



COMMONWEALTH OF PENNSYLVANIA

December 28, 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 Motion to Compel Responses to the Office of Small Business Advocate's Interrogatories, Set I, Question No. 3, Subparts a., b., d., and e., 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,

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**

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

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**MOTION OF THE OFFICE OF SMALL BUSINESS ADVOCATE  
TO DISMISS OBJECTIONS OF PEOPLES NATURAL GAS COMPANY LLC  
AND PEOPLES GAS COMPANY LLC AND COMPEL RESPONSES TO OSBA  
SET I, NOS. 3.A, 3.B, 3.D, AND 3.E INTERROGATORIES**

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Pursuant to 52 Pa. Code § 5.342(g), the Office of Small Business Advocate (“OSBA”) hereby requests that Administrative Law Judge (“ALJ”) Mary D. Long dismiss the objections of Peoples Natural Gas Company LLC (“Peoples Natural Gas”) and Peoples Gas Company LLC (“Peoples Gas”) (collectively, “Peoples” or the “Companies”) and compel Peoples to answer OSBA Interrogatories Set I, Nos. 3.a, 3.b, 3.d, and 3.e. In support of this Motion, OSBA avers as follows:

## **I. Procedural Background**

1. On November 13, 2018, Peoples, Aqua America, Inc. (“Aqua America”), Aqua Pennsylvania, Inc. (“Aqua PA”), and Aqua Pennsylvania Wastewater, Inc. (“Aqua PA Wastewater”) filed the *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* (“*Joint Application*”) pursuant to Sections 1102(a)(3) and 2210(a)(1) of the Public Utility Code, 66 Pa. C.S. §§ 1102(a)(3) and 2210(a)(1).

2. On December 7, 2018, the OSBA filed a Notice of Appearance, Notice of Intervention and Protest in opposition to the *Joint Application*.

3. On December 10, 2018, the OSBA served Set I of its Interrogatories upon Peoples.

4. On December 11, 2018, the Utility Workers Union of America, Local 612 filed a Petition to Intervene.

5. On December 11, 2018, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) filed Notices of Appearance.

6. On December 19, 2018, the Laborers District Council of Western Pennsylvania filed a Petition to Intervene and Notice of Appearance.

7. On December 19, 2018, the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement.

8. On December 20, 2018, Peoples filed Objections (“*Peoples Objections*”) to OSBA Set I, nos. 3.a, 3.b, 3.d and 3.e.

9. On December 21, 2018, a PreHearing Conference was scheduled before ALJ Long for January 18, 2019.

10. On December 21, 2018, the Pennsylvania Independent Oil and Gas Association filed a Petition to Intervene.

11. On December 21, 2018, the United States Steel Corporation filed a Petition to Intervene.

12. On December 21, 2018, Equitrans, L.P. filed a Notice of Appearance and Petition to Intervene.

13. On December 26, 2018, Duquesne Light Company filed a Petition to Intervene.

14. On December 27, 2018, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”) filed a Petition to Intervene.

## **II. Discussion**

15. In its December 20<sup>th</sup> objections, the Companies argued that OSBA Set I, Nos. 3.a and 3.b sought information that is beyond the scope of permissible discovery, pursuant to 52 Pa. Code § 5.321(c). *Peoples Objections*, at 4. Peoples stated, as follows:

[T]he post-closing financial fitness of the indirect owners of [Peoples] (*i.e.*, SteelRiver Infrastructure Fund North America LP and an affiliated fund, which are managed by SteelRiver Infrastructure Associates LLC and its affiliated investment management entities (collectively, ‘SteelRiver’)) is irrelevant. Information concerning

SteelRivers' determination that the sales price is reasonable is therefore inadmissible as irrelevant, and does not appear reasonably calculated to lead to the discovery of relevant evidence.

*Peoples Objections*, at 4. The Companies also argued that the information requested by OSBA Set I, Nos. 3.a and 3.b. is “subject to the attorney-client and attorney work product privileges.” *Peoples Objections*, at 4.

16. For ease of reference, OSBA Set I, No. 3 is set forth below:

3. Reference Application at page 13 paragraph 38:

- a. In MS Excel electronic format, please provide the financial forecasts developed by the Peoples Companies and/or Steel River which demonstrated that an acquisition price of \$4.275 billion was reasonable. Please include all supporting workpapers.
- b. Please provide copies of any and all external or internal valuation or financial appraisal studies of the Peoples Companies used by the Peoples Companies and/or SteelRiver to evaluate the Proposed Transaction.
- c. Please identify any and all external financial, accounting and appraisal advisors retained by the Peoples Companies and/or SteelRiver regarding the Proposed Transaction.
- d. Please provide copies of all presentations made to the boards of directors for the Peoples Companies and SteelRiver regarding the Proposed Transaction.
- e. Please provide copies of all meeting minutes for the Peoples Companies' and SteelRiver's board meetings in which the Proposed Transaction was addressed.

