



January 2, 2019

**Jonathan P. Nase**

**VIA E-FILING**

Direct Phone 717-773-4191  
Direct Fax 215-372-2340  
jnase@cozen.com

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
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, ET AL.**

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

Dear Secretary Chiavetta:

Enclosed for filing with the Commission, please find the Answer of Peoples Natural Gas Company LLC and Peoples Gas Company LLC to the Motion of the Office of Small Business Advocate to Dismiss Objections and Compel Responses to OSBA Set I, Nos. 3.A., 3.B., 3.D. and 3.E. Interrogatories in the above-referenced proceeding. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions, please contact me. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

By: Jonathan P. Nase  
Counsel for Peoples Natural Gas Company LLC and  
Peoples Gas Company LLC

JPN:kmg  
Enclosures

cc: Honorable Mary D. Long  
Per Certificate of Service

**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 : Docket No. A-2018-3006061  
Peoples Gas Company LLC for all of the Authority : A-2018-3006062,  
and the Necessary Certificates of Public : A-2018-3006063  
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 I have this day served a true copy of the foregoing **Answer of Peoples Natural Gas Company LLC and Peoples Gas Company LLC to the Motion of the Office of Small Business Advocate to Dismiss Objections and Compel Responses to OSBA Set I, Nos. 3.A., 3.B., 3.D. and 3.E. Interrogatories**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

The Honorable Mary D. Long  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Piatt Place  
301 5<sup>th</sup> Avenue, Suite 200  
Pittsburgh, PA 15222  
E-mail: malong@pa.gov

Carrie B. Wright, Esq.  
Erika L. McLain, Esq.  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
400 North Street, 2 West  
Harrisburg, PA 17120  
E-mail: carwright@pa.gov  
E-mail: ermclain@pa.gov  
Counsel for *Bureau of Investigation & Enforcement*

Erin K. Fure, Esq.  
Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101  
E-mail: efure@pa.gov  
Counsel for *Office of Small Business Advocate*

J. D. Moore, Esq.  
Christine Maloni Hoover, Esq.  
Darryl A. Lawrence, Esq.  
Harrison W. Breitman, Esq.  
Office of Consumer Advocate  
555 Walnut Street 5th Floor  
Forum Place  
Harrisburg, PA 17101  
E-mail: JMoore@paoca.org  
E-mail: CHoover@paoca.org  
E-mail: DLawrence@paoca.org  
E-mail: HBreitman@paoca.org  
Counsel for *Office of Consumer Advocate*

Michael W. Hassell, Esq.  
Michael W. Gang, Esq.  
Garrett P. Lent, Esq.  
Post & Schell  
17 N. 2nd St., 12th Floor  
Harrisburg, PA 17101  
E-mail: mhassell@postschell.com  
E-mail: mgang@postschell.com  
E-mail: glent@postschell.com  
Counsel for *Aqua Pennsylvania Inc.*

Kimberly A. Joyce, Esq.  
Alexander R. Stahl, Esq.  
Aqua America, Inc.  
762 West Lancaster Ave.  
Bryn Mawr, PA 19010  
E-mail: kajoyce@aquaamerica.com  
E-mail: astahl@aquaamerica.com  
Counsel for *Aqua Pennsylvania Inc.*

William H. Roberts II, Esq.  
Peoples Natural Gas Company LLC  
375 North Shore Drive  
Pittsburgh, PA 15212  
E-mail: William.h.robertsii@peoples-gas.com  
Counsel for *Peoples Natural Gas Company LLC and Peoples Gas Company LLC*

Kevin J. Moody, Esq.  
Pennsylvania Independent Oil  
& Gas Association  
212 Locust St., Suite 300  
Harrisburg, PA 17101-1510  
E-mail: kevin@pioga.org  
Counsel for *PIOGA*

Brian C. Wauhop, Esq.  
Buchanan Ingersoll & Rooney PC  
409 North Second St., Suite 500  
Harrisburg, PA 17101-1357  
E-mail: Brian.wauhop@bicp.com  
Counsel for *Equitrans, L.P.*

Matthew Eggerding, Esq.  
2200 Energy Drive  
Canonsburg, PA 15317  
E-mail: meggerding@equitransmidstream.com  
Counsel for *Equitrans, L.P.*

Brian Petruska, Esq.  
General Counsel  
LiUNA, Mid-Atlantic Region  
11951 Freedom Drive, Suite 310  
Reston, VA 20190  
E-mail: bpetruska@maliuna.org  
Counsel for *Laborers' International Union*

Melvin L. Vatz, Esq.  
Vatz Law  
247 Fort Pitt Boulevard, 4th Floor  
Pittsburgh, PA 15222  
E-mail: mvatz@vatzlaw.com  
Counsel for *Laborers' District Council of Western Pennsylvania*

