NON-CONFIDENTIAL

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 AND THE NECESSARY CERTIFICATES OF PUBLIC CONVENIENCE TO APPROVE A CHANGE IN CONTROL OF PEOPLES NATURAL GAS COMPANY LLC, AND PEOPLES GAS COMPANY LLC BY WAY OF THE PURCHASE OF ALL OF LDC FUNDING LLC'S MEMBERSHIP INTERESTS BY AQUA AMERICA, INC.	:	Docket Nos. A-2018-3006061 A-2018-3006062 A-2018-3006063

MAIN BRIEF
OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT

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MAIN BRIEF
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I. INTRODUCTION

The Bureau of Investigation and Enforcement ("I&E") respectfully submits that the Joint Applicants have failed to satisfy their burden of proof. Specifically, the Joint Applicants have failed to demonstrate that the transaction will result in substantial, affirmative public benefits, the public benefits alleged by the Joint Applicants are speculative at best and not supported by the record. Accordingly, I&E maintains the Application and Non-Unanimous Joint Petition for Settlement must be denied as they are not in the public interest.

II. HISTORY OF THE PROCEEDING

On November 13, 2018, Aqua America, Inc. ("Aqua") 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") (collectively the "Joint Applicants") filed an *Application 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.* ("Application").

On November 19, 2018, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued a Secretarial Letter that acknowledged receipt of the Application and directed the Joint Applicants to publish notice of the Application. The Joint Applicants filed Direct Testimony on December 7, 2018.

The Commission assigned this proceeding to the Office of Administrative Law Judge. Administrative Law Judge Mary D. Long ("ALJ Long") convened a Prehearing Conference on January 18, 2019. At that time, a litigation schedule was developed that provided for the filing of testimony, hearings, and briefs as follows:

April 2, 2019	Direct Testimony of all other Parties
April 30, 2019	Service of Rebuttal Testimony by all Parties
May 21, 2019	Service of Surrebuttal Testimony by all Parties
June 4, 2019	Service of Rejoinder Testimony
June 11-13, 2019	Evidentiary Hearings in Harrisburg, PA
July 10, 2019	Filing and service of Main Briefs by all Parties
July 25, 2019	Filing and service of Reply Briefs by all Parties

ALJ Long conducted an evidentiary hearing on June 11, 2019. At the hearing, the following I&E testimony and exhibits were entered into the evidentiary record: I&E Statement No. 1, I&E Exhibit No. 1, I&E Statement No. 1-SR, I&E Exhibit No. 1-SR, I&E Statement No. 2, I&E Exhibit No. 2, I&E Statement No. 2-R, I&E Exhibit No. 2-R, I&E Statement No. 2-SR, I&E Statement No. 3, I&E Exhibit No. 3, I&E Statement No. 4, I&E Exhibit No. 4, and I&E Statement No. 4-SR. I&E witnesses Zalesky, Cline, and Orr were cross-examined.

Pursuant to the procedural schedule and in accordance with Sections 5.501- 5.502[1] of the Public Utility Code, I&E submits this Main Brief.

III. LEGAL STANDARDS

A. Burden of Proof

As a general proposition, the proponent of a rule or order has the burden of proof[2] in advocating its position in a proceeding before the Commission and any facts utilized to support this burden must be established by a preponderance of the evidence; that is, evidence presented by the proponent must be more convincing, by even the smallest degree, than that proposed by the opponent.[3] Accordingly, the Applicants have the burden of proof and, therefore, a duty to demonstrate by a preponderance of the evidence that the proposed transaction complies with Pennsylvania law.[4] Necessarily, this requires that an applicant for a certificate has the burden of going forward with the evidence to

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1 52 Pa. Code §§ 5.501- 5.502.
2 66 Pa. C.S. § 332(a).
3 66 Pa. C.S. § 332(a); *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).
4 *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

prove its case. That evidence must prove the material facts regarding which the Commission must make findings in order to support the conclusion desired by the applicant.[5] Moreover, it is well established that the ultimate decision of the Commission must be supported by reliable, probative and substantial evidence.[6]

The Application must be rejected as the Applicants have failed to satisfy this burden.

B. Standards for Approval of Acquisition and Settlement

Aqua seeks Commission approval of this acquisition pursuant to Sections 1102(a)(3)[7] and 2210(a)(1)[8] of the Pennsylvania Public Utility Code ("Code"). Specifically, Aqua is seeking a Certificate of Public Convenience and approval of the acquisition of the Peoples Companies, a natural gas distribution company. Pennsylvania courts have held that, in making the determination of whether to grant a certificate of public convenience, the Commission must find that, "those seeking approval of a utility merger demonstrate more than the mere absence of any adverse effect upon the public. In order for the Commission to grant a Certificate of Public Convenience an applicant must follow the procedure spelled out in Section 1103.[9] Section 1103[10] requires that the proponents of a merger demonstrate that the merger will affirmatively promote the 'service, accommodation, convenience or safety of the public' in some substantial

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5 *Re: West Penn Power Company*, 54 Pa. PUC 319; 1980 Pa. PUC LEXIS 49 (May 29, 1980).

6 *See Pocono Water Company v. Pennsylvania Public Utility Commission*, 630 A.2d 971 (Pa. Cmwlth. 1993).

7 66 Pa. C.S. § 1102(a)(3).

8 66 Pa. C.S. § 2210(a)(1).

9 66 Pa. C.S. § 1103.

10 66 Pa. C.S. § 1103.

way."[11] To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable. [12]

The Joint Applicants have failed to demonstrate that the Application meets the criteria that it serves the public interest within the meaning of Sections 1102 and 1103 of the Public Utility Code.

Regarding settlements, it has been established that "[t]he prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest."[13] Additionally, the Commission's decision must be supported by substantial evidence in the record. This requires that more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established is provided.[14]

IV. SUMMARY OF ARGUMENT

I&E submits that the Joint Applicants have failed to establish that the proposed acquisition is in the public interest. The Joint Applicants have failed to establish that Aqua is technically or financially fit to own and operate the Peoples Companies. Further, the Joint Applicants have failed to establish that the settlement produces the requisite affirmative public benefits that were missing in the application that would be required before the Commission could grant approval of this acquisition.

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11 *City of York v. Pennsylvania Public Utility Commission,* 295 A.2d 825, 828 (Pa. 1972).
12 66 Pa. C.S. § 1103(a).
13 *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 Pa.PUC 1, 22 (1985).
14 *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

The main issue for I&E regarding this acquisition was the resolution of the issues surrounding the deteriorated and unsafe Goodwin and Tombaugh Gathering Systems ("Gathering Systems"). I&E first became aware of the disastrous state of these Gathering Systems in 2012, when Equitable filed an application to acquire Goodwin and Tombaugh.[15] In that proceeding the then owners of the gathering Systems, EQT and Equitrans, noted that the systems were aged beyond their depreciable life and that the throughput volumes did not justify the cost to keep the lines in service.[16] Due to the safety and ratemaking concerns raised by I&E, the ALJ in that proceeding denied the requested transfer of Goodwin and Tombaugh to Equitable. Equitable ultimately withdrew that Application and Peoples then filed its own application in 2013 seeking to acquire Equitable, along with the Goodwin and Tombaugh Gathering Systems.[17] In that proceeding I&E was criticized as the Applicants thought that it was "...premature and irresponsible to conclude that the measures that must be applied to these gathering systems will be drastic and expensive."[18] The Joint Applicants are now, however, by the terms of the non-unanimous settlement asking for approval of the most drastic and

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15 *Application of Equitable Gas Company for Affiliated Interest Approval and Such Other Approvals, If Any, As May Be Necessary, In Regard to the Acquisition of the Goodwin Gathering System from EQT Gathering, LLC and of the Tombaugh Gathering System from Equitrans, L.P.*, Docket No. R-2012-2312577.

