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July 25, 2019

VIA E-FILING
VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Joint Application of Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Peoples Gas Company LLC for All of the Authority and the Necessary Certificates of Public Convenience to Approve a Change in Control of Peoples Natural Gas Company LLC and Peoples Gas Company LLC by Way of the Purchase of All of LDC Funding, LLC's Membership Interests by Aqua America, Inc.
Docket Nos. A-2018-3006061, A-2018-3006062 and A-2018-3006063

Dear Secretary Chiavetta:

Enclosed for filing please find the Public, CONFIDENTIAL and HIGHLY CONFIDENTIAL-STATUTORY ADVOCATES ONLY Versions of the Joint Applicants' Reply Brief in connection with the above-referenced proceedings. The CONFIDENTIAL and HIGHLY CONFIDENTIAL-STATUTORY ADVOCATES ONLY versions of the Joint Applicants' Reply Brief will be hand-filed and will only be provided to parties that have executed an appropriate non-disclosure certificate or are counsel for the respective statutory advocate. A password protected version of the HIGHLY CONFIDENTIAL-STATUTORY ADVOCATES ONLY version of the Reply Brief will be provided to the Administrative Law Judges and counsel for the statutory advocates.

**REQUEST FOR PROTECTED TREATMENT
OF CONFIDENTIAL INFORMATION**

As noted above, this filing includes information that the Joint Applicants consider to be proprietary and confidential. The CONFIDENTIAL and HIGHLY CONFIDENTIAL-STATUTORY ADVOCATES ONLY versions of the Reply Brief are contained in separately sealed envelopes, which have been stamped with the correct titles.

The Joint Applicants request that the materials that have been labeled "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL-STATUTORY ADVOCATES ONLY" be given the appropriate, non-public treatment by the Commission. That is, the Joint Applicants request that these materials be excluded from the public documents folder and that such copies not be disclosed to the public.

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

Sincerely,

Michael W. Hassell

Michael W. Hassell

MWH/kls
Enclosures

cc: Honorable Mary D. Long
Honorable Emily DeVoe
Certificate of Service

PUBLIC VERSION – PROTECTED INFORMATION REDACTED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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Date: July 25, 2019

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I. INTRODUCTION

The Joint Applicants[1] hereby submit this Reply Brief in response to the Main Briefs of the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") and the Office of Small Business Advocate ("OSBA"). I&E and OSBA are the only parties, out of roughly one dozen participating parties to this proceeding, who oppose the Joint Petition for Approval of Non-Unanimous, Complete Settlement ("Settlement").[2] Joint Applicants' Main Brief anticipated and responded to many of the arguments presented in I&E's and OSBA's Main Briefs, and Joint Applicants will endeavor to avoid repeating those responses.

II. HISTORY OF THE PROCEEDING

A detailed history of the proceeding was provided in the Joint Petition for Settlement and in the Joint Applicants' Statement in Support, which was attached as **Appendix A** to the Main Brief. Main Briefs were filed on July 10, 2019, and Reply Briefs are due July 25, 2019. The Main Briefs of I&E and OSBA included their respective comments on the Settlement.

III. LEGAL STANDARDS

The Joint Applicants addressed the standards for approval required under Sections 1102(a)(3), 1103 and 2210(a) of the Code in their Main Brief. *See* Joint App. MB, Section III.B. (citing 66 Pa. C.S. §§ 1102(a)(3), 1103 and 2210(a)). While the parties appear to agree that the substantial affirmative public benefits set standard set forth in *City of York v. Pa. Pub. Util.*

[1] The Joint Applicants are Aqua America, Inc. ("Aqua America"), Aqua Pennsylvania, Inc. ("Aqua PA"), Aqua Pennsylvania Wastewater, Inc. ("Aqua PA Wastewater"), Peoples Natural Gas Company LLC ("Peoples Natural Gas") and Peoples Gas Company LLC ("Peoples Gas"). Aqua America, Aqua PA and Aqua PA Wastewater are collectively referred to as "Aqua." Peoples Natural Gas and Peoples Gas are collectively referred to as the "Peoples Companies."

[2] The Settlement was entered into and filed by the Joint Applicants, the Office of Consumer Advocate ("OCA"), the Coalition of Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Direct Energy Business Marketing, LLC and Direct Energy Small Business Marketing, LLC (collectively, "Direct Energy"), the Natural Gas Supplier Parties and the Retail Energy Supply Association (collectively, "NGS/RESA"), Pennsylvania Independent Oil and Gas Association ("PIOGA"), Laborers' District Council of Western Pennsylvania ("Laborers' District Council") and Utilities Workers Union of America, Local 612 ("UWUA") (hereinafter collectively referred to as the "Settlement Parties"). Equitrans, LP ("Equitrans") and Duquesne Light Company ("Duquesne Light") are not signatories to the Joint Petition for Settlement, indicated they do not oppose the Joint Petition for Settlement.

Comm'n, 295 A.2d 825 (Pa. 1972) ("*City of York*") and its progeny is the applicable standard, there is substantial disagreement over how the standard should be interpreted and applied in this proceeding.

Both I&E and OSBA argue that this standard requires the Commission to compare the benefits of an acquisition to a no transaction "status quo." *See* I&E MB, p. 13; OSBA MB, p. 21. However, I&E and OSBA improperly assert that the "status quo" includes anything that existing ownership conceivably might be able to do, even if it has not. Under that interpretation, I&E and OSBA contend that benefits such as accelerated at-risk pipe replacement and increased shareholder contributions toward low income customer programs are not truly a benefit because current ownership theoretically (and without actual evidence) might increase existing spending and contributions. However, the affirmative public benefits standard does not require this showing. Rather, it merely requires an applicant to demonstrate that the asserted benefits will occur as a result of the proposed transaction. *See Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1058 (Pa. 2007) ("*Popowsky*"); *see also* Joint App. MB, pp. 30-31. In order for a specific commitment to constitute an affirmative benefit, an applicant need only demonstrate that the commitment is achievable as a result of the transaction at issue. *Popowsky*, 937 A.2d at 1058. Moreover, "the Commission is not required to secure legally binding commitments or to quantify benefits" of the proposed transaction. *Id.* at 1057.

The Commission has also previously dealt with arguments that are dismissive of asserted benefits as "either preserving the status quo or simply avoiding negative impacts." *Joint Application for Approval of the Transfer of the Issued and Outstanding Shares of Capital Stock of the Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. A-2008-2063737, at p. 33 (Order entered November 19, 2009) ("*SteelRiver Application Order*"). Therein, the Commission overturned an Interim Order denying a proposed acquisition and explained:

> Significantly, the ALJ does not expressly address the foregoing (such as low income customer benefits) or dismisses the benefits (such as pension and labor contract retention) as either preserving the status quo or simply avoiding negative impacts. We find all of these commitments represent substantial, affirmative benefits to PNGC's ratepayers and the public...
>
> We have already reviewed some of the financial conditions in the context of our review of the *Penn Estates* criteria. Some of those [financial] conditions would not necessarily result from the full litigation of this Application and represent substantial benefits in their own right...

Id. at 33-34 (emphasis added). Indeed, the Commission found that where a commitment results from a specific transaction and/or a settlement for the approval of the transaction, the commitment constitutes an affirmative benefit that is unique to the transaction.

The "status quo" arguments advanced by I&E and OSBA in an attempt to dismiss the benefits of the Proposed Transaction misstate the applicable legal standards. Therefore, their arguments should be rejected and the Proposed Transaction, as conditioned by the Settlement, should be approved without modification.

IV. SUMMARY OF ARGUMENT

There are numerous errors of law and inaccurate factual analyses in I&E's and OSBA's Main Briefs, which lead to the flawed conclusion that the Commission should reject this Proposed Transaction. Several of these errors are summarized below.

First, it is the position of I&E and OSBA that the Commission should conclude that Aqua America, a large, well-respected, well-run, Pennsylvania-based public utility holding company should be declared unfit to acquire the Peoples Companies. This is an unprecedented contention and ignores the clear evidence of Aqua's fitness. In so doing, I&E and OSBA speculate about financial harms related to the purchase price and financing, and would have the Commission become a super board of directors that overrules the negotiated purchase price, even though the premium included in that price and the financing of the Proposed Transaction will not be borne

by either Aqua PA's or the Peoples Companies' customers. These speculative claims of financial harm are disproven by the market's positive response to the already-completed financing for the Proposed Transaction. In addition, I&E and OSBA ignore the undisputed evidence of record, and settlement commitments, that natural gas operations will continue to be run by experienced natural gas personnel, with Aqua America's primary purpose being to provide the ongoing investment capital to further improve gas operations. Claims that Aqua America is either financially or technically "unfit" should be rejected.

Second, I&E and OSBA take the position that only dollar-enumerated savings are to be considered in determining whether the Proposed Transaction meets a substantial benefits standard. Such a standard is clearly and unequivocally not the law, as made clear in *Popowsky*. In so doing, I&E and OSBA minimize or completely disregard the important service, accommodation, convenience and safety benefits, in addition to rate credits, that will be produced for both natural gas and water customers by the Proposed Transaction, as modified by the Settlement.

Third, I&E and OSBA express understandable concerns about the safety of the Goodwin and Tombaugh gathering systems ("G/T systems"). And yet, somewhat inexplicably, the I&E and OSBA contend that the solution is to continue to follow a plan that would lead to abandonment proceedings and substantially higher energy costs for 1,000 or more current Peoples Natural Gas customers, many of whom are low-income. I&E and OSBA oppose the better solution set forth in the Settlement, which uses the financial resources available through new ownership (Aqua America), to expeditiously fix the G/T systems, with a partial contribution in the form of a rate credit by Aqua America. That solution should be adopted in the context of approval of the settlement and the Proposed Transaction.

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

V. ARGUMENT

A. Aqua America Is Fit To Own The Peoples Companies

1. Neither I&E Nor OSBA Rebut The Presumption That Aqua America Is Fit To Own The Peoples Companies

As explained in the Joint Applicants' Main Brief, Aqua America is presumed to be technically, legally and financially fit to assume control of the Peoples Companies by virtue of its long-standing existence and ownership of jurisdictional public utility service providers, *e.g.*, Aqua PA. Joint App. MB, Section V.A.1 (citing, *inter alia*, *In re: Application of Pennsylvania Power & Light Company, PFG Gas, Inc., and North Penn Gas Company*, Docket Nos. A-120650F0006, A-122050F0003, 1998 Pa. PUC LEXIS 23, at *36-37 (Initial Decision dated May 1, 1998) ("*PPL Gas Merger ID*"), *adopted by*, Opinion and Order, Docket Nos. A-120650F0006, A-122050F0003, 1998 Pa. PUC LEXIS 33, *28 (Order dated July 24, 1998)). Despite the fact that the Joint Applicants cited the *PPL Gas Merger* and other cases in the Application, neither I&E nor OSBA address these cases or cite to appropriate legal authority to support their position that Aqua America should not be presumed fit. *See* OSBA MB, pp. 7-9; I&E MB, pp. 8-10.

I&E instead attempts to argue that the *Penn Estates*[3] criteria somehow govern the determination of Aqua America's fitness. I&E M.B, pp. 8-9. In doing so, I&E misrepresents the Commission's decision to formulate these criteria, its reasoning for doing so and the types of transactions to which the criteria apply.

[3] *Application of Penn Estates Utilities, Inc.*, Docket No. A-210072F0003, et al., 2006 Pa. PUC LEXIS 719 (Order entered 2, 2006) ("*Penn Estates*").

In the *Penn Estates* proceeding, the decision of an administrative law judge that recommended approval of the acquisition of certain water utilities by a private equity investor became final by operation of law on February 26, 2006. *Penn Estates*, at *4-5. The Commission subsequently issued an Opinion and Order on March 31, 2006, which determined the proceeding should be reconsidered, upon the motion and statement of then Chairman Wendell F. Holland. *See Application of Penn Estates Utilities, Inc.*, Docket No. A-210072F0003, et al., 2006 Pa. PUC LEXIS 357 (Public Meeting March 16, 2006) ("*Penn Estates Reconsideration Order and Statement*"). Therein, Chairman Holland intimated specific concerns regarding the purchase and ownership of water utilities by equity investors based upon, among other things, the complexity of the equity fund's corporate structure and a lack of transparency. *Penn Estates Reconsideration Order and Statement*, at *6. Indeed, the "overriding concern" was that the buyers would be "strictly equity investors with limited utility operating experience and a possible short term ownership horizon." *Id.* at *7.

In its Final Order, the Commission confirmed the scope of its concerns and stated:

> The Commission expressed concern regarding the public interest findings relating to this transaction due to the status of the acquiring party as an equity investor. (March 31 Order at 1). Because of that concern, the Commission reopened the record for the receipt of additional information and directed the Office of Trial Staff (OTS) to intervene.

Penn Estates, at *5 (emphasis added). The Commission then determined that the acquiring entity had satisfied the enumerated criteria and approved the transaction without additional conditions.

