

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oca
 /pennoca

FAX (717) 783-7152
consumer@paoca.org

August 12, 2019

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to the Motion to Open Record and Exhibit of the Office of Small Business Advocate in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Darryl A. Lawrence".

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Enclosures:

cc: Honorable Mary D. Long
Office of Special Assistants (email only: ra-OSA@pa.gov)
Certificate of Service
*277367

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE TO
THE MOTION TO OPEN RECORD AND EXHIBIT OF
THE OFFICE OF SMALL BUSINESS ADVOCATE

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

J.D. Moore
Assistant Consumer Advocate
PA Attorney I.D. # 326292
E-Mail: JMoore@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: August 12, 2019

I. INTRODUCTION

On November 13, 2018, Aqua America, Inc. (Aqua America), Aqua Pennsylvania, Inc. (Aqua PA), Aqua Pennsylvania Wastewater Inc. (Aqua PA Wastewater) (collectively, Aqua), Peoples Natural Gas Company LLC, and Peoples Gas Company LLC (collectively, Peoples), filed a Joint Application pursuant to Sections 1102(a)(3) and 2210(a)(1) of the Public Utility Code whereby Aqua America would acquire Peoples. In accord with the procedural schedule, evidentiary hearings were held on June 11, 2019. On June 26, 2019, the Joint Applicants filed a Petition for Approval of Non-Unanimous, Complete Settlement Among Most Parties (Settlement Petition). Also on June 26, 2019, the Office of Consumer Advocate (OCA) submitted its Statement in Support of the Settlement.¹ On July 10, 2019, the Joint Applicants filed a Main Brief in support of the Settlement Petition, and the Bureau of Investigation and Enforcement (I&E) and the Office of Small Business Advocate (OSBA) filed Main Briefs opposed to the Settlement Petition. On July 25, 2019, the OCA filed a Reply Brief in response to the Main Briefs of I&E and OSBA.

On August 2, 2019, the OSBA filed a Motion to Open Record and Exhibit (Motion). In its Motion, the OSBA argues that the record should be reopened to admit OSBA's Supplemental Reply Brief (SR Brief). OSBA argues that the SR Brief should be admitted into the record, specifically to: (1) counter new arguments raised for the first time in OCA's Reply Brief, and; (2) to correct the OCA's mischaracterization of the OSBA's position as to repair of the Goodwin Tombaugh Gathering Systems (GT Systems).

The OCA submits that OSBA's arguments and assertions as to "new and novel" arguments

¹ The OCA notes that at the June 11, 2019 hearings, all Parties agreed that the Settlement Petition and any Statements in Support would be filed on June 26, 2019. Main Briefs would be due July 10, 2019. These dates would enable any Parties opposed to the Settlement Petition ample time to review the complete Settlement terms and the Statements in Support of the other Parties in order to respond to anything contained in those documents in their respective Main Briefs.

being raised for the first time in the OCA's Reply Brief are without merit and are inconsistent with the record in this matter. Similarly, the OCA's portrayal of OSBA's position as to the GT System is consistent in all respects with the OSBA's Main Brief in this matter. Accordingly, on a factual basis alone the OSBA's Motion should be denied.

Further, the OCA submits that OSBA has failed to meet the applicable legal standards to reopen the record and admit its SR Brief. Under Section 5.431(b), a party must show "good cause" as to why additional evidence should be admitted after the close of the record. 52 Pa. Code § 5.431(b). Under Section 5.571, a Party must show that material changes of fact or law have occurred since the close of the record in order to support a petition to reopen the record. 52 Pa. Code §§ 5.571(b), (d). The OCA submits that no material changes of fact or law have occurred that would support reopening the record in this matter.

The OCA's position as to the repair of the GT System has been clear throughout this proceeding as evidenced by OCA expert witness testimony and the OCA's Statement in Support of the Settlement Petition. The OCA's Reply Brief incorporated the substantial evidence of record already supplied by the OCA and the Joint Applicants as to the GT System in order to respond to the Main Briefs of I&E and OSBA. The OCA submits that its Reply Brief as to the GT System is accurate and consistent with the record in all respects. Accordingly, OSBA's Motion should be denied.

II. ANSWER

A. The OCA's Reply Brief Contained No New Or Novel Arguments.

The OSBA's first argument is that the OCA raised a new argument in its Reply Brief, specifically:

To attempt to single out particular segments of existing customers for individualized economic analyses, as I&E and OSBA both propose here, would be

inconsistent with the public interest and adverse to the basic business models that allow public utility systems to exist.