16 I&E St. No. 2, p. 9.

17 *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC for all of the Authority and the Necessary Certificates of Public Convenience (1) to transfer all of the Issued and Outstanding Limited Liability Company Membership Interest in Equitable Gas Company, LLC to PNG Companies LLC, (2) to Merge Equitable Gas Company, LLC with the Peoples Natural Gas Company, LLC. (3) to Transfer Certain Storage and Transmission Assets of Peoples Natural Gas Company, LLC to Affiliates of EQT Corporation, (4) to Transfer Certain Assets Between Equitable Gas Company, LLC and Affiliates of EQT Corporation, (5) for Approval of Certain Ownership Changes Associated with the Transaction, (6) for Approval of Certain Associated Gas Capacity and Supply Agreements, and (7) for Approval of Certain Changes in the Tariff of Peoples Natural Gas Company LLC.*, Docket Nos. A-2013-2353647, A-2013-2353649, and A-2013-2353651 (Order Entered Nov. 14, 2013)

18 I&E St. No. 2, p. 9.

expensive measure that could be taken; replacement of the entirety of the Goodwin and Tombaugh Systems at an initial cost of $120 million with the possibility of some untold millions more in additional costs.[19] Further, but for a $13 million rate credit, it is being funded entirely on the backs of Peoples ratepayers.[20] As regulated monopolies, ratepayers must be able to rely on their utilities to make fiscally responsible choices, as ultimately the ratepayers fund these choices. A fundamental tenant of ratemaking requires that all rates must be just and reasonable; therefore, when utilities, such as the Joint Applicants propose to make imprudent investments and treat their ratepayers as a blank check, the Commission must step in and require adherence to the Public Utility Code and sound ratemaking principles. This is why, as argued further below, the Commission must reject the acquisition and the terms of this settlement related to Goodwin and Tombaugh Systems. In the alternative, if the Commission approves this transaction, I&E recommends that the Commission require the Joint Applicants to set aside $127 million of the over $4 billion purchase price in to a restricted fund to cover the uneconomic portion of the cost associated with remediating these Gathering Systems.

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19 Settlement para. 32.

20 Settlement para. 33.

V. ARGUMENT

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

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

Aqua lacks the fitness necessary to own, operate and manage a natural gas distribution company. In order to determine the fitness of an acquiring entity, the Commission looks to the criteria set forth by *Penn Estates Utilities*.[21] The need for this review arose in 2005 because a subsidiary of American International Group sought to acquire three Commission regulated water and wastewater companies. The Commission was concerned about equity investors acquiring regulated utilities as those entities may be interested in flipping the utility for a quick profit and may have little experience managing a utility.[22] The transaction at hand is similar to *Penn Estates* because Aqua is primarily a water utility without natural gas background seeking to purchase one of the largest natural gas distributors in Pennsylvania.

Aqua lacks the technical expertise necessary to own, operate, and manage a natural gas distribution company. Technical expertise was specifically articulated in *Penn Estates Utilities* as a factor the Commission should consider when reviewing an

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[21] The criteria are: (1) capital to be allocated to ongoing operating and maintenance expenses; (2) fees paid to and services performed by affiliates; (3) corporate governance/Sarbanes Oxley compliance; (4) expected term of ownership; (5) buyer's experience as an owner and operator of water and wastewater utilities; (6) use of leverage to eliminate or maximize income tax liabilities; (7) extent of transparency on corporate structure issues; (8) community presence of the buyers; (9) complex nature and objectives of affiliated relationships; and (10) entity credit worthiness. *Application of Penn Estates Utilities, Inc., Utilities, Inc., Utilities, Ind. Of Pennsylvania and Utilities, Inc. – Westgate for Approval of Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc.*, Docket No. A-210072F0003 (Order entered October 2, 2006).

[22] *Application of Penn Estates Utilities, Inc., Utilities, Inc., Utilities, Ind. Of Pennsylvania and Utilities, Inc. – Westgate for Approval of Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc.*, Docket No. A-210072F0003, et al, Statement of Chairman Wendell F. Holland (Public Meeting March 16, 2006).

application by an equity fund to own a utility. Although Aqua is a public utility and not an equity fund, the factors articulated in *Penn Estates Utilities* control because like the equity fund's inexperience in the water industry, Aqua has no experience in owning, operating or managing a natural gas utility. Aqua has exhibited its technical fitness in the water and wastewater industries, however; it has failed to provide evidence of its technical fitness to own and operate a natural gas distribution company.

In support of the Application, Aqua claims that it demonstrates its technical fitness with its experience in owning and operating public utility pipeline assets in conformance with the Code and Commission regulations.[23] However, as expressed in I&E witness Orr's Direct Testimony, if Aqua is to acquire Peoples, Aqua must adhere to safety provisions that do not exist for water and wastewater operators.[24] Due to the potential volatile nature of natural gas as opposed to water, the safety requirement levels are elevated for natural gas operations. Additionally, Aqua will be required to follow regulations set forth by Pipeline and Hazardous Materials Safety Administration ("PHMSA"). Aqua, as water and wastewater utility, does not currently comply with PHMSA standards or the Code of Federal Regulations ("CFR") relating to the transportation of natural gas. If the Commission allows the acquisition to occur, Aqua would have to become acquainted with these additional obligations to safely provide service to its customers.

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23 Joint Applicants St. No. 4 Revised, p. 10.

24 I&E St. No. 4, p. 8.

Aqua also lacks the financial fitness to own, operate, and manage a natural gas distribution company. As part of the transaction, Aqua agreed to pay more than double the book value for the Peoples Companies assets, this includes $2.0 billion in goodwill.[25] The goodwill payment will produce no revenue for Aqua. Further, in order to finance the transaction, Aqua anticipates an addition of $0.4 to $0.9 billion of new debt.[26] This amount of debt to acquire the Peoples Companies is concerning considering Aqua plans on keeping the capital structures separate. This means that Aqua's debt will rise without the addition of any revenue base and reductions in cost which would typically occur when a utility provider acquires a similarly situated utility. It appears that the transaction will have negative impact on Aqua by increasing its financial risk and not providing any benefits typically seen with adding customer base and cost savings.

I&E maintains that Aqua falls short of providing Peoples with the technical expertise and financial fitness necessary to provide safe and reliable service to its customers. For this reason, the Settlement and Application should not be approved by the Commission.

2. Additional Considerations Concerning Aqua America's Fitness to Own The Peoples Companies

Another aspect to consider with regards to Aqua's fitness to operate Peoples Natural Gas is the Goodwin and Tombaugh Gathering Systems. If the Commission approves the transaction, Aqua would gain ownership of the Goodwin and Tombaugh

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25 I&E Exhibit No. 1, Schedule 9.
26 Joint Applicants St. No. 2, p. 6.

Gathering Systems. Together these gathering systems comprise of approximately 368 miles of lines and serve approximately 1,695 customers.[27]

I&E remains concerned about the safety and reliability of these gathering lines. The Goodwin and Tombaugh Systems came under Peoples ownership in 2013 when the Commission approved through Settlement the Application of Peoples to acquire Equitable.[28] At that time, I&E raised serious concerns about these lines because in 2013 the Goodwin system had 81.7% lost gas and the Tombaugh system had 59.7% lost gas. In the 2013 acquisition, a Settlement was entered where Peoples made extensive commitments to mow, walk, leak survey the gathering systems, address the root cause of leaks to eliminate future leaks and to update the segmentation in order to monitor the systems and react to situations that cause UFG.[29] However, in the five years since the gathering lines were transferred to Peoples, they have shown little to no improvement in UFG levels. Both the Goodwin and Tombaugh Systems continue to have very high levels of UFG, as of 2018 the Goodwin System's UFG was 83.52% and the Tombaugh System's UFG was at 43.95%.[30] Additionally, a house served off the Goodwin system

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27 I&E St. No. 2, pp. 3-4.

