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July 10, 2019

VIA E-FILING
VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
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**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 for filing please find the Public and CONFIDENTIAL Versions of the Joint Applicants' Main Brief in connection with the above-referenced proceedings. The CONFIDENTIAL version of the Joint Applicants' Main Brief will be hand-filed and will only be provided to parties that have executed an appropriate non-disclosure certificate.

**REQUEST FOR PROTECTED TREATMENT
OF CONFIDENTIAL INFORMATION**

As noted above, this filing includes information that the Joint Applicants consider to be proprietary and confidential. The CONFIDENTIAL version of the Main Brief is contained in a separately sealed envelope, which has been stamped "CONFIDENTIAL."

Rosemary Chiavetta, Secretary
July 10, 2019
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The Joint Applicants request that the materials that have been labeled "CONFIDENTIAL" be given the appropriate, non-public treatment by the Commission. That is, the Joint Applicants request that these materials be excluded from the public documents folder and that such copies not be disclosed to the public.

Please feel free to contact me should you have any questions. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Michael W. Hassell". The signature is written in a cursive style with a large, looping initial "M".

Michael W. Hassell

MWH/kl
Enclosures

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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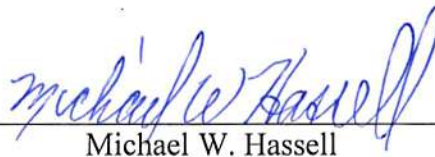
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Date: July 10, 2019


Michael W. Hassell

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua America, Inc., :
Aqua Pennsylvania, Inc., Aqua Pennsylvania :
Wastewater, Inc., Peoples Natural Gas : Docket Nos. A-2018-3006061
Company LLC and Peoples Gas Company : A-2018-3006062
LLC For All Of The Authority And : A-2018-3006063
Necessary Certificates Of Public :
Convenience To Approve A Change In :
Control of Peoples Natural Gas Company :
LLC And Peoples Gas Company LLC By :
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LLC's Membership Interests By Aqua :
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I. INTRODUCTION

Aqua America, Inc. (“Aqua America”), and its subsidiaries Aqua Pennsylvania, Inc. (“Aqua PA”) and Aqua Pennsylvania Wastewater, Inc. (“Aqua PA Wastewater”)¹, Peoples Natural Gas Company LLC (“Peoples Natural Gas”) and its affiliate Peoples Gas Company LLC (“Peoples Gas”)², (Aqua America, Aqua PA, Aqua PA Wastewater, Peoples Natural Gas and Peoples Gas are collectively referred as the “Joint Applicants”), filed the above-captioned Application³ seeking all necessary approvals from the 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”)⁴ by Aqua America (the “Proposed Transaction”). 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. As explained in greater detail in the Application, the Proposed Transaction will result in the Peoples Companies becoming wholly owned indirect subsidiaries of Aqua America. Funding will become a wholly owned direct subsidiary of Aqua America.

The transaction contemplated by the Application will result in numerous affirmative public benefits, including but not limited to benefits in the areas of (1) long-term, public, Pennsylvania-based ownership, (2) combined infrastructure experience, (3) maintaining and creating Pennsylvania-based jobs, (4) long-term efficiencies, and (5) maintaining and strengthening the Joint Applicants’ community presence in Pennsylvania. In addition, the Joint

¹ Aqua America, Aqua PA and Aqua PA Wastewater are collectively referred to as “Aqua.”

² Peoples Natural Gas and Peoples Gas are collectively referred to as the “Peoples Companies.”

³ The Application was admitted into the record as Joint App. Ex. DJS-1.

⁴ 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. Funding is owned by SteelRiver Infrastructure Fund North America LP (“SRIFNA”) and an affiliated fund, which are managed by SteelRiver Infrastructure Associates and its affiliated investment management entities (collectively “SteelRiver”).

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Applicants admitted Joint App. Ex. DJS-1R (CORRECTED), which detailed all of the commitments which Aqua America would accept as additional conditions to the approval of the transaction. These additional commitments, which were agreed-to in the spirit of compromise, provide affirmative public benefits in addition to those previously identified by the Joint Applicants. Reviewed as a whole, the Joint Applicants' testimony and exhibits demonstrate that the Proposed Transaction will affirmatively benefit the public in a substantial way.

On June 26, 2019, a Joint Petition for Approval of Non-Unanimous, Complete Settlement ("Joint Petition for Settlement" or "Settlement") was entered into and filed by the Joint Applicants, the Office of Consumer Advocate ("OCA"), the Coalition of Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Direct Energy Business Marketing, LLC and Direct Energy Small Business Marketing, LLC (collectively, "Direct Energy"), the Natural Gas Supplier Parties⁵ and the Retail Energy Supply Association (collectively, "NGS/RESA"), Pennsylvania Independent Oil and Gas Association ("PIOGA"), Laborers' District Council of Western Pennsylvania ("Laborers' District Council") and Utilities Workers Union of America, Local 612 ("UWUA") (hereinafter collectively referred to as the "Settlement Parties").⁶ A true and correct copy of the Settlement is incorporated herein by reference and attached hereto as **Appendix A**. Included with the Settlement are Statements in Support of the Settlement, which were attached thereto as Appendices A through H.

If approved, the Settlement will resolve all issues raised by the Settlement Parties concerning the Proposed Transaction. The Settlement conditions incorporate and, in many respects, go beyond the commitments contained in Joint App. Ex. DJS-1R (CORRECTED). The

⁵ The Natural Gas Supplier Parties consist of Dominion Energy Solutions, Inc. and Shipley Choice LLC.

⁶ Equitrans, LP ("Equitrans") and Duquesne Light Company ("Duquesne Light") are not signatories to the Joint Petition for Settlement, indicated they do not oppose the Joint Petition for Settlement.

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conditions contained in the Settlement provide additional affirmative public benefits that further support the approval of the Proposed Transaction.

Despite the presence of these benefits, the Commission's Bureau of Investigation & Enforcement ("I&E") and the Office of Small Business Advocate ("OSBA") did not agree to the terms and conditions set forth in the Settlement. Consequently, the Joint Applicants file this Main Brief to address concerns raised by I&E and OSBA and to further explain that the Application, as conditioned by the Settlement, provides substantial public benefits and is in the public interest.

For the reasons set forth in the Settlement and Statements in Support thereof, as well as those more fully explained below, I&E's and OSBA's arguments in opposition to the Proposed Transaction and Settlement should be rejected and the Commission should approve the Application and Settlement thereof without modification.

II. HISTORY OF THE PROCEEDING

A detailed history of the proceeding was provided in the Joint Petition for Settlement and in the Joint Applicants' Statement in Support. *See Appendix A.* The Joint Applicants incorporate the History of the Proceeding set forth in those documents herein, but highlight the following matters.

The Joint Applicants served responses to over 540 interrogatories of the parties, many of which contained multiple subparts. The OSBA served one set of discovery requests, which contained twelve (12) questions excluding subparts.

The parties engaged in several rounds of testimony, including: (1) the Joint Applicants' Direct Testimony; (2) other parties' Direct Testimony; (4) Rebuttal Testimony; (5) Surrebuttal Testimony; and (6) Rejoinder Testimony. An identification of the testimony and exhibits

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submitted by Joint Applicants is provided on page 7 of the Joint Applicants' Statement in Support of the Settlement.

On June 11, 2019, hearings were held in the proceeding. Terms of the non-unanimous settlement were provided as Settlement Parties Joint Exhibit 1, and witnesses for Joint Applicants, I&E and OSBA were cross-examined. Cross-examination included questions involving provisions of the Settlement.

Main Briefs are due on July 10, 2019, and Reply Briefs are due July 25, 2019. The Main Briefs of I&E and OSBA are to include any comments on the Settlement.

III. LEGAL STANDARDS

A. Burden of Proof.

Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999). Consequently, as the parties seeking relief, the Joint Applicants bear the burden of proving that the Proposed Transaction, as modified by the Settlement, satisfies the requirements of Sections 1102 and 1103 of the Code. 66 Pa.C.S. §§ 1102, 1103.

Additionally, any an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm’n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa. C.S. § 704). Substantial evidence is such relevant evidence as a

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reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008).

B. Standards for Approval of Acquisition and Settlement.⁷

1. Standard For Required Section 1102(a)(3) Approvals.

Section 1102(a)(3) of the Code, 66 Pa. C.S. § 1102(a)(3), provides, in pertinent part, that the Commission's prior approval, evidenced by a certificate of public convenience, is required:

For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

To provide direction for future applicants, the Commission issued a Statement of Policy on October 22, 1994, to establish clear standards regarding the circumstances under which a transfer of voting interest constitutes a change in *de facto* control of the utility, which provides, in pertinent part, as follows:

(1) A transaction or series of transactions resulting in a new controlling interest is jurisdictional when the transaction or transactions result in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent, regardless of the tier. A transaction or series of transactions resulting in the elimination of a controlling interest is jurisdictional when the transaction or transactions result in the dissipation of the largest voting interest in the utility or parent, regardless of the tier.

(2) For purposes of this section, a controlling interest is an interest, held by a person or group acting in concert, which enables the beneficial holders to control at least 20% of the voting interest in the utility or its parent, regardless of the remoteness of the

⁷ The Commission's standards for reviewing a non-unanimous settlement are the same as those for deciding a fully contested case. *See, e.g., Joint application of Equitable Resources, Inc., and The Peoples Natural Gas Company, d/b/a Dominion Peoples, for approval of the transfer of all stock and rights of The Peoples Natural Gas Company to Equitable Resources, Inc., and for the approval of the transfer of all stock of Hope Gas, Inc., dba Dominion Hope, to Equitable Resources, Inc.*, Docket No. A-122250F5000, 2007 Pa. PUC 32, at *12 (Order entered April 13, 2007) ("*Peoples/Equitable 2007 Order*"). Thus, the Joint Applicants must demonstrate that substantial evidence, consistent with the statutory requirements associated with the Proposed Transaction, supports the Settlement.

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transaction. In determining whether a controlling interest is present, voting power arising from a contingent right shall be disregarded.

52 Pa. Code § 69.901. Thus, Commission approval is required for any transaction that creates or eliminates a controlling interest and results in a different entity becoming the largest voting interest in a public utility company. The determination of the interests involved in a transaction considers all tiers of interest in the utility or parent of the utility and, thus, both direct and indirect ownership interests in a utility are considered under the Commission's Policy Statement.

Section 1103 of the Code sets forth the procedure to obtain a certificate of public convenience. Under Sections 1102 and 1103, the Joint Applicants must demonstrate that the party to whom the assets and service obligations are being transferred is technically, legally and financially fit. *Seaboard Tank Lines 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).

The Commission may issue a certificate of public convenience upon a finding that "the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103(a). This standard requires the Commission to find that the Proposed Transaction will "affirmatively promote 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 (Pa. 1972) ("*City of York*"). The "substantial public interest" standard is satisfied by a simple preponderance of the evidence of benefits, and such burden can be met by showing a likelihood or probability of public benefits that need not be quantified or guaranteed. *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (Pa. 2007) ("*Popowsky*").

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Further, the substantial public benefit test does not require that every customer receive a benefit from the Proposed Transaction. *Popowsky*, at 617-18, 937 A.2d at 1061. Rather, the benefits and detriments of the acquisition are to be measure as they impact all affected parties and not merely one particular group or geographic subdivision. *Middletown Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984). Once an acquisition is determined to produce overall substantial, affirmative public benefits, there is no basis for attaching additional conditions to its approval in order to assure specific benefits to particular parties. *Joint Application of PECO Energy Company And Public Service Electric and Gas Company for Approval of the Merger of Public Service Enterprise Group, Inc. with and into Exelon Corporation*, Docket No. A-110550F0160, 2006 Pa. PUC LEXIS 33, at *44-47 (Order entered Feb. 1, 2006).

2. Standard For Required Section 2210(a) Approvals.

Section 2210(a) of the Code provides as follows:

(a) General rule. --In the exercise of authority the commission otherwise may have to approve mergers or consolidations involving natural gas distribution companies or natural gas suppliers or the acquisition or disposition of assets or securities of natural gas distribution companies or natural gas suppliers, the commission shall consider:

(1) Whether the proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail gas customers from obtaining the benefits of a properly functioning and effectively competitive retail natural gas market.

(2) The effect of the proposed merger, consolidation, acquisition or disposition on the employees of the natural gas distribution company and on any authorized collective bargaining agent representing those employees.

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Under Section 2210(a)(1) of the Code, the Commission is required to consider whether a proposed acquisition of a natural gas distribution company is likely to result in anticompetitive or discriminatory conduct. 66 Pa. C.S. § 2210(a). Additionally, the Commission is required to consider the impact that a proposed acquisition of a natural gas distribution company may have on the employees of the natural gas distribution company. 66 Pa. C.S. § 2210(a)(2).

IV. SUMMARY OF ARGUMENT

The Proposed Transaction, as conditioned by the Settlement, will affirmatively promote the public interest in a substantial way, as required by *City of York* and as interpreted in *Popowsky*. The record evidence in this proceeding demonstrates that Aqua America's acquisition of the Peoples Companies will result in numerous public benefits, including: (1) long-term, public, Pennsylvania-based ownership of the Peoples Companies; (2) combined infrastructure experience and commitments to further infrastructure replacements; (3) maintaining and creating Pennsylvania-based jobs; (4) low-income customer benefits for both the Peoples Companies and Aqua PA; (5) improved service performance standards for Aqua PA and the Peoples Companies; (6) additional programming and operating changes to benefit natural gas suppliers; (7) immediate rate credits totaling \$23 Million; (8) long-term efficiencies benefitting Aqua PA, the Peoples Companies and their customers; and (9) maintaining and strengthening the Joint Applicants' community presence in Pennsylvania.

Despite these many benefits, I&E and OSBA oppose the Proposed Transaction and Settlement. This opposition is primarily focused on claims regarding transaction risk, opposition to commitments to repair the Goodwin and Tombaugh Gathering Systems, and claims of insufficient, dollar-specific, synergy savings. These claims are without merit and should be rejected.

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In addition, Aqua America should be presumed fit by virtue of its long-standing existence and ownership of a jurisdictional public utility service provider. Any arguments to the contrary ignore Commission precedent that has applied the presumption to other similar acquisitions. Moreover, even if Aqua America is not presumed fit, substantial evidence demonstrates Aqua America has the requisite technical, financial and legal fitness to own the Peoples Companies.

For these reasons and the reasons more fully explained below, the Commission should determine that the Proposed Transaction, as modified by the Settlement, is in the public interest and issue all approvals and certificates of public convenience necessary to effectuate it.

V. ARGUMENT

A. Aqua America, Inc. Is Technically, Financially and Legally Fit To Own The Peoples Companies

1. Aqua America Should Be Presumed Technically, Financially and Legally Fit To Own The Peoples Companies.

Unlike a new utility seeking Commission certification for the first time, Aqua America is presumed to be technically, legally and financially fit to assume control of the Peoples Companies by virtue of its long-standing existence and ownership of jurisdictional public utility service providers, *e.g.*, Aqua PA. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308 (Pa. Cmwlth. 1992); *Re Blue Bird Coach Lines, Inc.*, 72 PA PUC 262, 285-286 (1990); *Re V.I.P. Travel Services, Inc.*, 56 PA PUC 625, 631 (1982). Significantly, the Commission has previously applied this rebuttable presumption where the acquiring public utility provided service of a different nature than that of the public utility it acquired. *See In re: Application of Pennsylvania Power & Light Company, PFG Gas, Inc., and North Penn Gas Company*, Docket Nos. A-120650F0006, A-122050F0003, 1998 Pa. PUC LEXIS 23, at *36-37 (Initial Decision dated May 1, 1998) (“*PPL Gas Merger ID*”), *adopted by*, Opinion and Order, Docket Nos. A-120650F0006, A-122050F0003, 1998 Pa. PUC LEXIS 33, *28 (Order dated July 24, 1998).

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In the *PPL Gas Merger*, PP&L, Inc. (an electric utility), PFG Gas, Inc. (a gas utility) and North Penn Gas Company (a gas utility) sought Commission approval of the transfer of Penn Fuel Gas, Inc. to PP&L Resources, Inc., a public utility holding company. *PPL Gas Merger ID*, at *1. Prior to the merger, PPL Resources, Inc., owned all of the common stock of PP&L, Inc., which exclusively provided electric public utility service in Pennsylvania. *Id.*, at *2. The proposed merger contemplated that the subject utilities would maintain the “complete capability of providing all services necessary to conduct operations and meet all obligations and requirements placed upon corporate system.” *Id.*, at *26-27 (emphasis added). That is, the same legal entities would continue to provide the same service in their existing territories, despite the change in ownership. In determining whether the utilities were fit to provide service, the Initial Decision explained that “it is significant that the law recognizes a presumption that incumbent utilities are fit to provide utility service.” *Id.*, at *37 (citing *In Re Breman*, Docket No. A-25549F0003 (1938)). It further highlighted that “[t]here is even more reason to apply the presumption here, where the three applicant utilities will continue to offer present services in present territories regardless of the outcome of this proceeding.” *Id.* (emphasis added).

The circumstances surrounding the change in ownership contemplated by the Proposed Transaction are essentially the same as the facts involved in the *PPL Gas Merger*. Aqua America is a public utility holding company that owns and operates existing water and wastewater utilities in Pennsylvania, *i.e.* Aqua PA. (Joint App. Ex. DJS-1, pp. 5-7.) Each of the Peoples Companies is an incumbent natural gas utility. (Joint App. Ex. DJS-1, pp. 7-9.) In addition, the Proposed Transaction contemplates that the same entities currently providing water and wastewater service (Aqua PA) and natural gas service (the Peoples Companies) will continue to offer and provide these services in their present service territories under the ownership of Aqua America. (*See* Joint App. St. 1 (REVISED), pp. 12-13; Joint App. St. 4

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(REVISED), pp. 12-13.) Therefore, Aqua America should be presumed fit because it is a long-time owner of a Pennsylvania utility and the incumbent utilities will continue to offer their present services in their present territories upon approval of the Proposed Transaction. As explained next, no party has rebutted this presumption of fitness.

2. Aqua America Is Fit To Own the Peoples Companies.

Even if the Commission were to determine that Aqua America should not be presumed fit, the Joint Applicants demonstrated Aqua America has the requisite technical, financial and legal fitness to own the Peoples Companies. No parties disputed Aqua America's legal fitness to own the Peoples Companies. Aqua America's and its subsidiaries' culture of compliance is undisputed and will continue if the Proposed Transaction is approved. (Joint App. Ex. DJS-1, pp. 23-24.)

Aqua America is technically fit to own the Peoples Companies. Aqua America is the second largest investor-owned water utility in the country and is an experienced owner and manager of pipe-based utility assets in the United States. (Joint App. Ex. DJS-1, p. 21.) In addition, Aqua America is a long-term investor in utility operations, focused on long-term ownership; it has owned and operated water systems in Pennsylvania for over 130 years. (Joint App. St. 1 (REVISED), pp. 9-10 (PUBLIC).) Moreover, highly-experienced teams will continue to lead the separate operations of Aqua PA and the Peoples Companies; water/wastewater operators will report to water/wastewater supervisors, managers and directors and natural gas operators will report to natural gas supervisors, managers and directors. (Joint App. St. 1-R, pp. 29-31.) The water/wastewater and natural gas subsidiaries will have their own presidents, who will report to Aqua America management. (*See* Joint App. St. 1-R, p. 30; *see also* HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY Joint App. Ex. Nos. CHF-3R and CHF-4R.)

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Both I&E and OSBA argued that Aqua America should not be presumed to be technically fit and/or suggest Aqua America's technical competence to own the Peoples Companies should be questioned. (*See* I&E St. 1, pp. 14-17 (CONFIDENTIAL); I&E St. 4, pp. 7-8; *see also* OSBA St. 1, pp. 3-6.) However, these concerns simply ignore that (1) the Peoples Companies have a solid foundation of experienced supervisors, managers and leadership (Joint App. St. 1-R, p. 31) and (2) operational personnel directly responsible for the day-to-day operations and service of the Peoples Companies will be unaffected by the Proposed Transaction (Joint App. St. 4 (REVISED), pp. 10-11, 14-15; *see also* Joint App. St. 3, (REVISED), pp. 6-7). Aqua America also highlighted its long term experience in general utility matters including meter reading, billing, capital budget and planning, and utility call center operations. (*See, e.g.*, Joint App. St. 4-R, pp. 7-10.)

In addition to speculative concerns regarding changes in leadership, I&E witness Orr also argued⁸ that the fact that Aqua PA had not recently met all projected goals for main replacements and distribution system improvements should be considered for purposes of evaluating Aqua America's fitness. (I&E St. 4, pp. 7-8.) However, Mr. Orr's argument ignores that over the two-year period he cites, Aqua PA exceeded the projected miles of main replacement. (Joint App. St. 5-R, pp. 25-26.) Aqua PA also spent in excess of its projections on main replacement during the period in question. (Tr. 223.) Aqua PA's successes in these regards further demonstrate that Aqua America is fit to own the Peoples Companies.

Aqua America is also financially fit to own the Peoples Companies. (Joint App. St. 2, pp. 3-4.) Aqua America is a publicly traded company that has substantial experience in raising both debt and equity capital in the public marketplace for approximately 130 years. Joint App. St. 1 (REVISED), pp. 8-10 (PUBLIC).) Prior acquisitions demonstrate that Aqua America is able: (1)

⁸ Mr. Orr also stated that he does "not believe that Aqua is technically unfit to acquire Peoples based on these concerns." (I&E St. 4, p. 8.)

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to acquire companies and assets and finance the growing capital needs associated with owning and operating public utility companies and assets; and (2) to finance and meet the growing capital needs associated with owning and operating public utility companies and assets. (Joint App. Ex. 1, p. 24; Joint App. St. 1 (REVISED), pp. 8-10.) In fact, Aqua America has already secured the necessary debt and equity capital to finance the purchase price of the Proposed Transaction. (Joint App. St. 2, pp. 4-5; *see also* Joint App. St. 2-R, pp. 3-17 (PUBLIC).)

Both I&E and OSBA argued that the Proposed Transaction's lack of synergies and other financial requirements could impact Aqua America's finances.⁹ (*See* I&E St. 1, pp. 11-12, 17-18; *see also* OSBA St. 1, pp. 6-10.) However, Aqua America demonstrated that these concerns are unwarranted. (*See* Joint App. St. 2-R, pp. 3-17 (PUBLIC).) Importantly, based upon several analyses, Aqua America determined and has demonstrated that the Proposed Transaction will increase its financial strength and stability. (Joint App. St. 2-R, pp. 5-6.)

For these reasons, and the reasons more fully explained in the Joint Applicants' Statement in Support, the Commission should conclude that Aqua America is fit to own the Peoples Companies.

B. The Proposed Transaction, As Conditioned By The Settlement, Will Result In Substantial Affirmative Public Benefits

As summarized in the Summary of Argument, there are numerous public benefits of the Proposed Transaction. I&E and OSBA have challenged several of these benefits, and have contended that the Proposed Transaction and Settlement may harm customers. While I&E and OSBA testified to certain concerns and perceived risks associated with the Proposed Transaction, these concerns are speculative, unsupported or alleviated by commitments first contained in Joint App. Ex. DJS-1R (CORRECTED) and later included in the Settlement. Moreover, where I&E

⁹ The Joint Applicants further respond to I&E's and OSBA's arguments regarding alleged financial risks associated with the Proposed Transaction in Section V.B.1, below.

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and OSBA have proposed that additional or alternative conditions be imposed upon approval of the Proposed Transaction, these parties have failed to demonstrate their proposals are necessary for the Proposed Transaction to affirmatively benefit the public. Therefore, and for the reasons more fully explained below, the Proposed Transaction, as conditioned by the Settlement, should be approved without modification.

1. Claims That The Purchase Price and Financing of the Proposed Transaction Will Be Harmful Are Without Merit.

As explained in greater detail in Section V.B.2., *infra*, one of the financial benefits of returning the Peoples Companies to public ownership under Aqua America will be expanded access to capital. Increased access to capital is vital to accomplishing a number of the beneficial commitments made by Joint Applicants in the Application and the Settlement. These include the public safety benefits from earlier replacement of at-risk distribution pipe and benefits to low income customers and gas producers from reconstruction of the Goodwin and Tombaugh Gathering Systems (“G/T Systems”).

Witnesses for I&E and OSBA have questioned whether the purchase price and financing of the Proposed Transaction would impair Aqua America’s financial position and harm customers as a result. These concerns are without merit and should be rejected.

a. Purchase Price

The primary criticism of I&E and OSBA is that the purchase price exceeds the book value of the assets being acquired. (I&E St. 1, pp. 14-15; OSBA St. 1, p. 7.) The consideration to be paid to acquire Funding and all of its subsidiaries is a base price of \$4.275 Billion with approximately \$2 Billion in goodwill.¹⁰ However, there is nothing surprising about payment of a purchase price in excess of book value for a utility with growing rate base and income potential.

¹⁰ The base price is subject to adjustment at Closing, principally for changes in place between the time the deal was executed and Closing. (*See* Joint App. St. 2, p. 4; *see also* Joint Applicants Exhibit DJS-2, Public Appendix A-1.)

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(Joint App. St. 2-R, p. 5; Joint App. Ex. DJS-2R.) For example, purchasers of Aqua America stock in the current market are paying a market price in excess of three times Aqua America's book value. (Joint App. St. 2-R, p. 9.) Aqua America also demonstrated that the premium to book value being paid in the Proposed Transaction is consistent with other recent utility transactions. (Joint App. St. 2-R, p. 5; Joint App. Ex. DJS-2R.) Aqua America further demonstrated that, as a result of the Proposed Transaction, Aqua America's goodwill on its balance sheet would increase by an amount equal to approximately 15% of the combined company's enterprise value. (Joint App. St. 2-R, p. 5.) This is also within the range of increased goodwill experienced in other comparable acquisitions. (Joint App. Ex. DJS-5R.) The comparability of premiums paid in other transactions provides further support for the reasonableness of the purchase price.¹¹ Aqua America also examined the Proposed Transaction using a variety of financial analyses, including the common Discounted Cash Flow ("DCF") method, to measure the long-term financial value of the acquisition. (Joint App. St. 2-R, p. 5) While the goodwill will not generate cash flows, financial analyses determined that the Proposed Transaction still would be accretive to earnings over the short term and long term. (Joint App. St. 2-R, p. 10.)¹² These analyses further support the conclusion that the Proposed Transaction will result in a financially strong and stable entity, benefitting both shareholders and customers in the long-term. (Joint App. St. 2-R, p. 7.)

I&E witness Zalesky speculates that Aqua might have "overpaid" for the Proposed Transaction because a public bid process was not undertaken. (I&E St. 1, p. 14; *see also* I&E St. 1-SR, pp. 16-17.) Mr. Zalesky offers no evidence that a bid process would have resulted in a lower purchase price. Joint Applicants explained that the parties undertook arm's length

¹¹ Because the Peoples Companies are privately owned, it is not possible to use stock price to directly measure market value.

¹² As explained by OCA Witness Smith, the term "accretive to earnings" means that earnings per share are expected to be higher following closing on the transaction. (OCA St. 2, p. 20.)

[REDACTED] [END CONFIDENTIAL] Any professional asked to offer a formal opinion on a matter understands the economic and reputational risks from a faulty opinion. Mr. Knecht has offered no evidence to question the independence of Moelis' opinion.

In assessing the reasonableness of the purchase price, it is important to recognize that customers of both Aqua PA and the Peoples Companies will not be responsible for any premium/goodwill incurred as a result of the Proposed Transaction. Pennsylvania law does not permit a gas utility to include a premium above book value in rate base. 66 Pa. C.S. § 1311(b). Aqua America committed in the Application that it would not seek to include amounts paid in excess of book value in either Aqua PA's or the Peoples Companies' rates. (Joint App. Ex. DJS-1, p. 20.) These commitments were confirmed and further expanded upon in the Settlement. *See Appendix A*, pp. 8-13.

b. Financing

Because ratepayers will not be responsible for any premium/goodwill resulting from the Proposed Transaction, the amount of the premium/goodwill should only be relevant to Commission review insofar as the financing of this purchase price will present a substantial risk of harm to the financial stability of the combined companies after closing. However, there is no evidence that the transaction financing will present any real risk of harm customers.

Mr. Knecht asserts that the market views the transaction negatively, and that this is a demonstration of the financial risks of the Proposed Transaction. (*See OSBA St. 1*, pp. 8-9.) Such contention is without merit.

First, Mr. Knecht asserts that the drop in Aqua America's stock price after announcement of the Proposed Transaction demonstrated that the market perceived substantial risk from the acquisition. (*See OSBA St. 1*, p. 9, Figure IEc-1.) However, as Mr. Schuller explained, it is

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common for an acquiring entity's stock price to decline following an announcement, as there is uncertainty about what the transaction means. (Joint App. St. 2-R, p. 8; Tr. 125.) The key to understanding the market's true reaction to a proposed acquisition is how the price reacts subsequently. As the market gathers more information about the transaction, the stock price will rebound if the market approves the transaction. (Tr. 125.) In the case of this Proposed Transaction, Aqua America's stock price has rebounded, and now is about \$2.50 per share higher than the stock price on the day before the announcement of the transaction. (Tr. 125.) The stock price rebound is a strong indicator that the market is supportive of the Proposed Transaction.

There is additional evidence demonstrating that equity investors do not perceive substantial risk from the transaction. Aqua America recently went to the market to raise the equity capital needed for the Proposed Transaction. The issuances were well received by the market, with demand totaling approximately four times the amount of new equity that was sought. (Joint App. St. 2-R, p. 9.)

Mr. Knecht also asserts that the debt to be incurred to finance the Proposed Transaction will materially increase Aqua America's financial risk. (OSBA St. 1, p. 8.) Mr. Knecht principally relied upon several credit reports issued with respect to the transaction, and calculations of interest costs to be incurred from \$900 Million of projected debt to be incurred, to reach his conclusions. (*See* OSBA St. 1-SR, pp. 4-8.) Again, details of the actual debt issued to finance the Proposed Transaction dispel Mr. Knecht's concerns. As explained by Mr. Schuller, Aqua America recently issued substantially less debt than initially anticipated to finance the Proposed Transaction. (Joint App. St. 2-R, p. 15.) The actual debt issued to finance the Proposed Transaction was \$436 Million.¹⁴ That debt has an average tenor of 21 years and an

¹⁴ Under cross-examination, Mr. Schuller confirmed this was all of the debt to be issued to finance the transaction. (Tr. 127:24-128:5.)

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average interest rate of 3.96%. (Joint App. St. 2-R, pp. 15-16.) Mr. Knecht acknowledged this result was successful and did not adversely affect Aqua's cost of capital. (OSBA St. 1-S, p. 6.)

In an effort to downplay the success of Aqua America's debt issuance to finance the Proposed Transaction, Mr. Knecht asserts that this successful outcome may have been influenced by the fact that the current economy is strong and the present regulatory environment is favorable. (OSBA St. 1-SR, p. 4.) He contends that the impact of the Proposed Transaction on corporate risk should be evaluated under less favorable conditions. (OSBA St. 1-SR, pp. 4-5.) This contention is also without merit and should be rejected.

First, while Mr. Knecht argues that the financial effects of the Proposed Transaction should be evaluated under less favorable conditions, Mr. Knecht does not actually offer any such evaluation. (*See* OSBA St. 1-SR, p. 5.) Therefore, his contention is based upon mere speculation. Second, Mr. Knecht's contention is based upon the flawed premise that current investors do not take into account future conditions. As Mr. Knecht conceded under cross-examination, rational investors would consider possible future conditions, both positive and negative, in assessing the risk of an investment. (Tr. 229.) Thus, investors who eagerly invested in Aqua America's debt and equity did so with full knowledge that adverse conditions could occur sometime in the future.

Mr. Knecht further asserts that Aqua PA's debt cost may increase in the future because of increased financial risk at the Aqua America level. As explained above, very favorable market reaction to the financing of the Proposed Transaction demonstrates there is no appreciable concern of increased financial risk at the Aqua America level. Further, Mr. Schuller demonstrated that Aqua PA's debt rating will not be affected by the Proposed Transaction, and would continue to maintain an NAIC rating of 1 post-transaction. (Joint App. St. 2-R, p. 12.) Finally, Aqua America has agreed to a number of ring-fencing conditions for its operating

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subsidiaries and other conditions to protect against adverse financial consequences from the Proposed Transaction. (Settlement ¶¶ 43-67; *see also* Joint App. St. 2-R, pp. 22-25.)

The purchase price and financing of the Proposed Transaction will not impair Aqua America's financial integrity or harm customers of Aqua PA or the Peoples Companies. Contentions of I&E or OSBA that the Proposed Transaction will present substantial adverse risks should be rejected.

2. Returning the Peoples Companies to Public Ownership by a Long-Established, Pennsylvania-Based Company is a Public Benefit.

The Peoples Companies are indirectly owned and managed by SteelRiver, a non-Pennsylvania based private investment fund. (Joint App. Ex. DJS-1, pp. 7-10.) SteelRiver acquired Peoples Natural Gas in 2010. (Joint App. Ex. DJS-1, p. 7, n. 3.)

In contrast, Aqua America, the parent of Aqua PA, is a publicly traded company. Aqua America, and Aqua PA, are based in Bryn Mawr. Aqua America currently is a water and wastewater holding company that provides services through operating subsidiaries in 8 states. Aqua PA furnishes water and wastewater services to over 430,000 customers across 32 counties in Pennsylvania, including counties in western Pennsylvania. (Joint App. Ex. DJS-1, p. 7; Tr. 187-188.) Roughly 74% of Aqua America's income comes from its regulated Pennsylvania operations (Joint. App. Ex. DJS-1, p. 113.) Aqua PA, and its corporate predecessor Philadelphia Suburban Water Company, have owned and operated water systems in Pennsylvania for over 130 years. (Joint App. St. 1, p. 9.)

Witnesses for I&E and OSBA have questioned whether the return of the Peoples Companies to public, Pennsylvania-based ownership provides substantial public benefits. As explained below, there are a number of important public benefits from the acquisition by Aqua America.

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a. The Commission Recognizes There are Unique Concerns with Private Ownership.

Although the Commission does not oppose ownership of public utilities by private investment funds, it does recognize there are unique concerns associated with ownership by private funds. These concerns led to the adoption of what are known as the *Penn Estates* criteria to be examined in cases where the acquirer is a private equity fund. *See, Application of Penn Estates Utilities, Inc.*, A-21007210003, Order entered March 31, 2006. Both SteelRiver and SRIFNA made commitments in prior acquisition proceedings to address the concerns raised by equity fund ownership of public utilities. Notwithstanding these commitments, Aqua America's ownership of the Peoples Companies will provide various benefits, including: (1) a track record of long-term ownership; (2) expanded access to sources of capital; (3) enhanced transparency in corporate and capital structure; and (4) a commitment to issues of concern to all Pennsylvanians—jobs, community and infrastructure.

b. Aqua America's Acquisition of the Peoples Companies Will Bring Stability of Ownership.

One of the *Penn Estates* criteria is expected term of ownership. Previously, Peoples Natural Gas was a subsidiary of Dominion Resources, which had acquired Peoples Natural Gas in 2000. *Joint Application for Approval of the Transfer of the Issued and Outstanding Shares of Capital Stock of the Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. A-2008-2063737, at p. 37 (Order entered November 19, 2009) ("*SteelRiver Application Order*"). In 2009, SteelRiver acquired Peoples Natural Gas. *SteelRiver Application Order*. In 2011, SteelRiver indirectly acquired Peoples Gas, formerly T.W. Phillips Gas & Oil Co. (Joint App. Ex. DJS-1, p. 9, n. 5.) Subsequently in 2013, Peoples Natural Gas acquired, by merger, the former Equitable Gas Company, LLC (Joint App. Ex. DJS-1, p. 8, n. 4.)

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Clearly, no owner or prospective owner can give a long-term guarantee of ownership. Nonetheless, expected term of ownership is important to the Commission. As the Commission observed in its 2009 Order approving SteelRiver's acquisition of Peoples Natural Gas:

We do have concerns regarding the finite life of SteelRiver. However [Peoples Hope Gas Companies, LLC] has responded with a specific series of steps, including Commission oversight, with regard to the termination of SteelRiver and the ownership of [Peoples Gas]. In this context, we are not unmindful that Dominion [Resources, Inc.] acquired [Peoples Gas] in 2000 and began looking for buyers in 2005.

(SteelRiver Application Order at p. 37.)

Stability of ownership generally leads to greater willingness to make long-term capital investments to provide continued safe and reliable utility service. (Joint App. St. 1, p. 10; Joint App. St. 2, p. 8.) Long-term ownership also promotes a sustained commitment to, and engagement with, the communities served. (Joint App. St. 2, pp. 8-9.)

Aqua America has a demonstrated track record of long-term ownership of utility assets. Aqua America has owned and operated water systems in Pennsylvania for over 130 years. Aqua America has also owned and operated water systems in other states since 1999, and has operated wastewater systems since 1996. (Joint App. St. 1, p. 9.)

I&E witness Zalesky argued that long-term ownership is not a benefit of the transaction. First, he contended that the Peoples Companies have been willing to make capital investments under current ownership. (I&E St. 1, p. 7.) However, Mr. Franklin explained that Aqua America is committed to substantially greater levels of investment, consistent with its business objective of infrastructure investment and replacement over the long term. (Joint App. St. 1-R, pp. 9-10.) Second, Mr. Zalesky's contended that the Commission had already determined that SteelRiver is an adequate owner, by its prior approval for SteelRiver to acquire the Peoples Companies. (I&E St. 1, p. 8.) While SteelRiver's ownership has been adequate, the proper

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question is whether Aqua America's ownership will be better in terms of longevity. Aqua America is not an investment fund with a defined investment time horizon. Its investment horizon is perpetuity and its business model is based on long-term ownership of long-lived assets. (Joint App. St. 2-R, p. 32.)

Mr. Zalesky's third contention is that there is no guarantee that Aqua America will remain a long-term owner. (I&E St. 1, p. 8.) While there is no formal guarantee, there is a track record that should be considered. Unlike SteelRiver, which acknowledged in 2009 that the term of the investment fund was 20 years (*see SteelRiver Application Order*, p. 36), Aqua America is a publicly-held corporation with no planned end date to its existence. (*See Joint App. St. 1-R*, pp. 24-25.) Aqua has a long-term investment strategy, aligned with the long-lived assets that it owns. The contrast in investment strategy can be visualized by a comparison of the debt maturity schedules for PNG and Aqua America (including Aqua PA) debt. (Joint Applicants Ex. CHF-1R.) Aqua America has debt maturities extending out 40 years, consistent with its long-term investment strategy, which are much longer than the PNG debt terms. (*See Joint App. St. 1-R*, p. 10.)

OSBA witness Knecht similarly speculates that a publicly-traded company may have a shorter investment time horizon than a private investment fund, due to short term pressures on income performance. (OSBA St. 1, p. 13.) In the case of Aqua America, the facts disprove Mr. Knecht's speculation. Aqua America is not an investment fund with a defined term. Its investment decisions are not constrained to meet investor requirements for a finite investment horizon. (Joint App. St. 2-R, p. 32.) Aqua America is known to the market as a long-term investor in long-lived utility assets. As Mr. Schuller explained: "This activity satisfies the market demands of our investors for long-term and consistent income growth through investment in long-term utility rate base assets." (Joint App. St. 2-R, p. 32.)

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Aqua America's acquisition of the Peoples Companies will result in long-term stability of ownership, which will benefit Peoples Companies' customers.

c. Aqua America's Status as a Publicly-Owned Company Will Provide Expanded Access to Capital.

The Peoples Companies currently have access to equity from the finite number of investors in the SteelRiver equity funds and debt from private placements to debt-buying life insurance companies. (Joint App. St. 2-R, p. 21.) Aqua America has a proven record of access to expanded sources of capital which will benefit the Peoples Companies.

As a publicly-traded company, Aqua America has access to equity capital from a broad range of investors through highly-liquid public markets. (Joint App. St. 2-R, pp. 21-22.) These investors range from small individual investors to large investment funds, including mutual funds. (Joint App. St. 2-R, p. 32.) This access was recently reaffirmed when Aqua America raised approximately \$2.7 billion in equity capital to finance the Proposed Transaction, with public demand of nearly four times the supply raised publicly. (Joint App. St. 2-R, pp. 9, 22.) Access to equity will be even greater in the future after Aqua America becomes a larger public utility. (OSBA Ex. IEC-3, response to OSBA I-7.) Aqua America also has access to debt capital both through private placements (typically undertaken at the utility subsidiary level) and public market debt (Joint App. St. 2-R, pp. 12, 22.) The ability to raise public market debt was recently demonstrated when Aqua America raised \$436 million in debt to finance the Proposed Transaction, in an offering that was more than four times oversubscribed. (Joint App. St. 2-R, p. 12; Tr. 127-128.) This demonstrated ability to access substantial capital from diverse sources is important to execute on the various infrastructure commitments explained in Section V.B.4. of this Brief.

Aqua America's increased access to capital as a publicly-held company is a public benefit of the Proposed Transaction.

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d. The Enhanced Transparency Provided by a Publicly-Owned Company with Respect to Governance and Capital Structure is a Public Benefit.

Several of the points of concern under the *Penn Estates* criteria focus on transparency, including:

- Corporate governance/Sarbanes-Oxley compliance;
- Complex nature and objectives of the various affiliated relationships involved;
- Transparency on corporate structure issues; and
- Creditworthiness.

As explained by Mr. Schuller, corporate governance under Aqua America will be even more transparent than the prior commitments that were made in support of SteelRiver's prior acquisitions of the Peoples Companies:

As a publicly traded company, Aqua America is automatically subject to numerous reporting requirements that provide information to shareholders, government agencies including the Commission, and the public. Aqua America is subject to all reporting requirements of the New York Stock Exchange and the United States Securities and Exchange Commission, including requirements to provide a detailed report on its operations and maintenance expenses, revenues, and other financial reporting, submit executive compensation to its shareholders, hold annual voting on all of its directors, hold all employees accountable pursuant to a comprehensive and published Code of Ethics, and provide oversight and governance pursuant to published Corporate Governance Guidelines. Among the various reporting requirements that would apply to corporate governance of the Peoples Companies following the acquisition would be the Sarbanes-Oxley Act of 2002. Aqua America is currently subject to the provisions of Sarbanes-Oxley.

(Joint App. St. 2, p. 10.)

Aqua America's corporate structure is and will be simple and transparent. As a publicly-held company, the details of Aqua America's subsidiary ownership are transparent, including ownership of subsidiaries not in the chain of ownership of Aqua PA or the Peoples Companies.

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(Joint App. St. 2, p. 1.) While the ownership of subsidiaries that are not directly within the chain of ownership of Pennsylvania utilities may not be jurisdictional, public knowledge of such non-jurisdictional ownership can provide important information to investors, potential investors, customers, and the Commission on potential changes to a corporation's investment focus.¹⁵

With respect to the Peoples Companies, no substantive changes in affiliate relationships are contemplated. Funding will become a first-tier operating subsidiary of Aqua America, and the current chain of ownership from Funding to the Peoples Companies will remain in place. (Joint App. Ex. DJS-1, Appendices F and G.) Operations reporting will remain unchanged, as gas operators will report to gas supervisors, on up the chain to the President of the Peoples Companies' operations, and likewise water operators will report up the chain to the President of Aqua PA operations. (Joint App. St. 1-R, p. 30.)

As a publicly-held company, Aqua America's creditworthiness is and will remain solid and transparent. The financing of the transaction was structured to maintain strong investment grade credit ratings. (Joint App. St. 2, p. 5; Joint App. St. 2-R, pp. 6, 7-8, 11-12.)