OSBA SR Brief at 5, *citing* OCA R.B. at 21.

OSBA's position as to the GT System is clearly set out in its Main Brief. From OSBA's

Summary of Argument:

Secondly, from a regulatory perspective, the *Non-Unanimous Settlement's* treatment of the Goodwin-Tombaugh natural gas gathering systems ("G/T Systems") is, at best, highly problematic because it is not economic.

OSBA M.B. at 7 (emphasis added). And further:

It is unjust and unreasonable to ask ratepayers to make such an enormous contribution when the overall project so miserably fails an economic test.

OSBA M.B. at 25 (emphasis added).²

In response to the OSBA's position as set out in its Main Brief, the OCA provided a discussion as to why a complete reliance on economics as to *existing utility customers* is misplaced. Both cases cited by the OCA, Harris and Mountain Energy, show that the Commission has viewed these matters with a much wider lens than the pure economic path forward as OSBA supports. Accordingly, the OCA's responsive arguments on this point are proper and reasonable.

Further, the OCA's argument on this issue is consistent with the testimony given by Mr. O'Brien at trial, specifically:

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

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

Tr. at 105.

² As further evidence of the OSBA's position on the GT System "the OSBA is in favor of solving the issues posed by the G/T Systems in an expedient, *economic*, and safe manner ...". SR Brief at 5 (*emphasis added*).

In addition to the foregoing, the OCA submits that the OSBA has failed to meet the legal standards for reopening the record. In numerous cases the Commission has found that reopening the record to allow the introduction of additional evidence under Section 5.571 requires a material change in either the facts or the law, or, that the public interest requires the reopening of the record. See, e.g., Application of Lyft, Docket No. A-2014-2415045, pg.22 (Order entered Feb. 12, 2015). As the Commission further provided in Frompovich v. PECO, Section 5.431(b) requires a showing of good cause as to the material change in fact or law requirement:

Specifically, Ms. Frompovich has not made a showing in her Exceptions that there is reason to believe that conditions of fact or law have so changed since the close of the record in this proceeding as to require, or that the public interest otherwise requires, the reopening of the record.

Frompovich v. PECO, Docket No. C-2015-2474602, pg. 48 (Order entered May 3, 2018).

These are the legal requirements, the showing that must be made by the OSBA to support the Motion. Yet, nowhere in OSBA's Motion or its SR Brief does OSBA explain, illustrate, or point to any material change in fact or law or the public interest element that would support granting the Motion. Rather, in the SR Brief, OSBA argues that the OCA is attempting to introduce new or additional evidence through its Reply Brief. OSBA SR Brief at 3.

OSBA has failed to provide "good cause" to reopen the record. OSBA's additional arguments as to the introduction of new evidence must also fail as the OCA's Reply Brief contained legal argument, directly responsive to the OSBA Main Brief. Accordingly, OSBA's first argument is without merit.

OSBA next argues that the OCA presented another new argument in its Reply Brief, specifically that resolution of the GT System issue "must be viewed as an either/or paradigm." SR Brief at 4. OSBA goes on to argue that "[t]he OCA improperly argued in its Reply Brief that only two possible resolutions of the G/T Systems exist." Id. The OCA submits that there was

nothing “improper” about the OCA’s discussion on this issue, and certainly there is nothing “new” here as to the most hotly debated issue in this entire Application proceeding.

The OCA’s position on the GT System has been clear and consistent throughout this proceeding. In his Direct Testimony, OCA witness Mierzwa testified that:

I recommend that if the Commission approves the acquisition of the Peoples Companies by Aqua, a condition of that acquisition be that Peoples Natural Gas should be required to present a plan that provides for the complete rehabilitation of the Gathering Systems which currently serve approximately 1,550 customers within one year of approval of the acquisition.

OCA St. 4 at 7. Further, in Mr. Mierzwa’s Surrebuttal Testimony he testified that:

Replacement of all the bare steel pipe in the G/T Gathering Systems would allow all existing G/T Gathering System customers to remain on natural gas and would avoid abandonment and conversion to potentially higher cost alternative fuel sources. The Applicants in this proceeding have the burden to establish that the merger would produce substantial, affirmative public benefits. Rehabilitation of the G/T Systems by replacing all the bare steel pipe can be viewed as partially meeting that burden.