Scott J. Rubin, Esq.  
333 Oak Lane  
Bloomsburg, PA 17815  
E-mail: Scott.j.rubin@gmail.com  
Counsel for *Utility Workers Union of America, Local 612*

Derrick Price Williamson, Esq.  
Barry A. Naum, Esq.  
Spilman Thomas & Battle, PLLC  
1110 Bent Creek Blvd., Suite 101  
Mechanicsburg, PA 17050  
E-mail: dwilliamson@spilmanlaw.com  
E-mail: bnaum@spilmanlaw.com  
Counsel for *United States Steel Corporation*

David T. Fisfis, Esquire  
Tishekia E. Williams, Esquire  
Duquesne Light Company  
411 Seventh Avenue  
Pittsburgh, PA 15219  
E-mail: dfisfis@duqlight.com  
E-mail: twilliams@duqlight.com  
Counsel for *Duquesne Light Company*

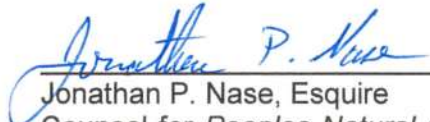
Michael A. Gruin, Esq.  
Stevens & Lee  
17 North Second Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
E-mail: mag@stevenslee.com  
Counsel for *Duquesne Light Company*

Linda R. Evers, Esquire  
Stevens & Lee  
111 N. 6th Street  
Reading, PA 19601  
E-mail: lre@stevenslee.com  
Counsel for *Duquesne Light Company*

Elizabeth R. Marx, Esq.  
Kadeem G. Morris, Esq.  
Patrick M. Cicero, Esq.  
John W. Sweet, Esq.  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
E-mail: pulp@palegalaid.net  
Counsel for CAUSE-PA

Todd S. Stewart, Esq.  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
E-mail: tsstewart@hmslegal.com  
Counsel for *Natural Gas Supplier Parties and  
The Retail Energy Supply Association*

Deanne M. O'Dell, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
Counsel for *Direct Energy Business  
Marketing, LLC* and *Direct Energy Small  
Business, LLC*

  
Jonathan P. Nase, Esquire  
Counsel for *Peoples Natural Gas Company  
LLC* and *Peoples Gas Company LLC*

Date: January 2, 2019

## VERIFICATION

I, John McGuire, hereby state that the facts set forth 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: January 2, 2019



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PRINTED NAME: John McGuire  
TITLE: Vice President  
COMPANY: SteelRiver Infrastructure  
Fund North America LP

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Administrative Law Judge Mary D. Long**

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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 Nos. A-2018-3006061  
the Authority and the Necessary Certificates of : A-2018-3006062  
Public Convenience to Approve a Change in : 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. :

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

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AND NOW COMES, Peoples Natural Gas Company LLC (“Peoples Natural Gas”) and Peoples Gas Company LLC (“Peoples Gas”) (collectively, “Peoples”), pursuant to 52 Pa. Code § 5.342(g)(1), to file this Answer (“Answer”) to the “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” (“Motion to Compel”), filed on December 28, 2018. Peoples respectfully requests that the Motion to Compel be denied in its entirety. In support thereof, Peoples states as follows:

## I. OVERVIEW

This proceeding concerns an application (“Application”) seeking Pennsylvania Public Utility Commission (“Commission”) approval of the change of control of public utilities. 66 Pa. C.S. § 1102(a). Specifically, the Application requests Commission approval of a transaction (“Transaction”) in which LDC Parent LLC will convey the membership interests in LDC Funding LLC to Aqua America, Inc. (“Aqua America”). Aqua America, Inc. is a corporate parent of two Commission-regulated utilities, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. LDC Funding LLC is a corporate parent of two Commission-regulated utilities, Peoples Natural Gas and Peoples Gas. LDC Parent LLC, however, is not the ultimate corporate parent of Peoples. Rather, 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”) are Peoples’ ultimate corporate parent.

The standard for approval of such a transfer of control is whether the proposed buyer is financially, technically and legally fit to own and operate the utility being transferred, *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958). In addition, the Commission will consider whether the transaction “affirmatively promotes the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

Peoples objected to certain interrogatories propounded by the Office of Small Advocate (“OSBA”) on the grounds that those interrogatories were beyond the scope of permissible discovery in PUC proceedings. 52 Pa. Code § 5.321(c) states the permissible scope of discovery:

(c) *Scope*. Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Additionally, 52 Pa. Code § 5.361(a) states:

- (a) Discovery or deposition is not permitted which:
  - (1) Is sought in bad faith.
  - (2) Would cause unreasonable annoyance, embarrassment, oppression, burden, or expense to the deponent, a person or party.
  - (3) Relates to a matter which is privileged.
  - (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

In its Motion to Compel Responses, the OSBA limits the scope of the objected-to discovery. The OSBA focuses on interrogatories seeking the seller's calculations of the *value* of the entity being sold. The OSBA asserts that this information is relevant to this proceeding because "[i]f 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." Motion to Compel, p. 5.

