


COMMONWEALTH OF PENNSYLVANIA



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July 25, 2019

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Brief in the above referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Harrison W. Breitman".

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cc: Honorable Mary D. Long  
Certificate of Service  
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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 25<sup>th</sup> day of July 2019.

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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.	:	

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REPLY BRIEF OF  
THE OFFICE OF CONSUMER ADVOCATE

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## I. INTRODUCTION

On November 13, 2018, Aqua America, Inc. (Aqua America), Aqua Pennsylvania, Inc. (Aqua PA), Aqua Pennsylvania Wastewater Inc. (Aqua PA Wastewater) (collectively, Aqua), Peoples Natural Gas Company LLC, and Peoples Gas Company LLC (collectively, Peoples), filed a Joint Application pursuant to Sections 1102(a)(3) and 2210(a)(1) of the Public Utility Code whereby Aqua America would obtain control of Peoples (hereinafter referred to as the proposed transaction). 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. On July 9, 2019, the Joint Applicants filed a Petition for Approval of Non-Unanimous, Complete Settlement Among Most Parties (Petition). On July 10, 2019, the Joint Applicants filed a Main Brief in support of the Petition. I&E and OSBA filed Main Briefs opposed to the Petition. The OCA files this Reply Brief to address the arguments of I&E and OSBA.

## II. LEGAL STANDARDS

Section 1102(a) of the Public Utility Code authorizes the Commission to permit a regulated public utility to begin to offer service in an additional territory and to acquire property used and useful in the public service. Section 1102(a) states:

(a) General Rule. - Upon application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had obtained, and upon compliance with existing laws, it shall be lawful:

(1) For any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized by:

(i) A certificate of public convenience granted under this part...

...

- (3) For any public utility . . . to acquire from, or to transfer to, any person or corporation, including a municipal 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 of, any tangible or intangible property used or useful in the public service.

66 Pa. C.S. § 1102(a)(1), (3).

The merits of applications filed under Section 1102 are measured by the standards set forth in City of York. In City of York, the Pennsylvania Supreme Court stated:

Section [1103] of the Public Utility Law requires that those seeking approval of a utility merger demonstrate more than the mere absence of any adverse effect upon the public. Section [1103] 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 way.

City of York v. Pa. PUC, 295 A.2d, 825, 828 (Pa. 1972). This standard is the standard by which all mergers of and acquisitions by Pennsylvania utility companies must be judged.

In Middletown Township v. Pa. PUC, 482 A.2d 674 (Pa. Commw. 1984), the Commonwealth Court considered the City of York standard applicable through Section 1102 and Section 1103. The Court provided that “when the ‘public interest’ is considered, it is contemplated that the benefits and detriments of the acquisition be measured as they impact on all affected parties, and not merely on one particular group or geographic subdivision.” Id. at 682. The Middletown Court emphasized that the “primary objective of the law in this area is to serve the interests of the public.” Id.; see also Popowsky v. Pa. PUC, 937 A.2d 1040 (Pa. 2007).

Further, under Section 1103, the Applicant must demonstrate that it is technically, legally, and financially fit to own and operate the assets it will acquire. See Seaboard Tank Lines v. Pa. PUC, 502 A.2d 762, 764 (Pa. Commw. 1985); Warminster Twp. Mun. Auth. v. Pa. PUC, 138 A.2d 240, 243 (Pa. Super. 1958). There is a rebuttable presumption that a certified, existing public utility possess the requisite fitness. See South Hills Movers, Inc. v. Pa. PUC, 601 A.2d 1308 (Pa.

Commw. 1992). Importantly, the Commission can, and has, in the past, put conditions on applications. See 66 Pa. C.S. § 1103(a); see also Application of Pennsylvania-American Water Co., A-2016-2537209, Order (Oct. 19, 2016) (PAWC-Scranton); Rheems Water Co. v. Pa. PUC, 620 A.2d 609 (1993) (Rheems).

### III. SUMMARY OF ARGUMENT

The Joint Applicants' initial application did not contain important provisions to address the substantial affirmative benefits standard for acquisitions in the Commonwealth of Pennsylvania. The Non-Unanimous, Complete Settlement (Non-Unanimous Settlement or Settlement), however, will provide substantial affirmative benefits as a result of the proposed transaction and will provide necessary ratepayer protections.

The terms and conditions of the Non-Unanimous Settlement satisfactorily address issues raised in the OCA's analysis of the Applicants' filing. The OCA submits that the Settlement, taken as a whole, is a reasonable compromise in consideration of likely litigation outcomes before the Commission. I&E's and OSBA's arguments to the contrary are without merit. While the Non-Unanimous Settlement does not adopt 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 was critical to achieving settlement. Accordingly, the OCA urges the Commission to consider the Non-Unanimous Settlement as a whole, and adopt the Settlement.

### IV. 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.

I&E and OSBA argued that Aqua America should not be afforded the presumption that it is legally and financially fit to assume control of the Peoples Companies. I&E M.B. at 8-10; OSBA

M.B. at 7-9. I&E and OSBA emphasized the fact that Aqua America is currently a water and wastewater utility while Peoples is a natural gas utility. I&E M.B. at 8-9; OSBA M.B. at 8. I&E argued that the proposed transaction is similar to the Penn Estates Utilities case, in which the Commission expressed concern in regard to equity investors acquiring regulated utilities for a quick profit with little experience. I&E M.B. at 8.<sup>1</sup> I&E also expressed concerns regarding the ability of Aqua to adhere to strict safety regulations that do not exist for water and wastewater utilities. I&E M.B. at 9. OSBA additionally argued that, under the same logic the Joint Applicants utilize in presuming that Aqua America is automatically fit to own Peoples, it would be logical to presume that Pike County Light & Power would automatically be deemed fit to operate Aqua PA and for Newtown Artesian Water Company to automatically be deemed fit to operate PPL Electric. OSBA M.B. at 8.

