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January 2, 2019

VIA ELECTRONIC FILING

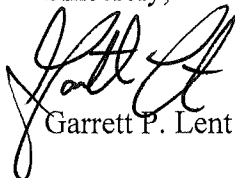
Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**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 and A-2018-3006063**

Dear Secretary Chiavetta:

Attached for filing please find Aqua America, Aqua Pennsylvania, and Aqua Wastewater's Answer to OSBA's Motion to Compel in the above-referenced proceedings. Copies are being provided per the attached Certificate of Service.

Sincerely,



Garrett P. Lent

GPL/kls
Enclosure

cc: Honorable Mary D. Long
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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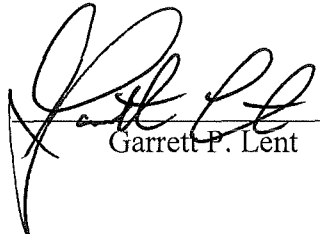
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Date: January 2, 2019


Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT APPLICATION OF AQUA :
AMERICA, INC., AQUA :
PENNSYLVANIA, INC., AQUA : Docket Nos. A-2018-3006061
PENNSYLVANIA WASTEWATER, INC., : A-2018-3006062
PEOPLES NATURAL GAS COMPANY : A-2018-3006063
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. :

**ANSWER OF AQUA AMERICA, INC., AQUA PENNSYLVANIA, INC., AND AQUA
PENNSYLVANIA WASTEWATER, INC.
TO THE MOTION TO COMPEL RESPONSES TO OSBA SET I**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Aqua America, Inc. (“Aqua America”), Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (collectively “Aqua”) hereby file this Answer, pursuant to Section 5.342 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.342, to the Motion to Compel (“Motion”) filed by the Office of Small Business Advocate (“OSBA”) on December 28, 2018. As explained below, OSBA’s Motion should be denied because the disputed interrogatory set forth in OSBA Set I is not relevant and is not likely to lead to the discovery of relevant or admissible evidence in this proceeding. In support thereof, Aqua states as follows:

I. BACKGROUND

1. Aqua, Peoples Natural Gas Company LLC (“Peoples Natural Gas”) and Peoples Gas Company LLC (“Peoples Gas”), collectively the “Joint Applicants,” initiated the above-captioned proceeding on November 13, 2018, by filing an application with the Pennsylvania Public Utility Commission (“Commission”) seeking all necessary approvals authorizing the change in control of Peoples Natural Gas and Peoples Gas (collectively the “Peoples Companies”) to Aqua America by way of the purchase of all of the membership interests of LDC Funding LLC (“Funding”) by Aqua America.¹

2. As stated in the Motion, OSBA filed a Notice of Appearance, Notice of Intervention and Protest in opposition to the above-captioned Application on December 7, 2018.

3. On December 10, 2018, OSBA served Set I Interrogatories upon Aqua. OSBA Set I, Question 2 requested the following information:

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.

¹ As explained in Section II of the Application, Peoples Natural Gas and Peoples Gas are wholly-owned subsidiaries of PNG Companies LLC (“PNG”). PNG is in turn a wholly-owned subsidiary of LDC Holdings LLC (“Holdings”), which is the wholly-owned subsidiary of Funding.

- 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.
4. Aqua filed timely objections to OSBA Set I, Question 2, subparts (a) through (d) on December 20, 2018. In its objections, Aqua stated:

Pursuant to Section 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). OSBA Set I, Question 2, subparts (a)-(d) is overly broad, and is written to seek information that is irrelevant, immaterial, and not likely to lead to the discovery of admissible evidence in this proceeding.

The information requested in OSBA Set I, Question 2, subpart (a) pertains to "financial forecasts...which justified an acquisition price of \$4.275 billion." Paragraph 61, on page 20 of the Application states that "no claim to recover the transaction costs and/or acquisition premium associated with the Proposed Transaction would be made in future base rate cases." Furthermore, Joint Applicants witness Mr. Schuller testified that "acquisition premiums and acquisition costs from the Proposed Transaction are not recoverable in rates, and Aqua America commits that there will not be a claim for these amounts in future rate filings of the Peoples Companies or Aqua PA." As the Joint Applicants have indicated that no claim to recover the costs of the Proposed Transaction has been made as a part of this proceeding, or will be made in a future proceeding, information related to and financial forecasts developed by Aqua in relation to the acquisition price paid by Aqua is not relevant to any material issue in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Similarly, the information requested in OSBA Set I, Question 2, subparts (b) and (c) pertains to “valuation” and “financial appraisals” of the Peoples Companies used by Aqua to evaluate the Proposed Transaction, and financial, accounting and appraisal advisors retained by Aqua regarding the Proposed Transaction. As the Joint Applicants have indicated that no claim to recover the costs of the Proposed Transaction has been made as a part of this proceeding, or will be made in a future proceeding, information related to Aqua’s evaluations or financial appraisals of the Peoples Companies and any advisors retained by Aqua in relation to such valuations or financial appraisals is not relevant to any material issue in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.