I&E witness Zalesky acknowledged that increased transparency provides a benefit, but argued this was information helpful to investors and questioned whether there is a significant benefit to ratepayers. However, under cross-examination, Mr. Zalesky conceded that knowledgeable investors serve to influence effective corporate management. (Tr. p. 189.) Effective corporate management unquestionably is considered to be a benefit to customers. 66 Pa. C.S. § 523; *see also Pa. Pub. Util. Comm'n, et al. v. UGI Utilities, Inc. – Electric Division*, Docket No. R-2017-2640058, at p. 115 (Opinion and Order entered Oct. 25, 2018).

OSBA witness Knecht also questioned the benefit of increased transparency, arguing that "all public utilities are an 'open book' to regulators." (OSBA St. 1, p. 13.) However, Mr.

¹⁵ For example, it is certainly important to know that over 99% of Aqua America's income is from regulated operations. (Joint App. St. 1 (REVISED), p. 9.)

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Knecht's focus is limited to information about the public utility. As explained above, many of the benefits of public ownership will be to provide greater information about management and decisions above the operating utility level.

Aqua America's public ownership of the Peoples Companies will provide public benefits through transparency.

e. Pennsylvania-Based Ownership Understands and is Responsive to Issues of Concern to Pennsylvanians.

Aqua America is and always has been a Pennsylvania-based company throughout its 130-year life. Although Aqua America has expanded to serve customers in eight states, its primary service area remains Pennsylvania. (Joint App. Ex. DJS-1, p. 113.) Aqua America's position as a Pennsylvania-based company means that it understands, and is responsive to, issues of concern to all Pennsylvanians. These include, in particular: jobs, community concerns and infrastructure improvement.

In the Application, Aqua America made clear that it did not seek to create "synergies" by cutting employment. (Joint App. St. 1-R, pp. 5-6.) Aqua America supports retention and growth of Pennsylvania jobs. Further details of Aqua America's commitments to jobs in the Settlement are explained in Section V.B.3 of this Brief.

Aqua America's commitment to the communities it serves matches well with the Peoples Companies' commitment. As noted in the Application:

110. Aqua America's mission is to protect and provide Earth's most essential resource. Aqua America, and in particular Aqua PA, is committed to the communities it serves, its customers, and the environment. Giving back to the communities in which Aqua America's subsidiaries operate is part of the Aqua America culture. For instance, Aqua America's subsidiaries, including Aqua PA, participate in various volunteer opportunities throughout the year including food banks, bike-a-thons, Habitat for Humanity, and the American Red Cross, with specific focus on making an impact in the communities within its operating subsidiaries' service territories. Additionally, environmental initiatives serve as a focal point for the Aqua America, through support of river and watershed associations

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and volunteer opportunities such as tree planting and stream clean ups. Supporting nonprofit organizations through volunteer activities furthers the mission of Aqua America's corporate giving and volunteer program.

111. Community commitment is one of the Peoples Companies' core values and the Peoples Companies have an active community presence in western Pennsylvania. The Peoples Companies make financial commitments to community and charitable organizations throughout their service territories – to both large organizations and small. Among the organizations that the Peoples Companies support are the Salvation Army, United Way, Leukemia/Lymphoma Society, Dollar Energy Fund, March of Dimes, and Greater Pittsburgh Literacy Council. The Peoples Companies also have a very active Volunteer Activities Committee and offer ongoing volunteer events such as collecting and packaging food in partnership with local food banks, cleaning the rivers with Paddle without Pollution, mentoring youths through Big Brothers Big Sisters or providing winter outerwear for children with the Salvation Army's Project Bundle Up.

(Joint App. Ex. DJS-1, pp. 32-33; *see also* HIGHLY CONFIDENTIAL Tr. 95.)

Aqua America also understands, and is committed to, the replacement of infrastructure. Aqua PA has had a long and successful history of accelerated infrastructure replacement, installing even more pipe annually than the Peoples Companies do currently. (*See* Joint App. St. 5-R, pp. 18, 24.) As explained in Sections V.B.4 and V.B.5 of this Brief, Aqua America has committed to increase the pace of pipe replacement by the Peoples Companies.

Although Aqua America is headquartered in Bryn Mawr, it made clear in the Application that it intended to leave the Peoples Companies headquarters and operations in Pittsburgh. The Settlement includes a number of conditions that serve to reaffirm Aqua America's intent to maintain the Peoples Companies' presence in the Pittsburgh area. This includes a commitment to maintain the current Peoples Companies' corporate headquarters at least through January 31, 2029. Thereafter, the Peoples Companies' headquarters will continue to remain in the Peoples Companies' service territory unless through application to, and approval by, the Commission. (Settlement, ¶¶ 81-82.) The Peoples Companies also commit to spend at least \$2.7 million annually in corporate contributions for a period of not less than 5 years. Overall, Aqua America

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commits to spend at least one-half of one percent of pre-tax net income each year for charitable contributions, with a goal of increasing that spending to one percent of pre-tax net income for charitable contributions annually in five years. (Settlement, ¶ 113.) These conditions confirm Aqua America's intention to maintain an active presence in western Pennsylvania.

For reasons identified above, public ownership of the Peoples Companies by Aqua America, a publicly-owned and Pennsylvania based company, will produce substantial public benefits.

3. The Proposed Transaction Will Retain Pennsylvania-Based Jobs And Expand Job Opportunities In Western Pennsylvania.

When considering the benefits associated with workforce retention and/or expansion, the Commission has previously explained that “[a]ny current reductions in...workforce must be measured against any potential gains in order to demonstrate a substantial public benefit.” *See Peoples/Equitable 2007 Order*, 2007 Pa. PUC LEXIS 32, at *23 (Order entered April 13, 2007). Importantly, the Proposed Transaction does not contemplate or involve reductions in the workforces of either the Peoples Companies or Aqua PA. It does, however, involve specific commitments by the Joint Applicants to keep and grow jobs in Pennsylvania.

The Joint Applicants made clear from the outset of this proceeding that the Proposed Transaction does not contemplate the creation of synergies from the elimination of jobs at the Peoples Companies or Aqua PA. (Joint App. Ex. DJS-1, pp. 20-21, 30-31; *see also* Joint App. St. 1 (REVISED), p. 12.) As such, the Proposed Transaction stands in stark contrast to a typical acquisition of the Peoples Companies by another gas utility, potentially located outside of Pennsylvania, that might eliminate Pennsylvania-based jobs to achieve synergy savings or migrate those jobs outside of Pennsylvania. (Joint App. St. 1-R, pp. 11-12.)

I&E and OSBA both attempt to highlight the lack of large, employment-driven synergies associated with the Proposed Transaction as a basis for rejecting it. (*See* I&E St. 1, pp. 10-11;

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OSBA St. 1, pp. 6, 11-12.) However, their arguments actually highlight the substantial, employment-related benefits that are provided under the Proposed Transaction.

I&E witness Zalesky principally argues that there are no synergies involved in this acquisition because Aqua and the Peoples Companies differ in utility type and geographic location. (I&E St. 1, pp. 10-11.) He goes on to opine that “[o]verall, lack of synergies makes the proposed acquisition unlikely to meet the standards required by the Public Utility Code.” (I&E St. 1, p. 11.) However, no requirement under the Code, Commission precedent, or Pennsylvania law requires that an acquisition result in employment reductions to create synergies to satisfy the affirmative public benefits standard.¹⁶

OSBA similarly argues that the lack of employment-related synergies simply means that the acquisition does not provide an affirmative benefit relative to the status quo. (OSBA St. 1, p. 6.) However, the affirmative public benefits standard does not require this showing. Rather, it merely requires an applicant to demonstrate that the asserted benefits would simply not occur absent the proposed transaction. *See Popowsky*, 937 A.2d at 1058 (concluding substantial evidence of the claimed benefits existed because “the sum and substance of the credited joint applicants' evidence was that the bulk of the benefits would flow from the combination of MCI's Internet network infrastructure with Verizon's facilities and financial resources, an eventuality which simply would not occur absent the corporate transaction.” (emphasis added)). Indeed, the Joint Applicants have demonstrated, and I&E essentially concedes, that the retention of workforce contemplated by the transaction—*i.e.* lack of synergies—would not occur in a typical acquisition; they are principally occurring because the Proposed Transaction involves the acquisition of a natural gas utility by a water/wastewater utility holding company. (*See* I&E St.

¹⁶ Further, as explained in Section V. B. 8 of this Brief, there will be long-term, non-employment synergies from the Proposed Transaction, and a rate credit that reflects the potential value of those long-term non-employment synergies.

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1, pp. 10-11.) As such, the contemplated workforce retention benefits are unique to this acquisition and clearly satisfy the affirmative public benefits standard. Essentially, the I&E and OSBA witnesses prefer an acquisition of the Peoples Companies that produces synergy savings and lost jobs. That should not be the sole means of demonstrating substantial public benefits.

In addition to these general workforce retention benefits, the Joint Applicants also made specific commitments to retain jobs at the call centers of the Peoples Companies and Aqua, as well as to retain Peoples Companies' field operations center jobs. Specifically, the Peoples Companies committed to maintain field staffing levels for the next five years. (Joint App. Ex. DJS-1R (CORRECTED), p. 5; Settlement, ¶ 76.) The Joint Applicants further committed to maintain or increase staffing of call centers located in Pennsylvania, maintain the Peoples Companies' call center within the Peoples Companies' service territory in or near Pittsburgh, and only reduce staffing or relocate call center employment upon Commission approval. (See Joint App. Ex. DJS-1R (CORRECTED), p. 8; *see also* Settlement, ¶¶ 94-95.) These specific commitments provide guarantees of job retention in Pennsylvania that do not currently exist, and benefit customers by ensuring that they enjoy the same services provided by Pennsylvania-based employees. Keeping jobs in the Joint Applicants' service territories will benefit local Pennsylvania economies.

Moreover, the Proposed Transaction will provide further benefits by increasing employment opportunities and growing jobs in Pennsylvania. It is not disputed that the Proposed Transaction will provide expanded job opportunities for both gas and water/wastewater employees under combined ownership. (Joint App. Ex. DJS-1, pp. 30-31.) In addition, the Joint Applicants' commitment to accelerate the replacement of risky pipe, detailed in Section V.B.4. below, will result in approximately 100 new jobs, inclusive of contracted labor and Peoples

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Companies' employees, being added in Western Pennsylvania. (Joint App. St. 5-R, pp. 18-21.)

This opportunity to increase jobs in Western Pennsylvania is a further substantial public benefit.

Both I&E and OSBA simply ignore or attempt to deflect the benefits associated with the Joint Applicants' commitment to expand job opportunities. I&E witnesses do not address the Joint Applicants' evidence regarding job growth benefits in either direct or surrebuttal testimony.¹⁷ OSBA witness Mr. Knecht simply argues that the Joint Applicants have not undertaken a "systemic evaluation" of potential limitations with respect to the availability of qualified workers. (OSBA St. 1-SR, p. 15.) However, OSBA witness Knecht provides no support for his speculation that such limitations exist and further concedes that the Joint Applicants have based their understanding of labor availability upon conversations with the local unions associated with the necessary workforce. (OSBA St. 1-SR, p. 15 (conceding local unions have not identified potential labor shortages).) Laborers District Council witness Ameris further testified that local contractors are "well positioned to ramp up quickly to provide Peoples with the trained and qualified local labor needed to support the ambitious infrastructure goals." (Laborers District Council St. 1, p. 5.) As such, I&E's and OSBA's arguments disputing job growth benefits are without basis and should be rejected.

4. The Proposed Transaction Will Accelerate The Replacement Of The Peoples Companies' At-Risk Pipe.

A further benefit of the Proposed Transaction is the Joint Applicants' commitment to further accelerate the replacement of the Peoples Companies' at-risk pipe beyond current levels. Merger commitments that improve safety or service reliability constitute affirmative public benefits. *See Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp.*, 2001 Pa. PUC LEXIS 23, at *47-48 (Order dated June 21, 2001); *see also Popowsky*, 937 A.2d

¹⁷ I&E witness Cline did admit at hearing that the accelerated replacement of high-risk pipeline is an affirmative public benefit. (Tr. 214.)

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1053-54 (approval of the application “will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” (emphasis added)).

The Joint Applicants initially proposed to review the potential to further accelerate the replacement of at-risk pipe under the Peoples Companies’ existing Long Term Infrastructure Improvement Plan (“LTIIIP”). (Joint App. St. 5 (REVISED), pp. 14-15.) However, I&E witness Mr. Matse raised a specific concern that the existing LTIIIP should be more leveled, *i.e.* the plan should be accelerated for an increase in pipe replacement in the short-term and a reduction of number of replacement miles currently scheduled to be replaced later in the 20-year replacement schedule. (I&E St. 3, pp. 8-9.)

In response to I&E’s concerns, the Joint Applicants specifically proposed to increase DSIC-eligible capital spending by \$30 million each year, starting in 2021, resulting in the replacement of approximately 25 miles of additional distribution and large bore transmission mains each year. (Joint App. St. 5-R, p. 19; Joint App. Ex. DJS-1R (CORRECTED), p. 4.) Joint Applicants’ witness Mr. Barbato summarized the reliability and safety benefits of this commitment as follows:

The acceleration of the Peoples Companies Combined LTIIIP will allow for a greater number of miles to be replaced earlier in the overall plan, thereby providing a more leveled approach to pipe replacement as sought by Mr. Matse. Moreover, it will allow more residential customers and local businesses to be positively affected by the plan sooner, and it will benefit the Commonwealth by the removal of riskier pipe, with associated improvements to UFG. As shown on the chart on page 17, the current Peoples Companies pipeline replacement plan will remove 75% of affected customers off of priority pipe, by 2026. Aqua’s proposed additional investment will reduce that remaining percentage even further.

(Joint App. St. 5-R, p. 21.) Importantly, this acceleration of replacement will provide safety and reliability benefits in addition to the safety and reliability benefits provided by the Joint Applicants’ proposal to replace and remediate the G/T Systems. *See* Section V.B.5., *infra*. The

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Joint Applicants emphasize that this investment will be done as efficiently as possible, recognizing that the ultimate impact on rates for customers is very important. Because both Aqua PA and the Peoples Companies are pipeline companies, Aqua America expects to be able to leverage their combined skill sets to replace pipe safely and in the most cost-effective manner possible. (Tr. 88; Joint App. St. 4-R, p. 6.)

While I&E did not oppose this commitment or contend that it does not constitute an affirmative public benefit, OSBA witness Knecht argued that the commitment to accelerate LTIP spending should not be considered a public benefit. (OSBA St. 1-SR, p. 12.) Mr. Knecht argued that Aqua America had a strong interest in increasing LTIP spending and that the Joint Applicants did not conduct an analysis of factors associated with LTIP to support this proposal. (OSBA St. 1-SR, p. 12.) As such, he concluded that the Joint Applicants' commitment "appears to be self-serving and unsupported by any credible evidence." (OSBA St. 1-SR, p. 15.) OSBA's contentions are without merit.

Joint Applicants' witness Mr. Barbato's testimony that Aqua America's commitment to accelerate replacement efforts will increase the rate of replacement over present levels and, therefore, benefit more residential and business customers sooner is undisputed. (Joint App. St. 5-R, p. 21.) I&E's witness Cline confirmed that "further acceleration of the replacement of high-risk pipeline is an affirmative public benefit" at hearing. (Tr. 214.) During cross-examination, OSBA witness Knecht ultimately conceded that accelerated elimination of at-risk pipeline reduces risk to greater numbers of customers:

Q. Am I correct that in measuring risk for a gas utility, an important factor considered is the number of customers at risk from the pipe to be replaced?

A. It's a little outside of my area of expertise, Mr. Hassell, but that is my understanding.

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Q. So accelerated elimination of at-risk pipeline reduces risk to greater numbers of customers?

A. Yes, and that's true always...

(Tr. 232 (emphasis added).)

OSBA further attempts to dispute these safety and reliability benefits by arguing that the costs of replacement and repair will be recovered from ratepayers. (OSBA St. 1-SR, p. 13.) Essentially, OSBA advocates for a standard whereby a commitment in an application proceeding cannot be found to constitute an affirmative public benefit if the costs of implementation are recovered from ratepayers. This is not the law¹⁸ and, if adopted, OSBA's standard would stymie the approval of beneficial public utility mergers and acquisitions in Pennsylvania. Therefore, OSBA's arguments should be rejected.

5. The Goodwin and Tombaugh Gathering Systems.

The Joint Applicants have demonstrated that the Proposed Transaction, as conditioned by the Settlement, will provide additional, substantial affirmative public benefits. The Settlement provides a plan for resolving the issues associated with the Goodwin and Tombaugh ("G/T") gathering systems. The Settlement, related to the G/T systems, was developed as this issue was introduced into this merger proceeding by I&E and other parties. Aqua America acknowledges that this is a complex issue where there may not be a perfect answer; however, since this became a significant focal point of several parties in their direct testimony, Aqua America has sought to provide a final resolution where the concentration is on retaining residential and small business customers on low cost natural gas.

¹⁸ See 66 Pa. C.S. § 1103 ("A certificate of public convenience shall be...if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." (emphasis added)). The Commission regularly considers safety benefits in determining whether a transaction satisfies Section 1103. See, e.g., *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, 2013 Pa. PUC LEXIS 654 (Nov. 1, 2013); *Application of Gasco Distribution Systems, Inc.*, Docket No. A-120002F2001, 2006 Pa. PUC LEXIS 388, at *16 (Order entered September 29, 2006) (concluding that additional investments in pipeline replacement "will benefit the long-term viability and safety of the system" and constitute public benefits); *Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp.*, 2001 Pa. PUC LEXIS 23, at *47-48 (Order dated June 21, 2001)

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Both I&E and OSBA identified concerns regarding the existing G/T systems, which are currently owned by PNG Gathering, LLC. (*See, e.g.*, I&E St. 2, pp. 3-18; OSBA St. 1-SR, pp. 16-17.) In particular, I&E identified these systems as being “in very poor condition” due to existing Unaccounted For Gas (“UFG”) levels and also highlighted specific safety issues associated with the systems. (I&E St. 2, p. 2; I&E St. 3, pp. 17-18.) The benefits of the Settlement conditions to resolve these issues, and the flaws in the alternative proposals advanced by I&E and OSBA, are explained below.

a. The Joint Applicants’ Proposal Under The Settlement Will Affirmatively Benefit The Public.

The Joint Applicants, and Aqua America in particular, recognized that “the G/T Systems present a set of complex issues to which there may be no perfect answer in solving.” (Joint App. St. 5-R, p. 4.) There are approximately 1,700 utility customers served off these non-jurisdictional gathering systems. There are over 391 total miles of pipeline in the systems, 314 miles of which are bare, unprotected steel pipe, with substantial levels of UFG. (Joint App. St. 5-R, p. 4; *see also* Tr. 105.) The Settlement provides for a complete resolution of the current status of the G/T system. In summary, the Peoples Companies anticipate replacing all, or substantially all, of the bare steel pipe in the G/T systems. The goal is to substantially avoid abandoning service to existing Peoples Natural Gas customers on the G/T systems that were acquired in the Equitable acquisition. The replacement of pipe will occur over seven years. Pending replacement of bare steel pipe, Peoples Natural Gas will perform annual, instead of triennial, walking leak surveys of all bare steel segments on the G/T systems. Any leaks detected as part of the annual surveys that are within 450 feet of a house shall be fixed (or pipe replaced) within six months. As part of the rehabilitation, both Company-owned and customer-owned

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service lines will be replaced,¹⁹ and inside meters will be moved outside.²⁰ The Peoples Companies will not seek to claim G/T systems replacement plant through a Distribution System Improvement Charge (“DSIC”), but only through future base rate filings as the pipelines are repaired and transferred to Peoples Natural Gas. In addition, as part of the G/T settlement terms, Peoples Companies’ customers will be provided a \$13 million dollar rate credit in 2019.

The Joint Applicants demonstrated that this settlement condition to replace the bare steel pipeline of the G/T systems would provide additional substantial affirmative public benefits. (Joint App. St. 5-R, pp. 14-15; Tr. 170-172.) Specifically, remediating and replacing the systems will improve the safety and reliability of the system by establishing a defined timeline for remediation, which would reduce leaks and UFG levels. (*See* Joint App. St. 5-R, p. 16; *see also* Tr. 90-91.) In addition, the Joint Applicants’ remediation proposal would benefit existing customers served by the G/T system by avoiding abandonment and conversion of existing customers to likely much higher cost alternative fuel sources. (Joint App. St. 5-R, pp. 14-15.) Furthermore, the cost of the Joint Applicants’ proposal is modest; it would ultimately increase the monthly bill of the average Peoples residential customer by approximately 1%, or \$1 per month. (Joint App. St. 5-R, pp. 15-16.) A rate credit is being provided as a partial offset. As such, the record evidence demonstrates that the benefits of this proposal exceed the modest associated costs.

The Joint Applicants’ Statement in Support further explains how the proposal to replace and remediate the G/T systems, as modified by the Settlement, will provide additional substantial public benefits by providing a defined path toward a solution that maintains service to existing

¹⁹ The Peoples Companies’ current Commission-approved LTIP provides for the Peoples Companies to replace, but not own, customer-owned service lines affected by mains replacement. (*See* Joint App. St. 3 (REVISED), pp. 7-8.)

²⁰ 52 Pa. Code § 59.18.

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public utility customers, improves the overall safety of these systems, and balances the economic interests of the Joint Applicants and existing customers. *See Appendix A*, pp. 49-53.

b. I&E’s Proposal Regarding The G/T Systems Is Inconsistent With The Law And Would Harm Existing Peoples Natural Gas Customers.

Despite the benefits associated with the solution contemplated by the Settlement, I&E argues that the replacement and repair of these systems is not in the public interest and does not constitute a benefit of the Proposed Transaction. (*See I&E St. 2-SR*, pp. 4-6.) I&E instead proposed that: (1) Aqua America remain subject to all terms and conditions of the 2013 Peoples/Equitable Settlement²¹; (2) that the Commission Order Peoples Natural Gas to complete the economic test set forth in the 2013 Peoples/Equitable Settlement within six months of an Order approving the Proposed Transaction; and (3) that \$127 million of the purchase price be placed into a restricted capital account to be used for the remediation of the G/T systems or converting customers to alternative fuel sources, with any remainder being paid out to SteelRiver. (I&E St. 2, p. 13; *see also I&E St. 2-SR*, p. 18 (updating the amount to be held in escrow from \$400 million to \$127 million).) As explained below, however, I&E’s proposal is legally and factually flawed.

i. The Commission Cannot Impose An “Exit Fee” On SteelRiver’s Sale Of The Peoples Companies.

Mr. Cline’s proposal, if adopted, would amount to an “exit fee” imposed on SteelRiver for the sale of its utility assets. The Commission should summarily reject his proposal because it would be unlawful and ignores relevant facts.

The legal standard for approval of the instant Application is that the Joint Applicants must demonstrate that Aqua America possesses the legal, technical and financial fitness to own

²¹ The settlement was filed at Docket Nos. A-2013-2353647, A-2013-2353649, A-2013-2353651 on Oct. 7, 2013 and approved by the Commission by Order entered November 14, 2013. *See Joint Application of Peoples Natural Gas Co LLC (Peoples LLC), Peoples TWP LLC (Peoples TWP) and Equitable Gas Company LLC (Equitable LLC)*, Docket Nos. A-2013-2353647, A-2013-2353649, A-2013-2353651 (Order entered Nov. 14, 2013).

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and operate the Peoples Companies. In addition, the Joint Applicants must demonstrate that Aqua's ownership/operation of Peoples affirmatively promotes the service, accommodation, convenience, or safety of the public in some substantial way. *City of York*, 295 A.2d at 828. As explained above, the Proposed Transaction, as modified by the Settlement, satisfies these tests. Under these circumstances, the Commission is legally obligated to approve the Transaction, as modified by the Settlement, without Mr. Cline's proposed condition.

At the hearing, Mr. Cline agreed "that if the joint applicants are otherwise able to demonstrate an affirmative public benefit, this application should be approved." (Tr. 212.) He also agreed that the Settlement includes several provisions that constitute public benefits. (Tr. 214.) Consequently, in light of these concessions, the Commission should conclude that the Transaction, as modified by the Settlement, should be approved without Mr. Cline's proposed "exit fee."

Additionally, withholding a portion of the purchase price from the seller (an unnecessary condition for approval) would be unconstitutional as a regulatory taking of private property. *See Citizens for Pers. Water Rights v. Borough of Hughesville*, 815 A.2d 15, 22 (Pa. Cmwlth. 2002) (explaining that a regulatory taking occurs when there has been a deprivation of "all economically beneficial use" of property (quoting *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1018, 112 S. Ct. 2886, 89 L. Ed. 23 166 (1986))). Mr. Cline's recommendation would also violate the "regulatory compact" between the utility and its customers. A utility is entitled to recover its costs, and its shareholders are entitled to a fair return on and of their capital investment. *See Federal Power Comm'n v. Hope Nat'l Gas Co.*, 320 U.S. 591 (1944) (holding that a utility is entitled to a fair opportunity to earn a fair return on the fair value of its investment and rates that do not meet this standard are confiscatory and unconstitutional); *Bluefield Waterworks and Imp. Co. v. Pub. Serv. Comm'n of West Va.*, 262 U.S. 679 (1923); *see also Pa.*

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Pub. Util. Comm'n, v. Pa. Gas and Water Co. – Water Div., 492 Pa. 326, 424 A.2d 1213 (Pa. 1980). There is no legal basis for requiring a utility's shareholders to pay for the cost of remediating the G/T systems. This is particularly true where, as here, part of the purchase price would be withheld from the seller to address deficiencies in a system owned by a non-regulated affiliate.

Even if the Commission finds that Mr. Cline's recommended "exit fee" does not violate federal and Pennsylvania law, there are several fact-based reasons why the Commission should reject the recommendation. Foremost, the Peoples Companies have complied with the provisions of the 2013 Equitable Gas Company merger settlement regarding the G/T systems. (Joint App. St. 6-R, pp. 6-13 (explaining that the settlement required Peoples Natural Gas to complete an assessment of the systems, which it has done, and Peoples Natural Gas must now consult with OCA, OSBA and the Gas Safety Division of I&E before submitting a plan to the Commission).) Additionally, it should be noted that the transfer of the G/T systems to Peoples Natural Gas was part of a larger transaction that generated significant benefits to ratepayers that far outweighed the issues with the G/T Systems. (Joint App. St. 3-R, pp. 5-7.) There is no reason to punish the Peoples Companies by withholding a portion of the purchase price due to the condition of the G/T systems.

The buyer and seller, negotiating at arm's length based among other things, on customary due diligence, arrived at a purchase price that was acceptable to both. Withholding a portion of the purchase price, to pay for the remediation of the G/T Systems, would be inappropriate and unprecedented.

Furthermore, the amount of Mr. Cline's proposed withholding is excessive (even after he adjusted it downward from \$400 million to \$127 million). In compliance with the Equitable Gas Company merger settlement, Peoples developed three options for addressing the deficiencies in

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the G/T systems. The costs of implementing these options range from \$121.6 million for retaining the entire system and replacing 314 miles of bare steel pipe over 15 years (Joint App. St. 6-R, p. 10), to \$15.8 million for retaining only the northern-most Tombaugh pipeline system and replacing 40 miles of bare steel pipe over 15 years (an additional \$5.8 million would be required to convert customers to alternative fuel sources) (Joint App. St. 6-R, p. 11.)

Mr. Cline attempts to address the excessive amount of the recommended withholding by proposing that any portion of the “exit fee” that remains unspent five years after the Commission Order approving the Application would be returned to SteelRiver. (I&E St. 2, p. 15.) This proposal has several flaws, including the fact that SteelRiver may not exist in five years. Additionally, SteelRiver would be denied the benefit of its bargain with Aqua America due to the time value of money—receiving a refund of \$127 million in 2024 is not the same as receiving a payment of \$127 million today.

Finally, the Commission’s refusal to adopt Mr. Cline’s recommendation would not mean that the deficiencies in the G/T systems would fail to be addressed after Closing. Peoples has an on-going obligation under the Code to provide “adequate, efficient, safe, and reasonable service and facilities” regardless of the owner. 66 Pa. C.S. § 1501. Peoples also has an obligation to comply with the settlement terms related to G/T under the 2013 Peoples/Equitable Settlement.

As discussed above, the Settlement contains extensive provisions to address the deficiencies in the G/T systems. These provisions are preferable to an “exit fee” on SteelRiver, and should be adopted. Indeed, imposition of an “exit fee” would, as a matter of public policy, send a message to the capital markets that Pennsylvania does not have a fair regulatory climate.

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ii. Adopting A Settlement Condition That Encourages The Filing For Abandonment Of Most Of The G/T System Customers Is Not In The Public Interest.

I&E's proposal would encourage the abandonment of service to most of the 1695 utility customers on the G/T systems. I&E proposes that SteelRiver be responsible for the cost of rehabilitation or abandonment of service to all customers for whom service would not be justified under a strict "economic test" of plant supported by G/T customers' revenues. (I&E St. 2, pp. 17-18.) As the Joint Applicants' witness Mr. Gregorini explained, a strict "economic test" concluded that replacement of plant would be justified for only 723 customers in a discrete section of the Tombaugh System, at a cost of \$15.8 million. (Joint App. St. 6-R, p. 11.) I&E's "choice" to either replace the remainder at SteelRiver's expense or abandon service effectively means that the Peoples Companies would be forced to seek abandonment of the remaining 972 customers on the G/T systems.

I&E's proposal to effectively condition approval of the Proposed Transaction on the filing of applications to abandon service to 972 Peoples Natural Gas customers is not in the public interest. The primary flaw in I&E's position is that it is built upon the premise that abandonment decisions should be subject to the same criteria as extensions of service. This is incorrect.

Abandonment of service requires the filing of an application for a certificate of public convenience under Section 1102(a)(2) of the Code. 66 Pa. C.S. § 1102(a)(2). As part of that application, Peoples Natural Gas would bear the burden to prove that abandonment of each of the 972 customers is "necessary or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. § 1103. In determining whether to grant abandonment, the Commission considers and weighs the use of the service by the public, prospects as to future use by the public, hardship to the public if the service is discontinued, and the availability of alternative

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service; it does not conduct a strict, “economic” cost-benefit analysis. *See, e.g., Borough of Duncannon v. Pa. Pub. Util. Comm’n*, 713 A.2d 737, 740 (Pa. Cmwlth. 1998) (explaining the Commission “must weigh these factors and not focus on mere cost-benefit criteria.”). This is a very different standard from the mathematical process applied to main extensions to connect new customers. *See* 52 Pa. Code § 65.21; *Popowsky v. Pa. Pub. Util. Comm’n*, 910 A.2d 38 (Pa. 2006).

Among the factors to be considered in deciding whether to abandon service would be the sheer number of customers to be abandoned. In the heart of natural gas production fields, substantial political and public opposition could be expected to attempt to abandon service to nearly 1,000 existing utility customers. (*See* Tr. 105-108.) Such large scale abandonment would stand in contrast to the efforts by the Peoples Companies, in cooperation with OCA, I&E and the Commission to maintain service to much smaller numbers of existing customers of two troubled gas companies in Western Pennsylvania, where a strict economic test was not employed. (OCA St. 4, pp. 8-9.)

In addition, abandonment based solely upon a strict “economic” test fails to recognize that utilities often socialize costs among a large number of customers, to reduce the effects upon a smaller subset of customers—in this case \$1 per residential customer per month would be required to replace the G/T systems. (Tr. 88.)

Abandonment also would deprive these customers of the consumer protection provisions associated with regulated utility service. In particular, the Peoples Companies explained that a number of the customers on the G/T systems are lower income customers, who would lose the opportunity to access the Peoples Companies’ low income customer assistance programs and the protections of Chapter 14 of the Code and Chapter 56 of the Commission’s regulations. (*See* Tr. 139.) This is particularly relevant given the substantially higher cost of replacement propane.

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Abandonment would also result in the shut-in of a number of existing shallow production wells delivering into the G/T systems. (Joint App. St. 5-R, p. 15.) This would be another relevant consideration in deciding whether to undertake a substantial abandonment of the G/T systems.

It is important to recognize that, under the Settlement's terms, abandonment is not foreclosed in the event of extreme circumstances involving individual customers.²² However, retention, rather than abandonment, of service should be viewed as more consistent with standards of public benefit.

The record evidence in this proceeding demonstrates I&E's alternative proposals are inconsistent with the law, inconsistent with their own position and would, in fact, harm existing utility customers. I&E's proposed conditions regarding the G/T systems should, therefore, be rejected.

iii. I&E's Proposal May Violate The Due Process Rights Of G/T System Customers.

Finally, I&E's proposal contemplates that the Commission's Order in this proceeding will condition approval of the Proposed Transaction, in part, upon the abandonment of certain existing customers on the G/T systems. (*See* Tr. 200-202; *see also* Joint App. St. 5-RJ, p. 2.) The Application contained no proposal with respect to the G/T systems. OCA proposed that, as a condition to approval of the Application, the Peoples Companies be required to submit a plan for the complete rehabilitation of the G/T systems. (OCA St. 4, p. 7.) I&E recommended a dramatically different proposal: that SteelRiver, the seller of the Peoples Companies escrow \$400 million (later reduced to \$127 million) of the purchase price to either pay for (1) full replacement of the bare steel pipeline in the G/T systems, above the "economic" investment in

²² Without offering a specific standard, replacement of several miles of plant to serve one or two customers may justify abandonment rather than replacement.

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replacement plant, (2) abandonment of all customers on the G/T systems, or (3) some combination of abandonment and rehabilitation. (I&E St. 2, pp. 13-18; I&E St. 2-SR, p. 18.)

The Joint Applicants submit that I&E's position regarding the implementation of a process to abandon customers in the context of the acquisition proceeding raises serious due process concerns. *See, e.g., Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984) (concluding due process is only provided where parties are accorded notice and the opportunity to appear and be heard). The Application in this proceeding did not contemplate the abandonment of customers. (*See generally* Joint App. Ex. DJS-1.) As such, no existing Peoples Natural Gas customer taking service from the G/T systems has been provided notice that their service may be abandoned as a result of this acquisition. In this regard, I&E's proposal would violate the due process rights owed to these customers if adopted.

c. OSBA's Proposal Would Delay Necessary Remediation And Withhold From Existing Customers The Benefits Of Such Remediation.

OSBA essentially makes two arguments with respect to the G/T systems issue. (OSBA St. 1-SR, pp. 16-17.) First, OSBA argues that the resolution of this issue "should be unrelated to the evaluation of an affirmative public benefit in this proceeding," because a process is currently in place and underway pursuant to the 2013 Peoples/Equitable Settlement. (OSBA St. 1-SR, pp. 16-17.) While there is a process under the 2013 Peoples/Equitable Settlement, existing Peoples Natural Gas customers will continue to be served via at-risk pipe until that process is completed. Under the Settlement, however, Aqua America would commence the process to remove and replace this risky pipe on a defined schedule. As such, the Proposed Transaction would benefit existing customers by decreasing risk, decreasing UFG levels and increasing safety on the G/T systems. (Joint App. St. 5-R, pp. 13-15; *see also* Joint App. Ex. DJS-1R (CORRECTED), ¶¶ 1-4.) The Settlement further affirms these service and safety benefits related to the G/T systems

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and also provides an additional benefit to the Peoples Companies' customers through a \$13 million rate credit. *See Appendix A*, pp. 6-8.

Second, OSBA argues that the remediation and replacement of the G/T systems proposed in the Settlement does not constitute an affirmative public benefit because it will be funded by ratepayers. (OSBA St. 1-SR, p. 17.) However, Mr. Knecht agrees with Joint Applicants' witness Mr. O'Brien that the 2013 Peoples/Equitable Settlement recognized the remediation costs would be paid by ratepayers. (*See OSBA St. 1-SR, p. 17; Joint App. St. 3-R, pp. 5-6.*) Indeed, that these costs would be borne by ratepayers is an essential aspect of the "regulatory compact" that forms the basis of public utility service. (Tr. 83, 90, 177; *see also* Tr. 207 (I&E witness Mr. Kline testifying, "The regulatory compact is that companies, utilities will make certain capital improvements to ensure the safe and reliable service, in which case they get a return on and return of their investment.") Here, the Settlement conditions to address the G/T systems contemplate additional capital improvements to increase safety and reliability (*i.e.* decrease leaks and the mileage of at-risk pipe) and, therefore, they are entitled to a return of and return on these investments under the regulatory compact.

For these reasons, OSBA has failed to demonstrate that the Settlement conditions to remediate and replace the G/T systems do not constitute a substantial affirmative public benefit. Therefore, the Settlement should be approved without modification.

6. Other Conditions Adopted In The Settlement Will Provide Additional Affirmative Benefits To The Peoples Companies' Customers.

a. Commitments To Maintain Or Improve Upon The Peoples Companies' Customer Service.

The Proposed Transaction, subject to the terms and conditions set forth in the Settlement, will have a positive effect on customer service for the Peoples Companies' customers. The Settlement includes various conditions to maintain or improve the Peoples Companies' capital

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expenditures, performance standards and customer service standards. (Settlement, ¶¶ 84, 90-93; *see also* Joint App. Ex. DJS-1R (CORRECTED), ¶ 40-47.)²³ These commitments will ensure that the Peoples Companies continue to provide safe and reliable service to their customers, at a level that meets or exceeds current performance.

b. Benefits To The Peoples Companies Low-Income Customers.

The Peoples Companies will continue to fund their existing Universal Service Programs at levels that are not less than the funding levels proposed in their most recent Universal Service and Energy Conservation Plan for 2019-2021 at Docket No. M-2018-3003177, and Aqua America’s shareholders will contribute additional funds to these programs. (Settlement, ¶¶ 98-101.) The contribution of additional funds to low-income programs will provide substantial public benefits by assisting customers to maintain gas service.

In addition, the Peoples Companies will continue their long-standing partnerships with existing Community Based Organizations (“CBOs”), other stakeholder agencies, and the Peoples Universal Service Advisory Group to ensure the effective administration of these programs. (Settlement, ¶¶ 102-104.) Moreover, the Settlement contains commitments that maintain the Peoples Companies’ current Universal Service organizational structure and staffing levels, and maintain the existing field employee referral program (*i.e.* “Help At Peoples Now”). (Settlement, ¶¶ 110-111.) These commitments maintain and improve upon the low-income programs and services currently offered to the Peoples Companies customers, and evidence Aqua America’s commitment to building upon these programs in the future.

7. Other Conditions Adopted In The Settlement Will Provide Additional Affirmative Benefits To Aqua PA’s Customers

a. Commitments To Achieve Improved Customer Service.

²³ Under ¶ 90 of the Settlement, the Peoples Companies will provide annual reports concerning achievement of service commitments for 5 years. If an identified metric is not achieved, the Peoples Companies must explain the reason for the failure and provide a detailed plan to achieve the metric.

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Similar to the commitments that provide service-related benefits to the Peoples Companies' customers detailed above, the Settlement also contains additional conditions that will benefit Aqua PA's customers. These conditions include the implementation of specific customer service metrics above and beyond current levels, as well as the establishment of a process for Aqua PA to review whether it has achieved this metrics and address any shortfalls. (Settlement, ¶¶ 83-89.) These Settlement conditions provide additional, substantial affirmative benefits that are designed to provide Aqua PA's customers with improved customer service, beyond current levels. *See Appendix A*, pp. 62-64. In addition, the reporting requirement set forth in Paragraph 89 ensures Aqua PA will strive to meet the identified customer service metrics and, if it does not meet a given metric, that there is a course of action to move forward.

b. The Implementation Of The Peoples Companies' SAP System At Aqua PA.

Another significant public benefit of the Proposed Transaction, which is reflected in the Settlement, is the Joint Applicants' implementation of the Peoples Companies' SAP system at Aqua PA. (*See Joint App. St. 4 (REVISED)*, pp. 22-23; *see also Settlement*, ¶ 96.) OSBA questioned whether the implementation of SAP by Aqua PA would create any specific efficiencies and or cost savings. (OSBA St. 1, pp. 15-16.) I&E also claimed that the move toward SAP was "mere speculation," because no estimates of costs or savings, or a timeline for implementation, were provided. (I&E St. 1, pp. 6-7.)

While the Joint Applicants have not yet quantified the dollar value of savings associated with implementing the Peoples Companies' SAP system at Aqua PA,²⁴ it is undisputed that two categories of cost savings will result: savings associated with the mitigation of implementation

²⁴ The Pennsylvania Supreme Court has repeatedly concluded that an applicant is not required to precisely quantify the value of a benefit to satisfy the affirmative public benefit standard. *See Popowsky*, 937 A.2d at 1055-57; *City of York*, 295 A.2d at 828.

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risk; and savings from consulting. The ALJ and Joint Applicants' witness, Mr. Franklin, engaged in the following exchange regarding these benefits at the hearing:

JUDGE LONG: All right. Wouldn't Aqua be upgrading its computer system even if it wasn't going to use the Peoples system?

THE WITNESS: At some point, some of our systems would reach end of life, and at some point we would upgrade those systems. But today they all operate and meet every standard in the market.

JUDGE LONG: Well, I guess, what I'm getting at is if it's something you would be doing anyway, is that really a benefit of the merger transaction?

THE WITNESS: One of the benefits, as you think about the risk associated with installing a new system, we've all heard the stories of utilities who were unable to get a bill out or who had particular difficulties with the installation of those systems, particularly in the earlier days.

We believe there is some level of risk mitigation by having that system already installed at Peoples that we can look at, touch, feel and install and almost phase as compared to a blank piece of paper.

And so we think there's some risk mitigation there. And associated with that, clearly when you put a new system in, the majority of that cost is not the software itself. The majority of the cost is the consulting burn associated with all the work around it.

And the team that put that system in at Peoples is still at the company and associated with the company, some of the consulting teams, and so we believe that there's ability to save overall cost in the installation of that system through the work we do together.

(Tr. 84:16-85:20 (emphasis added).)

In addition to these cost savings benefits, Joint Applicants' witness Mr. Fox explained that SAP implementation will provide additional customer service benefits. SAP implementation will allow Aqua PA to run a fully integrated contact center system that allows a Customer Service Representative to have immediate access to SAP customer information through automated screen pops, similar to the Peoples Companies, and would create more personalized customer interactions through additional communications channels and an online customer

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portal. (Joint App. St. 4-R, pp. 10-11.) Customers' expectations with respect to their interactions with utilities have changed; they desire a number of different channels to interact and demand that the utilities provide information promptly and accurately. (Joint App. St. 1-R, p. 10.) This is part of the convenience that customers receive in other contexts, and expect from utilities as well. The Peoples Companies have responded to those expectations through their use of the SAP platform, and Aqua PA's customers can also obtain those service benefits once Aqua PA installs the SAP platform as well.

c. Benefits to Aqua PA's Low-Income Customers

Finally, the Settlement contains conditions that will benefit Aqua PA's low-income customers. Importantly, Aqua PA will leverage the Peoples Companies' experience with programming²⁵ and invite one member of its current Universal Service Staff to Aqua PA's Helping Hand collaborative meetings and invite staff in charge of collections to the Peoples Companies' Universal Service Advisory Committee meetings. (Settlement, ¶¶ 105-106.) These commitments will ensure that Aqua PA's employees interface with and learn from the Peoples Companies and share in their practices with respect to low-income programming. (*See* Joint App. Ex. DJS-1R (CORRECTED), ¶¶ 61-62; *see also* Joint App. St. 7-R, p. 10.)