28 *Joint Application of Peoples Natural Gas Company, LLC, Peoples TWP LLC, and Equitable Gas Company, LLC for All of the Authority and the Necessary Certificates of Public Convenience (1) to Transfer All of the Issued and Outstanding Limited Liability Company Membership Interest of Equitable Gas Company, LLC to PNG Companies, LLC, (2) to Merge Equitable Gas Company, LLC with Peoples Natural Gas Company LLC, (3) to Transfer Certain Storage and Transmission Assets of Peoples Natural Gas Company to Affiliates of EQT Corporation, (4) to Transfer Certain Assets between Equitable Gas Company, LLC and Affiliates of EQT Corporation, (5) for Approval of Certain Ownership Changes Associated with the Transaction, (6) for Approval of Certain Associated Gas Capacity and Supply Agreements, and (7) for Approval of Certain Changes in the Tariff or Peoples Natural Gas Company LLC pursuant to Sections 1102(a)(3), 1317(d), 2102(a) and 2204(e) of the Public Utility Code*, Docket Nos. A-2013-2353647, A-2013-2353649 and A-2013-2353651.

29 Id. at Appendix C.

30 I&E St. No. 2, p. 8.

exploded in 2018, the cause of which is currently being investigated by I&E's Pipeline Safety Division.[31]

I&E believes that Peoples, without Aqua oversight, is in the best position to resolve the issues surrounding the Goodwin and Tombaugh Gathering Systems. The Peoples Companies, after taking ownership of the systems and in accordance with the 2013 Settlement, mowed the rights-of way, located the gathering lines, and performed an initial leak survey. The Peoples Companies, **[BEGIN CONFIDENTIAL]** [redacted] **END CONFIDENTIAL]** are aware of the difficulties the gathering lines present and with the expertise in the natural gas industry, are better positioned to resolve such issues. If the Commission grants the Joint Application, some expertise regarding this issue will be lost which will hinder Aqua's technical fitness to operate the system.

On the contrary, Aqua was not involved in prior litigation surrounding the Goodwin and Tombaugh Gathering Systems. Aqua, a water and wastewater public utility, should not be determining how the issues are to be resolved. Aqua is not versed in safety for a natural gas distributor, this was made clear when Mr. Joseph Barbato, Vice President, Corporate Engineering of Aqua America, Inc., stated that Peoples Gathering has been operating the gathering systems safely.[32] Further, at hearing, Mr. Barbato hesitated to call the Goodwin and Tombaugh Gathering Systems unsafe despite the fact that he is aware UFG levels are at 83.52% and 43.95%.[33] Noting that while the

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31 I&E St. No. 3, p. 17.
32 Joint Applicants St. No. 5-R, p. 4.
33 Tr. at p. 168.

unaccounted for gas levels were "...well above every standard that's out there in terms of acceptability," Mr. Barbato still stated "...I hesitate to call them unsafe."[34] Mr. Barbato's testimony highlights the inexperience Aqua possesses in safety for natural gas distribution company. The Peoples Companies, as it stands today with its experience in natural gas distribution safety and **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**, is in the best position to resolve the issues involving safety on the gathering lines, they have begun the initial steps to make safe and should see it through to resolution.

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

First and foremost, the fact that two of the three statutory advocates, I&E and the Office of Small Business Advocate ("OSBA"), refused to sign off on this partial settlement as being in the public interest should be a huge red flag for this Commission. The transaction, even as conditioned by the partial settlement does not result in affirmative public benefits. As expressed by expert witnesses in this proceeding, any benefits of this acquisition must be viewed relative to the only other alternative at this juncture, i.e. maintenance of the status quo in which there is no acquisition.[35] In acquisition proceedings, the standard is not merely "do no harm," rather there should be new benefits provided for as a result of the acquisition. As expressed by OSBA witness Knecht, this acquisition can be likened to a feeding frenzy in which, because none of a substantial nature were offered by the Joint Applicants, the Parties attempted to extract

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34 *Id.*

35 OCA St. No. 1, pp. 18 and 21 and OSBA St. No. 1-S, p. 3.

their own affirmative public benefits.[36] The feeding frenzy-like nature of this acquisition is reflected in the partial settlement. It must be noted that none of the conditions imposed by the Settlement, but for the purchase price and financing related terms, are things that Peoples or Aqua could not do independently of this transaction. In fact, only the financing terms are a direct result of this acquisition and, as noted below, the purchase price and financing of this transaction does not in any way benefit Aqua or Peoples ratepayers. Further, the costs associated in the commitments reflected in the non-unanimous settlement, all or most of which will ultimately be borne by ratepayers, appear to have gone unreviewed. Even when viewing this acquisition through the veil of this partial settlement, the benefits to ratepayers simply do not outweigh the associated risks both financial and those related to Aqua's technical fitness to own a natural gas distribution company. The ratepayers are being asked to bear the cost, not only of this acquisition, but also the costs of largely all the commitments Aqua has agreed to as part of this settlement. For an acquisition in which synergies are largely non-existent, it is certainly not in the public interest to also view ratepayers as a never-ending funding source.

1. Purchase Price and Financing

As part of its duty to ensure that utilities charge just and reasonable rates, this Commission has the authority to determine whether the purchase price of this utility is reasonable and in the public interest. Sections 505[37] and 1103(b)[38] of the Public Utility

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36 OSBA St. No. 1-S, p. 3.
37 66 Pa. C.S. § 505 ("Section 505").
38 66 Pa. C.S. § 1103(b) ("Section 1103(b)")

Code each individually provides the Commission with the authority to conduct an investigation into property valuation. Further, under Section 1103 the Commission is vest with a great amount of latitude in determining what conditions must be imposed in order to grant a certificate of public convenience to offer public utility service.[39]

This acquisition arose, not out of necessity, but out of a water utilities' desire to own a natural gas distribution company. Peoples was not publicly up for sale and Peoples did not solicit bids for purchase,[40] nor was it in such dire condition that a sale was necessary to protect its customers. The consideration to be paid by Aqua America as a result of this acquisition is enormous; a base purchase price of $4.275 billion. As noted by Office of Consumer Advocate ("OCA") witness Kahal, this acquisition "...could put substantial financial pressure on Aqua, Aqua PA and ultimately the Peoples Companies that does not exist today."[41] This includes approximately $1.3 billion of assumed Peoples debt and approximately $2 billion in goodwill being recorded. As noted by OSBA, for the year ended 2017 Aqua's total assets were $6.3 billion; therefore, absorbing this $4.275 billion purchase is an increase in asset value of about 70%.[42] Further, Aqua will need to finance $2 billion of goodwill that it will not be permitted to earn any revenue on.[43] While Aqua's debt is increasing by a large extent, , all other things remain equal; the number of Peoples and Aqua customers is not changing, therefore, there are no additional revenue stream and the Joint Applicants are not reporting any real cost savings

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39 *Rheems Water Co. v. Pennsylvania Pub. Util. Comm'n*, 620 A.2d 609, 611 (1993).
40 I&E St. No. 1, p. 11.
41 OCA St. No. 1, p. 10
42 OSBA St. No. 1, p. 7.
43 *Id.*

that will be achieved as a result of this merger. Therefore, the Joint Applicants are left with a sizeable debt increase related to goodwill that will not generate any revenues thereby increasing the riskiness of this transaction.

The partial settlement terms do not in any way adjust downward the purchase price of this acquisition. In fact, as noted by OSBA witness Knecht, "...it is important to recognize that adopting the commitments of the type that are often made in these proceedings will serve to exacerbate the financial problems..."[44] that could result from these acquisitions. Further, in an effort to effectuate this transaction, Aqua's indebtedness will necessarily increase substantially. As noted by OSBA, "...the new combined entity will have additional debt totaling some $400 to $900 million, with no addition to its revenue base and no reduction to its costs. This increase in indebtedness necessarily increases the financial risk of the combined entity."[45] Combining this with the financial impact of the commitments made in the non-unanimous settlement can put immense financial pressure on both of the Joint Applicants.