Peoples, however, will be operated by the same personnel that are currently responsible for the day-to-day natural gas operations. See JA M.B. at 11-12. The Settlement provides as follows:

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.

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<sup>1</sup> Citing 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., Statement of Chairman Wendell F. Holland (Public Meeting March 16, 2006) (Penn Estates Utilities).

Settlement at ¶ 75. In response to I&E's concerns that Aqua is acquiring Peoples for a quick profit, the Joint Applicants, while not guaranteeing long-term ownership, noted that there is a history of Aqua's long-term ownership of the entities it acquires. JA M.B. 22-24. The OCA agrees with I&E and OSBA that Pennsylvania utilities should not be acquired and then quickly sold for a short-term profit. The OCA, however, submits that the stated intent of long-term stability of ownership and Aqua's history of long-term ownership of the companies it acquires are important factors in the proposed transaction as modified by the Settlement. The Joint Applicants have submitted substantial evidence to support that Aqua's ownership of the Peoples Companies, as conditioned by the Settlement, is in the public interest.

In regard to the technical fitness of Aqua's management to operate a Natural Gas Distribution Company (NGDC), the Non-Unanimous Settlement addresses the composition of Aqua's Board of Directors post-closing.<sup>2</sup> 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.

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<sup>2</sup> As discussed in detail in Section IV.B.3, the Settlement also contains important provisions related to maintaining field staffing levels for the next five years. See Settlement at ¶ 76. The OCA further notes that the labor union parties are signatories to the Non-Unanimous Settlement.

The Non-Unanimous 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 Non-Unanimous Settlement seek to ensure that Aqua America's Board will have the experience necessary to safely 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, when viewed as a part of the overall Settlement, satisfactorily addresses the OCA's concerns regarding the fitness of Aqua's management to operate a NGDC.

I&E also expressed concerns regarding Aqua's debt and its impact on Aqua's financial risk and the lack of cost savings. I&E M.B. at 10. Aqua's ability to finance the transaction and the impact of the transaction on Aqua's debt will be addressed in Section IV.B.1.

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

OSBA argued that Aqua America admitted that it does not have any experience owning and operating a natural gas utility and that Peoples is mandated to adhere to a Distribution Integrity Management Plan (DIMP). OSBA M.B. at 9. Furthermore, OSBA notes additional safety concerns specifically in regard to natural gas, such as leaks, pressure management, storage requirements, and prioritization that differs from water utilities. *Id.* at 9-10.

As noted in Section IV.A.1, the same personnel that are currently tasked with adhering to a DIMP will continue to be employed by Peoples under Aqua's ownership. Similarly, the safety concerns regarding natural gas will be addressed by the same personnel that currently address natural gas safety. As such, the OSBA's concerns are misplaced.

Both I&E and OSBA discuss the Goodwin Tombaugh Gathering Systems in their respective sections addressing additional considerations concerning Aqua America's fitness to own Peoples. Section IV.B.5 contains the OCA's response to all issues pertaining to the Goodwin Tombaugh Gathering System.

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

I&E and OSBA have characterized the settlement negotiations as a "feeding frenzy" to obtain affirmative public benefits that were not included in the initial application. I&E M.B. at 13-14. I&E argued that the benefits to ratepayers contained in the Non-Unanimous Settlement do not outweigh the associated risks of the transaction. I&E M.B. at 14. OSBA stated that a comparison to the status quo provides "the only rational and measurable metric by which to evaluate the Proposed Transaction for affirmative public benefits." OSBA M.B. at 12. The OCA notes that the application, as filed, did not meet the affirmative public benefits standard. Therefore, the OCA's experts recommended specific conditions that, if adopted, would produce substantial



affirmative benefits as a result of the proposed transaction. The OCA submits that the Non-Unanimous Settlement contains significant benefits to ratepayers that may not have materialized in litigation or on other future proceedings and that, the settlement as a whole, produces substantive affirmative benefits.

1. Purchase Price And Financing.

Both I&E and OSBA expressed concern regarding the reasonableness of the purchase price for the proposed transaction. I&E M.B. at 14-17; OSBA M.B. at 12-15. I&E noted that OCA witness Kahal testified that the acquisition could put substantial financial pressure on Aqua, Aqua PA, and ultimately the Peoples Companies that does not exist today. I&E M.B. at 15 citing OCA St. 1 at 10. I&E further noted that the Non-Unanimous Settlement does not downwardly adjust the price of the acquisition. I&E M.B. at 16. I&E cited to OSBA witness Knecht's testimony, which discussed the fact that there are few combined water and gas utilities and suggested that the synergies between the two types of utilities are not substantial. I&E M.B. at 17.

Additionally, OSBA emphasized the fact that Aqua America is paying SteelRiver approximately \$2 billion in goodwill for assets that will produce zero revenues. OSBA M.B. at 13-14. OSBA argued that, relative to the status quo, the goodwill adds to the overall riskiness of the combined companies. OSBA M.B. at 14. OSBA further argued that while the Joint Applicants justify the price premium based on the opinion of an independent investment bank, the debt agencies and the stock market provide evidence that the proposed transaction will have a negative impact on shareholders, debtholders, and "probably ratepayers." OSBA M.B. at 13-15.

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 Joint Applicants. Of particular concern to the OCA was the providing of a rate credit to the Joint Applicants customers, the amount of goodwill associated with the proposed transaction, the Joint Applicants' financing plan for the proposed transaction, potential ring-fencing requirements, the possibility of a credit downgrade, and the Joint Applicants' treatment of debt incurred as a result of this Transaction.

The Settlement memorializes Mr. Kahal's and Mr. Smith's recommendations concerning the \$2 billion of goodwill associated with the proposed 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 ¶ at 45. All goodwill associated with the proposed transaction must also be permanently excluded from the Joint Applicants' base rates. Settlement at ¶ 54.

