



July 25, 2019

VIA E-File

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Filing Room
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 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-2018-3006061, A-2018-3006062, A-2018-3006063**

Dear Secretary Chiavetta,

Enclosed, please find the *Reply Brief* of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) in the above referenced proceeding.

Copies will be served consistent with the attached Certificate of Service. Please contact me with any questions or concerns.

Respectfully submitted,

A handwritten signature in black ink that reads "John W. Sweet". The signature is written in a cursive style with a horizontal line above the name.

John W. Sweet
Counsel for CAUSE-PA

Cc: Certificate of Service

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 : Docket Nos. A-2018-3006061
Authority and Necessary Certificates of : A-2018-3006062
Public Convenience to Approve a : A-2018-3006063
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. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the attached *Reply Brief of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania* upon the parties of record in the above-captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

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A handwritten signature in black ink, appearing to read "John W. Sweet". The signature is written in a cursive style with a horizontal line above the name.

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July 25, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua America, Inc., :
Aqua Pennsylvania, Inc., Aqua :
Pennsylvania Wastewater, Inc., Peoples :
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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.

**REPLY BRIEF OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND
ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)**

PENNSYLVANIA UTILITY LAW PROJECT

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July 25, 2019

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I. INTRODUCTION

On November 13, 2018, Peoples Natural Gas Company LLC, and Peoples Gas Company LLC (collectively, "Peoples") together with Aqua America, Inc. ("Aqua America"), Aqua Pennsylvania, Inc. ("Aqua PA"), and Aqua Pennsylvania Wastewater, Inc. (collectively, "Aqua") filed the above captioned Joint Application.¹ The Joint Application proposed a plan of acquisition whereby Aqua America would purchase all the membership interests of LDC Funding LLC, the indirect parent company of Peoples, and thereby obtain control of Peoples. The Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) was an active party throughout this proceeding, and a signatory party to the Non-Unanimous Settlement ("Proposed Settlement"). The Joint Petition for Approval of the Non-Unanimous Settlement ("Joint Petition"), filed June 26, 2019, includes a Statement in Support of CAUSE-PA, which outlines the many reasons that CAUSE-PA asserts that the Proposed Settlement provides a substantial public benefit, is in the public interest, and should be approved. (Joint Pet. App. C) (hereinafter "CAUSE-PA St. in Supp.").

CAUSE-PA files this narrow Reply Brief to respond to discrete arguments raised by the Bureau of Investigation and Enforcement (I&E) and the Office of Small Business Advocate (OSBA) in their respective Main Briefs. Specifically, CAUSE-PA takes issue with the assertion of I&E and OSBA that the Joint Applicants' commitments to improve access to service for vulnerable populations and available low income programming do not provide a sufficient public benefit to support approval of the proposed transaction. CAUSE-PA asserts that these low income commitments benefit all of Peoples' and Aqua PA's customers, as well as the community as a whole; extend beyond what is already legally required of the Joint Applicants; and include specific

¹ Together, Aqua and Peoples are referred to herein as the "Joint Applicants."

and quantifiable benefits which are certain to improve access to utility service in both utilities' respective service territories in Pennsylvania. Thus, CAUSE-PA asserts that these commitments amount to a substantial public benefit resulting from the proposed transaction, and that the Proposed Settlement must therefore be approved.

II. HISTORY OF PROCEEDING

CAUSE-PA incorporates by reference the procedural history included in the Joint Petition. As noted above, the Joint Petition – along with CAUSE-PA's Statement in Support and the Statements in Support of other parties² – was filed on June 26, 2019. Additionally, on July 10, 2019, Main Briefs were filed in this proceeding by the Joint Applicants, I&E, and OSBA. CAUSE-PA did not file a main brief in this proceeding.