The cases relied upon by I&E make it abundantly clear that the Commission's concerns regarding fitness were due to the acquirer's status as a private equity investor, completely lacking utility operations experience. Aqua America, however, is a publicly traded company and has owned and operated utilities for over 130 years. (Joint App. St. 1 (REVISED), pp. 8-10

(PUBLIC).) As such, the *Penn Estates* criteria are not applicable to Aqua America's fitness to own and operate the Peoples Companies, although they do highlight certain benefits provided by returning the Peoples Companies to public ownership. Joint App. MB, pp. 20-29.

OSBA similarly fails to cite authority to support its position. OSBA assumes that the Joint Applicants' position is that "a Pennsylvania water and wastewater utility is automatically fit to own and operate a Pennsylvania natural gas distribution utility." OSBA MB, p. 8. The Joint Applicants have not argued that Aqua America is "automatically fit." Aqua America is, however, afforded a rebuttal presumption of fitness under the law.[4] In addition, OSBA appears to argue that Aqua PA (*i.e.* the jurisdictional Pennsylvania water and wastewater utility) will be the entity that owns and operates the Peoples Companies. This is simply incorrect. Under the Proposed Transaction, Aqua America will own and separately operate the Peoples Companies and Aqua PA. (Joint App. St. 1-R, pp. 29-30.) Aqua America will act as a holding company, with appropriate management structures in place to ensure that both the Peoples Companies and Aqua PA are respectively managed by individuals with natural gas and water/wastewater experience. (*See* Joint App. St. 1-R, pp. 29-30.)

Finally, both I&E and OSBA miss the point that the presumption afforded to Aqua America is rebuttable. While these arguments claiming that Aqua America is unfit are discussed below, the Joint Applicants note that I&E and OSBA attempt to ignore this crucial point by design. Despite their attempts to decry the fitness of Aqua America to own the Peoples Companies, I&E and OSBA cannot escape the fact Aqua America's long-standing existence and ownership of jurisdictional public utilities, financial strength, commitments to ensure natural gas employees directly report to natural gas management and commitments to retain employees (or

[4] In that regard, OSBA claims that Joint Applicants' position would allow an extremely small Pennsylvania utility to be presumed fit to acquire a large utility. (OSBA MB, p. 8.) OSBA's hypothetical is illogical, as an obvious lack of financial fitness means that no deal would ever be negotiated. Further, fitness is rebuttable, and if the situation were as extreme as OSBA hypothesizes, fitness would be easy to rebut.

implement succession plans or hire best in class talent where retention is not possible) overwhelmingly demonstrate its fitness.

2. The Record Evidence Demonstrates That Aqua America Is Fit To Own The Peoples Companies.

I&E and OSBA further argue that not only should Aqua America not be presumed to be fit, but that the record in this proceeding demonstrates Aqua America is unfit to own and operate the Peoples Companies. *See* I&E MB, pp. 8-12; *see also* OSBA MB, pp. 9-11. I&E argues that Aqua America lacks both technical and financial fitness, and OSBA argues that Aqua America lacks the requisite technical fitness. For the reasons explained below, and the reasons more fully explained in the Joint Applicants' Main Brief, the Commission should reject these arguments and conclude that Aqua America is fit to own the Peoples Companies.

a. Aqua America Is Technically Fit to Own and Operate the Peoples Companies.

With respect to technical fitness, I&E and OSBA argue that Aqua America has no experience in owning, operating or managing a natural gas utility and that this lack of experience renders it technically unfit. *See, e.g.*, I&E MB, p. 9; OSBA MB, p. 9. For instance, both I&E and OSBA argue that Aqua America has no experience complying with the safety regulations applicable to natural gas pipelines, promulgated by the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). I&E MB, p. 9; OSBA MB, p. 9. However, Aqua America would not be the applicable pipeline operator for purposes of PHMSA's regulations, just as SteelRiver is not the applicable operator today; Peoples Natural Gas and Peoples Gas would continue to complete and implement their Distribution Integrity Management Plan ("DIMP") and comply with PHMSA regulations, and Aqua America would rely upon experienced gas managers and operators to ensure continued compliance with the DIMP and all natural gas regulations.[5]

[5] The Joint Applicants note that I&E and OSBA misrepresent the entity responsible for the completion and implementation of a DIMP. These regulations are applicable to "operators," and Part 192.3 of PHMSA's

I&E and OSBA further ignore the Joint Applicants' commitments to ensure the Peoples Companies are managed by executives with best-in-class natural gas distribution utility experience. Joint App. MB, **Appendix A**, pp. 15-16. Neither I&E nor OSBA even attempt to address the Joint Applicants' evidence regarding management and employee retention commitments, or the several governance related commitments contained in the Settlement.

[BEGIN HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY] [redacted]

regulations defines an "operator" as "a person who engages in the transportation of gas." 49 C.F.R. § 192.3. Peoples Natural Gas and Peoples Gas are the defined operators for PHMSA purposes and have been attributed operator codes. *See* https://portal.phmsa.dot.gov/analyticsSOAP/saw.dll?Portalpages (the PHMSA operator information registry contains operator codes for Peoples Natural Gas and Peoples Gas, but not for SteelRiver, because they are the applicable operators). Like SteelRiver is not today, Aqua America would not be the operator for purposes of completing and implementing a DIMP.

[redacted]

[redacted] **[END HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY]**

Finally, the arguments raised by both I&E and OSBA have been previously rejected by the Commission in the *SteelRiver Application Order*. In that proceeding, Trial Staff argued that the acquiring entities did not have the technical expertise to operate a gas distribution utility because the acquiring entities had not replaced the technical expertise of a departed investor with a similarly experienced owner. *See SteelRiver Application Order*, at p. 38. The Commission noted that PHGC, the natural gas utility being acquired, had explained its day-to-day management would be provided at the local level and it was endeavoring to retain/hire existing company employees and management with substantial experience. *See id.*, at pp. 39-40. Based upon these and other facts, the Commission determined:

> We find that PHGC possesses the necessary technical fitness. Our finding is based on three factors. First, PHGC has committed to the retention of PNGC operations and other personnel. While the OTS is correct that actual employment has yet to occur, this is one of those impractical items addressed in *Popowsky*. Until PHGC obtains the necessary regulatory approvals, it cannot move forward on this issue. The OTS argument presents PHGC with a Catch-22 proposition.
>
> Second, PHGC has a clear plan in place for the provision of essential services during a transition phase for gas procurement and customer service. Following the transition phase, PHGC has committed to working with the OCA, the OTS and the OSBA, under this Commission's oversight, to move forward either in-

> house or on a contracted basis, with the continued provision of these services. Again, we find that this plan is a valid method for PHGC to move forward and supports a finding of technical fitness.
>
> Lastly, we agree with PHGC that senior management in SteelRiver can provide the necessary expertise in capital markets and over-all operations one would expect to find at the ultimate parent company level. Contrary to the OTS, we do not find the departure of Babcock & Brown to be a fatal blow to a fitness determination. As set forth by PHGC, the essential management personnel remain.

Id., at pp. 40-41 (emphasis added).[6]

As in the *SteelRiver Application Order*, the Proposed Transaction contemplates the retention of essential natural gas management personnel and employees. The Proposed Transaction, as conditioned by the Settlement, goes even further by committing that Aqua America's board of directors now includes, and will include in the future, at least one director with substantial natural gas utility experience. *See* Joint App. MB, **Appendix A**, p. 15. Moreover, Aqua America "can provide the necessary expertise in capital markets and over-all operations one would expect to find at the ultimate parent company level" for a public utility. Aqua America is the second largest investor-owned water utility in the country and is an experienced owner and manager of pipe-based utility assets in the United States. (Joint App. Ex. DJS-1, p. 21.) Aqua America is a long-term investor in utility operations, focused on long-term ownership; it has owned and operated water systems in Pennsylvania for over 130 years. (Joint App. St. 1 (REVISED), pp. 9-10 (PUBLIC).) Any assertion that Aqua America is unable to provide the expertise contemplated in the *SteelRiver Application Order* is absurd.

Therefore, and for the reasons more fully explained in the Joint Applicants' Main Brief, Aqua America will be technically fit to own the Peoples Companies.

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[6] Joint Applicants note that Mr. O'Brien had no significant experience in natural gas operations prior to becoming President of Peoples Gas, but had substantial electric utility experience. (Joint App. St. 3 (REVISED), pp. 2-3.)

b. Aqua America Is Financially Fit To Own and Operate The Peoples Companies.

I&E also attempts to argue Aqua America lacks the financial fitness necessary to own the Peoples Companies. I&E MB, p. 10. Importantly, however, I&E cites to no record evidence to support its argument that Aqua America is not financially fit. The only two record cites provided are to support the amount of goodwill included in the transaction and the range of amounts of debt the Joint Applicants indicated might need to be raised. I&E MB, p. 10. As such, this argument should be rejected.

Furthermore, Aqua America demonstrated it raised the requisite capital to fund the acquisition, on reasonable and attractive terms. (*See* Joint App. St. 2-R, pp. 3-17 (PUBLIC).) Moreover, based upon several analyses, Aqua America determined and has demonstrated that the Proposed Transaction will increase its financial strength and stability. (Joint App. St. 2-R, pp. 5-6.) In addition, Aqua America is finished raising the capital necessary to support the transaction, so no new debt will need to be raised. (Tr. 127-128.) The Joint Applicants further address I&E's arguments regarding the purchase price and financial risk of the Proposed Transaction in Section V.B.1, below. For these reasons, and the reasons more fully explained in the Joint Applicants' Main Brief, Aqua America is financially fit to own the Peoples Companies.

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

I&E's and OSBA's contentions that disparage the public benefits of the Proposed Transaction, as conditioned by the Settlement, are strikingly reminiscent of the contentions made by I&E (then OTS) in opposing the acquisition of Peoples Natural Gas by SteelRiver. Then, like now, it was argued that a series of benefits should be disregarded "as either meeting existing requirements or simply maintaining the status quo." *SteelRiver Application Order*, p. 32. The Commission strongly rejected such argument, concluding that "[e]ven a cursory review of the

benefits…leads to the conclusion that the Application as modified by the settlement will provide affirmative and substantial benefits to the public." *Id.* Relevant to this proceeding, the Commission identified as benefits in the *SteelRiver Application Order* a series of items, including:

- Commitments to improve customer service with specific metrics;
- Commitments to maintain and create Pennsylvania-based jobs;
- Commitments to maintain the utility headquarters in Pittsburgh for 10 years;
- A base rate credit;
- Ring-fencing;
- Affirmative commitments to improve low-income customer programs;
- Enhancements for retail gas supply competition; and
- "A financially strong and diversified owner with a long-term investment horizon and superior access to capital markets."

Id., pp. 31-32.

The Proposed Transaction, as conditioned by the Settlement, contains a variety of public benefits comparable in nature to the benefits found to be sufficient to support SteelRiver's acquisition of Peoples Natural Gas. These include:

- Commitments to further improve customer service for both the Peoples Companies and Aqua PA;
- Creating new Pennsylvania jobs;
- Further commitment to retain the Peoples Companies headquarters at the current location for an additional 9 years, and to not move the headquarters outside the Peoples Companies service territory thereafter without Commission approval;
- Two separate base rate credits, totaling $23 million;
- Additional ring fencing and debt ratio commitments to assure financial integrity;
- Affirmative commitments to further improve low-income customer programs of the People Companies and Aqua PA;

- Additional enhancements for retail supply competition;
- Commitments to further accelerate at-risk pipeline replacements, resulting in the Peoples Companies' distribution systems being made safer, more quickly;
- Increased charitable commitments;
- Commitments to retain current levels of field service and call center employees;
- Commitment to fix, once and for all, the G/T systems;
- Commitment to file a new damage prevention program to reduce line hit damages, which will further increase the safety of the Peoples Companies' distribution systems;
- Efficient adoption of a new, SAP-based customer information system by Aqua PA. patterned after the existing SAP system used by the Peoples Companies, which will improve customer service and convenience;
- Long-term efficiencies in back office functions, which will benefit the customers of both the Peoples Companies and Aqua PA; and
- Return of ownership of the Peoples Companies to a Pennsylvania-based publicly-owned company, with its 130-year history of committed investment in utility assets and strong access to public and private capital markets.

I&E and OSBA would have the Commission ignore many of these benefits on the basis that these are things that either the Peoples Companies or Aqua could do without the Proposed Transaction. This is a false description of the applicable standard, as explained previously. Theorizing that a large utility could do almost anything is not the same as actual outcomes or commitments. Under the I&E's and OSBA's proposed standard, ownership change for all but the smallest utilities would cease, as it is simple to hypothesize that benefits might be provided by current ownership. The fact is these benefits will occur because of Aqua America's proposed ownership and commitments, and there is no evidence that either the Peoples Companies or Aqua PA would undertake, or achieve, these beneficial commitments absent the Proposed Transaction.[7]

[7] As explained later in this Reply Brief, Aqua acknowledges that at some point in the future it would likely replace its customer information system, but it would not have the guidance, or obtain the efficiency benefits, in following the Peoples Companies' experience from its recent installation of a SAP system.