The Commission must keep in mind that an arm's length negotiation and a reasonable purchase price are two separate considerations. One neither precludes nor ensures the other. While both Joint Applicants contend this deal was negotiated at arm's length, this does not necessarily justify the purchase price. As noted by OSBA witness Knecht, the financial impact of this transaction could be mitigated by either restructuring the sale price of financing so as to avoid any material increase in debt or by making

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44 OSBA St. No. 1, p. 18.

45 *Id.* at 8.

commitments that interest costs claimed in future rate proceeding may not exceed those consistent with the current debt ratings for both entities. This settlement does none of those things.

Further, as the Joint Applicants have acknowledged, this acquisition is not a synergy or cost-savings based acquisition.[46] As OSBA witness Knecht discussed, in the United States there are few combined water and gas utilities suggesting that synergies and technical expertise between the two types of utilities is not at all substantial.[47]

2. Public Ownership of The Peoples Companies by a Pennsylvania Based Company

Neither the alleged more public ownership under Aqua nor the fact that Aqua is a Pennsylvania based company, creates the affirmative public benefits necessary to approve this transaction. This is particularly true considering public utilities in Pennsylvania are fairly open with information provided to this Commission. Further, while SteelRiver may not be a Pennsylvania company, it is unfair to imply that the Peoples Companies do not have a strong commitment to Pennsylvania under its ownership.

Aqua America is a publicly owned and traded company, which automatically makes it subject to additional reporting requirements that the Peoples Companies are not beholden to. As noted by I&E witness Zalesky, these reporting requirements included providing information to various entities including their shareholders, the government, the New York Stock Exchange, and in some instances the public as a whole.[48] While the

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46 OSBA Ex. IEc-3, response to OCA-IV-67, and OCA St. No. 2, p. 28.
47 OSBA St. No. 1, p. 14.
48 I&E St. No. 1, pp 8-9.

Peoples Companies are not required to provide all of the same information as Aqua, to say that they are not transparent as a Commission regulated utility would be a misstatement. Frankly, approval of the acquisition would not impact the information that the Peoples Companies must report to this Commission.[49] Pennsylvania regulated public utilities are very open to the public and the regulators. For regulatory purposes, it does not appear that greater transparency is an affirmative benefit that warrants approval of this transaction as the Peoples Companies must provide the Commission with industry specific information required for regulation, such as quarterly earnings reports, annual reports, UFG reports, accident reports and outage reports, to just name a few. Moreover, these reports and other regulatory requirements are all in addition to the scrutiny undertaken in base rate cases and in their annual 1307(f) purchased gas cost proceedings. Further, this increased transparency does not appear to benefit ratepayers in any substantial, quantifiable way. As noted by OCA witness Kahal "[t]he fact that Aqua files reports with the Securities and Exchange Commission is helpful, but no evidence has been presented that the absence of transparency for the Peoples Companies' current ownership (i.e. SteelRiver) has created a problem or denied the Commission any vital information needed for regulatory purposes. In that regard, there is no 'transparency' problem for the Peoples Companies themselves."[50] Given that there is no transparency issue with Peoples or its current owners, Aqua's attempt to use transparency as an affirmative public benefit of a substantial nature must fail.

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49 I&E St. No, 1, p. 9.
50 OCA St. No. 1, p. 21.

The Commission's *Penn Estates Utilities* criteria states that the community presence of the buyer is a factor to be considered when an equity investment fund seeks to gain ownership of a regulated utility.[51] In direct testimony Joint Applicant's witness Morgan O'Brien was asked to comment on Peoples commitment to the communities they serve. Mr. O'Brien noted that:

> Community commitment is not only one of the Peoples Companies' stated core values, it is how we have become recognized in the communities we serve as a true community leader. In a time when governmental support is becoming more challenging at both the federal and state levels, the need for social services in our region continues to grow. Peoples Natural Gas committed in the Equitable acquisition case settlement to provide annual corporate contributions and community support in southwestern Pennsylvania of at least $1.4 million. We have exceeded this commitment level by contribution in 2017 more than $1.5 million to at least 200 community-based organizations that serve our service territory communities – both large organizations and small....
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> One of the key values our employees have embraced is the need to support the communities we serve. I am proud to say that we have a very active Volunteer Activities committee and many of our employees volunteer on the boards of community organizations. A large number of Peoples Natural Gas' corporate donations are made to organizations in which our employees are actively involved or actively support.
>
> This includes giving time and money to help those in need. We offer ongoing volunteer events such as collecting and packing good in partnership with local food banks, cleaning the rivers with Paddle without Pollution, mentoring youths through Big Brothers Big Sisters or providing winter outwear for children with the Salvation Army's Project Bundle Up. This is helping our customers to see us differently, as something other than a company who send them a bill every

[51] *Application of Penn Estates Utilities, Inc., Utilities, Inc. of Pennsylvania and Utilities, Inc.- Westgate for Approval of Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc.*, Docket No. A-210072F0003, et al. (Order entered March 31, 2006).

> month for their utility services, and at the same time building a pride in the employee ranks that we have not seen before.[52]

Per Mr. O'Brien's testimony, it appears Peoples already has a strong commitment to Pennsylvania and, specifically, to the communities it provides natural gas service. In fact, the non-unanimous settlement's "Community Commitment" section is only three paragraphs long with only one of those paragraphs being actual commitments to the community.[53] One provision merely maintains the status quo; i.e. that Peoples will continue complying with the Commission's diversity policy. Secondly, Aqua has committed to spending one half of one percent, with the eventual goal being one percent, of pretax net income each year for charitable contributions. Peoples has committed to spend $2.7 million annually in corporate contributions for a period of not less than 5 years. The last commitment is simply that Aqua will report to I&E, OCA and OSBA on these commitments. The financial impact of this increased spending has not been evaluated, and further Peoples already has a strong community presence and commitment to Pennsylvania. When evaluating the increase in costs along with the effect of these charitable contributions, particularly when the ratepayers have no say in which charities are being committed to, it is completely debatable that these provisions constitute affirmative public benefits.

Had there been identified a problem with the current ownership of the Peoples Companies, ownership by Aqua America could possibly be viewed as an affirmative public benefit. However, since no issue has been alleged with SteelRiver's ownership of

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52 Joint Applicants St. No. 3 Revised, pp. 11-12.

53 Settlement, pp. 24-25.

the Peoples Companies it is disingenuous to state that ownership by Aqua is an affirmative public benefit.

3. Job Retention and Growth in Western Pennsylvania

As has been discussed prior, any alleged benefits of this acquisition have to be measured against the only other pertinent alternative, namely Aqua and Peoples continuing along as if this acquisition have never been contemplated. This remains true when viewing the effect this acquisition will have on jobs and growth in Pennsylvania. As noted by CAUSE-PA witness Harry Geller,

> [r]egarding the Joint Applicants assertion that Pennsylvania jobs will be maintained, there is nothing inherent in the acquisition that causes this to be so; we have only a statement of present intent made by Aqua that could change in the future. There are no job *gains* that would occur as a result of the acquisition; the fact that Aqua proposes not to *initially* eliminate jobs in either service territory should not be viewed – standing alone – as an affirmative public benefit, given there is no indication that these jobs would be lost if the acquisition were not to occur.[54]

One could also say that there is nothing inherent in the partial settlement that makes this so either. The settlement merely indicates that there are no planned workforce reductions and that Aqua is willing to commit to maintain field staffing levels at the Peoples Companies for at least five years post-closing.[55] In addition, the Joint Applicants have committed to adhere to the currently effective collective bargaining agreements.[56] Further, the Joint Applicants have agreed to continue to maintain the Peoples corporate

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54 CAUSE-PA St. No. 1, pp. 8-9.
55 Settlement, para. 76.
56 Settlement, para. 77.

headquarters through January 31, 2029 and to thereafter not move the headquarters outside of the Peoples service territory.[57] As none of the above were expected to occur without the acquisition, it is clear that these things not occurring as a result of the acquisition do not constitute affirmative public benefits. Once again, they are mere maintenance of the status quo.