In addition, Aqua PA has committed to review the feasibility of collecting data in accordance with its recent rate case settlement in Docket No. R-2018-3003558, as set forth in each settlement. (Settlement, ¶ 107.) Collecting this information will provide Aqua PA additional information about the low-income population it serves, which will benefit future efforts to address these customers' needs. (*See* Joint App. Ex. DJS-1R (CORRECTED), ¶ 63; *see also* Joint App. St. 7-R, pp. 10-11.)

²⁵ The Peoples Companies were recognized as having a well-structured low-income program. (CAUSE-PA St. 1, p. 32.)

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Furthermore, Aqua PA will include in the Helping Hand collaborative agreed to in its recent rate case settlement at Docket No. R-2018-3003558, discussion of the development of a comprehensive universal service and conservation program that will be proposed by Aqua PA, as set forth in the Settlement. (Settlement, ¶ 108.) The discussion and development of this program will benefit low-income customers by creating solutions to promote water conservation that are not currently provided. (*See* Joint App. Ex. DJS-1R (CORRECTED), ¶¶ 65; *see also* Joint App. St. 7-R, p. 11-12.)

Finally, Aqua America's shareholders will contribute an additional \$50,000 annually to the hardship grant component being developed for Aqua PA's Helping Hand Program annually for four years, and further commit to evaluate whether to increase this contribution as a part of Aqua PA's next base rate case. (Settlement, ¶ 109.) This provision benefits the public because it increases funds available to low-income customers under Aqua PA's program above current levels.

8. Other Conditions Adopted In The Settlement Will Provide Additional Affirmative Benefits To The Public.

In addition to the affirmative public benefits detailed above, the Settlement provides additional benefits. Principal among these further commitments is an additional \$10 million rate credit to be provided to Aqua PA's and the Peoples Companies' customers.

A primary criticism of the Proposed Transaction by I&E and the OSBA is that it increases financial risk and does not contain a synergistic (*i.e.* rate reducing) benefit to existing customers. *See* Section V.B.1., *supra*. However, in addition to the commitments designed to achieve the long-term efficiencies and savings described by the Joint Applicants,²⁶ the Settlement

²⁶ *See* **Appendix A**, pp. 53-54 for a description of these savings and efficiencies. The Joint Applicants explicitly committed to passing any future cost savings or rate benefits that may result from the acquisition to customers in future base rate proceedings. (Joint App. Ex. DJS-1R (CORRECTED), ¶ 5; *see also* Joint App. St. 1-R, pp. 12-13; Joint App. St. 2-R, p. 26.)

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contains an additional \$10 million rate credit provided to the customers of the Peoples Companies and Aqua PA customers in 2019. (Settlement, ¶ 41.) This rate credit provides an immediate pass through of potential savings to existing customers, and constitutes an affirmative public benefit. (See OCA St. 2, pp. 32-34; *see also* Tr. 214:11-13.) Importantly, this rate credit is in addition to the previously described \$13 million rate credit associated with the G/T systems. Therefore, the Proposed Transaction, as conditioned by the Settlement, provides for an immediate rate savings benefit of approximately \$23 million to existing customers.

The Settlement also includes a commitment that confirmed Aqua America was adding a director to its board with natural gas experience and that it would regularly hold board meetings in Pittsburgh. (Joint App. Ex. DJS-1R (CORRECTED), ¶¶ 33-34; *see also* Joint App. St. 1-R, pp. 14-15.) In addition, Aqua America committed to: ensure the Peoples Companies are managed by individuals with natural gas utility experience, ensure turnover does not present public safety risks, and develop succession plans. Essentially, Aqua America committed to maintain an organization structure at the Peoples Companies in which natural gas operational workers directly report to trained natural gas managers.²⁷ (Joint App. Ex. DJS-1R (CORRECTED), ¶35; *see* Joint App. St. 1-R, pp. 28-31.) These commitments provide further benefits, by implementing specific managerial controls upon the prospective owner of the Peoples Companies that are above and beyond any controls in place today.

The Settlement also includes a condition that states the Peoples Companies will intervene, at the request of a statutory advocate, in any proceeding involving the potential abandonment of natural gas customers by others in an area neighboring the Peoples Companies' existing pipeline distribution system, for the purposes of studying and evaluating the possibility

²⁷ The Joint Applicants further note that organizational charts demonstrating this structure would be maintained were admitted as HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY Exhibits CHF-3R and CHF-4R.

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of the Peoples Companies extending service to those customers. (Settlement, ¶ 97.) This provision addresses a recommendation proposed by the OCA, based on the Peoples Companies' historic involvement in proposed abandonments by neighboring natural gas systems. (OCA St. 4, pp. 8-10.) This condition is a public benefit as it may benefit people and businesses currently served by small gas systems in Western Pennsylvania who might otherwise lose their gas service due to the inability of current owners to continue operations. (See Joint App. St. 6-R, pp. 13-15; see also Tr. 154-156.)

C. Whether the Proposed Transaction, As Conditioned By the Settlement, Is Likely To Result in Anticompetitive or Discriminatory Conduct

Under Section 2210(a)(1) of the Code, the Commission is required to consider whether a proposed acquisition of the securities of a natural gas distribution company is likely to result in anticompetitive or discriminatory conduct. 66 Pa. C.S. § 2210(a). The Joint Applicants demonstrated that the Proposed Transaction would not have an anticompetitive impact on retail gas competition, because all rates, terms and conditions that have an impact on retail competition in the Peoples Companies' respective service territories would remain unaffected by the Proposed Transaction. (Joint App. Ex. DJS-1, p. 20.) Furthermore, as an owner of water and wastewater utilities with no natural gas operations, Aqua America will not create anti-competitive or discriminatory conditions.

While the NGS Parties/RESA and Direct Energy proposed various modifications to the Peoples Companies' choice programs and supplier tariffs, which they asserted would enhance retail gas competition,²⁸ neither I&E nor OSBA asserted that the Proposed Transaction would create anti-competitive or discriminatory conditions. To the extent either of these parties raises this issue in their respective briefs, the Joint Applicants submit that the record evidence and the

²⁸ (NGS/RESA St. 1, pp. 7-10, 14-19; Direct Energy St. 1, pp. 4-8.)

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Settlement demonstrate that the Proposed Transaction will not create anti-competitive or discriminatory conditions.

The Joint Applicants' specific commitments to maintain and enhance the existing choice and transportation programs of the Peoples Companies are a further public benefit of the Proposed Transaction. (Joint App. Ex. DJS-1R (CORRECTED), ¶¶ 66-73.) Specifically, the Peoples Companies would maintain: (1) the Local Production Pool Tracking system (¶ 68; *see also* Joint App. St. 6-R, p. 38); (2) the upgraded Electronic Bulletin Board (¶ 69; *see also* Joint App. St. 6-R, p. 38); (3) the Local Production Pool invoicing and associated identifying information (¶ 70; *see also* Joint App. St. 6-R, p. 38); and (4) the group contact e-mail process (¶ 71; *see also* Joint App. St. 6-R, p. 38).

In addition, the Peoples Companies committed to programmatic changes that would enhance retail gas competition, including: (1) providing natural gas suppliers with heating and base load information for customers, including the weather station associated with the customer, upon request (¶ 66; *see also* Joint App. St. 6-R, p. 37); (2) providing a minimum of 20 rate codes, up to 40 rate codes, per supply pool (¶ 67; *see also* Joint App. St. 6-R, p. 36); (3) examining potential opportunities to expedite issuance of daily delivery requirements and capacity requests (¶ 72; *see also* Joint App. St. 6-R, p. 37); and (4) identifying customers' billing cycles on customers' invoices, to the extent that suppliers find this information valuable and are willing to pay for it (¶ 73; *see also* Joint App. St. 6-R, p. 38). These commitments address many of the concerns identified by the NGS Parties/RESA and Direct Energy and enhance the competitive retail gas landscape in the Peoples Companies' service territories. (*See* NGS/RESA St. 1-SR, pp. 10-11; *see also* Direct Energy St. 1-SR, pp. 2-3.)

Therefore, and for the reasons more fully explain in the Joint Applicants' Statement in Support, the Proposed Transaction satisfies Section 2210(a)(1) of the Code.

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D. The Effect Of The Proposed Transaction, As Conditioned By The Settlement, On The Employees Of The Peoples Companies

Under Section 2210(a)(2) of the Code, the Commission is also required to consider the impact that a proposed acquisition of a natural gas distribution company may have on the employees of the natural gas distribution company. 66 Pa. C.S. § 2210(a)(2).

The Joint Applicants demonstrated that the Proposed Transaction would provide public benefits by retaining jobs and increasing job opportunities in Section V.B.3., *infra*. As such, they have demonstrated the Proposed Transaction will have a positive effect on the employees of the Peoples Companies and Aqua PA. Not only will the Proposed Transaction, as conditioned by the Settlement, maintain jobs in Pennsylvania, it will also expand job opportunities for both gas and water/wastewater employees under combined ownership. Therefore, the Commission should find that the Proposed Transaction, as conditioned by the Settlement, satisfies the requirements of Section 2210(a)(2) of the Code.

E. The Settlement Provides Numerous Public Benefits, In Addition To Those Identified By The Joint Applicants, And Is In The Public Interest

As explained above, the Joint Applicants demonstrated that the Proposed Transaction will affirmatively benefit the public in a substantial way. In addition to the benefits identified by the Joint Applicants, the Settlement provides further conditions which were agreed upon by the Settlement Parties in the spirit of compromise and to provide additional benefits to the public. Despite the numerous benefits that will result from the Proposed Transaction, as conditioned by the Settlement, I&E and OSBA oppose the approval of the acquisition.

With respect to I&E's opposition, it appears that I&E primarily opposes the Proposed Transaction, as conditioned by the Settlement, based upon the conditions related to the replacement and repair of the G/T systems. (*See, e.g.*, I&E St. 2-SR, pp. 4-6.) The Joint Applicants note that issues concerning the G/T systems were first raised by I&E and other

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parties. In particular, I&E takes issue with the proposal to resolve concerns about the G/T systems embodied in the Settlement because it does not involve the abandonment of certain existing Peoples Natural Gas customers. However, I&E's proposal to condition approval of this acquisition proceeding upon a process to abandon service to existing customers has numerous legal and practical issues that, ultimately, would substantially harm existing customers. *See* Section V.B.3. *supra*. As such, I&E's opposition to the Settlement should be rejected.

OSBA witness Knecht summarized OSBA's reasons for opposing the Proposed Transaction in his direct testimony. (OSBA St. 1, p. 18.) He testified that the "two issues that would need to be resolved" were (1) the Joint Applicants would need to mitigate alleged financial impacts of the Proposed Transaction and (2) the Joint Applicants would "need to make a showing of an affirmative public benefit, potentially with commitments of the type that are often part of acquisition proceedings..." (OSBA St. 1, p. 18 (emphasis added).) The Joint Applicants demonstrated that the transaction will not impose unreasonable financial risks (*see* Section V.B.2. *supra*) and also adopted numerous commitments typically part of acquisitions in order to further demonstrate public benefits would result (*see generally* Joint App. Ex. DJS-1R (CORRECTED); *see also* **Appendix A**). Having satisfied both of OSBA's qualms, it appears that OSBA now believes that the commitments adopted by the Joint Applicants are nothing more than a "feeding frenzy" designed to "obtain handouts" to customers. (OSBA St. 1-SR, p. 3.) OSBA cannot have it both ways and, therefore, its opposition to the Settlement should be rejected.

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VI. CONCLUSION

WHEREFORE, the Joint Applicants respectfully request that Administrative Law Judges Mary D. Long and Emily I. DeVoe, and the Pennsylvania Public Utility Commission, approve 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 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 LDC Funding LLC's Membership Interests By Aqua America, Inc., and issue all Certificates of Public Convenience to the Joint Applicants necessary to effect its approval.

Respectfully submitted,

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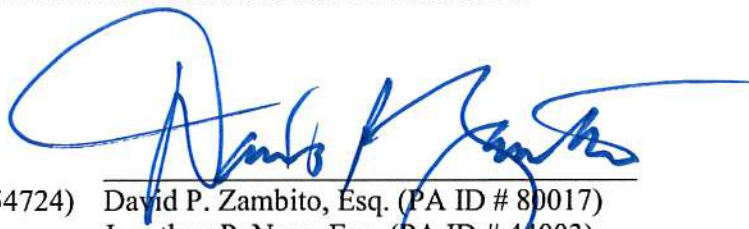


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Date: July 10, 2019

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LLC and Peoples Gas Company LLC*

Appendix A

**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. :

**JOINT PETITION FOR APPROVAL OF NON-UNANIMOUS,
COMPLETE SETTLEMENT AMONG MOST PARTIES**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES MARY D. LONG AND EMILY DEVOE:

I. INTRODUCTION

Aqua America, Inc. (“Aqua America”), and its subsidiaries Aqua Pennsylvania, Inc. (“Aqua PA”) and Aqua Pennsylvania Wastewater, Inc. (“Aqua PA Wastewater”)¹, Peoples Natural Gas Company LLC (“Peoples Natural Gas”) and its affiliate Peoples Gas Company LLC (“Peoples Gas”)², (Aqua America, Aqua PA, Aqua PA Wastewater, Peoples Natural Gas and Peoples Gas are collectively referred as the “Joint Applicants”), the Office of Consumer Advocate (“OCA”), the Coalition of Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Direct Energy Business Marketing, LLC and Direct Energy Small

¹ Aqua, Aqua PA and Aqua PA Wastewater are collectively referred to as “Aqua.”

² Peoples Natural Gas and Peoples Gas are collectively referred to as the “Peoples Companies.”

Business Marketing, LLC (collectively, “Direct Energy”), the Natural Gas Supplier Parties³ and the Retail Energy Supply Association (collectively, “NGS/RESA”), Pennsylvania Independent Oil and Gas Association (“PIOGA”), Laborers’ District Council of Western Pennsylvania (“Laborers’ District Council”) and Utilities Workers Union of America, Local 612 (“UWUA”) (hereinafter collectively referred to as the “Settlement Parties”) hereby submit this Joint Petition for Approval of Non-Unanimous, Complete Settlement Among Most Parties (“Joint Petition for Settlement”) and respectfully request that Administrative Law Judges Mary D. Long and Emily DeVoe (“the “ALJs”) recommend approval of, and the Pennsylvania Public Utility Commission (“Commission”) approve, the above-captioned Joint Application consistent with the terms and conditions set forth in this Joint Petition for Settlement. This Joint Petition for Settlement represents a complete settlement of all issues among the Settlement Parties in the instant proceeding. The Commission’s Bureau of Investigation & Enforcement (“I&E”) and the Office of Small Business Advocate (“OSBA”) are not signatories to the Joint Petition for Settlement. Equitrans, LP (“Equitrans”) and Duquesne Light Company (“Duquesne Light”) are not signatories to the Joint Petition for Settlement, but have indicated they do not oppose the Joint Petition for Settlement.

II. PROCEDURAL HISTORY

1. On November 13, 2018, the Joint Applicants filed the above-captioned Application seeking all necessary approvals from the 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

³ The Natural Gas Supplier Parties consist of Dominion Energy Solutions, Inc. and Shipley Choice LLC.

(“Funding”)⁴ 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. On November 19, 2018, the Commission issued a Secretarial Letter that acknowledged receipt of the Application and directed Joint Applicants to publish notice of the Application once in a newspaper having a general circulation in the area involved and file proof of publication with the Commission on or before December 31, 2018. The letter also indicated that notice of the Application would be published in the *Pennsylvania Bulletin* on December 1, 2018, and that the deadline for filing protests and petitions to intervene was December 31, 2018.

3. On December 6, 2018, the Joint Applicants filed their Direct Testimony.

4. OSBA filed a Notice of Appearance and a Notice of Intervention and Protest on December 7, 2018.

5. On December 11, 2018, I&E filed two Notices of Appearance.

6. Also on December 11, 2018, UWUA filed a Petition to Intervene.

7. On December 19, 2018, the Laborers’ District Council filed a Petition to Intervene and Notice of Appearance.

8. Also on December 19, 2018, OCA filed a Protest and Public Statement. OCA additionally filed Notices of Appearance on January 4, 2019.

9. On December 21, 2018, PIOGA and United States Steel Corporation (“U.S. Steel”) each filed a Petition to Intervene. In addition, Equitrans, L.P. (“Equitrans”) filed a Petition to Intervene and Notice of Appearance.

⁴ 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. Funding is owned by SteelRiver Infrastructure Fund North America LP (“SRIFNA”) and an affiliated fund, which are managed by SteelRiver Infrastructure Associates and its affiliated investment management entities (collectively “SteelRiver”).

10. Also on December 21, 2018, the Commission issued a Notice of a Call-In Telephonic Prehearing Conference.

11. On December 26, 2018, Duquesne Light filed a Petition to Intervene.

12. On December 27, 2018, CAUSE-PA filed a Petition to Intervene.

13. On December 28, 2018, Aqua filed Proofs of Publication of Notice of the Application with the Commission.

14. On December 31, 2018, NGS/RESA jointly filed a Petition to Intervene. Direct Energy also filed a Petition to Intervene.

15. On January 18, 2019, a Prehearing Conference was held before the ALJs. A procedural schedule was established, all interventions were granted, modified discovery rules were adopted and other procedural issues were discussed. No parties identified a substantial public interest in conducting a public input hearing, and none was scheduled.

16. On January 24, 2019, the ALJs issued a Prehearing Order, which memorialized matters decided and agreed upon by the parties attending the Prehearing Conference.

17. On February 6, 2019, U.S. Steel filed a Petition for Leave to Withdraw its Petition to Intervene. By Interim Order dated February 19, 2019, U.S. Steel's Petition for Leave to Withdraw was granted.

18. On February 11, 2019, Joint Applicants filed an unopposed Motion for Protective Order. By Interim Order entered February 14, 2019, the ALJs granted the Motion for Protective Order.

19. On March 25, 2019, Joint Applicants filed revised Direct Testimony.

20. Joint Applicants served responses to over 540 interrogatories of the parties, many of which contained multiple subparts.

21. On April 2, 2019, other parties served direct testimony, in accordance with the procedural schedule.

22. On April 30, 2019, rebuttal testimony was served.

23. On May 21, 2019, surrebuttal testimony was served.

24. Numerous settlement proposals were circulated among parties to the proceeding and multiple settlement conferences and discussions were held. All parties to the proceeding were provided opportunities to participate in settlement discussions. Ultimately, most, but not all, parties were able to achieve a complete settlement of the Application proceeding prior to the scheduled dates for hearings. The final terms were shared with parties opposing the settlement in advance of the scheduled dates for hearings.

25. On June 11, 2019, hearings were held in the proceeding. Terms of the non-unanimous settlement were provided as Settlement Parties Joint Exhibit No. 1, and witnesses for Joint Applicants, I&E and OSBA were cross-examined. Cross-examination included questions involving provisions of the non-unanimous settlement.

26. Pursuant to agreement of the parties, the ALJs directed that the Joint Petition for Settlement be filed no later than June 26, 2019, and that parties opposing the Joint Petition for Settlement provide comments on the proposed settlement as part of their Main Briefs.

27. Main Briefs are due July 10, 2019, and Reply Briefs are due July 25, 2019.

III. TERMS AND CONDITIONS OF SETTLEMENT

28. Conditioned upon the Commission's adoption of the terms of this Joint Petition for Settlement without modification, the Commission shall issue certificates of public convenience evidencing approval of the change in control of the Peoples Companies by way of the purchase of all of Funding's membership interests by Aqua America.

A. Goodwin/Tombaugh Gathering Systems

29. Aqua America commits to addressing the replacement of gathering pipe representing remediation of the bare steel within the Goodwin/Tombaugh Gathering System over a seven-year timeframe. The work to begin repair and replacement of the system would begin three months after closing (such work includes engineering and planning) and the Peoples Companies and interested parties would meet to discuss and provide updates on the status of the project every six months.

30. Capital replaced and remediated for the Goodwin/Tombaugh systems will be recovered through a base rate case (rather than a DSIC). In addition, remediation of the Goodwin/Tombaugh systems shall occur concurrently with the Peoples Companies' other replacement projects.

31. As the capital is completed and placed in service, the plant will then be transferred and become part of Peoples Natural Gas and regulated under the Commission's jurisdiction and classified as distribution pipeline and operated for safety purposes following all provisions under 49 C.F.R. § 192 for distribution pipeline.

32. The intent of this section is to replace and repair all the bare steel in the system so that customers are not abandoned. However, there will likely be circumstances that require further evaluation. For these situations, the interested parties and the Peoples Companies will meet to discuss at or before the six month check meetings discussed above. As a general matter for discussion, PNG will identify areas where customer saturation levels may require further study and analysis.

33. Complete rehabilitation of the bare steel in the system is estimated to cost \$120 million in present dollars. The Peoples Companies will receive full recovery for the actual

capital spent for the complete rehabilitation of the bare steel in the system up to \$120 million. During the repair and replacement of the system, if it becomes apparent that this estimate is no longer sufficient, based on the actual extent of the rehabilitation effort, the Peoples Companies and the statutory advocates will meet to discuss. If an agreement cannot be reached, the Peoples Companies will submit a filing to the Commission for decision for those amounts over the \$120 million. All parties will retain their rights to either challenge or support such a filing. Regardless of the actual capital spent to rehabilitate the systems, Aqua America agrees to provide all Peoples Companies' customers a rate credit of \$13 million. The rate credit will appear on the Peoples Companies' customers' bills before the end of 2019.

34. Peoples Natural Gas and Aqua America will look to create and find synergies in the replacement of gathering and distribution pipe that eventually flow back to customers. In addition, the companies will explore the opportunity of grant eligibility and include PIOGA members for possible solutions and partnership in addressing the issue.

35. The Commission's Gas Safety Division will be provided access to these systems to inspect for any safety concerns through the remediation period, and this access will continue at all times after the remediation is complete.

36. Effective October 1st following the first Unaccounted For Gas ("UFG") reporting period in which the Peoples Companies begin remediation of the Goodwin/Tombaugh systems, Peoples Natural Gas will adjust the annual Goodwin system retainage rate applicable to producers delivering gas into the Goodwin system. The Goodwin system retainage rate shall be adjusted annually to reflect the lower of: 1) the actual calculated UFG rate on the Goodwin system; or 2) a retainage rate calculated by reducing the then-effective annual retainage rate by a percentage (percentage rate of decline) that is equal to the annual rate of pipeline replacement on

the Goodwin system. Peoples Natural Gas also agrees to conduct interim semi-annual reviews of actual Goodwin system UFG levels based on a rolling 12-month period and if a UFG decline trend is evident Peoples Natural Gas will also make an interim adjustment to the effective retainage rate to reflect the actual UFG level for the interim rolling 12-month period. In no case shall the Goodwin system retainage rate be less than the currently effective system-wide producer retainage charge.

37. Peoples Natural Gas will perform annual, instead of triennial (once every three years), leak surveys of all bare steel segments in the Goodwin/Tombaugh systems until that particular pipeline section is replaced as part of this remediation. This survey will be a walking survey in which the company will start at one end of the line and finish at the other.

38. Every leak detected as part of the accelerated annual surveys undertaken pursuant to Paragraph 37 that is within 450 feet of a house shall be fixed within 6 months unless it is located on a line scheduled for replacement within 6 months.

39. All company and customer service lines (curb to meter) will be replaced by Peoples Natural Gas as part of the Goodwin/Tombaugh replacement program.

40. All inside meters in the Goodwin/Tombaugh systems shall be placed outside the wall of the structures.

B. Books, Records, Rate Activity and Financing

41. Separate and apart from the \$13 million rate credit provided in Paragraph 33 above, Aqua America will provide a one-time \$10 million rate credit to the Peoples Companies' natural gas customers, Aqua PA Water customers, and Aqua PA Wastewater customers (Aqua PA Water and Aqua PA Wastewater are collectively referred to herein as "Aqua PA" unless otherwise stated). The rate credit will appear on customer bills before the end of 2019.

42. The Peoples Companies and Aqua PA will continue to maintain reasonable accounting controls to govern any transactions with affiliates and that any charges are consistent with Commission requirements. Specifically, this includes maintaining detailed accounting records sufficient to document that charges to the Peoples Companies and Aqua PA from affiliates are at the lower of cost or market, and charges from the Peoples Companies and Aqua PA to non-regulated affiliates are at the higher of cost or market.

43. The Peoples Companies and Aqua PA will operate as separate corporate subsidiaries and will maintain separate accounting for the companies sufficient to provide all Commission required financial statements.

44. The Peoples Companies and Aqua PA agree to seek Commission approval of all new or amended agreements with affiliates consistent with Chapter 21 of the Public Utility Code.

45. Aqua America commits that no equity or debt issued to finance the acquisition premium or goodwill will be included in ratemaking capital structure of any of the PA utility subsidiaries. Any goodwill resulting from this transaction on the balance sheet of Aqua PA or the Peoples Companies shall be excluded from that utility's ratemaking capital structure.

46. Aqua America commits that financing of the acquisition will be at least 50% equity or equity equivalents calculated inclusive of the \$1.3 billion of PNG debt absorbed by Aqua America in the acquisition.

47. Aqua America commits that any new equity and debt issued to finance the acquisition premium will be excluded from PA utility subsidiaries' balance sheets.

48. Aqua America commits to appropriate ring-fencing protections to the extent applicable to Aqua America's structure, and that are no less protective of the ring-fencing

protections currently in effect for Aqua PA and the Peoples Companies. The current ring fencing includes, but is not limited to the following:

- a) Aqua PA and the Peoples Companies ("Utility Subsidiaries") maintaining their status as corporate subsidiaries with their own corporate officers;
- b) each of the Utility Subsidiaries issuing their own sets of financial statements pursuant to Commission requirements;
- c) all transactions among the Utility Subsidiaries and their corporate affiliates (including Aqua America) taking place pursuant to the terms of a Commission-approved affiliated agreement to avoid cross subsidization;
- d) each Utility Subsidiary (and PNG) maintaining the capability to issue its own long-term debt (with such debt issues subject to Commission approval if required);
- e) the maintenance of maximum debt levels in the capital structure for the Utility Subsidiaries as specified in Paragraphs 51 and 52;
- f) no lending by the Utility Subsidiaries to corporate affiliates for a term in excess of one year; and
- g) no pledging or encumbering the assets of the Utility Subsidiaries or the provision of loan guarantees for the benefit of corporate affiliates.

49. The Peoples Companies and Aqua PA will not lend on a long-term basis (i.e., for a term exceeding one year) to Aqua America, Aqua PA, PNG, the Peoples Companies or any other corporate affiliates and will not provide debt guarantees or pledge assets for corporate affiliates without prior Commission approval.

50. In the event of a credit downgrade at Aqua America, PNG or Aqua PA to below medium triple B, the companies will provide notice to the Commission within 5 business days,

which will state the reason for the downgrade and remedial actions intended to strengthen credit ratings.

51. The Peoples Companies will maintain a debt ratio measured at an annual level of no more than 50% (inclusive of short term debt, but exclusive of goodwill) for at least five-years post-closing.

52. Aqua PA will maintain a debt ratio of no more than 50% (inclusive of short term debt, but exclusive of goodwill) for at least five-years post-closing.

53. Aqua America will continue to seek to acquire and rehabilitate troubled Commission regulated water and wastewater systems. The transaction will not interfere with Aqua PA's ability to finance or pursue these acquisitions.

54. Any acquisition premium or goodwill as a result of this transaction recorded on Aqua America's, or any affiliate's, books will be permanently excluded from rate base of Aqua PA (water and wastewater) and the Peoples Companies (Peoples Natural Gas and Peoples Gas) in establishing future rates subject to the Commission's jurisdiction and also will be excluded from the Peoples Companies and Aqua PA capital structures for ratemaking purposes.

55. Aqua America and the Peoples Companies will file a Report of Action within 120 days of closing, which contains the closing date, the actual total sale price, and the actual accounting entries records in Aqua's and the Peoples Companies' books that reflect the acquisition including the following: all Transaction Cost and Transition Cost accounting entries for Aqua and the Peoples Companies that are recorded on the books of each entity; all Merger related fair value, Goodwill, and/or Acquisition Premium accounting entries for Aqua and the Peoples Companies and their subsidiaries; all Merger-related tax accounting entries for Aqua and

the Peoples Companies and their subsidiaries; all Merger-related debt and equity financing accounting entries for Aqua and Peoples and their subsidiaries.

56. Aqua America will ensure any accounting treatments associated with Acquisition accounting do not affect rates charged to Pennsylvania public utility customers.

57. Aqua America and the Peoples Companies will not claim in any future rate proceedings any Transaction Costs to complete the transaction. Such costs shall be borne by Aqua/Peoples Companies shareholders. All Transaction Costs shall be recorded on Aqua America and Funding books and shall be tracked to facilitate verification that none of the costs are being directly or indirectly included in cost of service for any Pennsylvania utility.

58. Any termination fees incurred if the Acquisition is not consummated shall be borne by the shareholders and will not be recovered from Pennsylvania utility ratepayers.

59. Aqua America commits that no Transition costs (incremental costs incurred to facilitate integration of companies, including all costs listed in Settlement Parties Joint Exhibit No. 2 (confidential), shall be included in Aqua PA's or Peoples Companies' cost of service in any rate case.

60. Aqua America will track and account for Transition costs in sufficient detail to permit parties to review and verify no such costs have been included in cost of service for Aqua PA or the Peoples Companies.

61. The Peoples Companies will report and identify the impact resulting from any constraints on their ability to monetize otherwise available tax benefits due to their affiliation with Aqua America and their post-merger participation in a federal consolidated tax return.

62. Aqua America will ensure that the acquisition closing will not affect accounting and ratemaking treatments of the Peoples Companies' Accumulated Deferred Income Taxes

(“ADIT”), including excess deferred income taxes, accumulated deferred tax credits and net operating losses. Aqua America commits that no Section 338(h)(10)⁵ election will be employed that would result in a reduction of the pre-closing Peoples Companies’ ADIT balances.

63. Aqua America will ensure the acquisition accounting is rate-neutral for Peoples Companies’ customers.

64. Aqua America will report key credit metrics to the Commission for a five - year period and will use reasonable efforts to maintain existing Aqua America, Aqua PA, and Peoples Companies' credit ratings at investment grade for their publicly traded debt securities.

65. The Peoples Companies and Aqua PA each will maintain the capability of issuing their own long-term debt unless authorized otherwise by the PUC.

66. The Peoples Companies and Aqua PA will not guarantee debt of Funding, Aqua America or any of their other affiliates, grant liens upon their own property other than to finance their own utility operations, or make loans/extend credit for a term of more than one year without Commission approval, if required under the Public Utility Code.

67. Aqua America shall investigate the feasibility of establishing a commercial paper program for short-term debt financing for the Peoples Companies and Aqua America within six months of closing on the transaction.

C. Reliability and Pipe Replacement

68. Aqua America commits to continue the Peoples Companies’ Combined UFG Mitigation Plan and the Peoples Companies will continue to be subject to the UFG targets set forth in the Plan.

69. Aqua America commits to continue to meet the Peoples Companies’ Combined Distribution Long Term Infrastructure Improvement Plan (“LTIIIP”). In addition, Aqua America

⁵ 26 U.S.C. § 338(h)(10).

commits to further accelerate the replacement of higher risk pipe, with a focus on its distribution assets totaling at least \$30 million per year and approximately 25 miles per year of distribution pipe. In order to accomplish this, the Peoples Companies will file a modified LTIP after closing that will propose this further acceleration of the replacement of high risk pipe. The Peoples Companies will plan for pipe replacement needs in connection with the Peoples Companies' modified LTIP and associated in-house and sub-contractor staffing. The Peoples Companies will submit a detailed five-year plan explaining staffing needs matched to projected annual projects and work will commence in 2021 after PUC review and approval of the modified LTIP. This modified LTIP filing is in addition to the plant replacement discussed under Section III.A.

70. The Peoples Companies will propose a damage prevention program designed to reduce line hit damages which will be filed by March 31, 2020.

71. Aqua America will provide full support for the Peoples Companies' operator qualification requirements.

72. The Joint Applicants commit to maintain a benchmark of 95% of the construction contractor crews utilized per calendar year in the City of Pittsburgh, Baldwin Borough, Brentwood Borough, Whitehall Borough, Borough of Dormont, Green Tree Borough, Crafton Borough, Ingram Borough, McKees Rocks Borough, Borough of Roslyn Farms, Borough of Carnegie, Borough of Thornburg, and Baldwin Township for on-site construction work in connection with Peoples' LTIP accelerated pipeline replacement program to contractors having an existing collective bargaining relationship with a union. The Joint Applicants commit that any "live gas" work associated with accelerated pipe replacement above current levels will be performed by Peoples Companies union employees.

D. Governance & Management

73. Aqua America currently has one Board member that is employed by a natural gas utility and all nine board of director seats will be filled at the closing of this transaction. Aqua America commits to include natural gas distribution utility operations as a component of its search process for board membership and will endeavor to have additional members on its Board with background and experience with natural gas distribution utility operations. When any new Board member is added over the next ten years, Aqua America commits to providing notice of the change to its Board's composition to OCA, I&E, OSBA and the Commission. Such notice shall include identification of the new Board member and sufficient background on their work history and experience. The commitment acknowledges that compliance with rules regarding conflict of interest, related party transactions and director independence impact this Paragraph.

74. Aqua America will hold at least one Board meeting in Pittsburgh every year for five years.

75. Aqua America will ensure Peoples Companies' executive operational management possess best in class natural gas distribution utility experience, will ensure changes to leadership do not present public safety, reliability, or customer service risks, and will develop succession plans to ensure that any replacements are qualified and knowledgeable. Operational management includes pipeline safety and gas utility pipeline integrity management. In addition, Aqua America will ensure the current organization structure is maintained in which natural gas operational workers are reporting directly to trained natural gas managers. Aqua America commits to providing OCA, I&E, OSBA and the Commission an organization chart that shows the reporting duties of the Peoples Companies' executive level employees responsible for operations management, and their individual direct reporting employees in operations

management. Included with this organizational chart will be a summary of the qualifications and length of service for each such employee.

76. The Peoples Companies commit to maintain at least the field staffing level for the next five years, with the baseline staffing numbers established at closing; providing however that the baseline number shall be no less than 825 employees, of which no less than 720 shall be members of UWUA, which are the actual number of field employees and union-represented field employees working in Pennsylvania field locations on October 31, 2018. The Peoples Companies agree to provide annual reports to the Commission, I&E, OSBA, OCA, and UWUA regarding field offices and staffing levels in its service territory for a period of five years.

77. Aqua PA and the Peoples Companies commit to adhere to the collective bargaining agreements in effect as of closing of the transaction.

78. The Aqua America Board will hold a meeting with the Peoples Companies' gas distribution utility executives at least twice per year for five years post-merger. One of these two meetings will take place in the Pittsburgh, PA headquarters or other location in the Peoples Companies' service area.

79. After the closing of the transaction, the CEO of Aqua America, CEO of Duquesne Light, and the Peoples Companies' president of natural gas operations will endeavor to meet at least twice per year to discuss how their respective utilities can collaborate and work more closely together for the benefit of their mutual customers and stakeholders in southwestern Pennsylvania.

80. Aqua America will continue tracking and complying with existing Peoples Companies' merger commitments listed in Settlement Parties' Joint Exhibit No. 3.

81. Aqua America will continue to maintain the current Peoples Companies' corporate headquarters through at least January 31, 2029, at which point it will evaluate whether to exercise the option to extend the lease by 5 more years or negotiate a new lease.

82. After January 31, 2029, the Peoples Companies commit to not moving their headquarters outside of the Peoples Companies' service territory unless through application to, and approval by, the Commission.

E. Service Related Commitments

83. Aqua commits to improve Aqua's call center performance to meet or exceed the same performance standards that the Peoples Companies agreed to meet in the 2013 Settlement concerning the acquisition of Equitable Gas Company (Docket No. A-2013-2353647 et al.) for the following three metrics in each of the five calendar years (2020-2024) following closing:

- i. percent of calls answered within 30 seconds of at least 82%,
- ii. busy-out rate of no more than 0.25%,
- iii. average call abandonment rate that is no higher than 4% for 2020-2021, no higher than 3% for 2022-2023, and no higher than 2.5% for 2024.

84. Aqua America will maintain, at the minimum, the Peoples Companies capital expenditures at pre-acquisition budgeted levels, and will provide to the OCA, I&E and OSBA with projected expenditures for 2019 and 2020.

85. Aqua PA will develop a system to track Aqua PA customer complaints in a live Excel spreadsheet, consistent with Paragraph 47 in the Joint Petition for Settlement submitted in Aqua PA's recent base rate case (Docket Nos. R-2018-3003558 and R-2018-3003561). Aqua PA will review this information and conduct a root cause analysis of adverse trends at least annually.

86. Aqua PA will commit to a significant reduction in the number of days to respond to customer complaints so that, within 24 months, the average is less than 10.

87. Aqua PA will develop and adopt a methodology to track whether appointments are made and kept for field operations in a manner similar to that used by the Peoples Companies within 18 months and adopt internal performance standards that meet or exceed those of the Peoples Companies for this performance standard for five years.

88. Aqua PA will meet its internal 2019 performance objectives as listed below and will continue to establish and strive to meet comparable or more strict performance objectives for five years:

- i. Estimate read rate – less than 0.5%
- ii. Actual read rate – 99%
- iii. Lost time accidents – 19
- iv. Responsible vehicle accidents – 4.1
- v. Compliance with water regulations – 99.5%
- vi. Compliance with wastewater regulations – 94.5%

89. Aqua PA will provide a report to OCA, I&E, and OSBA each calendar year for a period of five years following closing regarding its achievement of the service quality metrics listed in Paragraphs 83-88. The report will outline the actual metrics achieved and additional actions expected to be taken in the following year to further improve customer service. If Aqua PA has not achieved an identified metric, the report must also include the reasons for the failure and Aqua PA's plan to reach the service quality metric. Aqua PA must then convene a collaborative with OCA, I&E, and OSBA to discuss such report.

90. Aqua America will ensure that the Peoples Companies will provide a report to OCA, I&E, and OSBA each calendar year for a period of five years following Closing regarding its achievement of the service quality metrics listed in Paragraphs 91-93. The report will outline

the actual metrics achieved and additional actions expected to be taken in the following year to further improve customer service. If the Peoples Companies have not achieved an identified metric, the report must also include the reasons for the failure and the Peoples Companies' detailed plan to reach the service quality metric. The Peoples Companies must then convene a collaborative with OCA, I&E and the OSBA to discuss such report.

91. The Peoples Companies will meet performance standards at or more strict than the following for a five-year period, as listed below:

- i. Call center service level – 82%
- ii. % of calls abandoned – 2.0%
- iii. Busy-out rate – 0%
- iv. % of bills not rendered each billing period - .008%
- v. % of meters not read within 6 months - .15%
- vi. % of meters not read within 12 months – 0.15%
- vii. % of company disputes not answered within 30 days – 1%
- viii. Emergency response – average minutes to respond – 27.5 minutes

92. The Peoples Companies will continue to track their field operations appointments and continue the performance standard of meeting 99% of all appointments for a five-year period.

93. The Peoples Companies will meet the overall average performance customer survey results reflected in 2017-2018 results for a period of five years.

94. Aqua America and the Peoples Companies will maintain or increase the location and staffing of call center employees in PA. Aqua America will further commit to maintain the Peoples Companies' call center within Peoples service territory and in or near Pittsburgh. If it becomes apparent that the Pittsburgh call center performance lags the results of the other call

centers, Aqua America reserves the right to initiate discussion with the Commission and interested parties to explore mitigation alternatives.

95. Any significant reductions in Pennsylvania call center staffing or transfer of call center employment outside of Pennsylvania will be subject to Commission approval.

96. Aqua PA will conduct a cost, benefit, timetable and rate impact analysis for implementation of the Peoples Companies' SAP system and submit the analysis and report to the OCA, I&E, & OSBA prior to any implementation of such SAP system to Aqua PA. Aqua PA's future implementation of an SAP system will not be considered a transition cost.

97. The Peoples NGDCs will intervene (at the request of any statutory advocates) in any proceeding involving the potential abandonment of natural gas customers by others in an area neighboring the Peoples Companies' existing pipeline distribution system, for the purposes of studying and evaluating the possibility of the Peoples Companies extending service to those customers. The intent of this condition is premised on the future possibility of a troubled natural gas provider needing assistance whereby it could be helpful to have another entity extend service. It is not intended to create an issue with service territory disputes and is limited to special circumstances.

F. Low Income Service Programs

98. The Peoples Companies shall continue to fund the Companies' Universal Service Programs, including its Customer Assistance Program ("CAP"), Low Income Usage Reduction Program ("LIURP"), CARES, and hardship fund at levels that, at a minimum, are not less than the funding levels proposed in its most recent Universal Service and Energy Conservation Plan for 2019-2021 at Docket No. M-2018-3003177, plus the increased funding outlined in this settlement. Within 90 days of approval of the settlement in this case, the Peoples Companies

will file an amended Universal Service Plan for 2019-2021 with the Commission to reflect the changes adopted in the proceeding.

99. Aqua America shareholders will contribute historical universal service program contribution levels for the Peoples Companies' LIURP for four years after the date of closing. Funding for LIURP will not be reduced after this four year period, but just and reasonable costs will be recovered by the approved universal service cost recovery mechanism in effect at the time.

100. Aqua America shareholders will contribute an additional \$100,000 each year for four years after closing to Dollar Energy. This increase will be over and above the funding levels that are currently in place, and will be allocated proportionately based on the needs assessments across both divisions of Peoples Natural Gas and Peoples Gas.

101. Aqua America will increase the Peoples Companies' LIURP emergency furnace repair by \$75,000. The Peoples Companies will amend eligibility criteria to include renters as well as homeowners. A maximum of 25% of the annual emergency furnace repair budget will be made available for renters. The Peoples Companies will include in their 2022-2024 USECP filing a breakdown of dollars spent annually on renters versus homeowners and will make a recommendation about whether the 25% cap should be raised or eliminated. Funds not used will rollover to subsequent years. This increase will be paid by Aqua America shareholders for a three year period post-closing. After that three year period, the Peoples Companies' LIURP will be funded by the approved universal service cost recovery mechanism in place at that time. This funding will remain at the total proposed levels until a different funding level is approved by the Commission based on needs assessment.

102. Aqua America commits to continue to use community-based organizations within the Peoples Companies' service territories for delivery, implementation, and community financial support of Universal Service programs. The Peoples Companies will also continue to promote their hardship fund through its public advertising and sponsorship of such activities that bring in additional non-shareholder revenue to the Dollar Energy Fund.

103. Regarding the administration of its CAP and hardship fund, the Peoples Companies will continue to partner with an agency that: (a) can increase the number of intake sites; (b) is an administrator of utility CAP programs for the electric distribution companies ("EDCs") or natural gas distribution companies ("NGDCs") in its service territory; (c) recruits and partners with multi-service agencies; and, (d) uses a case management system to track and monitor referrals and enrollments into utility programs.

104. The Peoples Companies will continue the Peoples Universal Service Advisory Group. The Group will invite community-based organizations ("CBOs"), Low-Income Advocates, the OCA and other interested stakeholders. The Group will meet quarterly to discuss all universal service issues including, but not limited to, recommendations concerning LIURP, LIURP eligibility, concerns and landlord issues that may present a barrier to customer participation.

105. Aqua PA will commit to leverage the Peoples Companies' experience with programming for low-income customers for the benefit of Aqua PA's low-income customers.

106. Aqua PA agrees to invite at least one member of the Peoples Companies' current Universal Service Staff to its Helping Hand Collaborative meetings and agrees to invite staff in charge of collections to the Peoples Companies' Universal Service Advisory Committee meetings.

