COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

IN REPLY PLEASE
REFER TO OUR FILE

July 25, 2019

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

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

Dear Secretary Chiavetta,

Enclosed for filing, please find the Bureau of Investigation and Enforcement's (I&E) **Reply Brief (PROPRIETARY)** for the above captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please contact me at (717) 783-6156.

Sincerely,

Carrie B. Wright
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney I.D. No. 208185

CBW/ac
Enclosure

cc: Hon. Mary D. Long (*ALJ, Pittsburgh*)
Hon. Emily DeVoe (*ALJ, Pittsburgh*)
Per Certificate of Service

NON-CONFIDENTIAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF
OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT

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Dated: July 25, 2019

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BEFORE THE
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REPLY BRIEF
OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT

I. INTRODUCTION

The Bureau of Investigation and Enforcement ("I&E") maintains that the Joint Applicants have failed to satisfy their burden of proof. As was set forth in I&E's Main Brief, the Joint Applicants have failed to demonstrate that the proposed transaction will result in substantial, affirmative public benefits. I&E respectfully submits that the Application and Non-Unanimous Joint Petition for Settlement be denied as they are not in the public interest.

II. HISTORY OF THE PROCEEDING

On July 10, 2018, the Bureau of Investigation and Enforcement ("I&E") filed its Main Brief in this proceeding setting forth the argument, evidence, and law in support of its recommendations to the Pennsylvania Public Utility Commission ("PUC" or "Commission") that Aqua America, Inc. ("Aqua") not be allowed to acquire the Peoples Companies ("Peoples")(collectively, "Joint Applicants").

I&E has received timely service of the Joint Applicants' Main Brief and the Office of Small Business Advocate's ("OSBA") Main Brief. The issues addressed in this I&E Reply Brief are limited to matters raised in the Joint Applicants' Main Brief that respond to or comment upon the I&E recommendations in the I&E Main Brief. As such, this I&E Main Brief therefore includes every topic section heading found in the I&E Main Brief but only addresses in detail certain issues that require responsive discussion.

III. LEGAL STANDARDS

A. Burden of Proof

As discussed in detail in the I&E Main Brief, the Company retains the burden of proving the reasonableness of each and every element of its claim throughout the entire proceeding. This standard is well-established and recognized by the Commission and courts. A review of the evidence and arguments presented by the parties demonstrates that the Company has failed in its burden because the evidence provided is not sufficient to show that this acquisition would be in the public interest.

B. Standards for Approval of Acquisition and Settlement

I&E incorporates by reference all standards required for Commission approval of the instant Joint Application set forth by the I&E Main Brief.

IV. SUMMARY OF ARGUMENT

I&E reaffirms each and every argument raised in the I&E Main Brief and respectfully submits that they should be adopted by Administrative Law Judge Long and the Commission as being in the public interest. The arguments made in this I&E Reply Brief augment the I&E recommendations presented in the I&E Main Brief. In this Reply Brief, I&E responds to the Joint Applicants' discussions and points out the flaws in the Joint Applicants' methodology.

In conclusion then and for the reasons presented in both the I&E Main and this Reply Brief, we respectfully request that the ALJ issue a Recommended Decision and the Commission issue an Opinion and Order denying the Joint Application.

V. ARGUMENT

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

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

Aqua failed to prove it has the necessary technical and financial fitness to own the Peoples Companies. I&E's Main Brief acknowledged that the Commission looks to the criteria set forth by *Penn Estates Utilities*[1] when determining the fitness of an acquiring

[1] *Application of Penn Estates Utilities, Inc., Utilities, Inc., Utilities, Ind. Of Pennsylvania and Utilities, Inc. – Westgate for Approval of Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc.*, Docket No. A-210072F0003

entity. As was articulated in I&E's Main Brief, Aqua lacks the technical and financial fitness to own and operate a natural gas distribution company such as the Peoples Companies.

In its Main Brief, Joint Applicants essentially argue that Aqua's technical fitness to own and operate the Peoples Companies should be presumed based upon its fitness to own and operate a water/wastewater company.[2] I&E recognizes Aqua's technical fitness to own and operate its water/wastewater utilities however, maintains that natural gas distribution differs drastically from water/wastewater distribution. I&E's Main Brief points out that although both utilities use pipes to deliver the product to customers, natural gas is inherently more dangerous than water/wastewater and requires an owner and operator to comply with safety provisions that do not exist for water and wastewater distribution. These safety regulations for natural gas distribution are set forth by the Pennsylvania Public Utility Code ("Code"), Commission regulations, and Pipeline and Hazardous Materials Safety Administration ("PHMSA") which would not be familiar to Aqua through the provision of water and wastewater service.

Further, the Joint Applicants argue that the instant transaction is similar to Pennsylvania Power and Light Company's ("PPL") application to acquire North Penn Gas Company.[3] However, the PPL acquisition can be distinguished from the instant transaction. Unlike PPL's acquisition of North Penn Gas Company, Aqua's proposed transaction seeks to acquire one of the largest natural gas distribution companies in

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[2] Joint Applicants MB. p. 9.
[3] *Id.*

Pennsylvania. It is unusual that without any prior natural gas industry knowledge, a water/wastewater company would seek to acquire one of the largest natural gas companies in Pennsylvania. Moreover, PPL's acquisition of North Penn Gas Company was not completely unordinary as there are companies regulated by this Commission that offer both gas and electric service, such as UGI and PECO. Accordingly, I&E maintains that Aqua, although fit to own an operate a water/wastewater utility, has not shown that its fitness to own and operate a natural gas distribution company should be presumed.

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

Aqua argues that its technical fitness would remain with the Peoples Companies and be unaffected by the proposed transaction with its experienced supervisors, managers and leadership and those responsible for the day to day operations.[4] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[4] Joint Applicants MB. p. 12.

Next, Aqua points out that Aqua PA has exceeded its projected miles of main replacement.[5] Aqua uses this point to show that they are technically fit to own and operate the Peoples Companies without drawing any analogies between replacement of water/wastewater pipeline and natural gas pipeline. Although pipelines distribute both water/wastewater and gas, the pipes are different; water/wastewater distribution lines are primarily metal while gas distribution lines are primarily plastic. Joint Applicant witness Barbato when asked by Judge Long whether the pipelines used for gas and water/wastewater service are similar responded, "...no, they're not the same."[6] Simply by demonstrating effectiveness of water/wastewater pipeline replacement does not equate to demonstrating fitness to own and operate a natural gas distribution system.