The Competition Act[58] requires an evaluation of the proposed transaction on the disposition of employees and any collective bargaining agreement representing those employees. Peoples has not at any point alleged that, but for this acquisition, jobs would be eliminated or moved outside of Pennsylvania or that they would not honor the commitments of the collective bargaining agreements currently in place. Therefore, the concept that job retention, particularly as it relates to keeping jobs in Pennsylvania, is somehow a benefit of this acquisition is unsupported given that those jobs are not in danger of being moved or eliminated under SteelRiver's current ownership.

Further, related to job retention, as a result of this acquisition [**BEGIN CONFIDENTIAL**] [redacted]

57 Settlement, paras. 81-82.
58 66 Pa. C.S § 2210(a).
59 OCA St. No. 2 (Confidential), p. 23.

[redacted] [END CONFIDENTIAL]. As the job-related commitments contained in the non-unanimous settlement do nothing other than maintain the status quo, I&E does not believe they constitute affirmative public benefits.

4. Long Term Infrastructure Improvement Plan ("LTIIP") Acceleration

In the Settlement, the signatories agree to increase Peoples' combined distribution LTIIP spending by $30 million per year beginning in 2021, and the replacement of an additional 25 miles of pipe per year.[61] As noted in I&E's testimony, acceleration of Peoples' LTIIPs is necessary.[62] However, I&E's recommendation is necessary independent of this acquisition and could have been addressed in Peoples' LTIIP filings. While LTIIP acceleration is certainly a benefit, it is something that can be accomplished under SteelRiver's ownership and does not rise to the level of affirmative public benefit that would negate the negative aspects of this acquisition especially because it remains to

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60 OCA St. No. 2 (Confidential), p. 23. Joint Applicants St. No. 3 REVISED, p. 6

61 Settlement, para. 69.

62 I&E St. No. 6.

be seen whether the LTIIP acceleration proposals as laid out in the settlement will actually be realized. It is not simply enough for the Joint Applicants to indicate they would like to accelerate pipeline replacement through means of a revised LTIIP. The revised LTIIP must be filed with and reviewed by the Commission. Should it, for some reason, be rejected by this Commission, then the benefits touted in the non-unanimous settlement will not be realized at all. Additionally, while I&E supports accelerating pipeline replacement, there may be circumstances that could cause Peoples to not meet the revised acceleration levels, such as competing with other NGDCs for pipeline contractor manpower and pipeline purchases.[63] Therefore, this settlement term fails to be a public benefit that warrants approval of this transaction given that pipeline replacement can be addressed and accelerated under SteelRiver's ownership and the fact that it is unknown how many more miles will actually be replaced. As noted in I&E's testimony in this proceeding, acceleration of both Companies' LTIIPs is necessary. However, I&E's recommendation is something that is necessary independent of this acquisition. While LTIIP acceleration is certainly a benefit, it is something that is needed even without this transaction and does not rise to the level of affirmative public benefit that would negate the negative aspects of this acquisition.

5. Goodwin and Tombaugh Gathering Systems

The concerns surrounding the Goodwin and Tombaugh Systems are long-standing and difficult as they present significant safety and ratemaking concerns. The application was silent with respect to these concerns and the instant Settlement fails to resolve them

[63] I&E St. No. 3, pp. 8-9.

appropriately or in keeping with the prior 2013 Peoples/Equitable Settlement; therefore, the Joint Applicants have failed to demonstrate an affirmative public benefit and the transaction should be denied.

The Goodwin System currently loses 82% of its gas, while the Tombaugh System loses 44%. As I&E witness Cline stated "...the Goodwin and Tombaugh Gathering systems have been transferred between entities several times with each entity not performing the necessary remediation."[64] This issue was last contested in the 2013 Peoples/Equitable merger proceeding. In that acquisition I&E provided extensive testimony from its safety witness Ralph Graeser and engineer Ethan Cline regarding the safety concerns and the financial impact of replacing all 368 miles of these gathering lines. In the 2013 proceeding, the cause of the high UFG on these gathering lines was unknown and Peoples downplayed I&E's safety and ratemaking concerns by indicating that it would likely be able to reduce UFG through segmentation and other inexpensive measures.[65] I&E entered into a Settlement with Peoples to allow it to acquire these lines but, pursuant to the 2013 Settlement, Peoples was required to perform specific activities to assess and improve the gathering lines in order to reduce UFG and develop a plan to rehabilitate or abandon some or all of the Goodwin and Tombaugh lines. The 2013 Settlement also required that the Seller, EQT, provide $5 million to be used by Peoples to investigate UFG on the Goodwin and Tombaugh Systems. Further, in recognition of I&E's ratemaking concerns, the 2013 Settlement required that the Gathering Systems be

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64 I&E St. No. 2-SR, p. 13.
65 I&E St. No. 2-SR, p. 21-22.

transferred to a newly created subsidiary rather than directly to Peoples because I&E was concerned that EQT had neglected these lines over the course of many years and that Peoples would expect its customers pay for that neglect. Over five years have lapsed since this 2013 Settlement, and UFG levels on Goodwin and Tombaugh remain unacceptably high. These gathering lines are proposed to be transferred again through this transaction, but the Settlement ignores the safety and ratemaking concerns that I&E raised many years ago and must, therefore, be rejected.

It is now clear that UFG on the Goodwin and Tombaugh Systems will not decrease simply because it is being operated by Peoples, rather than EQT. The time has arrived for the Commission to put in place an appropriate solution, which is more appropriately accomplished under its current parent, SteelRiver, and under the structure that was established in the 2013 Settlement. There, the signatories to the Settlement agreed that Peoples would complete its assessment and present a plan to the Commission and recommend whether to proceed with rehabilitation of some or all of the gathering lines and/or with abandonment of some or all of the customers served off those lines. The parties further agreed to an economic test comprised of the EQT $5 million contribution, the $12 million cost to convert customers to alternative fuels, and the $6 million of incremental rate base supported by revenues from the Gathering System customers. If the economic test is satisfied, the 2013 Settlement provided that Peoples would be permitted to include its investments to the Gathering Systems in rate base to be recovered from ratepayers; however, if the economic test is not satisfied, Peoples agreed that it would make a recommendation not to further invest in the Gathering Systems.

The Settlement currently before the Commission fails to adhere to any of the commitments agreed upon in the 2013 Settlement as it ignores the detailed economic test that was agreed upon by the parties and approved by the Commission. Specifically, it allows Peoples full recovery of $120 million from ratepayers to replace all 368 miles of the Goodwin and Tombaugh gathering lines. This far exceeds the $23 million threshold detailed in the 2013 Settlement's economic test. Additionally, I&E is concerned that the $120 million estimate is artificially low; therefore, ratepayers are likely at risk for much more. The Settlement attempts to address this by providing an opportunity to meet and discuss if it becomes apparent that the initial $120 million estimate is no longer sufficient. If an agreement cannot be reached, the Settlement states that a filing will be submitted to the Commission to decide the recovery of amounts in excess of the agreed upon $120 million. This term fails to provide any protection to ratepayers. I&E has estimated a much higher replacement cost in the range of $184 million to $368 million based on a replacement cost of $500,000 to $1,000,000 per mile.[66] Although Peoples claims that I&E's estimate is incorrect, Peoples reported that its investment in mains and services in its most recent LTIIP was approximately $1,273,000 per mile in 2017, $1,323,000 per mile in 2018 and $1,317,000 per mile in 2019; therefore, I&E's estimate of $500,000-$1,000,000 per mile appears to be reasonable and even conservative.[67] Given that the Settlement provides for recovery of an initial $120 million from customers

[66] I&E St. No. 2-SR, p. 11.