Peoples respectfully submits that, in an arm's length transaction between a willing buyer and a willing seller, the value of the entity being sold *is* the agreed-to purchase price. Additionally, the relevant information for purposes of determining the financial fitness of the purchaser is the purchase price compared to the depreciated original cost of the acquired assets. The financial ability of a buyer to meet its obligations after the transaction is consummated depends on the purchase price of the entity, taking into consideration the revenues and other financial resources of the buyer. The buyer may well be financially fit to purchase and operate



an entity, even where that buyer pays an “acquisition premium” (*i.e.*, the difference between the purchase price and the depreciated original cost of the acquired assets) for the entity. The information that the OSBA seeks from Peoples is therefore inadmissible and is not likely to lead to the discovery of admissible evidence.<sup>1</sup> It is therefore beyond the scope of permissible discovery and the Administrative Law Judge (“ALJ”) should deny the Motion to Compel.

The OSBA also seeks meeting minutes from, and presentations to, the Board of Directors of Peoples and SteelRiver, relating to the Transaction described in the Application. In its objections, Peoples explained that there are no pertinent minutes or presentations with regard to Peoples.

To the extent that the OSBA seeks documents pertaining to SteelRiver’s Board of Directors, the Motion to Compel fails to explain how the objected-to Interrogatories would produce evidence admissible in this proceeding, or lead to the discovery of evidence admissible in this proceeding. If the OSBA is seeking information concerning the value of the entity being sold, as previously argued, the purchase price and the depreciated original cost of the assets -- rather than the seller’s calculations of the value of the entity being sold -- is the relevant information. Interrogatories 3.d. and 3.e. are therefore objectionable for the reasons discussed in Paragraph 17, above.

If, however, the OSBA is seeking to confirm that LDC Parent LLC has authority to enter into the Transaction, the Purchase Agreement dated as of October 22, 2018 by and between LDC Parent LLC and Aqua America includes a representation and warranty that LDC Parent LLC has the right, power, capacity and authority to execute and deliver that agreement and to consummate

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<sup>1</sup> Peoples notes that information regarding the depreciated original cost of the acquired assets can be obtained through other less-intrusive means than requesting highly-confidential and attorney-client privileged financial models, presentations, and meetings minutes of the seller. If indeed OSBA’s true intention in asking the objected-to discovery is to ascertain the value of the assets being sold (as it is now asserting in its Motion to Compel), it could have asked that question directly or asked for the plant-in-service accounting records of Peoples.

the Transaction. Section 3.2(a). Consequently, Peoples has offered to stipulate to the fact that LDC Parent LLC properly authorized the Transaction.

The OSBA's Motion fails to demonstrate that the objected-to interrogatories request documents that are within the scope of discovery in PUC proceedings. Consequently, the ALJ should deny the Motion to Compel with respect to Interrogatories 3.d. and 3.e.

## **II. ANSWER**

### **A. Procedural Background**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.
13. Admitted.
14. Admitted

**B. Discussion**

15. Denied. Peoples' Objections are a written document that speak for themselves. A copy of those objections is attached as **Appendix A**.

16. Denied. OSBA's Interrogatory Set I, No. 3 is a written document that speaks for itself. A copy of the OSBA's Set I is attached to **Appendix A**.

17. Denied. This paragraph contains a legal argument to which no response is required. To the extent a response is required, Peoples notes that, in its Motion to Compel, the OSBA limits the scope of Interrogatories 3.a. and 3.b. Even as so limited, however, Interrogatories 3.a. and 3.b. do not seek admissible evidence or information reasonably calculated to lead to the discovery of admissible evidence.

As limited by the Motion to Compel, the OSBA's Interrogatories 3.a. and 3.b. seek information regarding the seller's assessment of the value of the entity being sold. The OSBA asserts that this information is relevant to this proceeding because, "[i]f 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." Motion to Compel, p. 5.