17. As set forth above, OSBA Set I, Nos. 3.a and 3.b do not make any request for information regarding the post-closing financial fitness of SteelRiver. OSBA Set I, Nos. 3.a and 3.b specifically request information prepared by, and/or information which was available to, Peoples and SteelRiver regarding the value of the entity being sold. Peoples acknowledged that the Commission must make a determination as to “...whether

the proposed buyer is financially, technically and legally fit to own and operate the utility.” *Peoples Objections*, at 3. If the purchase price exceeds the fair value of the entity being sold, the financial ability of the buyer to meet its obligations as a utility may be compromised. The value of Peoples will impact the analysis of whether Aqua America is financially fit to own Peoples. Therefore, the information sought by OSBA Set I, Nos. 3.a and 3.b is relevant and reasonably calculated to lead to the discovery of admissible evidence.

18. In response to Peoples’ claims that the information sought by OSBA Set I, Nos. 3.a and 3.b. is subject to the attorney-client privilege, whether attorney-client privilege protects a particular communication from disclosure is a question of law to be decided by the court. *See Estate of Wood*, 818 A.2d 568, 571 (Pa. Super. 2003). Peoples has the burden of proving that the attorney-client privilege applies to the information sought. *See Commonwealth v. Maguigan*, 511 A.2d 1327, 1334 (Pa. 1986); *Joyner v. SEPTA*, 736 A.2d 35, 38 n.3 (Pa.Cmwlt. 1999). Peoples has not provided any facts to support their claim that the attorney-client privilege applies to the requested financial forecasts and valuation/financial appraisal studies. Peoples also broadly asserted that the information sought by OSBA Set I, Nos. 3.a and 3.b is subject to the attorney work product privilege, but again provided no facts to support its claim. Therefore, Peoples has failed to meet its burden of proof that the privilege should apply to OSBA Set I, Nos. 3.a and 3.b.

19. The Companies objected to OSBA Set I, No. 3.d, arguing that there are no pertinent presentations to the Board of Directors of Peoples Natural Gas or Peoples Gas. The Companies also argued that presentations to the governing boards of SteelRiver are

inadmissible as they are irrelevant and are not likely to lead to the discovery of admissible evidence because “[t]he pertinent party to the Transaction is LDC Parent LLC [sic], which executed the Purchase Agreement.” *Peoples Objections*, at 5. Peoples also claimed that presentations to the governing boards of SteelRiver are subject to the attorney-client privilege. *Peoples Objections*, at 5.

20. In addition, the Companies objected to OSBA Set I, No. 3.e, arguing that there are no pertinent meeting minutes for the Board of Directors of Peoples Natural Gas or Peoples Gas, and that the meeting minutes of the governing boards of SteelRiver are inadmissible as they are irrelevant and are not likely to lead to the discovery of admissible evidence because “[t]he pertinent party to the Transaction is LDC Parent LLC [sic], which executed the Purchase Agreement.” *Peoples Objections*, at 5-6. Peoples also claimed that the meeting minutes of the governing boards of SteelRiver are subject to the attorney-client privilege. *Peoples Objections*, at 6.

21. The OSBA disagrees with Peoples’ claims that SteelRiver is not a pertinent party. The *Joint Application* stated, as follows:

Peoples Natural Gas is a wholly-owned subsidiary of PNG Companies LLC (‘PNG’), indirectly owned by SteelRiver Infrastructure Fund North America LP (‘SRIFNA’) and an affiliated fund, which are managed by SteelRiver Infrastructure Associates LLC and its affiliated investment management entities (collectively ‘SteelRiver’).

*Joint Application*, at ¶15, p. 7. Thus, the term “SteelRiver” in OSBA Set I, Nos. 3.d and 3.e refers to the entities that the *Joint Application* indicated manage Peoples Natural Gas. According to the *Joint Application*, SteelRiver encompasses SRINFA, affiliated funds, SteelRiver Infrastructure Associates and affiliated investment management entities. Moreover, the *Joint Application*, which was verified by Peoples’ President and CEO

subject to the penalties of 18 Pa. C.S. § 4904, represented to the Commission that Peoples Natural Gas is being managed by SteelRiver. As such, the SteelRiver entities are certainly the relevant decisionmakers with respect to evaluating the financial reasonableness of the proposed transaction. Therefore, the information sought by OSBA Set I, Nos. 3.d and 3.e is relevant and likely to lead to discovery of admissible evidence.

22. Regarding Peoples' claims that the information sought by OSBA's Set I, Nos. 3.d and 3.e is subject to the attorney-client privilege, as set forth above, whether attorney-client privilege protects a particular communication from disclosure is a question of law to be decided by the court. Furthermore, as discussed above, Peoples has the burden of proving that the attorney-client privilege applies to the information sought. Peoples has not provided any facts to support their claim that the attorney-client privilege applies to the information sought. Therefore, Peoples has failed to meet its burden of proof that the privilege should apply to OSBA Set I, Nos. 3.d and 3.e.



**WHEREFORE**, the OSBA respectfully requests that ALJ Long grant this motion to dismiss the *Peoples Objections* and compel Peoples to answer OSBA's Set I, Nos. 3.a, 3.b, 3.d, and 3.e.

Respectfully submitted,



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Erin K. Fure  
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Attorney ID No. 312245

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Small Business Advocate

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Dated: December 28, 2018

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**VERIFICATION**

I, Erin K. Fure, 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 28, 2018



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(Signature)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**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 Mary D. Long  
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DATE: December 28, 2018



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