Finally, Aqua claims to be financially fit to own the Peoples Companies and assert that I&E and OSBA concerns about Aqua's financial fitness are unwarranted.[7] Joint Applicants go on to claim that the proposed transaction will increase Aqua's financial strength and stability.[8] The Joint Applicants do not provide any evidence that the proposed transaction will strengthen its financial condition. I&E's Main Brief aptly pointed out the $0.4 to $0.9 billion of new debt Aqua will need in order to acquire the Peoples Companies and the lack of cost reductions in this proposed transaction that typically occur with acquisitions.[9] The Joint Applicants do nothing to quell those

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5 *Id.*
6 Tr. p. 180.
7 Joint Applicants MB. pp. 12-13.
8 Joint Applicants MB. p. 13.
9 I&E MB. p. 10.

concerns raised by both I&E and OSBA. For that reason, Joint Applicants fail to prove they are financially fit to own the Peoples Companies.

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

The terms and conditions of the non-unanimous settlement spell out many costly commitments that ratepayers will be expected to fund. While arguably, some of these on a stand-alone basis could be construed as benefits, when looking at the totality of the acquisition it becomes clear that these potential benefits do not overcome the detriments resulting from this acquisition.

1. Purchase Price and Financing

Aqua America is paying a substantial sum to effectuate this acquisition; namely a purchase price of $4.275 billion with $2 billion of Goodwill. With an acquisition of this magnitude, the largest ever before this Commission, it is clear that scrutiny of the purchase prices is necessary. Both OSBA and I&E expressed concerns regarding the purchase price.

One of I&E's concerns was that at the time of the transaction Peoples was not publicly up for sale and was not the result of a competitive bid process.[10] As a result, I&E was concerned that Aqua may have paid more than necessary for the Peoples Companies. In Main Brief, the Joint Applicants attempt to mitigate this position by stating that I&E has presented no evidence that a competitive bid process would have

[10] I&E St. No. 1, p. 11.

lowered the purchase price.[11] While it is true that I&E did not provide that analysis, the Joint Applicants appear to misunderstand the point. Because no competitive bid process was undertaken and because no acquisition like this has occurred before this Commission the purchase price warrants much scrutiny. While the Joint Applicants fail to acknowledge this, arm's length negotiations do not necessarily prove that the purchase price is acceptable. I&E does not dispute that the Joint Applicants may have negotiated at arm's length, this does not mean that the agreed upon price is appropriate. These are separate considerations.

Regarding financing, I&E explained in Main Brief that in an effort to effectuate this transaction, Aqua's indebtedness will necessarily increase substantially. Debt and riskiness are intrinsically tied together. The Joint Applicants have essentially stated that no synergies will be achieved by this transaction. Therefore, with a lack of cost saving measures the overall increase in debt will necessarily make the combined entity riskier and less financially stable. The non-unanimous settlement does not mitigate this risk.

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

As evident in the I&E and OSBA Main Briefs, public ownership by Pennsylvania-based Aqua does not provide the requisite affirmative public benefits that must be demonstrated by this acquisition.[12]

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[11] Joint Applicants MB, p. 15.

[12] I&E MB, pp. 17-21, OSBA MB, pp. 16-18.

One of the main focuses of the Joint Applicants' Main Brief, in this regard, is term of ownership.[13] The Joint Applicants note that the Commission had concerns about the finite life of SteelRiver in 2009 when it approved SteelRiver's acquisition of Peoples Natural Gas.[14] While it is certainly true that the Commission raised this concern, ultimately, the Commission did approve that acquisition. Further, the Joint Applicants have not alleged that SteelRiver's finite term has, thus far, caused any harm to ratepayers. In fact, as I&E witness Zalesky noted, Peoples has demonstrated that it is willing to make capital investments despite SteelRiver's finite life; and, further, as a public utility certain investments are required to remain in compliance with the Public Utility Code, no matter the owner of the Company.[15] While the Joint Applicants state that Aqua is willing to make larger investments than Peoples did under SteelRiver's ownership, this is simply not enough to make the transaction, as a whole, appropriate considering the Commission has not made a determination that SteelRiver's ownership of Peoples was somehow insufficient.

Further, the Joint Applicants note that "[w]hile SteelRiver's ownership has been adequate, the proper question is whether Aqua America's ownership will be better in terms of longevity."[16] The Joint Applicants then acknowledge one paragraph later that there is no formal guarantee that Aqua will remain a long term owner of the Peoples

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13 Joint Applicants MB, pp. 21-24.
14 Joint Applicants MB, p. 22.
15 I&E St. No. 1, pp. 7-8.
16 Joint Applicants MB, pp. 22-23.

Companies.[17] In fact, at hearing, Joint Applicants witness Christopher Franklin stated that the longest defined time period commitment Aqua was making as part of the non-unanimous settlement of this proceeding was seven years.[18] Therefore, while Aqua does not view SteelRiver's ten-year ownership of Peoples as long-term,[19] Aqua similarly has not made any commitments related to its ownership of Peoples that meet or exceed seven years. While Aqua may have proven itself as a long-term owner of utility assets in Pennsylvania, the Commission must remain mindful of the fact that all of these assets were water or wastewater. Aqua has no experience owning a natural gas distribution system[20] and has made no commitment extending longer than seven years related to the assets it wishes to acquire. Aqua's assertion that it intends to be the long-term owner of the Peoples Companies is without support and, therefore, cannot serve as an affirmative public benefit.

The Joint Applicants then allege that more public ownership under Aqua is an affirmative benefit.[21] However, as I&E explained in its Main Brief, the information that the Peoples Companies must report to the Commission remains the same, and under SteelRiver's ownership the Commission has not been deprived of any vital information necessary for regulatory purposes.[22] It is undeniable that in general, greater access to

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17 Joint Applicants MB, p. 23.
18 Tr. p. 76.
19 Tr. p. 76.
20 Tr. p. 75.
21 Joint Applicants MB, p. 24.
22 I&E MB, p. 18.

information is a benefit. What is debatable is whether that information will prove to be materially beneficial to this Commission or ratepayers.