Peoples respectfully submits that, in an arm's length transaction between a willing buyer and a willing seller, the value of the entity being sold *is* the agreed-to purchase price. To the extent that there is a difference between the value of the entity being sold and its purchase price, the relevant information for purposes of determining the financial fitness of the purchaser *is* the purchase price and the depreciated original cost of the acquired assets.<sup>2</sup> The financial ability of a buyer to meet its obligations after the transaction is consummated depends on the purchase price

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<sup>2</sup> Information regarding Peoples' depreciated original cost is otherwise available through discovery and examination of Peoples' plant-in-service accounting records. Depreciated original cost would be used to determine Peoples' rate base under Aqua ownership. Aqua would be entitled to earn a "return on and of" such rate base under the Pennsylvania Public Utility Code ratemaking process.

of the entity, taking into consideration the revenues and other financial resources of the purchaser. A buyer may well be financially fit to purchase and operate an entity, even where the buyer pays an “acquisition premium” on the entity. Information pertaining to the seller’s calculations of an acceptable purchase price are therefore inadmissible, and are not likely to lead to the discovery of admissible evidence. Consequently, the ALJ should deny the Motion to Compel with respect to Interrogatories 3.a. and 3.b.

18. Denied. This paragraph sets forth a legal argument to which no response is required. By way of further answer, the ALJ need not address this argument because the ALJ should deny the Motion to Compel for the reasons set forth in Paragraph 17. In any event, the requested documents – to the extent that they may exist – are subject to the attorney-client privilege and, therefore, not subject to disclosure. All financial forecasts and valuation/financial appraisal studies were prepared in consultation with John McGuire, SteelRiver’s General Counsel, or in consultation with outside counsel for SteelRiver. Mr. McGuire is present at all meetings of the governing boards of SteelRiver and its affiliated entities in his capacity as General Counsel. Any such documents were prepared in anticipation of making an offer to Aqua and of litigation regarding the Transaction. SteelRiver took care to ensure that the attorney-client privilege was not waived for any such documents.

19. Denied. Peoples’ objections are contained in a written document that speaks for itself. See **Appendix A**.

20. Denied. Peoples’ objections are contained in a written document that speaks for itself. See **Appendix A**.

21. Denied. This paragraph sets forth a legal argument to which no response is required. To the extent a response is required, Peoples submits that the relevant inquiries in this

proceeding are (1) whether Aqua America is financially, legally, and technically fit to purchase and operate Peoples, and (2) whether the Transaction will result in an affirmative public benefit of a substantial nature. The objected-to Interrogatories seek information concerning minutes from, or presentations to, the Board of Directors of Peoples and Peoples' ultimate corporate parent, SteelRiver. Peoples' Objections explained that there are no documents responsive to the request for minutes or presentations to Peoples' Boards of Directors.

To the extent that the objected-to Interrogatories seek documents pertaining to SteelRiver's Board of Directors, the Motion to Compel fails to explain how the objected-to Interrogatories would produce evidence admissible in this proceeding, or lead to the discovery of evidence admissible in this proceeding. If the OSBA is seeking information concerning the value of the entity being sold, as previously argued, the purchase price and the depreciated original cost of the assets -- rather than the seller's calculations of the value of the entity being sold -- is the relevant information. Interrogatories 3.d. and 3.e. are therefore objectionable for the reasons discussed in Paragraph 17, above.

If, however, the OSBA is seeking to confirm that LDC Parent LLC has authority to enter into the Transaction, the Purchase Agreement dated as of October 22, 2018 by and between LDC Parent LLC and Aqua America includes a representation and warranty that LDC Parent LLC has the right, power, capacity and authority to execute and deliver that agreement and to consummate the Transaction. Section 3.2(a). Consequently, Peoples' Objections offered to stipulate to the fact that LDC Parent LLC properly authorized the Transaction.

The OSBA's Motion fails to demonstrate that the objected-to interrogatories request documents that are within the scope of discovery in PUC proceedings. Consequently, the ALJ should deny the Motion to Compel with respect to Interrogatories 3.d. and 3.e.


22. Denied. This paragraph sets forth a legal argument to which no response is required. By way of further answer, the ALJ need not address this argument because the ALJ should deny the Motion to Compel for the reasons set forth in Paragraph 21 above. In any event, the requested documents – to the extent that they may exist – are subject to the attorney-client privilege and, therefore, not subject to disclosure. All presentations and meeting minutes regarding the Transaction were prepared in consultation with John McGuire, SteelRiver’s General Counsel, or in consultation with outside counsel for SteelRiver. Mr. McGuire is present at all meetings of the governing boards of SteelRiver and its affiliated entities in his capacity as General Counsel. Any such documents were prepared in anticipation of making an offer to Aqua and of litigation regarding the Transaction. SteelRiver took care to ensure that the attorney-client privilege was not waived for any such documents.

### III. REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons, Peoples respectfully requests that the Administrative Law Judge deny the Motion to Compel in its entirety and sustain the Objections of Peoples to Interrogatories 3.a., 3.b., 3.d and 3.e.