107. For Aqua PA, the company will review the feasibility of collecting the data in accordance with its recent rate case settlement in Docket No. R-2018-3003558; specifically:

- i. Number of estimated and confirmed low income customers;
- ii. Number of confirmed low income customers with arrears and the average arrearage amount;
- iii. Average monthly bill amount of confirmed low income customers;
- iv. Amount of arrearages for customers entering Helping Hand;
- v. Terminations for nonpayment of confirmed low income customers;
- vi. Number and amounts of hardship grants dispersed;
- vii. The average arrearage of Aqua PA customers receiving an Aqua PA hardship grant;
- viii. The number of accounts receiving a notice of disconnection for nonpayment;
- ix. The number of Helping Hand participants by five different levels of poverty:
 1. 0%-49%
 2. 50%-74%
 3. 75%-99%
 4. 100%-125%
 5. 125%-149%
- x. Average usage of Helping Hand participants.

108. Aqua PA will include in the Helping Hand collaborative agreed to in its recent rate case settlement at Docket No. R-2018-3003558, discussion of the development of a comprehensive universal service and conservation program that will be proposed by Aqua PA. The items to be evaluated for inclusion in Aqua PA's proposal include: (1) a bill payment/customer assistance program; (2) a hardship fund; (3) a water conservation program; (4) a low income service repair line and replacement program; and (5) a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania. Aqua PA will submit a rate

recoverable universal service proposal in Aqua PA's next base rate case that considers the best practices learned from the Peoples Companies and through conversations from the Helping Hand collaborative.

109. Aqua America's shareholders will contribute an additional \$50,000 to the hardship grant component being developed for Aqua PA's Helping Hand Program annually for four years. The Company agrees to evaluate whether to increase this contribution as a part of its next base rate case.

110. The Peoples Companies shall continue the current Universal Service organization structure and staffing levels for its Universal Service Programs as outlined and explained in the Peoples Companies' Universal Service and Energy Conservation Plan for 2019-2021 at Docket No. M-2018-3003177, for at least five years. In addition, Aqua America will ensure that the Peoples Companies' universal service staff will have the appropriate authority and discretion to continue to operate the Peoples Companies' Universal Service programs in a manner which is reasonably consistent with the manner in which the programs were operated prior to the acquisition.

111. The Peoples Companies shall continue the "Help at Peoples Now" program that allows field employee personnel to make referrals to the Peoples Companies for payment and payment arrangements in lieu of termination of service for at least the next five years after closing.

G. Community Commitment

112. The Peoples Companies will continue to comply with the Commission's diversity policy, 52 Pa. Code Section 69.801-69.809.

113. Aqua America commits to spending at least one half of one percent of pre tax net income each year for charitable contributions with a goal of spending one percent of pre tax net income for charitable contributions annually by the fifth anniversary of the closing. The Peoples Companies shall commit to spending at least \$2.7 million annually in corporate contributions for a period of not less than 5 years.

114. Aqua America will file an annual report of these contributions with the OCA, I&E, and OSBA each year for five years and these contributions shall not be recovered in rates.

H. Supplier Issues

115. Upon request, the Peoples Companies will provide Choice suppliers heat load and baseload factors for their Priority One Choice pools on a monthly basis.

116. Upon request for non-residential customers with load greater than 300 mcf/year and with appropriate authorization from the customer of record, the Peoples Companies will provide heat load and baseload factors.

117. Upon request, the Peoples Companies will provide the daily temperatures used to produce Priority One Choice daily targets.

118. The Peoples Companies will provide 20 rate codes for each pool. Upon request, the Peoples Companies will provide 10 additional rate codes, up to a maximum of 50 rate codes per pool. Any requests greater than 50 rate codes per pool must be reviewed and approved by the Peoples Companies. In no case shall the Peoples Companies provide more than 100 rate codes per pool.

119. The Peoples Companies will increase the purchase of receivables customer eligibility from 300 Mcf annually to 1000 Mcf annually, for Rate SGS customers.

120. The Peoples Companies will maintain the Local Production Pool Tracking System.

121. The Peoples Companies will maintain their upgraded Electronic Bulletin Board.

122. The Peoples Companies will maintain Local Production Pool invoicing that includes identifying information.

123. The Peoples Companies will maintain the group contact e-mail process.

124. The Peoples Companies will provide to each supplier, through existing billing files, the total number of individual customer burns that make up the aggregate burn pool.

125. The Peoples Companies agree to undertake an assessment on the ability to accelerate the timing of issuance of daily delivery requirements (Targets) and capacity (gate space) requests. The results of this assessment and any resulting proposed modifications will be shared with suppliers prior to any implementation.

126. The Peoples Companies will identify the customers' billing cycles on its invoices.

127. The Peoples Companies will add a posting date to the daily billing files to serve as an indicator of the month being billed for all accounts, including the largest high-pressure accounts.

128. Within 90 days of the closing of the merger, the Peoples Companies will commence a process to obtain the input of interested stakeholders, including but not limited to, NGSs, public advocates, and customers, regarding the broad subject of increasing customer participation in the competitive natural gas market in their service territories. While the topic of this collaborative may be broad, it shall not include or recommend elimination of the supplier of last resort function on the Peoples Companies systems.

IV. PROCEDURAL CONDITIONS OF SETTLEMENT

129. The Joint Petition for Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Joint Petition for Settlement, any Settlement Party may elect to withdraw from the Joint Petition for Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Parties within five business days after the entry of an Order modifying the Settlement.

130. This Settlement is proposed by the Settlement Parties to this Joint Petition for Settlement to settle and forever resolve all issues in the instant proceeding. If the Commission does not approve the Settlement and the proceedings continue, the Settlement Parties reserve their respective procedural rights. The Joint Petition for Settlement is made without any admission against, or prejudice to, any position which any Settlement Party may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

131. The Settlement Parties acknowledge that the Joint Petition for Settlement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding. The Settlement Parties agree that the Joint Petition for Settlement shall not constitute or be cited as precedent in any other proceeding, except to the extent required to implement the Joint Petition for Settlement.

132. The Settlement Parties agree to support this Joint Petition for Settlement in any Statements in Support, briefs and other filings, including exceptions and replies to exceptions, that they may elect to file in this proceeding.

133. The Joint Petition for Settlement may only be amended by a written document duly agreed to and executed by the Settlement Parties.

134. The Settlement Parties will present their reasons why the Joint Petition for Settlement is in the public interest in their Statements in Support of Settlement, attached hereto as Appendices A through H.

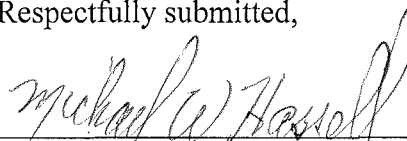
V. CONCLUSION

WHEREFORE, the Settlement Parties, by their respective counsel, respectfully request:

a) That the Honorable Administrative Law Judge Mary D. Long and Emily DeVoe recommend approval, and the Commission approve, the Joint Petition for Approval of Non-Unanimous, Complete Settlement Among Most Parties, including all terms and conditions thereof without modification; and

b) That the Commission issue certificates of public convenience evidencing approval under Section 1102(a)(3) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a)(3), of the 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.

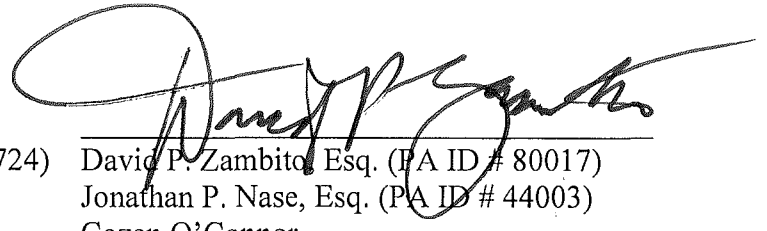
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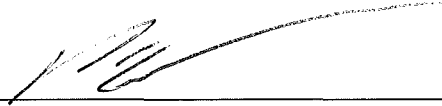
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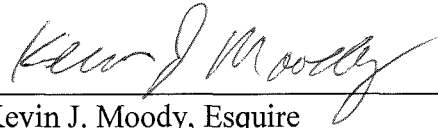
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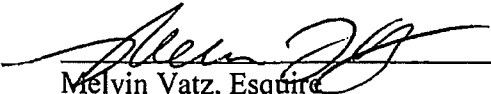
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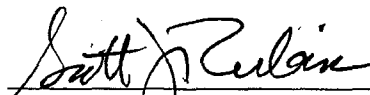
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Appendix A

**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. :

**THE JOINT APPLICANTS'
STATEMENT IN SUPPORT OF SETTLEMENT PETITION**

TO ADMINISTRATIVE LAW JUDGES MARY D. LONG AND EMILY I. DEVOE:

I. INTRODUCTION

Aqua America, Inc. (“Aqua America”) and its subsidiaries, Aqua Pennsylvania, Inc. (“Aqua PA”), Aqua Pennsylvania Wastewater, Inc. (“Aqua PA Wastewater”), along with Peoples Natural Gas Company LLC (“Peoples Natural Gas”) and Peoples Gas Company LLC (“Peoples Gas”), hereinafter, collectively the “Joint Applicants,” hereby submit this Statement in Support of the Joint Petition for Approval of Non-Unanimous, Complete Settlement (“Joint Petition for Settlement” or “Settlement”) entered into by the Joint Applicants, the Office of Consumer Advocate (“OCA”), the Coalition of Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Direct Energy Business Marketing, LLC and Direct Energy Small Business Marketing, LLC (collectively, “Direct Energy”), the Natural Gas Supplier

Parties¹ and the Retail Energy Supply Association (collectively, “NGS/RESA”), Pennsylvania Independent Oil and Gas Association (“PIOGA”), Laborers’ District Council of Western Pennsylvania (“Laborers’ District Council”) and Utilities Workers Union of America, Local 612 (“UWUA”) (hereinafter collectively referred to as the “Settlement Parties”). The Joint Petition for Settlement represents a complete settlement of all issues among the Settlement Parties in the instant proceeding. The Commission’s Bureau of Investigation & Enforcement (“I&E”) and the Office of Small Business Advocate (“OSBA”) are not signatories to the Joint Petition for Settlement. Equitrans, LP (“Equitrans”) and Duquesne Light Company (“Duquesne Light”) are not signatories to the Joint Petition for Settlement, but have indicated they do not oppose the Joint Petition for Settlement. The Joint Applicants respectfully request that Administrative Law Judges Mary D. Long and Emily I. DeVoe (the “ALJs”) and the Pennsylvania Public Utility Commission (“Commission”) approve the Joint Petition for Settlement, including the terms and conditions thereof, without modification.

In this proceeding, the Joint Applicants sought all necessary approvals from the 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”)² by Aqua America (the “Proposed Transaction”). 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 Proposed Transaction

¹ The Natural Gas Supplier Parties consist of Dominion Energy Solutions, Inc. and Shipley Choice LLC.

² 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. Funding is owned by SteelRiver Infrastructure Fund North America LP (“SRIFNA”) and an affiliated fund, which are managed by SteelRiver Infrastructure Associates and its affiliated investment management entities (collectively “SteelRiver”).

contemplated in the Application in a lawful manner. The Settlement, if approved, will resolve all issues raised by the Joint Petitioners concerning the Proposed Transaction. Given the diverse interests of the Joint Petitioners and the active role they have taken in this proceeding, the fact that they have resolved their respective issues in this proceeding, in and of itself, provides strong evidence that the Settlement is reasonable and in the public interest. The Settlement was achieved after a thorough review of the Joint Applicants' proposal in this proceeding. The Joint Applicants responded to many interrogatories, and there were multiple rounds of testimony. The Joint Petitioners, and the other parties to this proceeding, participated in a number of settlement discussions that ultimately led to the Settlement among the Joint Petitioners.

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231(a). Settlements reduce the time and expense the parties must expend litigating a case and, at the same time, conserve precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code § 69.401. The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *See Pa. PUC v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861, 2013 Pa. PUC LEXIS 789, 310 P.U.R.4th 58 (Order entered Dec. 5, 2013). In order to approve a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *See Pa. PUC v. Windstream Pa., LLC*, Docket No. M-2012-2227108, 2012 Pa. PUC LEXIS 1535 (Order entered Sept. 27, 2012); *Pa. PUC v. C.S. Water and Sewer Assoc.*, Docket No. R-881147, 74 Pa. PUC 767 (Order entered July 22, 1991).

The Settlement reflects a carefully balanced compromise of the interests of the Settlement Parties in this proceeding. Therefore, for the reasons explained in this Statement in Support, the

Joint Applicants believe that the Settlement is just, reasonable, and in the public interest and, therefore, should be approved without modification.

In support thereof, the Joint Applicants state as follows:

II. HISTORY OF THE PROCEEDING

On November 13, 2018, the Joint Applicants filed the above-captioned Application seeking all necessary approvals from the Commission pursuant to Sections 1102(a)(3) and 2210(a)(1) of the 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 Funding” 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.

On November 19, 2018, the Commission issued a Secretarial Letter that acknowledged receipt of the Application and directed Joint Applicants to publish notice of the Application once in a newspaper having a general circulation in the area involved and file proof of publication with the Commission on or before December 31, 2018. The letter also indicated that notice of the Application would be published in the *Pennsylvania Bulletin* on December 1, 2018, and that the deadline for filing protests and petitions to intervene was December 31, 2018.

On December 6, 2018, the Joint Applicants filed their Direct Testimony.

OSBA filed a Notice of Appearance and a Notice of Intervention and Protest on December 7, 2018.

On December 11, 2018, I&E filed two Notices of Appearance.

Also on December 11, 2018, UWUA filed a Petition to Intervene.

On December 19, 2018, the Laborers' District Council filed a Petition to Intervene and Notice of Appearance.

Also on December 19, 2018, OCA filed a Protest and Public Statement. OCA additionally filed Notices of Appearance on January 4, 2019.

On December 21, 2018, PIOGA and United States Steel Corporation ("U.S. Steel") each filed a Petition to Intervene. In addition, Equitrans, L.P. ("Equitrans") filed a Petition to Intervene and Notice of Appearance.

Also on December 21, 2018, the Commission issued a Notice of a Call-In Telephonic Prehearing Conference.

On December 26, 2018, Duquesne Light filed a Petition to Intervene.

On December 27, 2018, CAUSE-PA filed a Petition to Intervene.

On December 28, 2018, Aqua filed Proofs of Publication of Notice of the Application with the Commission.

On December 31, 2018, NGS/RESA jointly filed a Petition to Intervene. Direct Energy also filed a Petition to Intervene.

On January 18, 2019, a Prehearing Conference was held before the ALJs. A procedural schedule was established, all interventions were granted, modified discovery rules were adopted and other procedural issues were discussed. No parties identified a substantial public interest in conducting a public input hearing, and none was scheduled.

On January 24, 2019, the ALJs issued a Prehearing Order, which memorialized matters decided and agreed upon by the parties attending the Prehearing Conference.

On February 6, 2019, U.S. Steel filed a Petition for Leave to Withdraw its Petition to Intervene. By Interim Order dated February 19, 2019, U.S. Steel's Petition for Leave to Withdraw was granted.

On February 11, 2019, Joint Applicants filed an unopposed Motion for Protective Order. By Interim Order entered February 14, 2019, the ALJs granted the Motion for Protective Order.

On March 25, 2019, Joint Applicants filed revised Direct Testimony.

Joint Applicants served responses to over 540 interrogatories of the parties, many of which contained multiple subparts.

On April 2, 2019, other parties served direct testimony, in accordance with the procedural schedule.

On April 30, 2019, rebuttal testimony was served.

On May 21, 2019, surrebuttal testimony was served.

Numerous settlement proposals were circulated among parties to the proceeding and multiple settlement conferences and discussions were held. All parties to the proceeding were provided opportunities to participate in settlement discussions. Ultimately, most, but not all, parties were able to achieve a complete settlement of the Application proceeding prior to the scheduled dates for hearings. The final terms were shared with parties opposing the settlement in advance of the scheduled dates for hearings.

On June 11, 2019, hearings were held in the proceeding. Terms of the non-unanimous settlement were provided as Settlement Parties Joint Exhibit No. 1, and witnesses for Joint Applicants, I&E and OSBA were cross-examined. Cross-examination included questions involving provisions of the non-unanimous settlement.

Pursuant to agreement of the parties, the ALJs directed that the Joint Petition for Settlement be filed no later than June 26, 2019, and that parties opposing the Joint Petition for Settlement provide comments on the proposed settlement as part of their Main Briefs.

Main Briefs are due July 10, 2019, and Reply Briefs are due July 25, 2019.

III. DISCUSSION

A. THE SETTLEMENT WILL AFFIRMATIVELY BENEFIT THE PUBLIC INTEREST IN A SUBSTANTIAL WAY

The Proposed Transaction, as conditioned by the Settlement, will affirmatively promote the public interest in a substantial way, as required by *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 295 A.2d 825 (Pa. 1972).³ The Application (Joint Applicants Exhibit DJS-1), and the Joint Applicants direct,⁴ rebuttal,⁵ surrebuttal,⁶ and rejoinder⁷ testimony admitted into the record

³ In *Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040 (Pa. 2007), the Supreme Court of Pennsylvania interpreted the Pennsylvania Public Utility Code and the *City of York* standard as satisfied by a simple preponderance of the evidence of benefits and that such burden can be shown by a likelihood or probability of public benefits that need not be quantified or guaranteed.

⁴ The Joint Applicants admitted the following pieces of direct testimony and exhibits into the record in this proceeding: Joint Applicants Statement No. 1 Revised – The Direct Testimony of Christopher H. Franklin (PUBLIC and CONFIDENTIAL versions); Joint Applicants Statement No. 2 – The Direct Testimony of Daniel J. Schuller and Joint Applicants Exhibit DJS-1, Joint Applicants Exhibit DJS-2 (comprised of Public Appendix A-1 to the Application and HIGHLY CONFIDENTIAL Appendix A-2 to the Application); Joint Applicants Statement No. 3 Revised – The Direct Testimony of Morgan O'Brien (PUBLIC and CONFIDENTIAL versions); Joint Applicants Statement No. 4 Revised – The Direct Testimony of Richard S. Fox (PUBLIC and CONFIDENTIAL versions); and Joint Applicants Statement No. 5 Revised – The Direct Testimony of James C. Barbato (PUBLIC and CONFIDENTIAL versions).

⁵ The Joint Applicants admitted the following pieces of rebuttal testimony and exhibits into the record: Joint Applicants Statement No. 1-R – The Rebuttal Testimony of Christopher H. Franklin (Public, Confidential and HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY versions), and associated Joint Applicants Exhibits CHF-1R, CHF-2R, CHF-3R (HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY) and Exhibit CHF-4R (HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY); Joint Applicants Statement No. 2-R – The Rebuttal Testimony of Daniel J. Schuller (Public and HIGHLY CONFIDENTIAL versions), and associated exhibits Joint Applicants Exhibit DJS-1R (CORRECTED), DJS-2R, DJS-3R (CONFIDENTIAL), DJS-4R, DJS-5R and DJS-6R; Joint Applicants Statement No. 3-R – The Rebuttal Testimony of Morgan O'Brien; Joint Applicants Statement No. 4-R – The Rebuttal Testimony of Richard S. Fox (Public, Confidential and HIGHLY CONFIDENTIAL versions); Joint Applicants Statement No. 5-R – The Rebuttal Testimony of James C. Barbato and associated Joint Applicants Exhibits JCB-1R and JCB-2R; Joint Applicants Statement No. 6-R – The Rebuttal Testimony of Joseph A. Gregorini and associated Joint Applicants Exhibit JAG-1R, JAG-2R and JAG-3R; and Joint Applicants Statement No. 7-R – The Rebuttal Testimony of Georgetta Parisi-Knup and associated Joint Applicants Exhibit GPK-1R.

⁶ The Joint Applicants admitted Joint Applicants Statement No. 6-SR – The Surrebuttal Testimony of Joseph A. Gregorini into the record.

at this proceeding contain substantial evidence demonstrating the numerous public benefits of the Proposed Transaction in the areas of (1) long-term, public, Pennsylvania-based ownership, (2) combined infrastructure experience, (3) maintaining and creating Pennsylvania-based jobs, (4) long-term efficiencies, and (5) maintaining and strengthening the Joint Applicants' community presence in Pennsylvania.

Moreover, the Joint Applicants Exhibit DJS-1R (CORRECTED) detailed all of the commitments which Aqua America would accept as additional conditions to the Commission's approval of the Proposed Transaction. The commitments contained in Joint Applicants Exhibit DJS-1R (CORRECTED) included a number of proposed conditions presented in the other parties' direct testimony, which were agreed to in the spirit of compromise and to provide additional public benefits. (Joint App. St. No. 1-R (CORRECTED), pp. 2-3; Joint App. St. No. 2-R, pp. 1-2.) Reviewed as a whole, the Joint Applicants' testimony and exhibits demonstrate that, even without the additional, beneficial conditions contemplated by the Joint Petition for Settlement, the Proposed Transaction is in the public interest and should be approved.

However, in addition to these numerous, substantial public benefits identified by the Joint Applicants, the conditions contained in the Joint Petition for Settlement will provide additional affirmative public benefits that further support the approval of the Proposed Transaction. As detailed below, the conditions contemplated by the Joint Petition for Settlement in many cases affirm the public benefits identified in the Joint Applicants' testimony and exhibits, affirm the additional beneficial conditions Aqua America identified that it would accept as conditions to the approval of the Proposed Transaction in Joint Applicants' Exhibit DJS-1R (CORRECTED), and build upon these commitments to create additional benefits for the public. Therefore, and for the

⁷ The Joint Applicants admitted the following pieces of rejoinder testimony into the record: Joint Applicants Statement No. 2-RJ – The Rejoinder Testimony of Daniel J. Schuller (Public and CONFIDENTIAL versions); and Joint Applicants Statement No. 5-RJ – The Rejoinder Testimony of James C. Barbato.

reasons set forth below, the Joint Petition for Settlement should be approved without modifications.

1. Aqua America Is A Financially Strong, Public Owner Dedicated To The Long-Term Ownership And Management of Long-Lived Public Utility Assets.

Aqua America is the second largest investor-owned water utility in the country and is a financially strong owner and manager of pipe-based utility assets in the United States. (Joint App. Exhibit DJS-1, p. 21.) Aqua America owns and operates 1,486 water systems across its eight-state footprint, producing more than 82 billion gallons of quality drinking water in 2017. (Joint App. Exhibit DJS-1, p. 21.) In addition, Aqua America is a long-term investor in utility operations, focused on long-term ownership; it has owned and operated water systems in Pennsylvania for over 130 years. (Joint App. St. 1 (REVISED), pp. 9-10 (PUBLIC).) Over the course of its ownership of public utility assets in Pennsylvania, and in other states, Aqua America has demonstrated its long-term commitments to its existing and acquired customers. To that end, Aqua America invests in new and replacement facilities to improve service and maintain the acquired assets and customers. (Joint App. St. 1 (REVISED), p. 9-10 (PUBLIC).)

This experience and long-term focus will ensure that the Peoples Companies continue to prosper under new ownership. The Peoples Companies have improved under SteelRiver ownership, and both SteelRiver and SRIFNA made commitments in prior acquisition proceedings to address the concerns raised by equity fund ownership of public utilities in response to the ten-factor test set forth in *Application of Penn Estates Utilities, Inc.*, Docket Nos. A-210072F0003, et al., 2006 Pa. PUC LEXIS 88, 252 P.U.R.4th 131 (Order dated Oct. 2, 2006). (Joint App. Exhibit DJS-1, p. 27.) Notwithstanding this commitment, the transfer to a publicly-traded corporation would provide important benefits, including: (1) expanded access to equity capital - Aqua America raises equity capital through public stock issuances; (2) enhanced

transparency in corporate governance; (3) enhanced transparency as to capital structure; and (4) enhanced transparency as to creditworthiness. (Joint App. Exhibit DJS-1, pp. 27-29; Joint App. St. No. 2, pp. 8-11.)

The acquisition will also mean that the Peoples Companies will return to ownership by a Pennsylvania-based company. For over 130 years, Aqua America and its predecessor entity, Pennsylvania Suburban Corporation, has operated in Pennsylvania. (Joint App. St. No. 1 (REVISED), pp. 8-10.) This strong Pennsylvania connection ensures that the new ownership of the Peoples Companies understands and is prepared to respond to the Commission's concerns and issues of importance to Pennsylvania, including jobs, expanded access to reasonably priced utility service, environmental initiatives and community involvement.

Furthermore, Aqua America's long-term focus aligns with the long-lived utility assets it seeks to acquire. SRIFNA has been an owner of the relevant assets for less than 10 years and Aqua America intends to own the Peoples Companies for the long-term as it has its other assets. (Joint App. St. No. 1-R, p. 10 (PUBLIC).) For example, as a part of this long-term ownership strategy, Aqua America has committed to further accelerate the replacement of the Peoples Companies' at-risk pipe. (Joint App. St. No. 1-R, pp. 9-10 (PUBLIC); Joint App. St. No. 5-R, pp. 16-27.) In addition, Aqua America provided an exhibit comparing its long term commitment borrowing strategy to that of its current owner, which directly benefits customers. (Joint App. Exh. No. CHF-1R.) The record evidence demonstrates that Aqua America is, and will continue to be, incentivized to make long-term investment decisions that benefit customers and other stakeholders immediately.

Finally, Aqua America demonstrated that the Proposed Transaction has not, and will not, impact its ability to continue to raise the capital necessary to support its long-term ownership,

operation and management of long-lived public utility assets. Through its operating subsidiaries in eight states, Aqua America has over \$5.4 billion in utility assets, and \$809 million in annual revenues. (Joint App. St. No. 2, p. 3.) Aqua America fully described how it intended to finance the Proposed Transaction (Joint App. St. No. 2, pp. 4-5) and, as a part of this proceeding, demonstrated that it was able to finance the Proposed Transaction as intended, securing the necessary debt and equity financing under attractive terms. As a result, the Proposed Transaction will enhance the financial profile of Aqua America and its ability to access both debt and equity capital in the future as needed. (See Joint App. St. No. 2-R, pp. 3-17 (PUBLIC).)

Approval of the Joint Petition for Settlement will provide for the transfer of the Peoples Companies to Aqua America. The Settlement provides a substantial, affirmative public benefit by ensuring that the Peoples Companies are transferred to a financially strong, publicly owned and Pennsylvania-based, long-term owner.

2. The Settlement Provides For The Expedient Repair And Replacement Of The Goodwin and Tombaugh Gathering Systems.

From the beginning of this proceeding, several parties identified concerns regarding the existing Goodwin and Tombaugh Gathering Systems (“G/T Systems”) in their direct testimony and elsewhere, which are currently owned by PNG Gathering, LLC. (See, e.g., I&E St. No. 2, pp. 3-18; OCA St. No. 4, pp. 2-7; PIOGA St. No. 1R, pp. 3-9.) The Joint Applicants, and Aqua America in particular, recognized that “the G/T Systems present a set of complex issues to which there may be no perfect answer in solving.” (Joint App. St. No. 5-R, p. 4; see also Tr. 105:8-11.)

Since this issue was raised by several parties, in order to create a path toward resolving these issues, the Joint Applicants made two proposals to address other parties’ concerns. In particular, Aqua America proposed to (1) file with the Commission the study required by the 2013 Peoples/Equitable Settlement and adhere to the process for addressing the G/T Systems set

forth therein and, alternatively (2) to replace all bare steel pipe in the G/T Systems in accordance with Scenario 1 detailed in the study. (Joint App. St. No. 5-R, p. 14; Joint App. St. No. 6-R, pp. 8-10.) The replacement of all the bare steel pipe of the G/T Systems would benefit the public by: (1) allowing the existing G/T Systems' residential customers and local businesses to remain on low-cost, abundant, natural gas; (2) avoiding abandonment and conversion of existing customers to potentially higher cost alternative fuel sources; (3) ensuring that existing, shallow-well producers can continue to provide gas into the system; and (4) improving the overall safety of the system as further explained below. (Joint App. St. 5-R, pp. 14-15; Tr. 170-172.)

The Joint Petition for Settlement provides these substantial affirmative public benefits by affirming Aqua America's commitment to the prompt replacement and remediation of the G/T Systems. Aqua America committed to the replacement of bare steel pipeline within the G/T System within seven years. (Settlement, ¶ 29.) The capital associated with the replacement and remediation of the G/T Systems will be recovered through a base rate case and the remediation efforts will occur concurrently with the Peoples Companies' other replacement projects. (Settlement, ¶ 30.) In addition, as capital is completed and placed in service, the plant will be transferred to Peoples Natural Gas, from PNG Gathering, LLC, become regulated under the Commission's jurisdiction and classified as distribution pipeline for safety purposes following the applicable pipeline safety regulations. (Settlement, ¶ 31.) Together, these provisions established a defined timeline for the replacement and remediation of these troubled systems, which would not otherwise be in effect without the Proposed Transaction as modified by the Joint Petition for Settlement. (*See* Tr. 78:23-79:4.)

The plan contemplated by the Joint Petition for Settlement also includes several commitments designed to provide important safety benefits. The Settlement confirms that I&E's

Pipeline Safety Division will be provided consistent access to the G/T Systems to inspect and monitor their remediation. (Settlement, ¶ 35.) In addition, the Settlement provides for a plan to monitor and reduce Unaccounted For Gas (“UFG”) levels on the system and increasing the frequency at which Peoples Natural Gas will perform leak surveys—*i.e.* from once every three years, to once a year. (Settlement, ¶ 37.) Moreover, the Settlement contains substantial commitments to repair leaks near houses, replace service lines and move inside meters outside (Settlement, ¶¶ 38-40), and each of these actions will improve the safety of the Peoples Companies customers, employees and the public who interface with the system. (*See* Joint App. St. No. 5-R, p. 16; *see also* Tr. 90:13-91:1.)

Finally, the remediation and replacement plan contemplated by the Joint Petition for Settlement contains specific commitments regarding the cost of remediation and replacement, and the recovery of those costs. (Settlement, ¶¶ 32-34.) The 2013 Peoples/Equitable Settlement contemplated full recovery of the costs associated with the replacement and remediation of the G/T Systems. (Joint App. St. No. 3-R, pp. 4-5; Joint App. St. No. 5-R, p. 12.) The Settlement, however, provides that regardless of the actual capital spent to rehabilitate the systems, Aqua America will provide all Peoples Companies’ customers a rate credit of \$13 million before the end of 2019. (Settlement, ¶ 32.) This rate credit provides an additional, immediate financial benefit to the customers of the Peoples Companies, which would not exist but for the Settlement. (*See* Tr. 80:16-22, 147:14-18.)

The resolution of the G/T Systems issue reflects a balancing of interests and should be accepted. Nearly 1,700 Peoples Natural Gas customers are currently served off of the G/T Systems. The Peoples Companies cannot abandon service to any of those customers without first proving that abandonment would be in the public interest. *See* 66 Pa. C.S. § 1102(a)(2).

While reconstruction of the G/T Systems would have a modest, 1% increase to the average residential Peoples Natural Gas customer bill, the very nature of utility service and rates is to spread costs among a larger base, even where a specific project may only benefit certain customers, recognizing that future projects benefiting other customers may be similarly spread. Moreover, the impact of abandonment would likely: require abandonment of nearly 1,000 families and businesses, increase the energy burden of the abandoned customers by as much as 300%-400%, and deprive low-income or payment-troubled customers of the benefits of the Peoples Companies' low-income programs and the Commission's service termination protections. (*See* Joint App. St. No. 5-RJ, pp. 2-4; Tr. 170-172, 173-174.) Further explanation of the reasons and benefits of the Settlement related to the G/T Systems will be presented in Joint Applicants' brief.

The parties to this proceeding have all recognized that the current status of the G/T Systems represent a complex issue that has not yet been satisfactorily resolved. The Proposed Transaction, as conditioned by the Joint Petition for Settlement, provides a defined path toward a solution that maintains service to existing public utility customers, improves the overall safety of these systems, and balances the economic interests of the Joint Applicants and existing customers.

3. The Settlement Contains A Rate Credit And Numerous Financial Safeguards That Benefit Aqua PA's and the Peoples Companies' Customers.

The Joint Applicants committed in their initial filing that the Proposed Transaction would not have an immediate, adverse effect on the rates of existing utility customers. (Joint App. Exh. DJS-1, pp. 19-20.) The Joint Applicants demonstrated that Aqua America would be able to adequately finance of the Proposed Transaction, without impacting rates. (Joint App. St. No. 2, pp. 3-7.) They further committed that the acquisition premium and transaction costs would not

be recovered in rates. (Joint App. St. No. 2, p. 6.) Additionally, they committed to maintaining the existing capital structures of Aqua PA and the Peoples Companies. (Joint App. St. No. 2, p. 6.)

Several of the parties argued that the Proposed Transaction might have a negative impact on customers' rates, because the purchase price might present a substantial risk to the financial stability of the combined companies following closing and/or no synergies would be created by the acquisition. (*See* I&E St. No. 1, pp. 9-12; OCA St. No. 1, pp. 27-33; OCA St. No. 2, pp. 25-28; OSBA St. No. 1, pp. 6-10.) The Joint Applicants addressed many of these concerns by proposing to accept a number of conditions to ensure the financial integrity of the combined entity after closing. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶¶ 5-27.)⁸

The Proposed Transaction is expected to produce long-term savings, or process improvements, in a number of back-office functions, such as finance and accounting, human resources, regulatory functions, legal functions, information technology, payroll and supply chain. (Joint App. St. No. 4-R, p. 4.) Other areas of overlap include: fleet management, purchasing, capital planning, meter reading, customer field services, engineering management, budgeting, planning, execution and rate recovery of capital. (Joint App. St. No. 4-R, p. 4.) Although the Joint Applicants have not specifically quantified the benefits of consolidation and best practices review, Aqua America's experience with numerous utility acquisitions is that savings or process improvements will be developed. (Joint App. St. No. 4 (REVISED), pp. 10-13.) However, large, short-term synergy savings are not expected, given Aqua America's plans and commitments to retain and grow jobs, as explained later in this Statement in Support.

⁸ Joint Applicants will respond further to claims of financial risk from the Proposed Transaction in their briefs.

Importantly, while no immediate synergies or savings were contemplated by the acquisition or proposed to be passed-through to customers, the Joint Applicants explicitly committed to passing any future cost savings or rate benefits that may result from the acquisition to customers in future base rate proceedings. (¶ 5; *see also* Joint App. St. No. 1-R, pp. 12-13; Joint App. St. No. 2-R, p. 26.) Therefore, the Joint Applicants demonstrated that, to the extent any intermediate- or long-term savings would result from the transaction, those savings would inure to the benefit of the Joint Applicants' customers.

OCA contended in its direct testimony that the Joint Applicants should provide a rate credit to capture potential synergies or savings from the Proposed Transaction. (OCA St. No. 2, p. 32.) The Settlement contains an additional \$10 million rate credit provided to the customers of the Peoples Companies and Aqua PA customers in 2019. (Settlement, ¶ 41.) This rate credit provides an immediate pass through of potential savings to existing customers, and constitutes an affirmative public benefit. (*See* OCA St. No. 2, pp. 32-34; *see also* Tr. 214:11-13.) Importantly, this rate credit is in addition to the previously described \$13 million rate credit associated with the G/T Systems.

Moreover, the Settlement contains numerous financial safeguards to which the Joint Applicants committed as a part of their litigation position, or were adopted to address concerns identified by other parties. For example, the Joint Applicants committed to maintaining separate books, records, and separate capital structures for the Peoples Companies, and Aqua PA will maintain separate books and records, and separate capital structures, as a part of their litigation position. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶ 7-8; *see also* Joint App. St. No. 2-R, pp. 20, 28, 30.) These commitments are reflected in the Settlement. (*See* Settlement, ¶¶ 42, 43.)

In addition, the Joint Applicants unequivocally committed that goodwill, transaction or transition costs, and the equity or debt issued to finance the acquisition premium or goodwill would not be passed through to Aqua PA or the Peoples Companies or be recovered in the utilities' rates. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶¶ 6, 11-13, 17, 19-20; *see also* Joint App. St. No. 2-R, pp. 13, 20, 22-23, 27.) Furthermore, Aqua America committed that any new incremental debt issued to finance the acquisition premium would be completely separate from the Pennsylvania utilities' balance sheets. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶ 13; *see also* Joint App. St. No. 2-R, p. 23.) The Settlement reflects these commitments (*see* Settlement, ¶¶ 45, 45-47, 54, 57, 59), but also includes additional commitments that any termination fees, if the transaction is not consummated, will not be recovered from ratepayers and that Aqua America will track and account for transition costs to permit parties to review and verify such costs were excluded from the costs of service for Aqua PA or the Peoples Companies. (Settlement, ¶¶ 58, 60.) The Settlement also contains specific commitments, beyond the tracking of these costs to ensure there is no pass through to customers and that any accounting treatments associated with the transaction will be revenue neutral to Pennsylvania ratepayers. (*See* Settlement, ¶¶ 56, 63; *see also* Joint App. Exh. No. DJS-1R (CORRECTED), ¶¶ 23.)

Furthermore, the Settlement provides Aqua America and the Peoples Companies will file a Report of Action including:

the closing date, the actual total sale price, and the actual accounting entries records in Aqua's and the Peoples Companies' books that reflect the acquisition including the following: all Transaction Cost and Transition Cost accounting entries for Aqua and the Peoples Companies that are recorded on the books of each entity; all Merger related fair value, Goodwill, and/or Acquisition Premium accounting entries for Aqua and the Peoples Companies and their subsidiaries; all Merger-related tax accounting entries for

Aqua and the Peoples Companies and their subsidiaries; all Merger-related debt and equity financing accounting entries for Aqua and Peoples and their subsidiaries.

(Settlement, ¶ 55.) These commitments affirm the Joint Applicants' position that the Proposed Transaction will not have an impact on the rates of Aqua PA's and the Peoples Companies' customers.

Beyond these commitments to ensure the transaction would be rate-neutral, the Joint Applicants further committed to appropriate debt-financing and ring-fencing protections, which would ensure the entities involved would be appropriately and separately financed. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶¶ 14, 25; *see also* Joint App. St. No. 2-R, pp. 21, 23-24, 29.) These protections and additional ring-fencing measures were adopted in the Settlement. (*See* Settlement, ¶ 48, 49, 66.)

The Joint Applicants also committed to seek Commission approval for all new or amended affiliated interest agreements. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶ 9; *see also* Joint App. St. No. 2-R, p. 28.) This commitment was adopted in the Settlement. (*See* Settlement, ¶ 44.)

Aqua America and the Joint Applicants also made specific commitments to address and notify the Commission of changes in credit ratings or metrics by the utilities. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶¶ 15, 24 *see also* Joint App. St. No. 2-R, pp. 24-25, 27.) These reporting measures were also incorporated into the Settlement, and provide further benefits associated with the transparency of the Joint Applicants' credit metrics. (Settlement, ¶¶ 50, 64.)

In addition, the Settlement includes specific commitments regarding the identification of tax impacts on the Peoples Companies resulting from post-merger participation in a federal consolidated tax return, and assurance that the acquisition will not affect accounting and ratemaking treatments of the Peoples Companies' Accumulated Deferred Income Taxes

(“ADIT”), including excess deferred income taxes, accumulated deferred tax credits and net operating losses. (Settlement, ¶¶ 61, 62.) The Joint Applicants made similar commitments in their testimony, recognizing that they would be necessary to ensure the transaction did not impact rates. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶¶ 21, 22 *see also* Joint App. St. No. 2-R, pp. 27-28.)

In addition to the conditions set forth in the Settlement that were reflected in the Joint Applicants’ litigation position, additional financial protections have been incorporated into the Settlement. Both Aqua PA and the Peoples Companies will respectively maintain a debt ratio measured at an annual level of no more than 50% (inclusive of short term debt, but exclusive of goodwill) for at least five-years post-closing. (Settlement, ¶¶ 51-52.) Aqua PA and the Peoples Companies’ also committed to maintain the capability of issuing their own long-term debt unless authorized otherwise by the PUC. (Settlement, ¶ 65.) These additional conditions will benefit ratepayers by ensuring that the cost of debt for each of the utilities is not negatively impacted by the Proposed Transaction.

Finally, Aqua America committed to continue to seek to acquire and rehabilitate troubled Commission regulated water and wastewater systems and that the transaction will not interfere with Aqua PA’s ability to finance or pursue these acquisitions. (Settlement, ¶ 53.) This commitment confirms that Pennsylvanians will continue to benefit from Aqua PA’s efforts to acquire and rehabilitate troubled water and wastewater systems and that these efforts will not be hindered by the acquisition.

4. The Accelerated Replacement Of Higher-Risk Natural Gas Distribution Pipe Will Increase Safety and Reliability.

The Joint Applicants committed to continue the existing Peoples Companies’ Combined Distribution Long Term Infrastructure Improvement Plan (“LTIIP”), and to review this plan to

determine whether a more aggressive approach to the replacement of at-risk pipe would benefit customers. (Joint App. Exh. No. DJS-1, p. 29; Joint App. St. 5 (REVISED), pp. 14-17.) Several of the parties raised concerns regarding Aqua America's plan to review and potentially modify the Peoples Companies' existing Combined Distribution LTIIP. (See I&E St. No. 3, pp. 8-9; I&E St. No. 4, p. 10; OSBA St. No. 1, p. 12.) In particular, I&E witness Matse contended that the Peoples Companies should submit a revised LTIIP to increase at-risk pipe replacement in the short-term and reduce replacements in later years. (I&E St. No. 3, pp. 8-9.) And, while supportive of Aqua America's commitment to increase pipeline replacement, the Laborers District Council indicated that the Peoples Companies would need to ensure construction contractors used union labor to complete these projects. (Laborers District Council St. No. 1, pp. 3, 5.)

In response to these concerns, the Joint Applicants included specific commitments that detailed their proposal to accelerate the replacement of at-risk pipe, and decrease UFG on the Peoples Companies' systems. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶¶ 28-32.) These conditions would increase capital spending under the Combined Distribution LTIIP by \$30 million per year, starting in 2021, to allow for approximately 25 additional miles of pipe to be replaced each year. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶ 28; *see also* Joint App. St. No. 5-R, p. 19.)⁹ This commitment directly addresses the issue raised by I&E and accelerates the amount of pipe replaced by moving it forward in the LTIIP. Aqua America committed to filing a revised LTIIP within six months of closing, that explained the strategy for the contemplated additional pipe replacement. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶ 29; *see also* Joint App. St. No. 5-R, p. 22.) These commitments would provide for a modified plan that would

⁹ The increase would not begin until 2021, to provide time to file and receive approval of a revised LTIIP, to engage additional contractor services and to have additional Peoples Companies employees as needed to meet the accelerated replacement plan.

move forward the timing of the replacement of risky pipe, to the benefit of the Peoples Companies customers. (*See* Tr. 175:24-176:4, 214:17-20.)

This commitment to increase LTIP replacement of at-risk pipe is a substantial public benefit, made possible by Aqua America's commitment to safety, infrastructure replacement, and access to capital for infrastructure improvement. Currently, at the end of 2021, the Peoples Companies anticipate that the number of customers remaining on at-risk pipe will be 62% of the original number served off of at-risk pipe. This number will be reduced to 25% by 2026, under the Peoples Companies' current LTIP. These percentages will be further reduced by replacement of an additional 25 miles of pipe per year. (Joint App. St. No. 5-R, pp. 18-21.) Furthermore, to meet this increased replacement commitment, Aqua America estimates that approximately 100 new employees, inclusive of contracted labor and Peoples Companies employees, will be added. This opportunity to increase jobs in Western Pennsylvania is a further substantial public benefit.

