicants' future financial fitness. Notwithstanding the Applicants' current financial circumstances, the OCA submits that the Commission should examine the possibility of ringfencing or other similar provisions to ensure the financial soundness of Aqua PA, Aqua PA Wastewater, Peoples Gas, and Peoples Natural Gas going forward.

m. Ability to Diversify Utility Service: Aqua America has provided exclusively water and wastewater services to Pennsylvania ratepayers. Through this Application, Aqua America would, for the first time, provide natural gas distribution services to Pennsylvania ratepayers in addition to its water and wastewater services. The Commission must examine Aqua America's financial, operational, and technical ability to assume the responsibilities and obligations that attend being the parent of a natural gas distribution company.

n. Ongoing Settlement Commitments: Peoples Gas and Peoples Natural Gas are the subject of several ongoing commitments contained within a Joint Settlement Agreement at Docket No. A-2013-2353647 et al. The Commission must ensure that Peoples Gas and Peoples Natural Gas continue to honor the commitments contained within the Settlement Agreement despite a change in control.

o. Continuation of PUC Jurisdiction: Post-acquisition, the Commission must ensure that it retains sufficient jurisdiction and access to appropriate books and records of Aqua PA, Aqua PA Wastewater, Peoples Gas, and Peoples Natural Gas to ensure the continued provision of safe, adequate, and reliable service, to prevent inappropriate cross-subsidies at the expense of Pennsylvania consumers, and to support workable and viable competitive markets for retail natural gas distribution.

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

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission investigate and hold full hearings regarding the above-captioned Application. The OCA further requests that the Commission not approve this Application unless it finds that: (1) the Application is in the public interest; (2) the Application provides substantial, affirmative benefits to the ratepayers of Aqua PA, Aqua PA Wastewater, Peoples Gas, and Peoples Natural Gas; (3) the Application does not adversely affect retail competition in Pennsylvania; and (4) the Application is in accordance with the Public Utility Code. Additionally, the OCA requests that the Commission impose such terms and conditions upon the proposed acquisition as are necessary to ensure that the Application meets the requirements set forth above.

Respectfully Submitted,



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December 19, 2018
#263693

PUBLIC STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. § 309-4(e)

Act 161 of 1976, 71 P.S. Section 309-2, as enacted by the Pennsylvania General Assembly, authorizes the Office of Consumer Advocate (OCA) to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Acting Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the Application filed on November 13, 2018 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).

The Application seeks Commission approval of (1) the transfer of 100% of the issued and outstanding membership interests in LDC Funding, LLC (LDC Funding), an indirect parent company of Peoples Natural Gas and Peoples Gas, from LDC Parent, LLC (LDC Parent) to Aqua America, and (2) the change in control of Peoples Natural Gas and Peoples Gas that would result from Aqua America acquiring LDC Funding from LDC Parent. The Applicants further seek all other approvals or certificates appropriate, customary, or necessary under the Public Utility Code to carry out the acquisition contemplated in this Application in a lawful manner.

Through this Application, Aqua America will acquire LDC Funding from LDC Parent. LDC Funding is a subsidiary of LDC Parent and owns all of the authorized, issued, and outstanding membership interests in LDC Holdings, LLC (LDC Holdings). LDC Holdings owns all of the authorized, issued, and outstanding membership interests in PNG Companies, LLC (PNG). PNG is the sole owner of all authorized, issued, and outstanding membership interests of Peoples Natural Gas and Peoples Gas. Accordingly, through this Application, Peoples Natural Gas and

Peoples Gas will become indirect subsidiaries of Aqua America. If the Application is approved, the Applicants state that the current employees and daily operations of both Peoples Natural Gas and Peoples Gas will be unaffected by the change in ownership and control. Under the Purchase Agreement, Aqua America will acquire Funding from Parent for \$4.275 billion, which includes approximately \$1.3 billion of debt assumed by Aqua America.

The OCA has submitted a Protest in order to ensure that the Application is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to the ratepayers of Aqua PA, Aqua PA Wastewater, Peoples Natural Gas, and Peoples Gas; (3) it does not adversely affect retail natural gas competition in Pennsylvania; and (4) it is in accordance with the Public Utility Code. Among the areas to be addressed by the OCA are: affirmative ratepayer benefits, potential savings and synergies, costs to achieve the acquisition, acquisition premium, quality of service, impact on rates of the operating subsidiaries, market power and effects on competitive markets, impact on universal service and customer assistance programs, and necessary ratepayer protections. The OCA will seek to ensure that the interests of all affected Pennsylvania ratepayers are adequately considered in this proceeding.