Respectfully submitted,

Dated: January 2, 2019

  
\_\_\_\_\_  
David P. Zambito, Esquire (PA ID No. 80017)  
Jonathan P. Nase, Esquire (PA ID No. 44003)  
Cozen O’Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Phone: 717-703-5892  
Fax: 215-989-4216  
E-mail: dzambito@cozen.com  
jnase@cozen.com

William H. Roberts II, Esq. (PA 54724)  
Peoples Natural Gas Company LLC  
375 North Shore Drive  
Pittsburgh, PA 15212  
Phone: 412-208-6527  
Fax: 412-208-6575  
E-mail: William.H.RobertsII@peoples-gas.com

Counsel for *Peoples Natural Gas Company LLC*

# APPENDIX A





December 20, 2018

VIA E-MAIL AND FIRST CLASS MAIL

**Jonathan P. Nase**

Direct Phone 717-773-4191  
Direct Fax 215-372-2340  
jnase@cozen.com

Erin K. Fure, Esq.  
Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101

**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 et al.**

**Objections of Peoples Natural Gas Company and Peoples Gas Company LLC to Certain Interrogatories in the Interrogatories – Set I Propounded by the Office of Small Business Advocate**


Dear Ms. Fure:

Enclosed please find the Objections of Peoples Natural Gas Company and Peoples Gas Company LLC to Certain Interrogatories in the Interrogatories – Set I Propounded by the Office of Small Business Advocate. Copies have been served in accordance with the enclosed certificate of service.

Please contact me if you have any questions concerning the enclosed.

Sincerely,

COZEN O'CONNOR



By: Jonathan P. Nase

JPN  
Enclosure

cc: Rosemary Chiavetta, Secretary (*Cover Letter and Certificate of Service Only*)  
Per Certificate of Service  
William H. Roberts II, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua America, Inc., Aqua :  
Pennsylvania, Inc., Aqua Pennsylvania : Docket Nos. A-2018-3006061  
Wastewater, Inc., Peoples Natural Gas Company : A-2018-3006062  
LLC and Peoples Gas Company LLC for all of the : A-2018-3006063  
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 I have this day served a true copy of the foregoing **Objections of the Applicants to Certain Interrogatories in the Interrogatories – Set I Propounded by the Office of Small Business Advocate** upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA E-MAIL AND FIRST CLASS MAIL**

Darryl Lawrence, Esq.  
Harrison Breitman, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
E-mail: dlawrence@paoca.org  
E-mail: hbreitman@paoca.org  
Counsel for the *Office of Consumer Advocate*

Erika L. McLain, Esq.  
Carrie B. Wright, Esq.  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
E-mail: ermclain@pa.gov  
E-mail: carwright@pa.gov  
Counsel for the *Bureau of Investigation and Enforcement*

Kimberly A. Joyce, Esq.  
Alexander R. Stahl, Esq.  
Aqua America, Inc.  
762 West Lancaster Ave.  
Bryn Mawr, PA 19010  
E-mail: kjoyce@aquaamerica.com  
E-mail: astahl@aquaamerica.com  
Counsel for *Aqua America, Inc.*

Melvin Vatz, Esq.  
247 Fort Pitt Boulevard, 4<sup>th</sup> Floor  
Pittsburgh, PA 15222  
E-mail: mvatz@vatzlaw.com  
Counsel for *Laborers' District Council of Western Pennsylvania*

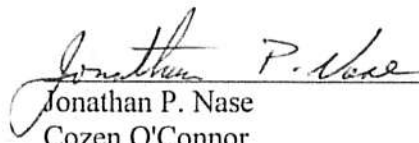
Brian Petruska, Esq.  
LIUNA, Mid-Atlantic Region  
11951 Freedom Drive, Suite 310  
Reston, VA 20190  
E-mail: bpetruska@maliuna.org  
Counsel for *Laborers' International Union*

Erin K. Fure, Esq.  
Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101  
E-mail: [efure@pa.gov](mailto:efure@pa.gov)  
Counsel for *Office of Small Business Advocate*

Michael W. Hassell, Esq.  
Michael W. Gang, Esq.  
Garrett P. Lent, Esq.  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101  
E-mail: [mhassell@postschell.com](mailto:mhassell@postschell.com)  
E-mail: [mgang@postschell.com](mailto:mgang@postschell.com)  
E-mail: [glent@postschell.com](mailto:glent@postschell.com)  
Counsel for *Aqua*

Date: December 20, 2018

Scott J. Rubin, Esq.  
333 Oak Lane  
Bloomsburg, PA 17815  
E-mail: [scott.j.rubin@gmail.com](mailto:scott.j.rubin@gmail.com)  
Counsel for *UWUA Local 612*