[67] Peoples LTIIP for January 1, 2017 through December 31, 2021, Docket No. P-2013-2342745, P-2013-2344596, Appendix A, p. 7. I&E St. No. 1-SR, p. 17.

and potential recovery of untold more millions of additional ratepayer funds, this Settlement term where the signatories agree to meet and talk it over is of little comfort.

Despite the fact that the Settlement proposes to replace all bare steel pipe in the Goodwin and Tombaugh Gathering Systems, Peoples own witnesses recognize that doing so is imprudent. Joint Applicant's witness Morgan O'Brien addressed the issue of rehabilitation in his rebuttal testimony. There Mr. O'Brien notes that replacement of every mile of pipe on the Goodwin and Tombaugh Systems would not be economic.[68] He then opines "[i]n some cases, abandonment of the customer, and converting the customer to an alternative fuel source, would me more economic and in the public interest."[69] Furthermore, Joint Applicants witness Joseph Gregorini explains in his rebuttal testimony three scenarios for rehabilitating the Goodwin and Tombaugh Systems.[70] The first scenario examines retaining the entirety of the Systems.[71] The second scenario examines maintaining only the trunk line systems where there are higher concentrations of customers.[72] Lastly the third scenario examines retailing only the northern Tombaugh pipeline system.[73] Mr. Gregorini goes on to note that "[o]nly Scenario 3 would satisfy the settlement economic test" detailed in the 2013 Peoples/Equitable Settlement. [74] Additionally, as Mr. O'Brien testified at hearing, Peoples remains bound by the terms of the 2013 settlement.[75] Despite the Joint

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68 Joint Applicants St. No. 3-R, p. 8.
69 *Id.*
70 Joint Applicants St. No. 6-R, pp. 8-11.
71 *Id.* at 8-10.
72 *Id.* at 10.
73 *Id.* at 11.
74 *Id.* at 12.
75 Tr. pp. 104

Applicant's acknowledgement through the testimony of their own witness that it would not be economic or in the public interest to replace every mile of pipe on the Goodwin and Tombaugh Systems, they have presented the ALJ and the Commission with a non-unanimous settlement asking to do just that. The Parties to the settlement bear the burden of convincing this Commission that the project is in the public interest. I&E submits that they have failed to do so. In fact, the purported resolution contained in the non-unanimous settlement is simply irresponsible and violates prior Commission approved settlement commitments. I&E entered into the 2013 Settlement in good faith to remedy the challenging safety and ratemaking issues presented by the Goodwin and Tombaugh Systems. Approximately five years later, Aqua and Peoples are asking this Commission to ignore the terms of the 2013 Settlement at the expense of its customers.

To further illustrate why full replacement of Goodwin and Tombaugh contained in the Settlement is contrary to the public interest, Joint Applicant witness Joseph Gregorini testified that there are approximately eight to ten customers per mile on the Goodwin and Tombaugh Systems as compared to the approximately 50 customers per mile on Peoples distribution system.[76] He further testified that the cost to replace the entirety of the Goodwin and Tombaugh Systems on a per customer basis was about $72,000.[77] The total effect of replacement of the entirety of the Goodwin and Tombaugh Systems is a net present value cost to ratepayers of $91.7 million.[78] Essentially it will cost almost $92 million more to replace these systems than the Company will get back in revenue which

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76 Tr. at 135.

77 *Id.*

78 OSBA St. no. 1-S, p. 17 and Joint Applicants Exh. JAG-3R.

will be placed into rate base and recovered from ratepayers.[79] Even when taking into account the $13 million rate credit related to Goodwin and Tombaugh, it is clear that ratepayers are on the hook for a far more significant portion of this burden than shareholders.

Importantly, this is not the first time ratepayers have had to be protected from the significant costs associated with the Goodwin and Tombaugh Gathering Systems. Before the Peoples/Equitable acquisition arose in 2013, Equitable Gas Company filed an Application with the Commission seeking to take ownership of the Goodwin and Tombaugh Gathering Systems from EQT and Equitrans in 2012. In that 2012 proceeding a non-unanimous settlement was reached that permitted the transfer of the gathering lines, which I&E opposed due to the significant safety and ratemaking issues surrounding those gathering lines. A Recommended Decision ("RD") was issued that denied the proposed transfer of the Goodwin and Tombaugh Systems to Equitable because the "extraordinarily high LUFG levels" were "risky and potentially very expensive." [80] Nothing has changed except for the fact that the expense related to these systems has increased significantly. In that proceeding, Equitable estimated that it would cost approximately $12 million to operate the Goodwin and Tombaugh Systems for the first three years of ownership. Even at that $12 million threshold, much lower than the $120 million agreed to in the instant non-unanimous settlement, the ALJ determined that the

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79 Tr. at 135.

80 *Application of Equitable Gas Company LLC for Affilitated Interest Approval and Such Other Approvals, If Any, As May Be Necessary, In Regard to the Acquisition of the Goodwin Gathering System from EQT Gathering, LLC and of the Tombaugh Gathering System from Equitrans, L.P.* Docket No. R-2012-2312577, p. 24 (RD Dated January 28, 2013).

acquisition should not be approved.[81] Additionally, as in the instant proceeding, Equitable essentially left open the question of the total cost to be recovered from ratepayers which concerned the ALJ in 2012 and should similarly be of concern in 2019:

> Equitable contends that the ratepayers are protected because it has agreed to not seek recovery of the acquisition costs for the systems and that its initial investigation costs are capped at $2 million and can only be recovered in a base rate proceeding upon a showing that the costs were "prudently incurred." But in the context of a rate proceeding, the Commission's review would not include whether the acquisition was prudent in the first place if the investigation reveals that the rehabilitation of the systems is prohibitively expensive. Replacement of the pipeline could amount to as much as $379,000,000, in the event that Equitable is unable to control LUFG by other means. In order to meet its obligation to balance the needs of ratepayers with the needs of the company's investors, the Commission would be in a position where it may have to permit the recovery of at least some of these costs from ratepayers in order to preserve the financial health of Equitable. Therefore, the cap on investigation costs and the element of risk to Equitable that the Commission may limit the recovery of those costs only provides a short-term protection to ratepayers.
>
> Similarly, although the Joint Settlement may offer some limited short-term protections to ratepayers, it offers no protection from future cost recovery. Although Equitable claims that its main purpose in acquiring the systems is the continued distribution service to the Field Line Customers, it offers no guarantees either in its proposal or the settlement that would preserve service to those customers in either the short-term or the long-term. Since the ultimate costs of the project are unknown and the benefits are unquantified and speculative, it is impossible to conclude that the acquisition of the Gathering Systems is in the public interest.[82]

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81 Equitable RD at 24.

82 Equitable RD, pp. 26-27.

The Commission would be in the same untenable position in this proceeding as it would have been in the 2012 Equitable proceeding. Chiefly that the actual total costs to rehabilitate these Gathering Systems remain unknown. As evidenced by Mr. O'Brien's testimony, replacement of the entirety of these gathering systems is not economic; therefore, if the Commission accepts the Joint Applicants proposal in settlement, it may ultimately be forced to allow the recovery of imprudent costs from ratepayers.

As stated by the Pennsylvania Supreme Court in *Berner v. Pennsylvania Public Utility Commission:*

> [T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations...[83]

Moreover, it is well established that the evidence required by a utility to meet this burden must be substantial.[84] Replacing these Gathering Systems at the expense of its ratepayers with full recovery of and on the assets does not represent and affirmative public benefit and will harm existing customers. As discussed above, this issue has been extensively addressed in two prior proceedings, the first of which resulted in an RD denying the transfer of Goodwin and Tombaugh due to the safety and ratemaking concerns and the second proceeding resulted in a settlement with carefully crafted terms to protect ratepayers. This issue is now being raised for a third time proposing yet again that ratepayers bear the full responsibility for the rehabilitation of these gathering lines. If the

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[83] *Berner v. Pa. PUC*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955).

