

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua America Inc., Aqua : A-2018-3006061
Pennsylvania Inc., Aqua Pennsylvania Wastewater :
Inc., and Peoples Natural 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 by :
Way of the Purchase of All of LDC Funding LLC's :
Membership Interests by Aqua America Inc. :

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

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

RECOMMENDED DECISION

HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY

(NON-PROPRIETARY)

Before
Mary D. Long
Administrative Law Judge

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I. INTRODUCTION

This decision recommends the approval of certificates of public convenience to Aqua America Inc. to effect the acquisition of the Peoples Companies, as modified by the terms of a non-unanimous settlement petition. The Joint Applicants have satisfied their burden of proof and have demonstrated that the acquisition of the Peoples Companies by Aqua America Inc. provides substantial affirmative benefits to the public.

II. HISTORY OF THE PROCEEDINGS

On November 13, 2018, Aqua America Inc., Aqua Pennsylvania Inc., Aqua Pennsylvania Wastewater Inc., along with Peoples Natural Gas Company LLC, Peoples Natural Gas Company LLC - Equitable Division, and Peoples Gas Company LLC (collectively, Joint Applicants) filed a joint application for all of the authority and necessary certificates of public convenience to approve a change in control of the Peoples Companies by way of the purchase of all of LDC Funding LLC's (Funding) membership interests by Aqua America Inc. (Aqua America or Aqua).¹

On November 19, 2018, the Commission issued a Secretarial Letter that acknowledged receipt of the Application and directed Joint Applicants to publish notice of the Application once in a newspaper having a general circulation in the area involved and file proof of publication with the Commission on or before December 31, 2018. The letter also indicated that notice of the Application would be published in the *Pennsylvania Bulletin* on December 1, 2018, and that the deadline for filing protests and petitions to intervene was December 31, 2018.

The Bureau of Investigation & Enforcement (BIE) and Office of Consumer Advocate (OCA) each filed notices of appearance. The Office of Small Business Advocate (OSBA) filed a notice of intervention. Petitions to intervene were filed by Utility Workers Union of America, Local 612 (UWUA Local 612); Laborer's District Council of Western Pennsylvania; Pennsylvania Independent Oil & Gas Association (PIOGA); United States Steel

¹ The acquisition is hereafter referred to as the "Proposed Transaction."

Corporation; Equitrans, L.P.; Duquesne Light Company; Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Dominion Energy Solutions, Inc. and Shipley Choice LLC d/b/a Shipley Energy (NGS Parties); Retail Energy Supply Association (RESA); Direct Energy Business Marketing, LLC and Direct Energy Small Business, LLC (collectively, Direct Energy).

A prehearing conference was held on Friday, January 18, 2019. Counsel for all the parties appeared. The parties agreed to a litigation schedule which included the filing of written testimony and evidentiary hearings in Harrisburg, beginning on June 11, 2019. A prehearing order memorialized the matters agreed upon and was served on January 24, 2019.

The Petitions to Intervene filed by UWUA Local 612; PIOGA; United States Steel Corporation²; Equitrans, L.P.; Duquesne Light Company; CAUSE-PA; RESA; Direct Energy were granted at the prehearing conference.

On June 11, 2019, hearings were held in the proceeding. Terms of the non-unanimous settlement were provided as Settlement Parties Joint Ex. No. 1, and witnesses for Joint Applicants, BIE and OSBA were cross-examined. Cross-examination included questions involving provisions of the non-unanimous settlement.

The prehearing conference and evidentiary hearing resulted in a transcript of 246 pages.

Pursuant to an agreement of the parties, the Administrative Law Judge (ALJ) directed that the Non-Unanimous Joint Petition for Settlement (Settlement) be filed no later than June 26, 2019, and that parties opposing the Settlement provide comments on the proposed settlement as part of their main briefs.

² US Steel filed a petition for leave to withdraw their intervention on February 6, 2019, which was granted by interim order dated February 19, 2019.

The Settlement and statements in support were filed as directed. Main briefs were filed by the Joint Applicants, BIE, and OSBA on July 10, 2019;³ and reply briefs were filed by the Joint Applicants, BIE, OCA, OSBA and CAUSE-PA on July 25, 2019.

The record was closed by interim order dated July 30, 2019. On August 2, 2019, OSBA filed a motion to reopen the record in order to admit a supplemental reply brief to address issues raised in the reply briefs of the Joint Applicants and OCA. The Joint Applicants and OCA filed answers opposing the motion on August 12, 2019. By interim order dated August 20, 2019, the motion was denied.

Contents of the Record

On February 11, 2019, the Joint Applicants filed a motion for a protective order which was not opposed by any party. The motion was granted on February 14, 2019. The parties filed direct, rebuttal, surrebuttal and written rejoinder testimony. Pursuant to the protective order some of this material was designated as “Confidential” and “Highly Confidential.” Additionally, the Joint Applicants and statutory advocates pre-served testimony designated as “Highly Confidential – Statutory Advocates Only.” The other parties were notified of this designation by cover letter. No party objected to this designation. Further, no party objected to the admission of this material into the evidentiary record. A table of the testimony and its designation is included as an appendix to this decision.

Portions of the testimony at the June 11, 2019 hearing were designated as “Highly Confidential – Statutory Advocates Only” and these pages were appropriately marked by the court reporter.

The briefs of the statutory advocates and the Joint Applicants refer to this material as well and are labelled accordingly.

³ The Joint Applicants and BIE filed Public and Confidential versions of their Main Briefs; OSBA filed Public, Confidential and Highly Confidential – Statutory Advocate Only versions.

III. FINDINGS OF FACT

1. Aqua America Inc. (Aqua America or Aqua) is a water and wastewater utility holding company that currently provides service through its operating subsidiaries in Pennsylvania, Ohio, North Carolina, Illinois, Texas, New Jersey, Indiana and Virginia. Aqua America's subsidiaries provide drinking water and wastewater treatment infrastructure and services, and have substantial experience providing public utility service via pipes and pipelines. (Joint Applicant Ex. DJS-1⁴ at 5-6.)

2. Aqua America is the second largest investor-owned water utility in the country and is a financially strong owner and manager of pipe-based utility assets in the United States. (Joint Applicants Ex. DJS-1 at 21.)

3. Aqua Pennsylvania Inc. (Aqua PA) is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua PA is a wholly-owned subsidiary of Aqua America. Aqua Pennsylvania Wastewater Inc. (Aqua PA Wastewater) is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua PA Wastewater is a wholly-owned subsidiary of Aqua PA.⁵ (Joint Applicant Ex. DJS-1 at 6.)

4. Aqua America is a publicly traded company. Aqua America, and Aqua PA, are based in Bryn Mawr, Pennsylvania. (Joint Applicants Ex. DJS-1 at 7; N.T. 187-188.)

5. Aqua America owns and operates 1,486 water systems across its eight-state footprint, producing more than 82 billion gallons of quality drinking water in 2017. (Joint Applicants Ex. DJS-1 at 21.)

⁴ Joint Applicants Ex. DJS-1 is the Application filed on November 13, 2018.

⁵ Unless otherwise specified herein, references to Aqua PA also include Aqua PA Wastewater.

6. 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 Applicants St. 1 (REVISED) at 9-10).

7. Through its operating subsidiaries in eight states, Aqua America has over \$5.4 billion in utility assets, and \$809 million in annual revenues. (Joint Applicants St. No. 2 at 3.)

8. Roughly 74% of Aqua America's income comes from its regulated Pennsylvania operations (Joint Applicant Ex. DJS-1 at 113.)

9. Aqua PA, and its corporate predecessor Philadelphia Suburban Water Company, have owned and operated water systems in Pennsylvania for over 130 years. (Joint Applicants St. 1 at 9.)

10. Aqua PA and Aqua PA Wastewater are applicants for purposes of the Proposed Transaction because they are the public utility affiliates of the acquiring entity, Aqua America. (Joint Applicant Ex. DJS-1 at 6.)

11. Aqua PA is a "public utility" as defined under Section 102 of the Code, 66 Pa.C.S. § 102. Aqua PA furnishes water service to approximately 435,000 water customer accounts and wastewater service, through Aqua PA Wastewater, to approximately 24,000 wastewater customer accounts (representing a population of approximately 1.4 million people) throughout Pennsylvania. (Joint Applicant Ex. DJS-1 at 6.)

12. As a publicly-traded company, Aqua America has access to equity capital from a broad range of investors through highly-liquid public markets. (Joint Applicants St. 2-Rat 21-22.)

13. Aqua America's investors range from small individual investors to large investment funds, including mutual funds. (Joint Applicants St. 2-R at 32.)

14. This access to equity was recently reaffirmed when Aqua America raised approximately \$2.7 billion in equity capital to finance the Proposed Transaction, with public demand of nearly four times the supply raised publicly. (Joint Applicants St. 2-R at 9, 22.)

15. Access to equity will be even greater in the future after Aqua America becomes a larger public utility. (OSBA Ex. IEc-3, response to OSBA I-7.)

16. Aqua America also has access to debt capital both through private placements (typically undertaken at the utility subsidiary level) and public market debt (Joint Applicants St. 2-Rat 12, 22.)

17. The ability to raise public market debt was recently demonstrated when Aqua America raised \$436 million in debt to finance the Proposed Transaction, in an offering that was more than four times oversubscribed. (Joint Applicants St. 2-R at 12; N.T. 127-128.)

18. Peoples Natural Gas Company LLC is a limited liability company formed under the laws of the Commonwealth of Pennsylvania for the purpose of providing natural gas transmission, distribution, and supplier of last resort services subject to the Commission's regulatory jurisdiction. (Joint Applicant Ex. DJS-1 at 7.)

19. Peoples Natural Gas Company LLC is a wholly-owned subsidiary of PNG Companies LLC (PNG), indirectly owned by SteelRiver Infrastructure Fund North America LP (SRIFNA) and an affiliated fund, which are managed by SteelRiver Infrastructure Associates LLC and its affiliated investment management entities (collectively SteelRiver). (Joint Applicant Ex. DJS-1 at 7.)

20. Peoples Natural Gas Company LLC is a "public utility" and a "natural gas distribution company" as those terms are defined in Sections 102 and 2202 of the Code,

66 Pa.C.S. §§ 102, 2202. Peoples Natural Gas, including its Equitable Division, provides natural gas services to approximately 622,000 customers. (Joint Applicant Ex. DJS-1 at 8.)

21. Peoples Gas, formerly Peoples TWP LLC, is a limited liability company formed under the laws of the Commonwealth of Pennsylvania for the purpose of providing natural gas transmission, distribution, and supplier of last resort services subject to the Commission's regulatory jurisdiction. Peoples Gas is a wholly-owned subsidiary of PNG. (Joint Applicant Ex. DJS-1 at 9.)

22. Peoples Gas is a "public utility" and a "natural gas distribution company" as those terms are defined in Code Sections 102 and 2202, 66 Pa.C.S. §§ 102, 2202. Peoples Gas provides natural gas services to approximately 61,000 customers. (Joint Applicant Ex. DJS-1 at 9.)⁶

23. The Peoples Companies are indirectly owned and managed by SteelRiver, a private investment fund. (Joint Applicants Ex. DJS-1 at 7-10.)

24. SteelRiver manages infrastructure investments throughout North America. (Joint Applicant Ex. DJS-1 at 9.)

25. Funding is a Delaware limited liability company and a wholly-owned direct subsidiary of LDC Parent LLC (LDC Parent), which is indirectly owned by SRIFNA and an affiliated fund managed by SteelRiver. Funding directly owns a 100% interest in LDC Holdings LLC (Holdings), which in turn owns a 100% interest in PNG. (Joint Applicant Ex. DJS-1 at 10.)