  
Jonathan P. Nase  
Cozen O'Connor  
17 North Second Street  
Suite 1410  
Harrisburg, PA 17101  
Phone: (717) 773-4191  
E-mail: [jnase@cozen.com](mailto:jnase@cozen.com)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Administrative Law Judge Mary D. Long**

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Joint Application of Aqua America, Inc., Aqua :  
Pennsylvania, Inc., Aqua Pennsylvania : Docket Nos. A-2018-3006061  
Wastewater, Inc., Peoples Natural Gas Company : A-2018-3006062  
LLC and Peoples Gas Company LLC for all of : A-2018-3006063  
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. :

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**OBJECTIONS OF THE APPLICANTS TO CERTAIN INTERROGATORIES  
IN THE INTERROGATORIES – SET I PROPOUNDED BY  
THE OFFICE OF SMALL BUSINESS ADVOCATE**

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AND NOW COMES, Peoples Natural Gas Company LLC (“Peoples Natural Gas”) and Peoples Gas Company LLC (“Peoples Gas”) (collectively, the “Applicants”), pursuant to 66 Pa. C.S. § 333(d) and 52 Pa. Code § 5.342, to file these Objections (“Objections”) to Certain Interrogatories in the Interrogatories of the Office of Small Business Advocate (“OSBA”) to the Applicants – Set I (“Set I”). In support whereof, the Applicants state as follows:

**I. PROCEDURAL HISTORY**

1. On November 13, 2018, the Applicants, together with Aqua America, Inc. (“Aqua America”), Aqua Pennsylvania, Inc. (“Aqua PA”), Aqua Pennsylvania Wastewater, Inc. (“Aqua

PA Wastewater”), filed the instant Application pursuant to Sections 1102(a)(3) and 2210(a)(1) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. §§ 1102(a)(3) and 2210(a)(1), authorizing the change in control of Peoples Natural Gas and Peoples Gas to Aqua America by way of the purchase of all of the membership interests of LDC Funding LLC (“Funding”) by Aqua America.

2. On December 7, 2018, the OSBA filed its Notice of Intervention in this proceeding, together with the Notice of Appearance of Erin K. Fure, Esq.

3. On December 11, 2018, the Utility Workers Union of America, Local 612 filed a Petition to Intervene in this matter.

4. Also on December 11, 2018, counsel for the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“PUC” or “Commission”) filed their Notices of Appearance.

5. On December 19, 2018, the Laborers’ District Council of Western Pennsylvania filed a Petition to Intervene.

6. Also on December 19, 2018, the Office of Consumer Advocate filed a protest and public statement.

## **II. OBJECTIONS**

7. On December 10, 2018, the OSBA served the Applicants with Set I. A true and correct copy of this discovery is attached as **Appendix A**.

8. 52 Pa. Code § 5.342(c) permits a party to object to discovery requests.

9. 52 Pa. Code § 5.342(e) requires objections to be served within 10 days of service of the interrogatories.

10. The Applicants object to subparts a., b., d., and e. of Interrogatory 3. In its entirety, Interrogatory 3 provides:

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.

11. 52 Pa. Code § 5.321(c) states:

(c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

12. 52 Pa. Code § 5.361(a) states:

(a) Discovery or deposition is not permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden, or expense to the deponent, a person or party.
- (3) Relates to a matter which is privileged.

(4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

Objections to Subparts a. and b.

13. With respect to subparts a. and b., the Applicants object on the grounds that the interrogatory is beyond the scope of permissible discovery, pursuant to 52 Pa. Code § 5.321(c). The standard for approval of an application for change of control, pursuant to 66 Pa. C.S. § 1102(a), is whether the proposed buyer is financially, technically and legally fit to own and operate the utility, *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). In addition, the Commission will consider whether the transaction “affirmatively promotes the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). As a result, the post-closing financial fitness of the indirect owners of Peoples Natural Gas and Peoples Gas (*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 SteelRiver’s 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. Consequently, subparts a. and b. are beyond the scope of permissible discovery.

14. Also, with respect to subparts a. and b., the requested materials, to the extent that they may exist, are subject to the attorney-client and attorney work product privileges and were prepared at the behest of, or in coordination with, counsel for SteelRiver and its subsidiaries. *See* 52 Pa. Code § 5.361(a)(3)(providing that privileged matters are not discoverable).

Objections to Subpart d.

15. With respect to subpart d., there are no pertinent presentations to the Board of Directors of Peoples Natural Gas or Peoples Gas.

