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File #: 173472

February 11, 2019

VIA E-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:

Enclosed please find Joint Applicants' Motion for Protective Order in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Michael W. Hassell

MWH/kl
Enclosures

cc: 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).

VIA E-MAIL AND FIRST-CLASS MAIL:

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Date: February 11, 2019



Michael W. Hassell

**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. :

MOTION FOR PROTECTIVE ORDER

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Aqua America, Inc. (“Aqua America”) and its subsidiaries Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC, including its Equitable Division, (“Peoples Natural Gas”) and Peoples Gas Company LLC (“Peoples Gas”) (hereinafter, collectively the “Joint Applicants”) hereby request that the Honorable Administrative Law Judge Mary D. Long (the “ALJ”) enter a Protective Order in this proceeding pursuant to the provisions of 52 Pa. Code §§ 5.362(a)(7) and 5.365(a), and in support thereof represents as follows:

1. On November 13, 2018, the Joint Applicants filed the above-captioned Application seeking all necessary approvals from the Pennsylvania Public Utility Commission (“Commission”) 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 the Peoples Companies to Aqua America by way of the purchase of all of the membership interests of LDC Funding LLC (“Funding”)¹ by Aqua America. The Joint Applicants further sought all other approvals or certificates of public convenience that are appropriate, customary, or necessary under the Code to carry out the transaction contemplated in the Application in a lawful manner.

2. Proprietary Information within the definition of 52 Pa. Code § 5.365 has been requested during the course of this proceeding, which justifies the issuance of a Protective Order. For example, the parties have sought information that is customarily treated as sensitive, proprietary, or highly confidential. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

3. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential commercial information where the potential harm to a participant would be substantial and outweighs the public’s interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information is known by others and used in similar activities; and the worth or value of the information to the party and to the party’s competitors. 52 Pa. Code § 5.365(a)(1)-(3).

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.

4. The attached proposed Protective Order defines two categories of protected information. The first is “CONFIDENTIAL,” which is defined in Paragraph 2 of the attached proposed Protective Order as “those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury.” The second is “HIGHLY CONFIDENTIAL” protected material, which is also defined in Paragraph 2 of the attached proposed Protective Order as “those materials that are of such a commercially sensitive nature relative to the business interests of a Party or of such a private, personal nature that a Party is able to justify a heightened level of confidential protection with respect to those materials.”

5. Paragraph 16 of the attached proposed Protective Order protects against overly broad designations of protected information by giving all parties the right to question or challenge the confidential or proprietary nature of the information deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material.

6. Limitation on the disclosure of information deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the parties, the public, and the Commission.

7. The attached Protective Order sought by the Joint Applicants will protect the proprietary nature of competitively valuable information while allowing the parties to use such information for purposes of the instant litigation. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

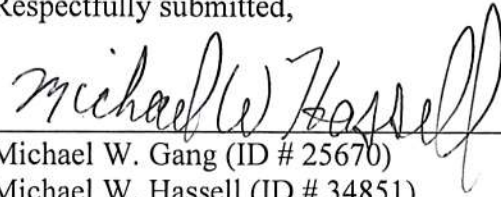
8. The Joint Applicants have consulted with all other parties to this proceeding including the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, the Utility Workers Union of America, Local 612, the Laborers' District Council of Western Pennsylvania, the Pennsylvania Independent Oil & Gas Association, Equitrans, L.P., Duquesne Light Company, the Retail Energy Supply Association and the NGS Parties,² and Direct Energy.³

² The NGS Parties in this proceeding are comprised of Dominion Energy Solutions, Inc. and Shipley Choice LLC d/b/a Shipley Energy.

³ Direct Energy is collectively comprised of Direct Energy Business Marketing, LLC and Direct Energy Small Business, LLC.

WHEREFORE, for all the reasons set forth above, Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC, and Peoples Gas Company LLC respectfully request that Your Honor issue the attached Protective Order.

Respectfully submitted,

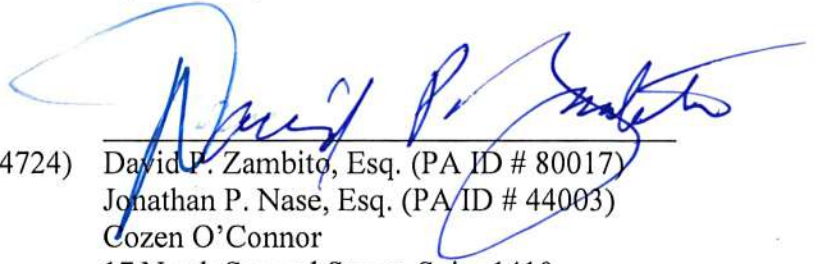


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Date: February 11, 2019

Counsel for Aqua America, Inc. and its subsidiaries, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.