III. LEGAL STANDARD

A. Burden of Proof

The party seeking a rule or order from the Pennsylvania Public Utility Commission ("Commission") has the burden of proof in that proceeding. 66 Pa. C.S. § 332(a). "A litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." Samuel J. Lansberry, Inc. v. Pa. P.U.C., 578 A.2d 600, 602 (Pa. Commw. Ct. 1990). As such, the Joint Applicants have the burden of proof in this proceeding to show by a preponderance of the evidence

² Statements in support of the Proposed Settlement were filed by the Joint Applicants; the Office of Consumer Advocate; CAUSE-PA; Dominion Energy Solutions, Inc., Shipley Choice LLC d/b/a Shipley Energy, and the Retail Energy Supply Association; Direct Energy Business Marketing, LLC and Direct Energy Small Business, LLC; Utility Workers Union of America, Local 612; Laborers' District Council of Western Pennsylvania; and the Pennsylvania Independent Oil & Gas Association. (See Joint Pet., App. A-H).

that the proposed transaction, as modified by the Settlement, satisfies the requirements of Sections 1102 and 1103 of the Public Utility Code. 66 Pa. C.S. §§ 1102, 1103.

B. Standard for Approval of Acquisition and Settlement

A proposed acquisition of a public utility may not go forward unless the Commission first issues a certificate of public convenience. 66 Pa. C.S. § 1102(a). To obtain a certificate of public convenience, the Joint Applicants must demonstrate that the proposed transaction would "affirmatively promote the 'service, accommodation, convenience, or safety of the public in some substantial way.'" City of York et al., v. Pa. P.U.C., 295 A.2d 825, 828 (Pa. 1972). In short, the Joint Applicants must demonstrate by a preponderance of the evidence that the acquisition will produce an *affirmative public benefit*. See Popowsky v. Pa. P.U.C., 937 A.2d 1040, 1057 (Pa. 2007).

IV. SUMMARY OF ARGUMENT

Low income consumers struggle to make ends meet each month and are uniquely vulnerable to changes in the provision of service. (CAUSE-PA St. 1 at 10). In the Proposed Settlement in this proceeding the Joint Applicants make a number of commitments to address this vulnerability relative to the proposed transaction. (Joint Pet. at ¶¶ 98-111). The Proposed Settlement also contains a number of provisions intended to keep jobs in the local community, ensure continuity in staffing and program delivery, and protect the quality of customer service of the acquired utility. (Joint Pet. at ¶¶ 81, 82, 94, 95, 105-107). Additionally, the Proposed Settlement sets forth several requirements designed to ensure that Peoples maintains at least its current level of community commitment post acquisition and provide direct financial benefit to the local community. (Joint Pet. at ¶¶ 112-114). Taken together, and as explained more thoroughly in

CAUSE-PA's Statement in Support, these commitments provide a substantial public benefit to both Peoples' and Aqua's customers, as well as the broader community.

In their respective Main Briefs, I&E and OSBA erroneously contend that the commitments made by the Joint Applicants under the terms of the Proposed Settlement regarding low income service programs do not provide a sufficient public benefit to support approval of the proposed transaction. (I&E MB at 14, 36; OSBA MB at 27-28). However, the record in this proceeding clearly showed that the low income commitments in the Proposed Settlement provide a substantial benefit to all ratepayers, regardless of income level, rate division, or geographic location, and thus support a finding that the Proposed Settlement provides a substantial public benefit resulting from the proposed transaction. (CAUSE-PA St. 1 at 27.)

Moreover, OSBA and I&E each raised concerns that the low income commitments contained in the Proposed Settlement could negatively impact other ratepayers, including other low income consumers in the Joint Applicants' respective service territories. (I&E MB at 36; OSBA MB at 28). These concerns are speculative and unsubstantiated by the record evidence in this proceeding. Importantly, the Joint Applicants are not legally required to make many of the specific low income program improvements contained in the Proposed Settlement, and the commitments to low income customers in the Settlement will be largely financed by Aqua's shareholders. (Joint Pet. at ¶¶ 99-101, 109).

For these reasons, CAUSE-PA continues to assert that the low income commitments in the Proposed Settlement provide a substantial public benefit and support a finding that the Settlement is in the public interest. (CAUSE-PA St. in Supp. at 16). As such, the Proposed Settlement should be approved.