The goodwill associated with the proposed transaction will not be recovered or financed by the Joint Applicants' customers, either directly or indirectly, in the future. As a result, the Joint Applicants' customers are not forced to shoulder the premium that Aqua is paying for the Peoples companies. The OCA submits that these important provisions preventing the Joint Applicants from recovering the \$2 billion of goodwill associated with this proposed transaction from ratepayers addresses the OCA's concerns regarding goodwill.

The Non-Unanimous Settlement further satisfies the OCA's concerns by definitively providing a rate credit to the Joint Applicants' customers. The \$10 million rate credit in the Settlement recognizes that synergies and savings could be achieved as a result of the proposed transaction and passes those savings on to the Joint 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 Gathering Systems. The OCA submits that the \$10 million rate credit requirement in the Settlement is in the interest of the Joint Applicants' customers.

I&E argued that the financial impact of the transaction could be mitigated by restructuring the financing to avoid any material increase in debt or by making commitments that interest costs argued in future rate proceedings may not exceed the interest costs consistent with the current debt ratings for both entities. I&E M.B. at 17. OSBA argued that the \$2 billion acquisition premium, combined with the stock market's reaction to the proposed transaction, demonstrates that the proposed transaction will be financially destabilizing and that creating a combined entity that is less financially stable than both Aqua and Peoples is not an affirmative public benefit. OSBA M.B. at 15.

The OCA submits that the Non-Unanimous Settlement solidifies the commitment to a financing plan agreed to by Aqua America. Aqua America committed to financing the proposed 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 committed 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 at ¶¶ 51-52. The commitments made in the Non-Unanimous Settlement demonstrate that Aqua America has a concrete plan to finance the proposed transaction in a fiscally

responsible manner. Furthermore, 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 proposed transaction. The OCA submits that the provisions relating to Aqua America's financing plan for the proposed transaction are in the public interest and in the interest of the Joint Applicants' customers.

Moreover, the Non-Unanimous Settlement reflects the prompt notice requirement agreed to by the Joint Applicants in Rebuttal Testimony. See JA St. 2 at 24. 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.

Settlement at ¶ 50. The requirement to provide notice to the Commission in the event of a credit downgrade satisfies the OCA's concerns. While the Joint Applicants have strong credit ratings at present, the possibility exists that their ratings may become impaired in the future. The Non-Unanimous Settlement not only requires the Applicants to provide the reasons for the credit downgrade but also requires a plan for how the Joint Applicants intend to rehabilitate their credit ratings back to a strong position. These provisions are not contained in the initial application and may not have materialized through litigation. The OCA submits that I&E and OSBA's concerns are not well founded, considering the proposed transaction as a whole as conditioned and modified by the Settlement.

2. Public Ownership Of The Peoples Companies By A Pennsylvania Based Company.

I&E argued that a more public ownership under Aqua as a Pennsylvanian company, as opposed to SteelRiver as a private equity firm, does not create the affirmative public benefits

necessary to approve the proposed transaction. I&E M.B. at 17-21. I&E noted that while publically owned and traded companies are subject to additional reporting requirements, public utilities in Pennsylvania are fairly open with information provided to the Commission. I&E M.B. at 17-18. I&E cited to OCA testimony which stated that there is no transparency issue under the current ownership. I&E M.B. at 18. Moreover, I&E noted that Peoples already has a strong commitment to Pennsylvania under the current ownership and that the provisions contained in the Non-Unanimous Settlement do not constitute affirmative public benefits. I&E M.B. at 18-20.

In addition to the issues raised by I&E, OSBA expressed doubt as to whether Aqua America would have better access to capital than SteelRiver. OSBA M.B. at 16-18. OSBA, citing to the OCA's testimony, observed that the Joint Applicants offered no evidence that SteelRiver has experienced any difficulty in raising capital and provided no quantification of any improved access to equity markets. OSBA M.B. *citing* OCA St. 2 at 27, note 14. Additionally, OSBA noted that the publicly-owned companies are subject to more scrutiny than privately-held firms, which would make privately held firms more attractive to some investors. OSBA M.B. at 16. OSBA further alleges that there is a trend towards more private equity and less public ownership as a favored source of company financing. OSBA M.B. at 16-17.

The OCA notes, however, that the Non-Unanimous Settlement contains provisions that alleviate concerns related to governance of the company to ensure that the new ownership continues to be responsive to the needs of the Pennsylvania utility service area of Peoples. See Settlement at ¶¶ 73-82. The OCA submits that, taken as a whole, the Non-Unanimous Settlement reasonably addresses the OCA's concerns regarding the ownership of the Company and its continued ability to provide safe and reliable utility service. I&E's and OSBA's arguments to the contrary are without merit.

3. Job Retention And Growth In Western Pennsylvania.

I&E and OSBA argued that the proposed transaction merely maintains the status quo in relation to job retention and growth in western Pennsylvania. I&E M.B. at 21-23; OSBA M.B. at 18. According to I&E and OSBA, the commitments contained in the Non-Unanimous Settlement were expected to occur without the acquisition. I&E M.B. at 21-22; OSBA M.B. at 18. OSBA argued that both companies would likely maintain their existing workforce without the proposed transaction. OSBA M.B. at 18. I&E and OSBA further argued that maintaining jobs that already exist fails to demonstrate any affirmative public benefit. Id. I&E and OSBA also noted that the Competition Act<sup>3</sup> requires an evaluation of the proposed transaction regarding effects on employees and any collective bargaining agreement agent representing those employees. I&E M.B. at 22; OSBA M.B. at 18. I&E additionally stated that Peoples has not alleged that, but for the proposed transaction, the collective bargaining agreement would be dishonored, jobs would be moved outside of Pennsylvania, or that jobs would be eliminated. I&E M.B. at 22.