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Date: February 11, 2019

Counsel for Peoples Natural Gas Company LLC and Peoples Gas Company LLC

**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. | : | |

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order that was filed by Aqua America, Inc. (“Aqua America”), Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC, including its Equitable Division, (“Peoples Natural Gas”) and Peoples Gas Company LLC (“Peoples Gas”) on January 25, 2019:

IT IS ORDERED THAT:

1. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are reasonably believed by the producing party to be of a proprietary or confidential nature and which are so designated by being marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL.” Such materials will be referred to below as

“Proprietary Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

2. This Protective Order applies to the following categories of materials: (a) the producing party may designate as “CONFIDENTIAL” those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury; (b) the producing party may designate as “HIGHLY CONFIDENTIAL PROTECTED MATERIAL” those materials which, in the producing party’s reasonable judgment, are of such a commercially sensitive nature among the parties (or of such a private, personal nature) that the producing party is able to justify a heightened level of confidential protection with respect to those materials. The producing party shall endeavor to limit their designation of information as CONFIDENTIAL or HIGHLY CONFIDENTIAL PROTECTED MATERIAL.

3. Proprietary Information shall be made available to counsel for a Party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in this proceeding. To the extent required for participation in this proceeding, counsel for a Party may afford access to Proprietary Information subject to the conditions set forth in this Protective Order.

4. Information deemed as “CONFIDENTIAL”, shall be made available to a “Reviewing Representative” who is a person that has signed a Non-Disclosure Certificate attached as Appendix A, and who is:

- (a) An attorney for a statutory advocate pursuant to 52 Pa. Code § 1.8, or a counsel who has entered an appearance in this proceeding for a party or serves as the General Counsel or its equivalent for a party;
- (b) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph (a);
- (c) An expert or an employee of an expert retained by a party for the purpose of advising, preparing for or testifying in this proceeding; or
- (d) Employees or other representatives of a party appearing in this proceeding with significant responsibility for this docket.

With regard to I&E, information deemed as “CONFIDENTIAL” shall be made available to I&E Prosecutors subject to the terms of this Protective Order. The I&E Prosecutors shall use or disclose the CONFIDENTIAL information only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in this proceeding. To the extent required for participation in this proceeding, the I&E Prosecutors may afford access to CONFIDENTIAL information only to I&E’s experts, without the need for the execution of a Non-Disclosure Certificate, who are full-time employees of the Commission and bound by all the provisions of this Protective Order by virtue of the I&E Prosecutors’ execution of a Non-Disclosure Certificate.

With regard to the OCA and OSBA, counsel for the OCA and OSBA may afford access to CONFIDENTIAL information to the Consumer Advocate and Small Business Advocate, respectively, without the need for execution of a Non-Disclosure Certificate. The Consumer Advocate and Small Business Advocate are bound by all of the provisions of the Protective Order by virtue of the OCA counsel’s and OSBA counsel’s execution of a Non-Disclosure Certificate.

5. Information deemed as “HIGHLY CONFIDENTIAL PROTECTED MATERIAL”, may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate attached as Appendix A and who is:

- (a) An attorney for a statutory advocate pursuant to 52 Pa. Code § 1.8 or a counsel who has entered an appearance in this proceeding for a party or serves as the General Counsel or its equivalent for a party;
- (b) An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in Paragraph (a);
- (c) An outside expert or an employee of an outside expert retained by a party for the purposes of advising, preparing for or testifying in this proceeding; or
- (d) A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL PROTECTED MATERIAL.

With regard to I&E, information deemed as “HIGHLY CONFIDENTIAL PROTECTED MATERIAL” shall be made available to the I&E Prosecutors subject to the terms of this Protective Order. The I&E Prosecutors shall use or disclose the HIGHLY CONFIDENTIAL PROTECTED MATERIAL only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in this proceeding. To the extent required for participation in this proceeding, the I&E Prosecutors may afford access to HIGHLY CONFIDENTIAL PROTECTED MATERIAL, only to I&E’s experts, without the need for the execution of a Non-Disclosure Certificate, who are full-time employees of the Commission and bound by all the provisions of this Protective Order by virtue of the I&E Prosecutors’ execution of a Non-Disclosure Certificate.