While the Joint Applicants' specific commitments set forth affirmative benefits associated with the accelerated replacement of risky pipe, the provisions of the Settlement refine and enhance these commitments. (Settlement, ¶¶ 68-72.) In particular, the Settlement makes clear that Aqua America commits to continue the Combined UFG Mitigation plan, as a part of its efforts to accelerate the replacement of risky pipe. (Settlement, ¶ 68.) In addition, the Settlement contains an additional commitment by the Peoples Companies to propose a damage prevention program by March 31, 2020, which would be designed to reduce line hit damages. (Settlement, ¶ 70.) Furthermore, the Settlement ensures that qualified operators and contractors will be utilized to accelerate the replacement of risky pipe. (Settlement, ¶¶ 71-72.) As a whole, the commitments in the Settlement associated with Reliability and Pipe Replacement constitute a

comprehensive effort to more rapidly reduce the amount of risky pipe in the Peoples Companies' system and thereby improve service reliability and safety for customers, employees and the public.

5. The Settlement Ensures That The Peoples Companies Will Continue To Be Led By Best In Class Management.

As noted by the Joint Applicants, an important part of the Proposed Transaction is the fact that it contemplates the retention of the existing management and leadership of the Peoples Companies. By retaining the individuals with the expertise in owning, managing and operating the natural gas assets of the Peoples Companies, the combined entity under Aqua America's ownership would have the managerial and utility experience necessary to operate the Peoples Companies. (*See* Joint App. Exh. No. DJS-1, pp. 21-23.)

However, certain of the parties raised concerns regarding whether the Peoples Companies would continue to be led by individuals with significant natural gas utility experience and whether the Aqua America board possessed the requisite knowledge or expertise to own a natural gas utility in Western Pennsylvania. (*See* OCA St. No. 1, p. 13; OCA St. No. 2, pp. 66-67; I&E St. No. 1, pp. 16-17 (CONFIDENTIAL); OSBA St. No. 1, pp. 3-4 (CONFIDENTIAL); Duquesne St. No. 1, p. 7 (CONFIDENTIAL); Duquesne St. No. 2, pp. 7-8 (CONFIDENTIAL).)

In order to address these concerns as a part of the proceeding, the Joint Applicants proposed several acceptable conditions to ensure the Peoples Companies are owned and managed effectively. (Joint App. Exhibit No. DJS-1R (CORRECTED), ¶¶ 33-36.) These conditions included a commitment that Aqua America was adding a director to its board with natural gas experience and that it would regularly hold board meetings in Pittsburgh. (Joint App. Exhibit No. DJS-1R (CORRECTED), ¶¶ 33-34; *see also* Joint App. St. No. 1-R, pp. 14-15.) In addition, Aqua America committed to ensure the Peoples Companies are managed by individuals

with natural gas utility experience, ensure turnover does not present public safety risks, and develop succession plans; essentially, Aqua America committed to maintain an organization structure at the Peoples Companies in which natural gas operational workers directly report to trained natural gas managers.¹⁰ (Joint App. Exhibit No. DJS-1R (CORRECTED), ¶35; *see* Joint App. St. No. 1-R, pp. 28-31.)

The Settlement contains several provisions that build upon the conditions identified by the Joint Applicants, and these provisions provide further benefits and assurances that the Peoples Companies will be effectively owned and managed after closing. (Settlement, ¶¶ 73-75, 78-80.) In addition to the director already added to Aqua America's board, the Settlement would ensure that Aqua America actively searches for directors with natural gas experience and provides a mechanism for the statutory advocates to monitor changes in Aqua America's board composition. (Settlement, ¶ 73.) Furthermore, the Settlement provides for Aqua America's board to meet with the Peoples Companies' gas distribution utility executives at least twice per year for five years post-merger, which would ensure there is beneficial interface and discourse between the Peoples Companies' executives and the new ownership. (Settlement, ¶ 78.) Such conditions go beyond normal corporate oversight, but are acceptable to Aqua America as part of its commitment to transparency. Moreover, the Settlement contains a specific commitment for Aqua America, the Peoples Companies and Duquesne Light to attempt to collaborate for the benefit of their mutual customers and stakeholders in southwestern Pennsylvania. (Settlement, ¶ 79.) Finally, the Settlement ensures that the contemplated new owners will continue to track and comply with the Peoples Companies' prior merger commitments. (Settlement, ¶ 80; *see also* Settlement Parties Joint Exh. No. 3.)

¹⁰ The Joint Applicants further note that organizational charts demonstrating this structure would be maintained were admitted as HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY Exhibits CHF-3R and CHF-4R.

6. The Settlement Provides For Additional Customer Service Improvements.

Another substantial affirmative benefit of the Proposed Transaction, as modified by the Settlement, is the Joint Applicants' respective commitments to improve their customer service and related metrics. The Proposed Transaction, subject to the terms and conditions set forth in the Settlement, will have a positive effect on customer service for both the Peoples Companies' customers and Aqua PA's customers.

Importantly, the Settlement reflects the Joint Applicants' commitment to maintain or increase the location and staffing of call centers and their local workforce. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶ 56; *see also* Joint App. St. No. 7-R, pp. 6-7.) These commitments by the Joint Applicants constitute significant public benefits because they would (1) maintain or increase Pennsylvania-based jobs, (2) ensure Pennsylvania customers are interfacing with Pennsylvania-based employees, and (3) ensure the Joint Applicants continue to maintain the call center and workforce staffing levels necessary to provide safe and reliable service.

a. Aqua America And Aqua PA Customer Service Improvements.

Aqua America has committed to improving its call center performance, to match the performance standards applicable to the Peoples Companies, which would result in improved performance compared to current levels. (Settlement, ¶ 83; *see also* Joint App. Exh. No. DJS-1R (CORRECTED), ¶ 39; Joint App. St. No. 7-R, pp. 3-4.) There is a substantial benefit to Aqua PA's customers associated with improved interactions with the Aqua America call center.

The Settlement also provides for Aqua PA to track Pennsylvania customer complaints, and to conduct annual reviews of the tracked information to determine the cause of any adverse trends. (Settlement, ¶ 85.) This condition will provide Aqua PA information regarding complaint trends, which could be used to more effectively and efficiently address complaints to

the benefit of its customers. In addition, the Settlement contains a commitment by Aqua PA to reduce the number of days to respond to complaints, which also will improve the service it provides to its customers beyond current levels. (Settlement, ¶ 86.)

Aqua PA also commits to developing and adopting a method to track field operations appointments, similar to the method used by the Peoples Companies, and adopt performance standards that meet or exceed the standard of the Peoples Companies for this metric, for five years. (Settlement, ¶ 87.) Customers have increased expectations that utilities will set and meet appointments for field work, and this commitment benefits Aqua PA's customers by enhancing the service Aqua PA provides them beyond current levels.

In addition, Aqua PA commits to meet its internal 2019 performance objectives as set forth in the Settlement and will continue to establish and strive to meet comparable or more strict performance objectives for five years. (Settlement, ¶ 88.) This commitment ensures that Aqua PA will continue to meet or exceed its existing performance metrics, which help it provide safe and reliable service to its customers.

Finally, Aqua PA will provide a report to OCA, I&E, and OSBA each calendar year for a period of five years following closing regarding its achievement of these service quality metrics, which will outline the actual metrics achieved and additional actions expected to be taken in the following year to further improve customer service. (Settlement, ¶ 89.) This commitment further provides that if Aqua PA has not achieved an identified metric, the report must also include the reasons for the failure and Aqua PA's plan to reach the service quality metric and that Aqua PA must then convene a collaborative with OCA, I&E, and OSBA to discuss the report. In this regard, the Settlement provides an additional, substantial affirmative benefit that

ensures Aqua PA will strive to meet the identified metrics and, if it does not meet a given metric, that there is a course of action to move forward.

b. The Peoples Companies Customer Service Improvements.

Aqua America will also maintain the Peoples Companies' capital expenditures at pre-acquisition budgeted levels. (Settlement, ¶ 84; *see also* Joint App. Exh. No. DJS-1R (CORRECTED), ¶ 40; Joint App. St. No. 7-R, pp. 30-31.) This commitment would ensure that the Peoples Companies continue to possess the requisite capital to provide safe and reliable service to their customers.

The Peoples Companies have committed to meet performance standards at or more strict than those listed in the Settlement, for a five-year period. (Settlement, ¶ 91.) This commitment ensures that the Peoples Companies will continue to meet or exceed their existing performance metrics, which help them provide safe and reliable service to its customers.

In addition, the Peoples Companies are committed to continuing to track their field operations appointments and continuing the existing performance standard of meeting 99% of all appointments. (Settlement, ¶ 92; *see also* Joint App. Exh. No. DJS-1R, ¶ 47; Joint App. St. 6-R, p. 21.) Further, the Peoples Companies are committed to meeting the overall average performance customer survey results reflected in 2017-2018 results for a period of five years. (Settlement, ¶ 93.) These commitments demonstrate that the Proposed Transaction, as modified by the Settlement, will benefit the Peoples Companies' customers by continuing the Peoples Companies' long-term commitment to finding better ways to serve their customers. (Joint App. St. No. 6-R, pp. 44-46.)

Finally, the Settlement requires Aqua America to ensure that the Peoples Companies will file a similar report to the report Aqua PA has committed to file, and to have a similar plan of action if the reported metrics do not meet the levels set forth in the Settlement. (Settlement,

¶ 90.) As such, the Settlement provides an additional, substantial affirmative benefit that ensures the Peoples Companies will strive to meet the identified metrics and, if they do not meet a given metric, that there is a course of action to move forward.

c. Implementation of the Peoples Companies' SAP Platform By Aqua.

The Joint Applicants identified the potential implementation of the Peoples Companies SAP platform at Aqua PA as a significant benefit of the Proposed Transaction. (Joint App. Exh. No. DJS-1, pp. 31-32; Joint App. St. No. 4 (REVISED), pp. 21-23.) While certain of the parties argued that these benefits were uncertain or speculative, the Joint Applicants demonstrated that there are concrete benefits associated with the implementation of the Peoples Companies' SAP platform at Aqua.¹¹

Customers' expectations with respect to their interactions with utilities have changed. Customers desire a number of different channels to interact and demand that the utilities provide information promptly and accurately. (Joint App. St. No. 1-R, p. 10.) The Peoples Companies have responded to those expectations through their use of the SAP platform, and Aqua America's customers can also obtain those service benefits once Aqua America installs the SAP platform as well.

For instance, SAP implementation will allow Aqua PA to run a fully integrated contact center system that allows a Customer Service Representative to have immediate access to SAP customer information through automated screen pops, similar to the Peoples Companies, and would create more personalized customer interactions through additional communications channels and an online customer portal. (Joint App. St. No. 4-R, pp. 10-11.) It is also beneficial for Aqua PA to adopt and implement this platform while interfacing with the Peoples

¹¹ It is to be emphasized that Aqua America is not seeking to replace a recently installed customer service platform. Its existing system is aging, and a new system will be needed. (Joint App. St. No. 4-R, p. 9.)

Companies, because working with an experienced utility team who has continually implemented SAP and surrounding technology will minimize risks associated with timing, budget and planning associated with adopting a new information technology platform to replace Aqua's current, aged system. (*See* Joint App. St. No. 4-R, pp. 11-12, 15-16.)

The Settlement provides that Aqua PA will conduct a cost, benefit, timetable and rate impact analysis for implementation of the Peoples Companies' SAP system and submit the analysis and report to the OCA, I&E, & OSBA prior to any implementation of such SAP system to Aqua PA. (Settlement, ¶ 96.) This process recognizes the benefits associated with the implementation of SAP at Aqua PA, and provides the statutory advocates with the information necessary to validate the benefits claimed by the Joint Applicants in this proceeding.

d. Intervention In Abandonment Proceedings.

The Settlement also includes a provision that states the Peoples Companies will intervene, at the request of a statutory advocate, in any proceeding involving the potential abandonment of natural gas customers by others in an area neighboring the Peoples Companies' existing pipeline distribution system, for the purposes of studying and evaluating the possibility of the Peoples Companies extending service to those customers. (Settlement, ¶ 97.) This provision addresses a recommendation proposed by the OCA, based on the Peoples Companies' historic involvement in proposed abandonments by neighboring natural gas systems. (OCA St. No. 4, pp. 8-10.) This may benefit people and businesses currently served by small gas systems in Western Pennsylvania who might otherwise lose their gas service due to the inability of current owners to continue operations. (*See* Joint App. St. No. 6-R, pp. 13-15; *see also* Tr. 154-156.)

7. Low-Income And Universal Service Programs.

While the Proposed Transaction did not propose any changes to rates or other programs affecting low-income customers, OCA and CAUSE-PA raised concerns regarding the effect of the Proposed Transaction on low-income customers. (*See* OCA St. No. 3, pp. 32-34; *see also* CAUSE-PA St. No. 1, pp. 9-13.) The Joint Applicants addressed many of these concerns, and proposed acceptable conditions that would ensure certain benefits inured to the low-income customers of the Peoples Companies and Aqua PA if the Proposed Transaction were approved. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶¶ 58-65; *see also* Joint App. St. No. 2-R, pp. 30-31; Joint App. St. No. 6-R, pp. 42-45; Joint App. St. No. 7-R, pp. 10-11.)

As described below, the Settlement will provide public benefits to the low-income customers of the Peoples Companies and Aqua PA, in addition to those that would result from the Joint Applicants' prior commitments.

a. Benefits To The Peoples Companies' Low-Income Customers.

The Peoples Companies will continue to fund their existing Universal Service Programs at levels that are not less than the funding levels proposed in its most recent Universal Service and Energy Conservation Plan for 2019-2021 at Docket No. M-2018-3003177, and Aqua America's shareholders will contribute additional funds to these programs. (Settlement, ¶¶ 98-101.) The contribution of additional funds to low-income programs will provide substantial public benefits by assisting customers to maintain gas service.

In addition, the Peoples Companies will continue their long-standing partnerships with existing Community Based Organizations ("CBOs"), other stakeholder agencies, and the Peoples Universal Service Advisory Group to ensure the effective administration of these programs. (Settlement, ¶¶ 102-104.) Moreover, the Settlement contains commitments that maintain the Peoples Companies' current Universal Service organizational structure and staffing levels, and maintain the existing field employee referral program (*i.e.* "Help At Peoples Now").

(Settlement, ¶¶ 110-111.) These commitments maintain and improve upon the low-income programs and services currently offered to the Peoples Companies customers, and evidence Aqua America's commitment to building upon these programs in the future.

b. Benefits to Aqua PA's Low-Income Customers

Similar substantial benefits are also provided by the Joint Petition for Settlement to the low-income customers of Aqua PA. Importantly, Aqua PA will leverage the Peoples Companies' experience with programming¹² and invite one member of its current Universal Service Staff to Aqua PA's Helping Hand collaborative meetings and invite staff in charge of collections to the Peoples Companies' Universal Service Advisory Committee meetings. (Settlement, ¶¶ 105-106.) These commitments will ensure that Aqua PA's employees interface with and learn from the Peoples Companies and share in their practices with respect to low-income programming. (See Joint App. Exh. No. DJS-1R (CORRECTED), ¶¶ 61-62; see also Joint App. St. No. 7-R, p. 10.)

In addition, Aqua PA has committed to review the feasibility of collecting data in accordance with its recent rate case settlement in Docket No. R-2018-3003558, as set forth in each settlement. (Settlement, ¶ 107.) Collecting this information will provide Aqua PA additional information about the low-income population it serves, which will benefit future efforts to address these customers' needs. (See Joint App. Exh. No. DJS-1R (CORRECTED), ¶ 63; see also Joint App. St. No. 7-R, pp. 10-11.)

Furthermore, Aqua PA will include in the Helping Hand collaborative agreed to in its recent rate case settlement at Docket No. R-2018-3003558, discussion of the development of a comprehensive universal service and conservation program that will be proposed by Aqua PA, as

¹² The Peoples Companies were recognized as having a well-structure low-income program. (CAUSE-PA St. No. 1, p. 32.)

set forth in the Settlement. (Settlement, ¶ 108.) The discussion and development of this program will benefit low-income customers by creating solutions to promote water conservation that are not currently provided. (See Joint App. Exh. No. DJS-1R (CORRECTED), ¶¶ 65; see also Joint App. St. No. 7-R, p. 11-12.)

Finally, Aqua America's shareholders will contribute an additional \$50,000 to the hardship grant component being developed for Aqua PA's Helping Hand Program annually for four years, and further commit to evaluate whether to increase this contribution as a part of Aqua PA's next base rate case. (Settlement, ¶ 109.) This provision benefits the public because it increases funds available to low-income customers under Aqua PA's program above current levels.

8. Community Commitment.

The Joint Petition for Settlement also affirms the Joint Applicants' commitments to the communities in which they provide utility service. Aqua PA currently participates in various volunteer opportunities and environmental initiatives, and supports non-profit organizations throughout the 32 Pennsylvania counties it serves. (Joint App. Exh. No. DJS-1, p. 32.) In addition, community commitment is one of the Peoples Companies' core values and the Peoples Companies have an active community presence in western Pennsylvania. (Joint App. Exh. No. DJS-1, p. 33.) Aqua America demonstrated that it would maintain the strong community presence of both the Peoples Companies and Aqua PA following the consummation of the transaction. (Joint App. Exh. No. DJS-1, pp. 32-33; Joint App. St. No. 1 (REVISED), pp. 14-15; Joint App. St. No. 3 (REVISED), pp. 11-12.)

Paragraphs 112 through 114 of the Settlement affirm and build upon these commitments. In particular, Aqua America will commit to increasing the percentage of pre-tax net income provided as charitable contributions over present levels and maintain the corporate contributions

of the Peoples Companies at present levels for not less than five years. (Settlement, ¶ 113.) These commitments will affirmatively benefit the public by maintaining and/or improving upon the Joint Applicants' existing commitments and involvement in the communities they serve.¹³

B. THE SETTLEMENT WILL NOT PRODUCE ANY UNREASONABLE EFFECT ON THE EMPLOYEES OF AQUA PA OR THE PEOPLES COMPANIES.

Under Section 2210(a)(2) of the Code, the Commission is also required to consider the impact that a proposed acquisition of a natural gas distribution company may have on the employees of the natural gas distribution company. 66 Pa. C.S. § 2210(a)(2). The Joint Applicants demonstrated that the Proposed Transaction would not have any unreasonable effect on the employees of each public utility, because it would maintain expertise in the field of natural gas operations and management provided by employees and Pittsburgh-based leadership of PNG, Peoples Natural Gas and Peoples Gas. (Joint App. Exh. DJS-1, pp. 20-21.) In addition, the Peoples Companies would continue to honor the requirements of all union collective bargaining agreements, treat all union employees in accordance with the National Labor Relations Act and other legal requirements, and maintain their outstanding pension fund balances. (Joint App. Exh. DJS-1, p. 21.) Moreover, and importantly, the Joint Applicants demonstrated that the Proposed Transaction would maintain jobs in Pennsylvania, and provide expanded job opportunities for both gas and water/wastewater employees under combined ownership. (Joint App. Exh. DJS-1, pp. 30-31.)

The Joint Applicants confirmed they would accept conditions that affirm these commitments. (Joint App. Exh. DJS-1R (CORRECTED), ¶¶ 32, 35-37, 56-57.) The commitments set forth in Joint App. Exh. DJS-1R (CORRECTED), included: (1) a commitment

¹³ The Peoples Companies' commitments to provide specified levels of charitable contributions expire after 2019. (See Settlement Parties Exhibit No. 2, p. 9.)

to maintain a 95% benchmark of utilized contractors having an existing collective bargaining relationship with a union (§ 32; *see also* Joint App. St. No. 4-R, p. 21); (2) the assurance that the Peoples Companies will continue to be led by individuals with extensive natural gas operational management and natural gas utility experience (§ 35; *see also* Joint App. St. No. 1-R, pp. 28-31); (3) a commitment to maintain current field office staffing levels at the baseline staffing levels existing at the time of closing, for the next three years (§ 36; *see also* Joint App. St. No. 4-R, pp. 17-18); (4) explicitly and unequivocally committing to adhere to the collective bargaining agreements in effect at the time of closing (§ 37; *see also* Joint App. St. No. 4-R, p. 18); (5) maintain or increase the location and staffing of the Joint Applicants' respective call centers and local workforce (§ 56; *see also* Joint App. St. No. 7-R, pp. 6-7); and (6) maintain the Peoples Companies' corporate headquarters at the current Pittsburgh location, until the existing lease expires (§ 57; *see also* Joint App. St. No. 1-R, p. 18). As such, the Joint Applicants demonstrated that the Proposed Transaction would not negatively impact, but would instead benefit, the Peoples Companies' employees.

The Settlement affirms these commitments and, in some cases, provides additional benefits to the Joint Applicants' employees. (Settlement, §§ 72, 75-77, 81-82, 94-95.) Paragraph 72 affirms the commitment set forth in paragraph 32 of Joint Applicants Exhibit DJS-1R (CORRECTED) and provides the same public benefits identified by the Joint Applicants. The Settlement also provides for additional benefits associated with the management of the Peoples Companies, and contains a further commitment that such management "possess best in class natural gas distribution utility experience." (Settlement, § 75.) In addition, the Settlement provides a more specific commitment to maintaining field office staffing levels, including the retention of union-represented field employees (Settlement, § 76), and explicitly and

unequivocally confirms the commitment evidence in Joint Applicants Exhibit DJS-1R (CORRECTED) that Aqua PA and the Peoples Companies will adhere to the collective bargaining agreement in effect at the closing. (Settlement, ¶ 77.) The Settlement further affirms the Joint Applicants' commitment to maintaining the existing corporate headquarters of the Peoples Companies until the current lease expires (*see* Settlement, ¶ 81; Joint App. Exh. No. DJS-1R (CORRECTED), ¶ 57), but also provides an additional benefit by ensuring the Peoples Companies will not move their headquarters outside of their service territory without Commission approval. (Settlement, ¶ 82.)

The Settlement affirms the Joint Applicants' commitment to maintaining or increasing the location and staffing of call center employees in Pennsylvania. (Settlement, ¶¶ 94-95.) These provisions of the Settlement also ensure that the Peoples Companies' call center will be maintained within the Peoples Companies' service territory and that any significant reductions in call center staffing or the transfer of call center employment outside of Pennsylvania will be subject to Commission approval.

In addition, as explained in Section III.A.4, above, the Commitment to increase LTIIP spending by at least \$30 million per year is expected to result in new employment opportunities, as "live gas" connections associated with replacement of pipes will increase. In summary, the Proposed Transaction, as modified by the Joint Petition for Settlement, will not have an adverse impact on the employees of the Peoples Companies, or on the employees of Aqua PA. In fact, the Proposed Transaction, as modified by the Settlement, will provide substantial public benefits by ensuring that call center, field-staffing and other jobs are kept in Pennsylvania, and by increasing jobs in Western Pennsylvania.

C. THE SETTLEMENT WILL IMPROVE THE ENVIRONMENT FOR RETAIL GAS COMPETITION.

Under Section 2210(a)(1) of the Code, the Commission is required to consider whether a proposed acquisition of the securities of a natural gas distribution company is likely to result in anticompetitive or discriminatory conduct. 66 Pa. C.S. § 2210(a). The Joint Applicants demonstrated that the Proposed Transaction would not have an anticompetitive impact on retail gas competition, because all rates, terms and conditions that have an impact on retail competition in the Peoples Companies' respective service territories would remain unaffected by the Proposed Transaction. (Joint App. Exh. DJS-1, p. 20.) Furthermore, as an owner of water and wastewater utilities, Aqua America will not create anti-competitive or discriminatory conditions. However, the NGS Parties/RESA and Direct Energy proposed various modifications to the Peoples Companies' choice programs and supplier tariffs, which they asserted would enhance retail gas competition. (NGS/RESA St. No. 1, pp. 7-10, 14-19; Direct Energy St. No. 1, pp. 4-8.)

In response to the testimony of the NGS Parties/RESA and Direct Energy, the Joint Applicants made specific commitments to maintain and enhance the existing choice and transportation programs of the Peoples Companies. These commitments are a further public benefit of the Proposed Transaction. (Joint App. Exh. No. DJS-1R (CORRECTED), ¶¶ 66-73.) Specifically, the Peoples Companies would maintain: (1) the Local Production Pool Tracking system (¶ 68; *see also* Joint App. St. No. 6-R, p. 38); (2) the upgraded Electronic Bulletin Board (¶ 69; *see also* Joint App. St. No. 6-R, p. 38); (3) the Local Production Pool invoicing and associated identifying information (¶ 70; *see also* Joint App. St. No. 6-R, p. 38); and (4) the group contact e-mail process (¶ 71; *see also* Joint App. St. No. 6-R, p. 38).

In addition, the Peoples Companies committed to programmatic changes that would enhance retail gas competition, including: (1) providing natural gas suppliers with heating and base load information for customers, including the weather station associated with the customer,

upon request (§ 66; *see also* Joint App. St. No. 6-R, p. 37); (2) providing a minimum of 20 rate codes, up to 40 rate codes, per supply pool (§ 67; *see also* Joint App. St. No. 6-R, p. 36); (3) examining potential opportunities to expedite issuance of daily delivery requirements and capacity requests (§ 72; *see also* Joint App. St. No. 6-R, p. 37); and (4) identifying customers' billing cycles on customers' invoices, to the extent that suppliers find this information valuable and are willing to pay for it (§ 73; *see also* Joint App. St. No. 6-R, p. 38). These commitments address many of the concerns identified by the NGS Parties/RESA and Direct Energy and enhance the competitive retail gas landscape in the Peoples Companies' service territories. (*See* NGS/RESA St. No. 1-SR, pp. 10-11; *see also* Direct Energy St. No. 1-SR, pp. 2-3.)

The Settlement provides affirmative benefits by affirming these commitments and, in some cases, provides further modifications and enhancements to the Peoples Companies' choice and transportation programs. (Settlement, §§ 115-128.) The Settlement refines the Peoples Companies' commitment to provide heat load and base load information, by committing to provide this information for Priority One Choice pools on a monthly basis, requiring customer authorization for this requested information for non-residential customers with load greater than 300 mcf/year, and committing to provide the daily temperatures used to produce Priority One Choice daily targets. (Settlement, §§ 115-117.) It also provides for additional rate codes, up to 50 with an absolute maximum of 100, which enhances the commitment set forth in Joint Applicants Exhibit DJS-1R (CORRECTED). (Settlement, § 118.) The Settlement also contains an additional commitment to modify the eligibility criteria for Rate SGS customers, which directly addresses the request of the NGS Parties/RESA. (Settlement, § 119; *see also* NGS/RESA St. No. 1-SR, p. 10.) Furthermore, it refines and enhances the information associated with customers' billing cycles and customer burns that will be provided to suppliers,

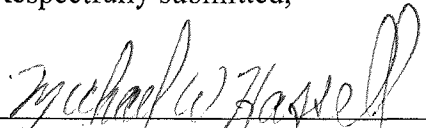
which addresses the concerns and recommendations proposed by the NGS Parties/RESA and Direct Energy. (Settlement, ¶ 124, 126-127; *see also* NGS/RESA St. No. 1-SR, pp. 11-12; Direct Energy St. No. 1-SR, pp. 3-4.)

Finally, the Settlement contains a commitment for the Peoples Companies to undertake a process to obtain the input of interested stakeholders regarding the broad subject of increasing customer participation in the competitive natural gas market in the Peoples Companies' service territories. (Settlement, ¶ 128.) This commitment will further the Peoples Companies' efforts to fostering a competitive retail gas environment. (*See* Joint App. St. No. 6-R, pp. 31-33.)

IV. CONCLUSION

The Settlement resolves all of the issues that were raised during this proceeding. For the reasons explained above, the resolution of this proceeding in accordance with the terms of the Settlement is in the public interest and meets the affirmative public benefits standard as established in *City of York*.

Respectfully submitted,



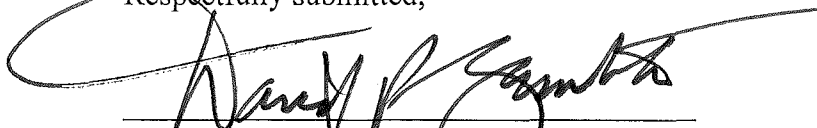
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Appendix B

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of Aqua America, Inc., :
Aqua PA, Inc., Aqua PA :
Wastewater, Inc., Peoples Natural Gas :
Company LLC, and Peoples Gas Company : Docket Nos. A-2018-3006061
LLC For All of the Authority and the : A-2018-3006062
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. :

STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
IN SUPPORT OF JOINT PETITION FOR APPROVAL
OF NON-UNANIMOUS, COMPLETE SETTLEMENT
AMONG MOST PARTIES

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The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Non-Unanimous, Complete Settlement (Settlement), finds the terms and conditions of the Settlement to be in the public interest for the following reasons:

I. INTRODUCTION

In accord with Judge Long's instructions to the Parties, the OCA adopts the Introduction as set out in the Settlement and provides only the following brief procedural history.

II. PROCEDURAL HISTORY

In accord with the procedural schedule, on April 2, 2019, the OCA submitted the Direct Testimonies of Matthew I. Kahal, OCA Statement 1;¹ Ralph C. Smith, OCA Statement 2;² Barbara R. Alexander, OCA Statement 3;³ and Jerome D. Mierzwa, OCA Statement 4.⁴ On April 30, 2019, the OCA submitted the Rebuttal Testimonies of Barbara R. Alexander, OCA Statement 3-R and Jerome D. Mierzwa, OCA Statement 4-R. On May 21, 2019, the OCA submitted the Surrebuttal

¹ Mr. Kahal is an independent consultant that has been employed in the area of energy, utility, and telecommunications consulting for the past 35 years. Most of Mr. Kahal's work experience has focused on mergers, financial issues, electric utility integrated planning, plant licensing, and environmental issues. Mr. Kahal has previously testified before this Commission, as well as approximately two dozen other state commissions, federal courts, and the United States Congress in more than 400 separate regulatory cases.

² Mr. Smith is a Certified Public Accountant, attorney, and Senior Regulatory Consultant at Larkin & Associates, PLLC. Most of Mr. Smith's 39 years of work experience has involved utility regulation, and Mr. Smith has previously testified before this Commission, as well as 38 other state utility commissions, federal courts, and the Federal Energy Regulatory Commission. OCA Statement 2 included a Public version, Highly Confidential version, and Highly Confidential—Statutory Advocates Only version that were all served in accordance with the Protective Order adopted in case.

³ Ms. Alexander is an attorney and the sole owner of Barbara Alexander Consulting, LLC, where she focuses on consumer protection and customer service issues associated with utility regulation. Ms. Alexander spent ten years as the Director of the Consumer Assistance Division of the Maine Public Utilities Commission prior to starting her consulting business. Ms. Alexander has been published widely and has previously testified before this Commission, as well as over 30 other state and Canadian utility commissions.

⁴ Mr. Mierzwa is a principal and Vice President with Exeter Associates, Inc., where he specializes in providing public utility-related consulting services. Prior to joining Exeter Associates, Mr. Mierzwa worked for the National Fuel Gas Distribution Corporation and the National Fuel Gas Supply Corporation. Mr. Mierzwa has previously testified on more than 300 occasions before this Commission, as well as over a dozen other state utility commissions and the Federal Energy Regulatory Commission.

Testimonies of Matthew I. Kahal, OCA Statement 1-SR; Ralph C. Smith, OCA Statement 2-SR; Barbara R. Alexander, OCA Statement 3-SR; and Jerome D. Mierzwa, OCA Statement 4-SR.

The testimonies and accompanying exhibits of OCA witnesses Kahal, Smith, Alexander, and Mierzwa, were submitted into the record by stipulation of the Parties at the evidentiary hearing held on June 11, 2019.

Pursuant to the Commission's policy of encouraging settlements that are in the public interest, the Joint Petitioners held numerous settlement discussions during the course of this proceeding. These discussions resulted in this Non-Unanimous, Complete Settlement, which addresses the numerous complex issues raised in this case. The OCA submits that the Non-Unanimous, Complete Settlement is in the public interest and in the best interest of the Applicants' customers, and should be approved without modification.

The terms and conditions of the Non-Unanimous, Complete Settlement satisfactorily address issues raised in the OCA's analysis of the Applicants' filing. The OCA submits that this Settlement, taken as a whole, is a reasonable compromise in consideration of likely litigation outcomes before the Commission. While the Non-Unanimous, Complete Settlement does not reach all of the recommendations proposed by the OCA, the OCA recognizes that the Settlement is a product of compromise. The balance of compromises struck by the settling parties is critical to achieving settlement. Accordingly, the OCA urges the Commission to consider the Non-Unanimous, Complete Settlement as a whole.

III. TERMS AND CONDITIONS OF SETTLEMENT

In this Statement in Support, the OCA addresses those areas of the Settlement that specifically relate to important issues that the OCA raised in this case. The OCA expects that other parties will discuss how the Settlement's terms and conditions address their respective issues and

how those parts of the Settlement support the public interest standard required for Commission approval.

For the reasons discussed in greater detail below, the OCA submits that the Settlement is in the public interest and the best interest of the Applicants' customers and should be approved by the Commission without modification.

A. Goodwin/Tombaugh Gathering Systems (Settlement § A.)

The Goodwin and Tombaugh gathering systems have been a concern for a variety of stakeholders for many years. The OCA submits that the Settlement is a substantial step forward in positively addressing an issue of great importance to the customers receiving service from these systems and to the surrounding communities where these systems are located.

1. Remediation of the Goodwin/Tombaugh Gathering Systems

The Goodwin Gathering System, located in Greene and Washington Counties, consists of approximately 250 miles of pipeline delivering gas directly to approximately 775 Equitable Division customers or Equitable Division customers served from distribution facilities that are fed by the Goodwin Gathering System. OCA St. 4 at 3. The Tombaugh Gathering System, also located in Greene and Washington Counties, consists of approximately 105 miles of pipeline delivering gas directly to approximately 770 Equitable Division customers or Equitable Division customers served from distribution facilities that are fed by the Tombaugh Gathering System. OCA St. 4 at 3. Both the Goodwin Gathering System and the Tombaugh Gathering System (collectively Goodwin-Tombaugh) are in need of remediation to address leaks and ensure safe and reliable service. OCA St. 4 at 5. The lost-and-unaccounted-for-gas (LUFG) for the Goodwin Gathering System is 82 percent and the LUFG percentage for the Tombaugh Gathering System is 44 percent. OCA St. 4 at 5.

In his Direct Testimony, OCA witness Jerome D. Mierzwa noted that the Peoples Natural Gas Distribution Companies (Peoples NGDCs, PNG, or Peoples) were willing to commit the time and resources necessary to creatively work toward solutions that may enable the continuation of natural gas service to customers on the Goodwin-Tombaugh systems. OCA St. 4 at 8. Mr. Mierzwa further noted that, without a specific commitment to continue these efforts in the future, customers may be harmed. OCA St. 4 at 8.

In his Rebuttal Testimony, Joint Applicant witness Joseph A. Gregorini presented three scenarios to address Goodwin-Tombaugh. JA St. 6-R at 8-11. Scenario 1 retains the entirety of both gathering systems and maintains service to all existing customers at an estimated total capital cost of \$127 million. JA St. 6-R at 8-9. Scenario 2 retains only the main Goodwin-Tombaugh trunk line systems at a total capital cost of approximately \$44.3 million. JA St. 6-R at 10. Under Scenario 2, 251 miles of pipeline would be abandoned and 560 customers would be converted to an alternative fuel. JA St. 6-R at 10. The estimated cost of conversions was \$3.4 million. JA St. 6-R at 11. Scenario 3 retains only the northern most section of the Tombaugh system, which contains the highest concentration of customers. JA St. 6-R at 11. Under Scenario 3, 66 miles of pipeline and 723 customers would be retained at a cost of \$15.8 million. JA St. 6-R at 11. Under Scenario 3, 972 customers would be converted to an alternative fuel and 325 miles of pipelines would be abandoned. JA St. 6-R at 11. The estimated costs of conversion under Scenario 3 is approximately \$5.8 million. JA St. 6-R at 11. In his Rebuttal Testimony, Joint Applicant witness James C. Barbato stated that Aqua America is willing to replace all of the bare steel pipes in the Goodwin-Tombaugh systems in accordance with Scenario 1, as long as it is accompanied by full rate recovery. JA St. 5-R at 14.

In his Surrebuttal Testimony, Mr. Mierzwa stated that rehabilitation of the Goodwin-Tombaugh Systems would provide a public benefit and that rehabilitation over a five to seven year period should be a condition of the merger. OCA St. 4-SR at 2. Mr. Mierzwa further recommended that the recoverable costs associated with the rehabilitation of the systems should be limited to the lower of actual costs or the \$127 million estimate determined by Peoples. OCA St. 4-SR at 2. In order to finally resolve the Goodwin-Tombaugh issue, the Settling Parties⁵ agreed as follows:

Aqua America commits to addressing the replacement of gathering pipe representing remediation of the bare steel within the Goodwin/Tombaugh Gathering System over a seven-year timeframe. The work to begin repair and replacement of the system would begin three months after closing (such work includes engineering and planning) and the Peoples Companies and interested parties would meet to discuss and provide updates on the status of the project every six months.

Settlement at ¶ 29. This provision matches Scenario 1 and closely aligns with Mr. Mierzwa's recommendation that the Goodwin-Tombaugh system be completely rehabilitated over a period of five to seven years. The Settlement also provides that:

Capital replaced and remediated for the Goodwin/Tombaugh systems will be recovered through a base rate case (rather than a DSIC). In addition, remediation of the Goodwin/Tombaugh systems shall occur concurrently with the Peoples Companies' other replacement projects.

Settlement at ¶ 30. This provision provides the interested parties with an opportunity to be heard in regard to capital costs incurred through replacement/remediation of Goodwin-Tombaugh instead of having costs recovered through an automatic surcharge such as the DSIC.

The Settlement states that complete rehabilitation is estimated to cost \$120 million and that Peoples will receive full recovery for the actual capital spent on complete rehabilitation up to \$120 million. Settlement at ¶ 33. The Settlement provides that, if it becomes evident that the \$120

⁵ The Settling Parties are identified in the Settlement at pages 1-2.

million estimate is no longer sufficient, Peoples will meet with the Statutory Advocates to discuss capital costs. Id. Moreover, the Settlement states that if an agreement cannot be reached, Peoples will submit a filing to the Commission for a decision on amounts over \$120 million and that all parties retain their rights to challenge or support such a filing. Id.

Regarding abandonment, the Settlement provides that the Applicant's intent is to replace and repair all the bare steel in the system so that these existing Equitable division customers are not abandoned but that there will likely be circumstances requiring further evaluation. Settlement at ¶ 32. The Settlement notes that for circumstances requiring further evaluation, interested parties and Peoples will meet to discuss any discrete situations that may arise at or before the six-month check meetings discussed above. Id. The OCA submits that the Settlement represents a reasonable compromise regarding the issues raised in the OCA's testimony related to Goodwin-Tombaugh.

The Settlement also provides that all company and customer service lines (curb to meter) will be replaced by Peoples as part of the Goodwin-Tombaugh replacement program. Settlement at ¶ 39. Further, the Settlement provides that:

As the capital is completed and placed in service, the plant will then be transferred and become part of Peoples Natural Gas and regulated under the Commission's jurisdiction and classified as distribution pipeline and operated for safety purposes following all provisions under 49 C.F.R. § 192 for distribution pipeline.

Settlement at ¶ 31. Since customers served by Goodwin-Tombaugh are currently being charged as distribution customers of Peoples (Tr. at 193), it is appropriate that plant being used to service these customers will be regulated under the Commission's jurisdiction.

2. Goodwin/Tombaugh Rate Credit

The Settlement provides:

Complete rehabilitation of the bare steel in the system is estimated to cost \$120 million in present dollars. The Peoples Companies will receive full recovery for the actual capital spent for the complete rehabilitation of the bare steel in the system

up to \$120 million. During the repair and replacement of the system, if it becomes apparent that this estimate is no longer sufficient, based on the actual extent of the rehabilitation effort, the Peoples Companies and the statutory advocates will meet to discuss. If an agreement cannot be reached, the Peoples Companies will submit a filing to the Commission for decision for those amounts over the \$120 million. All parties will retain their rights to either challenge or support such a filing. Regardless of the actual capital spent to rehabilitate the systems, Aqua America agrees to provide all Peoples Companies' customers a rate credit of \$13 million. The rate credit will appear on the Peoples Companies' customers' bills before the end of 2019.

Settlement ¶ 33. Therefore, regardless of capital spent, Aqua America agrees to provide all Peoples customers with a rate credit of \$13 million before the end of 2019. This provision provides some immediate benefit to Peoples customers and also serves to defray some of the costs of this important project. As provided, if remediation costs turn out to be less than the forward estimates customers still receive this upfront \$13 million credit. In the event that capital costs are estimated to exceed \$120 million as the remediation process moves along, Peoples and the statutory advocates will meet to discuss and assess the situation at that time.

3. Lost-and-Unaccounted-For-Gas

As indicated earlier, both the Goodwin Gathering System and the Tombaugh Gathering System are in need of remediation to address leaks and ensure safe and reliable service. OCA St. 4 at 5. The LUFG for the Goodwin Gathering System is 82 percent and the LUFG percentage for the Tombaugh Gathering System is 44 percent.⁶ OCA St. 4 at 5.

The Settlement provides that:

Peoples Natural Gas will perform annual, instead of triennial (once every three years), leak surveys of all bare steel segments in the Goodwin/Tombaugh systems until that particular pipeline section is replaced as part of this remediation. This survey will be a walking survey in which the company will start at one end of the line and finish at the other.

⁶ It should be noted that these numbers for LUFG do not necessarily indicate that the entirety of losses are due to leakage. Peoples has indicated that metering errors, lack of metering and potential gas losses due to flowback from connected production wells are all likely part of the current make up of LUFG numbers.

Settlement ¶ 37. Further, every leak detected as part of the accelerated annual surveys that is within 450 feet of a house will be fixed within six months unless it is located on a line scheduled for replacement within six months. Settlement at ¶ 38. Leak detection and accelerated remediation addresses important safety concerns related to the level of LUFG on the systems, and this provision related to the level of LUFG on the Goodwin/Tombaugh Systems is in the public interest.

4. Conclusion

There are approximately 1600 customers connected to these gathering systems. The Goodwin/Tombaugh matter has undoubtedly been an issue for many years, with little real progress made toward a final solution for these customers and the region in general. Abandonment of such significant numbers of customers—both residential customers and commercial customers—would cause economic disruption and deprive customers of the benefits of regulated service. The agreement reached here, however, will provide a permanent, safe and reasonable resolution to this matter for all concerned stakeholders. As such, the OCA submits that these Settlement provisions contain a comprehensive resolution of this important matter and should be approved without modification.

B. Books, Records, Rate Activity and Financing (Settlement § B.)

Given the size of this Transaction and the combination of a water/wastewater company with a natural gas distribution company, the OCA sought certain protections related to the financing of this Transaction, the future ratemaking treatment of acquisition premiums and other costs, and the subsequent capital structure of the Applicants. Of particular concern to the OCA was the providing of a rate credit to the Applicants customers, the amount of goodwill associated with this Transaction, the Applicants' financing plan for the Transaction, potential ring-fencing requirements, the possibility of a credit downgrade, and the Applicants' treatment of debt incurred

as a result of this Transaction.

1. Rate Credit (Settlement ¶ 41)

In his Direct Testimony, OCA witness Ralph C. Smith indicated that providing a rate credit to the Applicants' customers is one way of providing a substantial affirmative benefit as a result of the Transaction. OCA St. 2 at 28. Further, Mr. Smith explained that an appropriate rate credit amount could be determined in this proceeding based on the information already provided by the Applicants in discovery. OCA St. 2 at 32. In his Rebuttal Testimony, Aqua America CEO, Mr. Christopher H. Franklin, argued that an immediate rate credit as a result of the Transaction would result in a duplication of savings. JA St. 1-R at 12. In his Surrebuttal Testimony, Mr. Smith explained that providing a rate credit in this proceeding was appropriate because it may be difficult to quantify in a later proceeding savings or synergies to pass on to the Applicants' customers as a result of the current Transaction. JA St. 2-SR at 10.