26. PNG is a limited liability company organized, validly existing, and in good standing under the laws of Delaware. PNG directly owns a 100% interest in the Peoples Companies. (Joint Applicant Ex. DJS-1 at 10.)

⁶ Hereafter, Peoples Natural Gas, including its Equitable Division, and Peoples Gas are referred to collectively as the "the Peoples Companies."

27. The Peoples Companies currently have access to equity from the finite number of investors in the SteelRiver equity funds and debt from private placements to debt-buying life insurance companies. (Joint Applicants St. 2-R at 21.)

The Transaction

28. Under the terms of the Purchase Agreement, LDC Parent will sell, convey, transfer, assign and deliver to Aqua America all of the issued and outstanding membership interests in Funding. Funding currently owns all of the authorized, issued, and outstanding limited liability interests in Holdings, which in turn owns all of the authorized, issued, and outstanding limited liability members in PNG. (Joint Applicant Ex. DJS-1 at 10-11; Joint Applicant Ex. DJS-2, PUBLIC Appendix A-2.)

29. PNG is the sole owner of the authorized, issued, and outstanding limited liability interests of the Peoples Companies, as well as other non-jurisdictional natural gas utilities and service providers. (Joint Applicant Ex. DJS-1 at 10-11; Joint Applicant Ex. DJS-2, Appendix A-2.)

30. At the closing of the Proposed Transaction, Funding, its direct subsidiary (Holdings), and indirect subsidiary (PNG) will become wholly-owned direct and indirect subsidiaries of Aqua America. (Joint Applicant Ex. DJS-1 at 11 and Appendix G.)

31. No new intermediate corporate entity will be created between Aqua America and Funding. (Joint Applicant Ex. DJS-1 at 11.)

32. The Proposed Transaction will not result in any change of ownership associated with Aqua PA. (Joint Applicant Ex. DJS-1 at 11.)

33. The Proposed Transaction also involves ownership changes associated with certain non-jurisdictional entities owned by PNG. (Joint Applicant Ex. DJS-1 at 12-13; Joint Applicants St. 1 (REVISED) at 5-6.)

34. Highly-experienced teams will continue to lead the separate operations of Aqua PA and the Peoples Companies; water/wastewater operators will report to water/wastewater supervisors, managers and directors and natural gas operators will report to natural gas supervisors, managers and directors. (Joint Applicants St. 1-R at 29-31.)

35. The water/wastewater and natural gas subsidiaries will have their own presidents, who will report to Aqua America management. (Joint Applicants St. 2-R at 29-30; *see also* HIGHLY CONFIDENTIAL – STATUTORY ADVOCATES ONLY Joint Applicants Ex. Nos. CHF-3R and CHF-4R.)

Purchase Price and Financing

36. The consideration to acquire Funding from LDC Parent is a base price of \$4.275 billion, which includes a projected \$1.3 billion of assumed debt, as adjusted pursuant to the terms of the Purchase Agreement. (Joint Applicant Ex. DJS-1 at 13; Joint Applicant St. 1 (REVISED).)

37. The purchase price also includes approximately \$2 billion in goodwill. (N.T. 82.)

38. Aqua America examined the Proposed Transaction using a variety of financial analyses, including the common Discounted Cash Flow (DCF) method, to measure the long-term financial value of the acquisition. (Joint Applicants St. 2-R at 5.)

39. Aqua America has already secured the necessary debt and equity capital to finance the purchase price of the Proposed Transaction. (Joint Applicants St. 2 at 4-5; *see also* Joint Applicants St. 2-R at 3-17.)

40. Both the equity and debt securities were about four times oversubscribed. (Joint Applicant St. 2-R at 9, 12; N.T. 127-28.)

41. The purchase price paid for SteelRiver's equity is about three times book value. (See Joint Applicants Ex. DJS-2R.)

42. The premium to book value (goodwill) being paid in the Proposed Transaction is consistent with other recent utility transactions. (Joint Applicants St. 2-R at 5; Joint Applicants Ex. DJS-2R.)

43. 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 Applicants St. 2-R at 9.)

44. Aqua America's goodwill on its balance sheet would increase by an amount equal to approximately 15% of the combined company's enterprise value. (Joint Applicants St. 2-R at 5.)

45. None of the goodwill generated by the Proposed Transaction will be held by the utility subsidiaries. (Joint Applicants St. 2-R at 13.)

46. The financing of the transaction was structured to maintain strong investment grade credit ratings. (Joint Applicants St. 2 at 5; Joint Applicants St. 2-R at 6, 7-8, 11-12.)

47. As of the hearing, purchasers of Aqua America stock in the current market are paying a market price in excess of three times Aqua America's book value. (Joint Applicants St. 2-R at 9.)

48. The Proposed Transaction will ultimately be accretive to Aqua America's earnings. (Joint Applicant St. 2-R at 6-10.)

Goodwin and Tombaugh Gathering Systems

49. The Goodwin and Tombaugh Gathering Systems, located in Greene and Washington Counties, consist of 262 miles and 106 miles respectively of gathering line. (BIE St. 2 at 3-4; Joint Applicants St. 5-R at 2.)

50. The Goodwin and Tombaugh Gathering systems are held by PNG Gathering, LLC, a non-utility entity and an affiliated sister company of the Peoples Companies. (Joint Applicants St. 6-R at 4.)

51. A total of 1,695 customers are served on the Goodwin and Tombaugh gathering systems. (Joint Applicants St. 6-R at 4; BIE St. 2 at 3-4.)

52. The customers on these systems are distribution customers of Peoples Natural Gas Company LLC and are supplied from 109 active producer supply taps, four interstate interconnects, and five Company interconnects. (Joint Applicants St. 6-R at 4.)

53. The median household income in Greene County is \$40,498. (Joint Applicants St. 5-R at 2.)

54. The median household income in Washington County is \$49,697. (Joint Applicants St. 5-R at 2.)

55. During 2014, the Peoples Companies mowed rights-of-way, leak surveyed the lines throughout these systems, walked the systems in order to GPS-locate facilities and meter locations, placed all facilities into the company's GIS mapping system, replaced and installed line markers, established eight new odor inspection sites, initiated quarterly odor inspections, placed all facilities into PA OneCall System and incorporated the facilities into the Peoples Companies' damage prevention program. (Joint Applicants St. 6-R at 5; *see also* BIE St. 2 and Ex. 2.)

56. Since 2014, the Peoples Companies added all lines to a three-year cycle program and have been classifying, grading and repairing leaks according to its leak management program. (Joint Applicants St. 6-R at 5.)

57. The Peoples Companies has abandoned eight miles of bare steel pipeline and installed two miles of new plastic line segments where repairs were not possible. (Joint Applicants St. 6-R at 5.)

58. The Peoples Companies have completed the investigation activities contemplated by the 2013 Equitable Settlement but have not yet submitted the assessment to the Commission. (Joint Applicant St. 6-R at 8; N.T. 104; BIE St. 2 at 7-8; *see* Docket No. A-2013-2353647.)

59. Beginning in 2017 the Peoples Companies initiated the assessment of data to generate an assessment of the systems to identify various possible scenarios for further economic and customer impact evaluations. (Joint Applicants St. 6-R at 7-8.)

60. Only one of the developed scenarios, Scenario 3, would pass the economic test of the 2013 Equitable Settlement. (Joint Applicant St. 6-R at 12-13.)

61. Scenario 3 would permit the Peoples Companies to retain 66 miles of pipeline and 723 customers. The remaining 325 miles of pipeline and 972 customers would be abandoned. (Joint Applicants St. 6-R at 12-13; Ex. JAG-3-R.)

62. As of 2018 the lost and unaccounted for level for the Goodwin System was 83.52% and for the Tombaugh System was 43.95%. (BIE St. 1 at 8.)

63. Currently, the Peoples Companies anticipate that the number of customers remaining on at-risk pipe will be 62% of the original number served off of at-risk pipe, at the end of 2021. (Joint Applicant St. 5-R at 18-21.)

At-Risk Pipeline Replacement

64. The percentage of identified at-risk pipeline in the Peoples Companies system number will be reduced to 25% by 2026, under the Peoples Companies' current Long Term Infrastructure Improvement Plan (LTIIP)(Joint Applicant St. 5-R at 18-21.)

65. The percentage of identified at-risk pipeline in the Peoples Companies system will be further reduced by replacement of an additional 25 miles of pipe per year. (Joint Applicants St. 5-R at 21.)

66. Aqua America has invested \$350 million in infrastructure replacement in Pennsylvania, typically replacing 150-170 miles of pipe per year. (N.T. 88.)

67. The Proposed Transaction will provide expanded job opportunities for both gas and water/wastewater employees under combined ownership. (Joint Applicants Ex. DJS-1 at 30-31.)

68. The Joint Applicants' commitment to accelerate the replacement of risky pipe, will result in approximately 100 new jobs, inclusive of contracted labor and the Peoples Companies' employees, being added in Western Pennsylvania. (Joint Applicants St. 5-R at 18-21.)

Implementation of SAP

69. SAP implementation will allow Aqua PA to run a fully integrated contact center system that allows a Customer Service Representative to have immediate access to SAP customer information through automated screen pops, similar to the Peoples Companies, and would create more personalized customer interactions through additional communications channels and an online customer portal. (Joint Applicants St. 4-R at 10-11.)

70. The costs associated with implementing the Peoples Companies' SAP system at Aqua America's operations would be recovered through rates. (Joint Applicants St. 2-R at 27.)

Other Issues

71. Low-income customers make up a significant portion of the Joint Applicants' respective residential customer base. (CAUSE-PA St. 1 at 10.)

72. Conservatively, CAUSE-PA's witness Harry S. Geller estimated that there were at least 200,000 low-income customers across both companies' geographic service territories – and likely many more. (CAUSE-PA St. 1 at 10-12.)

73. The Proposed Transaction is expected to produce long-term savings, or process improvements, in a number of back-office functions, such as finance and accounting, human resources, regulatory functions, legal functions, information technology, payroll and supply chain. (Joint Applicants St. No. 4-R at 4.)

74. Other areas of overlap include: fleet management, purchasing, capital planning, meter reading, customer field services, engineering management, budgeting, planning, execution and rate recovery of capital. (Joint Applicants St. No. 4-R at 4.)

75. Although the Joint Applicants have not specifically quantified the benefits of consolidation and best practices review, Aqua America's experience with numerous utility acquisitions is that savings or process improvements will be developed. (Joint Applicants St. No. 4 (REVISED) at 10-13.)

76. Aqua PA currently participates in various volunteer opportunities and environmental initiatives, and supports non-profit organizations throughout the 32 Pennsylvania counties it serves. (Joint Applicants Ex. DJS-1 at 32.)

77. In addition, community commitment is one of the Peoples Companies' core values and the Peoples Companies have an active community presence in Western Pennsylvania. (Joint Applicants Ex. DJS-1 at 33.)

78. If the Joint Applicants' proposal to modify the Peoples Companies current LTIP is approved by the Commission, Aqua America estimates that approximately 100 new employees, inclusive of contracted labor and Peoples Companies employees, will be added. (Joint Applicant St. 5-R at 18-21.)

79. The Peoples Companies employs a "hybrid" approach to their pipeline infrastructure modernization projects, utilizing third-party contractors for installation of mains, services and restorations. Over 70% of the work on pipeline installation and throughout the Peoples Companies' gas system are performed by contractors. (LDC St. 1 at 3.)