V. ARGUMENT

- A. *Improving service and affordability for low income customers benefits the entire community, as well as all residential ratepayers, thus resulting in a substantial public benefit sufficient to approve the proposed transaction.*

As stated above, for the Commission to approve the acquisition at issue, the Joint Applicants must demonstrate that the proposed transaction is in the public interest and will provide an affirmative public benefit. City of York et al., 295 A.2d at 828. Additionally, “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.” Middletown Township v. Pa. P.U.C., 482 A.2d 674, 682 (Commw. Ct. 1984).

In its Main Brief, OSBA cites to Middletown Township, and argues that the benefits resulting from the low income commitments in the Proposed Settlement are not sufficient to support the proposed transaction because they are targeted to low income customers; thus, OSBA implies that the benefits derived from the low income commitments do not extend to all affected parties. This implication is inconsistent with the applicable legal standard. The low income commitments in the Proposed Settlement will provide an affirmative benefit to *all* customers of both the acquiring and acquired utilities, as well as the community at large, and is therefore distinguishable from the terms of the proposed settlement addressed in Middletown Township.

In the Middletown Township case, Middletown Township filed an application with the Commission for a certificate of public convenience that would allow it to purchase that part of the Newton Artesian Water Company located within the township. Middletown Township, 482 A.2d at 678. There, the Commission rejected the proposed acquisition, and found that approval of the acquisition in question, and the issuance of a requisite certificate of public convenience, would

only benefit residents of Middletown Township and “would have an *adverse* effect on the [Newton Artesian] Water Company’s remaining customers.” Id. at 679, 682 (emphasis added). In the current proceeding, however, the low income program commitments contained in the Proposed Settlement are specific and quantifiable, and will provide both direct and indirect benefits for the customers of both Aqua and Peoples. (Joint Pet. at ¶¶ 98-111; CAUSE-PA St. in Supp. at 6-14). There are also additional commitments in the Proposed Settlement that protect quality of service and provide a direct financial benefit to the local community throughout the acquired utility’s service territory. (Joint Pet. at ¶¶ 81, 82, 94, 95, 105-107, 112-114; see also CAUSE-PA St. in Supp. at 4-6, 15). On the other hand, there is no evidence in the record to support OSBA’s claim that these commitments, which consist primarily of shareholder contributions, would have an adverse impact on customers of either service territory. Indeed, by improving affordability for low income customers and, in turn, helping to reduce involuntary terminations and the accumulation of uncollectible expenses, the Proposed Settlement will bring measurable improvement to customers of both companies. These benefits will not be limited to one particular group or geographic subdivision, but will instead provide positive and quantifiable benefits to all ratepayers and the broader community.

As CAUSE-PA expert Harry Geller explained through his written testimony, low income customers make up a significant portion of the Joint Applicants’ respective residential customer base. (CAUSE-PA St. 1 at 10). Conservatively, Mr. Geller estimated that there were at least 200,000 low income customers across both companies’ geographic service territories – and likely many more. (Id. at 10-12). These customers struggle to make ends meet each month and are “consistently juggling expenses, trimming expenditures, and forgoing necessities” to pay for essential utility services. (Id.) As a result of this persistent economic strain, low income consumers are uniquely vulnerable to changes in the provision of service. (Id.) When affordability issues go

unaddressed, the resultant increase in terminations and uncollectible expenses increases costs on other ratepayers and creates costly impacts on the community as a whole – including the use of dangerous alternative heat sources, increased homelessness, family separation, neighborhood blight, and workforce instability. (Id. at 27).

The low income commitments in the Settlement will help to improve affordability, reduce terminations, control uncollectible expenses, maintain a strong customer base, and help low income customers implement energy efficiency measures that they would not otherwise be able to afford. (Joint Pet. at ¶¶ 98-111; see CAUSE-PA St. in Supp. at 6-14). Other commitments in the Proposed Settlement will ensure that the community benefits from the proposed transaction by helping to keep jobs in the local community, ensuring continuity in staffing, protecting the quality of customer service of the acquired utility, and ensuring that Peoples maintains at least its current level of community commitment post acquisition, which provides direct financial benefit to the local community. (Joint Pet. at ¶¶ 81, 82, 94, 95, 105-107, 112-114; see CAUSE-PA St. in Supp. at 4-6, 15). While many of these benefits provide a direct financial benefit to low income consumers, they also provide a host of indirect benefits for all ratepayers of both the acquiring and acquired utilities, and help to protect the safety of the entire community.