Finally, the information requested in OSBA Set I, Question 2, subpart (d) pertains to “all presentations” made to Aqua’s board of directors regarding the Proposed Transaction. Aqua objects to Question 2, subpart (d) to the extent that it seeks presentations made to Aqua’s board of directors that contain the irrelevant information sought in subparts (a)-(c). As explained above, the Joint Applicants have indicated that no claim to recover the costs of the Proposed Transaction has been made as a part of this proceeding, or will be made in a future proceeding and, therefore, the information sought by subparts (a)-(c) is not relevant to any material issue in this proceeding. In addition, Question 2, subpart (d) is overly broad because it includes all presentations made to the board of directors, regardless of whether those presentations were relied upon by the board of directors in deciding to execute the Proposed Transaction or formed the basis for any approval of any decision by the board of directors regarding the Proposed Transaction. As such, Set I, Question 2, subpart (d) is not reasonably calculated to lead to the discovery of admissible evidence.

As discussed more fully herein, Aqua has demonstrated that the information sought by these interrogatories is irrelevant and not reasonably calculated to lead to the discovery of evidence that is admissible in this proceeding.

5. Under Section 5.342(g)(1) of the Commission’s regulations, “[t]he party against whom the motion to compel is directed shall file an answer within 5 days of service of the

motion absent good cause...” 52 Pa. Code § 5.342(g)(1). Accordingly, Aqua hereby files this Answer to OSBA’s Motion with respect to OSBA Set I, Question 2, subparts (a) through (d).

II. ANSWER TO THE MOTION TO COMPEL

6. The Commission’s regulations and precedent limit discovery to information that is relevant to the subject matter involved in the pending proceeding. Section 5.321(c) of the Commission’s regulations states that:

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 a 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.

52 Pa. Code § 5.321(c) (emphasis added). In addition, the information sought by discovery must be “reasonably calculated to lead to the discovery of admissible evidence.” *Id.*

7. Discovery seeking information outside the scope of a pending proceeding is impermissible. *See, e.g., Petition of the Borough of Cornwall for a Declaratory Order*, 2015 Pa. PUC LEXIS 433, at *19-21 (Order Denying Motion to Compel, Sept. 11, 2015) (“*Cornwall*”); *Re Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations*, 2000 Pa. PUC LEXIS 49, at *18-19 (July 20, 2000) (holding a presiding officer correctly determined discovery related to the *need* for structural separation was outside the scope of proceeding regarding the *form, nature and details* of the separation). Indeed, the question is not whether the information sought by OSBA is relevant to an issue raised by them; rather, the

question is whether this issue is relevant to the subject matter of this proceeding. *See Cornwall*, 2015 Pa. PUC LEXIS, at * 20-21.

8. As an initial matter, Aqua notes the Joint Applicants have indicated that no claim to recover the costs of the Proposed Transaction has been made as a part of this proceeding, or will be made in a future proceeding. As such, the prudence of the purchase price associated with the Proposed Transaction is outside the scope of this proceeding. Rather, the scope of relevant inquiries is limited to assessing whether the Proposed Transaction, evaluated as a whole, “is necessary or proper for the service, accommodation, convenience, or safety of the public.”

9. OSBA principally argues that the information requested in OSBA Set I, Question 2, subparts (a) through (d) is necessary to examine prudent management and to determine financial fitness. *See Motion* ¶¶ 20-23. In particular, OSBA asserts that “[i]f the purchase price is excessive, and if it represents a significant share of the surviving entity, the transaction could be financially destabilizing.” *Motion* ¶ 20. These arguments fail to demonstrate that the requested information is relevant to the subject matter in this proceeding, or is reasonably calculated to lead to the discovery of admissible evidence for several reasons.

10. First, “financial forecasts” (subpart (a)), “external or internal valuation or financial appraisal studies” (subpart (b)), and “financial accounting and appraisal advisors” (subpart (c)), do not provide information that is relevant to the concerns claimed by OSBA. This information is not relevant to assessing Aqua America’s financial fitness because its pre-transaction financial forecasts and valuation or financial appraisal studies are not probative of any material fact regarding its ability to finance the Proposed Transaction. Importantly, OSBA

does not, and cannot, suggest that Aqua America has not secured adequate financing to effectuate the Proposed Transaction.

In addition, OSBA can assess the degree of any difference between the book value and purchase price for the Proposed Transaction without accessing information related to financial forecasts, and valuation or financial appraisal studies. Indeed, OSBA's Motion effectively concedes that it is able to conduct such a comparison based upon the publicly available information set forth in the Application and its Appendices. *See* Motion ¶ 21 (comparing the book values the Peoples Companies set forth in Appendices J and K to the Application, with the purchase price of the Proposed Transaction).