IV. DISCUSSION

A. Prior Acquisitions and Reorganizations of the Peoples' Companies

The Peoples' Companies -- Peoples Natural Gas, including its Equitable Division, and Peoples Gas -- have changed owners and consolidated their operations several times in the past decade or so, effectively bringing them under the SteelRiver umbrella in one form or another. As explained in the Application, SteelRiver includes SteelRiver Infrastructure Fund North America LP (SRIFNA), and an affiliated fund, which are managed by SteelRiver Infrastructure Associates and its affiliated management entities. None of the applications have included SteelRiver directly, but rather have involved the acquisition of interests from various holding companies, which are ultimately controlled by SteelRiver. A short review of these transactions may be helpful to put the current proposal into context.

In 2009, the Commission approved the transfer of stock of Peoples Natural Gas Company to Peoples Hope Gas Companies, LLC. Peoples Hope Gas Company was a wholly-owned subsidiary of LDC Holdings LLC, which is wholly owned by LDC Funding LLC which

in turn is wholly owned by SteelRiver.⁷ The Commission reviewed the fitness of Peoples Hope Gas Company, largely in the context of concerns regarding the financial strength of SteelRiver and concerns over the length of time that Peoples Hope Gas Company, and in turn SteelRiver, intended to hold Peoples Natural Gas Company. The Commission accepted Peoples Hope Gas Company assurances that SteelRiver intended to hold the Peoples Natural Gas Company on a “long-term” basis and that the purpose of the acquisition was not to “‘buy and flip’ [the company] for a quick profit.”⁸

SteelRiver, through subsidiaries, acquired another Western Pennsylvania natural gas utility in 2011. In that application, LDC Holdings II LLC, also an indirect subsidiary of SteelRiver, sought ownership of T.W. Phillips Gas and Oil Company (T.W. Phillips). The Commission approved the transaction, finding that by virtue of their operation of Peoples Natural Gas Company, both LDC Holdings II LLC and SteelRiver were technically and legally fit to operate T.W. Phillips. This coupled with the benefits which would be generated by the transaction was sufficient for the Commission to find that the acquisition was in the public interest.⁹ The name of T.W. Phillips was later changed to Peoples Gas Company LLC.¹⁰

The final addition to the Peoples Companies occurred in 2013, with the acquisition of Equitable Gas Company, LLC (Equitable) by PNG Companies LLC (PNG).

⁷ *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 (Opinion and Order entered November 19, 2009) (2009 Peoples Natural Gas Application).

⁸ *Id.* at p. 37.

⁹ *Joint Application of T.W. Phillips Gas and Oil Company, TWP INC. and LDC Holdings II LLC for approval of a change in control of T.W. Phillips Gas and Oil Company from TWP Inc. to LDC Holdings II LLC, an indirect subsidiary of SteelRiver Infrastructure Fund North America LP.*, Docket A-2010-2210326 (Initial Decision adopted by Order entered May 23, 2011)(2011 TWP Application).

¹⁰ The Commission approved the internal reorganization and transfer of Peoples Gas from LDC Holdings II LLC to PNG Companies LLC, an affiliated holding company. Both LDC Holdings II and PNG were owned by LDC Funding LLC, which is ultimately owned by SteelRiver. The application was unopposed, and the Commission determined that the proposal reflected a simplification of Peoples Gas’ corporate structure and that all of the entities involved in the transaction had been found financial and technically fit to operate the public utility entities. Accordingly, the application was approved. *Application for Approval of the Transfer of Membership Interests in Peoples Gas Company LLC from LDC Holdings II LLC to PNG Companies LLC*, Docket No. A-2017-2624578 (Order entered November 8, 2017).

Through a series of applications approved by the Commission, PNG acquired the membership interests of Equitable, which was an indirect subsidiary of EQT Corporation (EQT) along with the transfer of various assets¹¹ between the Peoples Companies gas distribution subsidiaries of PNG and EQT. After reviewing the fitness of the acquiring entities including SteelRiver, as the ultimate parent of PNG, along with the benefits as described in the application and the settlement petition, the Commission approved the transaction.¹²

And now, in 2019, Aqua America seeks to acquire the interests of all of the Peoples Companies in a stock purchase as described below.

B. The Transaction

1. Regulatory Approvals Sought

Through the Joint Application, the Joint Applicants seek Commission approval for all of the authority and necessary certificates of public convenience to approve a change in control of the Peoples Companies by way of the purchase of all of LDC Funding LLC's membership interests by Aqua America Inc. The owners of the Peoples Companies, LDC Funding LLC, and Aqua America will engage in a single transaction that transfers control of the Peoples Companies to Aqua America. The contemplated transaction will be effectuated pursuant to a Purchase Agreement. The consideration to acquire the Peoples Companies by Aqua America is a base price of \$4.275 billion, which includes a projected \$1.3 billion of assumed debt, as adjusted pursuant to the terms of the Agreement. At the conclusion of the transaction, the Peoples Companies will become indirect subsidiaries of Aqua America. There will be no change in ownership of Aqua America's water and wastewater subsidiaries, collectively referred to as Aqua PA. The Peoples Companies and Aqua PA will continue to provide their respective utility services in their existing service territories. The Joint Applicants

¹¹ One of the assets which was transferred to Peoples by EQT was the Goodwin-Tombaugh system which is discussed below.

¹² *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 (Initial Decision adopted by Order entered November 14, 2013)(2013 Equitable Application).

are seeking Commission approval of the ownership changes of the Peoples Companies, pursuant to Sections 1102(a)(3),¹³ 1103(a)¹⁴ and 2210(a)¹⁵ of the Public Utility Code.

2. The Joint Petition for Approval of Non-Unanimous Settlement

On June 26, 2019, the Joint Applicants filed with the Commission a Non-Unanimous Joint Petition for Settlement (Settlement) executed by all of the active parties except for BIE and OSBA. The Settlement resolves all the issues among the Settling Parties, which include the Joint Applicants, OCA, CAUSE-PA, NGS/RESA, Direct Energy, UWUA, Local 612, Laborers District Council of Western Pennsylvania, and PIOGA. The Settling Parties are in full agreement that the Proposed Transaction, as described in the Joint Application and as supplemented by the Settlement, will provide affirmative public benefits. Additionally, the Settling Parties agree that consummating the Proposed Transaction on the terms set forth in the Joint Application as conditioned by the Settlement is in the public interest and express their full support for the Settlement as evidenced by the Statements in Support filed by each Settling Party. The terms of the Settlement include commitments regarding infrastructure replacement, employment levels, rate credits, and enhancements in a variety of areas including customer service and reliability, universal service, financial governance, and retail competition, as discussed below.

The Settling Parties filed statements in support on June 26, 2019.¹⁶ Not every area of the Settlement was of interest to every Settling Party. Therefore, their respective statements in support only address those subject areas on which those parties took a position. The Settlement terms comprise 134 enumerated paragraphs as well as paragraphs including the

¹³ 66 Pa.C.S. § 1102(a)(3).

¹⁴ 66 Pa.C.S. § 1103(a).

¹⁵ 66 Pa.C.S. § 2210(a).

¹⁶ Duquesne Light filed a letter of non-opposition to the Settlement.

usual terms and conditions related to procedure. These settlement terms will be discussed throughout the decision below rather than repeated verbatim here.

C. Legal Standards

The Commission's standards for reviewing a non-unanimous Settlement as proposed here, are the same as those for deciding a fully contested case. Accordingly, substantial evidence consistent with the statutory requirements must support the proposed settlement.¹⁷

The burden of proof in this proceeding is upon the Joint Applicants.¹⁸ As the parties bearing the burden of proof, the Joint Applicants must prove by a preponderance of the evidence that the Commission's issuance of a certificate of public convenience approving the Purchase Agreement and terms, as modified by the Settlement is in the public interest because it will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.¹⁹ However, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible.²⁰ Instead, the Commission "applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters."²¹

The Purchase Agreement requires the approval of the Commission as evidenced by its issuance of a certificate of public convenience.²² Before the Commission may issue a

¹⁷ *Popowsky v. Pa. Pub. Util. Comm'n*, 805 A.2d 637 (Pa.Cmwlth. 2002) (*en banc*), *appeal denied*, 820 A.2d 163 (Pa. 2003); *ARIPPA v. Pa. Pub. Util. Comm'n*, 792 A.2d 636 (Pa.Cmwlth. 2001), *appeal denied*, 820 A.2d 163 (Pa. 2003).

¹⁸ 66 Pa.C.S. § 332(a).

¹⁹ *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825 (Pa. 1972) (*City of York*).

²⁰ *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007) (*Popowsky(Verizon)*).

²¹ *Id.* at 1057.

²² 66 Pa.C.S. § 1102(a)(3).

certificate of public convenience it must find that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.²³ Even where the Commission finds sufficient public benefit to grant a certificate of public convenience is necessary or proper for the service, accommodation, convenience, or safety of the public without imposing any conditions, the Commission nevertheless has discretion to impose conditions which it deems to be just and reasonable.²⁴

Also, the Natural Gas Competition Act,²⁵ has specific criteria for this Commission to address in the context of mergers. The Commission must also consider whether the proposed merger is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which would prevent retail gas customers from obtaining the benefits of a properly functioning and effectively competitive retail natural gas market.²⁶

The Commission must also consider the effect of the proposed merger on the employees of the natural gas distribution company or any other authorized collective bargaining agent representing those employees.²⁷ Additionally, the Commission is authorized to impose necessary terms and conditions to preserve the benefits of the properly functioning and effectively competitive retail natural gas market.²⁸

²³ 66 Pa.C.S. § 1103(a).

²⁴ 66 Pa.C.S. § 1103(a).

²⁵ 66 Pa.C.S. § 2210.

²⁶ 66 Pa.C.S. § 2210(a)(1).

²⁷ 66 Pa.C.S. § 2210(a)(2).

²⁸ 66 Pa.C.S. § 2210(b). *See Joint Application of PECO Energy Company and Public Service Electric and Gas Company for Approval of the Merger of Public Service Enterprise Group, Inc. with and into Exelon Corporation*, Docket No. A-110550F0160 (Order entered February 1, 2006).

D. Technical and Financial Fitness of Aqua America, Inc.

Aqua America currently owns, among other utilities, a Pennsylvania public utility, Aqua PA. Aqua PA is a direct subsidiary of Aqua America. If the Proposed Transaction is approved, the Peoples Companies will be owned by intervening holding companies (as they are now) and will be indirect subsidiaries of Aqua America. Both the Peoples Companies and Aqua PA will continue to render public utility service in their respective service territories.

The Joint Applicants argue that Aqua America is not a new utility seeking certification for the first time. Therefore, according to the Joint Applicants, Aqua America should be 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.

OSBA disagrees, contending that Aqua America should not be presumed to be technically and financially fit because the utility service offered by its existing public utility subsidiaries is very different from the utility service offered by the Peoples Companies. Specifically, OSBA takes the position that adopting the Joint Applicants' argument that a Pennsylvania water and wastewater utility is automatically fit to own and operate a Pennsylvania natural gas distribution utility merely on the basis of its status as a "jurisdictional public utility service provider" would be reckless and would lead to absurd results. OSBA argues that adopting that standard could lead to a conclusion that a small water utility would be automatically fit to operate a large electric distribution utility, for example.

The Joint Applicants counter that the fitness presumption is rebuttable. Therefore, OSBA's concerns regarding the potential consequence of applying a presumption of fitness to Aqua America are unfounded. In the Joint Applicants' view, a party opposing an acquisition can present evidence demonstrating that the acquiring utility is not fit.