16. The Applicants object to subpart d. to the extent it requests presentations to the governing boards of SteelRiver. The pertinent party to the Transaction is LDC Parent LLC, which executed the Purchase Agreement, rather than SteelRiver. As a result, any presentations to the governing boards of SteelRiver would not be admissible at the hearing because they are irrelevant to the Application, nor are they likely to lead to the discovery of admissible evidence. To this extent, subpart d. is beyond the scope of permissible discovery pursuant to 52 Pa. Code § 5.321(c).

17. As explained in Paragraph 13 above, the relevant inquiry in this proceeding is Aqua America's fitness and whether the acquisition will result in an affirmative public benefit of a substantial nature. Accordingly, any presentations to the governing boards of SteelRiver, to the extent that they may exist, are not likely to lead to the discovery of admissible evidence.

18. Moreover, any presentations to the governing boards of SteelRiver, to the extent that they may exist, are subject to the attorney-client privilege. *Id.* § 5.361(a)(3).

Objections to Subpart e.

19. With respect to subpart e., there are no pertinent meeting minutes for the Board of Directors of Peoples Natural Gas or Peoples Gas. The Purchase Agreement dated as of October 22, 2018 by and between LDC Parent LLC and Aqua America includes a representation and warranty that LDC Parent LLC has the right, power, capacity and authority to execute and deliver that agreement and to consummate the Transactions. Section 3.2(a). Consequently, the



Applicants are willing to stipulate to the fact that LDC Parent LLC properly authorized the Transaction.

20. The Applicants object to subpart e. to the extent that it requests meeting minutes of the governing boards of SteelRiver. The pertinent party to the Transaction is LDC Parent LLC, which executed the Purchase Agreement, rather than SteelRiver. As a result, any minutes of the governing boards of SteelRiver would not be admissible at the hearing because they are irrelevant to the Application, nor are they likely to lead to the discovery of admissible evidence. To this extent, subpart e. is beyond the scope of permissible discovery pursuant to 52 Pa. Code § 5.321(c).

21. As explained in Paragraph 13 above, the relevant inquiry in this proceeding is Aqua America's fitness and whether the acquisition will result in an affirmative public benefit of a substantial nature. Accordingly, any minutes of the governing boards of SteelRiver, to the extent that they may exist, are not likely to lead to the discovery of admissible evidence.

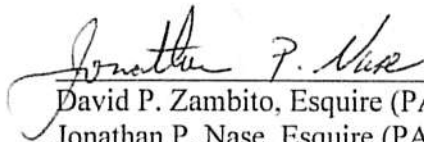
22. Moreover, the minutes of the governing boards of SteelRiver, to the extent that they may exist, are subject to the attorney-client privilege. *Id.* § 5.361(a)(3).

**III. CONCLUSION AND REQUEST FOR RELIEF**

WHEREFORE, for all of the reasons set forth above, the Applicants respectfully request that their objections be sustained, and that Interrogatories No. 3a., 3b., 3d., and 3e. in OSBA's Set I be stricken.

Respectfully submitted,

Dated: December 20, 2018

  
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David P. Zambito, Esquire (PA ID No. 80017)  
Jonathan P. Nase, Esquire (PA ID No. 44003)  
Cozen O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
Phone: 717-703-5892  
Fax: 215-989-4216  
E-mail: dzambito@cozen.com  
jnase@cozen.com

William H. Roberts II, Esq. (PA 54724)  
Peoples Natural Gas Company LLC  
375 North Shore Drive  
Pittsburgh, PA 15212  
Phone: 412-208-6527  
Fax: 412-208-6575  
E-mail: William.H.RobertsII@peoples-gas.com

Counsel for *Peoples Natural Gas Company LLC*

# APPENDIX A

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>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.</b>	<b>:</b>	<b>Docket No. A-2018-3006061</b>
	<b>:</b>	<b>Docket No. A-2018-3006062</b>
	<b>:</b>	<b>Docket No. A-2018-3006063</b>
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**INTERROGATORIES OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE  
TO AQUA AMERICA, INC., AQUA PENNSYLVANIA, INC., AQUA  
PENNSYLVANIA WASTEWATER, INC., PEOPLES NATURAL GAS  
COMPANY LLC & PEOPLES GAS COMPANY LLC**

**SET I**

The Office of Small Business Advocate hereby propounds the following interrogatories to Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC & Peoples Gas Company LLC (hereinafter: "Applicants" or the "Companies") to be answered by those officers, employees, or agents as may be cognizant of the requested facts and who are authorized to answer on behalf of the Companies.