In his Direct Testimony, OCA witness 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 Joint 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 Joint Applicants commit to adhere to the collective bargaining agreements currently in effect post-closing. OCA St. 2 at 67.

In his Rebuttal Testimony, JA witness Franklin emphasized that no planned workforce reductions were contemplated as part of this Transaction. JA St. 1-R at 20. Mr. Franklin testified

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<sup>3</sup> 66 Pa. C.S. § 2210(a).

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 Non-Unanimous 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 Joint Applicants are an important protection that was negotiated as an overall part of the Non-Unanimous Settlement and that the Settlement provides important benefits.

As noted in the Joint Applicant's Main Brief, the proposed transaction as modified by the Non-Unanimous Settlement does not involve reductions in workforces for either company and involves specific commitments by the Joint Applicants to keep and grow jobs in Pennsylvania. See JA M.B. at 29-32; Settlement at ¶¶ 75-76. The OCA submits that this commitment is especially important given the concerns expressed by I&E and OSBA regarding the technical fitness of the combined companies post-acquisition. Moreover, the OCA notes that the labor union parties are signatories to the Non-Unanimous Settlement and that the Settlement as a whole produces a favorable outcome that may not have been obtained through litigation. The OCA submits that the provisions associated with current employees of the Joint Applicants are an

important part of the Application and Settlement package when viewed as a whole. I&E's and OSBA's arguments to the contrary are without merit.

4. LTIIIP Acceleration.

According to I&E and OSBA, acceleration of Peoples' Long Term Infrastructure Improvement Plan (LTIIIP) is necessary, but it does not rise to the level of an affirmative public benefit. I&E M.B. at 23; OSBA M.B. at 19-22. I&E argued that LTIIIP acceleration could be accomplished under the current ownership and that a commitment to potential LTIIIP acceleration proposals do not negate the negative aspects of the proposed transaction. I&E M.B. at 23-24. I&E further observed that there may be circumstances that would cause Peoples to not meet the revised acceleration levels, such as competition with other NGDCs for manpower and pipeline purchases. I&E M.B. at 24. Moreover, it is unknown how many more miles will actually be replaced. *Id.* As such, I&E argued that while LTIIIP acceleration is a benefit, it is necessary independent of the proposed transaction. I&E M.B. at 24.

OSBA observed that, in its original filing, the Joint Applicants stated that Aqua America would maintain Peoples' asset replacement spending in its LTIIIP but would look for opportunities for further acceleration of spending. OSBA M.B. at 19. The Joint Applicants are now offering to commit to a specific acceleration of LTIIIP spending in the amount of \$30 million per year. OSBA M.B. at 19 *citing* Non-Unanimous Settlement at ¶ 69. According to OSBA, committing to a specific amount for accelerated LTIIIP spending does not constitute affirmative public benefits because 1) the Joint Applicants have made no demonstration that the acceleration of the spending would be cost-effective and reasonable; 2) while the acceleration may not be a benefit to the public, it is assuredly a benefit to the shareholders, and; 3) Commission approval of a modification to the



LTIIIP would be required, which renders the commitment as nothing more than an agreement that Aqua America will file a new LTIIIP in the near future. OSBA M.B. at 19-22.

The Non-Unanimous Settlement provides the following:

Aqua America commits to continue to meet the Peoples Companies' Combined Distribution Long Term Infrastructure Improvement Plan ("LTIIIP"). In addition, Aqua America 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 LTIIIP 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 LTIIIP 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 LTIIIP. This modified LTIIIP filing is in addition to the plant replacement discussed under Section IV A.

Settlement at ¶ 69. Under the Non-Unanimous Settlement, Aqua America has committed to file a modified LTIIIP to accelerate the replacement of high risk pipe. The OCA submits that Aqua America will be required to show that modified LTIIIP is cost effective and in accordance with the Public Utility Code. See 66 Pa C.S. §§ 1350-1360. The Non-Unanimous Settlement commits the Company to an LTIIIP filing indicating a yearly replacement of 25 miles of high-risk pipe. See Settlement at ¶ 69. The OCA further notes that approval of projected spending in an LTIIIP filing is not approval of cost recovery in the DSIC and that the Company will still be required to make a showing that costs will be recovered. One of the goals of the Non-Unanimous Settlement is to accelerate the replacement of high-risk pipe. The OCA submits that the acceleration of high-risk pipe is a substantial affirmative benefit of the proposed transaction. I&E's and OSBA's arguments to the contrary are misguided. In the context of the Settlement as a whole, the modified LTIIIP which Aqua America commits to filing is in the interest of the Joint Applicants' customers.

5. Goodwin And Tombaugh Gathering Systems.

a. Introduction.

There are approximately 1700 Equitable *public utility customers* receiving natural gas service through the Goodwin and Tombaugh Systems (GT System). These Equitable customers pay the same distribution and commodity rates, taxes and various surcharges as all other Equitable customers. The OCA submits that these customers should be afforded the same protections as all other public utility customers.

The Settlement reached in this matter will reasonably and effectively provide a just resolution to this long-contentious GT System matter. The idea that approximately 1000 current public utility customers should be singled out and abandoned is not only untenable and impractical, but also inconsistent with the public interest and should not be further entertained by the Commission.

In their respective Main Briefs, both I&E and OSBA place great emphasis on the 2013 Peoples/Equitable Settlement and Peoples' obligation to the economic analysis contained therein. I&E and OSBA both argue that the plan to repair the entire GT System as set out in the Settlement is uneconomic and thus must be rejected. Alternatively, I&E also argues that should the Commission decide to approve the Application then the Commission should condition its approval on SteelRiver contributing \$127 million to repair of the GT System. OSBA argues that the entire GT System issue does not belong in this proceeding and that it should be severed and assigned to a separate matter.<sup>4</sup> OSBA also makes the additional argument that Aqua has no experience in the

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<sup>4</sup> These additional arguments as to where the funding should come from for the GT System repairs and whether this issue should be split off to a different proceeding are primarily subsets of the main argument from the opposition that the GT System should only be repaired in accord with the 2013 Equitable/Peoples Settlement. As such, the OCA's reply here adequately covers those areas.

repair of a natural gas system, and seemingly questions whether Aqua is technically fit to perform the task.<sup>5</sup> See I&E M.B. at 24-25; OSBA M.B. at 22-26.