The “fitness” standard derives from the Commission’s interpretation of Section 1103 of the Public Utility Code.²⁹ The Commission often holds that an incumbent public utility enjoys a rebuttable presumption of fitness. This means that parties opposing an application must prove that the applicant is *not* fit to render the proposed utility service. Early cases applied to motor carriers with respect to an allegation of prior illegal operation.³⁰ In *Breman*, the Commission explained that once a carrier establishes its fitness to render service, fairness requires that an applicant for additional rights should have notice that the carrier’s fitness is at issue and could result in the denial of the requested authority.³¹ Over time this presumption has been applied to both motor carriers and fixed utilities, where a utility seeks a certificate of public convenience to expand its service territory.³² The presumption has also been applied where one utility seeks to merge with another.³³

I agree with OSBA that the presumption of fitness should not be applied to Aqua America merely because it already owns Pennsylvania public utility subsidiaries. The acquisition proposed in this application is unique in scope and nature. It is complex, because the nature of the utility service being offered by the affected utilities is materially distinct. It is not appropriate to shift the burden of proof from Aqua America to demonstrate its fitness to operate the Peoples Companies. The policy considerations at issue where two utilities offering the same type of service merge, are not the same as those presented by this Proposed Transaction. Aqua America is not simply expanding its service territory and proposing to render the same utility service that it has ably offered for many years. It is expanding into a new type of service

²⁹ See *Chester Water Authority v. Pa. Pub. Util. Comm’n*, 868 A.2d 384 (Pa. 2005); *Seaboard Tank Lines, Inc. v. Pa. Pub. Util. Comm’n*, 502 A.2d 262 (Pa.Cmwlt. 1985).

³⁰ Application of Joseph H. Breman, t/a Breman’s Transfer, 18 PUC 271 (1938).

³¹ *Id.* at 273.

³² E.g., *Seaboard Tank Lines* (motor carrier); *Chester Water Authority* (water service utility).

³³ E.g., *Joint Application of The Untied Telephone Company of Pennsylvania LLC d/b/ Embarq Pennsylvania and Embarq Communications, Inc.*, Docket No. A-2008-2076038 (Opinion and Order entered May 28, 2009)(United Telephone).

and characterizing itself as an “infrastructure company” rather than just a public utility.³⁴ The burden should not be shifted to the objecting parties by applying a rebuttable presumption.

The Joint Applicants cite the Commission’s 1998 decision of *In re: Application of Pennsylvania Power & Light Company, PFG Gas, Inc., and North Penn Gas Company*,³⁵ where PP&L, Inc. (an electric utility), PFG Gas, Inc. (a gas utility) and North Penn Gas Company (a gas utility) sought Commission approval of the transfer of Penn Fuel Gas, Inc. to PP&L Resources, Inc., a public utility holding company. Prior to the merger, PPL Resources, Inc., owned all of the common stock of PP&L, Inc., which exclusively provided electric public utility service in Pennsylvania. The proposed merger contemplated that the subject utilities would maintain the “complete capability of providing all services necessary to conduct operations and meet all obligations and requirements placed upon corporate system.” That is, the same legal entities would continue to provide the same service in their existing territories, despite the change in ownership. In determining whether the utilities were fit to provide service, the ALJ simply observed that “the law recognizes a presumption that incumbent utilities are fit to provide utility service.”³⁶

Administrative agencies are not bound by the principle of *stare decisis*.³⁷ The case cited by the Joint Applicants in support of their position that Aqua America should be presumed fit to operate the Peoples Companies is different from the matter under consideration here. In the *PPL* decision, no party challenged the fitness of any of the joint applicants. Nor did the ALJ examine the implications of applying such a presumption. The ALJ simply adopted the analysis of the applicants, which focused on the service territory to be served. No real analysis

³⁴ Joint Applicants St. 1 (Revised) at 7.

³⁵ Docket Nos. A-120650F0006, A-122050F0003 (Initial Decision issued May 13, 1998, approved by Opinion and Order entered July 24, 1998) (*PPL*).

³⁶ *PPL*, Initial Decision at p. 26.

³⁷ *United Telephone*.

was offered regarding the technical and regulatory differences between electric and gas service, nor was there any discussion of the implications of applying such a presumption.³⁸

Other decisions of the Commission have examined the fitness of the acquiring applicant, even where the applicant has been approved to operate public utilities in the past. Notably, none of the applications to acquire the Peoples Companies applied a presumption of fitness to SteelRiver, even while noting that the Commission had found SteelRiver to possess technical, legal and financial fitness in prior acquisitions.³⁹ The conclusion in prior applications was considered persuasive evidence to the Commission which supported the Commission's conclusion that SteelRiver continued to be a fit owner. The Commission did not simply presume that SteelRiver was technically fit each time it sought to acquire one of the Peoples Companies.

A review of an applicant's ability to render appropriate utility service is particularly important where there are material differences in the nature of the utility service to be offered. The requirements for natural gas service are far more sophisticated now than they were in 1998, when the Commission approved the *PPL* transaction. It is appropriate to place the burden of proving that Aqua America is fit to operate the Peoples Companies on the Joint Applicants.

1. Technical Fitness

The Joint Applicants take the position that Aqua America is fit, pointing to Aqua America's stability and expertise in utility service. According to the Joint Applicants, 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 addition, 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.

³⁸ In its reply brief, OSBA states that at the time PPL owned an oil and gas public utility. The decision also describes the acquisition of an additional source of gas supply to serve electric generation plants as a benefit of the merger. Therefore, PPL evidently had some experience with gas service.

³⁹ E.g. *2013 Equitable Application*, Initial Decision at 79-82.

The Joint Applicants explain highly-experienced teams will continue to lead the separate operations of Aqua PA and the Peoples Companies; water/wastewater operators will report to water/wastewater supervisors, managers and directors; and natural gas operators will report to natural gas supervisors, managers and directors. The Peoples Companies will have their own president, separate from Aqua PA, who will report to Aqua America management. The terms of the Settlement explicitly require that, “Aqua America will ensure the Peoples Companies' executive operational management possess best in class natural gas distribution utility experience, will ensure changes to leadership do not present public safety, reliability, or customer service risks, and will develop succession plans to ensure that any replacements are qualified and knowledgeable.”⁴⁰

The Settlement also includes a commitment that confirmed Aqua America has added a director to its board with natural gas experience and that it would regularly hold board meetings in Pittsburgh.⁴¹ In addition, Aqua America committed to: ensure the Peoples Companies are managed by individuals with natural gas utility experience, ensure turnover does not present public safety risks, and develop succession plans. Essentially, 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. In addition, Aqua America's Board must meet with the executive management of the Peoples Companies at least twice per year for five years post-closing, and one of these meetings must take place in Pittsburgh, while the other must take place within the Peoples Companies' service area.⁴²

The Joint Applicants explain that Aqua America is financially fit to acquire the Peoples Companies because it is a financially strong, public owner, dedicated to long-term ownership and management of public utility assets. Aqua America is the second largest investor-owned water utility in the country and is a financially strong owner and manager of pipe-based utility assets in the United States. Over the course of its ownership of public utility

⁴⁰ Settlement ¶ 75.

⁴¹ Settlement ¶¶ 73, 74.

⁴² Settlement at ¶ 78.

assets in Pennsylvania, and in other states, Aqua America has demonstrated its long-term commitments to its existing and acquired customers. To that end, Aqua America invests in new and replacement facilities to improve service and maintain the acquired assets and customers.

According to the Joint Applicants, because Aqua America is a proven utility operator and will maintain and rely on the operational expertise of the Peoples Companies, Aqua America meets the fitness standard. I agree.

Both BIE and OSBA contend that Aqua America does not meet the fitness standard because it lacks the requisite expertise to operate the Peoples Companies. There are complexities in the operation of natural gas utilities that are different from the requirements of the provision of water and wastewater service. Both advocates point to the myriad of planning and technical requirements in the Public Utility Code which govern the provision of natural gas service. Both observe that the failure to appreciate and adhere to these requirements can lead to danger to human life and property.

The Joint Applicants counter that the criticism of OSBA and BIE simply ignores (1) that the Peoples Companies have a solid foundation of experienced supervisors, managers and leadership and (2) that operational personnel directly responsible for the day-to-day operations and service of the Peoples Companies will be unaffected by the Proposed Transaction. Aqua America also highlighted its long-term experience in general utility matters including meter reading, billing, capital budget and planning, and utility call center operations.⁴³

The Joint Applicants have adequately demonstrated that Aqua America is technically fit to operate the Peoples Companies. The Commission has found several holding companies to be technically fit to own and operate public utilities. Indeed, SteelRiver the ultimate owner of the Peoples Companies, did not specialize in the operation of a natural gas distribution utility when the Commission determined that it was fit to acquire first Peoples, and then T.W. Phillips and Equitable. The Commission found that SteelRiver's commitment to

⁴³ See, e.g., Joint Applicants St. 4-R at 7-10.

retain existing gas utility operational personnel, plan for provision of essential services during the transition phase with consultation with the statutory advocates, and the access to senior management in SteelRiver for expertise in capital markets were important factors supporting the Commission's conclusion that SteelRiver met the fitness standard.⁴⁴

As described by all the parties in this matter, SteelRiver has been a responsible operator of the Peoples Companies. Like SteelRiver, Aqua America intends to retain the Peoples Companies' operational personnel directly responsible for the day to-day operations and service of those utilities. Unlike SteelRiver, Aqua America's purpose is to own and operate public utilities. It owns its water and wastewater utilities as direct subsidiaries and has operated them successfully for many years. It has experience with the management of pipeline infrastructure.

Importantly, the Settlement contains important provisions which memorialize Aqua America's commitment to governance, succession planning and the preservation of the personnel with the expertise to effectively operate the Peoples Companies.⁴⁵ The Settlement also includes Aqua America's commitment to include at least one board member with substantial natural gas experience, and its commitment to seek out others.⁴⁶

OCA in its reply brief, points to these and other provisions of the Settlement which ensure that the Peoples Companies will be properly operated by Aqua America. The Settlement requires Aqua America to hold at least one Board meeting in Pittsburgh every year for at least five years post-closing.⁴⁷ In addition, Aqua America's Board must meet with the executive management of the Peoples Companies at least twice per year for five years post-closing, and one of these meetings must take place in Pittsburgh, while the other must take place within the Peoples Companies' service area.⁴⁸

⁴⁴ See 2009 Peoples Natural Gas Application, pp. 40-41.

⁴⁵ Settlement ¶¶ 73-82.

⁴⁶ Settlement ¶ 73.

⁴⁷ Settlement ¶ 74.

⁴⁸ Settlement ¶ 78.

The commitments made by Aqua America in the Settlement seek to ensure that Aqua America's Board will have the experience necessary to safely and effectively provide oversight to a regulated natural gas utility within the Commonwealth. The newest addition to Aqua America's Board, an additional member proposed before settlement negotiations began, signifies Aqua America's intent to have a Board with experience in both water/wastewater operations and natural gas operations. Additionally, the Settlement facilitates open lines of communication between the Aqua America Board and the Peoples Companies' management. Required meetings between Aqua America's Board and the executive management at the Peoples Companies will introduce Aqua America's Board to regulated natural gas operations and will allow the Peoples Companies to integrate with its new holding company. The Settlement also provides the opportunity for Aqua America's Board to become familiar with the geographic region that the Peoples Companies are obligated to serve. OCA submits that the provisions relating to Aqua America's Board of Directors, when viewed as a part of the overall Settlement, satisfactorily addresses OCA's concerns regarding the fitness of Aqua's management to operate a natural gas distribution company.