[84] *See Brockaway Glass v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Lower Frederick Township v. Pa. PUC*, 409 A.2d 505 (Pa. Cmwlth. 1980).

Joint Applicants are going to knowingly, based on Mr. O'Brien's testimony regarding what would be the more economic solution, make the financially irresponsible choice to replace the entirety of the Goodwin and Tombaugh Systems, then I&E submits the financial burden should lie squarely on the shoulders of the Joint Applicants. As recommended in I&E witness Ethan Cline's testimony, if the Commission is going to approve this acquisition, a portion of the purchase price should be set aside and held in a restricted account to pay for the uneconomic cost to replace these systems.[85] Initially, I&E recommended that $400 million of the $4.275 billion purchase price be placed into this restricted account; however, I&E later revised that recommendation to $127 million upon Peoples representation that it was the more appropriate cost over a five year replacement period.[86] This recommendation was designed to protect ratepayers from the uneconomic share of the replacement costs by placing the full replacement amount into a restricted fund until the Commission approved a plan to replace and/or abandon, with any amount remaining in the restricted fund returned to SteelRiver once the lines were replaced or abandoned in accordance with the Commission approved plan. As accurately summarized by I&E witness Cline, SteelRiver is receiving in excess of $4 billion dollars through this acquisition and some of that should be used to remedy the Goodwin and Tombaugh Systems:

> I&E does not believe it is in the public interest to transfer these troubled lines from SteelRiver to Aqua without first ensuring that its current owner provides resources to remedy the lost gas on these gathering systems. In excess of $4 billion dollars is being exchanged in this transaction, but the

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85 I&E St. No. 2, p. 13.
86 I&E St. No. 2-SR, p. 18.

> Joint Applicants want ratepayers to fully pay for the cost to repair or replace these gathering lines. I&E made it clear that this position was contrary to the public interest in the 2013 acquisition proceeding and maintains that it remains contrary to the public interest in this proceeding.[87]

I&E recognizes that this is a significant amount of money; however, this recommendation should not come as a surprise as it is identical to what I&E recommended in the 2013 Peoples/Equitable acquisition and was ultimately approved by the Commission. There, I&E recommended a $20.8 million purchase price reduction due to the condition of these gathering systems; however, I&E clearly indicated that the $20.8 million was not a solid estimate but was used because no other estimates were available.[88] Ultimately through Settlement, that amount was reduced to a $5 million contribution from EQT because the parties in that proceeding indicated that Peoples simply needed some time to fix the problems. The only difference between the 2013 proceeding and this proceeding is that we now have a better estimate of the cost to fully replace the gathering lines and we now know that quick, inexpensive fixes will not remedy UFG on these lines. However, the principle that the seller bears responsibility for the condition of its system, in 2013 was EQT responsible for $5 million and in 2019 SteelRiver should be responsible for the uneconomic portion of the replacement, remains sound.

Approval of I&E's recommendation would certainly provide a tangible, substantial public benefit because it would allow Peoples to replace some or all of the

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87 I&E St. No. 2-SR, p. 22.
88 I&E St. No. 2, pp.

Goodwin and Tombaugh gathering lines, minimize customer abandonments and protect ratepayers from bearing the uneconomic share of the remediation. As noted above, the Commission has great latitude to impose those conditions necessary in order to grant a certificate of public convenience; therefore, if this transaction is approved, the approval should be conditioned on I&E's recommendation to establish a restricted fund for the remediation of the Goodwin and Tombaugh Gathering Systems.[89]

6. Other conditions impacting Peoples Company customers

Per the non-unanimous settlement, Aqua America has committed that Peoples will meet or exceed their existing customer service performance metrics. Had the Joint Applicants agreed that the Peoples Companies would exceed, and not be given the option to merely meet their current customer service metrics, this would have been a benefit, albeit not one of a substantial nature considering Peoples customer service metrics are not exceedingly low.

Further, the non-unanimous settlement provides that Peoples will intervene, if requested by a statutory advocate, in any proceeding near the Peoples' service territory in which abandonment of natural gas customer in a neighboring territory is contemplated. This provision provides no affirmative public benefits because it does not actually require Peoples to do anything other than enter an appearance. Further, ratepayers may be harmed if Peoples is intervening in these proceedings solely at the request of the statutory advocates as the cost of litigation is ultimately born by ratepayers.

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89 *Rheems Water Co. v. Pennsylvania Pub. Util. Comm'n*, 620 A.2d 609, 611 (1993).

7. Other conditions impacting Aqua PA customers

The main, and some might say the sole, benefit touted by the Joint Applicants for Aqua customers is its access to implementing Peoples SAP system. However, as noted by CAUSE-PA witness Geller, "...this would provide no benefit for Peoples' customers and it seems axiomatic that Aqua does not need to spend $4 billion to purchase Peoples simply to leverage its SAP customer information system."[90] The minimal benefit achieved by this $4 billion investment can hardly be said to be substantial.

The other purported benefits are likely related to low-income customer issues. While I&E does not disagree that it is important to consider the impact of an acquisition on low-income customers, it is also clear that these commitments contained in the non-unanimous settlement are commitments that Aqua and/or Peoples could commit to independent of this transaction. Furthermore, when viewed in totality with all considerations related to this acquisition, it is clear that the financial commitments the Joint Applicants have made could have a substantial negative impact on low-income ratepayers

8. Other conditions

The other commitments outlined in the non-unanimous settlement still do not rise to the level of affirmative public benefits. As has been continually recognized, the standard in this proceeding is something more than maintaining the status quo. Aqua's willingness to purchase a natural gas utility that was not even up for sale is certainly not a benefit. As stated by OSBA witness Knecht, small business customers, and really all

[90] CAUSE-PA St. No. 1, p. 9.

utility customers "...are best served by a technically competent, well-managed, cost-efficient utility, particularly one that is more focused on providing high quality service than in empire-building."[91] The synergies that generally accompany the merger of two public utilities simply do not exist in the situation where one utility is a gas utility and one is a water utility. The fact that Aqua can buy Peoples, does not mean that Aqua should by Peoples unless and until real, actual public benefits that inure from the acquisition, and not simply those things that are on wish list of things the parties would like Aqua and Peoples to do irrespective of this acquisition, can be identified.

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

Under 66 Pa. C.S. § 2210(a)(1) the Commission must consider whether an acquisition is likely to result in anticompetitive or discriminatory conduct. These considerations are especially important in a situation such as the present, where a water company is seeking to acquire a natural gas distribution company. However, the simple fact that an acquisition does not result in anticompetitive or discriminatory conduct is, in and of itself, not enough to determine that an acquisition is in the public interest.

In testimony, I&E took no position on whether this acquisition would result in anti-competitive or discriminatory conduct. I&E did, however, note its opposition to RESA's suggestion that Peoples exit the merchant function in the Rebuttal testimony of Ethan Cline.[92] Paragraph 128 of the non-unanimous settlement references convening a

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[91] OSBA St. No. 1-S, p. 3.

[92] I&E St. No. 2-R. I&E would note that NGS/RESA did not respond to I&E's testimony on this issue in the Surebuttal Testimony of James L. Crist.

collaborative aimed at increasing customer participation in the natural gas market. RESA refers to this provision as "...the result of NGS/RESA's efforts to ease the Companies out of the merchant function."[93] While it appears that the Joint Applicants have determined that for purposes of this proceeding they will not be exploring exiting the merchant function, I&E believes the Commission should affirm that Peoples will retain its role as supplier of last resort.

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

I&E maintains that the proposed transaction, as conditioned by the settlement, may negatively impact on the employees of the Peoples Companies. As discussed by I&E witness Zalesky in his Direct Testimony, one of the initial selling points of the transaction was the assertion that Peoples Companies would remain exactly as is with current leadership in place.[94] **[BEGIN CONFIDENTIAL]** [redacted]

[redacted]

93 NGS/RESA Statement in Support, p. 6.
94 I&E St. No. 1, p. 15.
95 Joint Applicants St. No. 3 Revised, p. 3.

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96 Joint Applicants St. No. 3 Revised, p. 1
97 I&E St. No. 1, p. 16.
98 Joint Applicants St. No. 3 Revised, p. 2.