Collectively, I&E's and OSBA's preferred outcome for the GT System matter is that only the "economic" portion of the systems should be repaired and, accordingly, close to 1000 current public utility customers should be abandoned. This outcome, as argued by I&E and OSBA, is consistent with the "public interest". The OCA strongly disagrees. The Settlement provisions that apply to the GT System are reasonable, contain numerous protections for all of Peoples' customers and should be approved without modification.

I&E and OSBA both argue that the proposed repair of the entire GT System as set out in the Settlement is "uneconomic" and must not be approved. The OCA submits that these "economic" arguments are for one, misplaced. Further, even if such arguments are relevant to the matter at hand, I&E and OSBA have failed to fully evaluate the total economic outcomes of their recommendations as to the GT System.

b. Complete Reliance On The Economic Argument Is Misplaced.

The 2013 Peoples/Equitable Settlement provided the framework for an economic test that Peoples would apply in order to determine what level of further investment in the GT System was necessary after Peoples initial assessment and evaluation was complete. As detailed in Mr. Gregorini's Rebuttal Testimony, that initial assessment is now complete although Peoples has yet to formally present its proposal for repair of the GT System. As I&E and OSBA both argue, if Peoples found that the economic test was not met as to the entirety or as to certain parts of the GT System, then Peoples would make a recommendation to the Commission that no further investment

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<sup>5</sup> This challenge to Aqua's technical fitness is argued by both the OSBA and I&E in various parts of their respective Main Briefs and, as such, is addressed in other parts of this Reply Brief.

should be made as to those parts of the GT System. Importantly, no matter what Peoples' proposal would be, all other parties expressly retained their rights to present alternative recommendations to the Commission as to the GT System. As Mr. Gregorini testified at hearings, Peoples also had various ideas and options under consideration that would perhaps provide some alternatives as opposed to a strict application of the economic test. Tr. at 138-139. The Settlement reached here provides a reasonable alternative.

Pennsylvania natural gas distribution companies NGDCs have collectively been replacing old natural gas pipes on an accelerated basis for many years based on their approved LTIIPs. Such activities have been an important part of the Commission's overall goal of improving the safety and reliability of the natural gas systems in the Commonwealth. The facts of the GT System matter here are similar to many areas in Pennsylvania where the existing natural gas systems were installed decades ago and are in need of replacement. To the best of the OCA's knowledge, however, the NGDCs engaged in the rehabilitation of these assets do not routinely perform a street-by-street, or neighborhood-by-neighborhood economic analysis to decide whether replacement of the natural gas system is warranted for existing customers.

Moreover, even if the GT System were viewed in isolation, it is apparent that these customers have been paying their share of the overall Peoples' system costs with no corresponding benefits other than to continue to receive service. Peoples' investment to date since acquiring the GT System has been for testing, analysis and maintenance of the system. But, those costs have been completely covered by the original \$5 million from Equitrans as part of the 2013 Equitable/Peoples Settlement. None of the marginal revenues being produced by the 1700 GT System customers have gone back into the GT System, but rather are and have been being used by

Peoples for other purposes – and likely some of those revenues have been used for pipe replacements in other parts of the Peoples’ system. As Mr. O’Brien testified at trial:

Today, we replace pipe in the streets of Pittsburgh and we file a rate case in (sic) people in Altoona pay that rate increase.

And so, you know, one of the goals of a utility is that we are socializing costs every day in the form of it being more economic and in the best interests of the public that we serve.

Tr. at 105. The GT System should not be viewed in isolation but even if it was these customers have certainly been paying their fair share, as Mr. O’Brien testified:

And so the question becomes, for this group of people, what’s the right answer. They’ve been paying a full utility bill for a long period of time. They pay - - the only asset the utility owns is their meter.

You could make an argument, that they’ve been subsidizing our other customers for a long time, not having a distribution system that serves them.

Tr. at 106.

It is reasonable to conclude from these facts that customers connected to the GT System have been “subsidizing” other Peoples’ customers for many years. Although, in the OCA’s view, such a microscopic analysis is neither reasonable nor warranted. In fact, efforts to engage in that type of analysis for certain segments of existing customers have been met with strong rebukes by the Commission.

In 2003, UGI Gas determined that an existing part of its natural gas system in the City of Harrisburg needed to be replaced due to age. See Deborah L. Harris, et al. v. UGI Gas, Docket Nos. C-20022233, C-20042659 (Initial Decision entered Aug. 19, 2004) (Harris). Prior to its replacement, however, UGI conducted an “economic” analysis and determined that it would be more cost effective to abandon the thirty-one existing natural gas customers and convert them to propane, rather than replace the aged pipes involved. UGI’s actions in that matter were opposed

by I&E, the affected customers in that area, OCA, and other stakeholders. At the end of the day, based on ALJ Colwell's findings and recommendations, the Parties reached a Settlement. UGI was subsequently ordered by the Commission to restore natural gas service to all of its involved customers.

There were some hard facts in the Harris case. One of the lessons from the Harris case is that our regulated public utility systems are just that – systems. These natural gas systems vary from areas of high customer densities to areas of low customer densities, but only in very rare circumstances does an NGDC isolate one particular segment for any type of a detailed economic analysis.<sup>6</sup> NGDC systems, like other public utility systems, are generally analyzed and reviewed based on the complete makeup of the entire system. This is the nature of public utilities, as their very existence depends on taking advantage of economies of scale and scope. To attempt to single out particular segments of existing customers for individualized economic analyses, as I&E and OSBA both propose here, would be inconsistent with the public interest and adverse to the basic business models that allow public utility systems to exist.