Further, the Joint Applicants contend that under Aqua's ownership, Peoples will have greater access to capital.[23] The Joint Applicants have however, failed to demonstrate the Peoples current access to capital is in some way insufficient. As explained by OSBA, "[i]nstead of demonstrating that public ownership will be an affirmative public benefit of the Proposed Transaction, the Joint Applicants have merely pointed out a difference in investment options – without demonstrating that such a difference creates any advantage."[24] Clearly this Commission views ownership of a public utility by either a private entity or a publicly held company as acceptable. The Joint Applicants have not provided sufficient support to demonstrate that ownership under publicly held Aqua will be superior to ownership under SteelRiver. Therefore, Aqua's status as a publicly held company fails to provide the necessary affirmative public benefits to approve this acquisition.

The Joint Applicants then imply that Aqua is somehow more understanding and responsive to issues of concern in Pennsylvania.[25] The notion that Aqua America's status as a Pennsylvania based company makes it more committed to the residents of Pennsylvania than Peoples, has been disproved in I&E's Main Brief.[26] While SteelRiver may not be a Pennsylvania based company, Peoples has shown a strong commitment to

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[23] Joint Applicants MB, p. 24.
[24] OSBA, MB p. 17.
[25] Joint Applicants MB, p. 27.
[26] I&E MB, pp. 19-20.

and interest in the communities that it serves. In fact, as Aqua has no customers in the Pittsburgh area, Peoples commitment to this specific territory is undeniably stronger than that of Aqua.

It is clear that in and of itself, ownership by Aqua PA is simply not an affirmative public benefit. SteelRiver in its tenure as owner of the Peoples Companies under Mr. O'Brien's leadership has "... run a very good company..."[27] As the Joint Applicants intend to continue to run these entities as separate companies, and as the Peoples Companies currently have no problems raising capital, sharing information with the Commission, or supporting the communities in which they operate, it does not appear that ownership under Aqua will change any of that in such a way that it rises to the level of an affirmative public benefit large enough to overcome the detriments posed by this acquisition.

3. Job Retention and Growth in Western Pennsylvania

Regarding job retention and growth, the Joint Applicants contend that, "the Proposed Transaction does not contemplate or involve reductions in the workforces of either the Peoples Companies or Aqua PA."[28] As both I&E and OSBA made clear in their Main Briefs, the Commission is obligated to measure the benefits of this transaction against the only other viable alternative, which is the maintenance of the status quo.[29] The Joint Applicants note that employment related synergies do not have to be shown for

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[27] Tr. p. 89.
[28] Joint Applicants MB. p. 29.
[29] I&E MB. p. 21. OSBA MB. p. 18.

an acquisition to be in the public interest; rather the applicants would need to show that the benefit asserted would not occur absent the transaction.[30] They indicate that absent this transaction a buyer might step in and eliminated jobs, so therefore, the fact that they are not eliminating jobs is a benefit.[31] The Joint Applicants ridiculously conclude that I&E supports their position because I&E witness Zalesky testified that since the utility types and geographic locations were so different, job related synergies could not be achieved.[32] Again, the Joint Applicants would prefer this acquisition be viewed, not as compared to the status quo (the only other logical alternative), but against some other acquisition which was never contemplated.

The Joint Applicants essentially ask the Commission to conclude that absent this transaction some other utility would buy Peoples and create synergies resulting from job elimination; therefore, they believe the lack of synergies for this transaction must be viewed as a benefit and not a detriment. This is a position the Commission is unable to adopt. As the Joint Applicants themselves noted, they are required to show that the purported benefit would not occur absent this acquisition. The purported benefit in this instance is job retention, or lack of job loss. Peoples has not indicated that, but for this acquisition it would be eliminating jobs in Pennsylvania. Nor have the Joint Applicants provided any evidence showing that there was another unscrupulous buyer waiting in the wings to purchase Peoples and eliminate jobs. Therefore, it is untrue that retention of

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30 Joint Applicants MB, p. 30.
31 *Id.*
32 *Id.*

jobs would not occur absent the proposed transaction. There is no benefit; the Joint Applicants are agreeing only to maintain the status quo.

The Joint Applicants attempt to explain how this acquisition will increase employment opportunities and growth in Pennsylvania by stating that their commitment to accelerate risky pipe replacement will require approximately 100 additional employees including both contractors and Peoples employees.[33] Oddly enough, however, nowhere in either testimony or the settlement do the Joint Applicants affirmatively commit to hiring these 100 employees or creating these jobs. Frankly, the only job-related commitment the Joint Applicants have made is to maintain the status quo and Aqua's unsupported claim of 100 additional employees should be rejected.

4. LTIIP Acceleration

As I&E explained in its Main Brief, LTIIP acceleration is something that is necessary even independent of this acquisition;[34] meaning that should the Commission disallow this acquisition, I&E still believes that Peoples should accelerate pipeline replacement under its LTIIP. Additionally, there will be competition for manpower and purchasing making the actual realization of this acceleration somewhat tenuous.[35] I&E certainly appreciates the Joint Applicants willingness to agree to accelerate the Peoples Companies' LTIIP; however, in order to truly be a benefit the acceleration will need to actually be realized. Further, I&E would reiterate that even absent this acquisition, no

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33 Joint Applicants MB, p. 31, Joint Applicants St. No. 5-R, p. 20.
34 I&E MB, pp. 24-25.
35 I&E St. No. 3, p. 8-9.

matter the owner of the Peoples Companies, LTIIP acceleration is needed and could be pursued under the current ownership structure.

5. Goodwin and Tombaugh Gathering Systems

a. The Proposal Contained in the Non-Unanimous Settlement Is Not In the Public Interest.

A fundamental requirement of being a public utility is providing customers safe and reliable service. Section 1501 of the Public Utility Code states in part:

> Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.[36]

There is always some level of risk inherently associated with natural gas service since it is a combustible substance. This risk is usually mitigated by safety measures such as adding odorant to the gas and replacing aging infrastructure among other things. Generally speaking, however, those risks do not rise to the level of that found on the Goodwin and Tombaugh Systems given that the Goodwin System currently loses 82% of its gas, while the Tombaugh System loses 44%.