I&E and OSBA also would have the Commission disregard some of the foregoing as benefits because costs ultimately may be recovered in future rate proceedings. However, the Commission has frequently accepted, as acquisition benefits, commitments to undertake safety and customer service improvements, even though the prudent costs of those improvements ultimately may be reflected in rates. *See* Joint App. MB, pp. 35, n. 18 (citing several authorities). Moreover, such arguments ignore the rate credits that will be borne by Aqua America's shareholders, contributions to be made by Aqua America and the long-term savings that will be produced from best practices and improvements to back office functions. (*See* Settlement, pp. 7, 8, 25; *see also* Joint App. St. 4 (REVISED), pp. 4, 10-11.) This contention to disregard various benefits is without merit and should be rejected.

Aqua further disagrees with I&E's and OSBA's contentions that the Commission cannot consider the possible future sale of the Peoples Companies to an out-of-state entity and resulting adverse job impacts if this transaction is rejected. As Mr. Franklin stated:

> It is clear that if this transaction is rejected, other potential buyers, likely without Pennsylvania connections, will seek to acquire the Peoples Companies. Efforts to produce substantial costs savings will focus on elimination of positions and that should not be viewed necessarily as a public benefit.

(Joint App. St. 1-R, p. 12.) Although not determinative, the Commission should not ignore what is likely to happen, and the likely impact on jobs, if this transaction were not approved.

1. I&E's and OSBA's Claims Regarding Risks of Goodwill and Financing Are Wrong.

I&E and OSBA continue to oppose the Proposed Transaction because it will result in goodwill being recorded on Aqua America's balance sheet. I&E MB, pp. 14-17; OSBA MB, pp. 12-15. As explained in Joint Applicants' Main Brief, the purchase price for all of the assets being acquired is reasonable and consistent with the price paid for other comparable utility

transactions. Joint App. MB, pp. 14-17.[8] I&E and OSBA are wrong in contending that the Proposed Transaction should be rejected because the negotiated purchase price is above book value.

I&E asserts that the Commission can investigate the purchase price pursuant to its authority to investigate property valuations under Sections 505 and 1103(b) of the Code. However, as made clear in the Application and as committed in the Settlement, no portion of the goodwill or premium will be included in the rate base or ratemaking capital structure of Aqua PA or the Peoples Companies. (Joint App. St. 2, p. 6; *see also* Settlement ¶ 45.) Thus, there will be no change to the original cost valuation of any utility property as a result of the Proposed Transaction. Moreover, no transaction or transition costs incurred to consummate the Proposed Transaction will be charged to utility customers, and all financing of the Proposed Transaction will remain at Aqua America. (Joint App. St. 2, p. 6.) The Commission's authority to examine property valuations does not give it authority to assess the reasonableness of the arm's length negotiated purchase price.

The premium being paid above book value for the Proposed Transaction is consistent with the market price premium over book value currently experienced for utility stocks. The purchase price paid for SteelRiver's equity is about three times book value. (*See* Joint App. Ex. DJS-2R.) In comparison, Aqua America's stock price over the past five years has traded at an average of three times book value per share. (Joint App. St. 2-R, p. 9.) This demonstrates that the negotiated price is consistent with market pricing. Moreover, any effort to assess the negotiated price in relation to book value should be rejected. The Commission consistently has

[8] In addition to the Peoples Companies, Aqua America will be acquiring three non-jurisdictional natural gas utilities: Peoples Gas KY LLC, Delta Natural Gas Company, Inc. and Peoples Gas WV LLC. Other non-utility Companies to be acquired are PA Gas Marketing LLC, Peoples Service Company LLC, Peoples Homeworks LLC, Peoples Gathering LLC, Enpro, LLC, Delta Resources, LLC, and Delgasco, LLC.

refused to regulate utility market prices. As the Commission noted in *Pa. P.U.C. v. The York Water Company*, 62 Pa. PUC 459, 502 n. 24:

> We have noted that at transcript page 437, Mr. Rothschild stated that it is his view that the Commission has the "responsibility to converge book value and market price...." (T. 437) We have in the past repeatedly refused to attempt to manipulate the market to book ratio through our determination of the cost of common equity.

Likewise here, the Commission should not manipulate market to book ratios by rejecting an acquisition on the basis that the price exceeds book value.

I&E asserts that motivation for the transaction is in some way relevant to assessing the reasonableness of the purchase price. (I&E MB, p. 15.) Specifically, I&E believes it is relevant that the acquisition arose "not out of necessity, but out of a water utility's desire to own a natural gas distribution company." However, motivation for an acquisition is not a criteria for determining whether a transaction should be approved. There is nothing objectively wrong with two parties reaching agreement on terms for an acquisition, regardless of "necessity." As noted by Mr. Franklin, the presentation of this Application demonstrates that SteelRiver has put the Peoples Companies up for sale. (Joint App. St. No. 1-R, p. 10.) Further, there is no requirement that a utility be in "dire condition" before a sale may occur. Many acquisitions have been approved without the utility being in "dire condition."[9]

I&E and OSBA claim that the premium will be harmful because there will be no additional rate-making revenue associated with the premium. *See* I&E MB, pp. 10, 16; *see also* OSBA MB, p. 14. However, these claims ignore expert financial testimony that the deal will be

[9] *See, e.g., Application of Duquesne Light Company for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving the acquisition of Duquesne Light Holding, Inc. by Merger*, Docket Nos. A-110150F0035, A-311233F0002, 2007 Pa. PUC LEXIS 637 (Initial Decision dated Mar. 20, 2007); *Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp.*, 2001 Pa. PUC LEXIS 23 (Order dated June 21, 2001); *In the Matter of the Application of Columbia Gas of Pennsylvania, Inc. for a Certificate of Public Convenience Evidencing Approval under Section 1102(a)(3) of the Public Utility Code of the Transfer from Columbia Energy Group to NiSource Inc. Or New NiSource Inc., by Merger, of the Title to and Possession and Use of All Property of Columbia Gas of Pennsylvania, Inc.*, Docket No. A-120700F0003, 2000 Pa. PUC LEXIS 880 (Order entered July 14, 2000); *PPL Gas Merger ID.*

accretive to Aqua America's earnings, even with the premium. (Joint App. 2-R, pp. 6-10.) In this regard, I&E and OSBA confuse the analysis of risk to Aqua America's shareholders with risk to utility customers. Earnings of the combined gas and water utilities can, and are projected to, increase the earnings per share for Aqua America's shareholders above current levels. How that level of earnings may compare to earnings of current SteelRiver investors based upon the book value of their assets is irrelevant. Moreover, the actual risk and reward of the transaction will be borne by shareholders and reflected in future stock price changes. Utility customers will not be responsible for those price changes. *York Water.*

I&E and OSBA assert there are risks to customers from financing of the transaction. This is incorrect. First, it appears from their Main Briefs that I&E and OSBA fail to consider, or intentionally ignore, the rebuttal testimony of the Joint Applicants with respect to transaction financing. Both parties continue to assert risk to utility customers from "additional debt totaling some $400 to $900 million." I&E MB, p. 16; OSBA MB, pp. 12-13. Both parties ignore clear rebuttal testimony, and testimony under cross-examination, that all additional debt to finance the transaction has been raised, and the amount is at the low end of the range at $436 Million.[10] Neither party even references the fact that the average cost rate for that debt is at a very attractive rate of 3.96% for debt averaging 21 years. Further, neither recognizes that the incremental debt is equivalent to approximately 3% of the asset value of the combined entity. (*See* Tr. 127-128 ($436 million in incremental debt); *see also* OSBA St. 1, p. 10 (total asset value after closing of approximately $10.575 billion).) In addition, neither party considers the fact that this debt is incurred at the Aqua America level and, consistent with Settlement conditions, will not be pushed down to the utility level. (Joint App. St. 2-R, p. 12; *see also* Settlement ¶¶ 45, 47.) Also, neither I&E nor OSBA give recognition to the fact that investor interest in the debt

[10] (Tr. 127-128 ("Q. [By OSBA counsel Fure] Are you going to raise any more, or are you done? A. [By Mr. Schuller] We've completed the acquisition financing.")

was four times the amount raised. Clearly, this demonstrates that Aqua America will have no difficulty in continuing to raise needed debt capital in the future. This incremental debt does not present risk to utility customers.

I&E and OSBA similarly contend that the equity financing for the transaction may harm utility customers, claiming it may adversely affect Aqua America's ability to raise equity capital going forward. *See* I&E MB, pp. 15-16; OSBA MB, p. 14. Again, it appears both parties failed to consider the Joint Applicants' rebuttal testimony. There, Aqua America explained that it already had raised the equity to finance the transaction, and, for the public issuance, there was investor interest equal to approximately four times the amount raised. (Joint App. St. 2-R, p. 12.) The market clearly does not agree with either I&E's or OSBA's perception of risk from the transaction, and shows no hesitancy to provide further equity capital.

OSBA also claims that the market views the transaction negatively. OSBA MB, pp. 14-15. Such claims are demonstrably wrong, based on the evidence. First, OSBA points to certain debt rating agency reports. However, those rating agency concerns were undercut by the market's positive reaction to the actual debt issuance, as described above. Second, OSBA continues to point to the initial drop in Aqua America's stock price immediately following the transaction. OSBA MB, pp. 14-15. However, this disregards the quick stock price recovery. As Mr. Schuller explained, in rebuttal:

> **Q. Is it common for an initial decline in stock price after a transaction announcement?**
>
> A. Yes, regardless of industry sector, it is common to see the acquirer's share price decline when a proposed transaction is announced. While Aqua's share price initially declined in the period immediately following the transaction announcement, as is typical for most utility acquirors as investors initially analyze a given transaction, our share price has rebounded significantly, consistent with our expectation based on our evaluation of the long-term financial benefits of the acquisition.

> Respectfully, I think that Aqua's stock price should be judged over the long term, and I do not believe focusing on a shortened time period right after the transaction announcement should be determinative of the transaction being in the public interest, particularly given our recent highly successful equity raises in support of the acquisition and our investors' long-term outlook for the business.

(Joint App. St. 2-R, p. 8, lns. 11-22.) Mr. Schuller further expanded upon this under cross-examination:

> A. So the graph before me shows the stock price until really through the month of March.
>
> Q. Of this year?
>
> A. Of this year.
>
> Q. And that would be post-announcement?
>
> A. That is post-announcement, but it doesn't include what's happened subsequent to that date, which would include continued strong stock price performance, especially after our equity issuance where our stock price jumped significantly, and our stock price now trades at a price that's about two and a half dollars above the price on the day before the announcement of the transaction itself.
>
> Q. Okay. And I'm sorry, did you just state and would you agree with me that Aqua's price, stock price dropped substantially on the date the announcement of the proposed transaction was made?
>
> A. I will agree that it did, which is not uncommon from—when there are transactions announced, it's common, regardless of industry, that the buyer stock price takes a hit. What occurs subsequently to that, though, is really the market starts to understand the transaction and for transactions which the market approves of, those stock prices rebound.
>
> And that's specifically what happened in the case of our stock. As we had conversations with our investor base, our stock price rebounded nicely. We went ahead and issued our equity and we've seen a continued increase in our stock price since issuing equity in April.

(Tr. 124-125.) OSBA's claims that the market views the proposed transaction negatively are without merit and should be rejected.

Finally, I&E suggests that the Commission should impose as a condition that interest costs claimed in future proceedings not exceed those consistent with current debt ratings of the utilities. I&E MB, pp. 16-17. Such a proposal is unreasonable and inappropriate, as Mr. Schuller explained:

> [N]o entity can guarantee it will maintain the same interest costs for any extended period of time due to potential changes in credit ratings, underlying interest rates, and credit spreads. In terms of ratings, many of the considerations that drive ratings outcomes may not be in the direct control of the Company. For example, debt ratings can change due to external forces, or changing industry standards. As recent evidence, the recent changes to federal income tax laws, which reduced income tax rates, have adversely affected debt interest coverage ratios, which can adversely affect debt ratings.

(Joint App. St. 2-R, p. 33, lns. 15-22.)

For reasons explained above and in Joint Applicants Main Brief, neither the purchase price nor the transaction financing are harmful to customers.

2. Returning the Peoples Companies to Public Ownership Under Aqua America Will Provide Real Benefits.

I&E and OSBA fail to recognize, or refuse to acknowledge, the real public benefits from placing the Peoples Companies under the ownership of Aqua America, a Pennsylvania-based and publicly owned company. These benefits are detailed at pages 20-29 of Joint Applicants' Main Brief.

a. The Proposed Transaction Will Enhance Corporate Transparency And Access To Capital.

