



COMMONWEALTH OF PENNSYLVANIA

January 17, 2019

**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 for filing please find the Prehearing Memorandum, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceedings. I respectfully request that a copy of any documents filed in this case also be shared with our witnesses at the addresses below:

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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, 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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**OFFICE OF SMALL BUSINESS ADVOCATE  
PREHEARING MEMORANDUM**

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**I. INTRODUCTION**

The Office of Small Business Advocate (“OSBA”) is authorized to represent the interests of small business consumers of utility services before the Pennsylvania Public Utility Commission (“Commission”) pursuant to the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50 (“the Act”). In order to discharge this statutory duty, the Small Business Advocate deems it necessary to participate as a party to this proceeding. Representing the OSBA in this matter is Assistant Small Business Advocate Erin K. Fure. Please address all correspondence as follows:

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## II. HISTORY OF PROCEEDING

On November 13, 2018, Aqua America, Inc. (“Aqua America”), Aqua Pennsylvania, Inc. (“Aqua PA”), and Aqua Pennsylvania Wastewater, Inc. (“Aqua PA Wastewater”) (collectively, “Aqua”), filed together with Peoples Natural Gas Company LLC (“Peoples Natural Gas”) and Peoples Gas Company LLC (“Peoples Gas”) (collectively, “Peoples”) 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). The *Joint Application* proposes a “plan of acquisition” whereby Aqua America (a water and wastewater utility holding company) would obtain control of the Peoples Companies (Commission-certificated operating public natural gas utilities). *Joint Application*, at Paragraphs 1-10.

On December 7, 2018, the OSBA filed a Notice of Appearance, Notice of Intervention and Protest in opposition to the *Joint Application*. The OSBA served Set I of its Interrogatories upon Aqua and Peoples on December 10, 2018. On December 11, 2018, the Utility Workers Union of America, Local 612 filed a Petition to Intervene. Also, on December 11, 2018, the Bureau of Investigation and Enforcement (“I&E”) of the Commission filed Notices of Appearance.

On December 19, 2018, the Laborers District Council of Western Pennsylvania filed a Petition to Intervene and Notice of Appearance. The Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement on December 19, 2018. On December 20, 2018, Aqua filed Objections (“*Aqua Objections*”) to OSBA Interrogatories Set I, No. 2, subparts (a) through (d) and

Peoples filed Objections (“*Peoples Objections*”) to OSBA Interrogatories Set I, No. 3, subparts (a), (b), (d), and (e).

Administrative Law Judge (“ALJ”) Mary D. Long was assigned to this proceeding. A Prehearing Conference Notice was issued on December 21, 2018, informing the parties that the initial Prehearing Conference on this case will be held on January 18, 2019.

On December 21, 2018, the Pennsylvania Independent Oil and Gas Association (“PIOGA”) and the United States Steel Corporation (“U.S. Steel”) filed separate Petitions to Intervene. Also, on December 21, 2018, Equitrans, L.P. filed a Notice of Appearance and Petition to Intervene. Duquesne Light Company (“Duquesne Light”) filed a Petition to Intervene on December 26, 2018, and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”) filed a Petition to Intervene on December 27, 2018.

On December 28, 2018, the OSBA filed the *Motion of the Office of Small Business Advocate to Dismiss Objections of Aqua America, Inc., Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc. and Compel Responses to OSBA Set I, No. 2, Subparts (A) through (D) Interrogatories (“Motion to Compel Aqua Responses”)* and 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 Peoples Responses”)*.

Aqua served its responses to the non-objectionable OSBA Set I Interrogatories on December 31, 2018. Dominion Energy Solutions, Inc. and Shipley Choice LLC d/b/a Shipley Energy (“Natural Gas Supplier Parties” or “NGS Parties”) and The Retail Energy Supply Association (“RESA”) (collectively, “NGS/RESA”) filed a Petition to Intervene on December 31, 2018. Direct Energy Business Marketing, LLC and Direct Energy Small Business, LLC (collectively, “Direct Energy”) also filed a Petition to Intervene on December 31, 2018.

On January 2, 2019, I&E served its *Interrogatories I&E-1 through I&E-14* on Aqua. Aqua filed its Answer to OSBA's *Motion to Compel Aqua Responses* on January 2, 2019. On January 2, 2019, Peoples filed its Answer to OSBA's *Motion to Compel Peoples Responses* and also served its responses to the non-objectionable OSBA Set I Interrogatories. An Interim Order was issued on January 3, 2019, directing the OSBA, Peoples, and Aqua to make efforts to resolve the discovery disputes informally and to report the results of their efforts at the prehearing conference scheduled for January 18, 2019. A Prehearing Conference Order was issued on January 4, 2019.