With regard to the OCA and OSBA, counsel for the OCA and OSBA may afford access to HIGHLY CONFIDENTIAL PROTECTED MATERIAL to the Consumer Advocate and Small Business Advocate, respectively, without the need for the execution of a Non-Disclosure

Certificate. The Consumer Advocate and Small Business Advocate are bound by all of the provisions of the Protective Order by virtue of the OCA counsel's and OSBA counsel's execution of a Non-Disclosure Certificate.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission's Rules of Practice and Procedure, 52 Pa. Code §§ 5.362, 5.365(e), any party may, by subsequent objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL PROTECTED MATERIAL, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

6. For purposes of this Protective Order, a Reviewing Representative may not be a "Restricted Person."

(a) A "Restricted Person" shall mean: (i) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services, or if the employee of such entity's duties involve strategic business decisions and activities in which the use of the Proprietary Information could be reasonably expected to cause competitive harm to the parties; (ii) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services; (iii) an officer, director, stockholder, owner or employee of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; and (iv) an officer, director, stockholder, owner or employee of an affiliate of a competitor of

a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establishes a significant motive for violation.

(b) If an expert for a party, another member of the expert's firm or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (i) identify for the parties each Restricted Person and each expert or consultant; (ii) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (iii) if segregation of such personnel is impractical the expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the parties or their customers. The parties retain the right to challenge the adequacy of the written assurances that the parties' or their customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

(c) The OSBA's consultant, Mr. Robert D. Knecht, will not be considered to be a Restricted Person, and Paragraphs 6(a) and 6(b) will not apply to Mr. Knecht,

provided that Mr. Knecht does not share or discuss the Proprietary Information with any person except authorized OSBA representatives.

7. A Reviewing Representative that satisfies the requirements of Paragraphs 4(a) through 4(d) or 5(a) through 5(c) above and who is not a “Restricted Person” under Paragraph 6 shall be considered a “qualified” Reviewing Representative. In the event that a Party wishes to designate as a Reviewing Representative a person not described in Paragraphs 4(a) through 4(d) or 5(a) through 5(c) above, or a person that is a Restricted Person under Paragraph 6, the party shall seek agreement from the producing party. If an agreement is reached and, subject to execution and delivery of the Non-Disclosure Certificate attached as Appendix A, that person shall be a qualified Reviewing Representative with respect to those materials. If no agreement is reached, the party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

8. A qualified “Reviewing Representative” for Proprietary Information may review and discuss Proprietary Information with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a “Restricted Person”, but may not share with or permit the client or entity to review the “CONFIDENTIAL” information and/or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL.” Such discussions must be general in nature and not disclose specific Proprietary Information. Counsel for I&E, OCA, and OSBA may share Proprietary Information with the I&E Director, Consumer Advocate, and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided however, that these individuals otherwise abide by the terms of this Protective Order.

9. Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage.

10. Reviewing Representatives shall execute a Non-Disclosure Certificate:

(a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate, provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so, nor do Commission employees assisting I&E as noted above in Paragraphs 4 and 5. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Parties asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

11. None of the Parties to this proceeding waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

12. The Parties shall designate data or documents as constituting or containing Proprietary Information by marking the documents “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL.” Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the Parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents that constitute or contain Proprietary Information. The Proprietary Information shall be served upon the Parties hereto only in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL.”

13. The Parties will consider and treat the Proprietary Information as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa.C.S. § 335(d), and the Pennsylvania Right-to-Know Act, 65 P.S. §§ 67.101 *et seq.*, until such time as the information is found to be non-proprietary. In the event that any person or entity seeks to compel the disclosure of Proprietary Information, the non-producing party shall promptly notify the producing party in order to provide the producing party an opportunity to oppose or limit such disclosure.

14. Any public reference to Proprietary Information by a Party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The

Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

15. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in Paragraph 14 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

16. The Parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a Party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate. In the event of a question or challenge to the designation of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL”, the parties shall make a good faith effort to narrow the designation of the Proprietary Information so that information can be provided in a form that is not “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL PROTECTED MATERIAL”.

17. The Parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; and to refuse to produce Proprietary Information pending the adjudication of the objection.

18. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the

Parties, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that a Party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the parties, the Party shall certify in writing to the producing party that the Proprietary Information has been destroyed.

Dated: _____

The Hon. Administrative Law Judge Mary D. Long

APPENDIX A

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

NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the Retaining Party). The undersigned has read and understands the Protective Order and the required treatment of Proprietary Information. The undersigned agrees to be bound by and comply with the terms and conditions of said Protective Order.

SIGNATURE

NAME (Printed)

ADDRESS

EMPLOYER

DATE