OCA St. 4-SR at 2. In addition to the testimony of Mr. Mierzwa, the OCA set out its position in its Statement in Support, submitted two weeks before main briefs were due, as follows:

There are approximately 1600 customers connected to these gathering systems. The Goodwin/Tombaugh matter has undoubtedly been an issue for many years, with little real progress made toward a final solution for these customers and the region in general. Abandonment of such significant numbers of customers—both residential customers and commercial customers—would cause economic disruption and deprive customers of the benefits of regulated service. The agreement reached here, however, will provide a permanent, safe and reasonable resolution to this matter for all concerned stakeholders. As such, the OCA submits that these Settlement provisions contain a comprehensive resolution of this important matter and should be approved without modification.

OCA Statement in Support at 8.

The OSBA argues that “[t]he OCA is wrong that there are only two choices to address the Goodwin/Tombaugh Systems.” SR Brief at 6. OSBA goes on to argue that there are “a multitude of options” to address the GT System. SR Brief at 7. The OSBA’s claims in this area are

inconsistent with the record.

The record in this matter shows that the GT System is in need of repair. As Mr. Gregorini testified, however, strict adherence to the economic test will result in abandonments, specifically:

Q. THE SETTLEMENT ALSO ESTABLISHED THAT AS PART OF THE PLAN TO BE SUBMITTED TO THE COMMISSION, THE GOODWIN/TOMBAUGH GATHERING SYSTEMS MAY BE TRANSFERRED TO PEOPLES IF AN ECONOMIC TEST IS SATISFIED. DO ANY OF THE THREE SCENARIOS THAT YOU DESCRIBED EARLIER IN YOUR TESTIMONY SATISFY THIS ECONOMIC TEST?

A. Only Scenario 3 would satisfy the settlement economic test. Under Scenario 3 Peoples would retain 66 miles (40 miles of bare steel) and 723 customers (43%) and abandon 325 miles (280 miles of bare steel) and convert 972 customers (57%) to alternative fuel sources. Joint Applicants Exhibit JAG-3R presents the results of the economic test for each of the three scenarios described in my rebuttal testimony.

Joint Applicants St. 6-R at 12-13. Either existing public utility customers continue to receive natural gas service off of a system that will be repaired and upgraded, or, a substantial number of these customers will be abandoned and converted to alternative fuels. OSBA has offered no plausible alternative. These are the facts of this matter and no amount of additional pleadings or alternative arguments by the OSBA is going to change these facts.

Moreover, as was discussed previously, nowhere in this section of the SR Brief does OSBA explain, illustrate, or point to any material change in fact or law or the public interest element that would support granting the Motion. Accordingly, the OCA submits that the Motion should be denied.

B. The OSBA's Position In This Matter Was Not Misrepresented By The OCA.

The OSBA argues that the OCA has inaccurately portrayed the position of the OSBA as to the GT System. OSBA argues that it is not in favor of customer abandonments on the GT System, as the OCA alleges in its Reply Brief. SR Brief at 5. The OCA submits that the record evidence

in this matter fails to provide support for OSBA's argument on this issue.

A fair reading of the OSBA's Main Brief provides several conclusions. One, the OSBA advocates for the denial of both the Application and the Settlement. OSBA M.B. at 5-7. As to the GT System issue, the OSBA supports following the procedures and the "economic test" as set out in the Peoples/Equitable 2013 Settlement. OSBA M.B. at 22-26. Notwithstanding these facts, in its SR Brief the OSBA argues that "there is no record evidence that the OSBA has ever advocated for the abandonment of customers served on the G/T Systems." SR Brief at 9. The OCA submits that the OSBA's latest position on this issue is unsupported by the record.

As part of the 2013 Peoples/Equitable Settlement, Peoples agreed to perform system-wide assessments on the GT System and then come up with a proposal as to how those systems could be rehabilitated. That proposal would have to be structured to fit within the "economic test" as also set out in the 2013 Peoples/Equitable Settlement. See Joint Applicants St. 6-R at 6-13. Although no proposals have been formally submitted to Gas Safety, the OSBA and the OCA as the 2013 Peoples/Equitable Settlement required, Mr. Gregorini's Rebuttal Testimony clearly set out that the only option that would meet the economic test is "Scenario 3". Joint Applicants St. 6-R at 12. As Mr. Gregorini testified, Scenario 3 would result in 972 customers being abandoned. Id.

The OSBA supports returning to the process as set out in the 2013 Peoples/Equitable Settlement. OSBA M.B. at 25-26. The OSBA supports repairing the GT System, only to the extent that it is "economic." OSBA M.B. at 5, 25. Scenario 3 is the only path forward under the 2013 Peoples/Equitable Settlement that meets the "economic test", as Mr. Gregorini testified. Joint Applicants St. 6-R at 12-13. Scenario 3 will result in the abandonment of 972 customers. Id. These are the facts of record and the conclusion to be drawn from these facts is clear.

