

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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January 17, 2019

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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

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

Attachment

cc: Honorable Mary D. Long
Certificate of Service

*264455

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of Aqua America, Inc.,	:	
Aqua Pennsylvania, Inc., Aqua Pennsylvania	:	
Wastewater, Inc., Peoples Natural Gas	:	
Company LLC and Peoples Gas Company LLC	:	Docket Nos. A-2018-3006061
for all of the Authority and Necessary	:	A-2018-3006062
Certificates of Public Convenience to	:	A-2018-3006063
Approve a Change in Control of Peoples	:	
Natural Gas Company LLC, and Peoples Gas	:	
Company LLC by way of the Purchase of all	:	
of LDC Funding LLC's Membership Interests	:	
by Aqua America, Inc.	:	

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. Section 333, and the Prehearing Conference Order of Administrative Law Judge (ALJ) Mary D. Long issued on January 4, 2019, the Office of Consumer Advocate (OCA) provides the following:

I. INTRODUCTION AND BACKGROUND

On November 13, 2018, Aqua America, Inc. (Aqua America), Aqua Pennsylvania, Inc. (Aqua PA), Aqua Pennsylvania Wastewater, Inc. (Aqua PA Wastewater), Peoples Natural Gas Company LLC (Peoples Natural Gas), and Peoples Gas Company LLC (Peoples Gas) (collectively, the Applicants) filed the instant Application seeking Commission approval of the following:

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

(2) the change in control of Peoples Natural Gas and Peoples Gas that would result from Aqua America acquiring LDC Funding from LDC Parent. The Applicants further seek all other approvals or certificates appropriate, customary, or necessary under the Code to carry out the acquisition contemplated in the Application in a lawful manner.

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

The Office of Small Business Advocate filed a Protest and Notice of Intervention on December 7, 2018. On December 11, 2018, the Utility Workers Union of America, Local 612 filed a Petition to Intervene, and the Bureau of Investigation and Enforcement filed a Notice of Appearance. On December 19, 2018, the OCA filed a Protest and Public Statement in response to the instant Application. The Laborers' District Council of Western Pennsylvania filed a Petition

to Intervene on December 19, 2018. On December 21, 2018, the Pennsylvania Independent Oil & Gas Association, the United States Steel Corporation, and Equitrans, L.P. all filed Petitions to Intervene. Duquesne Light Co. filed a Petition to Intervene on December 26, 2018, and CAUSE-PA filed a Petition to Intervene on December 27, 2018. On December 31, 2018, the Natural Gas Supplier Parties, Retail Energy Supply Association, and Direct Energy filed Petitions to Intervene.

Administrative Law Judge Mary D. Long was assigned to this proceeding. On December 21, 2018, ALJ Long notified the parties that a Telephonic Prehearing Conference would take place on January 18, 2019. The OCA submits this Prehearing Memorandum in accordance with the directives of ALJ Long's Prehearing Conference Order.

II. OCA ISSUES

Based upon its preliminary analysis of the Applicants' filing, the OCA anticipates that it will address the following topics in its testimony. The OCA also anticipates that additional issues may arise upon receipt and analysis of complete answers to OCA interrogatories. The OCA reserves the opportunity to present any new or unanticipated issues in accord with the procedural schedule set for this matter.

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

b. Savings/Synergies: The OCA submits that the Applicants' proposal must be examined to determine if the proposed acquisition will result in synergies and savings that will

provide substantial, affirmative benefits to ratepayers. The Applicants' estimates of savings must be thoroughly reviewed and substantiated.

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

d. Acquisition Premium: Aqua America has indicated that it will not seek a rate adjustment to offset the premium of above-book value that Aqua America will pay to acquire LDC Funding. The OCA submits that no acquisition premium should be allowed in the natural gas, water, and wastewater cost of service for the Applicants' consumers. The OCA will investigate the best means to secure this commitment from the Applicants.

e. Transaction/Transition Costs: Aqua America has indicated that it will not seek to recover the costs of the transaction through its customers. The OCA submits that the Commission must prevent the Applicants from claiming in any future rate proceedings any Transaction and Transition costs to complete the proposed acquisition. Such Transaction and Transition costs should be borne solely by the Applicants and their shareholders. The OCA will investigate the best means to secure this commitment from the Applicants.