Specifically, the Joint Applicants commit to both preserve and improve existing programming, which will help to ensure that the assistance currently available to Peoples’ and Aqua’s low income consumers will remain strong over the longer term. (Joint Pet., CAUSE-PA St. in Supp. at 9). Moreover, the Joint Applicants commit to using *shareholder dollars* to increase funding for both utilities’ respective low income programming, including the following:

- Aqua shareholders will contribute historical universal service program contribution levels for the Peoples Companies’ LIURP for four years after the date of closing, which will help

low income customers implement energy efficiency measures that they could not otherwise afford, which will help reduce energy burdens as well as the health and safety risks present in participating homes. (Joint Pet. at ¶ 99; CAUSE-PA St. in Supp. at 10).

- Aqua shareholders will contribute an additional \$100,000 each year for four years after closing to Peoples' hardship fund, which will help prevent terminations and help struggling households stay connected to the system. (Joint Pet. at ¶ 100; CAUSE-PA St. in Supp. at 11).
- Aqua shareholders will contribute an additional \$75,000 each year for three years to Peoples' emergency furnace repair program, and will extend the program to include renters who are not currently eligible. (Joint Pet. at ¶ 101). This will help reduce the health and safety risks from operating dangerous furnaces or resorting to alternative heating methods, which is good for the entire community. (CAUSE-PA St. in Supp. at 10).
- Aqua shareholders will contribute an additional \$50,000 per year for four years to Aqua's hardship fund, which will help more of Aqua's customers afford to connect to and maintain water service. (Joint Pet at ¶ 109; CAUSE-PA St. in Supp. at 13-14).

The Joint Applicants' funding commitment will help strengthen the financial stability of their respective rate base, will reduce reliance of low income families on potentially dangerous alternative heating sources, and will help prevent evictions and homelessness which may result from the loss of water or heat-related services. (CAUSE-PA St. in Supp. at 11-14). Taken together, these enhancements are in the public interest because they will help the Joint Applicants to improve their respective low income programs, which will in turn help low income customers to connect to and maintain service, promote public safety by reducing the risk of termination for low income customers, and by allowing low income customers to implement energy efficiency measures that

they would not otherwise be able to afford. Improving affordability helps reduce terminations, which in turn helps reduce the risks of fire from dangerous alternative heating sources. (See CAUSE-PA St. 1 at 27).

Moreover, while the cycle of poverty indeed grips many members of low income communities, no one can predict what tomorrow holds. Thus, many customers who do not qualify for these programs today may fall upon hard times and find themselves in need of the programs in the future. Likewise, many of the customers currently enrolled in these programs will hopefully rise above the ties that bind them to poverty. The Joint Applicants' low income programing along with the improvements in this settlement will provide additional tools in helping current low income consumers to rise above their current circumstances, while acting as a safety net for those who fall from affluence.

In addition to the low income commitments, the Joint Petitioners make specific, time-certain commitments regarding its continued presence in the communities that Peoples serves. The Joint Applicants agreed to the following provisions which will provide a substantial public benefit to all Aqua's and Peoples' customers:

- Peoples will continue its voluntary "Help at Peoples Now" program, which allows Peoples' field employee personnel to make referrals to Peoples for payment and payment arrangements in lieu of termination of service, which will also help reduce terminations. (Joint Pet. at ¶ CAUSE-PA St. in Supp. at 8-9).
- Peoples will maintain the current Peoples Companies' corporate headquarters through at least January 31, 2029, and subsequently will not move their headquarters outside of the Peoples Companies' service territory unless through application to, and approval by, the Commission. (Joint Pet. at ¶ 81, 82). This will keep jobs in the local community and will

help ensure continuity in staffing. Together, these specific and defined commitments by the Joint Applicants will provide a significant benefit to the public it serves. (CAUSE-PA St. in Supp. at 4-5).