C. Conclusion.

The OSBA's arguments and assertions as to "new and novel" arguments being raised for the first time in the OCA's Reply Brief are without merit and are inconsistent with the record in this matter. The OSBA has failed to meet the applicable legal standards to reopen the record and admit its SR Brief. Accordingly, the OSBA's Motion should be denied.

III. CONCLUSION

For the reasons set forth in this Answer, the Office of Consumer Advocate respectfully requests that the OSBA's Motion be denied.

Respectfully Submitted,

/s/ Darryl A. Lawrence

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

J.D. Moore
Assistant Consumer Advocate
PA Attorney I.D. # 326292
E-Mail: JMoore@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Fl., Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

DATE: August 12, 2019

277288

CERTIFICATE OF SERVICE

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

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

Dated this 12th day of August 2019.

SERVICE BY E-MAIL AND INTER-OFFICE MAIL

Erika L. McLain, Esquire
Carrie B. Wright, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
Counsel for I&E

SERVICE BY E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

Erin K. Fure, Esquire
Office of Small Business Advocate
Commerce Building
300 North Second Street, Suite 202,
Harrisburg, PA 17101
Counsel for OSBA

David P. Zambito, Esquire
Jonathan Nase, Esquire
Cozen O’ Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
Counsel for Peoples Gas Company

Kimberly Joyce, Esquire
Alexander R. Stahl, Esquire
762 West Lancaster Avenue
Bryn Mawr, PA 19010
Counsel for Aqua America, Inc.

William H. Roberts II, Esquire
Peoples Service Company, LLC
375 North Shore Drive, Suite 600
Pittsburgh, PA 15212
Counsel for Peoples Gas Company, LLC

Alan M. Seltzer, Esquire
Tanya C. Leshko, Esquire
Buchanan, Ingersoll & Rooney, P.C.
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
Counsel for Equitrans, L.P.

Michael A. Gruin, Esquire
Timothy K. McHugh, Esquire
Stevens & Lee
17 North Street, 16th Floor
Harrisburg, PA 17101
Counsel for Duquesne Light Company

Todd S. Stewart, Esquire
Hawke, McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
*Counsel for Natural Gas Suppliers Parties
and The Retail Energy Supply Association*

Melvin L. Vatz, Esquire
247 Fort Pitt Boulevard, 4th Floor
Pittsburgh, PA 15222
*Counsel for Laborers' District Council of
Western Pennsylvania*

Kevin J. Moody, Esquire
Pennsylvania Independent Oil & Gas
Association
212 Locust Street, Suite 300
Harrisburg, PA 17101-1510
Representing PIOGA

Patrick M. Cicero, Esquire
Elizabeth R. Marx, Esquire
John W. Sweet, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
Counsel for CAUSE-PA

Daniel Clearfield, Esquire
Deanne O'Dell, Esquire
Kristine Marsilio, Esquire
Eckert, Seamans, Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
*Counsel for Direct Energy Business Marketing LLC
& Direct Energy Small Business, LLC*

David T. Fisfis, Esquire
Michael Zimmerman, Esquire
Tisheikia E. Williams, Esquire
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
Counsel for Duquesne Light Company

Linda R. Evers, Esquire
Stevens & Lee
111 North Sixth Street
Reading, PA 19601
Counsel for Duquesne Light Company

Brian Petruska, General Counsel
LiUNA, Mid-Atlantic Region
11951 Freedom Drive, Suite 310
Reston, VA 20190
*Representing Laborers' District Council of
Western Pennsylvania*

Scott J. Rubin, Esquire
333 Oak Lane
Bloomsburg, PA 17815
*Counsel for Utility Workers Union of
America, Local 612*

Matthew Eggerding, Esquire
Equitrans, L.P.
2200 Energy Drive
Cannonsburg, PA 15317
Representing Equitrans, L.P.

Michael W. Hassell, Esquire
Michael W. Gang, Esquire
Garrett P. Lent, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101
Counsel for Aqua America, Inc.

/s/ Darryl A. Lawrence

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
Email: DLawrence@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
Email: HBreitman@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: August 12, 2019
*277368

J.D. Moore
Assistant Consumer Advocate
PA Attorney I.D. # 326292
Email: JMoore@paoca.org

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
Email: CHoover@paoca.org