I&E and OSBA both concede that Aqua America, as a publicly owned and traded company, is subject to "substantially more regulatory scrutiny" than a privately held entity. (OSBA Br., p. 16; I&E Br. p. 17.) Despite these admissions, I&E and OSBA continue to assert that there is no public benefit because the acquisition "would not impact the information that the Peoples Companies must report to the Commission." (I&E Br. p. 18, emphasis added; OSBA

Br. p. 17.) I&E and OSBA both fail to appreciate that the benefit of increased information is not with respect to the utility being acquired, but is with respect to ownership. The public ownership status of Aqua America provides insight into future planning, operational risks and opportunities, and financial matters well beyond the information that is reported at the utility level. (*See, e.g.*, Appendix I to Joint App. Ex. DJS-1, the annual 10-K report of Aqua America for 2017.) In addition to the substantial additional information provided by Aqua America, there is other third-party information, such as brokerage reports and ratings agency reports, that provide further insights regarding a public owner above what is available for private ownership. As Mr. Schuller summarized:

> Although, the Peoples Companies' customers currently have access to information that is required by the Commission, we believe that customers will benefit from the availability of a greater level of publicly available information under Aqua's ownership.

(Joint App. St. 2-R, p. 18.)

OSBA asserts that some investors prefer the lower degree of regulatory scrutiny provided by a privately held ownership, and concludes that public and private ownership are just differences in investment options. (OSBA MB, pp. 16-17.) Joint Applicants do not dispute that, from an investor perspective, public and private ownership are different investment options. However, the two alternatives result in different levels of information available to regulators, potential investors and the public.

If the Commission did not consider the ongoing level of information about ownership to be important, there would be no need for much of the information required under the *Penn Estates* criteria from private equity investors who seek to acquire public utilities. I&E's and OSBA's contention that expanded public information from public ownership is not a public benefit should be rejected.

OSBA contends that there is no demonstrated benefit with respect to Aqua America's increased access to capital as a publicly owned company. OSBA asserts that there is no evidence that SteelRiver has experienced difficulties in raising capital for the Peoples Companies. (OSBA MB, p. 16.)

However, as Aqua America's CEO, Mr. Franklin, has explained, the appropriate standard is not whether SteelRiver's "ownership is adequate, but whether Aqua's ownership would provide substantial public benefits." (Joint App. St. 1-R, p. 10.) As explained in Section V.B.4 of the Joint Applicants' Main Brief, and as explained further in Sections V.B.4 and 5 of this Brief, Aqua America is making substantial commitments to increase investment in utility plant, in order to increase safety and further improve service to customers. These commitments require increased access to capital above what SteelRiver has provided. Aqua America has provided unrebutted evidence that it has that increased access.[11]

Aqua America is a large corporation, with a current book asset value of over $6.3 billion. (*See* OSBA St. 1, p. 10.)[12] Across all of its operations, Aqua America invests about $500 million annually in infrastructure, with $350 million of that in Pennsylvania. (Tr. 88.) Aqua America has raised all of the capital needed for the acquisition without difficulty due to the strong market demand for its securities. (Joint App. St. 2-R, p. 17.) Both the equity and debt securities were about four times oversubscribed (Joint App. St. 2-R, pp. 9, 12), which demonstrate that Aqua America should have no difficulty raising the increased capital investment needed post-acquisition. In addition, Aqua America has made arrangements for a new $1 billion revolving credit facility, at a favorable interest rate, to finance new infrastructure

[11] OSBA also asserts that there is no quantification of the benefit of expanded access to capital. (OSBA MB, p. 16.) However, this is precisely the type of benefit that is difficult to quantify, as recognized in *Popowsky*. What is clear is that Aqua America has access to further sources of capital than are available to a private equity owner.

[12] Joint Applicants note that the quote from the Milken Institute report, present on page 17 of OSBA's Main Brief, refers to private equity firms developing options for financing growth of small and emerging firms.

investment for both the Peoples Companies and Aqua PA on a short-term basis pending issuance of permanent capital. (Joint App. St. 2, p. 4.)

Aqua America has, and will continue to have, access to a greater range of sources of capital than would be available to a private investment fund. As Mr. Schuller explained:

> Generally, private equity invests in market-based rather than regulated businesses because they intend to streamline the cost structure to resell the company later. The advantage of a publicly traded company in obtaining capital is that it has access to a much broader range of equity investors than does a private fund. A publicly traded company, with reasonably priced stock, can seek out investors from average investors to large investment funds, including mutual funds where Aqua's stock is part of a broad index. Private funds are generally limited to large investors, with large minimum investment requirements, and would not include mutual funds or retail investors. As a result, their pool of investors is smaller.

(Joint App. St. 2-R, pp. 31-32.) Aqua America's size and status as a public company will provide access to a broader range of capital to fund increased investment, to benefit the Peoples Companies' customers.

b. The Proposed Transaction Will Provide Benefits Resulting From the Long-Term Ownership Of The Peoples Companies.

The Joint Applicants made clear that stability of ownership generally leads to greater willingness to make long-term capital investments to provide continued safe and reliable utility service, and also promotes a sustained commitment to, and engagement with, the communities served. Moreover, they demonstrated that Aqua America has a demonstrated track record of long-term ownership of long-lived utility assets. Joint App MB, Section V.B.2.b.

I&E and OSBA fail to even address the stable ownership that Aqua America will bring to the Peoples Companies. As explained in Joint Applicants' Main Brief, there have been several owners of the Peoples Companies over the past twenty years. *See* Joint App. MB, pp. 21-24. Aqua America will now bring stability back to the ownership. Aqua America is not an

investment fund, with an established fund term. It is a public company, which has invested in, owned and operated public utility infrastructure assets for over 130 years. Stability ensures that investment strategy will look to the long-term, consistent with the long lives of pipeline infrastructure. (Joint App. MB, pp. 21-24.) This is a public benefit that must not be overlooked.

c. Community Commitment

I&E further contends that ownership of the Peoples Companies by Aqua America will not provide a public benefit because the Peoples Companies already have a strong community presence and because, with respect to increased charitable commitments, "ratepayers have no say in which charities are being committed to." (I&E MB, p. 20.)

Initially, Joint Applicants note that, under the Settlement, there are certain designated increases to contributions. Aqua America shareholders will contribute an additional $400,000 over the next four years ($100,000 per year) to the Dollar Energy program for the Peoples Companies' low-income customer assistance programs (Settlement, ¶100), an additional $225,000 over three years for emergency furnace repairs for the Peoples Companies' low income customers (Settlement, ¶101) and $200,000 over the next four years for a hardship grant component for Aqua PA's Helping Hand program (Settlement, ¶109.)

Additionally, the commitment to spend at least $2.7 million annually in corporate contributions by the Peoples Companies is greater than the $1.4 million commitment annually for five years that was made in the settlement for Peoples Natural Gas to acquire Equitable Gas in 2013. *See Joint Application of Peoples Natural Gas Co LLC (Peoples LLC), Peoples TWP LLC (Peoples TWP) and Equitable Gas Company LLC (Equitable LLC)*, Docket Nos. A-2013-2353647, A-2013-2353649, A-2013-2353651 (Order entered Nov. 14, 2013).[13] Furthermore, the

[13] The Peoples Companies have contributed more than the commitment level over the past five years. (CAUSE-PA St. 1, p. 37.)

Commission has accepted charitable commitments as public benefits in prior acquisition approvals, without mandating customer control over chosen recipients.

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

The Joint Applicants made clear that Proposed Transaction stands in stark contrast to a typical acquisition of the Peoples Companies by another gas utility, potentially located outside of Pennsylvania, that might eliminate Pennsylvania-based jobs to achieve synergy savings or migrate those jobs outside of Pennsylvania. Rather, the Proposed Transaction, as conditioned by the Settlement, evidences numerous commitments to retain Pennsylvania-based jobs and expand job opportunities in western Pennsylvania. *See* Joint App. MB, Section V.B.3. Despite the substantial benefits associated with these commitments, both I&E and OSBA argue the Joint Applicants have not demonstrated any employment-related benefits associated with the Proposed Transaction.

Both I&E and OSBA argue that the Joint Applicants' commitments to retain jobs and existing Pennsylvania-based workforce merely maintain the status quo. I&E MB, pp. 21-22; OSBA MB, p. 18. As explained in Section III *supra*, the Commission rejected similar arguments in the *SteelRiver Application Order* and should do so again here. The retention of these jobs is unique to this transaction because this transaction contemplates the acquisition of a natural gas utility by a water/wastewater utility holding company. *See* Joint App. MB, pp. 30-31. Moreover, these specific guarantees do not exist under the prior Commission approvals for SteelRiver's acquisition of the Peoples Companies. *See, e.g., See Joint Application of Peoples Natural Gas Co LLC (Peoples LLC), Peoples TWP LLC (Peoples TWP) and Equitable Gas Company LLC (Equitable LLC)*, Docket Nos. A-2013-2353647, A-2013-2353649, A-2013-2353651 (Order entered Nov. 14, 2013). The retention of jobs therefore constitutes an affirmative public benefit unique to this transaction.

In addition, both I&E and OSBA argue that there is no evidence of expanded job opportunities that would not occur if the acquisition was not consummated. *See* I&E MB, p. 21; OSBA MB, p. 18 (stating the Joint Applicants "fail to explain, how, when, and in what manner the Proposed Transaction will create new jobs.") These arguments simply ignore critical, unrebutted evidence of the Joint Applicants' commitment to accelerate the replacement of risky pipe, which will result in approximately 100 new jobs, inclusive of contracted labor and Peoples Companies' employees, being added in Western Pennsylvania. (Joint App. St. 5-R, pp. 18-21; *see also* Joint App. MB, pp. 31-32.) In addition, as employees of a large corporate entity, existing employees of the water and natural gas utilities will have increased advancement opportunities. (Joint App. Ex. DJS-1, pp. 30-31.) Based on this evidence alone,[14] the Commission should conclude that the Proposed Transaction, as conditioned by the Settlement, will result in expanded job opportunities.

[BEGIN CONFIDENTIAL] [redacted]

[END CONFIDENTIAL]

Finally, I&E's and OSBA's arguments regarding job retention are inconsistent. I&E states that "synergies are largely non-existent," but then goes on to argue that departures or the elimination of jobs if the transaction is approved is a detriment. *See* I&E MB, pp. 14, 22-21.

[14] The Joint Applicants detailed further evidence demonstrating expanded job opportunities in Section V.B.3 of their Main Brief.

OSBA similarly argues that the transaction produces no employment-related synergies, but then also states the "Proposed transaction increases the risk that redundancies may develop in the combined entity over time, which could lead to increased job loss." OSBA MB, p. 18. Both essentially argue for an impossible, paradoxical standard, *i.e.* the Joint Applicants must produce employment related synergies but at the same time retain all existing personnel, to produce employment-related benefits. I&E and OSBA cannot have it both ways and their arguments regarding the job-related benefits of the Proposed Transaction and Settlement should be denied.

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

The Joint Applicants' commitment to further accelerate the replacement of the Peoples Companies' at-risk pipe beyond current levels will improve safety and service reliability, which constitute further affirmative public benefits. *See Joint Application for Approval of the Merger of GPU, Inc. with FirstEnergy Corp.*, 2001 Pa. PUC LEXIS 23, at *47-48 (Order dated June 21, 2001); *see also Popowsky*, 937 A.2d 1053-54 (approval of the application "will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way." (emphasis added)). I&E and OSBA argue that this commitment does not constitute an affirmative public benefit by misrepresenting the record, misconstruing the law and advancing faulty logic to support their views.

I&E argues that the Joint Applicants' commitment does not constitute an affirmative public benefit because, while I&E believes further acceleration of the Peoples Companies' LTIIP is necessary, such acceleration is "independent of the acquisition." I&E's position is curious, as its own witness injected the issue of accelerating the Peoples Companies' LTIIP into this

proceeding; they admit as much in their Brief. I&E MB, p. 23 ("As noted in I&E's testimony, acceleration of Peoples' LTIIPs is necessary.").[15] Specifically, I&E witness Mr. Matse testified:

> I recommend that Peoples be ordered to file a modified LTIIP, six months after the Commission Order in this Proceeding. It is my opinion that Peoples' goal should be a more levelized approach to pipeline replacement instead of the backloaded approach that is laid out in the LTIIP. This would allow Peoples to replace more pipeline miles in the short term (i.e. over the next five years) rather than backloading pipeline replacement miles, to a level that is unrealistic.

(I&E St. 3, p. 7 (emphasis added).) Mr. Matse specifically stated these recommendations were presented in the context of Commission approval of the acquisition. (I&E St. 2, p. 2.) Moreover, while I&E attempts to argue the LTIIP acceleration is something that can be accomplished independent of this transaction, I&E is responsible for injecting this issue into the proceeding.[16] The fact remains that the Joint Applicants' commitment for further acceleration will occur only if the Proposed Transaction, as conditioned by the Settlement, is approved; therefore, it constitutes an affirmative public benefit. *See Popowsky*, 937 A.2d at 1058; *see also SteelRiver Application Order*, pp. 33-34. I&E's arguments to the contrary should be disregarded.

I&E's argument that the benefits of this commitment may not be realized because contemplated acceleration will require a new LTIIP, subject to Commission review and approval, is similarly flawed. There is no evidence that the Commission has ever rejected an LTIIP filing proposing a further acceleration, and there is no reason to anticipate rejection of a proposal to increase miles replaced and dollars spent by about 18% annually."[17] *See Joint Application of Peoples Natural Gas Co LLC (Peoples LLC), Peoples TWP LLC (Peoples TWP) and Equitable*

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[15] *See also* Joint App. St. 1 (REVISED), p. 11; Joint App. St. 4 (REVISED), p. 18; Joint Appl. St. 5 (REVISED), p. 14.