Neither OSBA nor BIE presented any evidence which would suggest that Aqua America will be unable to retain experienced natural gas personnel to continue to meet the natural gas utility regulatory requirements of the Commission. Indeed, these functions will remain with the Peoples Companies management and operational personnel. Some attrition may be expected. But there is no evidence that the Peoples Companies will lose so much experienced personnel as to impact the ability of the Peoples Companies to render safe and reliable service and render Aqua America technically unfit to operate them. While the observation of OSBA and BIE that the regulation of gas utility service is complex is correct, the observation alone falls short of carrying a burden of rebutting the evidence that the measures put in place by the Joint Applicants are inadequate.

2. Financial Fitness, Purchase Price and Financing

Through its operating subsidiaries in eight states, Aqua America has over \$5.4 billion in utility assets, and \$809 million in annual revenues.⁴⁹ Aqua America fully described how it intended to finance the Proposed Transaction and, as a part of this proceeding, demonstrated that it was able to finance the Proposed Transaction as intended, securing the necessary debt and equity financing under terms that the Joint Applicants consider favorable.⁵⁰ According to the Joint Applicants, the Proposed Transaction will enhance the financial profile of Aqua America and its ability to access both debt and equity capital in the future as needed.⁵¹

The consideration to acquire the interests of the Peoples Companies held by LDC Funding LLC from LDC Parent LLC, is a base price of \$4.275 billion, which includes a projected \$1.3 billion of assumed debt, as adjusted pursuant to the terms of the Purchase Agreement. The purchase price includes approximately \$2 billion in goodwill.

The Joint Applicants point to several provisions of the Settlement regarding the financial structure of the Proposed Transaction that are designed to protect ratepayers. The Joint Applicants committed that goodwill, transaction or transition costs, and the equity or debt issued to finance the acquisition premium or goodwill would not be passed through to Aqua PA or the Peoples Companies or be recovered in either of the utilities' rates. Furthermore, Aqua America committed that any new incremental debt issued to finance the acquisition premium would be completely separate from the Pennsylvania utilities' balance sheets. The Settlement memorializes these commitments.⁵² The Settlement also includes additional commitments that any termination fees, if the transaction is not consummated, will not be recovered from ratepayers and that Aqua America will track and account for transition costs to permit parties to review and verify such costs were excluded from the costs of service for Aqua PA or the Peoples

⁴⁹ Joint Applicants St. No. 2 at 3.

⁵⁰ Joint Applicant St. 2-R at 17.

⁵¹ Joint Applicants St. 2-R at 21-22.

⁵² Settlement ¶¶ 45-47, 54, 57, 59.

Companies.⁵³ The Settlement also contains specific commitments, beyond the tracking of these costs to ensure there is no pass-through costs to customers and that any accounting treatments associated with the transaction will be rate-neutral to Pennsylvania ratepayers.⁵⁴

The Settlement provides Aqua America and the Peoples Companies will file a Report of Action including:

[T]he closing date, the actual total sale price, and the actual accounting entries records in Aqua's and the Peoples Companies' books that reflect the acquisition including the following: all Transaction Cost and Transition Cost accounting entries for Aqua and the Peoples Companies that are recorded on the books of each entity; all Merger related fair value, Goodwill, and/or Acquisition Premium accounting entries for Aqua and the Peoples Companies and their subsidiaries; all Merger-related tax accounting entries for Aqua and the Peoples Companies and their subsidiaries; all Merger-related debt and equity financing accounting entries for Aqua and Peoples and their subsidiaries.

(Settlement ¶ 55.) According to the Joint Applicants, these commitments ensure that Aqua America will remain financially stable and the Proposed Transaction will not have an impact on the rates of Aqua PA's and the Peoples Companies' customers related to the purchase price or financing of the Proposed Transaction.

OCA supports the Settlement because the Settlement includes terms which recognize and mitigate some of the risks posed to ratepayers by the Proposed Transaction. According to OCA, the ratepayer protections in the Settlement meet many of the concerns OCA initially shared with BIE and OSBA. For example, the Joint Applicants committed to maintaining separate books, records, and separate capital structures for the Peoples Companies, and Aqua PA will maintain separate books and records, and separate capital structures, as a part of their litigation position. These commitments are memorialized in the Settlement.⁵⁵

⁵³ Settlement ¶¶ 58, 60.

⁵⁴ Settlement ¶¶ 56, 63.

⁵⁵ See Settlement ¶¶ 42, 43.

Beyond these commitments to ensure the transaction would be rate-neutral, the Joint Applicants further committed to appropriate debt-financing and ring-fencing protections, which would ensure the entities involved would be appropriately and separately financed. These protections and additional ring-fencing measures were adopted in the Settlement.⁵⁶

The Joint Applicants also committed to seek Commission approval for all new or amended affiliated interest agreements. This commitment was adopted in the Settlement.⁵⁷

In addition, the Settlement includes specific commitments regarding the identification of tax impacts on the Peoples Companies resulting from post-merger participation in a federal consolidated tax return, and assurance that the acquisition will not affect accounting and ratemaking treatments of the Peoples Companies' Accumulated Deferred Income Taxes (ADIT), including excess deferred income taxes, accumulated deferred tax credits and net operating losses.⁵⁸ The Joint Applicants made similar commitments in their testimony, recognizing that they would be necessary to ensure the transaction did not impact rates.

OCA supports the Proposed Transaction as modified by the Settlement and takes the position that the ring-fencing provisions of the Settlement ensure that the Peoples Companies maintain the capability to issue new long-term debt on behalf of the Peoples Companies. The Peoples Companies will be prohibited from providing long-term loans to affiliates, and neither the Peoples Companies nor Aqua PA will be permitted to mortgage their assets or provide loan guarantees for corporate affiliates. The ring-fencing provisions within the Settlement demonstrate a compromise between Aqua America's desire to acquire the Peoples Companies and OCA's concerns regarding the financial integrity and separation of these companies. The Settlement's ring-fencing conditions will ensure that these companies operate as separate corporate entities and will ensure that the appropriate protections are in place to protect the

⁵⁶ Settlement ¶ 48, 49, 66.

⁵⁷ See Settlement ¶ 44.

⁵⁸ Settlement ¶¶ 61, 62.

ratepayers of the Applicants. OCA submits that the ring-fencing provisions within the Settlement are wholly consistent with OCA witnesses' recommendations, are in the public interest and in the interest of the Applicants' customers.

BIE and OSBA take issue with the purchase price. In their view, there is no justification for Aqua America to pay \$2 billion over the book value of the Peoples Companies. Second, they contend that the debt used to finance the Proposed Transaction will negatively affect Aqua America by affecting its credit rating and ability to acquire capital at reasonable rates.

The Joint Applicants respond by contending that it is not appropriate for the Commission to scrutinize the goodwill paid for the Peoples Companies, because the goodwill will not be included as public utility property for any of Aqua America's public utility subsidiaries. Nevertheless, the goodwill included in the Proposed Transaction is consistent with other utility acquisitions and is not unreasonable. Finally, the Proposed Transaction was specifically structured to maintain strong investment grade credit ratings. To date, Aqua America's market performance indicates that there has been no negative impact on Aqua America's ability to attract investment or raise capital at attractive rates.

In considering the financing of the Proposed Transaction, it is important to keep in mind that the Commission generally does not interfere in the management decisions of regulated public utilities.⁵⁹ The focus of Commission review in examining whether an acquisition is in the public interest focuses on whether the public utilities affected by the transaction will be able to render safe and effective public utility service at just and reasonable rates.⁶⁰ Viewing the evidence in totality, coupled with the commitments made by the Joint Applicants in the Settlement, the Joint Applicants have demonstrated that neither the purchase price nor the financing of the transaction will unduly impair the ability of either the Peoples Companies or Aqua PA to meet their obligations to the public. The arguments raised by BIE or

⁵⁹ *Pa. Pub. Util. Comm'n v. Philadelphia Electric Company*, 460 A.2d 734 (Pa. 1983).

⁶⁰ *Id.*

OSBA ignore record evidence and speculate regarding the potential financial risk of the transaction.

Neither BIE nor OSBA attack the book value portion of the purchase price. Rather, they contend that Aqua America paid too much for the Peoples Companies by including \$2 billion in goodwill. In their view, the total purchase price places undue financial pressure on Aqua America which will negatively impact the public utility subsidiaries.

BIE implies that the goodwill paid was simply not necessary, observing the Peoples Companies were not openly for sale and were not in financial distress. There is nothing in the Public Utility Code which precludes the acquisition of a healthy public utility. It is not unusual to pay more than book value when acquiring a public utility.⁶¹ Moreover, there is no requirement that prohibits a utility acquisition unless the utility is openly for sale.

Furthermore, there is no compelling reason for the Commission to delve into Aqua America's long-term investment strategy or ultimate motivation as it relates to the negotiated purchase price of a healthy public utility that was not otherwise for sale, as advocated by BIE. There could be many reasons why the parties negotiated the purchase price, including market conditions at the time, evaluations of market conditions in the future, and a myriad of other consideration which informed the negotiators ultimate agreement on the price. As ratepayers are adequately protected from recovery of the purchase price, this matter is one for shareholders, not regulators.

OSBA contends that the amount of goodwill is unreasonable because the fairness opinion relied on by Aqua America was biased. Yet, there is substantial evidence in the record

⁶¹ N.T. 83.

to support the conclusion that the consideration paid as part of the Proposed Transaction is reasonable, even if the fairness opinion is disregarded.⁶²

Aqua America has substantial experience in acquiring utilities. Aqua America examined the Proposed Transaction using a variety of financial analyses, including the Discounted Cash Flow method, to measure the long-term financial value of the acquisition. 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.⁶³ The purchase price paid for SteelRiver's equity is about three times book value. In comparison, Aqua America's stock price over the past five years has traded at an average of three times book value per share. This demonstrates that the negotiated price is consistent with market pricing.

The Joint Applicants demonstrated that the premium to book value being paid in the Proposed Transaction is consistent with other recent utility transactions. As a result of the Proposed Transaction, Aqua America's goodwill on its balance sheet would increase by an amount equal to approximately 15% of the combined company's enterprise value. This is within the range of increased goodwill experienced in other comparable acquisitions.⁶⁴ The comparability of premiums paid in other transactions provides further support for the reasonableness of the purchase price.

In sum, the Joint Applicants demonstrated that the amount paid above the book value of the Peoples Companies was not unreasonable and would not be financially destabilizing to Aqua America. The \$2 billion agreed to by the Joint Applicants is within the premium multiple of other utility acquisitions. Neither BIE nor OSBA proffered sufficient evidence to

⁶² I do not believe there is sufficient evidence to conclude that the fairness opinion was, in fact, so biased that it is necessary to disregard it. I agree with the Joint Applicant's assessment of this issue in their Main Brief at pp. 16-17 (Confidential). Further, OSBA's conclusion regarding the evidence in its Main Brief at footnote 28 mischaracterizes the language of the report and Mr. Schuller's testimony. (See Joint Applicants St. 2-RJ at 1 (CONFIDENTIAL and Ex. DJS-3R (CONFIDENTIAL)).

⁶³ The Proposed Transaction is a stock purchase. Joint Applicant St. 2-SR at 9.

⁶⁴ Joint Applicants Ex. DJS-5R.

demonstrate that the purchase price was so shocking or unusual as to preclude the Commission from approving the Proposed Transaction.