On January 4, 2019, the OCA filed a Notice of Appearance and NGS/RESA served its Interrogatories and Requests for Production of Documents, Set I on Aqua and Peoples. The OCA served its Interrogatories, Set I on Aqua and Peoples on January 11, 2019, and its Interrogatories, Set II on January 14, 2019. The Utility Workers Union of America, Local 612 served its Interrogatories and Requests for Production of Documents, Set I on Aqua and Peoples on January 14, 2019. On January 15, 2019, the Laborers' District Council of Western Pennsylvania served Interrogatories and Requests for Production of Documents on Aqua and Peoples.

### **III. WITNESSES**

Assisting in the development and presentation of OSBA's position in this proceeding will be:

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Excel Consulting  
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The OSBA requests that all parties provide courtesy copies of all documents, including discovery, testimony and briefs, upon Mr. Kalcic and Mr. Knecht, simultaneously with service upon the OSBA.

#### **IV. IDENTIFICATION OF ISSUES**

The OSBA is participating in this case to ensure that the interests of small business customers of Peoples and Aqua are adequately represented and protected. As appropriate and necessary, the OSBA will investigate and analyze the claims and proposals of Aqua, Peoples, and other parties, primarily through discovery, cross-examination of witnesses appearing for those parties, filing of testimony, and briefing of the issues that arise in this proceeding.

At this time, the OSBA is concentrating on the following issues:

1. Whether Aqua's proposed acquisition of Peoples is necessary or proper for the service, accommodation, convenience, or safety of the public;
2. Whether Aqua's proposed acquisition of Peoples will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way;
3. Whether the resulting entity of the proposed acquisition will be financially stable and able to provide continuous and reliable service to small business customers;
4. Whether Aqua America is technically, legally, and financially fit to assume control of Peoples, given that Aqua America currently provides a different utility service than the utility service provided by Peoples, in a different geographic region than the geographic region served by Peoples; and
5. Whether Aqua's proposed acquisition of Peoples is likely to result in anticompetitive or discriminatory conduct which will prevent retail gas customers from obtaining benefits of a properly functioning and effectively competitive retail natural gas market.

The OSBA reserves the right to pursue additional issues as they may arise throughout the course of the proceeding.

## V. SERVICE OF DOCUMENTS

In accordance with 52 Pa. Code § 1.54(b)(3)(i), the OSBA agrees to accept electronic mail delivery of documents on the due date<sup>1</sup> as satisfying the in-hand requirement, provided that such documents are followed by hard copy delivery to OSBA. Hard copy delivery may be accomplished by first class mail, by personal hand delivery, or by overnight courier.<sup>2</sup> Service by electronic mail only is not sufficient. The OSBA requests that such hard copies are also provided to its witnesses identified above.

In addition to hard copies of pleadings, briefs, and exceptions, the OSBA requests hard copies of responses to discovery propounded by the OSBA or any other party. The OSBA also requests that all parties serve an electronic copy of all interrogatory responses upon the OSBA and the OSBA witnesses identified above.

## VI. DISCOVERY

Discovery is ongoing. The OSBA will work with the Presiding Officers and the other parties to develop any mutually acceptable discovery modifications. As outlined above, at the time of this writing, interrogatories have been served on Aqua and Peoples by the OCA, I&E, NGS/RESA, the Utility Workers Union of America, Local 612, the Laborers' District Council of Western Pennsylvania, and the OSBA. Both Aqua and Peoples filed Objections to certain Interrogatories propounded by the OSBA. In response to the Objections, the OSBA filed its *Motion to Compel Aqua Responses* and its *Motion to Compel Peoples Responses*. Both Aqua and Peoples filed Answers to OSBA's respective Motions to Compel. Following the issuance of the January 3,

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<sup>1</sup> In accordance with 52 Pa. Code § 1.56(a)(5), documents must be received by 4:30 pm.

<sup>2</sup> See 52 Pa. Code §§ 1.54(b)(1), 1.54(b)(2), and 1.56(a)(2). Regarding the *perfection of service*, the OSBA respectfully submits that 52 Pa. Code § 1.56(a)(2), as currently written, does not satisfy the requirements of due process.



2019, Interim Order, the OSBA engaged in discussions with both Peoples and Aqua to attempt to informally resolve the discovery disputes.

**VII. SETTLEMENT**

The OSBA notes its willingness to enter into settlement discussions at the appropriate phase of this proceeding.

**VIII. PROCEDURAL SCHEDULE**

The OSBA will work with the Presiding Officers and the other parties to develop a mutually acceptable procedural schedule. The parties have not reached an agreement regarding the schedule.

OSBA proposes the following schedule:

Other Parties' Direct Testimony Due	May 22, 2019
Rebuttal Testimony Due	June 21, 2019
Surrebuttal Testimony Due	July 11, 2019
Oral Rejoinder and Hearings	July 16-18, 2019
Main Briefs Due	August 30, 2019
Reply Briefs Due	September 13, 2019
PUC Decision	December 19, 2019

Respectfully submitted,



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Assistant Small Business Advocate

For:  
John R. Evans  
Small Business Advocate



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Dated: January 17, 2019



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