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

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

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

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

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

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

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

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

n. Ongoing Settlement Commitments: Peoples Gas and Peoples Natural Gas are the subject of several ongoing commitments contained within a Joint Settlement Agreement at Joint Application of Peoples Nat. Gas Co. et al., A-2013-2353647, 2013 Pa. PUC LEXIS 679 (Nov. 14, 2013). The Commission must ensure that Peoples Gas and Peoples Natural Gas continue to honor the commitments contained within the Settlement Agreement despite a change in control.

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

III. WITNESSES

The OCA intends to present the direct, rebuttal, and surrebuttal testimony, as may be necessary, of the following witnesses in this proceeding. Each witness will present testimony in written form and may also attach various exhibits, documents, and explanatory information which will assist in the presentation of the OCA's case. In order to expedite the resolution of this proceeding, the OCA requests that, in addition to mailing copies to OCA counsel, parties send copies of all interrogatory answers and testimony directly to the expert witness(es) responsible for the appropriate area of the case. The OCA requests all electronic correspondence be sent to AquaPeoples@paoca.org. The OCA also requests that CDs containing any interrogatory responses be mailed directly to the applicable consultant.

Merger/Acquisition Policy: Ralph C. Smith
 Larkin & Associates, PLLC
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 Livonia, MI
 rsmithla@aol.com

Necessary Financial Protections/
Potential Customer Benefits: Jerome D. Mierzwa
 Exeter Associates, Inc.
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Universal Service/Customer
Service/Consumer Protections: Barbara R. Alexander
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The OCA reserves the right to call additional witnesses, as necessary. If the OCA determines that an additional witness or witnesses will be necessary for any portion of its case, it will promptly notify all parties of record and the presiding officers.

IV. EVIDENCE

The OCA will rely on the direct, rebuttal, and surrebuttal testimony of its expert witnesses. The OCA will present relevant exhibits to support its own testimony, including, but not limited to, materials obtained from the Company through discovery and cross-examination.

V. PUBLIC INPUT HEARINGS

At present, the OCA has received no requests for public input hearings. Should the OCA become aware that there is a need for public input hearings in this matter or should the OCA receive requests for the same, the OCA will promptly notify the presiding officer and the other Parties.

VI. PROPOSED PROCEDURAL SCHEDULE

The OCA's proposed litigation schedule is attached as Appendix A.

VII. DISCOVERY

To date, the OCA has served two (2) set of interrogatories on the Applicants. The OCA anticipates using further formal discovery and also anticipates using informal discovery.

VIII. REPRESENTATION

The OCA will be represented in this case by Senior Assistant Consumer Advocates Christine Maloni Hoover and Darryl A. Lawrence, as well as Assistant Consumer Advocates J.D. Moore and Harrison W. Breitman. The OCA has created a group email address provided below, and this is the only email address that is required for service on the OCA. All documents and correspondence provided electronically through the group email address will be delivered to all members of the OCA team, including the consultants listed above. Two paper copy of all documents should be served on the OCA as follows:

J.D. Moore
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AquaPeoples@paoca.org
Telephone: (717) 783-4529
Fax: (717) 783-7152

For purposes of the Prehearing Conference to be held on Friday, January 18, 2019, the OCA will be represented by Darryl A. Lawrence.

IX. SETTLEMENT

The OCA is willing to participate in settlement discussions.

Respectfully submitted,



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Harrison W. Breitman

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Phone: (717) 783-5048
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DATED: January 17, 2019
#264383

APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PROPOSED PROCEDURAL SCHEDULE

Other Parties' Direct Testimony	Wednesday, May 22, 2019
Rebuttal Testimony	Friday, June 21, 2019
Surrebuttal Testimony	Thursday, July 11, 2019
Oral Rejoinder and Evidentiary Hearings	Tuesday, July 16, 2019— Thursday, July 18, 2019
Main Brief	Friday, August 30, 2019
Reply Brief	Friday, September 13, 2019
Public Meeting	Thursday, December 19, 2019

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following documents, the Office of Consumer Advocate's Prehearing Memorandum to Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Peoples Gas Company LLC, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 17th day of January 2019.

SERVICE BY E-MAIL AND INTER-OFFICE MAIL

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Carrie B. Wright, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
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Counsel for I&E

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