**INSTRUCTIONS**

- a) These interrogatories shall be deemed to be continuing. The Respondent is obliged to change, supplement, and correct all answers to interrogatories to conform to available information, including such information as first becomes available to the Respondent after the answers hereto are filed.
- b) The answers provided should first restate the questions asked and also identify the person(s) supplying the information.

c) All information is to be divulged that is within the knowledge, possession, control, or custody of the Companies or that may be reasonably ascertained thereby. The term “Companies,” as used herein, includes Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC & Peoples Gas Company LLC, their corporate parents, and attorneys, agents, employees, or other representatives.

d) As used herein, the word “document” or “workpapers” includes the original and all copies (regardless of origin and whether or not including additional writing thereon or attached thereto) of memoranda, reports, books, manuals, instructions, directives, records, forms, notes, letters, notices, confirmations, telegrams, pamphlets, notations of any sort concerning conversations, telephone calls, meetings or other communications, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys, worksheets, computer printouts and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments, and written comments regarding the foregoing, in whatever form, stored or contained in or on whatever medium including computerized memory or magnetic media.

e) As used herein, the word “includes” means “includes, but is not limited to.”

f) These instructions shall be deemed to apply to all interrogatories heretofore and hereafter propounded by the Office of Small Business Advocate in this proceeding, whether or not included with or attached to such interrogatories.

Date: December 10, 2018

1. Please provide a complete set of financial statements and associated notes (as available) for 2016 and 2017 for each of the Applicants.
2. Reference Application at page 13 paragraph 38:
  - a. In MS Excel electronic format, please provide the financial forecasts developed by Aqua America which justified an acquisition price of \$4.275 billion. 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 Aqua America to evaluate the Proposed Transaction.
  - c. Please identify any and all external financial, accounting and appraisal advisors retained by Aqua America regarding the Proposed Transaction.
  - d. Please provide copies of all presentations made to Aqua America's board of directors regarding the Proposed Transaction.
  - e. Please provide copies of all meeting minutes for Aqua America board of directors meetings in which the Proposed Transaction was addressed.
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.

4. Reference Application at pages 16-17 paragraph 50:
  - a. Regarding the Commission's presumption of fitness in PP&L's acquisition of PFG and North Penn Gas, please provide any evidence compiled by the Applicants that such presumption proved to be justified.
  - b. Please identify all other Commission decisions or relevant legal precedent supporting a presumption of fitness of an acquiring utility for a company that provides a different utility service.
5. Reference Application at pages 25-26, paragraph 80:
  - a. Please provide the basis for the statement that Aqua PA has maintained reasonable and competitive rates. In so doing, please specify the competitors and the relevant prices with which the Aqua PA rates are competitive.
  - b. Please define the term "successful" as used in this paragraph to describe completed rate proceedings. Please also provide examples of outcomes to such proceedings that would not be successful.
6. Reference Application at page 27, paragraph 84:
  - a. Please explain why SteelRiver wishes to divest itself of a prospering subsidiary.
7. Reference Application at page 27, paragraph 86:
  - a. Please explain why access to equity capital is expanded.
  - b. Do the regulatory requirements for publicly-traded companies increase or decrease the availability and cost for equity capital? Please explain your response.
8. Reference Application at page 27, paragraph 88:
  - a. Please provide the full basis for the Applicants' assertion that the cost for new debt under Aqua America will be "equal to, or lower than, the current cost incurred by the Peoples Companies, at comparable tenors."
9. Reference Application at page 31, paragraph 105:
  - a. Please identify the entities that would be involved in the shared IT system contemplated in this paragraph.
  - b. Please identify the current failings or inadequacies in the existing IT systems for the entities identified in your response to part (a) above which justify the adoption of a shared IT system.

10. Reference Application at page 31-32, paragraph 107:
  - a. Please explain how the efficiencies contemplated in this paragraph will be achieved, particularly as the Applicants indicate they are committed to maintaining separate management facilities in Bryn Mawr and Pittsburgh (paragraph 100).
11. Reference Application at page 32, paragraph 108:
  - a. Please identify the specific economies of scale contemplated in this paragraph.
  - b. Please identify the specific “technology solutions that will enhance customer service tools” contemplated in this paragraph, and provide examples.
  - c. Please define the “similar activities” contemplated in this paragraph, and identify the specific “technology tools for enhanced management” of those activities.
  - d. Please identify the specific “design and engineering” efforts that are not currently being undertaken as a result of insufficient economies of scale, as contemplated in this paragraph.
  - e. Please identify the specific “mapping of pipelines” efforts that are not currently being undertaken as a result of insufficient economies of scale, as contemplated in this paragraph.
  - f. Please identify the specific “other improvements and work efficiency tools” that are not currently being developed as a result of insufficient economies of scale, as contemplated in this paragraph.
12. Reference Application at page 33, paragraph 115:
  - a. Please explain why the evaluation of “specific functions that more appropriately belong in a shared services company” is deferred until after the closing, and is not an integral part of both the due diligence for the transaction and the application of Commission approval of the transaction.