11. Second, OSBA mischaracterizes the difference between the purchase price involved in the Proposed Transaction and the book value of the Peoples Companies, and asserts that the book value of the Peoples Companies is \$2.615 billion compared to a purchase price of \$4.25 billion. *See* Motion ¶ 21. This comparison ignores the fact that the Proposed Transaction also included the purchase of certain West Virginia and Kentucky based public utilities (*see* Application ¶¶ 35, 118) and other non-jurisdictional entities (*see* Application ¶ 36). By omitting the fact that the purchase price at issue involves the purchase of other non-jurisdictional entities, OSBA improperly and erroneously attempts to suggest that the difference between the purchase price of the Proposed Transaction and the book value of the Peoples Companies somehow demonstrates a lack of prudence. This incorrect suggestion should be rejected.

12. Third, OSBA's assertion that the requested information is relevant because of post-announcement market price changes also fails. The requested information, *i.e.* proprietary financial forecasts and valuation or financial appraisal studies, could not have had any effect on

market reaction due to both the timing at which the information was developed and the confidential nature of the information. In this regard, OSBA's assertion that the market's response to the Proposed Transaction demonstrates the information sought by Question 2, subparts (a) through (d) is relevant is a non-sequitur because the information sought could not have had an effect on the market response.

13. Fourth, financial forecasts and valuation or financial appraisal studies are irrelevant to the question of whether the Proposed Transaction will put a financial strain on Aqua America or affect its ability to raise capital. OSBA's assertion that the requested information is relevant to this issue is based upon the erroneous premise that financial instability is, or may be, demonstrated where the purchase price of a given transaction exceeds the book value of the purchased assets. The market price, or stock price, of a public utility can be affected by many things. Market price to book value ratios that exceed 1.0 indicate that investors value utilities at higher than book value, similar to most other stocks. Accordingly, OSBA's premise that a purchase price in excess of book value indicates potential for financial instability is erroneous. Where stock prices of major utilities exceed book values, it is expected and necessary to pay a purchase price in excess of book value to make an acquisition.

The Commission has recognized that it is not its role to determine utility stock prices or ensure that such prices result in a market to book ratio of 1.0. *See Pa. Pub. Util. Comm'n et al. v. York Water Company*, Docket Nos. R-922168, R-922168C001, 1992 Pa. PUC LEXIS 115, *124-125 (Order dated Nov. 18, 1992); *see also Pa. Pub. Util. Comm'n v. National Fuel Gas Distribution Corporation*, Docket Nos. R-79090956 et al., 54 Pa. PUC 401, 1980 Pa. PUC LEXIS 31 (Order dated Aug. 28, 1980) (rejecting attempt to increase allowed equity returns to

increase allowed return rates to increase market prices when the market-to-book ratio was less than 1.0); *Barasch v. Bell Telephone Company of Pa.*, Docket Nos. C-860923, C-871233, 67 Pa. PUC 195, 1988 Pa. PUC LEXIS 395 (Order dated May 5, 1988) (rejecting attempts to reduce return rates to drive market prices down). The effects of the Proposed Transaction on Aqua America's stock price are not a matter to be addressed in this proceeding. As such, OSBA's assertion that the requested information is relevant to the instant proceeding is incorrect and should be rejected.

14. Finally, OSBA argues that Aqua's objection to OSBA Set I, Question 2, subpart (d) should be denied because the question is "limited in scope and time" and Aqua's objection would result in a "cherry-picking approach to the production of documents." Motion ¶ 23. Aqua notes that its objection does not raise the issue of "cherry-picking" and producing only favorable documents; rather, it limits the scope of the question to only those documents relied upon by the Aqua America, Inc. board of directors.

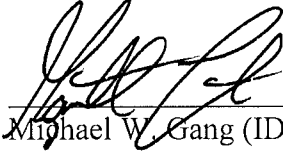
Moreover, Aqua notes that Question 2, subpart (d), is impermissibly broad because operates as a "backdoor" for OSBA to access the irrelevant and immaterial financial forecasts and valuation or financial appraisal studies sought by Question 2, subparts (a) through (c). As explained above, Aqua has demonstrated that the information sought in Question 2, subparts (a) through (c) is irrelevant and immaterial to the subject matter of this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. OSBA should not be permitted to access and obtain this irrelevant and immaterial information simply because the scope of the question seeking this information is broader than other, more specific requests.

15. For the reasons more fully explained above, OSBA's Motion should be denied because the information sought by OSBA Set I, Question 2, subparts (a) through (d) is irrelevant, immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence.

III. CONCLUSION

WHEREFORE, Aqua America, Inc., Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. respectfully request that Administrative Law Judge Mary D. Long deny the Motion to Compel of the Office of Small Business Advocate dated December 28, 2018.

Respectfully submitted,



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Date: January 2, 2019

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