[16] The DSIC provisions of Sections 1350-1360 of the Code do not authorize the Commission to mandate the filing of an LTIIP or mandate acceptance of changes to an LTIIP.

[17] 25 miles ÷ 132 miles = 18.9%. $30 Million ÷ $176.7 Million = 16.9%. (Joint App. St. 5-R, p. 18 (table, 2020 data).)

Gas Company LLC (Equitable LLC), Docket Nos. A-2013-2353647, A-2013-2353649, A-2013-2353651, p. 15 (Initial Decision dated Nov. 6, 2013). The fact that the Joint Applicants have made the commitments to accelerate the LTIIP contained in the Settlement is sufficient to satisfy the affirmative public benefits standard.

I&E further argues that the LTIIP commitment is not certain because the actual amount of pipe to be replaced for $30 Million is uncertain. I&E MB, p. 24. However, it is impossible to know in advance exactly how many miles of pipe will be replaced for $30 Million in any one year, because no two main segments are identical with respect to conditions faced. Recent experience indicates the additional amount of miles to be completed will be approximately 25. In general, the plant to be replaced will be the next most risky plant, consistent with the Peoples Companies' plant replacement plans. (Joint App. St. 5-R, p. 21.) Thus, customers will receive safer, and more reliable, service as a result of this commitment because the Proposed Transaction will result in more at-risk pipe being replaced sooner. Joint App. MB, pp. 34-35. I&E's claim that the benefit of increased main replacement is uncertain is without merit.

OSBA argues that the Joint Applicants' commitment to accelerate LTIIP spending does not constitute an affirmative public benefit for three reasons. OSBA MB, pp. 19-22. First, OSBA argues that Aqua America has not conducted an analysis of the factors considered by the Commission to evaluate LTIIPs, to determine if the contemplated changes are cost-effective and reasonable. OSBA MB, pp. 19-20. This argument, however, misconstrues the conditions set forth in the Settlement. *See* Joint App. MB, **Appendix A**, pp. 13-14. The evaluation of these factors will occur when the Peoples Companies submit an updated LTIIP to the Commission for review, after closing.

Second, OSBA argues that the Joint Applicants' proposal to accelerate LTIIP spending is merely a benefit to Aqua America's shareholders and alleged "financial manipulation." OSBA

MB, pp. 20-21. This argument is similarly without merit. It is undisputed that repairing and replacing at-risk pipe improves system safety and reliability and OSBA's witness Mr. Knecht candidly admitted during cross-examination that it is "true always" that accelerated elimination of at-risk pipeline reduces risk to greater numbers of customers. (*See* Tr. 232 (emphasis added).) OSBA similarly disregards evidence that the commitment will further improve customer safety by more quickly replacing at-risk pipe, thereby reducing the number of customers served off at-risk pipe. (Joint App. St. 5-R, p. 18.) Moreover, the fact that the Peoples Companies ultimately will earn a return on increased plant investment does not alter the clear safety benefits of the commitment. It is somewhat surprising that OSBA argues, on the one hand, that the Proposed Transaction should be rejected because of questions about the sufficiency of earnings Aqua America's shareholders will receive, and then objects to investments that produce those earnings. In addition, the Joint Applicants explained in their Main Brief that OSBA advocates for a position inconsistent with the law. *See* Joint App. MB, p. 35 (citing authorities).

Moreover, OSBA's second argument is based on the faulty premise that the Joint Applicants' commitments will increase pipeline replacement costs funded by ratepayers. *See* OSBA MB, p. 21 ("...the Joint Applicants are proposing to impose higher costs on ratepayers ($30 million more per year), in a shorter amount of time..."). The Joint Applicants' proposal neither increases the total miles of pipe or the replacement costs contemplated over the life of the Peoples Companies' pipeline replacement program; rather, it shifts some of the miles and costs forward and accelerates the rate of replacement. (*See* Joint App. 5-R, p. 21 ("The acceleration of the Peoples Companies Combined LTIIP will allow for a greater number of miles to be replaced earlier in the overall plan, thereby providing a more leveled approach to pipe replacement as sought by Mr. Matse.").) This was made abundantly clear at hearing, during the following Q&A between OSBA's counsel and Joint Applicants' witness Mr. Barbato:

BY MS. FURE:

Q. Good afternoon. I want to talk to you about the LTIIP. So Aqua is committing to increasing the level of spending in the existing LTIIP by $30 million per year, and that's going to replace an additional 25 miles of distribution mains, correct?

A. I would - - yes, that's true. I would also add that by "increase," it means more forward in time, not increase as in additional pipe over the life of it being replaced.

(Tr. 174 (emphasis added).) Mr. Barbato reiterated this point in response to further questioning about the rate of main replacement. (*See* Tr. 175-176 ("...Again, this is simply an acceleration in time of a planned program...this is simply moving forward to eliminate that risk, that more risky pipe sooner.").)

Finally, OSBA ignores the fact that in making this commitment, the Joint Applicants did consider the rate impact in proposing to spend an additional $30 million to replace approximately 25 additional miles of pipe per year. Mr. Barbato explained:

Q. Okay. Thank you. And I think you had indicated in your discovery responses that the $30 million would improve safety. Would you agree with that?

A. Yes.

Q. Okay.

A. Reduce risk.

Q. Would $60 million per year improve safety even more?

A. I'm not prepared to throw different numbers at it. I mean, theoretically, the answer to that is probably yes, but I'm not prepare[d] to commit to that as I haven't run an analysis of that number to see how – would that materially change the risk profile.

Q. Okay. Can you speak to why you didn't propose $60 million per year?

A. We felt that $30 million was, given various rates that are at issue here also, and with every decision to add additional pipe and replace pipe sooner, we realize that there is a rate implication, and

> the $30 million seemed to move the program ahead faster but not at such a pace that it would drive rates to a higher level.

(Tr. 177-178 (emphasis added).)[18] The record demonstrates that OSBA's suggestion that Aqua America has engaged in "financial manipulation" is patently false and no credible evidence exists to support this contention. Aqua America considered the rate impacts of its proposal and balanced those impacts with how its proposal would "materially change" the Peoples Companies' risk profile, which is precisely how a prudent utility operator should act.

As to OSBA's third argument that the Commission might reject the updated LTIIP contemplated by the Joint Applicants' commitment, this argument is the same as the one made by I&E and fails for the same reasons explained above.

I&E and OSBA have failed to demonstrate that the Joint Applicants' commitment under the Settlement to accelerate the rate of replacement for at-risk pipe is not an affirmative public benefit. This commitment will clearly benefit the public by increasing system safety and reliability, and Aqua America prudently evaluated the manpower availability, costs and safety benefits of this commitment to arrive at the proposal set forth in the Settlement. Therefore, and for the reasons more fully explained in the Joint Applicants' Main Brief, the Commission should conclude this commitment constitutes an affirmative public benefit and reject the arguments raised by I&E and OSBA.

5. The Settlement Provides a Balanced Approach to Expeditiously Resolve the Problems with the G/T systems.

a. Introduction

In their Joint Application, the Joint Applicants did not propose any conditions associated with the G/T systems (Joint App. St. 5-R, pp. 2-6) as there was a formally agreed upon process for dealing with the G/T systems that was contained in the 2013 Peoples/Equitable Settlement.

[18] Mr. Barbato also explained that Aqua America consulted with the management of the Peoples Companies, who would be responsible for actually making sure the replacements are done, in determining that a $30 million increase in plant replacements physically could be undertaken. (Tr. 181-182.)

However, in direct testimony, witnesses for I&E and OSBA proactively initiated and presented proposals to add conditions to approval of the Proposed Transaction related to the G/T systems. OCA sought a commitment that the Peoples Companies replace all at-risk pipe in the G/T systems. (OCA St. 4, p. 7.) I&E proposed that SteelRiver be required to place $127 million in an escrow account to be used for pipe replacement or abandonment of Peoples Natural Gas customers served off the G/T systems. (I&E St. No. 2-SR, p. 18.) As stated above, the Joint Applicants originally did not propose any conditions associated with the G/T systems. (Joint App. St. 5-R, pp. 2-6). With the information that was now available, that process would require the Commission to decide whether to direct abandonment of service to approximately 1,000 existing Peoples Natural Gas customers, many of whom are low-income, based upon a strict application of an "economic test." (*See* Joint App. St. 6-R, pp. 6-13.) Foremost in the Settlement is the desire with regard to the G/T systems to finally resolve the issues with the G/T systems, by establishing an expedited replacement of pipe to allow these customers to remain as Peoples Natural Gas customers, with a contribution by Aqua America of $13 million toward that replacement cost, to be provided as an immediate rate credit to Peoples Natural Gas customers. *See* Joint App. MB, Section V.B.5. The Settlement terms related to the G/T systems should be adopted without modification, so that the Peoples Companies, with the financial backing of Aqua America, can finally fix the aged system left by Equitable Gas Company.

b. The Proposed Transaction, as Modified by the Settlement, Provides the Resources to Resolve the G/T Concerns

I&E and OSBA express concern that the G/T system problems have not been resolved. That is an issue traceable back to well before the current ownership of the Peoples Companies, back to Equitable Gas Company.

The 2013 acquisition of Equitable Gas Company by Peoples Natural Gas was, in the words of Joint Applicants' witness Mr. O'Brien, "a transaction rich with customer benefits."

(Tr. 116.) Those benefits were due in large part to the elimination of the need to replace overlapping at-risk pipelines owned by Peoples Natural Gas and Equitable Gas Company. The benefits of that acquisition included an over four-year rate stay-out, commitments to accelerated pipe replacements, elimination of duplicative pipe between the overlapping territories of Equitable Gas Company and the Peoples Companies, commitments to improve customer service and universal service programs and a substantial movement toward reducing the unique issue of gas-on-gas competition in western Pennsylvania. (Joint App. St. 3-R, pp. 5-7; Tr. 116.) However, the transaction could not be done without a transfer of the G/T assets, which were at that time owned by an affiliate of Equitable Gas Company, with Equitable Gas Company customers served by the systems. (Joint App. St. 3-R, pp. 5-6.) Thus, the trade-off for all of the benefits from the Peoples Companies' acquisition of Equitable Gas Company was the assumption of the G/T systems by the Peoples Companies' non-jurisdictional gathering pipeline affiliate (PNG Gathering LLC), and the need for the future owner to develop a long-term solution. Importantly, nothing in the 2013 Peoples/Equitable Settlement contained any obligation for the Peoples Companies or its owners to bear the cost of that solution. (Joint App. St. 3-R, p. 6.)

Aqua America is committed to provide the resources now to achieve the solution. The solution involves a sharing of costs to achieve the benefit of safe service for all 1,700 current customers on the G/T systems. Aqua America commits $13 million in an immediate rate credit, and Peoples Natural Gas' customers will ultimately pay a roughly 1% increase in their rates, which will enable the replacement of the entire G/T systems. In concept, this is no different than a rate increase to all customers resulting from the Peoples Companies replacing pipe in and around the City of Pittsburgh. (Tr. 105.)

At page 42 of its Main Brief, I&E asserts:

> While the settling parties are concerned about jeopardizing service to these approximately 1600 customers, I&E is much more concerned about jeopardizing their safety. (footnote omitted.)

I&E's assertion establishes a false dichotomy. Resolving the G/T systems problems should not be an either/or proposition. The Settlement terms related to the G/T systems avoid abandonment of service to all or a majority portion of 1,700 existing customers by replacing aged pipe, thereby resolving safety issues. That replacement work will be undertaken by the same highly skilled Peoples Companies employees and contractors that currently work to upgrade the Peoples Companies' distribution systems, with the financial investment by Aqua America.

At several points in their Main Briefs, I&E and OSBA directly or indirectly criticize the Peoples Companies for failing to fix the G/T problems already. *See, e.g.*, I&E MB, p. 26; *see also* OSBA MB, p. 23. As explained in Joint Applicants' Main Brief, such criticisms lack merit, as the poor status of the prior owners' records required that the Peoples Companies virtually start from scratch to identify facility location and leak information. Joint App. MB, Section V.B.5. Moreover, the criticisms lack logic. On the one hand, I&E and OSBA claim they are dissatisfied with progress to date; on the other, they either oppose new ownership or propose onerous and improper additional conditions that will prevent an expeditious fix of the G/T systems. Instead, I&E and OSBA would have current ownership continue on the path set out in the 2013 Peoples/Equitable Settlement, and force the Commission to decide whether abandonment of 1,000 or more customers is a logical solution. It is not. As Aqua America's CEO, Mr. Franklin, explained:

> With regard to the Goodwin/Tombaugh system, Your Honor, I'll concede that that's been a long problem, right. And what I would say with regard to the new guys on the block who are going to be responsible for now making it happen, I would say we feel urgency.