BIE and OSBA both observe that Aqua America's debt is increasing, but the number of the Peoples Companies and Aqua PA's customers is not changing. BIE argues there are no additional revenue streams and the Joint Applicants are not reporting any real cost savings that will be achieved as a result of this merger. Therefore, the Joint Applicants are left with a sizeable debt increase related to goodwill that will not generate any revenues, thereby increasing the "riskiness" of this transaction.

OSBA agrees. According to OSBA, the effect of the Proposed Transaction will be to lower credit ratings for the debt which will serve to lower the value of that debt and have a negative impact on existing bondholders. OSBA points out that lower credit ratings will likely lead to higher interest rates, which will be passed on to ratepayers.⁶⁵

OCA, in its statement in support, explains how the Settlement allays its concerns regarding the financing of the Proposed Transaction. In OCA's view, it solidifies the commitment to a financing plan by Aqua America which ensures that the financing includes at least 50% common equity. This includes the \$1.3 billion of the Peoples Companies' debt assumed by Aqua America. No equity or debt issued to finance the Proposed Transaction will be included on the balance sheets for the subsidiaries.⁶⁶ In OCA's view, these commitments and others included in the Settlement demonstrate that Aqua America has a concrete plan to finance the Proposed Transaction in a fiscally responsible manner. Further, this financing plan acknowledges and addresses OCA's concerns with respect to the amount of debt that Aqua America will assume as part of the Transaction. OCA submits that the provisions relating to Aqua America's financing plan for the Transaction are in the public interest and in the interest of the Applicants' customers.

⁶⁵ OSBA St. 1 at 7, 10.

⁶⁶ Settlement ¶¶ 46, 47.

BIE and OSBA both mischaracterize the amount of debt which will be necessary to effectuate the Proposed Transaction. The Proposed Transaction will not be financed by “somewhere between \$436 and \$840 million in new debt.”⁶⁷ At the hearing, Daniel J. Schuller, an Aqua America Executive Vice President and Chief Financial Officer, testified that the acquisition financing was complete and included \$436 million in debt. At 42%, this is less than the 50% that was agreed to by the Settling Parties in the Settlement.⁶⁸ None of the debt will be pushed down to the utility level, but will be held by Aqua America. This incremental debt is equivalent to approximately 3% of the asset value of the combined entity.⁶⁹ The average cost rate for that debt is at a rate of 3.96% for debt averaging 21 years.⁷⁰ Mr. Knecht, OSBA’s expert, acknowledged this result was successful and did not adversely affect Aqua’s cost of capital.⁷¹

As stated above, the Settlement provides that no equity or debt issued to finance the Proposed Transaction will be included on the balance sheets of the utility subsidiaries.⁷² Accordingly, BIE and OSBA are correct in their observation that none of the spending will be recovered in rates. However, based upon several analyses, Aqua America determined that the Proposed Transaction will increase its financial strength and stability. Mr. Schuller testified that the deal will be accretive to Aqua America’s earnings, even with the \$2 billion premium. In this regard, the Joint Applicants believe that BIE 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

⁶⁷ OSBA Main Brief at 12 (citations omitted).

⁶⁸ N.T. 127-28.

⁶⁹ See N.T. 127-128 (\$436 million in incremental debt); see also OSBA St. 1 at 10 (total asset value after closing of approximately \$10.575 billion).

⁷⁰ Joint Applicants St. 2-Rat 15-16.

⁷¹ OSBA St. 1-S at 6.

⁷² Settlement ¶¶ 46, 47.

stock price changes. Because of the commitments and protections in the Settlement, utility customers will not be responsible for those price changes.

OSBA points to the stock market reaction when the Proposed Transaction was first announced as evidence that the Proposed Transaction puts ratepayers at undue risk. OSBA explains that the impact of the announcement of the Proposed Transaction on Aqua America's stock price was an almost immediate reduction of about 11% in the three days following the announcement of the Proposed Transaction, relative to the Dow Jones Utility Index (DJU). While the relative Aqua America stock price recovered to a certain extent, it nevertheless remained approximately 7% below the pre-announcement level, measured relative to the DJU, at the time intervenor evidence was submitted.⁷³ According to OSBA, the "inflated" purchase price, combined with the market's reaction to the Proposed Transaction announcement, demonstrates that the Proposed Transaction will be financially destabilizing for the combined entity. OSBA observes the Joint Applicants have committed to numerous construction projects in the Settlement, many of which will require large amounts of capital to complete. According to OSBA, the effect of the Proposed Transaction is the creation of a combined entity that is less financially stable than both Aqua PA and the Peoples Companies as they exist separately today. Therefore, according to OSBA, the Proposed Transaction is not an affirmative public benefit.

However, this argument disregards the recovery of Aqua America's stock price. Mr. Schuller agreed that Aqua America's stock initially dropped, but observed that this sort of initial reaction is not unusual. He went on to explain that Aqua America's stock price has rebounded and has continued to increase since issuing the equity for the Proposed Transaction.⁷⁴ He further explained, investor interest in the debt was four times the amount raised.⁷⁵ According to Mr. Schuller, 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. He explained in his rebuttal testimony that Aqua America had already raised the equity to finance the transaction,

⁷³ OSBA St. 1 at 9.

⁷⁴ N.T. 124-25.

⁷⁵ Joint Applicants St. 2-R at 12.

and, for the public issuance, there was investor interest equal to approximately four times the amount raised.⁷⁶ Therefore, the initial dip in Aqua America's stock price does not indicate that the Proposed Transaction will be financially destabilizing to Aqua America. Nor does it suggest that the combined entities will be significantly destabilized in the future and unable to render reasonable service.

OSBA also expresses concern that Aqua America's credit rating will drop which will have a negative impact on its ability to raise capital at low interest rates. These higher interest costs will ultimately be passed on to ratepayers. However, OSBA did not produce any evidence to demonstrate that a moderate drop in credit rating will have a significant impact on the Joint Applicants ability to raise capital at reasonable interest rates. Mr. Knecht observed that Aqua America's debt will retain investment grade in current market conditions.⁷⁷ Although OSBA expresses concern that the risk to Aqua America's stability could be material in adverse market conditions, OSBA does not point to any specific data or factors which could alter Aqua America's otherwise strong market performance.

The Joint Applicants also made specific commitments to address and notify the Commission of changes in credit ratings or metrics by the utilities. These reporting measures were also incorporated into the Settlement and provide further benefits associated with the transparency of the Joint Applicants' credit metrics.⁷⁸

OCA agrees with the Joint Applicants and explains that there are provisions in the Settlement which address its concerns regarding the risk of a credit downgrade of Aqua America. OCA's expert explained that, while both Companies currently have strong credit quality, the possibility remains that financial pressure and challenges associated with the Proposed Transaction may act to impair the credit quality of the Joint Applicants going forward.⁷⁹ The

⁷⁶ Joint Applicants St. 2-R at 12.

⁷⁷ OSBA St. 1-SR at 4.

⁷⁸ Settlement ¶¶ 50, 64.

⁷⁹ OCA St. 1 at 32.

Settlement requires the Joint Applicants to notify the Commission in the event that either Aqua America or either of the Pennsylvania public utility subsidiaries experience a credit downgrade below medium triple B. The Companies will notify the Commission within five business days and provide a reason for the downgrade and remedial actions intended to strengthen credit ratings.⁸⁰ The requirement to provide notice to the Commission in the event of a credit downgrade satisfies OCA's concerns. While the Joint Applicants have strong credit ratings at present, the possibility exists that their ratings may become impaired in the future. The Settlement not only requires the Joint Applicants to provide the reasons for the credit downgrade but also requires a plan for how the Joint Applicants intend to rehabilitate their credit ratings back to a strong position. OCA submits that the provisions requiring prompt notification in the event of a credit downgrade and a remediation plan are in the public interest and in the interest of the Joint Applicants' customers.

There is no substantial evidence that the Proposed Transaction will significantly impact Aqua America's ability to raise capital at reasonable rates. The testimony of the Joint Applicants support the Joint Applicants' claim that capital will be available to Aqua America after the Proposed Transaction and the commitments in the Settlement adequately protect ratepayers.

In sum, no financial transaction is without some level of risk. Certainly, market conditions could change. However, neither OSBA nor BIE offered evidence to counter the Joint Applicants testimony regarding Aqua America's success in raising capital and earnings on equity. Investors also evaluate future market conditions and apparently do not believe that the risk of the Proposed Transaction is material. Further, Aqua America has been able to finance more of the purchase price with equity than initially proposed, thereby exceeding the parameters of the financial plan memorialized in the Settlement. OCA explained the financial safeguards built into the Settlement address many of OCA's concerns which were similar to those raised by BIE and OSBA. OCA asserts that the Proposed Transaction, as modified by the Settlement, is in the public interest.

⁸⁰ Settlement ¶ 50.

BIE 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. Such a proposal is unreasonable and inappropriate, as Mr. Schuller⁸¹ 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.

Given the protections offered by the terms of Settlement and Aqua America's ability to finance the Proposed Transaction with less than 50% debt, the condition recommended by BIE is not necessary and should be rejected.

3. Legal Fitness

No party has challenged the legal fitness of Aqua America to hold the Peoples Companies. According to the Joint Applicants, Aqua America's and its subsidiaries' culture of compliance is undisputed and will continue if the Proposed Transaction is approved. Nothing in the Purchase Agreement disclosures suggests that there is a legal impediment to the Commission's approval of the Proposed Transaction.

E. Benefits Identified in the Joint Application and Settlement

As often quoted, the Joint Applicants must demonstrate that the Proposed Transaction will affirmatively promote the public interest in "some substantial way."⁸² This does

⁸¹ Joint Applicant St. 2-R at 33.

⁸² *City of York*, 295 A.2d at 827.

not mean that there can be no negative effects resulting from the transaction. This standard means that on balance, the benefits arising from the transaction outweigh any negative effects.⁸³ The benefits need not be legally binding commitments, nor do any alleged cost savings resulting from the transaction need to be specifically quantified.⁸⁴ The Commission must find that the facts in the record demonstrate that the benefits outweigh the negative effects by a preponderance of the evidence.⁸⁵ Factual conclusions may include “predictive ones informed by expert judgment.”⁸⁶

The Joint Applicants have been very clear that the benefits of this transaction are not “synergy” benefits.⁸⁷ While there may be some cost savings over time, in the short term the utility subsidiaries will be operated as separate business units and administrative functions will not be combined. The Joint Applicants do not anticipate that there will be any reduction in employment due to redundancy. As discussed below, the benefits of the transaction derive more from improvements in customer service and infrastructure. Some economies of scale will be achieved, but are not likely to be realized in the short term and are not easily quantifiable.

After reviewing the benefits described below, I find that the Joint Applicants have sustained their burden of proof. Not all of the benefits are of equal weight. Some benefits serve only to maintain conditions as they are or do not represent a significant improvement. Others are important and substantial. In sum, the benefits of the Proposed Transaction as modified by the commitments set forth in the Settlement affirmatively benefit the public.

⁸³ *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and First Energy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company, Docket No. A-2010-2176520 (Opinion and Order entered March 8, 2011); Application of Pennsylvania-American Water Company for approval of a Change in Control to be Effected through a Public Offering of the Common Stock of American Water Works Co., Inc., Docket No. A-212285F0136 at 10 (Tentative Opinion and Order adopted as Final by the Commission’s Order entered September 27, 2007); Application of UGI Utilities, Inc., UGI Utilities Newco, Inc. and Southern Union Company, Docket Nos. A-120011F2000, et al. (August 18, 2006).*

⁸⁴ *Popowsky (Verizon)*, 937 A.2d at 1055.

⁸⁵ *Id.*

⁸⁶ *Id.* at 1057.