Further, I&E's and OSBA's position as to abandoning close to 1000 existing natural gas customers stands in stark contrast to the public policy of Pennsylvania and the Commission's various approvals of specific NGDC programs designed to increase the availability of natural gas to customers in unserved and underserved areas. It is undeniable that natural gas is and has been for many years plentiful and a low-cost option for heating purposes in Pennsylvania. The public

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<sup>6</sup> Unfortunately, abandonments of small groups of customers do happen even with all best efforts of the parties involved.

policy of Pennsylvania clearly supports the use of natural gas in state as evidenced by many programs, including the use of PIPE Grants.<sup>7</sup>

Similarly, the Commission has actively supported programs to enable more Pennsylvania consumers to take advantage of this low-cost option to heat their homes. The Peoples Gas Companies, Columbia, UGI and PECO all have programs designed to extend mains to consumers who wish to become natural gas customers. These programs were specifically designed by all involved stakeholders, and approved by the Commission, to reduce the economic barriers that may be an impediment to Pennsylvania consumers who wish to take advantage of this abundant, Pennsylvania resource.

I&E's and OSBA's over emphasis on the singular "economics" of the GT System is misplaced. Many factors must be considered in a potential abandonment situation, especially for such a large group of customers, and I&E's and OSBA's narrow focus here fails to adequately consider the totality of what they recommend.

c. The Proposed Settlement As To The GT System Is Reasonable And Practical As Compared To The I&E And OSBA Alternative.

I&E's and OSBA's main argument in opposition to the GT System Settlement provisions are that the economics simply do not support repairing the majority of these assets. The OCA submits that this argument fails to capture the entirety of the economic landscape, on several grounds. For one, the Settlement provisions are more robust than what is being portrayed in the opposition's arguments. Further, all of the direct and indirect costs involved in the abandonment of close to 1000 public utility customers has been glossed over and reduced to a math problem. Based on the OCA's experience, the practical reality of accepting I&E's and OSBA's

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<sup>7</sup> The Pipeline Investment Program (PIPE) is administered by the Pennsylvania Department of Community and Economic Development. See, e.g., Petition of Valley Energy, Docket No. P-2018-3006500, (Recommended Decision issued Apr. 19, 2019); R.D. approved by the Commission May 9, 2019.

abandonment proposal as to the GT System will amount to much more than the simple mathematical constructs contained in their respective Main Briefs. Further, accepting the recommendations of the opposition here will only lead to a lengthy delay in addressing any safety issues present on the GT System. The OCA submits that such an outcome is inconsistent with the public interest and the interests of all Peoples customers.

I&E and OSBA both take issue with the \$13 million rate credit to Peoples customers, arguing that it is insignificant as compared to the proposed total spend. The OCA submits that the effects of the GT System Settlement provisions, taken as a whole, have not been adequately considered by the opposition. For one, the \$13 million credit will be given to Peoples customers before 2019 is over. This front-loaded bill credit is more valuable than the face amount due to the time value of money and also considering the other Settlement provisions as to cost recovery for GT System repairs.

The Settlement provides that cost recovery for GT System repairs cannot be included in Peoples' DSIC mechanism, but rather can only be recovered through future base rate cases. As Peoples is just now concluding a base rate case, it should be some period of time before Peoples files its next rate case. As such, inapposite to the \$13 million rate credit, cost recovery for GT System repairs will only occur through future base rate cases where all such costs can be thoroughly reviewed.

I&E's and OSBA's recommendations here as to abandoning close to 1000 public utility customers fails to consider the total costs of such an endeavor. In the OCA's experience, proceedings that seek to abandon existing natural gas customers are often very contentious and resource intensive. Even after all possible avenues have been explored, and the facts dictate that



no course of action can be employed to keep these customers on the natural gas system, much work remains.

One example of how arduous an abandonment proceeding can be is the Mountain Energy case. On December 9, 2013, Mountain Energy submitted an Application to abandon all 94 of its existing natural gas customers. In re Mountain Energy, Docket No. A-2013-2396198 (application submitted Dec. 9, 2013).<sup>8</sup> Over the ensuing number of years, Peoples, I&E, OCA, the Company and various other stakeholders worked through the abandonment process. At the eventual conclusion of this matter, 18 customers were converted to an alternative fuel source and 76 customers were transitioned onto the Peoples' natural gas system. The final Secretarial Letter approving Peoples Compliance Filing was issued on June 17, 2019. In re Mountain Energy, Docket No. A-2015-2507377 (Secretarial Letter of June 17, 2019).

In that matter, it took over *five and a half years* to address the various logistical, legal, economic and societal concerns for 94 customers. Consider also, only 18 of the customers were actually converted to propane.<sup>9</sup> Here, OSBA and I&E both support the idea that over *ten times* the amount of customers at issue in Mountain Energy should be abandoned. To the best of the OCA's knowledge, no such mass abandonment of public utility customers has ever occurred in Pennsylvania, and based on the facts of this record it should not happen now.

Further, there is ample evidence in the record of this matter to conclude that safety of the GT System is a concern. I&E has consistently pointed out the high levels of LUFG on the GT System and the fact that one incident involving damage to a residence has already occurred. With

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<sup>8</sup> Due to an initial mistake as to the identification and location of certain customers and other unforeseen issues, an additional docket was opened at A-2015-2507377.

<sup>9</sup> As noted by the Joint Applicants in their Main Brief and the testimonies of Joint Applicant witnesses Franklin and Barbato, propane is currently three to five times more expensive than natural gas. See JA M.B. at 43; Tr. at 79. 171.

these facts in mind, however, what I&E is recommending here would inevitably result in these potential safety issues continuing to exist for many, many years into the future.