In order to resolve this issue the Settling Parties agreed that:

Aqua America will provide a one-time \$10 million rate credit to the Peoples Companies' natural gas customers, Aqua PA Water customers, and Aqua PA Wastewater customers (Aqua PA Water and Aqua PA Wastewater are collectively referred to herein as "Aqua PA" unless otherwise stated). The rate credit will appear on customer bills before the end of 2019.

Settlement ¶ 41. The Settlement satisfies the OCA's concerns by definitively providing a rate credit to the Applicants' customers. The \$10 million rate credit in the Settlement recognizes that synergies and savings will be achieved as a result of this Transaction and passes those savings on to the Applicants' customers in the near term future, as opposed to attempting to divine possible savings that may have occurred at some future date. This rate credit is in addition to the specific \$13 million rate credit provided for Peoples customers in relation to the Goodwin/Tombaugh systems. The OCA submits that the \$10 million rate credit requirement in the Settlement is in the

public interest and in the interest of the Applicants' customers.

2. Ring-Fencing (Settlement ¶¶ 43, 48, 49, 60)

In his Direct Testimony, OCA witness Matthew Kahal noted that the Applicants had proposed some ring-fencing conditions, but expressed the need for more robust conditions to address concerns with respect to lending between corporate affiliates. OCA St. 1 at 29-30. Mr. Kahal then provided a series of recommendations related to lending between corporate affiliates, including, *inter alia*, that Peoples maintain the capability to issue new long-term debt on behalf of the Peoples companies, the Peoples companies be prohibited from providing long-term loans to affiliates, and neither the Peoples companies nor Aqua PA/Aqua PA Wastewater be permitted to mortgage their assets or provide loan guarantees for corporate affiliates. OCA St. 1 at 30. Mr. Smith also recommended that the Peoples companies and Aqua PA maintain their own long-term debt unless the Commission authorizes to the contrary. OCA St. 2 at 79-80.

In his Rebuttal Testimony, Aqua witness Daniel J. Schuller accepted several of the recommendations provided by Mr. Kahal. JA St. 2-R at 23-24. The recommendations adopted by Mr. Schuller on behalf of the Applicants specifically involved concerns expressed by the OCA with respect to long-term lending between corporate affiliates and the issuance of debt by the Applicants.

The Settlement memorializes the Applicants' commitments to maintain appropriate ring-fencing conditions post-closing. The Settlement requires that:

The Peoples Companies and Aqua PA will operate as separate corporate subsidiaries and will maintain separate accounting for the companies sufficient to provide all Commission required financial statements.

Settlement ¶ 43. Additionally, the Settlement provides a floor of ring-fencing protections that the Applicants must adopt going forward:

Aqua America commits to appropriate ring-fencing protections to the extent applicable to Aqua America's structure, and that are no less protective of the ring-fencing protections currently in effect for Aqua PA and the Peoples Companies. The current ring fencing includes, but is not limited to the following:

- a) Aqua PA and the Peoples Companies ("Utility Subsidiaries") maintaining their status as corporate subsidiaries with their own corporate officers;
- b) each of the Utility Subsidiaries issuing their own sets of financial statements pursuant to Commission requirements;
- c) all transactions among the Utility Subsidiaries and their corporate affiliates (including Aqua America) taking place pursuant to the terms of a Commission-approved affiliated agreement to avoid cross subsidization;
- d) each Utility Subsidiary (and PNG) maintaining the capability to issue its own long-term debt (with such debt issues subject to Commission approval if required);
- e) the maintenance of maximum debt levels in the capital structure for the Utility Subsidiaries as specified in Paragraphs 51 and 52;
- f) no lending by the Utility Subsidiaries to corporate affiliates for a term in excess of one year; and
- g) no pledging or encumbering the assets of the Utility Subsidiaries or the provision of loan guarantees for the benefit of corporate affiliates.

Settlement at ¶ 48. The Settlement also prohibits Aqua America and Peoples from lending on a long-term basis to corporate affiliates and prohibits any guarantees of debt among corporate affiliates without prior Commission approval. Settlement at ¶ 49. Finally, the Settlement prohibits the Peoples companies or Aqua PA from guaranteeing the debt of their corporate affiliates, granting liens upon their own property for reasons other than to finance their own, individual utility operations, and extending credit on a long-term basis without Commission approval. Settlement at ¶ 66.

The ring-fencing provisions within the Settlement demonstrate a compromise between Aqua America's desire to acquire Peoples and the OCA's concerns with regard to the financial integrity and separation of these companies. The Settlement's ring-fencing conditions will ensure that these companies operate as separate corporate entities and will ensure that the appropriate protections are in place to protect the ratepayers of the Applicants. The OCA submits that the ring-

fencing provisions within the Settlement are wholly consistent with the OCA witnesses' recommendations, are in the public interest and in the interest of the Applicants' customers.

3. Goodwill (Settlement ¶¶ 45, 54)

In his Direct Testimony, Mr. Kahal noted that the \$4.3 billion transaction price for this acquisition exceeded the net book value of the Peoples companies by approximately \$2 billion. OCA St. 1 at 22-23. Mr. Kahal acknowledged that Aqua agreed to exclude all of this goodwill from its customers' rates. OCA St. 1 at 23. Nonetheless, Mr. Kahal expressed concern that, if recorded on Aqua's books, the goodwill amount would increase the Company's equity ratio and thereby artificially inflate Aqua's weighted average cost of capital claimed in a subsequent rate case. OCA St. 1 at 23-24. Mr. Kahal therefore recommended that any equity resulting from the goodwill associated with this Transaction be excluded from the ratemaking capital structure for all of the Applicants going forward. OCA St. 1 at 24.

Similarly, in his Direct Testimony, Mr. Smith explained that "push down" accounting may provide Aqua America the opportunity to record Goodwill associated with the Transaction on the Company's books. OCA St. 2 at 39. To address this concern, Mr. Smith recommended that the Applicants commit to not recording any Goodwill associated with the Transaction on the books of the Applicants post-closing. In his Rebuttal Testimony, Mr. Schuller emphasized that any goodwill resulting from the Transaction will not be recorded on the books of any Pennsylvania utility associated with this Transaction and will not be recoverable through rates. JA St. 2-R at 13.

The Settlement memorializes Mr. Kahal's and Mr. Smith's recommendations concerning the \$2 billion of goodwill associated with this Transaction. The Settlement provides:

Aqua America commits that no equity or debt issued to finance the acquisition premium or goodwill will be included in ratemaking capital structure of any of the PA utility subsidiaries. Any goodwill resulting from this transaction on the balance sheet of Aqua PA or the Peoples Companies shall be excluded from that utility's

ratemaking capital structure.

Settlement ¶ 45. All goodwill associated with this Transaction must also be permanently excluded from the Applicants' base rates. Settlement at ¶ 54.

The goodwill associated with this Transaction will not be recovered or financed by the Applicants' customers, either directly or indirectly, in the future. As a result, the Applicants' customers are not forced to shoulder the premium that Aqua is paying for the Peoples companies. The OCA submits that the provisions preventing the Applicants from recovering the \$2 billion of goodwill associated with this Transaction are in the public interest and in the interest of the Applicants' customers.

4. Credit Downgrade (Settlement ¶ 50)

In his Direct Testimony, Mr. Kahal explained that, while both Companies currently have strong credit quality, the possibility remains that financial pressure and challenges associated with the Transaction may act to impair the credit quality of the Applicants going forward. OCA St. 1 at 32. To address this possibility, Mr. Kahal recommended that the Applicants be required to provide prompt notice to the Commission, as well as the Statutory Advocates, in the event of a credit downgrade by the Applicants to below medium triple B.⁷ OCA St. 1 at 32. In his Rebuttal Testimony, Mr. Schuller indicated that the Applicants accepted this recommendation. JA St. 2 at 24.

The Settlement reflects the prompt notice requirement agreed to by the Applicants in Rebuttal Testimony. Specifically, the Settlement requires:

In the event of a credit downgrade at Aqua America, PNG or Aqua PA to below medium triple B, the companies will provide notice to the Commission within 5 business days, which will state the reason for the downgrade and remedial actions intended to strengthen credit ratings.

⁷ Mr. Kahal explained that medium triple B equated to a BBB under Standard & Poor's rating system and Baa2 under Moody's rating system.

Settlement ¶ 50. The requirement to provide notice to the Commission in the event of a credit downgrade satisfies the OCA's concerns. While the Applicants have strong credit ratings at present, the possibility exists that their ratings may become impaired in the future. The Settlement not only requires the Applicants to provide the reasons for the credit downgrade but also requires a plan for how the Applicants intend to rehabilitate their credit ratings back to a strong position. The OCA submits that the provisions requiring prompt notification in the event of a credit downgrade and a remediation plan are in the public interest and in the interest of the Applicants' customers.

5. Financing the Transaction (Settlement ¶¶ 46, 51, 52)

In his Direct Testimony, Mr. Kahal explained that the Transaction will initially be financed with a "bridge" loan, followed shortly by permanent debt and equity financing. OCA St. 1 at 27. Mr. Kahal expressed concerns, however, that Aqua America had not fully committed to a financing plan despite the assumption of a significant amount of debt by acquiring Peoples. OCA St. 1 at 27-28. Mr. Kahal therefore recommended that Aqua America commit to a financing plan for the Transaction that is comprised of at least fifty percent common equity. OCA St. 1 at 27-28. In his Rebuttal Testimony, Mr. Daniel J. Schuller accepted Mr. Kahal's recommendation to commit to a financing plan for the Transaction that is at least fifty percent common equity and further indicated that the equity raise for the Transaction had been successfully completed. JA St. 2-R at 23.

The Settlement solidifies the commitment to a financing plan agreed to by Aqua America. Aqua America committed to financing the Transaction with at least fifty percent equity, which is calculated inclusive of the \$1.3 billion of debt assumed by Aqua America as a result of acquiring Peoples. Settlement at ¶ 46. Further, Aqua America commits to exclude from its subsidiaries balance sheets any new equity or debt issued to finance the Transaction. Settlement at ¶ 47. The

Settlement also establishes maximum debt ratios that the Applicants can maintain post-closing by providing:

51. The Peoples Companies will maintain a debt ratio measured at an annual level of no more than 50% (inclusive of short term debt, but exclusive of goodwill) for at least five-years post-closing.

52. Aqua PA will maintain a debt ratio of no more than 50% (inclusive of short term debt, but exclusive of goodwill) for at least five-years post-closing.

Settlement ¶¶ 51, 52. The commitments made in the Settlement demonstrate that Aqua America has a concrete plan to finance the Transaction in a fiscally responsible manner. Further, this financing plan acknowledges and addresses the OCA's concerns with respect to the amount of debt that Aqua America will assume as part of the Transaction. The OCA submits that the provisions relating to Aqua America's financing plan for the Transaction are in the public interest and in the interest of the Applicants' customers.

6. Transaction Costs, Transition Costs, Termination Fees (Settlement ¶¶ 57-59)

In his Direct Testimony, Mr. Smith explained that transaction costs were costs incurred to complete the Transaction, and provided several examples, including: consultant costs and legal fees, retention payments, costs associated with shareholder meetings related to the Transaction, and potential shareholder litigation costs. OCA St. 2 at 53. Mr. Smith explained that transaction costs should be borne by the Applicants, and not the Applicants' customers because the Transaction would not have occurred except for the Applicants' decision to effectuate the Transaction. OCA St. 2 at 54. Mr. Smith acknowledged that the Applicants agreed not to seek recovery of transaction costs related to the current Transaction but further delineated exactly what costs should be considered transaction costs in this proceeding and recommended that the Applicants commit to not seeking recovery of these costs through rates. OCA St. 2 at 55-56. Mr. Smith also recommended that any transaction costs related to the current Transaction be recorded

on the books of Aqua America and be specifically tracked to verify that no Transaction costs are being included in the cost of service of Aqua America or any of its subsidiaries post-closing. OCA St. 2 at 77.

Similarly, Mr. Smith explained that transition costs are those “costs to achieve” the Transaction. OCA St. 2 at 58. Transition costs in this proceeding would include costs necessary to integrate and combine the Aqua entities with the Peoples entities. OCA St. 2 at 58. Specifically, these transition costs could include costs associated with the need to integrate and combine communications system, physical facilities, and certain corporate costs. OCA St. 2 at 58. Like transaction costs, Mr. Smith argued that transition costs should be borne by the Applicants and completely excluded from rates. OCA St. 2 at 59-60. Mr. Smith recommended that the Applicants commit to permanently excluding transition costs from the Applicants’ rate bases and that all transition costs be recorded on the books of Aqua America and specifically tracked to verify that no transition costs are being included in the cost of service of Aqua America or any of its subsidiaries post-closing. OCA St. 2 at 59-60.

Finally, Mr. Smith noted that termination fees could be incurred for failure of the Applicants to consummate the Transaction. OCA St. 2 at 57. Mr. Smith explained that any termination fees should be borne by the Applicants’ shareholders and not the Applicant’s customers. OCA St. 2 at 57.

In his Rebuttal Testimony, Mr. Daniel J. Schuller explained that the Applicants would in no way seek to recover through rates any transaction costs or transition costs associated with the Transaction post-closing. JA St. 2-R at 26-27. Mr. Schuller did clarify, however, that costs associated with implementing the Peoples’ SAP system at Aqua America’s operations would be recovered through rates. JA St. 2-R at 27. In his Surrebuttal Testimony, Mr. Smith noted that the

Applicants had agreed not to recover through rates any transaction or transition costs related to this Transaction. OCA St. 2-SR at 7, 11-12. Additionally, Mr. Smith explained that his recommendation to permanently exclude transaction costs and transition costs from the Applicants' rate bases did not cover the future implementation of Peoples' SAP system at Aqua America's operations. OCA St. 2-SR at 12. Mr. Smith expressed concern, however, that the Applicants did not address termination fees or how those fees may be recovered in rebuttal testimony. OCA St. 2-SR at 7-8.

The Settlement addresses the OCA's concerns with respect to transaction costs, transition costs, and termination fees and incorporates many of the recommendations made by Mr. Smith throughout his testimony. With respect to transaction costs, the Settlement provides:

Aqua America and the Peoples Companies will not claim in any future rate proceedings any Transaction Costs to complete the transaction. Such costs shall be borne by Aqua/Peoples Companies shareholders. All Transaction Costs shall be recorded on Aqua America and Funding books and shall be tracked to facilitate verification that none of the costs are being directly or indirectly included in cost of service for any Pennsylvania utility.

Settlement ¶ 57. Similarly, the Settlement address transition costs by stating:

Aqua America commits that no Transition costs (incremental costs incurred to facilitate integration of companies, including all costs listed in Settlement Parties Joint Exhibit No. 2 (confidential), shall be included in Aqua PA's or Peoples Companies' cost of service in any rate case.

Settlement ¶ 59. Finally, the Settlement requires that:

Any termination fees incurred if the Acquisition is not consummated shall be borne by the shareholders and will not be recovered from Pennsylvania utility ratepayers.

Settlement ¶ 58.

The Settlement ensures that any transaction costs, transition costs, and termination fees associated with the Transaction will not be shouldered by the Company's customers. Instead, the Settlement recognizes that these costs are only the result of the Applicants' desire to effectuate this

Transaction, and, as such, the Applicants' shareholders should bear any transaction costs, transition costs, and termination fees. The OCA submits that the provisions requiring the Applicants' shareholders to bear any transaction costs, transition costs, and termination fees are in the public interest and in the interest of the Applicants' customers.

7. Tax Implications (Settlement ¶¶ 61, 62)

In his Direct Testimony, Mr. Smith testified that conditions needed to be imposed to ensure that Peoples' income taxes did not increase as a result of the Transaction. OCA St. 2 at 60. Mr. Smith recommended that Peoples quantify the impact of constraints on Peoples' ability to monetize available tax benefits resulting from the Transaction and that Peoples report this information in subsequent cases. OCA St. 2 at 60-61. Mr. Smith also explained that the Application did not contemplate whether the Applicants would make an election under Section 338(h)(10) of the Internal Revenue Code to treat the acquisition as an asset purchase for federal income purposes. OCA St. 2 at 61. Making a Section 338(h)(10) election could eliminate the accumulated deferred income taxes (ADIT) that the Peoples companies had accumulated over time. OCA St. 2 at 61. ADIT acts as a substantial deduction to a utility's rate base, and Mr. Smith expressed concern that eliminating this ADIT balance could result in higher rates for the Applicants' customers. OCA St. 2 at 61. Mr. Smith recommended that Aqua America commit to not making a Section 338(h)(10) election. OCA St. 2 at 61.

In his Surrebuttal Testimony, Mr. Schuller argued that Aqua America did not believe that the Transaction would result in any constraints on Peoples' ability to monetize available tax benefits. JA St. 2-R at 27. Additionally, Mr. Schuller explained that Aqua America never intended to make a Section 338(h)(10) election under the Internal Revenue Code. JA St. 2-R at 27-28. Mr. Schuller accepted Mr. Smith's recommendation and indicated that Aqua America will not make a

Section 338(h)(10) election post-closing. JA St. 2-R at 27-28.

The Settlement incorporates the recommendations made by Mr. Smith in his Direct Testimony. The Settlement requires the Peoples companies to quantify and report the impact of constraints on Peoples' ability to monetize available tax benefits resulting from the Transaction. Settlement at ¶ 61. Additionally, Aqua America commits to not making a Section 338(h)(10) election under the Internal Revenue Code post-closing. Settlement at ¶ 62.

These tax-related provisions ensure that the Applicants' customers will not experience higher rates due to eliminating Peoples' ADIT if the Company made a Section 338(h)(10) election. Additionally, any impact that the Transaction may have on Peoples' ability to monetize available tax benefits must be quantified and reported to interested parties in subsequent cases. The OCA submits that these tax-related provisions within the Settlement are in the public interest and in the interest of the Applicants' customers.

8. Short-Term Debt (Settlement ¶ 67)

In his Direct Testimony, Mr. Kahal explained that short-term debt was an important source of financing for natural gas distribution companies because of the seasonality of natural gas operations and storage. OCA St. 1 at 33. Mr. Kahal expressed concern, however, that the revolving credit agreement that currently provides Peoples with its short-term debt needs is the Company's only means of obtaining short-term debt financing. OCA St. 1 at 34. Mr. Kahal recommended that, post-closing, the Applicants investigate the feasibility of implementing a commercial paper program to provide a second, and less expensive, means of obtaining short-term debt for Peoples. OCA St. 1 at 34. In his Rebuttal Testimony, Mr. Schuller accepted Mr. Kahal's recommendation of investigating the feasibility of implementing a commercial paper program post-closing. JA St. 2 at 25.

The Settlement solidifies Aqua America's commitment to study the feasibility of implementing a commercial paper program. The Settlement requires that:

Aqua America shall investigate the feasibility of establishing a commercial paper program for short-term debt financing for the Peoples Companies and Aqua America within six months of closing on the transaction.

Settlement at ¶ 67. The six month deadline ensures that this investigation to supplement the revolving credit agreement is done quickly after the closing of the Transaction. The OCA submits that the provisions requiring the Applicants to investigate the feasibility of a commercial paper program are in the public interest and in the interest of the Applicants' customers.

9. Acquisition of Troubled Regulated Water/Wastewater Systems (Settlement ¶ 53)

In his Direct Testimony, Mr. Smith explained that Aqua PA has acquired and remediated several regulated water and wastewater system in the Commonwealth that are considered "troubled" systems. OCA St. 2 at 34. Mr. Smith expressed concern that, should the current Transaction prevent Aqua PA from continuing to acquire these troubled systems, customers of these troubled systems would be at risk of receiving inadequate water service. OCA St. 2 at 35. Mr. Smith concluded that, if this were the case, then the current Transaction would be detrimental to the public interest. OCA St. 2 at 35.

In his Rebuttal Testimony, Mr. Franklin argued that the current Transaction will not have any negative impact on Aqua PA's ability to acquire troubled water and wastewater systems in the future. JA St. 1-R at 16. Mr. Franklin explained that current strong interest in Aqua America's equity allows for continued access to capital for investments in the future. JA St. 1-R at 16. Additionally, Mr. Franklin indicated that Aqua America was willing to commit to continue seeking the acquisition of troubled regulated water and wastewater systems post-closing. JA St. 1-R at 16-17.

The Settlement incorporates the commitment made by Mr. Franklin in his Rebuttal Testimony by providing that:

Aqua America will continue to seek to acquire and rehabilitate troubled Commission regulated water and wastewater systems. The transaction will not interfere with Aqua PA's ability to finance or pursue these acquisitions.

Settlement at ¶ 53. The OCA submits that the provisions requiring Aqua America to continue seeking the acquisition of troubled regulated water and wastewater systems in the Commonwealth is in the public interest.

10. Acquisition of Troubled Regulated Natural Gas Systems (Settlement ¶ 97)

In his Direct Testimony, Mr. Mierzwa noted that the Peoples companies have been willing to work with Pennsylvania ratepayers that are faced with potential abandonment by their current natural gas service provider. OCA St. 4 at 8. Mr. Mierzwa explained that Peoples expended the time and resources necessary to maintain natural gas service for these customers despite having no obligation to do so. *Id.* Mr. Mierzwa expressed concern that, given the amount of debt Aqua America would incur because of the Transaction, Peoples may face constraints going forward in their attempts to assist natural gas customers facing abandonment. OCA St. 4 at 9. Mr. Mierzwa recommended that, at the request of the Statutory Advocates, Peoples be required to intervene in proceedings involving the potential abandonment of natural gas service to customers served by natural gas systems in close proximity to Peoples. OCA St. 4 at 9-10.

In his Rebuttal Testimony, Mr. Gregorini indicated that Peoples was not opposed to continue providing assistance to customers facing abandonment by their natural gas service provider. JA St. 6-R at 14-15. Mr. Gregorini was concerned, however, that the recommendation provided by Mr. Mierzwa would require Peoples to intervene before the Company had a chance to evaluate the issues surrounding the abandonment or require People to intervene in matters where

the Company is not authorized to serve. Id. In his Surrebuttal Testimony, Mr. Mierzwa explained that the OCA was not attempting to force or compel Peoples to acquire facilities without the opportunity for analysis and consideration. OCA St. 4-SR at 4.

The Settling Parties agreed to address customers facing potential abandonment in a manner that satisfies both Mr. Mierzwa's and Mr. Gregorini's concerns. Specifically, the Settlement provides:

The Peoples NGDCs will intervene (at the request of any statutory advocates) in any proceeding involving the potential abandonment of natural gas customers by others in an area neighboring the Peoples Companies' existing pipeline distribution system, for the purposes of studying and evaluating the possibility of the Peoples Companies extending service to those customers. The intent of this condition is premised on the future possibility of a troubled natural gas provider needing assistance whereby it could be helpful to have another entity extend service. It is not intended to create an issue with service territory disputes and is limited to special circumstances.

Settlement ¶ 97. This provision allows Peoples to continue evaluating opportunities to acquire natural gas distribution systems that are at risk of abandoning their customers post-closing. Because this provision allows ratepayers of the Commonwealth to continue enjoying the benefits of natural gas, the OCA submits that this provision is in the public interest.

C. Governance and Management (Settlement § D.)

Throughout this proceeding, the OCA expressed concern with respect to the governance and management of the Applicants post-closing. In particular, the OCA provided recommendations with regard to Aqua America's Board of Directors, the headquarters of the Peoples companies post-closing, and the impact on current employees at the Peoples companies.

1. Aqua Board of Directors (Settlement ¶¶ 73, 74, 78)

In his Direct Testimony, Mr. Kahal noted that presently Aqua America focuses almost exclusively on regulated water/wastewater operations and explained that, post-closing, two-thirds

of Aqua America would involve regulated water/wastewater operations and one-third of Aqua America would involve regulated natural gas operations. OCA St. 1 at 25. Mr. Kahal expressed concern that the current composition of Aqua America's nine-person Board of Directors lacked the natural gas experience necessary to address the safety, operational, and service issues presented by providing natural gas service. OCA St. 1 at 25-26. As a result, Mr. Kahal recommended that Aqua America add two members to its Board with natural gas utility experience. OCA St. 1 at 25-26. Additionally, Mr. Kahal recommended that at least one Board member be an independent director and that at least one Board member have ties to the Pittsburgh area. OCA St. 1 at 25. Mr. Kahal also recommended that some Board meetings be held in the Pittsburgh area. OCA St. 1 at 25.

In Rebuttal Testimony, Mr. Franklin, disagreed that Mr. Kahal's recommendations were necessary to effect the Transaction. JA St. 1-R at 13-14. Mr. Franklin opposed removing or replacing current Board members and noted that Aqua America's newest proposed Board member had operational roles involving natural gas operations at the Southern Company. JA St. 1-R at 14-15. Nonetheless, Mr. Franklin agreed that as a current Board member exited or retired, Aqua would strongly consider new Board members with natural gas experience. JA St. 1-R at 15. Mr. Franklin, however, opposed the idea of limiting the selection of Board members to candidates with ties to any particular geographic area. JA St. 1-R at 15.

The Settlement addresses the composition of Aqua's Board of Directors post-closing. With the addition of Aqua America's newest Board member, the Company's Board now has a new member with experience in natural gas operations. Additionally, the Settlement provides that:

Aqua America currently has one Board member that is employed by a natural gas utility and all nine board of director seats will be filled at the closing of this transaction. Aqua America commits to include natural gas distribution utility operations as a component of its search process for board membership and will

endeavor to have additional members on its Board with background and experience with natural gas distribution utility operations. When any new Board member is added over the next ten years, Aqua America commits to providing notice of the change to its Board's composition to OCA, I&E, OSBA and the Commission. Such notice shall include identification of the new Board member and sufficient background on their work history and experience. The commitment acknowledges that compliance with rules regarding conflict of interest, related party transactions and director independence impact this Paragraph.

Settlement at ¶ 73.

The Settlement also requires Aqua America to hold at least one Board meeting in Pittsburgh every year for at least five years post-closing. Settlement at ¶ 74. In addition, Aqua America's Board must meet with the executive management of Peoples at least twice per year for five years post-closing, and one of these meetings must take place in Pittsburgh, while the other must take place within Peoples' service area. Settlement at ¶ 78.

The commitments made by Aqua America in the Settlement seek to ensure that Aqua America's Board will have the experience necessary to safety and effectively provide oversight as to a regulated natural gas utility within the Commonwealth. The newest addition to Aqua America's Board, an additional member proposed before settlement negotiations began, signifies Aqua America's intent to have a Board with experience in both water/wastewater operations and natural gas operations. Additionally, the Settlement facilitates open lines of communication between the Aqua America Board and Peoples' management. Required meetings between Aqua America's Board and the executive management at Peoples will introduce Aqua America's Board to regulated natural gas operations and will allow Peoples to integrate with its new holding company. The Settlement also provides the opportunity for Aqua America's Board to become familiar with the geographic region that Peoples is obligated to serve. The OCA submits that the provisions relating to Aqua America's Board of Directors are in the public interest and in the interest of the Applicants' customers.

2. Peoples' Headquarters (Settlement ¶¶ 81, 82)

With regard to the Peoples' headquarters, OCA witness Ralph C. Smith recommended that Aqua America commit to maintaining the headquarters of the Peoples companies in Pittsburgh, Pennsylvania, at least until the current lease governing the Peoples' headquarters expired on January 31, 2029. OCA St. 2 at 67-69. Mr. Franklin also acknowledged that the Applicants were willing to commit to maintaining the headquarters of the Peoples companies in Pittsburgh post-closing. JA St. 1-R at 17-18.

The Settlement solidifies Mr. Franklin's commitment by providing that:

81. Aqua America will continue to maintain the current Peoples Companies' corporate headquarters through at least January 31, 2029, at which point it will evaluate whether to exercise the option to extend the lease by 5 more years or negotiate a new lease.

82. After January 31, 2029, the Peoples Companies commit to not moving their headquarters outside of the Peoples Companies' service territory unless through application to, and approval by, the Commission.

Settlement ¶, ¶ 81, 82. The Settlement acknowledges the importance of maintaining the headquarters of the Peoples companies in Pittsburgh while Peoples transitions into an Aqua America subsidiary and requires that Peoples remain in Pittsburgh post-closing unless the Commission approves of any proposed relocation.

3. Current Employees (Settlement ¶¶ 76, 77)

In his Direct Testimony, Mr. Smith argued that maintaining field office staffing at the Peoples companies was important because of the safety concerns presented by operating a natural gas distribution company. OCA St. 2 at 66. Mr. Smith recommended that the Applicants commit to maintaining field office staffing at least at the levels present during Peoples last base rate case. OCA St. 2 at 67. Mr. Smith also recommended that the Applicants commit to adhere to the collective bargaining agreements currently in effect post-closing. OCA St. 2 at 67.

In his Rebuttal Testimony, Mr. Franklin emphasized that no planned workforce reductions were contemplated as part of this Transaction. JA St. 1-R at 20. Mr. Franklin testified that Aqua America was willing to commit to maintain field office staffing at the Peoples companies for at least the next three years post-closing. JA St. 1-R at 20.

The Settlement acknowledges the commitment made by Mr. Franklin in his Rebuttal Testimony, extends that commitment, and addresses the concerns Mr. Smith expressed in his Direct Testimony. The Settlement requires that:

The Peoples Companies commit to maintain at least the field staffing level for the next five years, with the baseline staffing numbers established at closing; providing however that the baseline number shall be no less than 825 employees, of which no less than 720 shall be members of UWUA, which are the actual number of field employees and union-represented field employees working in Pennsylvania field locations on October 31, 2018. The Peoples Companies agree to provide annual reports to the Commission, I&E, OSBA, OCA, and UWUA regarding field offices and staffing levels in its service territory for a period of five years.

Settlement at ¶ 76. Finally, the Settlement requires that the Applicants commit to adhere to the collective bargaining agreements that are currently in effect at the time of closing. Settlement at ¶ 77. The OCA submits that the provisions associated with current employees of the Applicants are in the public interest and in the interest of the Applicants' customers.

D. Service Related Commitments (Settlement ¶ E.)

The OCA has sought to ensure that service quality and reliability would be maintained or improved as a result of this Transaction. These protections are especially important since service and reliability can often be overlooked in the process of merging Companies. OCA witness Barbara R. Alexander noted that Aqua did not provide any verifiable assurance that customer service and service quality will not deteriorate. OCA St. 3 at 12. Ms. Alexander further noted a lack of any identification of specific efficiencies or best practices that would be implemented if the Transaction were approved. Id. In her Direct Testimony, Ms. Alexander made several

recommendations regarding service related commitments for both Aqua America and the Peoples companies. OCA St. 3 at 3-6.

1. Service Commitments Made by Aqua America (Settlement ¶¶ 83, 85, 86-88)

The Settlement includes several provisions to ensure that Aqua PA adopts Peoples' best practices. Ms. Alexander recommended that Aqua PA should be required to meet its internal 2019 performance objectives and adopt future annual performance objectives that reflect ongoing improvements and prevent deterioration of service. OCA St. 3 at 4. In regard to specific service related commitments, Aqua PA has agreed to meet its internal 2019 performance objectives as follows for five years:

- i. Estimate read rate – less than 0.5%
- ii. Actual read rate – 99%
- iii. Lost time accidents – 19
- iv. Responsible vehicle accidents – 4.1
- v. Compliance with water regulations – 99.5%
- vi. Compliance with wastewater regulations –94.5%

Settlement at ¶ 88. These performance objectives contain the same percentages for each respective performance objective that Ms. Alexander recommended in her Direct Testimony. OCA St. 3 at 4. The OCA submits that the Applicants' adoption of Ms. Alexander's metrics enumerating specific performance objectives helps ensure that best practices are shared between the Applicants to benefit the public.

In regard to Aqua PA's specific call center performance metrics, Ms. Alexander recommended as follows:

Aqua should improve the performance of its call center for Pennsylvania customers to meet or exceed the current performance of the Peoples companies. At a minimum, I recommend that Aqua meet the same performance standards that Peoples agreed to meet in the 2013 Settlement and that Peoples currently meets or exceeds:

- Answer 82% calls within 30 seconds;
- Achieve an average Busy-out Rate less than 0.25%; and

- Achieve an average Call Abandonment Rate that is no higher than 2.5%.

OCA St. 3 at 3. The Settlement adopts this recommendation with slight modification. Instead of achieving an average call abandonment rate no higher than 2.5%, the Settlement provides for an average call abandonment rate that is no higher than 4% for 2020-2021, no higher than 3% for 2022-2023, and no higher than 2.5% for 2024. Settlement at ¶ 83. This provision sufficiently addresses Ms. Alexander's concerns since it achieves a call abandonment rate that is no higher than 2.5% within a specified set of years. Specifying the amount of time to achieve a call abandonment rate no higher than 2.5% is reasonable and responsive to Ms. Alexander's recommendation that Aqua America commit to meet or exceed the current performance of Peoples.

In regard to Aqua PA's tracking of customer disputes, Ms. Alexander recommended as follows in her Direct Testimony:

Aqua should develop a system to track customer disputes and complaints similar to that used by Peoples to ensure that customer disputes and complaints are categorized by the major reason for the contact and conduct a root cause analysis of its customer dispute and complaint trends annually. The database for this information should include the resolution of the dispute or complaint. At least annually, Aqua should analyze the complaint database to identify red flags, the potential for infractions, and develop needed reforms to respond to this analysis. My recommendation is similar to that agreed to by Aqua in the pending settlement of its recent base rate case.

OCA St. 3 at 3. The Settlement is responsive to Ms. Alexander's recommendation and provides that Aqua PA will develop a system to track Aqua PA customer complaints in a live Excel spreadsheet, consistent with the Joint Petition for Settlement submitted in Aqua PA's base rate case at Docket Nos. R-2018-3003558 and R-2108-3003561. Settlement at ¶ 85. The Settlement further provides that Aqua PA will review this information and conduct a root cause analysis of adverse trends at least annually. Id. The OCA submits that this provision is in accordance with

the Joint Petition for Settlement submitted in Aqua PA's base rate case and is a reasonable approach to developing a system that accurately tracks customer disputes and complaints.

Ms. Alexander also recommended that Aqua PA adopt an internal process to track appointments for field operations and report the rate at which appointments are not kept due to Company reasons. OCA St. 3 at 3. Ms. Alexander noted that Aqua PA does not currently track whether field appointments are kept. OCA St. 3 at 14. The Settlement adopts Ms. Alexander's recommendation as follows:

Aqua PA will develop and adopt a methodology to track whether appointments are made and kept for field operations in a manner similar to that used by the Peoples companies within 18 months and adopt internal performance standards that meet or exceed those of the People Companies for this performance standard for five years.

Settlement at ¶ 87. This provision is in the public interest since field operations will now be tracked and specifically details a best practice shared between the Applicants.

Ms. Alexander also made the following recommendation regarding the number of days to respond to customer complaints:

Aqua should commit to a significant reduction in the number of days to respond to customer complaints so that within 18 months the average is reflective of Peoples (3 days) and that the number of infractions are substantially reduced to 10, as reported by "other Class A water utilities" in 2018.

OCA St. 3 at 3. In her Direct Testimony, Ms. Alexander noted that Aqua PA's response time to customer complaints in 2017 was over 17 days. OCA St. 3 at 15. Under the Settlement, Aqua PA will commit to a reduction in the number of days to respond to customer complaints so that, within 24 months, the average is less than 10 days. Settlement at ¶ 86.

In sum, Aqua PA has adopted a significant amount of Ms. Alexander's Aqua-specific service commitment recommendations and the Settlement represents a reasonable product of compromise. The OCA submits that the service commitments made by Aqua PA are in the public

interest and in the interest of the Applicants' customers.

2. Service Commitments Made by the Peoples Companies (Settlement ¶¶ 90-92)

The Settlement also includes several provisions that ensure that Peoples' service quality and reliability will not deteriorate as a result of the Transaction.

Ms. Alexander raised concerns in her Direct Testimony as to whether Peoples would continue to meet its service performance goals for 2019. OCA St. 3 at 4-6. Regarding the specifics of Peoples performance commitment, Peoples has agreed to meet all of the following performance standards identified in Ms. Alexander's Direct Testimony for a period of five years:

- i. Call center service level – 82%
- ii. % of calls abandoned – 2.0%
- iii. Busy-out rate – 0%
- iv. % of bills not rendered each billing period - .008%
- v. % of meters not read within 6 months - .15%
- vi. % of meters not read within 12 months – 0.15%
- vii. % of company disputes not answer within 30 days – 1%
- viii. Emergency response – average minutes to respond – 27.5 minutes

Settlement at ¶ 91; OCA St. 3 at 5. Peoples will continue to track its field operations appointments and continue its performance standard of meeting 99% of all appointments for a five-year period.

Settlement at ¶ 92; OCA St. 3 at 5. Moreover, the Settlement ensures that the Parties and the Commission can monitor Peoples' service quality and reliability. Settlement at ¶ 90. In sum, the Applicants have adopted all of Ms. Alexander's recommendations to ensure that Peoples' performance would not deteriorate as a result of the Transaction and the Settlement is in the public interest. The OCA submits that the service commitments made by Peoples are in the public interest and in the interest of the Applicants' customers.

3. Reporting Requirements (Settlement ¶¶ 89, 90, 96)

To assist in tracking the full scope of the terms and conditions of the Settlement, the Settlement contains several reporting requirements. Ms. Alexander recommended in Direct

Testimony that Aqua PA report on its customer service and service quality performance annually and that, if Aqua PA fails to achieve applicable performance requirements, a formal proceeding before the Commission is to be held. OCA St. 3 at 4. The Settlement provides for an annual report to be provided to the Statutory Advocates for a period of five years regarding Aqua PA's and Peoples' achievement of service quality metrics. Settlement at ¶¶ 89-90. If Aqua PA or Peoples does not achieve an identified metric, the report will include the reasons for failure, a plan to reach the service quality metric, and a collaborative with the statutory parties to discuss the report. Id.

Ms. Alexander also recommended that Aqua PA conduct an analysis and create a report regarding the implementation of the Peoples SAP system. OCA St. 3 at 4. Ms. Alexander expressed concern that the potential benefit of a new SAP system requires additional analysis and determination of costs and benefits since Aqua PA will seek to recover these costs from customers. OCA St. 3 at 32. Under the Settlement, Aqua PA will conduct an analysis of the implementation of the Peoples SAP system and submit the analysis and report to the statutory parties prior to any implementation of the SAP system to Aqua PA. Settlement at ¶ 96. Providing an analysis and report regarding the costs and benefits of SAP implementation is in the public interest since customers will be paying the costs of the implementation.

The reporting requirements contained in the Settlement are important because they will allow the OCA and other parties to track best practices shared between the companies and provides the OCA and other parties with important data in a future base rate case. As such, the OCA submits that these reporting requirements are in the public interest and in the interest of the Applicants' customers.

E. Low Income Service Programs (Settlement ¶ F.)

Ms. Alexander raised issues concerning whether attention and funds would be diverted

from vital universal service programs in the process of Aqua America acquiring Peoples. OCA St. 3 at 27-28. As such, Ms. Alexander made several recommendations regarding the Applicants' universal service programs low-income programs in her Direct Testimony. OCA St. 3 at 6. Specifically, Ms. Alexander recommended that Peoples maintain its obligations to improve its universal service programs for an additional five years after the final order in this proceeding. Id. Ms. Alexander also recommended increasing Peoples' Low Income Usage Reduction Program (LIURP) funding levels and recommended that Aqua America shareholders fund the increase for a period of four years. OCA St. 3 at 23.

The Settlement addresses these concerns to the satisfaction of the OCA. The Settlement provides that Peoples will continue to fund its Customer Assistance Program (CAP), LIURP, CARES, and hardship funds at levels that are not less than the funding levels proposed in its most recent Universal Service and Energy Conservation Plan for 2021, in addition to the increased funding outlined in the Settlement. Settlement at ¶ 98. The Settlement also provides that:

Aqua America shareholders will contribute an additional \$100,000 each year for four years after closing to Dollar Energy. This increase will be over and above the funding levels that are currently in place, and will be allocated proportionately based on the needs assessments across both divisions of Peoples Natural Gas and Peoples Gas.

Settlement at ¶ 100.

The Settlement requires Aqua America to increase Peoples' LIURP emergency furnace repair by \$75,000 and specifies that this increase will be paid by Aqua America shareholders for a three-year period post-closing. Settlement at ¶ 101. The increase to the budget for Peoples' LIURP will assist customers with emergency repair and replacement, and in particular, customers who otherwise fall into the gap of emergency assistance. The Settlement also provides that Peoples will continue utilizing community-based organizations and its Universal Service Advisory Group

to provide low-income advocates and other stakeholders with the opportunity to share ideas and initiatives directly with the Peoples personnel responsible for the planning and implementation of Peoples' universal service programs. Settlement at ¶¶ 102-106.

Regarding Aqua PA's low-income programs, Ms. Alexander recommended that Aqua PA commit to developing additional data and tracking of its low income customers, utilize Dollar Energy to solicit enrollment in low-income programs, and contribute an additional \$100,000 annually to the Helping Hand Program for a period of three years. OCA St. 3 at 6. Under the Settlement, Aqua PA agreed to review the feasibility of collecting the data that Ms. Alexander recommended that Aqua track in regard to its low-income programs. Settlement at ¶ 107. Moreover, the Settlement states that Aqua America's shareholders will contribute an additional \$50,000 to the hardship grant component being developed for Aqua PA's Helping Hand program for a period of four years. Settlement at ¶ 109.

These provisions address the OCA's concerns regarding the merger's effect on low-income and universal service programs, provide affirmative benefits to the most vulnerable segments of Aqua's and Peoples' customers and seeks to ensure that attention will not be diverted away from these programs as a result of the Transaction. This aspect of the Settlement resolves these issues to the satisfaction of the OCA. Therefore, OCA submits that the universal service and low income commitments made by the Applicants are in the public interest and in the interest of the Applicants' customers.

F. Community Commitment (Settlement ¶ G.)

In his Direct Testimony, Mr. Smith testified that pre-closing levels of charitable contributions and community support should be maintained or increased post-closing. OCA St. 2 at 65-66. Mr. Smith recommended that, for ten years post-closing, the Applicants should

contribute at least their highest annual amount during the five years pre-closing to public 501(c)(3) charities. OCA St. 2 at 66. Mr. Smith further recommended that these charitable contribution be reported to show the amount of the contribution and the recipient of the contribution. OCA St. 2 at 66. Finally, Mr. Smith recommended the Applicants commit to not recovering these charitable contributions through rates. OCA St. 2 at 66. In his Surrebuttal Testimony, Mr. Smith indicated that the Applicants have not yet committed to a minimum level of charitable contributions for any specific period of time post-closing. OCA St. 2-SR at 10-11.

The Settlement requires charitable contributions continue to be made by the Applicants.

Specifically, the Settlement requires:

Aqua America commits to spending at least one half of one percent of pre tax net income each year for charitable contributions with a goal of spending one percent of pre tax net income for charitable contributions annually by the fifth anniversary of the closing. The Peoples Companies shall commit to spending at least \$2.7 million annually in corporate contributions for a period of not less than 5 years.

Settlement at ¶ 113. Additionally, the Settlement requires Aqua America to report these charitable contributions to the OCA, I&E, and OSBA each year for at least five years post-closing.

Settlement at ¶ 114. Importantly, this provision also prohibits the Applicants from recovering charitable contributions through customer rates. Settlement at ¶ 114.