⁸⁷ *E.g. Joint Applicants St. 2-R at 29.*

1. Goodwin and Tombaugh Gathering Systems⁸⁸

The Goodwin and Tombaugh Systems have a history with the Commission, beginning in 2012, when Equitable, not yet a Peoples company, filed an application to acquire the systems from affiliates, EQT Gathering and Equitrans.⁸⁹ The Commission quoted the application which described these systems as follows:

[G]oodwin System facilities include approximately 263 miles of natural gas gathering pipeline and appurtenant facilities and rights of way in Greene and Washington Counties. The Tombaugh System facilities include approximately 116 miles of natural gas gathering pipeline and appurtenant facilities and rights of way in Greene and Washington Counties. Equitable stated that the original and primary function of the Gathering Systems is to aggregate and transport natural gas to markets served by EQT Gathering and Equitrans. Equitable stated that the secondary purpose of the Gathering Systems is to deliver gas to 1,602^[90] end use customers of Equitable who are located along the Gathering System field lines (Field Line Customers). Application at 2.

Equitable noted that EQT Gathering and Equitrans intend to abandon the Gathering Systems or transfer them to a third party. Equitable averred that, rather than have EQT Gathering and Equitrans sell the systems to a third party or explore other options that could negatively impact delivery of natural gas to the Field Line Customers, Equitable, subject to Commission approval, agreed with EQT and Equitrans to acquire the systems by transfer at net book value. *Id.* at 3. Equitable stated that approval of the Application was in the public interest because it addressed the transfer of gathering facilities from which the Field Line Customers currently receive natural gas service, and because the acquisition would promote the development and gathering of locally produced Pennsylvania natural gas.^[91]

⁸⁸ Settlement ¶¶ 29-40.

⁸⁹ Docket No. R-2012-3412577.

⁹⁰ The current number of customers is 1,695.

⁹¹ *Pa. Pub. Util. Comm'n v. Equitable Gas Company, LLC*, Docket No. R-2012-2312577 (Opinion and Order entered April 4, 2013), at p. 5. *See also* Joint Applicant St. 5-R at 2.

Following an evidentiary hearing, Equitable, OCA and OSBA negotiated a settlement which was opposed by BIE. I rendered a decision which recommended that the Commission disapprove the Settlement in part, because none of the parties had adequately investigated the condition of either of the systems which were experiencing significant levels of lost and unaccounted for gas. Further, the settlement did not guarantee continued distribution service for the 1600 field line customers.⁹²

On February 19, 2013, Equitable filed a petition for leave to withdraw the filing because of a soon-to-be filed application to acquire Equitable by SteelRiver. According to Equitable, the Commission should consider the fate of the Goodwin and Tombaugh Systems in the context of the acquisition. The Commission agreed and, by Opinion and Order entered April 4, 2013, granted leave to withdraw the filing without prejudice and vacated the recommended decision.

As explained above, Equitable was acquired with the approval of the settlement reached in Joint Application of Peoples Natural Gas Co LLC (Peoples LLC), Peoples TWP LLC (Peoples TWP) and Equitable Gas Company LLC (Equitable LLC).⁹³ That settlement included the transfer of the Goodwin and Tombaugh Systems to Peoples Gathering and established a \$5 million fund provided by EQT for the purpose of investigating the condition of the systems, repairing leaks and preparing an assessment to determine whether the systems would be transferred to Peoples and included in Peoples' rate base. As part of that Settlement the parties agreed to a so-called "economic test" which would determine whether the systems would be transferred to Peoples:

(g) The Signatory Parties agree that the Gathering Systems may be transferred to Peoples if the amount of additional investment necessary to provide safe and reliable service from the Gathering Systems is equal to or less than the sum of the remaining portion of the EQT Contribution, the estimated \$12 million cost to convert customers to

⁹² Recommended Decision issued February 8, 2013.

⁹³ Docket Nos. A-2013-2353647, A-2013-2353649, A-2013-2353651 (Initial Decision adopted by Order entered November 14, 2013) (2013 Equitable Settlement).

alternative fuels, the estimated incremental rate base investment of \$6 million that would be supported by revenues from the approximately 1,500 customers served by the Gathering Systems, and any additional investment supported by incremental revenues on the Gathering Systems facilities. The parties agree that the remainder of the EQT contribution, the \$12 million conversion cost and the estimated \$6 million in customer revenues comprise the economic test of whether the Gathering Systems are transferred to Peoples. If the economic test is satisfied and the Commission approves transfer of the Gathering Systems, Peoples Equitable Division will be permitted to include in rate base the investments it makes to improve the Gathering Systems other than the EQT Contribution.

(h) If the economic test is not satisfied because the amount of additional investment necessary to provide safe and reliable service from the Gathering Systems is more than the sum of the remaining portion of the EQT Contribution, the estimated \$12 million cost to convert customers to alternative fuels, the estimated incremental rate base investment of \$6 million that would be supported by revenues from the approximately 1,500 customers served by the Gathering Systems, and any additional investment supported by incremental revenues on the Gathering Systems facilities, Peoples will make a recommendation not to further invest in the Gathering Systems. In such a scenario, all other parties expressly reserve the right to present their own recommendations to the Commission as to the disposition of the Gathering Systems.^[94]

To date, the Peoples Companies have completed the investigation contemplated by the settlement. Beginning in 2014, the Peoples Companies mowed rights-of-way, leak surveyed the lines throughout these systems, walked the systems in order to GPS-locate facilities and meter locations, placed all facilities into the company's GIS mapping system, replaced and installed line markers, established eight new odor inspection sites, initiated quarterly odor inspections, placed all facilities into the PA OneCall System and incorporated the facilities into the Peoples Companies' damage prevention program. The Peoples Companies added all lines to

⁹⁴ BIE St. 2 at 6-7(quoting the terms of Joint Petition for Approval of Settlement of All Issues filed on October 7, 2013 and approved by the Commission in the 2013 Equitable Settlement).

a three-year cycle inspection program and have been classifying, grading and repairing leaks according to its leak management program.

As explained by Joseph Gregorini, Senior Vice President and Chief Operating Officer of the Peoples Companies, beginning in 2017, the Peoples Companies initiated the assessment of data gathered since 2014, to generate an assessment of the systems and to identify various possible scenarios for further economic and customer impact evaluations. As of the date of the hearing in this matter, the assessments were completed but Peoples had not yet convened the consultative group provided for in the settlement, nor have the assessments been submitted to the Commission for consideration. Of the three scenarios developed by the Peoples Companies, only one would pass the economic test of the 2013 Equitable Settlement. This scenario would permit the Peoples Companies to retain 66 miles of pipeline and 723 customers. The remaining 325 miles of pipeline and 972 customers would be abandoned.⁹⁵ Another scenario included an analysis of the cost of retaining the entirety of both gathering systems and maintaining service to all existing 1,695 customers. This scenario estimated the total capital pipeline replacement costs to be \$121.6 million.⁹⁶

The fate of the gathering systems was of great concern to many of the parties in this proceeding. Specifically, BIE raised the issue because the lost and unaccounted for gas on the systems was still remarkably high. OCA concurred and its expert witness noted that without a specific commitment to continue efforts to address the safety concerns and the continuation of service, customers may be harmed. PIOGA intervened because it was concerned with the effect of Aqua America's acquisition of control over the Peoples Companies would have on the Companies' operations and programs intended to maintain or increase the availability and throughput of Pennsylvania natural gas on their pipeline systems as well as the Peoples Companies' pipeline infrastructure replacement programs. PIOGA was specifically concerned with the extraordinarily high lost and unaccounted for gas on these systems and the 85% annual

⁹⁵ Joint Applicants St. 6-R at 12-13; Ex. JAG-3-R.

⁹⁶ Joint Applicants St. 6-R at 9.

retainage charged by the Peoples Companies to conventional producers on the Goodwin system beginning in January 2014 after the acquisition from EQT.

The Joint Applicants advocate for the abandonment of a strict application of the economic test agreed to in the 2013 Equitable Settlement, in order to address the concerns by OCA, PIOGA and others. The Settlement attempts to address many of these concerns and includes, among other things, a commitment from Aqua America to replace the bare steel pipeline on the gathering systems in a seven-year timeframe, beginning three months after the closing of the Transaction.⁹⁷ Complete rehabilitation of the bare steel in the system is estimated to cost \$120 million. This amount would be recovered in base rates.⁹⁸ As capital is completed and placed in service, the plant will be transferred to Peoples Natural Gas, from PNG Gathering, LLC, and become regulated under the Commission's jurisdiction and classified as distribution pipeline for safety purposes following the applicable pipeline safety regulations.⁹⁹ To offset the burden on current ratepayers, Aqua America would provide all Peoples Companies' customers a rate credit of \$13 million before the end of 2019.¹⁰⁰

In their statement in support for the Settlement, the Joint Applicants explain that the replacement of all the bare steel pipe of the Goodwin and Tombaugh Systems would benefit the public by: (1) allowing the existing Goodwin and Tombaugh Systems' residential customers and local businesses to remain on low-cost, abundant, natural gas; (2) avoiding abandonment and conversion of existing customers to potentially higher cost alternative fuel sources; (3) ensuring that existing, shallow-well producers can continue to provide gas into the system; and (4) improving the overall safety of the system. Together, these provisions established a defined timeline for the replacement and remediation of these troubled systems, which would not otherwise be in effect without the Settlement.

⁹⁷ Settlement ¶ 29.

⁹⁸ Settlement ¶ 30.

⁹⁹ Settlement ¶ 31.

¹⁰⁰ Settlement ¶ 33.

The Joint Applicants further point out that the plan contemplated by the Settlement also includes several commitments designed to provide important safety benefits. The Settlement confirms that BIE's Pipeline Safety Division will be provided consistent access to the Goodwin and Tombaugh Systems to inspect and monitor their remediation.¹⁰¹ In addition, the Settlement provides for a plan to monitor and reduce unaccounted for gas levels on the system and increasing the frequency at which Peoples Natural Gas will perform leak surveys - i.e., from once every three years, to once a year.¹⁰² Moreover, the Settlement contains substantial commitments to repair leaks near houses, replace service lines and move inside meters outside¹⁰³ and each of these actions will improve the safety of the Peoples Companies customers, employees and the public who interface with the system.

OCA agrees with the Joint Applicants. OCA observed that there are approximately 1,600 customers connected to these gathering systems. In OCA's view, the Goodwin and Tombaugh matter has 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 as required by the 2013 Equitable Settlement, would cause economic disruption and deprive customers of the benefits of regulated service. These customers are both residential and commercial customers. OCA supports the Settlement because the agreement will provide a permanent, safe and reasonable resolution to this matter for all concerned stakeholders. As such, OCA submits that these Settlement provisions contain a comprehensive resolution of this important matter and should be approved without modification.

PIOGA also supports the proposal to replace the Goodwin and Tombaugh pipeline as set forth in the Settlement. PIOGA agreed with the position of OCA and BIE that the safety and reliability concerns with service on the Goodwin system should be resolved in this proceeding, but disagreed with BIE's position that abandonment of some customers served by these systems could be necessary and appropriate and in the public interest. PIOGA explains

¹⁰¹ Settlement ¶ 35.

¹⁰² Settlement ¶ 37.

¹⁰³ Settlement ¶¶ 38-40.

that the full remediation of all the bare steel pipe in the Goodwin and Tombaugh Systems comprehensively and positively addresses PIOGA's concern that customers served by these systems are not abandoned.