As explained in I&E's Main Brief,[37] in the 2013 proceeding when Peoples sought to acquire Equitable, including the Goodwin and Tombaugh Gathering Systems, the cause of the high UFG on these gathering lines was unknown. At that time Peoples

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[36] 66 Pa. Code § 1501

[37] I&E MB. pp. 25-26.

downplayed I&E's safety and ratemaking concerns by indicating that it would likely be able to reduce UFG through segmentation and other inexpensive measures.[38] Pursuant to the 2013 Settlement, Peoples was required to perform specific activities to assess and improve the gathering lines in order to reduce UFG and develop a plan to rehabilitate or abandon some or all of the Goodwin and Tombaugh lines. The 2013 Settlement also required that EQT provide $5 million to be used by Peoples to investigate UFG on the Goodwin and Tombaugh Systems. Further, in recognition of I&E's ratemaking concerns, the 2013 Settlement required that the Gathering Systems be transferred to a newly created subsidiary rather than directly to Peoples because I&E was concerned that EQT had neglected these lines over the course of many years and that Peoples would expect its customers to pay for that neglect. Peoples further agreed that if the economic test was not satisfied, it would not recommend further investment into the Gathering Systems. The Commission accepted that settlement, thereby affirming that the resolution was appropriate and in the public interest.

The non-unanimous settlement in this proceeding does not adhere to that 2013 Settlement and provides for a resolution of the issues surrounding the Goodwin and Tombaugh Gathering Systems that is neither economic nor in the public interest. It adheres to none of the commitments agreed to in the 2013 Goodwin and Tombaugh Settlement as it proposes that the entirety of the Goodwin and Tombaugh systems be replaced at the expense of all customers. The Joint Applicant's Main Brief, states Aqua

[38] I&E St. No. 2-SR, p. 21-22.

has "...sought to provide a final resolution where the concentration is on retaining residential and small business customers..."[39] I&E argues that what the Joint Applicants have actually sought is a resolution that concentrates on making sure these customers fund the endeavor no matter the ultimate sum and with little regard for Peoples testimony which affirmatively states that full replacement is not economic.[40]

Further, although they appear to understand they continue to be bound by the terms of the 2013 Settlement terms relating to Goodwin and Tombaugh, the Joint Applicants ignore those terms and have proposed the exact opposite of what was agreed to in 2013. Importantly, the non-unanimous settlement wholly ignores the economic test that was negotiated, agreed upon and approved by the Commission in the 2013 Settlement. The underlying principle of that economic test was that customers should not be required to bear the full, uneconomic cost to remediate or replace these gathering systems. Approximately six years later, the current settlement proposes exactly that as it mandates recovery of up to $120 million from ratepayers less the $13 million rate credit and also leaves open the door for the Joint Applicants to request any amounts that exceed the $120 million specified in the non-unanimous settlement..

The option presented to the Commission by the settling Parties is neither economic nor in the public interest; therefore, the Parties have failed in their burden and the settlement should be rejected. The purported resolution is imprudent and violates prior

[39] Joint Applicants MB, p. 35.
[40] Joint Applicants St. No. 3-R, p. 8.

Commission approved settlement commitments. As I&E previously explained, I&E entered into the 2013 Settlement in good faith to remedy the challenging safety and ratemaking issues presented by the Goodwin and Tombaugh Systems.[41] The resolution contained therein remains the Commission approved resolution of this issue and is appropriate and in the public interest.

b. I&E's Proposal Regarding The Goodwin and Tombaugh Systems Constitutes Neither and Impermissible Exit Fee or a Regulatory Taking

The Joint Applicants largely focus on I&E's alternate recommendation, i.e. that $127 million be placed in a separate fund to facilitate rehabilitation of these Systems.; however, they appear to be confused about I&E's proposal for the Goodwin and Tombaugh Systems. I&E has proposed, first and foremost, that this acquisition be denied and that the 2013 Settlement to which I&E was a signatory and supporter be followed. I&E's alternative proposal relates only to a situation in which the Commission would see fit to approve this transaction and require the complete replacement and rehabilitation of the Goodwin and Tombaugh Systems. In that particular scenario, I&E recommends that a portion of the purchase price, specifically $127 million, be set aside to facilitate this remediation. I&E further recommends that any portion of the $127 million not spent be returned to SteelRiver and any amounts above the $127 million be borne by Aqua America's shareholders.

[41] I&E MB. p. 29.

As noted above, a fundamental requirement of being a public utility is that the utility must provide its customers with safe and reliable service and complete the necessary repairs to do so. Further, as will be explained in more detail below, it is clear that there is a firm link between the provision of safe and reliable service and the rates that a utility is allowed to charge.

The Joint Applicants' allegation that I&E's proposal to set aside $127 million of the purchase price to rehabilitate the Goodwin and Tombaugh Systems should the Commission determine full remediation is necessary constitutes an impermissible "exit fee" is pure absurdity.[42] In support of this illogical conclusion, the Joint Applicants cite to *Citizens for Pers. Water Rights v. Borough of Hughesville*.[43] This is inherent in the quote they attempted to use which stated that there has to be a deprivation of **all** economically beneficial use of property before a regulatory taking occurs.[44] In this instance, if the Commission were to adopt I&E's recommendation related to Goodwin and Tombaugh in full, the Joint Applicants would still receive an economic benefit from the use of that property if for nothing else other than the fact that the customers served off of those lines would continue to pay their Commission approved rates. In addition, the Joint Applicants would still be receiving the economically beneficial use of all the rest of the utility plant they are asking to acquire through this acquisition.

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42 Joint Applicants MB, pp. 39-38.

43 *Citizens for Pers. Water Rights v. Borough of Hughesville*, 815 A.2d 15 (Pa. Cmwlth. 2002).

44 Joint Applicants MB, p. 39.

The term "exit fee" has long been used in the finance industry as a tool to hold shareholders accountable when they exit a fund, for fees and other expenses associated with their shares, as commonly used in open-end mutual funds.[45] In the public utility industry, exit fee has been used to refer to the fee charged to a customer who "exits" the service of a public utility company, either switching to a different utility company or installing on-site generation, often as a tool to recover stranded costs.[46] Although exit fees are banned in Manufactured Home Community statutes, 68 Pa. Stat. Ann. § 398.8, the Pennsylvania Public Utility Code does not address exit fees as a separate issue. Instead, the Code authorizes the Commission to impose just and reasonable conditions as part of the issuance of a certificate of public convenience, including in applications for acquisitions.[47]

While most Commission cases that address exit fees are referring to exit fees associated with customer exits, one case directly addressed an exit fee associated with the sale of a public utility. In the *TNAI-TPEC* acquisition case, the PUC denied a customer's request to condition the approval of the acquisition on the payment of an exit fee of $6.3 million, which the customer claimed was unjust profit from past rates.[48] The PUC based its decision on three factors: (1) the acquisition proceeding was not the appropriate vehicle for determining whether past rates were just and reasonable; (2) the customer

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[45] Investopedia, *Exit Fee*, https://www.investopedia.com/terms/e/exit_fee.asp (last visited July 22, 2019).