> It should be all about the customer. It should be all about the safety, and it should be all about, how quickly can we move to fix the problem.
>
> And I will also concede that there are probably multiple approaches that could work here, none of which are perfect. But at the end of the day, we need to make a decision together and move forward and get it done as quickly as possible for the sake of those customers. They deserve better.

(Tr. 90-91.)

I&E argues, through selective quotes, that the Peoples Companies' witnesses believe that abandonment of nearly 1,000 current Peoples Natural Gas customers served off the G/T systems is in the public interest. I&E MB, p. 28. However, Joint Applicants' witness Mr. O'Brien explained, under cross-examination, that a recommendation to abandon 1,000 or more customers based upon an "economic test" is a questionable solution compared to the solution offered by the Settlement:

> Q. Would you agree with me then that it's not necessarily in the public interest to remediate the entire Goodwin and Tombaugh system?
>
> A. Your Honor, this is an incredibly complicated issue with lots of policy issues. And depending on your view on those policy issues, you can reach different conclusions.
>
> I've been running a utility – I ran Duquesne Light for nine years. I've run Peoples for eight years. Today, we replace pipe in the streets of Pittsburgh and we file a rate case and 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.
>
> And so I'm faced, and we are faced as utilities every day with issues that raise these policy issues. And we're sitting in western Pennsylvania, as you're familiar with, on the largest gas reserve in the United States, the second largest in the world.
>
> And we got a group of people who are literally living atop where much of that drilling is going on in western Pennsylvania. And so these folks have been paying – they're utility customers. They pay

> their utility bill just like I do and you do if you're a gas utility customer. Yet, the gathering system was not part of the utility and is today not part of the utility.
>
> 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, they've been subsidizing our other customers for a long time, not having a distribution system that serves them.
>
> There are so many complicated issues, and we've had those debates. I've sat in the room with the I&E team. We've sat in the room with OCA.
>
> And you can reach different arguments on these policy issues as a utility person who understands that what we do is in the best interest of the public, and it feels right to me to try to save as many of those customers as we possibly can.
>
> We've had to face abandonment in other systems, and there's huge political pushback on those issues. There's people that don't understand why you pick and choose which pipes you replace and which you don't.
>
> So there's a lot of public issues around this, and so I think it's just one – it's easy to say it's complicated, but I think I could build a case that says it's good public policy, given all the things that utilities do, to replace those pipes.
>
> And the issues Mr. Franklin talked about with safety and doing it quickly, I mean, those are 100 percent sitting in front of all of us today.
>
> So I think we all feel we're at a point where making tough policy decisions is important, particularly for the people who are living – and the small businesses who are operating on that system.

(Tr. 105-107.)

I&E quotes from a 2012 Recommended Decision involving a subsequently withdrawn application by Equitable Gas Company related to the G/T systems. I&E MB, p. 30. The concerns identified by the ALJ in that Recommended Decision are entirely understandable in the context of Equitable Gas Company at that time. Equitable Gas Company sought to acquire the

G/T assets from its affiliate without any investigation or proposal to resolve the G/T problems. As the ALJ noted, Equitable Gas Company "offered no guarantees...that would preserve service to those customers in either the short-term or the long-term." *See Application of Equitable Gas Company LLC for Affiliated Interest Approval and Such Other Approval, If Any, As May Be Necessary, In Regarding to the Acquisition of the Goodwin Gathering System from EQT Gathering LLC and of the Tombaugh Gathering System from Equitrans, L.P.*, Docket No. R-2012-2312577, p. 27 (Recommended Decision dated Jan. 28, 2013)

The situation now is substantially different. The Peoples Companies, in compliance with their obligations under the 2013 Peoples/Equitable Settlement, have completed their investigation of the G/T systems, and have identified the cost to replace bare steel pipe. That investigation took into account the actual amount of pipe to be replaced, the pipe size, and the location of the pipe and the cost per foot for similar sized pipe currently being replaced under the Peoples Companies LTIIP.[19] The replacement cost is now estimated with a substantially greater degree of certainty and is much lower than amounts estimated in 2012. In addition, there is now presented a clear plan that will fix the problems quickly and preserve service to the Peoples Natural Gas customers on the G/T systems for the long-term. Recovery of costs will be paid by the Peoples Companies' customers, as all replacement costs are, and Aqua America will contribute toward those costs.

I&E and OSBA continue to argue that the proposed resolution of the G/T systems contained in the Settlement represents a detriment to customers from the Proposed Transaction. *See* I&E MB, pp. 32-33; *see also* OSBA MB, pp. 24-26. As explained in the Joint Applicants' Main Brief, this claim of a detriment is based solely upon the use of an "economic test" better

[19] I&E continues to refer to the higher cost per average mile currently incurred by the Peoples Companies. *See* I&E MB, p. 27. However, I&E refuses to acknowledge that the Peoples Companies are replacing pipe currently in dense, urban areas that present the greatest risk to large numbers of customers and that such construction is substantially more costly than suburban and rural construction. (*See* Tr. 198-199.)

suited to analysis of system expansions rather than abandonment of service, and ignores the clear benefits to the nearly 1,700 G/T customers who will keep low-cost natural gas service and access to low-income customer and service termination protections. *See* Joint App. MB, Section V.B.5. In addition, the Supreme Court of Pennsylvania in *Popowsky* made clear that the determination of whether to approve an acquisition is to be based on net public benefits of the entire transaction, and not a singular focus on only one part of the Proposed Transaction. Here, the many benefits of the Proposed Transaction outweigh any potential harm to general customers.

In arguing that the replacement of the at-risk pipe in the G/T systems is not a public benefit, I&E and OSBA contend that investment in replacement pipe would not result in "just and reasonable rates." I&E MB, p. 32; OSBA MB, pp. 25-26. This argument depends upon the flawed application of a strict "economic test" to abandonment. The Commission has never adopted a standard that service to a geographic subset of customers must be abandoned in every instance if the revenues from those customers do not cover the cost of plant replacement.

OSBA also appears to criticize Aqua America for its negotiations over the purchase price. OSBA asserts: "While Aqua was aware of the G/T Systems issues when negotiating a purchase price, Aqua did not appear to incorporate costs for the G/T Systems into the purchase price, instead relying that the resulting combined entity would receive earnings on investing in rehabilitating the G/T System (which is what was proposed in the Non-Unanimous Settlement)." OSBA MB, p. 25. This criticism is without merit. No prior Commission Order provided for any proposed disallowance of investments in G/T. (Joint App. St. 3-R, pp. 8-9.) In fact, the 2013 Peoples/Equitable Settlement allowed Peoples Natural Gas to include in rate base the cost of any G/T assets directed to be rehabilitated. (Joint App. St. 3-R, p. 8.)

The Settlement conditions concerning G/T are reasonable and should be adopted as part of the approval of the Settlement.

c. The Commission Cannot Lawfully Impost an "Exit Fee" on SteelRiver's Sale of the Peoples Companies.[20]

The Parties to this proceeding agree that addressing the G/T systems is complicated. The primary areas of disagreement concern abandoning customers and paying for improvements. (Tr. 200.)

The Settlement proposes that all bare steel pipe in the G/T systems be replaced in seven years, with the intent that no customers be abandoned. (Settlement ¶¶ 29 and 32.) The cost of this project will be shared between the Peoples Companies' ratepayers and the shareholders of Aqua (as the entity purchasing the Peoples Companies). Aqua's shareholders will help pay these costs by way of a $13 million rate credit to all of the Peoples Companies' customers to be paid before the end of 2019. (Settlement ¶ 33.) The Peoples Companies' ratepayers also will help pay these costs, because Aqua will be permitted to recover the costs through base rates (up to a maximum of $120 million)[21]. (Settlement ¶¶ 30 and 33; *see also* Tr. 80-81.)

The Settlement is consistent with the regulatory compact, in which a utility is to provide reasonable and adequate service to customers and, in return, the utility is entitled to recover its costs and its shareholders are entitled to a fair return on and of their capital investment. (Tr. 83, 207); *see also Federal Power Comm'n v. Hope Nat'l Gas Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks and Imp. Co. v. Pub. Serv. Comm'n of West Va.*, 262 U.S. 679 (1923); *see also Pa. Pub. Util. Comm'n, v. Pa. Gas and Water Co. – Water Div.*, 492 Pa. 326, 424 A.2d 1213 (Pa. 1980). As Morgan O'Brien, the Peoples Companies' CEO, succinctly explained at the hearing:

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[20] To reduce redundancy, Peoples incorporates by reference the arguments offered in the Joint Applicants' Main Brief, pp. 38-41. These arguments include: the Commission is legally obligated to approve the Transaction (as modified by the Settlement) without additional conditions because the Transaction has affirmative public benefits; the proposed exit fee would be an unconstitutional regulatory taking; the proposed exit fee would violate the regulatory compact; and, the amount of the proposed exit fee is excessive.

[21] If it appears that $120 million will be insufficient to complete the work, the Peoples Companies will meet with the statutory advocates to determine how to proceed. If those parties cannot reach an agreement, the Peoples Companies will submit a filing to the Commission for a decision regarding those amounts over $120 million. (Settlement ¶ 33.)

if the Commission finds that it is in the public interest to spend capital to rehabilitate the entire G/T systems, then it is in the public interest to allow the recovery of that capital. (Tr. 108.)

In contrast, I&E proposes that improvements made after the closing be financed by SteelRiver (by then, the Systems' former owner). I&E proposes that $127 million of the purchase price be withheld from SteelRiver and placed in an escrow fund to finance the improvements to the G/T systems. Any amounts not spent for that purpose within five years would be paid over to SteelRiver. (I&E St. No. 1 pp. 13-14; I&E St. No. 2-SR p. 18.)

At the hearing, I&E Witness Cline agreed with the Peoples Companies' counsel "that if the joint applicants are otherwise able to demonstrate an affirmative public benefit, this application should be approved." (Tr. 212.) Mr. Cline stated that it would be a public benefit if the G/T systems would be remediated without the costs being filtered back to those customers (Tr. 210-211), but admitted that the Transaction, as modified by the Settlement, has certain affirmative public benefits, (Tr. 214).

The Joint Petitioners to the Settlement have established a *prima facie* case that the Transaction, as modified by the Settlement, satisfies the *City of York* standard. The Commission should not impose another condition on the Transaction unless I&E can carry its burden of rebutting that *prima facie* case. In order to carry that burden, I&E obviously must prove facts, but must also provide legal support for its proposal. I&E has failed to provide such support.[22] I&E Witness Cline, who recommended the "exit fee," admitted at the hearing that he was not aware of any case in which the Commission has imposed an "exit fee." (Tr. 213.) I&E's Main

[22] It is also worth noting that I&E offered three recommendations concerning the G/T systems, but these are internally inconsistent. In his Direct Testimony at page 13, Mr. Cline stated that Aqua should remain subject to all of the terms and conditions of the 2013 Settlement in the Equitable Acquisition Proceeding concerning the G/T systems, which he quotes at length. Those terms and conditions explicitly permitted Peoples to recover in rates its investments to improve the G/T systems or to convert abandoned customers to other fuel sources. Mr. Cline simultaneously recommended that the 2013 Settlement be modified by the creation of a huge escrow fund (financed by the exit fee on SteelRiver) to be used for the remediation of the G/T systems. Similarly, Mr. Cline seems to recommend the use of the economic test traditionally used for line extensions, rather than the economic test set forth in the 2013 Settlement. (I&E St. No. 2-SR p. 6.) Obviously, I&E cannot have it both ways.

Brief does not cite any case in which the Commission has imposed an "exit fee" on a seller who did not voluntarily agree to an "exit fee."

Much of I&E's argument can be paraphrased as follows: the G/T systems need to be improved and Aqua is paying a lot of money to SteelRiver – including a substantial amount for good will. Some of that money should be used to pay for improvements, rather than requiring ratepayers to pay for those improvements. (*See, e.g.*, I&E St. No. 1 p. 14; I&E St. No. 2-SR p. 21-22.) I&E overlooks the fact, however, that the payment from Aqua to SteelRiver is not a pot of public money that can be used for infrastructure projects or other worthwhile programs. This sum represents the purchase price that a willing buyer has agreed to pay a willing seller and that a willing seller has agreed to accept from a willing buyer for a specific set of assets, following customary and prudent due diligence. The government cannot simply intercept a portion of that payment and order it to be used for purposes it deems worthy. Aside from being unlawful for the reasons explained in the Joint Applicants' Main Brief, such an expropriation of private money in order to obtain a necessary governmental approval would -- as a matter of public policy -- send an extremely negative message to the investment community regarding the risks of investing capital in Pennsylvania public utilities.

I&E tries to portray its proposal as consistent with the Commission's recent decisions regarding the G/T systems, but that argument has an obvious flaw. When the Peoples Companies' affiliate, PNG Gathering LLC, acquired the G/T Systems in 2013, I&E recommended that the Commission impose an "exit fee" on the seller, with the funds to be used by the buyer in the remediation of the G/T systems. (Tr. 101.) The Commission ultimately approved a settlement in which the seller agreed to contribute $5 million to be used to assess and improve the G/T systems. (I&E St. No. 2 p. 5 (quoting the G/T systems portion of the 2013 Settlement).)