- As a result of this Settlement, Aqua and Peoples will be required to maintain or increase the location and staffing of call center employees in Pennsylvania, maintain Peoples' call center within Peoples' service territory and in or near Pittsburgh, and guarantee that any significant reductions in Pennsylvania call center staffing or transfer of call center employment outside of Pennsylvania will be subject to Commission approval. (Joint Pet at ¶ 94, 95). This will help ensure that the level of customer service currently available will not be diminished, and may in fact be enhanced over the long term. (CAUSE-PA St. in Supp. at 5-6).
- The Joint Applicants commit to spending at least one half of one percent of pre-tax net income each year for charitable contributions and to spending at least \$2.7 million annually in corporate contributions for a period of not less than 5 years. (Joint Pet. at ¶ 113). These contributions will not be recovered in rates. (Joint Pet. at ¶ 114). These commitments will help ensure that Peoples' established community presence will be maintained post-acquisition and provide direct financial benefit to the local community. (CAUSE-PA St. in Supp. at 15).
- The Joint Applicants also agree that Peoples will continue to partner with community based organizations within their local community and utilize inter-utility program coordination and economies of scale, the benefits of which will ultimately inure to consumers. (Joint Pet. at ¶ 102-103; CAUSE-PA St. in Supp. at 12).

Thus, the low income commitments combined with the community commitments and quality of service commitments in the Settlement create an affirmative public benefit to the Joint Applicants' respective ratebase and the community as a whole. These improvements will help low income customers afford to connect to and maintain service, thus reducing the risk of service terminations and the host of ills that come along with it. They will also help protect those customers who are not currently identified as low income should their circumstances change.

B. The low income commitments in the Proposed Settlement extend beyond what is already legally required of Peoples and Aqua.

I&E argues that the Joint Applicants could have made the commitments in the Settlement, independent of the transaction and that ratepayers could bear the cost of the commitments, which could potentially have a negative impact on low income ratepayers. (I&E Main Br. at 14, 36). However, the Joint Applicants' commitments extend beyond what is legally required and will be largely financed by Aqua's shareholders. (Joint Pet. at ¶¶ 98-111, 104). As Mr. Geller pointed out in his direct testimony, the *initial* commitments that the Joint Applicants made regarding low income programming were insufficient, in that they were only committing to continue to do what was already legally required. (CAUSE-PA St. 1 at 13.) However, in the Proposed Settlement, the Joint Applicants have made substantial additional commitments to improve low income programming beyond the initial proposal and to have Aqua's shareholders shoulder the cost. (CAUSE-PA St. in Support at 7-11, 13). As explained in detail above, the Proposed Settlement contains a multi-year commitment to increase annual voluntary shareholder donations to Peoples' and Aqua's respective hardship funds, as well as Peoples' LIURP and emergency furnace repair program, amounting to a total of \$825,000. (Joint Pet. at ¶¶ 100, 101, 109).

In the absence of the Proposed Settlement, Joint Applicants would not be legally required to make these additional funding commitments, let alone pay with *shareholder* dollars.

Furthermore, the record evidence does not support a conclusion that the terms of the Proposed Settlement could have a “substantial negative impact” on low income ratepayers. (I&E Main Br. at 36). In fact, for the reasons stated above, the low income commitments made by the Joint Applicants as a result of the Proposed Settlement will materially improve affordability for vulnerable consumers, which in turn benefits the system, other ratepayers, and ultimately the entire community.

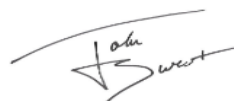
Thus, I&E’s concerns that the low income commitments could have been made outside of this proceeding and that ratepayers could eventually bear the cost are speculative and not supported by the record. As such, the Proposed Settlement should be approved.

VI. CONCLUSION

The low income commitments agreed to by the Joint Applicants in the current proceeding provide a substantial public benefit as a result of the proposed transaction. I&E and OSBA’s arguments that the benefits are insufficient are, at best, speculative, and are not based on record evidence. Thus, for the reasons more fully described above and in CAUSE-PA’s Statement in Support, the Proposed Settlement provides a substantial public benefit and should be approved.

PENNSYLVANIA UTILITY LAW PROJECT

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