[46] See *In Re Pennsylvania Power Co.*, 91 Pa. P.U.C. 629 (Sept. 17, 1998); *Pennsylvania Pub. Util. Comm'n*, No. R-00061366, 2007 WL 496359 (Jan. 11, 2007); *In Re Metro. Edison Co.*, 90 Pa. P.U.C. 1 (June 26, 1998)).

[47] 66 Pa. C.S. § 1103(a).

[48] *Application for Auth. to Transfer Control of Trigen-Philadelphia Energy Corp. by the Sale of All of Its Stock, Currently Owned by Trigen Energy Corp., to Thermal N. Am., Inc.*, No. A-130375F5000, 2005 WL 6502674, at 11 (Apr. 7, 2005).

should have filed a complaint for a refund under 66 Pa.C.S.A. §701 and §1312; and (3) the customer failed to prove that the rates in question were unjust or unreasonable.[49] In *TNAI-TPEC*, the PUC did not specifically address whether an exit fee was legal, but the underlying assumption was that an exit fee would be just another condition to the approval of the acquisition that the PUC could impose on the applicants.[50] The *TNAI-TPEC* applicants argued that the exit fee was unjustified and prohibited by the "filed-rate doctrine."[51] However, this argument was based on the prohibition against retroactive ratemaking, not on whether an exit fee itself is unjustified or prohibited.[52]

In their Main Brief, the Joint Applicants state that the I&E proposal amounts to an exit fee. Without offering any legal argument, they then urge the Commission to reject the I&E proposal "because it would be unlawful and ignores relevant facts."[53] Regardless of what the Joint Applicants call the I&E proposal, the PUC has the authority to impose on the applicants, as a condition of the approval of acquisition, a wide range of requirements, including exit fees (if it should deem this as such), that the PUC deems just and reasonable.[54]

Based on the Public Utility Code and precedent cases, the I&E proposal regarding the Goodwin and Tombaugh Gathering Systems is well within the purview of the Public Utility Commission. Exit fees are merely conditions attached to the approval of a sale

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49 *Id.*
50 *Id.*
51 *Id.* at 10.
52 *Id.*
53 Joint Applicants MB, p. 38.
54 66 Pa. C.S. § 1103(a).

and the PUC has the sole authority to determine whether such conditions are just and reasonable. Here, I&E's recommendation is supported by the longstanding safety and ratemaking concerns raised about the Goodwin and Tombaugh gathering lines. SteelRiver was aware of these issues when it purchased the system in 2013, it failed to remedy the UFG and now it is seeking to sell the lines to Aqua who is then attempting to recover the full cost from ratepayers. Indeed, in the 2013 Peoples/Equitable acquisition, I&E made a similar recommendation that benefited SteelRiver as the buyer. There, I&E recommended that the purchase price be reduced by $20.8 million so that SteelRiver had additional funds to remediate the Goodwin and Tombaugh gathering systems. This amount was later reduced to a $5 million contribution from EQT because the parties indicated that Peoples simply needed some time to fix the problems. The only difference between the 2013 proceeding and this proceeding is that we now have a better estimate of the cost to fully replace the gathering lines; however, the principle that the seller bears responsibility for the condition of its system remains sound. Accordingly, it is interesting that SteelRiver was willing to accept the $5 million contribution from EQT in the 2013 acquisition when it was purchasing the Goodwin and Tombaugh Systems; however, now that SteelRiver is selling those systems, it claims that requiring it to make a contribution is unlawful.

Even more concerning about the Joint Applicants' proposal is that on page 40 of their Main Brief the Joint Applicants note that "...the amount of Mr. Cline's proposed withholding is excessive (even after he adjusted it downward from $400 million to $127

million)."[55] However, mere pages before the Joint Applicants had stated that the cost of their proposal (i.e. that the entirety of the Systems be replaced at a cost of at least $120 million with a $13 million rate credit) is modest.[56] It is unacceptable to say that the amount is too large if the utility is being asked to pay it, but merely modest if the ratepayers are being asked to shoulder the burden.

The Joint Applicants note that, generally, the regulatory compact requires that the utility recovers its costs and the utilities' shareholders are entitled to a fair rate of return on the capital investments made. While this is true in most instances, in exchange for customers paying tariff rates for service, a public utility is required to provide safe, adequate and reasonable service.[57] Section 526(a) of the Public Utility Code states:

> The commission may reject, in whole or in part, a public utility's request to increase its rates where the commission concludes, after hearing, that the service rendered by the public utility is inadequate in that it fails to meet quantity or quality for the type of service.[58]

When the quality and safety of service a utility provides is called into question it has been found that it may be acceptable to order the repairs and improvements even though it may

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55 Joint Applicants MB, p. 40.
56 Joint Applicants MB, p. 37.
57 *Pa P.U.C. v. Pennsylvania Gas & Water Co.*, 74 PUR4th 238, 244-255 (1986).
58 66 Pa. C.S. § 526(a).

result in a financial loss to the company. As explained in *Colonial Products Co. v. Pa. PUC*:

> The making of repairs and improvements to meet the duty to render reasonable and adequate service is not necessarily dependent on the profit which may reasonably be expected therefrom; in proper cases such repairs and improvements may be ordered though the immediate result thereof would be a financial loss to the utility.[59]

Therefore, the Joint Applicants argument that I&E's proposal is an impermissible exit fee or somehow represents a regulatory taking is simply untrue. The Commission has concluded that "...a utility is not guaranteed rate increases necessary for a return on its property; it is only entitled to rates sufficient to earn a fair return if it provides adequate service. This is the essence of the regulatory bargain."[60] As evidenced by this decision, the Joint Applicants description of the regulatory compact does not paint the entire picture.