Obviously, the 2013 Equitable Merger Proceeding is distinguishable from this proceeding because the former case involved a settlement; the seller there voluntarily agreed to make a contribution toward the assessment and improvement of the G/T systems. In this case, in contrast, I&E is asking the Commission to impose a condition that would take money out of the hands of the seller, in order to use that money to benefit the system after closing on the Transaction. The Commission's approval of the 2013 Settlement hardly establishes a precedent for approving the involuntary "exit fee" proposed by I&E here.

If the Commission's approval of the 2013 Settlement establishes any precedent for this proceeding, it favors approval of the Settlement rather than imposition of an "exit fee." The 2013 Settlement included provisions regarding the G/T systems, but that was only a small piece of a much larger agreement; the 2013 Settlement as a whole had many customer benefits. (Tr. 117.) Similarly, the Settlement proposed here includes provisions regarding the G/T systems, and those provisions are part of a much larger agreement that has many public benefits that, even without the provisions on the G/T systems, would satisfy the approval standard of an affirmative public benefit of a substantial nature.[23] As such, the Commission should approve the Settlement without imposing an "exit fee."

Finally, I&E hints that an "exit fee" is appropriate as a sanction for a utility's failure to maintain reasonable and adequate service and facilities. I&E Witness Cline noted that past Commission decisions have held that, if a system has not been properly maintained, a company cannot receive a return of and on its investment in that system. He argued that the G/T systems have not been maintained to an "acceptable standard." Therefore, he testified, it is appropriate to finance repairs to the G/T systems through a purchase price withholding rather than expenditures

[23] Indeed, the Commission will have continuing jurisdiction over the Peoples Companies in order to address the G/T systems in the future.

that a utility recovers in rates. (Tr. 208-209; I&E St. No. 1 pp. 13-14; I&E St. No. 2-SR p. 22.) His arguments are devoid of merit.

According to Mr. Cline, SteelRiver has invested a minimal amount of money in improvements in the G/T systems. Consequently, "it is unreasonable that SteelRiver should be permitted to receive $2 billion in estimated goodwill to simply walk away from the known issues that were acquired with the Goodwin and Tombaugh gathering systems in 2013."[24]

This rationale for I&E's proposed "exit fee" fails for several reasons. First, imposing a punitive "exit fee" as a sanction is procedurally improper in this proceeding. The instant matter is an application proceeding, not a complaint proceeding. There is a fundamental difference between a sanction pursuant to Chapter 33 of the Code and a reasonable condition on the issuance of a certificate of public convenience pursuant to Section 1103(a). Additionally, Section 526 of the Code, 66 Pa. C.S. § 526, permits the Commission to reject a rate increase request due to inadequate quality or quantity of service, but this matter is an application proceeding, not a rate case. Applying Section 526 to the instant proceeding requires an impossibly large leap in logic.

Second, Peoples has not committed any violation of the Code, the Commission's regulations or orders. Although Mr. Cline's Direct Testimony alleged that Peoples has not complied with all the terms in the 2013 Settlement (I&E St. No. 2 p. 7), there is extensive evidence in the record that Peoples has in fact complied with the requirements of the 2013 Settlement. (Tr. 104, 118, 165; Joint App. St. 6-R, pp. 6-13.) In fact, the evidence of record demonstrates that the Peoples Companies *improved* the G/T systems during its ownership of

[24] To some extent, I&E seems to be asking the Commission to impose an "exit fee" as an equitable remedy. As a creation of the Legislature, the Commission has only the powers and authority granted to it by the General Assembly. *Tod and Lisa Shedlosky v. Pa. Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Code does not give the Commission equity jurisdiction and powers. *Louis Pettinato, Sr. and Louis Pettinato, Jr. v. UGI Penn Natural Gas, Inc.*, Docket No. C-2009-2102117 (Initial Decision issued Mar. 10, 2010, Final Order entered Apr. 13, 2010).

those systems – despite the lengthy base rate case stay-out contained in the 2013 Settlement that effectively precluded rate recovery for remediation of the G/T systems. (Tr. 143; I&E St. No. 2-SR p. 4.) Consequently, Mr. Cline clarified his position at the hearing, stating that I&E was not alleging that the Peoples Companies violated the 2013 Settlement. (Tr. 197.)

In this regard, no statutory party has alleged that the Peoples Companies failed to disclose information about the G/T systems to Aqua. The 2013 Settlement arose out of a public proceeding. The Settlement and the Commission's Order approving it are public documents. Aqua's Witness James Barbato testified that Aqua reviewed these documents during its due diligence. (Tr. 163.) The Parties negotiated a purchase price based on customary due diligence. (Joint App. St. 5-R p. 4.) There is no evidence to suggest that Aqua America over-paid for the Peoples Companies. The evidence demonstrates that the purchase price was based on the parties' evaluation of the market value of the assets of Peoples. Under these circumstances, there is no reason to punish SteelRiver by imposing a punitive "exit fee." The Commission will have continuing jurisdiction to address the G/T systems, under Aqua ownership, in future proceedings.

Third, the amount of the proposed "exit fee" is clearly excessive. As discussed above, there is no evidence in the record that the Peoples Companies have violated the Code, the Commission's regulations or orders. It has certainly done nothing that would warrant a penalty of $127,000,000. On this record, such a penalty clearly violates the Excessive Fines Clauses, Article I, Section 13 of the Pennsylvania Constitution and the Eighth Amendment to the United States Constitution, U.S. Const. amend. VIII.

I&E's proposed "exit fee" therefore cannot be legally supported as a sanction. In fact, I&E's proposed "exit fee" is a conclusion in search of a rationale. The Commission should not adopt such a proposal, especially where, as here, most of the parties to the proceeding have proposed a solution to a complex problem that promotes the public interest. As argued

elsewhere in this brief, the Settlement – in its totality, and not just with regard to its provisions concerning the G/T systems – is in the public interest and should be approved.

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

The Joint Applicants further demonstrated that other conditions contained in the Settlement will benefit the Peoples Companies' customers. *See* Joint App. MB, Section V.B.6. As noted in the Main Brief, the Proposed Transaction, as conditioned by the Settlement, will provide specific benefits to the Peoples Companies' customers.

The only issue raised by OSBA with respect to other conditions affecting the Peoples Companies' customers **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** These contentions are addressed elsewhere in this Reply Brief. *See* Sections V.A.2. and V.E. OSBA's arguments on this issue are without merit and should be rejected.

I&E specifically targets two conditions: (1) the commitment that the Peoples Companies will meet or exceed their existing customer service performance standards; and (2) the commitment that the Peoples Companies will intervene in natural gas abandonment proceedings, at the request of a statutory advocate, where the abandonment of natural gas customer(s) in a bordering service territory is contemplated. I&E MB, p. 35.

With respect to I&E's arguments regarding service performance metrics, the Joint Applicants acknowledge that this commitment matches the Peoples Companies' performance goals for 2019 (OCA St. 3, pp. 25-26.) However, they do represent commitments, and not just goals, and exceed certain commitments that were contained in the Peoples/Equitable 2013 settlement. (OCA St. 3, p. 21.) I&E also fails to recognize that these commitments have reporting and resolution requirements that are not currently in place. *See* Joint App. MB, pp. 46-47. The reporting and resolution requirement provides specific benefits by implementing a new

mechanism to ensure that the Peoples Companies continue to provide safe and reliable service to their customers, at a level that meets or exceeds current metrics.

With respect to I&E's contentions regarding the intervention commitment, I&E's arguments that it does not require the Peoples Companies to "do anything other than enter an appearance" and that ratepayers would voluntarily bear the cost of litigation should be rejected. The Peoples Companies have previously intervened in such proceedings, at the request of the statutory advocates, and as a result of those interventions enabled and ensured continued natural gas service to people and businesses currently served by small gas systems in Western Pennsylvania, who might otherwise lose their gas service due to the inability of current owners to continue operations. *See* Joint App MB, pp. 52-53. This commitment ensures similarly situated people and businesses may also be benefitted in the future.

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

The Joint Applicants further demonstrated that the Proposed Transaction, as conditioned by the Settlement, would benefit Aqua PA's customers. *See* Joint App. MB, Section V.A.7. These benefits included: (1) commitments to achieve improved customer service metrics; (2) commitments to evaluate and implement the Peoples Companies' SAP information technology system; and (3) commitments targeted at low-income customers. *Id.* In addition, the Proposed Transaction will provide long-term synergy benefits in back office functions and an immediate rate credit. Joint App. MB, Section V.B.8.; *see also* Joint App. St. 4, pp. 4, 10-11.

As an initial matter, neither OSBA nor I&E claim that the commitments to achieve improved customer service metrics do not constitute a benefit to Aqua PA's customers. *See* I&E MB, pp. 26-27; OSBA MB, p. 36. Therefore, the Joint Applicants submit that it is undisputed that these commitments constitute affirmative public benefits, for the reasons explained in their Main Brief.

Both I&E and OSBA argue that the implementation of the Peoples Companies SAP platform does not constitute an affirmative public benefit warranting approval of the transaction. OSBA argues that the commitment to evaluate and thereafter implement the SAP system does not constitute a benefit because: (1) the savings are "hypothetical"; (2) Aqua PA would move toward implementing the SAP systems in the absence of the merger; and (3) Aqua PA's current system is "not in need of an upgrade." OSBA MB, pp. 26-27. I&E argues that the "minimal benefit" provided by SAP implementation is outweighed by the cost of the transaction. I&E MB, p. 36. All of these arguments regarding the implementation of the SAP platform should be rejected.

OSBA's argument that the benefits and/or savings associated with SAP implementation are "hypothetical" ignore record evidence. It is undisputed that the contemplated implementation will result in savings associated with the mitigation of implementation risk and savings from consulting. *See* Joint App. MB, pp. 48-49. In addition, SAP implementation by Aqua PA would provide numerous service improvement benefits to customers, none of which OSBA disputes. *See* Joint App. MB, pp. 49-50. For example, customers desire the convenience of on-line scheduling and improved certainty of appointments, and SAP will enable that. (Tr. 236.)

In addition, OSBA's argument that SAP implementation does not constitute a benefit because Aqua PA would move toward SAP implementation in the absence of the Proposed Transaction is contradicted by its argument that Aqua PA's "antiquated" system is "not in need of an upgrade." OSBA MB, p. 27. The savings associated with the mitigation of implementation risk and savings from consulting will not occur but for the Proposed Transaction because these benefits are specifically attributable to the acquisition of an entity that has already successfully implemented SAP, *i.e.* the Peoples Companies. *See* Joint App. MB, pp. 48-49.

Joint Applicants' witness Mr. Franklin specifically explained these benefits in response to questions from the ALJ, as highlighted on page 49 of the Joint Applicants' Main Brief. Therefore, OSBA's arguments should be rejected.

I&E's argument that the cost of the Proposed Transaction is not justified by Aqua PA leveraging the Peoples Companies SAP platform is a non-sequitur. I&E MB, p. 36. Aqua PA's ability to leverage the Peoples Companies' implementation of SAP, thereby minimizing implementation risks and providing customer service benefits, is simply one of the many affirmative public benefits that will result from the Proposed Transaction and Settlement. As a whole, these benefits justify Commission approval of the Proposed Transaction, as conditioned by the Settlement.

Lastly, I&E's arguments regarding the commitments benefitting Aqua PA's low-income customers should also be rejected. (I&E MB, p. 36.) The argument that the Settlement commitments are actions that "Aqua or the Peoples Companies could commit to independent of this transaction" misses the point; these commitments are specific to the Proposed Transaction and Settlement, are not currently in place and, therefore, satisfy the *City of York* standard. *See* Section III *supra*. In addition, I&E's statement that the financial commitments associated with the Proposed Transaction and Settlement could harm low-income ratepayers is simply incorrect. The Joint Applicants have already demonstrated that the Proposed Transaction, as conditioned by the Settlement, will increase Aqua America's financial strength and stability. *See* Sections V.A.2.b. and V.B.1. *supra*; *see also* Joint App. MB, Section V.B.1. Other commitments that improve safety, convenience and customer service also will provide important benefits to low income customers. As such, I&E's argument should be rejected.

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

The Joint Applicants highlighted the additional benefits produced by the Settlement, which principally include an additional $10 million rate credit to be provided to Aqua PA's and the Peoples Companies' customers. Joint App. MB, Section V.B. 8. OSBA and I&E contest the other beneficial conditions set forth in the Settlement on two grounds. I&E continues to argue that the Proposed Transaction merely maintains the status quo and lacks "synergies that generally accompany the merger of two public utilities." I&E MB, pp. 36-37. OSBA, on the other hand, specifically targets commitments concerning low-income service programs and argues that these do not satisfy the *City of York* standard because the benefits are specific to low-income residential customers. OSBA MB, pp. 27-28 (citing *City of York* and *Middletown Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674 (Pa. Cmwlth. 1984) ("*Middletown Twp.*")). Both I&E and OSBA fail to demonstrate that the other conditions adopted in the Settlement do not constitute affirmative public benefits.