IV. CONCLUSION

The OCA submits that the terms and conditions of the Joint Petition for Approval of Non-Unanimous, Complete Settlement in this proceeding, taken as a whole, represent a fair and reasonable resolution of the issues raised by the OCA in this proceeding. Therefore, the OCA submits that the Settlement should be approved by the Commission without modification as being in the public interest.

Respectfully Submitted,



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Appendix C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Joint Application of Aqua America Inc., Aqua : A-2018-3006062
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Equitable Division for All of the Authority and :
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Gas Company LLC Equitable Division by Way of :
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Purchase of All of LDC Funding LLC's :
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**STATEMENT OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND
ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA) IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF NON-UNANIMOUS SETTLEMENT**

June 26, 2019

CAUSE-PA Statement in Support

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), a signatory party to the Joint Petition for Approval of Non-Unanimous Settlement (“Joint Petition” or “Settlement”), respectfully requests that the terms and conditions of the Settlement be approved by the Honorable Administrative Law Judges Mary D. Long and Emily DeVoe, and the Pennsylvania Public Utility Commission (the “Commission”). For the reasons stated more fully below, CAUSE-PA believes that the terms and conditions of the Settlement are in the public interest and should be approved.

I. INTRODUCTION

CAUSE-PA intervened in this proceeding to ensure that low income customers of both the Peoples Natural Gas, LLC and Peoples Gas, LLC (collectively “Peoples”) and Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (collectively “Aqua”) would not be harmed by the proposed acquisition, and that the proposal would result in certain and material benefits for low income consumers and other vulnerable populations.

As CAUSE-PA’s expert witness Harry Geller explained in testimony, low income customers make up a significant portion of both Peoples’ and Aqua’s residential customer base, and are uniquely vulnerable to changes in the provision and administration of service. (CAUSE-PA St. 1 at 10-12). As such, it is critical that any acquisition proposal include specific and identifiable benefits to low income customers which will strengthen and enhance universal service programming over the long term and ensure seamless transition of ownership and operations for both the acquired and acquiring companies.

In relevant part, and as discussed in detail below, the Settlement includes a number of provisions which will quantifiably improve both Peoples’ and Aqua’s (collectively “Joint Applicants”) low income programing, and will ensure that Peoples’ customer service performance

will be preserved. Although not all of CAUSE-PA's positions in litigation were fully adopted, the Settlement was arrived at through good faith negotiation by the parties and strikes a reasonable balance of numerous competing interests. The Settlement is in the public interest in that it (1) addresses the ability of Joint Applicants' low income customers to access safe and affordable service, (2) balances the interests of the parties, and (3) fairly resolves several important issues raised by CAUSE-PA and other parties. If the Settlement is approved, the parties will also avoid the considerable cost of further litigation and/or appeals. As such, CAUSE-PA submits that the Settlement should be approved because it will – as a whole – provide substantial benefit to the public, consistent with the applicable legal standard in this proceeding.¹

II. PROCEDURAL HISTORY

For the purposes of this Statement in Support, CAUSE-PA adopts the Procedural History as set forth in the Joint Petition. (Joint Pet. at ¶¶ 1-27).

III. TERMS AND CONDITIONS OF SETTLEMENT

A. Goodwin/Tombaugh Gathering Systems

CAUSE-PA did not take a position in this proceeding on the Goodwin/Tombaugh Gathering Systems issue addressed in the Joint Petition.

B. Books, Records, Rate Activity and Financing

CAUSE-PA did not take a position in this proceeding on the Books, Records, Rate Activity and Financing issues addressed in the Joint Petition.

¹ The law requires the Public Utility Commission to find that the acquisition will substantially benefit the public prior to providing its approval. (CAUSE-PA St. 1 at 5; see also *Popowsky v. Pa. PUC*, 937 A.2d, 1040, 549 Pa. 583 (Pa. 2007)). Further, in granting a certificate of public convenience necessary for the acquisition, the Public Utility Commission “may impose such conditions as it may deem to be just and reasonable. (CAUSE-PA St. 1 at 5; see also 66 Pa. C.S. § 1103(a)).

C. Reliability and Pipe Replacement

CAUSE-PA did not take a position in this proceeding on the issues addressed under the Reliability and Pipe Replacement section of the Joint Petition.

D. Governance & Management

In its initial proposal, the Joint Applicants made only a vague commitment to maintain Peoples' current headquarters, and made no specific commitment regarding staffing levels, employee benefits, or the location of Peoples' ongoing operations. (CAUSE-PA St. 1 at 7). They also made no specific commitment to maintain a community presence in Peoples' service territory. (*Id.* at 7-9). As Mr. Geller explained, these initial proposals were illusory, and did not amount to a substantial benefit to the public. (CAUSE-PA St. 1 at 8-9).

The proposed Settlement includes specific and enforceable commitments by Aqua to continue to maintain the current Peoples Companies' corporate headquarters through at least January 31, 2029, at which point it will evaluate whether to exercise the option to extend the lease by 5 more years or negotiate a new lease. (Joint Pet. at ¶ 81). Further, after January 31, 2029, the Peoples Companies commit to not moving their headquarters outside of the Peoples Companies' service territory unless through application to, and approval by, the Commission. (Joint Pet. at ¶ 82).

CAUSE-PA believes that these provisions of the Settlement are in the public interest, and should be approved. The Joint Petitioners make specific, time-certain commitments, and must seek Commission approval before relocating Peoples' headquarters out Peoples' service territory. This will keep jobs in the local community and will help ensure continuity in staffing. Together,

CAUSE-PA Statement in Support

these specific and defined commitments by the Joint Applicants will provide a significant benefit to the public it serves.

E. Service Related Commitments

CAUSE-PA raised concerns throughout the proceeding that the Joint Applicants' initial proposal lacked a specific commitment to maintain Peoples' local customer service departments. As Mr. Geller explained in direct testimony, it is critical that when a customer contacts their utility for assistance, they reach someone who is located in the service territory, knows the community, and who is familiar with the types of available assistance for those in need. (CAUSE-PA St. 1 at 28). He also pointed out that Peoples' low income programs are currently administered by agencies that also administer programs for utilities with overlapping service territories, which allows for appropriate inter-utility program coordination and helps ensure that low income consumers are connected with other available assistance programs. (Id.)

As a result of this Settlement, Aqua and Peoples will be required to maintain or increase the location and staffing of call center employees in Pennsylvania. (Joint Pet at ¶ 94). Additionally, Aqua must maintain Peoples' call center within Peoples' service territory and in or near Pittsburgh. (Id.) However, if it becomes apparent that the Pittsburgh call center performance lags the results of the other call centers, Aqua reserves the right to initiate discussion with the Commission and interested parties to explore mitigation alternatives. (Id.) Additionally, any significant reductions in Pennsylvania call center staffing or transfer of call center employment outside of Pennsylvania will be subject to Commission approval. (Joint Pet. at ¶ 95).

In balance, CAUSE-PA asserts that these provisions will help ensure that the level of customer service currently available will not be diminished, and may in fact be enhanced over the long term. By providing specific and enforceable commitments, the Settlement ensures that the

public interest is furthered by the proposed acquisition. As such, CAUSE-PA believes that these provisions of the Settlement should be approved.

F. Low Income Service Programs

As explained above, CAUSE-PA intervened in this proceeding to ensure that low income customers, which make up a substantial portion of both Peoples' and Aqua's residential customers, would not be harmed by the proposed acquisition – and in fact would derive a specific and quantifiable benefit from the proposal. The need for specific and quantifiable benefits to low income customers was discussed at length in Mr. Geller's direct testimony. (CAUSE-PA St. 1 at 10-13). As Mr. Geller explained, the proposed benefits of the transaction initially asserted by the Joint Applicants already either existed without the merger, or were vague commitments as to timing and scope, without any real assurance that the purported benefits would materialize. (CAUSE-PA St. 1 at 7, 9). He also explained the harmful impact that the acquisition would have on Aqua's low income customers, as it could limit the ability and/or willingness of Aqua to provide sufficient resources to assist their low income customers in the future. (CAUSE PA St. 1 at 12). Thus, absent further guarantees of benefits to the Joint Applicants' low income customers, Mr. Geller argued that the Commission should not approve the acquisition. (CAUSE-PA St. 1 at 13).

The terms of the proposed Settlement rectify many of these identified shortcomings in the Joint Applicant's initial proposal, and will provide tangible and quantifiable benefits to low income consumers. (See Joint Pet. at ¶¶ 99-111). Each of these provisions – including general commitments related to Peoples' and Aqua's respective Universal Service programs as well as specific commitments with regard to Peoples' and Aqua's LIURP and Hardship Fund programs – are discussed in turn below.

i. Peoples' Universal Service Programs, Generally

The Joint Applicants' initial proposal made no specific commitment to preserving or enhancing Peoples' existing Universal Service Programs. When pressed through discovery, the Joint Applicants noted an intent to preserve Peoples' existing Universal Service Programs. (See CAUSE-PA St. 1 at 13, see also OCA St. 3 at 10). However, the Joint Applicants made no specific commitment for how those programs would be funded and/or operated on a forward going basis – or any commitment to make further enhancements to existing programs to ensure that low income consumers would derive a specific and tangible benefit from the proposed acquisition. (See CAUSE-PA St. 1 at 13, see also OCA St. 3 at 10).

As Mr. Geller explained in his direct testimony, Peoples is already legally required – whether owned by Aqua or not – to operate universal service programs that assist low income customers; thus, the Joint Applicants' vague promise that Aqua would maintain the programs amounted to a promise to do something they were already required to do – and did not create an affirmative benefit to the public. (CAUSE-PA St. 1 at 13). As Mr. Geller pointed out, Aqua has little to no experience with universal service programming as robust and complicated as Peoples', and raised concern that, as a result of this lack of universal service program experience, Peoples' universal service programming could be eroded over the long term. (Id.). Thus, he concluded that the Joint Applicants' vague commitment to maintain current programming, standing alone, could not be considered a public benefit – and in fact could cause distinct harm to Peoples' vulnerable customers. (Id.)

To alleviate these concerns, the Settlement includes a number of specific commitments which both preserve and enhance Peoples' existing programming over the long term. First, the Settlement includes a provision which commits to funding Peoples' Universal Service Programs,

including its Customer Assistance Program (“CAP”), Low Income Usage Reduction Program (“LIURP”), CARES, and Hardship Fund at levels which, at a minimum, are not less than the funding levels proposed in its most recent Universal Service and Energy Conservation Plan – “*plus the increased funding outlined in this settlement.*” (Joint Pet. at ¶ 98 (emphasis added)). The increased funding to these programs is discussed more thoroughly below. Additionally, the Joint Applicants agree that Peoples will continue the current Universal Service organization structure and staffing levels for its Universal Service Programs as outlined and explained in the Peoples Companies’ Universal Service and Energy Conservation Plan for 2019-2021 at Docket No. M-2018-3003177, for at least five years. (Id.)

In addition to enhanced funding, the Settlement also provides specific commitments which will help preserve and advance the management and operation of Peoples’ programs. The Joint Applicants agreed to ensure that Peoples’ universal service staff will have the appropriate authority and discretion to continue to operate the programs in a manner which is reasonably consistent with the manner in which the programs were operated prior to the acquisition. (Joint Pet. at ¶ 110). Moreover, the Settlement ensures that Peoples will continue to operate its Universal Service Advisory Group. (Joint Pet. at ¶ 104). This group has met quarterly since 2013, and allows Peoples to obtain input on a range of issues from a diverse group of stakeholders. The terms of the proposed Settlement will preserve the makeup of this group, and will ensure that the group continues to meet regularly to provide input and advice to Peoples on critical programmatic issues which may arise in the field. (Id.)

Finally, the Joint Applicants agreed that Peoples will continue its “Help at Peoples Now” program for at least the next five years after closing. (Joint Pet. at ¶ 111). This is a voluntary

program that allows Peoples' field employee personnel to make referrals to Peoples for payment and payment arrangements in lieu of termination of service. (Id.)

Together, CAUSE-PA asserts that these provisions of the Settlement are in the public interest and should be approved. Not only do these provisions more specifically preserve existing programming, going beyond the Joint Applicants' initial vague commitment to continue programs, they also enhance Peoples' current programming – helping to ensure that the assistance currently available to Peoples' low income consumers will remain strong over the longer term.

ii. Peoples' Low Income Usage Reduction Programming

As noted above, the Joint Applicant's initial proposal included only a vague commitment to continue funding Peoples' universal service programming. But Peoples is already required to continue the current pre-acquisition LIURP budget, which the Commission has already approved. (CAUSE-PA St. 1 at 18). This budget amount cannot be unilaterally reduced. (Id.) Mr. Geller explained in direct testimony that Peoples' Low Income Usage Reduction Program (LIURP) currently lacks the funds to adequately address the existing need within its service territory, and that additional funding should be made available as a condition of the proposed acquisition to ensure that low income customers would benefit from the proposed transaction. (CAUSE-PA St. 1 at 23-25). As Mr. Geller concluded, the Joint Applicants' initial commitment to continue funding at historical levels did not amount to a benefit resulting from the transaction. (Id.)

In order to provide additional benefit to low income customers, the Joint Applicants agreed in the proposed Settlement that Aqua America's shareholders will contribute historical universal service program contribution levels for the Peoples Companies' LIURP for four years after the date of closing. (Joint Pet. at ¶ 99). After four years, the Settlement provides that Peoples' LIURP

will not be reduced, and that just and reasonable costs will be recovered through the approved universal service cost recovery mechanism in effect at the time. (Id.)

In his direct testimony, Mr. Geller also explained that when low income customers' primary heating source fails, they often rely on secondary heating sources such as space heaters, stovetops, and ovens, which are not only expensive but also very dangerous. (CAUSE-PA St. 1 at 27). The Joint Applicants agreed to help address this issue by increasing the Peoples Companies' LIURP emergency furnace repair by \$75,000 to be paid by Aqua America shareholders for a three year period post-closing, with any unused funds rolling over to subsequent years. (Joint Pet. at ¶ 101). After that three year period, the Peoples Companies' LIURP will be funded by the approved universal service cost recovery mechanism in place at that time and funding will remain at the total proposed levels until a different funding level is approved by the Commission based on a formalized assessment of need. (Id.). This targeted investment in repairing and or replacing unsafe and inefficient heating sources not only reduces the health and safety risks present in the home but also can lead to an overall reduction in the home's energy burden. (CAUSE-PA St. 1 at 27). As such, CAUSE-PA asserts that this additional funding commitment ensures that the public will derive a substantial benefit from the proposed acquisition, and is therefore in the public interest.

Mr. Geller also pointed out that the phenomenon of low income customers resorting to dangerous and expensive alternative heating sources is not limited to homeowners. (Id.) Thus, as a result of the settlement, Peoples will also amend eligibility criteria to include renters in its emergency furnace repair program. (Joint Pet. at ¶ 101). A maximum of 25% of the annual emergency furnace repair budget will be made available for renters, and the Peoples Companies will include in their 2022-2024 USECP filing a breakdown of dollars spent annually on renters versus homeowners and will make a recommendation about whether the 25% cap should be raised

or eliminated. (Id.) Again, this specific and tangible commitment ensures that the public – including vulnerable low income consumers – will derive a significant benefit from the proposed acquisition and, as such, should be approved.

Together, these reforms to Peoples' LIURP are squarely in the public interest, as they ensure that low income consumers will derive a material and quantifiable benefit from the proposed acquisition.

iii. Peoples' Hardship Fund Program

Peoples' Hardship Fund Program, administered by Dollar Energy Fund, has been able to serve approximately 3,300 customers per year with an average grant amount of approximately \$360 per customer. (CAUSE-PA St. 1 at 17). However, as Mr. Geller explained in his direct testimony, the funding for the program never lasts 12 full months, leaving a number of vulnerable households unable to obtain a grant. (CAUSE-PA St. 1 at 17-18).

In an attempt to help bridge this gap, Aqua America shareholders will contribute an additional \$100,000 each year for four years after closing, over and above the funding levels that are currently in place. (Joint Pet. at ¶ 100). Additionally, the Peoples Companies will also continue to promote their hardship fund through its public advertising and sponsorship of such activities that bring in additional non-shareholder revenue to the Dollar Energy Fund. (Joint Pet at ¶ 102).

This increased funding will benefit the public interest because it will allow Peoples to serve more households in need of assistance, which will in turn help more low income customers both afford and maintain service. Thus, customers will enjoy a material and quantifiable benefit as a direct result of the proposed acquisition.

iv. Continued Use of Community Based Organizations

Mr. Geller pointed out in direct testimony that Peoples' programs are currently administered by agencies that also administer programs for utilities with overlapping service territories. (CAUSE-PA St. 1 at 27-28). He explained that this arrangement allows for appropriate inter-utility program coordination and brings about important economies of scale for program participants and administration, such as cross-program income verification for streamlined enrollment and combined energy audits and cost-sharing for coordinated electric and gas LIURP jobs. (*Id.*)

As a result of this Settlement, Aqua commits to continue using CBOs within Peoples' service territory for delivery, implementation, and community financial support of Universal Service programs. (Joint Pet. at ¶102). Additionally, the Joint Applicants commit that Peoples will continue to promote its Hardship Fund through public advertising and sponsorship of activities that bring in additional non-shareholder donations to support the program. (*Id.*) The Joint Applicants have also agreed that Peoples will continue to partner with agencies that: (a) can increase the number of intake sites; (b) administer utility CAP programs for the electric distribution companies ("EDCs") or natural gas distribution companies ("NGDCs") in its service territory; (c) recruit and partner with multi-service agencies; and, (d) use a case management system to track and monitor referrals and enrollments into utility programs. (Joint Pet. at ¶ 103).

Together, these provisions are in the public interest because they will allow Peoples' low income customers to continue to be served by organizations within their local community, and will help ensure Peoples' low income programs continue to thrive. Additionally, it will allow Peoples to continue to utilize inter-utility program coordination and economies of scale, the benefits of which will ultimately inure to consumers.

v. Aqua's Low Income Programing

Mr. Geller also expressed concern about the effect of the acquisition on Aqua's low income customers. He asserted that, even with the universal service program enhancements agreed to in Aqua's recent rate case, its low income programing remained insufficient to provide low income customers with an appropriate level of assistance in light of the proposed transaction. (CAUSE-PA St. 1 at 31). He feared that the cost of this transaction will have the effect of dampening the enthusiasm by Aqua and its shareholders from appropriately supporting the customer service and low income support within Aqua's service territory. (CAUSE-PA St. 1 at 29). He asserted that it is appropriate for Aqua to make commitments to leverage Peoples' experience in providing programming to low income customers for the benefit of Aqua's low income customers. (*Id.*)

In the proposed Settlement, Aqua agrees to leverage the Peoples Companies' experience with programming for low income customers for the benefit of Aqua PA's low income customers. (Joint Pet. at ¶105). Specifically, Aqua agrees to invite at least one member of the Peoples Companies' current Universal Service Staff to its Helping Hand Collaborative meetings and agrees to invite staff in charge of collections to the Peoples Companies' Universal Service Advisory Committee meetings. (Joint Pet. at ¶ 106). Aqua also agrees to review the feasibility of collecting the data in accordance with its recent rate case settlement in Docket No. R-2018-3003558 in light of the potential increased capabilities from Peoples' SAP system. (Joint Pet. at ¶ 107).

Further, Aqua shareholders will contribute an additional \$50,000 annually for four years to the hardship grant component being developed for Aqua PA's Helping Hand Program. The Company agrees to evaluate whether to increase this contribution as a part of its next base rate case. (Joint Pet. at ¶ 109). As part of the Helping Hand collaborative agreed to in its recent rate case settlement at Docket No. R-2018-3003558, Aqua PA will also discuss the development of a

comprehensive universal service and conservation program that will be proposed by Aqua PA. The items to be evaluated for inclusion in Aqua PA's proposal are explicitly delineated in the Settlement, and include: (1) a bill payment/customer assistance program; (2) a hardship fund; (3) a water conservation program; (4) a low income service repair line and replacement program; and (5) a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania. (Joint Pet. at ¶ 108). Aqua PA will submit a rate recoverable universal service proposal in Aqua PA's next base rate case that considers the best practices learned from the Peoples Companies and through conversations from the Helping Hand collaborative. (*Id.*) As Mr. Geller indicated in his direct testimony, this step will create lasting value from this transaction and would seek to leverage the knowledge and expertise of Peoples' existing universal service programming. (CAUSE-PA St. 1 at 33).

Taken together, these enhancements are in the public interest because they will help Aqua to improve its low income program, which will in turn help Aqua's low income customers to connect to and maintain service. The improved data collection and input from Peoples' universal service staff will help monitor and improve the effectiveness of Aqua's low income programming. The additional hardship funding will provide substantial benefit to low income households by allowing Aqua to assist more households in need. Further, Aqua's commitment to develop a comprehensive universal service plan will benefit the public interest by helping to address the growing water affordability concerns throughout Pennsylvania, and could ultimately serve as a model for other regulated water utilities in the future. As such, CAUSE-PA submits that the Commission should approve these provisions of the Settlement, as they provide a significant and quantifiable benefit to the public as a whole and, specifically, to vulnerable low income consumers.

G. Community Commitment

In his direct testimony, Mr. Geller pointed out that “Peoples has been a good corporate neighbor to many local nonprofits through its financial and corporate sponsorship over the years,” and he argued that, “at a minimum, that support should continue post-acquisition.” (CAUSE-PA St. 1 at 28). He explained that public utilities provide vital services to the local communities they serve - beyond providing utility service; thus, it is important to ensure that Peoples will continue to serve the needs and interests of its service territory through local jobs, community support, and community presence. (CAUSE-PA St. 1 at 5). Mr. Geller also argued that it was important for Peoples to commit to continue the charitable support currently provided by Peoples within its service territory. (CAUSE-PA St. 1 at 27).

As a result of this Settlement, Aqua commits to spending at least one half of one percent of pre-tax net income each year for charitable contributions with a goal of spending one percent of pre-tax net income for charitable contributions annually by the fifth anniversary of the closing. (Joint Pet. at ¶ 113). Additionally, Peoples will commit to spending at least \$2.7 million annually in corporate contributions for a period of not less than 5 years. (*Id.*). Further, Aqua has agreed to file an annual report of these contributions with the OCA, I&E, and OSBA each year for five years and these contributions shall not be recovered in rates. (Joint Pet. at ¶ 114). Additionally, Joint Applicants agree that the Peoples Companies will continue to comply with the Commission’s diversity policy, 52 Pa. Code Section 69.801-69.809. (Joint Pet. at ¶ 112).

These commitments are in the public interest because they help ensure that Peoples’ established community presence will be maintained post-acquisition and provide direct financial benefit to the local community.

IV. PROCEDURAL CONDITIONS OF SETTLEMENT

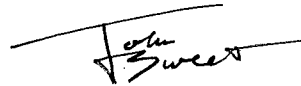
CAUSE-PA adopts the Procedural Conditions of Settlement contained in the Joint Petition. (Joint Pet. at ¶¶ 129-134).

V. CONCLUSION

CAUSE-PA submits that the Settlement, which the Joint Petitioners were able to negotiate after an extensive investigation of the Joint Petitioners' filing, is in the public interest, as it will ensure that vulnerable, low income consumers – and the broader community as a whole – will derive specific, identifiable, and quantifiable benefit from the proposed transaction. Acceptance of the Settlement also avoids the necessity of further administrative and possible appellate proceedings regarding the settled issues. Accordingly, CAUSE-PA respectfully requests that the Honorable Administrative Law Judges Mary D. Long and Emily DeVoe, and the Commission approve the Settlement.

Respectfully Submitted,

PENNSYLVANIA UTILITY LAW PROJECT
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June 26, 2019

Appendix D

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua America Inc., Aqua : A-2018-3006061
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**THE NATURAL GAS SUPPLIER PARTIES
AND THE RETAIL ENERGY SUPPLY ASSOCIATION'S
STATEMENT IN SUPPORT OF SETTLEMENT**

TO THE ADMINISTRATIVE LAW JUDGES MARY D. LONG AND EMILY DEVOE:

AND NOW, come Dominion Energy Solutions, Inc (“DES”), Shipley Choice LLC d/b/a Shipley Energy (“Shipley”)(“NGS Parties”), and the Retail Energy Supply Association¹ (“RESA”)(collectively “NGS/RESA”), and hereby submit their Statement in Support of the settlement in the above-captioned matter, and request that the settlement terms be adopted as submitted for the record at the hearing held June 11, 2019. NGS/RESA respectfully submit that the settlement is in the public interest and should be approved by the Pennsylvania Public Utility Commission (“Commission”) as presented. In support thereof, NGS/RESA state as follows:

I. BACKGROUND

1. On November 13, 2018, Aqua America Inc., Aqua Pennsylvania Inc., Aqua Pennsylvania Wastewater Inc. along with Peoples Natural Gas Company LLC, Peoples Natural Gas Company LLC - Equitable Division, and Peoples Gas Company LLC (collectively, Joint Applicants) filed a joint application for all of the authority and necessary certificates of public convenience to approve a change in control of Peoples by way of the purchase of all of LDC Funding LLC's membership interests by Aqua America Inc.

2. NGS/RESA filed their Petition to Intervene in the above-captioned matter on December 31, 2018, which Petition was granted by the Presiding Administrative Law Judge at the prehearing conference which was held January 18, 2019.

3. In their Prehearing Conference Memorandum, NGS/RESA identified a number of operational issues, including:

¹ The viewpoints expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

- that the Peoples NGDCs do not provide Choice suppliers with heat load and baseload factors for their Choice pools;
- that the Peoples NGDCs do not provide Natural Gas Suppliers (“NGS”) serving customers on their systems with the temperature used to predict Choice demand for an upcoming day;
- that the Peoples NGDCs do not send informational announcements via email;
- that the number of rate codes currently available for a single pool is 20 and should be increased; and,
- that the cut-off for participation in the Peoples NGDC purchase of Receivables (“POR”) program is currently 300 mcf annual usage, which is arbitrarily low and should be increased significantly.

NGS/RESA also identified a structural and thus more fundamental issue, namely, NGS/RESA’s belief that a significant public benefit could be realized if as a result of the proposed transaction, the Peoples NGDCs would exit the merchant function; that is, no longer provide supplier of last resort service, and instead use market-based solutions to provide the service. The premise of this approach is that Aqua is an infrastructure company, and in in that respect, the distribution of natural gas is very similar, while the purchase and sale of natural gas to customers, while infrastructure dependent, is not a monopoly-based infrastructure business.

4. NGS/RESA Submitted the Direct, Rebuttal and Surrebuttal testimony of a single witness in this proceeding: Mr. James Crist.

5. The settlement resolves all areas of controversy raised in this matter, save one – the appropriate measures to be taken with regard to the Goodwin/Tombaugh Gathering System. The issues surrounding Goodwin/Tombaugh will be submitted to the Commission for resolution and will be briefed by concerned parties. The bulk of the issues raised by the parties to this proceeding, however, have been resolved by agreement of the parties and are set out in the Settlement Parties Joint Exhibit No. 1 (“Settlement”). Of the many issues discussed in the Settlement, a limited

number are of interest to NGS/RESA, namely a number of the paragraphs 87 through 100. NGS/RESA takes no position on the other items addressed in the Settlement.

II. THE SETTLEMENT

6. As noted above, NGS/RESA raised a number of operational issues in this proceeding that directly impact the manner in which they serve their customers on the Peoples' systems, and consequently, which impact their profitability. While these issues are improvements to existing operational procedures, they nonetheless make it easier for suppliers, and Peoples for that matter, to provide customer focused service. These settlement conditions addressed by this statement are:

- 115. Upon request, the Peoples Companies will provide Choice suppliers heat load and baseload factors for their Priority One Choice pools on a monthly basis.**
- 116. Upon request for non-residential customers with load greater than 300 mcf/year and with appropriate authorization from the customer of record, the Peoples Companies will provide heat load and baseload factors.**
- 117. Upon request, the Peoples Companies will provide the daily temperatures used to produce Priority One Choice daily targets.**

These three provisions (§§ 87, 88, and 89) are centered on the regular provision of data to suppliers, data that will allow suppliers, such as the NGS/RESA members to better forecast their customers' consumption. More accurate forecasts mean more precise purchasing and the reduced need to purchase excess gas as a margin – particularly when prices are high – or the converse problem of purchasing too little gas, which can lead to penalties and the forced purchase of make-up supplies at higher-than-market prices. In a world where the margins for error are slim and the penalties for non-compliance are significant, accuracy is a key to success, which ultimately means that suppliers can provide better value for customers. Regularly updated heat load and baseload

factors allow suppliers to maintain a higher level of accuracy, thus reducing risk and the associated costs, which leads to lower prices and better service.

- 118. The Peoples Companies will provide 20 rate codes for each pool. Upon request, the Company will provide 10 additional rate codes, up to a maximum of 50 rate codes per pool. Any requests greater than 50 rate codes per pool must be reviewed and approved by the Company. In no case shall the Company provide more than 100 rate codes per pool.**

Paragraph 90 increases the maximum number of allowable rate code for suppliers from the present 20 to 50. Rate codes represent the “price” that a supplier can charge a particular customer when using the natural gas distribution company’s (“NGDC”) billing service. Under the current limitations a supplier has much less latitude to have a mix of products and prices in the marketplace. More rate codes make it possible to update prices without retiring older products and thus allow for a greater mix of products—with differing prices, to better meet customer demands. Because unique customers may have pricing that extends for many years, those rate codes are not reusable until after the expiration of that agreement.

- 119. The Peoples Companies will increase the purchase of receivables customer eligibility from 300 Mcf annually to 1000 Mcf annually, for Rate SGS customers.**

As discussed in Mr. Crist’s Direct Testimony, most suppliers avail themselves of the NGDC’s billing system, particularly for smaller customers. However, larger General Service customers still may benefit from receiving a single bill for their gas service. Going along with receiving one bill, is the convenience of having the NGDC collect from the customer as well, via the purchase of receivables (“POR”) program. Mr. Crist recommended (NGS/RESA St. No. 1, p. 18) that the upper limit for participation be increased from 300 mcf per year to 1000 mcf to provide the same convenience for commercial customers. Those using 1000 mcf per year can still be relatively

small businesses and in many respects pertaining to natural gas consumption are not different from residential customers, and so Mr. Crist opined that made practical sense to extend the limit.

120. The Peoples Companies will maintain the group contact e-mail process.

This provision simply provides for better and more timely communication of operational information between Peoples and suppliers. Better communication means better coordination which can be critical, particularly when the system is stressed on very cold days. This provision ensures that Peoples will continue what has proven to be an effective tool.

The final provision that was included in the settlement at the request of the NGS/RESA is the collaborative on improving and increasing participation in the competitive market, this is paragraph 100.

128. Within 90 days of the closing of the merger, the Peoples Companies will commence a process to obtain the input of interested stakeholders, including but not limited to, NGSs, public advocates, and customers, regarding the broad subject of increasing customer participation in the competitive natural gas market in their service territories. While the topic of this collaborative may be broad, it shall not include or recommend elimination of the supplier of last resort function on the Peoples Companies systems.

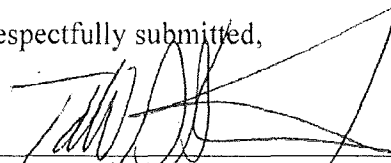
This provision is the result of NGS/RESA's efforts to ease the Companies out of the merchant function. That idea gained little traction in the fast-paced process of approving a merger and so the notion of improving the market has been relegated to a collaborative that cannot even discuss the possibility of exiting the merchant function due to the vehement opposition of a few parties. The exit idea will be resurrected at a future date, once the Commission has been given the opportunity to consider the promulgation of regulations on exactly how it should work. The collaborative at hand should focus on ensuring that customers have a positive shopping experience each and every time and serve as a discussion platform for new and innovative ways to better inform customers of the products being offered and the basic economics of the energy market.

Better informed customers make better consumers and will force suppliers across the board to raise their game to meet customer expectations. Other items that can be discussed are limitless and should focus on voluntary compliance with new and existing requirements, with increased enforcement if needed. This collaborative will focus on the Peoples territories but is expected to produce portable ideas that can be used across the Commonwealth.

The Settlement requirements, in many ways, will add certainty and predictability to the businesses of natural gas suppliers and will ultimately provide more diverse and reliable service options at a lower cost for customers. The operational issues, while not the stuff of headlines, are nonetheless important improvements that are clearly in the public interest, and which will provide tangible public benefits when implemented. NGS/RESA have high hopes that the collaborative provided-for in the settlement will combine the significant market experience of the Peoples' Companies, with the impetus and drive of the supplier community, and the consumer focus of Commission staff and public advocates, to generate innovative means of ensuring the sustainability of the competitive natural gas markets in Pennsylvania. While the public benefit of such a process seems undeniable, the process is expected to address such issues as: better and more focused customer education; standards of behavior training for suppliers; and whether there is a perceived need for additional Commission regulations. The product of such a discussion can only serve to improve the integrity of the marketplace which is an obvious benefit to all consumers.

Accordingly, the NGS Parties and RESA respectfully request that the Commission approve the Settlement in its entirety and do so with all due haste.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Todd S. Stewart', written over a horizontal line.

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*Counsel for the Natural Gas Supplier Parties
and The Retail Energy Supply Association*

Dated: June 21, 2019

Appendix E

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua America, Inc.,	:	Docket Nos.	A-2018-3006061
Aqua Pennsylvania, Inc., Aqua Pennsylvania	:		A-2018-3006062
Wastewater, Inc., Peoples Natural Gas	:		A-2018-3006063
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 LDC Funding,	:		
LLC's Membership Interests by Aqua	:		
America, Inc.	:		
	:		

**STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF NON-UNANIMOUS SETTLEMENT
OF DIRECT ENERGY BUSINESS MARKETING, LLC AND
DIRECT ENERGY SMALL BUSINESS, LLC**

Direct Energy Business Marketing, LLC and Direct Energy Small Business, LLC (collectively, "Direct Energy") submit this Statement in Support of the Joint Petition for Approval of Non-unanimous Settlement ("Joint Petition" or "Settlement") in the above-captioned proceeding. Direct Energy submits that the Settlement is in the public interest and will provide an affirmative public benefit. Direct Energy respectfully requests that Administrative Law Judges Mary Long and Emily DeVoe ("ALJs") and the Pennsylvania Public Utility Commission ("Commission") approve the Settlement without modification.

I. SETTLEMENT

In this proceeding, Direct Energy did not oppose the proposed acquisition of Peoples Natural Gas and Peoples Gas (collectively, “Peoples” or “The Peoples Companies”) by Aqua American, Inc. (“Aqua”). Through the Direct and Surrebuttal Testimonies of Mr. Orlando Magnani, however, Direct Energy provided recommendations related to certain operational practices and procedures in the context of the proposed acquisition. Specifically, Mr. Magnani testified that Peoples has a number of current procedures/operations that must be maintained during the transition and post-merger in order for Direct Energy to continue to offer Natural Gas Supplier (“NGS”) services in Peoples’ service territory in an efficient and effective manner. Mr. Magnani identified the procedures that must be maintained as follows:

- Peoples utilizes a Local Production (or a “Local Gas Aggregation”) Pool Tracking System to monitor deliveries to help ensure that the nominations made by NGSs, including Direct Energy, are consistent with the monthly available volume identified at the start of the month. This Local Production Pool Tracking system helps to keep the system balanced and helps ensure that nomination changes do not result in over- or under-delivery.
- In or around June of 2018, Peoples upgraded its Electronic Bulletin Board (“EBB”), which improved the overall speed of nomination changes.
- In or around August of 2017, Peoples confirmed that Local Production Pool invoices will include identifying information, including customers’ pool/rate class. This process also helps improve the efficiency of the nomination process.
- In the summer of 2017, Peoples added a group contact e-mail, which enables suppliers, including Direct Energy, to easily communicate any concerns or issues to the utility that may arise related to the supply of natural gas.

Direct Energy St. 1 at 4-5.

Additionally, Mr. Magnani testified that the Commission should consider certain modifications to Peoples’ current operations in order for the merger to provide an affirmative

public benefit. First, Mr. Magnani recommended that Peoples be required to issue an overall report at the close of each month to each marketer, identifying the total number of individual customer burns that make up the aggregate burn pool. Second, Mr. Magnani testified that the current timing of Peoples' target (daily delivery requirement) requests and capacity requests leaves little time for suppliers, including Direct Energy, to get their asset mixture organized and finalized. As such, Mr. Magnani recommended that the Peoples Companies issue preliminary target and capacity requests at the beginning of each month and update their requests in the middle of the month. Third, Mr. Magnani testified that Peoples should be required to identify billing cycles on its customer invoices.¹ Fourth, Mr. Magnani recommended that Peoples be required to send a separate file with rebills, or include rebills on a separate tab of the same file, instead of continuing its current practice of including information regarding rebills on the same file. Fifth, Mr. Magnani recommended that Peoples be required to reflect in its daily billing files the month being billed for high pressure accounts in order to eliminate NGS confusion, assist NGSs in servicing customers in Peoples' service territory, and create a public benefit. Direct Energy St. 1 at 5-7.

Mr. Magnani also supported the proposal of the NGS Parties, in which the NGS Parties recommended that Peoples "exit the merchant function" (*i.e.* no longer provide supplier of last resort services and, instead, rely on market-based prices and solutions). Mr. Magnani testified that implementing this proposal will provide the public with the benefits of a properly functioning and effectively competitive retail natural gas market. Direct Energy St. 1 at 7-8.

¹ Mr. Magnani's Direct Testimony provides that Peoples be required to identify billing cycles on its "Local Production Pool invoices." Direct Energy St. 1 at 7. In his Surrebuttal Testimony, however, Mr. Magnani clarified that his recommendation was intended to be for Peoples to identify the customer's billing cycle on the customer invoice. Direct Energy St. 1-SR at 3.

The Settlement contains numerous provisions addressing the issues raised by Direct Energy. Specifically, the Settlement provides that Peoples will maintain its Local Production Pool Tracking System, its upgraded EBB, Local Production Pool invoicing that includes identifying information, and its group contact e-mail. Joint Petition at ¶¶ 120-23. These Settlement provisions are consistent with Mr. Magnani's recommendations that the Peoples Companies maintain certain, current practices and procedures. Adoption of these provisions will enable NGSs, including Direct Energy, to continue to offer NGS services to ratepayers in Peoples' service territory in an efficient and effective manner post-merger, facilitating the provision of efficiently priced competitive options and services. In this regard, the Joint Petition is in the public interest and in the interest of NGSs and Peoples' ratepayers.

Additionally, the Settlement provides for certain modifications to Peoples' current practices and procedures, including: 1) Peoples will provide to each supplier, through existing billing files, the total number of individual customer burns that make up the aggregate burn pool; 2) Peoples will undertake an assessment on the ability to accelerate the timing of issuance of daily delivery requirements and capacity requests and share the result of the assessment with suppliers; 3) Peoples will identify customer billing cycles on its invoices; and 4) Peoples will add a posting date to the daily billing files to serve as an indicator of the month being billed for all accounts, including the largest high-pressure accounts. Joint Petition at ¶¶ 124-27. These commitments will help to ensure that the merger results in an affirmative public benefit. Specifically, these Settlement provisions will allow suppliers to receive timely and accurate data and help to eliminate potential NGS confusion. As a result, NGSs will be able to better serve customers in Peoples' service territory. For these reasons, the Joint Petition will result in an affirmative public benefit.

The Settlement also contains a number of other Settlement provisions addressing supplier issues. *See* Joint Petition at ¶¶ 115-19, 128. Of note, the Settlement provides:

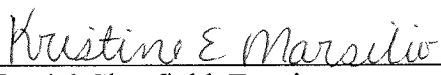
Within 90 days of the closing of the merger, the Peoples Companies will commence a process to obtain the input of interested stakeholders, including but not limited to, NGSs, public advocates, and customers, regarding the broad subject of increasing customer participation in the competitive natural gas market in their service territories. While the topic of this collaborative may be broad, it shall not include or recommend elimination of the supplier of last resort function on the Peoples Companies systems.

Joint Petition at ¶ 128. Efforts aimed at increasing customer participation in the competitive natural gas market will enable more natural gas customers to enjoy in the benefits of a competitive retail natural gas market and will provide an affirmative public benefit.

III. CONCLUSION

For the foregoing reasons, Direct Energy submits that the Joint Petition provides an affirmative public benefit and a reasonable resolution to the Company's filing. Direct Energy respectfully requests that the Joint Petition be approved without modification.

Respectfully submitted,



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Date: June 26, 2019

Appendix F

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 for all of the Authority	:	Docket No. A-2018-3006061
and the Necessary Certificates of Public	:	Docket No. A-2018-3006062
Convenience to Approve a Change in Control of	:	Docket No. A-2018-3006063
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.	:	

STATEMENT IN SUPPORT OF SETTLEMENT OF
UTILITY WORKERS UNION OF AMERICA, LOCAL 612

On December 11, 2018, Utility Workers Union of America, Local 612 (“UWUA Local 612”), representing more than 700 employees of Peoples Natural Gas Company LLC and Peoples Gas Company LLC (collectively “Peoples”), filed a Petition to Intervene in this proceeding. In that petition, UWUA Local 612 indicated that it was intervening to understand the effect of the proposed transaction on Peoples’ represented employees, and on the union local itself, so that it could help the Commission consider the “effect of the proposed ... acquisition ... on the employees of the natural gas distribution company and on any authorized collective bargaining agent representing those employees,” as required by 66 Pa. C.S. § 2210(a)(2). In particular, UWUA Local 612 noted a concern with the acquisition agreement’s limited commitment to have no effect on employment levels for only one year after closing.

UWUA Local 612 did not file testimony or participate in the hearings in this matter. UWUA Local 612, however, has carefully reviewed the voluminous discovery produced by the Joint Applicants, as well as the testimony filed by all parties. UWUA Local 612 also actively engaged in settlement negotiations with the Joint Applicants.

Based on its review of the documents, record evidence, and the Joint Petition for Approval of Non-Unanimous, Complete Settlement (“Settlement”) UWUA Local 612 has concluded that the Settlement adequately addresses its concerns before this Commission and is in the public interest. As explained below, UWUA Local 612 submits that the Settlement contains sufficient protections for the Commission to find that the transaction would not have an adverse effect on Peoples’ employees or UWUA Local 612 as the authorized collective bargaining agent representing those employees.

In particular, the Settlement contains provisions that are likely to maintain (and potentially enhance) the level of work performed by UWUA Local 612’s members for several years into the future. These Settlement provisions include the rehabilitation of the Goodwin and Tombaugh systems (¶¶ 29-40), continuation of Peoples’ programs to reduce unaccounted for gas (¶ 68), continuation and enhancement of Peoples’ Long Term Infrastructure Improvement Plans (¶¶ 69 and 72), creation of a new program to reduce line hit damages (¶ 70), and continuation of the field appointments performance standard (¶ 92).

In addition, the Settlement contains a specific commitment to maintain the level of field staffing -- both in total and for UWUA Local 612-represented employees -- for a period of five years. The baseline number of employees will be determined at closing,

but will be no fewer than the number of field employees when the proposed acquisition was announced (October 31, 2018).

WHEREFORE, Utility Workers Union of America, Local 612, respectfully requests the Administrative Law Judges and Pennsylvania Public Utility Commission to approve the proposed transaction subject to all of the terms and conditions of the Joint Petition for Approval of Non-Unanimous, Complete Settlement.

Respectfully submitted,


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Counsel for UWUA Local 612

Dated: June 26, 2019

Appendix G

**STATEMENT IN SUPPORT OF THE PROPOSED SETTLEMENT AGREEMENT
ON BEHALF OF INTERVENOR LABORERS DISTRICT COUNCIL OF WESTERN
PENNSYLVANIA**

The Intervenor, Laborers' District Council of Western Pennsylvania ("LDC") filed its Petition to Intervene in this matter on December 19, 2018. LDC is a labor organization providing administrative, training and organizational services to its constituent local unions and members in the 33-county geographical area of Western Pennsylvania, comprised of over 13,000 members. Laborers District Council of Western Pa. Ameris St. 1 ("Ameris") 1. Its largest local unions are in the geographic area served by applicant Peoples.