In *National Utilities, Inc. v. Pa. PUC*, the Commonwealth Court affirmed this Commission's determination that a rate increase was not warranted due to the failure of National Utilities to provide adequate service.[61] In reaching its decision the Commonwealth Court looked to other jurisdictions for support. For example, the Commonwealth court looked to the United States Court of Appeals for the DC Circuit in the case *DC Transit Systems, Inc. v. Washington Metropolitan Transit Commission*. The Commonwealth Court cites that decision wherein it was held that there was a definite

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59 *Colonial Products Co. v. Pa. PUC*, 188 Pa. Super 163, 172-173, 146 A.2d 657, 663 (1959).
60 *Pa P.UC. v. Pennsylvania Gas & Water Co.*, 68 PaPUC 191 (1998).
61 *National Utilities, Inc. v. Pa. PUC*, 709 A.2d 972 (1998).

interplay between reasonable rates and quality of service.[62] There the US Court of Appeals noted that granting a fare increase without sufficient assurances that the public would be protected was not warranted and would create a one-sided and unjust burden on the public.[63] In relying on that holding, the Commonwealth Court reached the conclusion that it is acceptable to deny a utility a rate increase when the utility fails to provide adequate service to its customers even if the ultimate result for the utility is a rate of return less that it would have otherwise expected to earn.[64]

Clearly the customers being served off of the Goodwin and Tombaugh Systems are not receiving safe and adequate service. SteelRiver was aware of the concerns surrounding Goodwin and Tombaugh when it acquired those systems in 2013 and it failed to improve those systems in the intervening five years; therefore, requiring SteelRiver to forgo a portion of that profit in order for customers to receive safe and reliable service is in the public interest and consistent with this Commission's prior decisions.

Regarding I&E's primary position that the 2013 Goodwin and Tombaugh Settlement be followed, the Joint Applicants now attempt to argue that the economic test contained therein is unsuitable. It is too late to argue that the economic test as provided for in the 2013 Goodwin and Tombaugh Settlement is inappropriate. This proposal was negotiated and agreed to by Peoples and has already been accepted by this Commission

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62 *Id.* at 977.
63 *Id.* at 977-978.
64 *Id.* at 979.

as suitable. In addition, it appears that both of the Joint Applicants understand that they remain bound by the terms of the 2013 Goodwin and Tombaugh Settlement.[65] As Joint Applicants witness Barbato explained, the 2013 Goodwin and Tombaugh Settlement is the current path forward to resolve these issues.[66]

Under the economic test as contemplated in the 2013 Goodwin and Tombaugh Settlement, it is clear that abandonment of some customers must be examined. This Commission has sometimes found that abandonment is preferable to replacement in situations where the cost of the replacement was very high. In *Groff v. North Penn Gas Company,* North Penn sought to abandon gas service to four customers in Potter Township.[67] The Commission approved North Penn's application for abandonment, finding the economic factors favored abandonment over replacement. As in the present case, North Penn's customers were receiving service from older deteriorated pipe, which had been installed in 1937. The cost of replacing the pipe was $50,000 while annual revenues from the customers totaled only $846.53.[68] As shown by this case, abandonment is not always the easiest or most popular decision, but it is sometimes necessary. To be clear, this does not necessarily imply that the entirety of the Goodwin and Tombaugh Systems must be abandoned, but it shows, just as Mr. O'Brien alluded to, that sometimes the economic solution is to abandon customers when the revenue

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65 Tr. pp. 104, 138, and 172.

66 Tr. p. 172.

67 *Groff v. North Penn Gas Company*, 77 Pa. P.U.C. 203 (1992).

68 *See also, Application of National Fuel Gas Distribution Corporation*, Docket Nos. A-121850F2023 and C-00003500 (Initial Decision issued April 8, 2002); *Application of National Fuel Gas Distribution Corporation*, Docket No. A-121850F2014 (Initial Decision issued November 17, 1997); and *Application of National Fuel Gas Distribution Corporation*, Docket Nos. A-121850F2011 and C-00968108 (Initial Decision issued January 3, 1997).

generated by these customers is insufficient to justify keeping their lines in service.[69] This type of economic analysis is precisely what was agreed to in the 2013 Settlement; however, the current settlement fails to take any cost recovery into account as it requires ratepayers to fund the replacement in full. This recommendation is imprudent and violates both the public interest and the terms of the 2013 Settlement.

c. I&E's Proposal In No Way Violates the Due Process Rights of the Goodwin and Tombaugh Customers.

Once again, the Company misstates I&E's position by saying that I&E recommended "...abandonment of all customers on the G/T systems."[70] This is categorically untrue. Not once has I&E recommended that all customers on the Goodwin and Tombaugh Systems be abandoned. The Joint Applicants also seem to believe that I&E is recommending the Commission apply the same criteria to line extensions as it does to abandonments.[71] As I&E witness Cline explained, the example regarding the main extension test was provided to give context because the economic test from the 2013 Goodwin and Tombaugh Settlement was a similar type of test.[72] As Mr. Cline clearly explained, he never stated that the main extension test should be applied to these customers.[73]

The Joint Applicants go on to claim that I&E's proposal would violate the due process rights of the Goodwin and Tombaugh customers based on the erroneous

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69 Joint Applicants St. 3-R, p. 8.
70 Joint Applicants MB, p. 45.
71 Joint Applicants MB, p. 42.
72 Tr. p. 206.
73 Tr. p. 207.

allegation that I&E has recommended these customers be abandoned through this acquisition proceeding. As noted above, I&E's principal recommendation is that the 2013 Goodwin and Tombaugh Settlement be followed. While following the process outlined in that settlement would necessitate some customers being abandoned, I&E has not once recommended that those customers be abandoned as part of this proceeding. In fact, on cross examination I&E witness Cline explained that abandonments have their own separate proceedings and Goodwin and Tombaugh customers would be afforded due process in those proceedings.[74]

I&E's proposal in no way violates the due process rights of any customers on the Goodwin and Tombaugh Systems. Any customer on those Systems that would potentially be abandoned under the provisions set forth in the 2013 Goodwin and Tombaugh Settlement would still have the assurance and protections contained in an abandonment proceeding which would be wholly separate from the instant acquisition proceeding. Nowhere has I&E suggested otherwise.

d. The Non-Unanimous Settlement Regarding the Goodwin and Tombaugh Systems Is Not In the Public Interest.