The Settlement provides that Peoples will repair the entire GT System in a period of seven years. Alternatively, should the Commission deny the Application as conditioned by the Settlement, Peoples would then have to submit their proposal for the GT System. Even if Peoples were to submit their GT System proposal and at the same time submit an abandonment application that process would certainly play out over an extended time frame.

Further, in any potential abandonment application the Commission must consider a broad array of factors beyond simply an “economic” analysis. The factors to be considered to grant a certificate of public convenience for abandonment are: "(1) the extent of the loss to the utility; (2) the prospects of the system being used in the future; (3) the balancing of the utility's loss with the hardship on the public; and (4) the availability and adequacy of alternate service." Fisher v. Columbia Gas of Pa., 78 Pa. PUC 432, 437 (1993), citing Commuters' Committee v. Pa. PUC, 88 A.2d 420, 424; cf. Re Victor Gas Co., 52 Pa. PUC 649, 654 (1978); see also Monessen Southwestern Ry. Co. v. Pa. PUC, 474 A.2d 1203, 1206 (Pa. Cmwlth.1984) and Re Pennsylvania Electric Co., 70 Pa. PUC 148 (1989). Further, "the Commission must weigh these factors and not focus on mere cost-benefit criteria." Borough of Duncannon v. Pa. PUC, 713 A.2d 737 (Pa. Cmwlth. 1998). "In addition, the utility, as the proponent of the abandonment, must demonstrate that its losses could not be cured by the granting of a reasonable rate increase." Fisher, 78 Pa. PUC at 437.

There is much more to be considered here than the pure “economic” analysis, as Mr. Franklin testified:

The economic test as the math has been done would yield the abandonment of nearly a 1000 customers. In our view, this being an economically challenged area, in our view, there is a better solution than the economic test.

The economic test would yield not only in the abandonment of those customers, but the comparison between natural gas prices and propane prices, let's assume that's at three to five times.

So those economically challenged customers, both commercial customers, small business residential customers, would pay for [a] lifetime three to five times more a month for their propane than they would for their natural gas. And for that reason, we have - - and our thinking on this has continued to evolve, and believe there is a better solution.

Tr. at 79-80.<sup>10</sup>

Further, as the Applicants point out in their Main Brief, any efforts to abandon close to 1000 customers in the middle of the Marcellus Shale fairway is likely to be met with a large amount of political and public opposition. Applicants M.B. at 43. Should such a scenario occur, it is likely that the final disposition for all the GT System customers, whether abandoned or retained, will take considerably longer than the current proposal to completely repair these assets as set out in the Settlement. During that period of time it is also likely that the safety issues discussed in this matter will continue to be present.

d. Conclusion.

There is no easy answer to the GT System matter. As the OCA discusses herein, however, there is only one reasonable, practical approach that complies with the public policy of Pennsylvania and this Commission, and would be in the public interest. The Settlement

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<sup>10</sup> As was made clear during the cross examination of OSBA witness Robert Knecht, the GT System currently serves a substantial number of non-residential customers. Under questioning as to the numbers of non-residential customers on the system, Mr. Knecht testified "As I recall, it's not an insignificant number of customers and that the non-residential loads were actually a material share of the Goodwin/Tombaugh system, so I know that because I was somewhat surprised." Tr. at 233.

comprehensively addresses the GT System and the OCA submits it should be approved in its entirety without modification.

6. Other Conditions Impacting Peoples Company Customers.

In the Non-Unanimous Settlement, Aqua America made several specific commitments on behalf of Peoples to meet or exceed their current customer service performance metrics. See Settlement at ¶¶ 91-95. I&E argued that meeting current customer service metrics is not a benefit and that, had the Joint Applicants agreed that Peoples would exceed their current metrics, it would be a benefit, albeit not a substantial benefit considering that Peoples customer service metrics are “not exceedingly low.” I&E M.B. at 35.

The OCA submits that this argument fails to acknowledge the importance of maintaining Peoples’ service-related commitments. The OCA was initially concerned that, due to the size of the proposed transaction and the attention that would potentially be diverted as a result of the proposed transaction, a lack of specific commitments could result in a deterioration of customer service and service quality at Peoples. As such, the OCA recommended that Peoples should continue to meet its service performance goals for 2019 and provided several recommended metrics by which Peoples could be evaluated. See OCA St. 3 at 4-6. The Non-Unanimous Settlement adopted the OCA’s recommendations for a period of five years. See Settlement at ¶¶ 90-92. Moreover, the Non-Unanimous Settlement provides that the Parties and the Commission can monitor Peoples’ service quality and reliability. Settlement at ¶ 90. These commitments ensure that Peoples will continue to meet specific customer service and quality standard metrics. The OCA submits that these specific five year commitments may not have occurred without the proposed transaction.

The OCA also notes that the Non-Unanimous Settlement includes several provisions to ensure that Aqua PA adopts Peoples' best practices, specifically in regard to customer service and quality of service. See Settlement at ¶¶ 83, 85-88. The OCA submits that the Joint Applicants' adoption of OCA witness Alexander's metrics enumerating specific performance objectives helps ensure that best practices are shared between the Applicants to benefit the public. These benefits were not originally included in the initial application and were committed to as part of the non-unanimous settlement. The service commitment recommendations and the Settlement represents a reasonable product of compromise.

I&E also argued that the Non-Unanimous Settlement's requirement that Peoples will intervene, at the request of a statutory advocate, in any proceeding near the Peoples' service territory in which the abandonment of a natural gas customer in a neighboring territory is contemplated, is not an affirmative public benefit because it does not require Peoples to do anything more than enter an appearance. I&E M.B. at 35; see also Settlement ¶ 97. I&E further argued that ratepayers may be harmed by Peoples intervention in these proceedings as the cost of litigation is borne by the ratepayers. I&E M.B. at 35.

In his Direct Testimony, OCA witness 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 proposed 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.