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[redacted] **[END CONFIDENTIAL]**

For the reasons articulated above, I&E maintains that the proposed transaction, as conditioned by the settlement, would have a negative impact on employees of the Peoples Companies.

E. Whether the Settlement Is In The Public Interest

"The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest."[99] Additionally, the Commission's decision must be supported by substantial evidence in the record. This requires that more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established is provided.[100] The benefits alleged by the settling Parties consist of largely unsubstantiated promises or a continuation of the status quo. Neither of which is a showing of substantial affirmative public benefits as required by the *City of York* standard. Far from showing affirmative benefits, I&E adamantly maintains that this

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99 *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 Pa.PUC 1, 22 (1985).

100 *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

transaction may harm the utility and ratepayers as Aqua has not demonstrated that it is financially or technically fit to own and operate Peoples.

As noted previously, the standard for approval of an acquisition before this Commission is more than a simple "do no harm" standard. The Commission must weigh both the benefits and the detriments of the transaction on both the utilities involved and the ratepayers who ultimately bear the costs of these acquisitions. In this proceeding, the Joint Applicants have failed to meet their burden of proving that the transaction is in the public interest. The non-unanimous settlement in general merely maintains the status quo. Those areas in which some benefit could be alleged still are not enough to outweigh the harm that this transaction will ultimately cause. Therefore, it cannot be said that this settlement is in the public interest.

The settlement does not cure the fact that Aqua America is not technically fit to own and operate a natural gas distribution company. In fact, there is nothing that can cure that issue. Aqua does not have the requisite expertise to resolve issues such as the enormous amount of lost and unaccounted for gas leaking from the Goodwin and Tombaugh Systems. The fact that Aqua is proposing to remediate the entirety of these Systems when Peoples itself, who is in the best position to evaluate the most appropriate way to deal with these Systems, has said that remediation of the entire Goodwin and Tombaugh Systems would be neither economic, nor in the public interest[101] is telling. Further, Joint Applicant's witness Barbato's inability to recognize that lost and

[101] Joint Applicants St. No. 3-R, p. 8.

unaccounted for gas levels as high as those on the Goodwin and Tombaugh Systems represent a safety issue[102] highlights the fact that Aqua is ill-prepared to deal with the challenges of owning and operating a natural gas distribution company. There is absolutely no record evidence that shows that the UFG at its current level is safe and, in fact, as I&E witness Matse noted, an explosion has occurred in the vicinity of these lines.[103]

While the settling Parties are concerned about jeopardizing service to these approximately 1600 customers,[104] I&E is much more concerned about jeopardizing their safety. There is no point in having natural gas service at the expense of property or life. I&E has no problem with these customers continuing to receive natural gas service, however, the primary objective should be to ensure that the natural gas service they receive is to be safe. If it is not, then the proper course of action may be abandonment. While abandonment is not always favored, at times it is in the public interest as noted by Peoples current President, Mr. O'Brien.[105]

The primary financial concession in Settlement are the proposed $10 million and $13 million distribution rate credits that will flow to ratepayers.[106] This financial incentive does not outweigh the potential harm that could result by technically inexperienced parent taking ownership of the Peoples Companies. Approving the acquisition based on this $23 million incentive is shortsighted because, once the $23

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102 Tr. At 167-169.
103 I&E St. No. 3 p. 17.
104 Settlement, para. 32.
105 Joint Applicants St. No. 3-R, p. 8
106 Settlement paras. 33 and 41.

million rate credit is dispersed, ratepayers will still be left with a technically unfit owner. Further, the impact of this benefit it mitigated based on the fact that ratepayers will still be on the hook for funding the other potentially costly commitments contained in the settlement such as the remediation of the entire Goodwin and Tombaugh Gathering System at a cost of $120 million. Furthermore, as noted by I&E witness Cline, a rate credit is short-lived benefit as it only benefits existing customers and not future customers.[107]

The non-unanimous settlement does nothing to cure the deficiencies in the Application. Peoples is left with a technically unfit parent, SteelRiver gets $4 billion, and ratepayers are left to foot the bill for these expenditures. This is simply not in the public interest. Furthermore, the general benefit of a settlement, which is that it negates the time and expense associated with litigation will not be realized in this proceeding either as I&E and OSBA both maintain that the settlement is contrary to the public interest.

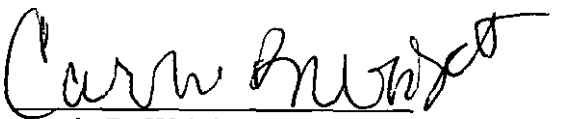
VI. CONCLUSION

For the reasons stated herein, I&E respectfully submits that the Joint Applicants have failed to satisfy their burden of proof. Specifically, the Joint Applicants have failed to demonstrate that the transaction will result in substantial, affirmative public benefits. Additionally, the proposed transaction, even as modified by the non-unanimous Joint Petition for Settlement, fails to satisfy the legal requirements necessary for approval

[107] Tr. at 214.

under the Public Utility Code. Therefore, I&E maintains that the Joint Application must be denied.

Respectfully submitted,



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Dated: July 10, 2019

APPENDIX A – Proposed Findings of Fact

1. Aqua Pennsylvania is a Commission regulated water and wastewater Company with its principle office being located in Bryn Mawr, Pennsylvania.

2. The Peoples Companies are Commission regulated natural gas distribution companies with their primary offices being located in Pittsburgh, Pennsylvania.

3. Aqua America is the parent company of Aqua Pennsylvania.

4. Aqua America wishes to acquire the Peoples Companies. (Joint Applicants St. No. 1 REVISED, p. 5).

5. The Goodwin and Tombaugh Gathering Systems consist o 262 miles and 106 miles respectively of gathering line that serve some 1600 Peoples customers. (I&E St. No. 2, pp. 3-4).

6. As of 2018 the lost and unaccounted for level for the Goodwin System was 83.52% and for the Tombaugh System was 43.95%. (I&E St. No. 2, p. 8).

7. Peoples has owned and operated these Systems for six years and the lost and unaccounted for gas levels remain staggeringly high. (I&E St. No. 2, p. 9).

8. Peoples believes it would cost approximately $127 million to replace these gathering lines completely over a period of 5 years.

9. It is not necessarily economic to replace the entirety of the Systems. (Joint Applicants St. No. 3-R, p. 8).

10. This is not a synergistic acquisition. (OCA St. No. 2, p. 28).

11. Maintenance of the status quo is not a substantial public benefit.

12. The application does not quantify any cost savings as a result of this acquisition. (OCA St. no. 2, p. 27).

APPENDIX B – Proposed Conclusions of Law

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. § 1308; 66 Pa. C.S. § 2102.

2. The proponent of a rule or order in a Pennsylvania Public Utility Commission proceeding has the burden of proof. 66 Pa. C.S. § 332.

3. The Commission will only approve a settlement if the Commission can determine that the settlement promotes the public interest.

4. The Commission must weigh the benefits of a proposed acquisition against the detriments of that acquisition.

5. The Joint Applicants have failed to carry their burden of proof that the instant application is in the public interest.

6. The Joint Applicants have failed to carry their burden of proof that the instant acquisition creates affirmative public benefits.

7. The Settlement Petition in this matter is not consistent with the public interest.

APPENDIX C – Proposed Ordering Paragraphs

THEREFORE,

IT IS ORDERED:

1. That the *Application 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.* is denied.

2. That the non-unanimous Settlement Agreement be denied.

3. That the Secretary mark these dockets closed.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. A-2018-3006061
	:	A-2018-3006062
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.	:	A-2018-3006063

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief** dated July 10, 2019, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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