As explained above, the non-unanimous settlement places the burden of rehabilitating the Goodwin and Tombaugh Systems onto ratepayers who, specifically the customers on these Systems, have not been receiving safe service. The Commission is well within its rights to determine that, as a result of the failure to provide safe and reliable service, SteelRiver must bear the burden of the repairs. The modest rate credit

[74] Tr. p. 201.

and the commitment to forgo a return on a merely 25% of the capital spent pale in comparison to the large sums ratepayers will expend to fix these unsafe gathering lines.

The Public Utility Code does not limit the conditions that the PUC may impose on public utilities. Indeed, the range of just and reasonable conditions that the PUC has imposed on public utilities as part of its approval of a sale or various other proceedings over the years is wide and varied. A few examples of conditions that the PUC has imposed include:

- an increase of LIURP funding from $ 350,000 to $ 500,000, *In Re UGI Utilities*, Docket No. A-2008-2034045 (Order entered August 21, 2008);
- the maintenance of current charitable contributions for five years, *Id.*;
- a 4% rate reduction, *In Re Pennsylvania Power & Light Co.*, 91 Pa. P.U.C. 532 (Aug. 27, 1998);
- a contribution of $300,000 toward the construction cost of the main extension project, *In Re Consumers Pennsylvania Water Co.-Shenango Valley Div.*, 95 Pa. P.U.C. 5 (Jan. 11, 2001);
- the continuation of various efforts to reduce LUFG, *In Re Columbia Gas of PA*, C-2016-2535307; and
- the freezing of executive pay, *In Re Delaware Sewer Co.*, C-2014-2454751.

In addition to imposing conditions, the PUC also has the authority to reject conditions even in situations such as this where some parties have agreed to a resolution by settlement of various issues. *Glenside Suburban Radio Cab, Inc. v. Pennsylvania Pub. Util. Comm'n*, states "The power to impose just and reasonable conditions necessarily

implies the power to reject conditions, even if imposed by agreement of the parties, which the Commission deems to be unjust and unreasonable."[75]

In this instance the Commission is vested with the authority to reject the non-unanimous settlement as the conditions contained therein produce a result that is unjust and unreasonable for ratepayers. Asking ratepayers to fund this endeavor is neither just, nor reasonable. This Commission has already determined that the resolution in the 2013 Goodwin and Tombaugh Settlement is reasonable and in the public interest. This is I&E's primary position. However, should the Commission determine that instead the entirety of these Systems must be replaced as part of this proceeding I&E has demonstrated above that its proposal to require SteelRiver to contribute $127 million to this effort is neither an impermissible exit fee, nor a regulatory taking.

6. Other conditions impacting Aqua PA customers

Similar to the Peoples Companies, the Joint Applicants identify customer service and low-income commitments as a benefit of this transaction.[76] It is highly speculative that there are any benefits in this regard considering the Joint Applicants note that "...Aqua PA will strive to meet the identified customer service metrics and, if it does not meet a given metric, that there is a course of action to move forward."[77] It appears Aqua PA does not see these commitments as firm commitments, but merely goals to strive for. If these commitments represent merely goals, I&E submits there is no benefit as Aqua

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[75] *Glenside Suburban Radio Cab, Inc. v. Pennsylvania Pub. Util. Comm'n*, 49 Pa. Cmwlth. 523, 526, 411 A.2d 874, 876 (1980).

[76] Joint Applicants MB, pp. 47-48 and 50-51.

[77] Joint Applicants MB, p. 48.

PA is not required to achieve them. Regarding low-income commitments, as noted above, the benefits associated with these commitments must be weighed against the extra costs associated with them. Because of the large cost ratepayers are being asked to contribute related to various commitments contained in the non-unanimous settlement, I&E submits the benefits of these low-income commitments are insufficient to meet the *City of York*, standard.

The other benefit identified by the Joint Applicants for Aqua PA, is the implementation of Peoples SAP system. As I&E explained in its Main Brief, it is certainly clear that Aqua did not need to spend over $4 billion to purchase a natural gas distribution company in order to implement new SAP software. Joint Applicants witness Fox explained that even without this acquisition at some point Aqua's current system would reach the end of its useful life and need to be replaced.[78] OSBA noted that, "...in all likelihood, because of its superiority, it is plausible that Aqua would move toward implementing the SAP platform in the absence of the merger."[79] This begs the very question asked by ALJ Long at hearing, "...if it's something that you would be doing anyway, is that really a benefit of the merger transaction?"[80] I&E submits that this does not rise to the level of affirmative public benefit required by *City of York*. Aqua is a sophisticated company quite capable of implementing SAP software on its own without the help of Peoples. To tout this as the main benefit of an acquisition of this magnitude especially when Aqua has not provided estimates regarding costs or regarding savings, or

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[78] Tr. at 84.
[79] OSBA MB. p. 27.
[80] Tr. at 84.

even the timeframe in which they intend to implement the SAP platform, simply does nothing to overcome the detriments that will be experienced by ratepayers if this acquisition is approved.

7. Other conditions

The Joint Applicants tout the $10 million rate credit contained in the settlement as a benefit of this acquisition.[81] One important aspect of the rate credit that must be considered is that the Joint Applicants provide no calculation or reason for the amount specified. Further with no analysis of the financial impact of the other commitments contained in the non-unanimous settlement, there is no way for the Commission to determine how large or small this $10 million rate credit actually is. Theoretically, if the costs associated with the commitments contained in the non-unanimous settlement are large enough then the rate credit may be so small in comparison that it does not offset enough of those costs to be considered substantial. The Joint Applicants have committed to increasing LTIIP spending by $30 million and paying at least $120 million to replace the Goodwin and Tombaugh Gathering Systems. Just these commitments alone overshadow the rate credit the Joint Applicants are agreeing to provide.

The other commitments the Joint Applicants acknowledge are the commitment to add a director to the Aqua America board who has experience in natural gas and ensure the Peoples Companies are managed by those with natural gas experience. Lastly, the Joint Applicants acknowledge the commitment of Peoples to intervene in any proceeding

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[81] Joint Applicants MB, pp. 51-52.

involving the abandonment of natural gas customers in areas that neighbor Peoples service territory.[82] As to the commitments related to management of Peoples, the Joint Applicants themselves note that these commitments serve merely to maintain the status quo. The Joint Applicants state "[e]ssentially, Aqua America committed to maintain an organization structure at the Peoples Companies in which natural gas operational workers directly report to trained natural gas managers."[83] This is simply the situation as it currently exists at the Peoples Companies today.