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 at ¶ 97. The OCA submits that the Non-Unanimous Settlement solidifies Peoples' current commitment to evaluating opportunities to acquire natural gas distribution systems that are at risk of abandoning their customers post-closing. I&E's arguments on this issue are misplaced and without merit. Peoples' prior assistance in matters like these have been both cost effective and reasonable as to maintaining natural gas service for Pennsylvania customers. This Settlement provision solidifies Aqua's commitment to continue having Peoples provide such assistance when necessary.

7. Other Conditions Impacting Aqua PA Customers.

a. Other Conditions Directly Impacting Aqua PA Customers.

I&E and OSBA both argued in their respective Main Briefs that Aqua's implementation of Peoples' SAP system does not rise to the level of an affirmative public benefit. I&E M.B. at 36; OSBA M.B. at 26-27. OSBA noted that, while Peoples' SAP system is generally superior, it is plausible that Aqua would implement the SAP system in the absence of the proposed transaction.

OSBA M.B. at 27. OSBA also noted that Joint Applicant witness Franklin stated at the evidentiary hearing that Aqua is currently not in need of an upgrade. OSBA M.B. at 27 *citing* Tr. at 84.

The Joint Applicant's Main Brief stated that the SAP implementation would enhance Aqua PA's ability to serve its customers. See JA M.B. at 49-50. The OCA noted in testimony that there was a significant difference between the customer service metrics of Peoples and Aqua, and that Aqua should strive to meet the metrics currently being achieved by Peoples. See OCA St. 3 at 23-25. The OCA did, however, express concern regarding the cost of implementing any new SAP system. Id. at 31-32. As such, the Non-Unanimous Settlement contains the following provision that addresses the OCA's concerns:

Aqua PA will conduct a cost, benefit, timetable and rate impact analysis for implementation of the Peoples Companies' SAP system and submit 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.

Settlement at ¶ 96.

b. Other Conditions Directly Impacting Both Aqua PA Customers And Peoples Customers.

Additionally, I&E argued that, in regard to low-income issues, the commitments contained in the Non-Unanimous Settlement are commitments that the Companies could commit to independent of the proposed transaction and that the financial commitments made by the Joint Applicants, "when viewed in totality", could have a substantial negative impact on low-income ratepayers. I&E M.B. at 36.

OCA witness 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 and 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 Non-Unanimous 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 Non-Unanimous 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 ¶¶ 102-06.

Additionally, it should be noted that the Settlement includes several provisions to ensure that Aqua PA adopts Peoples' best practices. The OCA notes that Aqua is currently not required to meet specific customer service metrics. The Non-Unanimous Settlement, however, contains service commitments by Aqua America to enhance customer service and service quality for Aqua PA. See Settlement at ¶¶ 83, 85-88. OCA witness 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. 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 Joint Applicants to benefit the public.

Regarding Aqua PA's low-income programs, OCA witness 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 Non-Unanimous Settlement, Aqua PA agreed to review the feasibility of collecting the data that OCA witness 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.

The Non-Unanimous Settlement contains multiple and significant commitments to low-income issues.<sup>11</sup> Moreover, the low-income advocate, CAUSE-PA, is a signatory to the Non-Unanimous Settlement. The provisions contained in the Non-Unanimous Settlement 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 proposed transaction. Therefore, the OCA submits that I&E and OSBA's criticisms of the universal service and low income commitments contained in the Settlement are without merit.

8. Other Conditions.

OSBA's argument under this subsection is addressed in detail in Section IV.B.7.

C. Whether The Proposed Transaction, As Conditioned By The Settlement, Is Likely To Result In Anticompetitive Or Discriminatory Conduct.

I&E argued that the Commission should affirm that Peoples will retain its role as supplier of last resort. I&E M.B. at 38. OCA witness Alexander and OCA witness Mierzwa both filed Rebuttal Testimony criticizing the recommendation that Peoples be required to exit the merchant function. See OCA St. 3-R; OCA St. 4-R. The OCA notes that the RESA/NGS Parties, the parties that originally recommended that Peoples should be required to exit the merchant function to

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<sup>11</sup> OSBA argued that the low-income provisions contained in the Non-Unanimous Settlement do not commit to having shareholders continue the low-income program contributions beyond the time period outlined in the Non-Unanimous Settlement and that ratepayers may have to pay for the costs of a comprehensive universal service program for Aqua PA. OSBA M.B. at 27-28. Any proposed changes to the recovery of universal service program costs, however, will be addressed by the Commission in accordance with the ongoing generic universal service proceeding at Docket No. M-2017-2596907. As such, OSBA's argument is misguided. The low-income programs and the time periods that the Joint Applicants agreed to in the Non-Unanimous Settlement, when viewed from the context of the Non-Unanimous Settlement as a whole, satisfactorily addresses the OCA's concerns.

produce substantial affirmative benefits, are signatory parties to the Non-Unanimous Settlement despite the Settlement not requiring Peoples to exit the merchant function. The Non-Unanimous Settlement represents a product of compromise between a large number of parties with competing interests. The OCA submits that the proposed transaction as conditioned by the Settlement does not result in anticompetitive or discriminatory conduct.

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

The OCA's discussion regarding the effect of the proposed transaction on the employees of the Peoples Companies is in Section IV.B.3.

E. Whether The Settlement Is In The Public Interest.

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

V. CONCLUSION

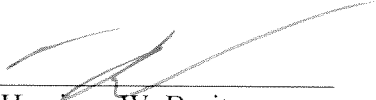
The OCA submits that I&E and OSBA's arguments in opposition to the proposed transaction are without merit for the reasons stated above. The OCA submits that the proposed transaction, conditioned by the Settlement, represents a fair and reasonable resolution of the issues raised by the OCA in this proceeding and produces substantive affirmative benefits. Therefore, the OCA submits that the Application as conditioned by the Settlement should be approved by the Commission without modification.

Respectfully Submitted,

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