The LDC's members work in the construction and general laboring industries. Through collective bargaining agreements with Peoples' pipeline replacement contractors, union laborers provide a highly skilled, experienced and safety-conscious workforce. The LDC has enjoyed a long-standing and cooperative relationship with these contractors, and the maintenance of this relationship following the proposed acquisition would promote the public interest in several respects. Peoples employs a "hybrid" approach to its pipeline infrastructure modernization projects, utilizing third-party contractors for installation of mains, services and restorations. Over 70% of the work on pipeline installation and throughout the Peoples' gas system are performed by contractors. Ameris 3.

The continuation of a commitment to utilizing union labor by the applicants for the ongoing pipeline infrastructure improvement project serves the public interest in several respects. For example, Peoples' largest pipeline contractor, M. O'Herron, is a signatory to collective bargaining agreements with LDC, and performs 24% of Peoples pipeline installation activities.

There are typically approximately 600 LDC members employed regularly on Peoples installation and restoration projects. Ameris 4. Union members employed on pipeline projects participate in extensive training through the LDC Training Center in Western Pennsylvania, which offers an 80-hour pipeline technology class and certification to Laborers seeking employment in the field. This program focuses on safety and construction processes and standards and is provided both prior to and during employment. Ameris 4.

A commitment to the continuation of the use of contractors that are parties to collective bargaining agreements with LDC will ensure the continuing availability of qualified, trained workers as the pipeline replacement and restoration projects accelerate. LDC negotiates fair wage and benefit packages with its signatory employees, which further promotes the supply of competent and skilled workers for this vitally important work. Ameris 4-5.

LDC's interests advanced in the Intervention Petition are addressed in the proposed Settlement Agreement in Paragraph 72 as follows:

The Joint Applicants commit to maintain a benchmark of 95% of the construction contractor crews utilized per calendar year in the City of Pittsburgh, Baldwin Borough, Brentwood Borough, Whitehall Borough, Borough of Dormont, Green Tree Borough, Crafton Borough, Ingram Borough, McKees Rocks Borough, Borough of Roslyn Farms, Borough of Carnegie, Borough of Thornburg, and Baldwin Township for on-site construction work in connection with Peoples' LTIP accelerated pipeline replacement program to contractors having an existing collective bargaining relationship with a union. The Joint Applicants commit that any "live gas" work

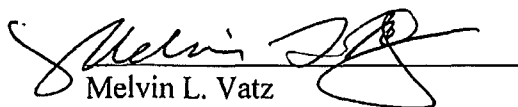
associated with accelerated pipe replacement above current levels will be performed by Peoples Companies union employees.

The foregoing language provides for use of union contractors for 95% of the construction work in the enumerated areas, which comprises a large percentage of the geographical territory in which LDC members are employed on Peoples' projects. Significantly, this agreement includes both the construction crew members doing traditional laborers' duties, but also traffic control personnel ("flaggers") who are also covered by collective bargaining agreements. Therefore, this proposed agreement adequately satisfies the issues raised by LDC in its Petition.

The remaining provisions in the Agreement do not relate to LDC's interests, and therefore are not addressed in this Statement.

For the above reasons, it is respectfully requested that the Commission approve the Non-Unanimous Settlement Proposal.

Respectfully submitted,



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Appendix H

**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.	:	

**STATEMENT OF
PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION
IN SUPPORT OF APPROVAL OF PROPOSED SETTLEMENT**

The Pennsylvania Independent Oil & Gas Association (PIOGA) respectfully requests Pennsylvania Public Utility Commission approval of the “Joint Petition For Approval Of Non- Unanimous, Complete Settlement Among Most Parties” (Settlement) in this proceeding. PIOGA submits this Statement in Support of approval of the Settlement to explain how the Settlement resolves PIOGA’s concerns in this matter.

PIOGA is the principal nonprofit trade association representing oil and natural gas interests in Pennsylvania. PIOGA’s members include natural gas producers and Commission- licensed natural gas suppliers and marketers (NGSs) that produce, transport and market natural gas, including Pennsylvania Appalachian “conventional” and “unconventional” production, on

the regulated pipeline systems of Peoples Natural Gas Company LLC (Peoples), Peoples Natural Gas Company LLC–Equitable Division (Peoples-Equitable) and Peoples Gas Company LLC (Peoples-Gas) (collectively, “Peoples Companies”) for system supply and to transportation customers. PIOGA member producers also deliver conventional production into the unregulated Goodwin system owned and operated by a Peoples affiliate.

PIOGA intervened because it was concerned with the effect of Aqua America, Inc.’s (Aqua) acquisition of control over the Peoples Companies would have on the Companies’ operations and programs intended to maintain or increase the availability and throughput of Pennsylvania natural gas on their pipeline systems as well as the Companies’ pipeline infrastructure replacement programs.¹ Generally, PIOGA’s concerns have been positively addressed by the Joint Applicants’ Settlement commitments to:

- maintain the Peoples Companies management expertise and organization structure, with natural gas operational workers reporting directly to trained natural gas managers;
- operate the Peoples Companies and Aqua as separate corporate subsidiaries;
- seek to include additional Board members with background and experience with natural gas distribution utility operations;
- continue to maintain Peoples Companies’ corporate headquarters in Pittsburgh through at least January 31, 2029, and thereafter to maintain that headquarters within the Peoples Companies’ service territory unless the Commission approves a change of location; and
- provide more information to suppliers to enable them to better manage their delivery responsibilities and improve their services to their customers.

More specifically, PIOGA was concerned with the situation involving the Goodwin and Tombaugh pipeline systems, particularly the extraordinarily high lost and unaccounted for gas (UFG) on these systems and the 85% annual retainage charged by Peoples to conventional

¹ PIOGA Petition to Intervene, ¶s 3-6; PIOGA Prehearing memo, p. 2; and PIOGA Statement No. 1R at 1:8-16, 2:13-20.

producers on the Goodwin system beginning in January 2014 after the acquisition from EQT. PIOGA agreed with the position of the Office of Consumer Advocate (OCA) and the Commission's Bureau of Investigation and Enforcement (I&E) that the safety and reliability concerns with service on the Goodwin system should be resolved in this proceeding² but disagreed with I&E's position that abandonment of some customers served by these systems could be necessary and appropriate and in the public interest.³

The full remediation of all the bare steel pipe in the Goodwin and Tombaugh systems (Settlement, ¶s 29-35, 37) comprehensively and positively addresses PIOGA's concern that customers served by these systems not be abandoned, a concern shared by the Joint Applicants⁴ and the OCA.

As in the December 2013 settlement involving the Peoples Companies' acquisition of Equitable Gas Company and the Goodwin and Tombaugh systems, the Peoples Companies have once again agreed not to be limited to what they may be legally required to do but to go above and beyond in agreeing to do what is fair and the right thing to do with respect to retainage on the Goodwin system. In the 2013 settlement, because of the extraordinarily high UFG on the Goodwin system Peoples agreed to impose gathering charges on only the "net" deliveries rather than on the "gross" deliveries, which was appropriate because the Goodwin producers were being paid only for the volumes "net" of retainage.⁵

² The Joint Applicants also agreed. Transcript (Tr.) at 104:14-19, 107:6-11 (O'Brien); 90:13-91:1 (Franklin); 164:22-165:5 (Barbato). ALJ Long observed that "[t]he Commission has been struggling with it [Goodwin/Tombaugh situation] for a long time." Tr. at 89:12-16.

³ PIOGA Statement No. 1R at 4:14-20; 5:4-6:20.

⁴ Tr. at 79:14-80:22 (Franklin); 105:5-108:11 (O'Brien); 138:18-139:12, 152:21-153:2; 155:14-24 (Gregorini); 164:11-165:5, 170:7-171:24 (Barbato).

⁵ PIOGA Statement No. 1R at .2:17-20, 6:23-7:8.

In this proceeding, Peoples has agreed to a gradual reduction of the annual 85% retainage rate on Goodwin – which has been borne exclusively by the producers delivering conventional production into Goodwin⁶ – based on the rate of annual pipeline replacement (Settlement, ¶36). In other words, the annual retainage rate will be set so that the percentage rate of decline (14.29%, based on a seven-year replacement timeframe; Settlement, ¶29) will match the same year-over-year percentage rate of decline in removing old pipe from the Goodwin system (14.29%). This will result in the retainage rate consistently decreasing annually from 85% in year 1 to near 0% by year 7, subject of course to the currently effective system-wide producer retainage charge, now a minimum 2%. Peoples has also agreed to conduct semi-annual reviews of actual Goodwin UFG levels and, if a UFG decline trend is evident, to make interim adjustments to the effective retainage rate to reflect the actual Goodwin UFG level for the interim rolling 12-month period.

Enabling Goodwin producers to receive payment for more of their natural gas by paying lower retainage will put more money into the producers' pockets and thereby help to ensure that they can continue to produce gas, maintain a level of employment for well tenders, generate income and tax revenues for the Commonwealth, and provide money for additional investment.⁷ While the current remediation plan doesn't provide for new pipeline capable of transporting natural gas produced from unconventional formations (*e.g.*, Marcellus and Utica shale) underlying the Goodwin system area,⁸ there are opportunities for additional supply from

⁶ *Id.*, at 7:19-21.

⁷ *Id.*, at 9:10-13.

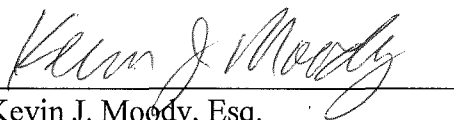
⁸ Tr. at 240:16-25. Nonetheless, currently most of the 8% of supply serving Goodwin and Tombaugh from interstate pipelines is Marcellus shale gas. Tr. at 241:11-18.

conventional production directly into Goodwin that would be enabled (due to improved economics) by remediation of Goodwin and reducing the producer retainage rate.⁹

Accordingly, in PIOGA's view the Settlement provisions described above concerning the Goodwin and Tombaugh systems provide substantial affirmative public benefits¹⁰ – in addition to the public benefits provided by other Settlement provisions – through maintaining, and providing for increased, production of conventional Pennsylvania natural gas and the resulting multiple beneficial effects flowing both within and beyond the industry.

WHEREFORE, for the reasons set forth above, the Pennsylvania Independent Oil & Gas Association asserts that the evidentiary record demonstrates that Aqua America's acquisition of the Peoples Companies in accordance with the Settlement is in the public interest, particularly the full remediation of the Goodwin and Tombaugh pipeline systems and (i) the resulting Peoples' retention of the nearly 1700 distribution service customers and (ii) the continual reduction of the extraordinarily high retainage charges to Goodwin producers. Accordingly, PIOGA requests that the Commission approve the Settlement.

Respectfully submitted,



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Pennsylvania Independent Oil & Gas Association
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Dated: June 26, 2019

⁹ Tr. at 242:3-14.

¹⁰ See Tr. at 81:3-11 (Franklin) (replacing these gathering systems at ratepayer expense represents an affirmative public benefit).

Appendix B

APPENDIX B

PROPOSED FINDINGS OF FACT

1. On November 13, 2018, the Joint Applicants filed the above-captioned Application seeking all necessary approvals from the 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”) 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. Aqua America is a water and wastewater utility holding company that currently provides service through its operating subsidiaries in Pennsylvania, Ohio, North Carolina, Illinois, Texas, New Jersey, Indiana and Virginia. Aqua America’s subsidiaries provide drinking water and wastewater treatment infrastructure and services, and have substantial experience providing public utility service via pipes and pipelines. (Joint. App. Exh. DJS-1, pp. 5-6.)

3. Aqua PA is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua PA is a wholly-owned subsidiary of Aqua America. Aqua PA Wastewater is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua PA Wastewater is a wholly-owned subsidiary of Aqua PA.¹ (Joint. App. Exh. DJS-1, p. 6.)

¹ Unless otherwise specified herein, references to Aqua PA also include Aqua PA Wastewater.

4. Aqua PA and Aqua PA Wastewater are applicants for purposes of the Proposed Transaction because they are the public utility affiliates of the acquiring entity, Aqua America. (Joint. App. Exh. DJS-1, p. 6.)

5. Aqua PA is a “public utility” as defined under Section 102 of the Code, 66 Pa. C.S. § 102. Aqua PA furnishes water service to approximately 435,000 water customer accounts and wastewater service, through Aqua PA Wastewater, to approximately 24,000 wastewater customer accounts (representing a population of approximately 1.4 million people) throughout Pennsylvania. (Joint. App. Exh. DJS-1, p. 6.)

6. Peoples Natural Gas is a limited liability company formed under the laws of the Commonwealth of Pennsylvania for the purpose of providing natural gas transmission, distribution, and supplier of last resort services subject to the Commission’s regulatory jurisdiction. Peoples Natural Gas is a wholly-owned subsidiary of PNG Companies LLC (“PNG”), indirectly owned by SteelRiver Infrastructure Fund North America LP (“SRIFNA”) and an affiliated fund, which are managed by SteelRiver Infrastructure Associates LLC and its affiliated investment management entities (collectively “SteelRiver”). (Joint. App. Exh. DJS-1, p. 7.)

7. Peoples Natural Gas is a “public utility” and a “natural gas distribution company” as those terms are defined in Sections 102 and 2202 of the Code, 66 Pa. C.S. §§ 102, 2202. Peoples Natural Gas, including its Equitable Division, provides natural gas services to approximately 622,000 customers. (Joint. App. Exh. DJS-1, p. 8.)

8. Peoples Gas, formerly Peoples TWP LLC, is a limited liability company formed under the laws of the Commonwealth of Pennsylvania for the purpose of providing natural gas transmission, distribution, and supplier of last resort services subject to the Commission’s

regulatory jurisdiction. Peoples Gas is a wholly-owned subsidiary of PNG. (Joint. App. Exh. DJS-1, p. 9.)

9. Peoples Gas is a “public utility” and a “natural gas distribution company” as those terms are defined in Code Sections 102 and 2202, 66 Pa. C.S. §§ 102, 2202. Peoples Gas provides natural gas services to approximately 61,000 customers. (Joint. App. Exh. DJS-1, p. 9.)

10. SteelRiver manages infrastructure investments throughout North America. (Joint. App. Exh. DJS-1, p. 9.)

11. Funding is a Delaware limited liability company and a wholly-owned direct subsidiary of LDC Parent LLC (“Parent”), which is indirectly owned by SRIFNA and an affiliated fund managed by SteelRiver. Funding directly owns a 100% interest in Holdings, which in turn owns a 100% interest in PNG. (Joint. App. Exh. DJS-1, p. 10.)

12. PNG is a limited liability company organized, validly existing, and in good standing under the laws of Delaware. PNG directly owns a 100% interest the Peoples Companies. (Joint. App. Exh. DJS-1, p. 10.)

13. Under the terms of the Purchase Agreement, Parent will sell, convey, transfer, assign and deliver to Aqua America all of the issued and outstanding membership interests in Funding. Funding currently owns all of the authorized, issued, and outstanding limited liability interests in Holdings, which in turn owns all of the authorized, issued, and outstanding limited liability members in PNG. PNG is the sole owner of the authorized, issued, and outstanding limited liability interests of the Peoples Companies, as well as other non-jurisdictional natural gas utilities and service providers. (Joint. App. Exh. DJS-1, pp. 10-11; Joint App. Exh. DJS-2, PUBLIC Appendix A-2.)

14. At the closing of the Proposed Transaction, Funding, its direct subsidiary (Holdings), and indirect subsidiary (PNG) will become wholly-owned direct and indirect subsidiaries of Aqua America. (Joint. App. Exh. DJS-1, p. 11 and Appendix G.)

15. No new intermediate corporate entity will be created between Aqua America and Funding. (Joint. App. Exh. DJS-1, p. 11.)

16. The Proposed Transaction will not result in any change of ownership associated with Aqua PA. (Joint. App. Exh. DJS-1, p. 11.)

17. The Proposed Transaction also involves ownership changes associated with certain non-jurisdictional entities owned by PNG. (Joint. App. Exh. DJS-1, pp. 12-13; Joint App. St. 1 (REVISED), pp. 5-6.)

18. The consideration to acquire Funding from Parent is a base price of \$4.275 billion, which includes a projected \$1.3 billion of assumed debt, as adjusted pursuant to the terms of the Agreement. (Joint. App. Exh. DJS-1, p. 13; Joint App. St. No. 1 (REVISED),

19. The purchase price also involves approximately \$2 billion in goodwill. (Tr. 82.)

20. Purchasers of Aqua America stock in the current market are paying a market price in excess of three times Aqua America's book value. (Joint App. St. 2-R, p. 9.) The premium to book value being paid in the Proposed Transaction is consistent with other recent utility transactions. (Joint App. St. 2-R, p. 5; Joint App. Ex. DJS-2R.)

21. Aqua America's goodwill on its balance sheet would increase by an amount equal to approximately 15% of the combined company's enterprise value. (Joint App. St. 2-R, p. 5.) This is within the range of increased goodwill experienced in other comparable acquisitions. (Joint App. Ex. DJS-5R.)

22. The Proposed Transaction will be accretive to earnings over the short term and long term. (Joint App. St. 2-R, p. 10.)²

23. The Fairness Opinion provided to Aqua America by Moelis & Company LLC provided an independent perspective that the purchase price is appropriate. (Joint App. St. 2-R, p. 5.)

24. The base price is subject to adjustment at Closing, principally for changes in place between the time the deal was executed and Closing. (*See* Joint App. St. 2, p. 4; *see also* Joint Applicants Exhibit DJS-2, Public Appendix A-1.)

25. Aqua America has financed the consideration through a combination of equity capital and third party debt financing. (Joint App. St. 2-R, pp. 8, 15; Tr. 125, 127-128.)

26. Aqua America went to the market to raise the equity capital needed for the Proposed Transaction. Demand for the equity totaled approximately four times the amount of new equity that was sought. (Joint App. St. 2-R, p. 9.)

27. Aqua America issued substantially less debt than initially anticipated to finance the Proposed Transaction. (Joint App. St. 2-R, p. 15.) The actual debt issued to finance the Proposed Transaction was \$436 Million; this amount represents all of the debt to be issued to finance the transaction. (Tr. 127:24-128:5.)

28. Aqua America is legally fit to own the Peoples Companies; Aqua America's and its subsidiaries' culture of compliance is undisputed and will continue if the Proposed Transaction is approved. (Joint App. Ex. DJS-1, pp. 23-24.)

29. Aqua PA's will continue to maintain an NAIC rating of 1 post-transaction. (Joint App. St. 2-R, p. 12.)

² As explained by OCA Witness Smith, the term "accretive to earnings" means that earnings per share are expected to be higher following closing on the transaction. (OCA St. 2, p. 20.)

30. Aqua America has agreed to a number of ring-fencing conditions for its operating subsidiaries and other conditions to protect against adverse financial consequences from the Proposed Transaction. (Settlement ¶¶ 43-67; *see also* Joint App. St. 2-R, pp. 22-25.)

31. Aqua America is technically fit to own the Peoples Companies; Aqua America is the second largest investor-owned water utility in the country and is an experienced owner and manager of pipe-based utility assets in the United States. (Joint App. Ex. DJS-1, p. 21.)

32. Aqua America is a long-term investor in utility operations, focused on long-term ownership; it has owned and operated water systems in Pennsylvania for over 130 years. (Joint App. St. 1 (REVISED), pp. 9-10 (PUBLIC).)

33. Highly-experienced teams will continue to lead the separate operations of Aqua PA and the Peoples Companies; water/wastewater operators will report to water/wastewater supervisors, managers and directors and natural gas operators will report to natural gas supervisors, managers and directors. (Joint App. St. 1-R, pp. 29-31.)

34. The water/wastewater and natural gas subsidiaries will have their own presidents, who will report to Aqua America management. (Joint App. St. 2-R, pp. 29-30; *see also* HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY Joint App. Ex. Nos. CHF-3R and CHF-4R.)

35. Aqua America is financially fit to own the Peoples Companies. (Joint App. St. 2, pp. 3-4.)

36. Aqua America is a publicly traded company that has substantial experience in raising both debt and equity capital in the public marketplace for approximately 130 years. Joint App. St. 1 (REVISED), pp. 8-10 (PUBLIC).)

37. Aqua America is able: (1) to acquire companies and assets and finance the growing capital needs associated with owning and operating public utility companies and assets; and (2) to finance and meet the growing capital needs associated with owning and operating public utility companies and assets. (Joint App. Ex. 1, p. 24; Joint App. St. 1 (REVISED), pp. 8-10.)

38. Aqua America has already secured the necessary debt and equity capital to finance the purchase price of the Proposed Transaction. (Joint App. St. 2, pp. 4-5; *see also* Joint App. St. 2-R, pp. 3-17 (PUBLIC).)

39. Aqua America demonstrated that the Proposed Transaction's lack of synergies or other financial requirements will not adversely affect Aqua America's finances. (*See* Joint App. St. 2-R, pp. 3-17 (PUBLIC).)

40. The Proposed Transaction will increase Aqua America's financial strength and stability. (Joint App. St. 2-R, pp. 5-6.)

41. The record in this proceeding contain substantial evidence demonstrating the numerous public benefits of the Proposed Transaction in the areas of (1) long-term, public, Pennsylvania-based ownership, (2) combined infrastructure experience, (3) maintaining and creating Pennsylvania-based jobs, (4) long-term efficiencies, and (5) maintaining and strengthening the Joint Applicants' community presence in Pennsylvania.

42. Joint Applicants Exhibit DJS-1R (CORRECTED) detailed all of the commitments which Aqua America would accept as additional conditions to the Commission's approval of the Proposed Transaction.

43. The commitments contained in Joint Applicants Exhibit DJS-1R (CORRECTED) included a number of proposed conditions presented in the other parties' direct testimony, which

were agreed to in the spirit of compromise and to provide public benefits in addition to those identified in the Application and the Joint Applicants' testimony. (Joint App. St. No. 1-R, pp. 2-3; Joint App. St. No. 2-R, pp. 1-2.)

44. On June 26, 2019, a Joint Petition for Approval of Non-Unanimous, Complete Settlement ("Joint Petition for Settlement" or "Settlement") was entered into and filed by the Joint Applicants, the Office of Consumer Advocate ("OCA"), the Coalition of Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Direct Energy Business Marketing, LLC and Direct Energy Small Business Marketing, LLC (collectively, "Direct Energy"), the Natural Gas Supplier Parties³ and the Retail Energy Supply Association (collectively, "NGS/RESA"), Pennsylvania Independent Oil and Gas Association ("PIOGA"), Laborers' District Council of Western Pennsylvania ("Laborers' District Council") and Utilities Workers Union of America, Local 612 ("UWUA") (hereinafter collectively referred to as the "Settlement Parties").

45. Equitrans, LP ("Equitrans") and Duquesne Light Company ("Duquesne Light") are not signatories to the Joint Petition for Settlement, but do not oppose the Joint Petition for Settlement.

46. The Settlement contains conditions, in addition to those identified by the Joint Applicants in Joint Applicants Exhibit DJS-1R (CORRECTED), that will provide further affirmative public benefits and further support the approval of the Proposed Transaction. (*See* Settlement Parties Exh. 1; *see also* Settlement.)

47. The Peoples Companies are indirectly owned and managed by SteelRiver, a non-Pennsylvania based private investment fund. (Joint App. Ex. DJS-1, pp. 7-10.)

³ The Natural Gas Supplier Parties consist of Dominion Energy Solutions, Inc. and Shipley Choice LLC.

48. Aqua America is a publicly traded company. Aqua America, and Aqua PA, are based in Bryn Mawr. (Joint App. Ex. DJS-1, p. 7; Tr. 187-188.) Roughly 74% of Aqua America's income comes from its regulated Pennsylvania operations (Joint. App. Exh. DJS-1, p. 113.) Aqua PA, and its corporate predecessor Philadelphia Suburban Water Company, have owned and operated water systems in Pennsylvania for over 130 years. (Joint App. St. 1, p. 9.)

49. Aqua America's ownership of the Peoples Companies will provide stability of ownership; stability of ownership generally leads to greater willingness to make long-term capital investments to provide continued safe and reliable utility service. (Joint App. St. 1, p. 10; Joint App. St. 2, p. 8.)

50. Long-term ownership also promotes a sustained commitment to, and engagement with, the communities served. (Joint App. St. 2, pp. 8-9.)

51. Aqua America's investment horizon is perpetuity and its business model is based on long-term ownership of long-lived assets; its investment decisions are not constrained to meet investor requirements for a finite investment horizon. (Joint App. St. 2-R, p. 32.)

52. The Peoples Companies currently have access to equity from the finite number of investors in the SteelRiver equity funds and debt from private placements to debt-buying life insurance companies. (Joint App. St. 2-R, p. 21.)

53. As a publicly-traded company, Aqua America has access to equity capital from a broad range of investors through highly-liquid public markets. (Joint App. St. 2-R, pp. 21-22.) These investors range from small individual investors to large investment funds, including mutual funds. (Joint App. St. 2-R, p. 32.)

54. Access to equity will be even greater in the future after Aqua America becomes a larger public utility. (OSBA Ex. IEc-3, response to OSBA I-7.)

55. Corporate governance under Aqua America will be even more transparent than the prior commitments that were made in support of SteelRiver's prior acquisitions of the Peoples Companies. (Joint App. St. 2, p. 10.)

56. Over 99% of Aqua America's income is from regulated operations. (Joint App. St. 1 (REVISED), p. 9.)

57. The financing of the transaction was structured to maintain strong investment grade credit ratings. (Joint App. St. 2, p. 5; Joint App. St. 2-R, pp. 6, 7-8, 11-12.)

58. Transparency benefits investors because knowledgeable investors serve to influence effective corporate management. (Tr. p. 189.)

59. Aqua America made clear that it did not seek to create "synergies" by cutting employment. (Joint App. St. 1-R, pp. 5-6.)

60. The Proposed Transaction, as conditioned by the Settlement, provides benefits by avoiding the elimination of Pennsylvania-based jobs to achieve synergy savings or migration of those jobs outside of Pennsylvania. (Joint App. St. 1-R, pp. 11-12.)

61. The Peoples Companies committed to maintain field staffing levels for the next five years. (Joint App. Ex. DJS-1R (CORRECTED), p. 5; Settlement, ¶ 76.) The Joint Applicants further committed to maintain or increase staffing of call centers located in Pennsylvania, maintain the Peoples Companies' call center within the Peoples Companies' service territory in or near Pittsburgh, and only reduce staffing or relocate call center employment upon Commission approval. (See Joint App. Ex. DJS-1R (CORRECTED), p. 8; see also Settlement, ¶¶ 94-95.) These commitments provide guarantees of job retention in Pennsylvania that do not currently exist, and benefit customers by ensuring that they enjoy the

same services provided by Pennsylvania-based employees. Keeping jobs in the Joint Applicants' service territories will benefit local Pennsylvania economies.

62. The Proposed Transaction will provide expanded job opportunities for both gas and water/wastewater employees under combined ownership. (Joint App. Ex. DJS-1, pp. 30-31.) The Proposed Transaction, as conditioned by the Settlement, will also result in approximately 100 new jobs, inclusive of contracted labor and Peoples Companies' employees, being added in Western Pennsylvania. (Joint App. St. 5-R, pp. 18-21.) This opportunity to increase jobs in Western Pennsylvania is a further substantial public benefit.

63. A further benefit of the Proposed Transaction is the Joint Applicants' commitment to further accelerate the replacement of the Peoples Companies' at-risk pipe beyond current levels. The Joint Applicants specifically proposed to increase DSIC-eligible capital spending by \$30 million each year, starting in 2021, resulting in the replacement of approximately 25 miles of additional distribution and large bore transmission mains each year. (Joint App. St. 5-R, pp. 19, 21; Joint App. Ex. DJS-1R (CORRECTED), p. 4.)

64. Further acceleration of the replacement of high-risk pipeline is an affirmative public benefit. (Tr. 214 (I&E witness Cline).) The accelerated elimination of at-risk pipeline reduces risk to greater numbers of customers. (Tr. 232 (OSBA witness Knecht).)

65. The Settlement provides a plan for resolving the issues associated with the Goodwin and Tombaugh ("G/T") gathering systems. (Settlement ¶¶ 29-40.) The plan to replace the bare steel pipeline of the G/T systems set forth in the Settlement will provide additional substantial affirmative public benefits. (Joint App. St. 5-R, pp. 14-15; Tr. 170-172.)

66. Remediating and replacing the systems will improve the safety and reliability of the system by establishing a defined timeline for remediation, which would reduce leaks and UFG levels. (*See* Joint App. St. 5-R, p. 16; *see also* Tr. 90-91.)

67. The Settlement’s remediation proposal will avoid abandonment and conversion of existing customers to higher cost alternative fuel sources. (Joint App. St. 5-R, pp. 14-15.)

68. The cost of the Settlement proposal to remediate the G/T systems is modest; it would increase the monthly bill of a Peoples Companies residential customer by approximately 1%, or \$1 per month. (Joint App. St. 5-R, pp. 15-16.) A rate credit is being provided as a partial offset. (Settlement ¶ 33.)

69. The strict “economic test” proposed by I&E would likely find that replacement of plant would be justified for only 723 customers in a discrete section of the Tombaugh System, at a cost of \$15.8 million; the Peoples Companies would effectively be forced to abandon the remaining 972 customers on the G/T systems. (Joint App. St. 6-R, p. 11.)

70. Substantial political public opposition could be expected if the Peoples Companies sought to abandon service to nearly 1,000 existing utility customers. (See Tr. 105-108.) Such large scale abandonment would stand in contrast to the efforts by the Peoples Companies, in cooperation with OCA, I&E and the Commission, to maintain service to much smaller numbers of existing customers of two troubled gas companies in Western Pennsylvania, where a strict economic test was not employed. (OCA St. 4, pp. 8-9.)

71. The Proposed Transaction, subject to the terms and conditions set forth in the Settlement, will have a positive effect on customer service for the Peoples Companies’ customers. The Settlement includes conditions to maintain or improve the Peoples Companies’

capital expenditures, performance standards and customer service standards. (Settlement, ¶¶ 84, 90-93; *see also* Joint App. Ex. DJS-1R (CORRECTED), ¶ 40-47.)⁴

72. The Peoples Companies will continue to fund their existing Universal Service Programs at levels that are not less than the funding levels proposed in its most recent Universal Service and Energy Conservation Plan for 2019-2021 at Docket No. M-2018-3003177, and Aqua America’s shareholders will contribute additional funds to these programs. (Settlement, ¶¶ 98-101.) The contribution of additional funds to low-income programs will provide substantial public benefits by assisting customers to maintain gas service.

73. The Peoples Companies will continue their long-standing partnerships with existing Community Based Organizations (“CBOs”), other stakeholder agencies, and the Peoples Universal Service Advisory Group to ensure the effective administration of these programs. (Settlement, ¶¶ 102-104.) Moreover, the Settlement contains commitments that maintain the Peoples Companies’ current Universal Service organizational structure and staffing levels, and maintain the existing field employee referral program (i.e. “Help At Peoples Now”). (Settlement, ¶¶ 110-111.) These commitments maintain and improve upon the low-income programs and services currently offered to the Peoples Companies customers, and evidence Aqua America’s commitment to building upon these programs in the future.

74. The Settlement includes conditions related the implementation of specific customer service metrics above and beyond Aqua PA’s current levels, as well as the establishment of a process for Aqua PA to review whether it has achieved these metrics and address any shortfalls. (Settlement, ¶¶ 83-89.) These Settlement conditions provide additional,

⁴ Under ¶ 90 of the Settlement, the Peoples Companies will provide annual reports concerning achievement of service commitments for 5 years. If an identified metric is not achieved, the Peoples Companies must explain the reason for the failure and provide a detailed plan to achieve the metric.

substantial affirmative benefits that are designed to provide Aqua PA's customers with improved customer service, beyond current levels.

75. The Proposed Transaction, as conditioned by the Settlement, involves the Joint Applicants' implementation of the Peoples Companies' SAP system at Aqua PA. (*See* Joint App. St. 4 (REVISED), pp. 22-23; *see also* Settlement, ¶ 96.) Two categories of cost savings will result: savings associated with the mitigation of implementation risk; and savings from consulting. (Tr. 84-85.)

76. SAP implementation will provide additional customer service benefits to Aqua PA. SAP implementation will allow Aqua PA to run a fully integrated contact center system that allows a Customer Service Representative to have immediate access to SAP customer information through automated screen pops, similar to the Peoples Companies, and would create more personalized customer interactions through additional communications channels and an online customer portal. (Joint App. St. 4-R, pp. 10-11.) Customers' expectations with respect to their interactions with utilities have changed; they desire a number of different channels to interact and demand that the utilities provide information promptly and accurately. (Joint App. St. 1-R, p. 10.)

77. Aqua PA will leverage the Peoples Companies' experience with low-income customer programming⁵ and invite one member of the Peoples Companies' current Universal Service Staff to Aqua PA's Helping Hand collaborative meetings and invite Aqua PA staff in charge of collections to the Peoples Companies' Universal Service Advisory Committee meetings. (Settlement, ¶¶ 105-106.) These commitments will ensure that Aqua PA's employees interface with and learn from the Peoples Companies and share in their practices with respect to

⁵ The Peoples Companies were recognized as having a well-structured low-income program. (CAUSE-PA St. 1, p. 32.)

low-income programming. (*See* Joint App. Ex. DJS-1R (CORRECTED), ¶¶ 61-62; *see also* Joint App. St. 7-R, p. 10.)

78. In addition, Aqua PA has committed to review the feasibility of collecting data in accordance with its recent rate case settlement in Docket No. R-2018-3003558, as set forth in each settlement. (Settlement, ¶ 107.) Collecting this information will provide Aqua PA additional information about the low-income population it serves, which will benefit future efforts to address these customers' needs. (*See* Joint App. Ex. DJS-1R (CORRECTED), ¶ 63; *see also* Joint App. St. 7-R, pp. 10-11.)

79. Aqua PA will include in the Helping Hand collaborative agreed to in its recent rate case settlement at Docket No. R-2018-3003558, discussion of the development of a comprehensive universal service and conservation program that will be proposed by Aqua PA, as set forth in the Settlement. (Settlement, ¶ 108.) The discussion and development of this program will benefit low-income customers by creating solutions to promote water conservation that are not currently provided. (*See* Joint App. Ex. DJS-1R (CORRECTED), ¶¶ 65; *see also* Joint App. St. 7-R, p. 11-12.)

80. Aqua America's shareholders will contribute an additional \$50,000 annually to the hardship grant component being developed for Aqua PA's Helping Hand Program annually for four years, and further commit to evaluate whether to increase this contribution as a part of Aqua PA's next base rate case. (Settlement, ¶ 109.) This provision benefits the public because it increases funds available to low-income customers under Aqua PA's program above current levels.

81. The Proposed Transaction is expected to produce long-term savings, or process improvements, in a number of back-office functions, such as finance and accounting, human

resources, regulatory functions, legal functions, information technology, payroll and supply chain. (Joint App. St. 4-R, p. 4.) Although these benefits have not been specifically quantified, Aqua America's experience with numerous utility acquisitions is that savings or process improvements will occur. (Joint App. St. 4 (REVISED), pp. 10-13.)

82. The Settlement also provides for an additional \$10 million rate credit to be provided to Aqua PA's and the Peoples Companies' customers. (Settlement, ¶ 41.) This rate credit provides an immediate pass through of potential non-employment related synergistic savings to existing customers, and constitutes an affirmative public benefit. (*See* OCA St. 2, pp. 32-34; *see also* Tr. 214:11-13.)

83. The Settlement confirms Aqua America was adding a director to its board with natural gas experience and that it would regularly hold board meetings in Pittsburgh. (Joint App. Ex. DJS-1R (CORRECTED), ¶¶ 33-34; *see also* Joint App. St. 1-R, pp. 14-15.) In addition, Aqua America committed to ensure the Peoples Companies are managed by individuals with natural gas utility experience, ensure turnover does not present public safety risks, and develop succession plans. Aqua America committed to maintain an organization structure at the Peoples Companies in which natural gas operational workers directly report to trained natural gas managers.⁶ (Joint App. Ex. DJS-1R (CORRECTED), ¶35; *see* Joint App. St. 1-R, pp. 28-31.) These commitments provide further benefits, by implementing specific managerial controls upon the prospective owner of the Peoples Companies that are above and beyond any controls in place today.

84. The Settlement also includes a condition that states the Peoples Companies will intervene, at the request of a statutory advocate, in any proceeding involving the potential

⁶ The Joint Applicants further note that organizational charts demonstrating this structure would be maintained were admitted as HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY Exhibits CHF-3R and CHF-4R.

abandonment of natural gas customers by others in an area neighboring the Peoples Companies' existing pipeline distribution system, for the purposes of studying and evaluating the possibility of the Peoples Companies extending service to those customers. (Settlement, ¶ 97.) This provision addresses a recommendation proposed by the OCA, based on the Peoples Companies' historic involvement in proposed abandonments by neighboring natural gas systems. (OCA St. 4, pp. 8-10.) This condition is a public benefit as it may benefit people and businesses currently served by small gas systems in Western Pennsylvania who might otherwise lose their gas service due to the inability of current owners to continue operations. (*See* Joint App. St. 6-R, pp. 13-15; *see also* Tr. 154-156.)

85. The Proposed Transaction will not have an anticompetitive impact on retail gas competition, because all rates, terms and conditions that have an impact on retail competition in the Peoples Companies' respective service territories would remain unaffected by the Proposed Transaction. (Joint App. Ex. DJS-1, p. 20.) The Joint Applicants' specific commitments to maintain and enhance the existing choice and transportation programs of the Peoples Companies are a further public benefit of the Proposed Transaction. (Joint App. Ex. DJS-1R (CORRECTED), ¶¶ 66-73.) The Peoples Companies will maintain: (1) the Local Production Pool Tracking system (¶ 68; *see also* Joint App. St. 6-R, p. 38); (2) the upgraded Electronic Bulletin Board (¶ 69; *see also* Joint App. St. 6-R, p. 38); (3) the Local Production Pool invoicing and associated identifying information (¶ 70; *see also* Joint App. St. 6-R, p. 38); and (4) the group contact e-mail process (¶ 71; *see also* Joint App. St. 6-R, p. 38).

86. The Peoples Companies further committed to programmatic changes that enhance retail gas competition, including: (1) providing natural gas suppliers with heating and base load information for customers, including the weather station associated with the customer, upon

request (§ 66; *see also* Joint App. St. 6-R, p. 37); (2) providing a minimum of 20 rate codes, up to 40 rate codes, per supply pool (§ 67; *see also* Joint App. St. 6-R, p. 36); (3) examining potential opportunities to expedite issuance of daily delivery requirements and capacity requests (§ 72; *see also* Joint App. St. 6-R, p. 37); and (4) identifying customers' billing cycles on customers' invoices, to the extent that suppliers find this information valuable and are willing to pay for it (§ 73; *see also* Joint App. St. 6-R, p. 38). The Settlement addresses many of the concerns identified by the NGS Parties/RESA and Direct Energy and enhance the competitive retail gas landscape in the Peoples Companies' service territories. (*See* NGS/RESA St. 1-SR, pp. 10-11; *see also* Direct Energy St. 1-SR, pp. 2-3.)

Appendix C

APPENDIX C

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. §§ 501, *et seq.*

2. The Joint Applicants bear the burden of proving that they are entitled to the relief sought in this application proceeding. 66 Pa. C.S. § 332(a)

3. It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlt. 1990).

4. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlt. 2008) (citing 2 Pa.C.S. § 704).

5. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 (Pa. Cmwlt. 2008).

6. Under Sections 1102 and 1103, the Joint Applicants must demonstrate that the party to whom the assets and service obligations are being transferred is technically, legally and financially fit. *Seaboard Tank Lines*, 502 A.2d 762, 764 (Pa. Cmwlt. 1985); *Warminster Township Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958).

7. Aqua America is presumed to be technically, legally and financially fit to assume control of the Peoples Companies by virtue of its long-standing existence and ownership of jurisdictional public utility service providers, e.g., Aqua PA. *South Hills Movers, Inc. v. Pa.*

Pub. Util. Comm'n, 601 A.2d 1308 (Pa. Cmwlth. 1992); *Re Blue Bird Coach Lines, Inc.*, 72 PA PUC 262, 285-286 (1990); *Re V.I.P. Travel Services, Inc.*, 56 PA PUC 625, 631 (1982); *see also In re: Application of Pennsylvania Power & Light Company, PFG Gas, Inc., and North Penn Gas Company*, Docket Nos. A-120650F0006, A-122050F0003, 1998 Pa. PUC LEXIS 23, at *36-37 (Initial Decision dated May 1, 1998) (“PPL Gas Merger ID”), adopted by, Opinion and Order, Docket Nos. A-120650F0006, A-122050F0003, 1998 Pa. PUC LEXIS 33, *28 (Order dated July 24, 1998).

8. The Joint Applicants have demonstrated by a preponderance of the evidence that Aqua America is technically, legally and financially fit to assume control of the Peoples Companies. *Seaboard Tank Lines*, 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).

9. Under Section 1102(a)(3) of the Code, 66 Pa. C.S. § 1102(a)(3), the Commission’s prior approval, evidenced by a certificate of public convenience, is required:

For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

10. The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a).

11. The Joint Applicants have demonstrated that the Proposed Transaction, as conditioned by the Settlement, will “affirmatively promote 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).

12. The Joint Applicants have satisfied the “affirmative public benefits” standard set forth in *City of York* by a preponderance of the evidence. *Popowsky v. Pa. Pub. Util. Comm’n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007).

13. The Joint Applicants have demonstrated by a preponderance of the evidence that the Proposed Transaction, as modified by the Settlement, is not likely to result in anticompetitive or discriminatory conduct. 66 Pa. C.S. § 2210(a).

14. The Joint Applicants have demonstrated by a preponderance of the evidence that the Proposed Transaction, as modified by the Settlement, will not have an adverse effect on the employees of the Peoples Companies. 66 Pa. C.S. § 2210(a)(2).

15. Based on the record developed in this proceeding and a thorough review of the positions of the parties, the Proposed Transaction, as modified by the Settlement, is in the public interest.

Appendix D

APPENDIX D

PROPOSED ORDERING PARAGRAPHS

1. 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 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 LDC Funding LLC's Membership Interests By Aqua America, Inc., and issue all Certificates of Public Convenience to the Joint Applicants necessary to effect its approval, is hereby approved subject to the terms and conditions of the Joint Petition for Settlement.

2. The Joint Petition for Approval of Non-Unanimous, Complete Settlement entered into and filed by the Joint Applicants, OCA, CAUSE-PA, Direct Energy, NGS/RESA, PIOGA, Laborers' District Council and UWUA, including all terms and conditions contained therein, is hereby approved.

3. That Aqua America may purchase all of the membership interests of LDC Funding LLC, as proposed in Purchase Agreement, the Application, and the Joint Petition for Approval of Non-Unanimous, Complete Settlement, and that a certificate of public convenience is hereby issued evidencing such right.

4. That any other approvals or certificates appropriate, customary, or necessary under the Public Utility Code to carry out the transaction contemplated in this Application are hereby granted.

5. That any protest or petition to intervene filed in this proceeding that is not satisfied or withdrawn pursuant to the terms of the Joint Petition for Approval of Non-Unanimous, Complete Settlement is hereby denied.

6. That the record at Docket Nos. A-2018-3006061, A-2018-3006062 and A-2018-3006063 are hereby marked closed.