Regarding the commitment to intervene if asked in natural gas abandonment proceedings in neighboring service territories, this commitment cannot be viewed as providing any affirmative benefit at all. First, Peoples is only required to enter an appearance, and then, only if requested by a Statutory Advocate. Peoples is obligated to do nothing more than enter said appearance. Further the Commission must be mindful that the cost of litigation is ultimately borne by ratepayers. The costs could be substantial, and the benefits may be non-existent.

None of the purported benefits listed above sufficiently negate the harm that will result from this acquisition. Therefore, I&E continues to believe this acquisition is not in the public interest and the best course of action would be denial of the acquisition.

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82 Joint Applicants MB, pp. 52-53.
83 Joint Applicants MB, p. 52.

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

As I&E explained in its Main Brief, whether this acquisition will result in anticompetitive or discriminatory conduct is not an issue on which I&E took a position.[84]

I&E does, however, reaffirm its position that Peoples exit of the merchant function would not be in the public interest. Therefore, I&E requests that the Commission affirm that Peoples will retain its role as supplier of last resort.

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

I&E's Main Brief discussed the disadvantages the proposed transaction, if approved by the Commission, would have on the employees of the Peoples Companies. Joint Applicants argue that the proposed transaction provides a public benefit by retaining jobs and increasing job opportunities.[85] Joint Applicants go on to state that the proposed transaction will have a positive effect on the employees of the Peoples Companies and Aqua PA and expand job opportunities under the combined ownership.[86]

I&E asserts that the proposed transaction will have the opposite effect on the employees of the Peoples Companies. **[BEGIN CONFIDENTIAL]** [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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84 I&E MB, pp. 37-38.
85 Joint Applicants MB, p. 55.
86 *Id.*

[redacted]

[END CONFIDENTIAL]

The Joint Applicants have not provided any evidence that the transaction will expand the job opportunities for gas and water/wastewater under Aqua's ownership. Since Joint Applicants maintain that both companies will remain the same and operate as usual after closing, any additional job opportunities for either industry would most likely be created absent the transaction. In addition, Aqua touts as benefit the retention of jobs at the Peoples Companies, however, the employees of the Peoples Companies would retain employment absent the transaction. The effect of the transaction on the employees of the Peoples Companies lacks any advantage, the Joint Applicants fail to show any benefit to these employees that would not exist absent Aqua ownership.

E. Whether the Settlement Is In The Public Interest

As evidenced throughout this Reply Brief as well as the I&E and OSBA Main Briefs, the non-unanimous settlement is not in the public interest. The determination that a settlement is in the public interest must be supported by substantial evidence. The only substantial evidence in this proceeding points toward great harm to the Joint Applicants ratepayers. In areas where the settlement does not purport to maintain the status quo, but affirmatively do more than is currently being done there is no economic analysis related

to these provisions. Without being able to examine just how much ratepayers are being asked to fund, it is impossible to find that this settlement is in the public interest.

The Joint Applicants have seriously misconstrued I&E's position regarding the Goodwin and Tombaugh Gathering Systems stating that "...I&E takes issue with the proposal to resolve concerns about the G/T systems embodied in the Settlement because it does not involve the abandonment of certain existing Peoples Natural Gas customers."[87] This is a patently unfair characterization for numerous reasons. First, I&E's position on the non-unanimous settlement was not presented to the parties until service of the I&E Main Brief. Notwithstanding the fact that the Joint Applicants determined I&E's position on a settlement before ever having seen that position explained, the Joint Applicants are simply incorrect. I&E's concern about the resolution of the Goodwin and Tombaugh Systems is simply that the settling parties are requesting the Commission accept a proposal that is not economic[88] or prudent and places a tremendous burden on ratepayers. I&E's position is not, and has never been, as characterized by the Joint Applicants that approval of this acquisition should be conditioned on abandonment of Goodwin and Tombaugh customers.[89] In this regard, I&E would note that while Goodwin and Tombaugh were a large concern, its position that this acquisition be denied was never solely based on what would happen with the Goodwin and Tombaugh Systems, nor could its position be changed by what was done

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87 Joint Applicants MB. p. 56.
88 Joint Applicants St. No. 3-R, p. 8.
89 Joint Applicants MB. p. 56.

with these Systems. I&E's position as it relates to Goodwin and Tombaugh is quite simple. First and foremost, it is I&E's position that the process laid out in the 2013 settlement[90] should be followed which requires that a plan be presented to the Commission to deal with the Goodwin and Tombaugh Gathering Systems that meets the economic test as explained therein.[91] As a safeguard, I&E proposed an alternative recommendation that should the Commission approve this transaction and determine that the entirety of the Goodwin and Tombaugh Systems be replaced, a certain amount of the purchase price be set aside in order to rehabilitate the Systems and not overly burden ratepayers for a situation that was completely out of their control.[92] While I&E certainly recognizes that in some instances abandonment may be necessary, it is blatantly incorrect to characterize I&E's position as being that this acquisition should be approved so long as customers are abandoned from the Goodwin and Tombaugh Systems. Accordingly, I&E's position is that Peoples should be bound to follow settlement that it entered into in 2013, which was negotiated by the parties and approved by the Commission. Using this transaction to attempt to circumvent the terms of the 2013 Settlement that it agreed to and

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

[91] I&E St. 2-SR, p. 3.

[92] *Id.*

further mischaracterize I&E's current position as requiring abandonment of customers is disappointing and disingenuous.

I&E's position remains that regardless of what happens with Goodwin and Tombaugh, the Application even as modified by the non-unanimous settlement must be denied as there are no sufficient affirmative public benefits to warrant approval of this acquisition. Further, as discussed above, Aqua America remains technically unfit to own a natural gas company. The settlement does not cure these deficiencies.

VI. CONCLUSION

For the reasons set forth in this I&E Reply Brief, as well as those presented in the I&E Main Brief, the Bureau of Investigation and Enforcement respectfully requests that the Pennsylvania Public Utility Commission deny the Joint Application. The Commission cannot approve this Settlement unless it finds the benefits to be substantial. As discussed in detail above, the Signatory Parties have not demonstrated that the Joint Application as modified by the Settlement provides substantial affirmative public benefits. Therefore, I&E respectfully requests the Joint Application as modified by the Settlement be denied.

Respectfully submitted,

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Dated: July 25, 2019

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Brief** dated July 25, 2019, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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