With respect to I&E's status quo argument, it has previously been rejected by the Commission. *SteelRiver Application Order*, pp. 33-34. Consistent with the Pennsylvania Supreme Court's determinations in *City of York* and *Popowksy*, the Commission concluded a commitment that results from a specific transaction, and/or a settlement for the approval of the transaction, constitutes an affirmative benefit that is unique to the transaction. *See id.* For reasons explained previously, claims that benefits should be disregarded because it is theoretically possible that current ownership might be able to undertake a commitment should not be a standard for assessing benefits of a transaction.

In addition, the Joint Applicants fully addressed I&E's argument that the Proposed Transaction lacks synergies in their Main Brief. Joint App. MB, Section V.B.3. The Joint Applicants note that I&E has cited no authority under the Code, Commission precedent, or Pennsylvania law that states employment reductions to create synergies are required to satisfy

the affirmative public benefit standard. In addition, I&E conveniently ignores the long-term, non-employment synergies that will be created by the Proposed Transaction and the rate credit that reflects the potential value of those long-term non-employment synergies. Moreover, I&E essentially concedes that the retention of workforce contemplated by the transaction—*i.e.* lack of synergies—would not occur in a typical acquisition; the retention of these jobs is clearly an affirmative public benefit. *See* Joint App. MB, pp. 30-31.

With respect to OSBA's argument that commitments specific to low-income customers do not satisfy the affirmative public benefits standard, OSBA's reliance upon *Middletown* is misplaced. In *Middletown*, the Commonwealth Court upheld a Commission order that rejected a proposed acquisition based upon the Commission's consideration of the benefits and detriments of the acquisition on all affected parties. *Middletown*, 482 A.2d at 862. OSBA singles out commitments specific to low-income customers, and argues that these low-income specific benefits are not enough to satisfy the standard under *Middletown*.[25] However, this ignores that the low-income specific benefits produced by the Proposed Transaction, as conditioned by the Settlement, are merely a portion of the numerous benefits to ratepayers, employees, the Pennsylvania economy and the public, which are produced by the Proposed Transaction.

C. The Proposed Transaction, As Conditioned By the Settlement, Will Not Result in Anticompetitive or Discriminatory Conduct

Neither I&E nor OSBA assert that the Proposed Transaction will result in anticompetitive or discriminatory conduct. I&E MB, pp. 37-38; OSBA MB, pp. 28-29. While I&E indicates that it took no position on whether the Proposed Transaction will result in anticompetitive or

[25] The Joint Applicants further note that OSBA candidly states its opposition to the Proposed Transaction and Settlement is because the transaction "does not provide any affirmative public benefits for small business customers." OSBA MB, p. 6 (emphasis added). The OSBA's position that a specific class of customers, *i.e.* small business customers, are not benefitted would ask the Commission to conduct the very class-specific analysis that OSBA argued is improper under *Middletown*. *See also Popowsky*, 937 A.2d 1061 (not every group of customers must receive specific benefits from a transaction). Moreover, OSBA ignores that many benefits from the transaction will be received by small business customers, including rate credits and improvements to safety and customer convenience.

discriminatory conduct, it notes its opposition to the suggestion that the Peoples Companies exit the merchant function, which was proposed by the NGS Parties/RESA. I&E MB, pp. 37-38. I&E further responds to comments by the NGS Parties/RESA indicated in their statement in support regarding paragraph 128 of the Settlement by stating they it believes the "Commission should affirm that Peoples will retain its role as supplier of last resort." I&E MB, p. 38. There is no reason to add any further commitment on the provision of supplier of last resort service. By law, a natural gas distribution company remains the supplier of last resort unless and until an alternative supplier is approved. 66 Pa. C.S. § 2207.

The Joint Applicants' Main Brief elaborates on the numerous commitments made to maintain or enhance the Peoples Companies' existing choice and transportation programs. These commitments, taken together, satisfy Section 2210(a)(1) of the Code and further demonstrate that the Proposed Transaction, as conditioned by the Settlement, will result in substantial affirmative public benefits. Therefore, and for the reasons more fully explained in the Joint Applicants' Main Brief, the Commission should conclude that the Joint Applicants have satisfied Section 2210(a)(1) of the Code.

D. The Proposed Transaction, As Conditioned By The Settlement, Will Benefit The Employees Of The Peoples Companies

The Joint Applicants demonstrated that the Proposed Transaction, as conditioned by the Settlement, will benefit the employees of the Peoples Companies. Joint App. MB, Section V.D. I&E and OSBA, however, respectively argue that the transaction will have negative impacts on the employees of the Peoples Companies or that the transaction will do no more than maintain the status quo. I&E MB, pp. 38-40; OSBA MB, pp. 29-30.

I&E's argument that the Proposed Transaction will harm employees of the Peoples Companies substantially repeats its flawed arguments regarding Aqua America's technical fitness to own the Peoples Companies. *See* Section V.A. *supra*. **[BEGIN CONFIDENTIAL]**

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[BEGIN HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY] [redacted]

[END HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY]

Moreover I&E ignores the Settlement commitments that ensure: (1) changes to leadership do not present public safety, reliability, or customer service risks; (2) Aqua America will develop succession plans to ensure that any replacements are qualified and knowledgeable; (3) the

current organization structure is maintained in which natural gas operational workers are reporting directly to trained natural gas managers. *See* Joint App. MB, **Appendix A**, pp. 15-16. These commitments provide further benefits, by implementing specific managerial controls upon the prospective owner of the Peoples Companies that are above and beyond any controls in place today. For these reasons, I&E arguments are without merit and should be rejected.

OSBA does not argue that the Proposed Transaction, as conditioned by the Settlement, will have a negative impact on the Peoples Companies' employees; rather, OSBA argues that the Joint Applicants have not demonstrated the transaction will expand job opportunities and that the Joint Applicants' commitments regarding employee retention merely maintain the status quo. *See* OSBA MB, pp. 29-30. The Joint Applicants have explained that OSBA's status quo argument simply misstates the law. *See* Section III *supra*. Further, OSBA ignores the fact that the Joint Applicants' commitment to accelerate the Peoples Companies LTIIP will result in approximately 100 new jobs. (*See* Joint App. St. 5-R, pp. 18-21.) As such, OSBA's arguments should be rejected.

The Joint Applicants have demonstrated that the Proposed Transaction, as conditioned by the Settlement, will have a positive impact on the employees of the Peoples Companies and have satisfied the requirements of Section 2210(a)(2) of the Code. Therefore, and for the reasons more fully explained in the Joint Applicants' Main Brief, the Commission should approve the Proposed Transaction, as conditioned by the Settlement, without further modification.

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

In addition to the benefits identified by the Joint Application, the Settlement provides further conditions which were agreed upon by the Settlement Parties in the spirit of compromise and to provide additional benefits to the public. Despite the numerous benefits that will result from the Proposed Transaction, as conditioned by the Settlement, I&E and OSBA oppose the

approval of the acquisition. The Joint Applicants demonstrated in their Main Brief that the principal reasons for I&E's and OSBA's opposition were not credible and should be rejected. *See* Joint App. MB, Section V.E. The Joint Applicants further respond to the specific arguments raised in I&E's and OSBA's respective briefs below.

A primary argument in opposition to the Settlement by both OSBA and I&E is that Aqua America has not been demonstrated technically fit to own and operate the Peoples Companies. *See* OSBA MB, p. 30; I&E MB, pp. 41-43. I&E even goes so far as to assert that "there is nothing that can cure" Aqua America's alleged lack of fitness. I&E MB, p. 41. These arguments have no basis in fact.

Both OSBA and I&E continue to ignore the critical fact that while Aqua America will become the indirect parent of the Peoples Companies, the Peoples Companies will remain responsible for day-to-day ownership and operation of their natural gas systems. *See* Section V.A.2. *supra*. **[BEGIN HIGHLY CONFIDENTIAL – STATUTORY ADVOCATE ONLY]**

[redacted]

[END HIGHLY CONFIDENTIAL – STATUTORY ADVOCATE ONLY] Moreover, the Settlement clearly provides the commitments necessary to ensure that the Peoples Companies are led by managers and executives with "best in class"

experience. *See* Joint App. MB, **Appendix A**, pp. 15-16. OSBA's and I&E's willful attempts to ignore these facts strain credulity and demonstrate the flawed nature of their position.

I&E's attempt to attack Aqua America's fitness based on the testimony of Mr. Barbato at hearing further demonstrates its failure to accept this fundamental point. *See* I&E MB, pp. 41-42. Mr. Barbato has, and will have, a water/wastewater leadership role, *i.e.* he will not be directly responsible for the operation or management of natural gas operations. Mr. Barbato made clear, under cross-examination, that he is not an expert on gas safety matters and deferred to Mr. Gregorini to respond to those matters. (*See* Tr. 165-168.) **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** By making the argument that a water/wastewater leader lacks specific, granular knowledge about natural gas operations issues, I&E actually highlights precisely why there are no concerns regarding Aqua America's fitness to own the Peoples Companies: natural gas leaders retained as a part of the Proposed Transaction will be the individuals responsible for natural gas operations.

In addition to these facts, the Commission has explicitly rejected similar arguments in the past. As noted in Section V.A.2.a. *supra*, the *SteelRiver Application Order* summarily rejected similar arguments made by OTS regarding SteelRiver's fitness. It bears repeating that a parent holding company's fitness turns on whether "senior management...can provide the necessary expertise in capital markets and over-all operations one would expect to find at the ultimate parent company level." *SteelRiver Application Order*, p. 41. The record clearly demonstrates that Aqua America can provide this expertise.

OSBA further asserts that the purchase price of the Proposed Transaction and the commitment to accelerate LTIIP spending will harm ratepayers. The Joint Applicants

demonstrated that OSBA's arguments regarding the purchase price and LTIIP spending are without merit in this brief and in their Main Brief. *See* Sections V.B.1 and V.B.4 *supra*; *see also* Joint App. MB, Sections V.B.1 and V.B.4.

I&E continues to argue that many of the additional, beneficial commitments in the Settlement do no more than maintain the status quo. I&E MB, pp. 40-41. The Joint Applicants have addressed I&E's misinterpretation of the law in Section III, *supra*, and responded to specific commitments that I&E alleges maintain the status quo throughout the body of this Reply Brief. Fundamentally, I&E ignores the fact that these commitments are a specific result of the Proposed Transaction and the Settlement and, therefore, satisfy the affirmative public benefits test.

Next, I&E asserts that the Settlement's commitments to repair and replace the G/T systems would jeopardize the safety of the customers served. I&E MB, p. 42. Joint Applicants have responded to this argument previously. *See* Joint App. MB, Section V.B.5.; *see also* Section V.B.5., *supra*. I&E's proposal to impose a punitive "exit fee" is not in the public interest, is not supported by the Code, Commission regulations and orders, and would violate the Joint Applicants' constitutional rights. Similarly, I&E's proposal to embrace abandonments of certain customers in this proceeding is not in the public interest and would violate those customers' due process rights. *See* Joint App. MB, Sections V.B.5.ii.-iii.

Finally, I&E acknowledges that ratepayers will receive $23 million dollars in rate credits under the Settlement (*i.e.* $13 million associated specifically with the G/T system commitments and an additional $10 million), but argues these credits do not outweigh the harm of a "technically inexperienced parent" and because ratepayers may fund many of the additional commitments set forth in the Settlement. I&E MB, pp. 42-43. The Joint Applicants have already addressed I&E's flawed arguments regarding Aqua America's technical fitness. With

respect to future ratemaking claims related to specific commitments, I&E ignores two critical points. First, many of the commitments it argues ratepayers will fund contain a corresponding benefit to those ratepayers. Second, the regulatory compact permits a utility to recover from ratepayers the costs of the utility's investments.[26] As such, I&E's arguments regarding the rate credits provided in the Settlement should be denied.

Contrary to OSBA's and I&E's positions, the Settlement provides additional benefits that affirm and/or enhance the significant affirmative public benefits provided by the Proposed Transaction. Therefore, and for the reasons more fully explained in the Joint Applicants' Main Brief, the Proposed Transaction, as conditioned by the Settlement, is in the public interest and should be approved without modification.

VI. CONCLUSION

WHEREFORE, the Joint Applicants respectfully request that the Honorable Administrative Law Judges Mary D. Long and Emily I. DeVoe, and the Pennsylvania Public Utility Commission, approve the Joint Application of Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Peoples Gas Company, LLC For All Of The Authority And Necessary Certificates Of Public Convenience To Approve A Change In Control of Peoples Natural Gas Company LLC And Peoples Gas Company LLC By Way Of The Purchase Of LDC Funding LLC's Membership Interests By Aqua America, Inc., as modified by the Joint Petition for Approval of Non-Unanimous, Complete Settlement, and issue all Certificates of Public Convenience to the Joint Applicants necessary to effect its approval.

[26] (Tr. 83, 90, 177; *see also* Tr. 207 (I&E witness Mr. Kline testifying, "The regulatory compact is that companies, utilities will make certain capital improvements to ensure the safe and reliable service, in which case they get a return on and return of their investment.")

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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