PIOGA further observes that in the 2013 Equitable Settlement, because of the extraordinarily high unaccounted for gas on the Goodwin system, the Peoples Companies agreed to impose gathering charges on only the "net" deliveries rather than on the "gross" deliveries. PIOGA explains this agreement was appropriate at the time because the Goodwin producers were being paid only for the volumes "net" of retainage. In this proceeding, the Joint Applicants have agreed to a gradual reduction of the annual 85% retainage rate on Goodwin – which has been borne exclusively by the producers delivering conventional production into Goodwin – based on the rate of annual pipeline replacement.¹⁰⁴ In other words, the annual retainage rate will be set so that the percentage rate of decline¹⁰⁵ will match the same year-over-year percentage rate of decline in removing old pipe from the Goodwin system (14.29%). This will result in the retainage rate consistently decreasing annually from 85% in year 1 to near 0% by year 7, subject of course to the currently effective system-wide producer retainage charge, now a minimum 2%. The Peoples Companies have also agreed to conduct semi-annual reviews of actual Goodwin UFG levels and, if a UFG decline trend is evident, to make interim adjustments to the effective retainage rate to reflect the actual Goodwin UFG level for the interim rolling 12-month period.

PIOGA asserts that enabling Goodwin producers to receive payment for more of their natural gas by paying lower retainage will put more money into the producers' pockets and thereby help to ensure that they can continue to produce gas, maintain a level of employment for well tenders, generate income and tax revenues for the Commonwealth, and provide money for additional investment. While the Settlement remediation plan does not provide for new pipeline capable of transporting natural gas produced from unconventional formations (e.g., Marcellus and Utica shale) underlying the Goodwin system area, PIOGA asserts there are opportunities for

¹⁰⁴ Settlement ¶ 36.

¹⁰⁵ Settlement ¶ 29 (14.29%, based on a seven-year replacement timeframe).

additional supply from conventional production directly into Goodwin that would be enabled (due to improved economics) by remediation of Goodwin and reducing the producer retainage rate. Accordingly, in PIOGA's view, the Settlement provisions described above concerning the Goodwin and Tombaugh Systems provide substantial affirmative public benefits – in addition to the public benefits provided by other Settlement provisions – through maintaining, and providing for increased, production of conventional Pennsylvania natural gas and the resulting multiple beneficial effects flowing both within and beyond the industry.

BIE and OSBA strenuously object to the Settlement because it fails to adhere to any of the commitments agreed upon in the 2013 Equitable Settlement as it ignores the detailed economic test that was agreed upon by the parties and approved by the Commission. Specifically, it allows the Peoples Companies full recovery of \$120 million from ratepayers to replace all 368 miles of the Goodwin and Tombaugh gathering lines. This far exceeds the \$23 million threshold detailed in the 2013 Equitable Settlement's economic test. Additionally, BIE is concerned that the \$120 million estimate is artificially low, and ratepayers may be at risk for much more. The Settlement attempts to address this by providing an opportunity to meet and discuss if it becomes apparent that the initial \$120 million estimate is no longer sufficient. If an agreement cannot be reached, the Settlement states that a filing will be submitted to the Commission to decide the recovery of amounts in excess of the agreed upon \$120 million. According to BIE, this term fails to provide any protection to ratepayers.

If the Commission nevertheless approves the proposal to replace the pipeline in the system, BIE recommends \$127 million of the purchase price should be set aside and held in a restricted account to pay for the uneconomic cost to replace these systems. This recommendation was designed to protect ratepayers from the uneconomic share of the replacement costs by placing the full replacement amount into a restricted fund until the Commission approved a plan to replace and/or abandon, with any amount remaining in the restricted fund returned to SteelRiver once the lines were replaced or abandoned in accordance with the Commission approved plan.

OSBA also believes that the economic test in the 2013 Equitable Settlement should be used to resolve the problem of the Goodwin and Tombaugh Systems and that the Settlement here should not be approved. Specifically, OSBA points out that ratepayers will be responsible for paying at least \$107 million (\$120 million cost less \$13 million one-time credit) towards the rehabilitation of the Goodwin and Tombaugh Systems. It is unjust and unreasonable to ask ratepayers to make such an enormous contribution when the overall project fails the economic test. OSBA states that Aqua America was aware of the issues surrounding the Goodwin and Tombaugh Systems when negotiating a purchase price, but did not appear to incorporate costs for the Goodwin and Tombaugh Systems into the purchase price. Instead, Aqua America relied on the fact that the resulting combined entity would receive earnings on investing in rehabilitating the Goodwin and Tombaugh System.

OSBA takes the position that the proposal to completely replace the pipeline in the Goodwin and Tombaugh Systems is an “affirmative public detriment.” OSBA urges that it must be recognized that Aqua America has never remediated a natural gas gathering system because it is a water and wastewater utility. Finding a reasonable, cost-effective solution that balances the public interest regarding the Goodwin and Tombaugh Systems and the effects on associated customers remains the responsibility of the Commission.¹⁰⁶

There is no question that the Goodwin and Tombaugh Systems present significant problems from both a technical standpoint and as a matter of policy. After considering the positions of the parties in their statements in support and briefs on this matter, as well as the discussion of the social and political considerations articulated by Christopher H. Franklin, the CEO of Aqua America, and Morgan O’Brien, CEO of the Peoples Companies, at the evidentiary hearings, I believe the proposal as set forth in the Settlement is the best of the imperfect solutions to resolve the Goodwin and Tombaugh problem and best serves the public interest.

¹⁰⁶ OSBA also contends that the issue of the Goodwin and Tombaugh Systems issue is not properly part of this proceeding. However, OSBA did not file a motion to exclude the issue and did not object to the admission of the considerable volume of testimony from most of the parties which addressed the subject, effectively waiving this argument.

Although BIE and OSBA are concerned about the interests of the Peoples Companies' ratepayers shouldering the costs of the replacement of the pipelines, its brief are silent regarding the social and economic costs of abandoning natural gas service to over 900 customers who are also members of the public.¹⁰⁷ Both BIE and OSBA take umbrage at the Joint Applicants' characterization of their position as requiring abandonment of customers. But BIE and OSBA's insistence on the economic test requires just that. As explained in testimony, many of these customers are low-income customers and some rely on the customer assistance programs that are available to them as distribution customers of the Peoples Companies. Although they will likely be awarded conversion costs if they are abandoned, the cost of propane and electricity is higher than the cost of natural gas. Thus, their energy bills are likely to be higher in the future. These factors are also not given consideration by OSBA as they relate to small business customers served by these systems. Neither BIE nor OSBA address the litigation costs that would be incurred by the Peoples Companies' ratepayers as a consequence of the applications to abandon these customers or the time and agency resources that would be expended to review the application or applications to abandon 57% of the customers currently served by the gathering systems.

The socialization of costs associated with infrastructure improvement is not an unusual concept and has been approved by the Commission in the past.¹⁰⁸ Both Mr. Franklin and Mr. O'Brien explained the social, political and safety issues which are implicated by the decision to replace the entire system. Mr. Franklin stated:

It should be all about the customer. It should be all about safety, and it should be all about how quickly we can 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

¹⁰⁷ Scenario 3, which passes the "economic test" set forth in the 2013 Equitable Settlement would require the abandonment of these customers. Joint Applicant St. 6-R at 12-13.

¹⁰⁸ See N.T. 105-107 (testimony of Morgan O'Brien).

forward and get it done as quickly as possible for the sake of those customers. They deserve better.^[109]

Mr. O'Brien echoed these considerations:

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

...

[O]ne 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 we got a group of people who are literally living atop where much of that drilling is going on in western Pennsylvania. . . . They pay their utility bill just like I do and you do if you're a gas utility customer.

...

And you can reach different arguments on these policy issues as a utility person who understands what we do is in the best interests of the public, and it feels right to me to try and save as many of those customers as we possibly can.

We've had to face abandonment in other systems, and there's a 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.

...

I've been sitting in western Pennsylvania championing the growth of Marcellus Shale and how important it is as a region that we embrace it, and the economic benefits that all of Pennsylvania will enjoy if we execute the expansion of the downstream opportunities from having this natural gas.

The people are sitting there living and watching those fracking and drilling going on every day. . . . They're not of an economic stature to be able to pay more for heating, and they're sitting there

¹⁰⁹

N.T. 90-91.

while the rest of us enjoy the benefits of the gas that's being drilled in their backyards.^[110]

Although replacing the Goodwin and Tombaugh Systems places a burden on the Peoples Companies' ratepayers, considering the safety issues and economic issues relating to the pipeline itself and the social economic needs of the Goodwin and Tombaugh System customers, the commitments of the Settlement are in the public interest.

BIE also expresses concern that the project could cost much more than the \$120 million estimate and that the Settlement offers ratepayers little protection. I disagree. Unlike 2012 when Equitable first sought Commission approval to acquire these systems, the parties have more information about the location and configuration of the lines and the facilities that are connected to them. BIE's expert opined that replacement costs could be much higher than the estimated \$120 million. However, Mr. Gregorini rebutted this testimony and explained that the cost figures BIE used reflected the replacement costs for pipeline in urban areas of the Peoples Companies' service territory. In contrast, the Goodwin and Tombaugh Systems are located in a rural area, where per mile replacement costs are lower and the cost estimate agreed to in the Settlement reflects those costs.¹¹¹

The Settlement in fact includes provisions to protect ratepayers. The Settlement provides that cost recovery for Goodwin and Tombaugh System repairs cannot be included in the Peoples Companies' DSIC mechanism, but rather can only be recovered through future base rate cases. The Peoples Companies have recently concluded a base rate case.¹¹² Cost recovery for Goodwin and Tombaugh System repairs will only occur through future base rate cases where all such costs can be thoroughly reviewed by both the statutory advocates and the Commission.

¹¹⁰ N.T. 105-108.

¹¹¹ *See also* Joint Applicants St. 5-R at 13.

¹¹² *Pa. Pub. Util. Comm'n v. Peoples Natural Gas, LLC*, Docket No. R-2018-3006818 (Recommended Decision served August 15, 2019).

There are significant provisions that require the Joint Applicants to consult the statutory advocates and the Commission on a regular basis during the project. These parties have an opportunity for input. In past settlements, the Commission has found such provisions requiring consultation with stakeholders a public benefit and an important factor in protecting the public interest.¹¹³

The Settlement provides that if the project costs more than the estimated \$120 million, the Joint Applicants will negotiate with stakeholders to seek recovery of these costs. If the Joint Applicants fail to secure an agreement, they will seek Commission approval for recovery of additional costs. The risk that the Joint Applicants will be unable to reach an agreement to recover additional costs or that the Commission will not approve recovery of these costs is an incentive to control these costs.

It is important to note that the Settlement provides a specific timeline for the replacement of the Goodwin and Tombaugh pipeline: seven years. Work will begin within three months of closing the transaction. The 2013 Equitable Settlement does not include any timeline for the remediation of the situation. Although the pipeline used in natural gas facilities is different than the pipeline used in water and wastewater facilities, no party disputed Aqua's expertise in the management of accelerated infrastructure replacement projects. A final resolution of these systems in a defined period of time is a significant benefit.

There is no disagreement that the condition of the Goodwin and Tombaugh Systems is problematic and fraught with safety concerns. Lost and unaccounted for gas levels remain a significant concern on these systems. These levels were very high in 2012,¹¹⁴ and they remain high today.¹¹⁵ BIE expresses safety concerns related to Aqua America's ability to

¹¹³ E.g., *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and First Energy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket No. A-2010-2176520 (Opinion and Order entered March 8, 2011).

¹¹⁴ *Pa. Pub. Util. Comm'n v. Equitable Gas, LLC*, Docket No. R-2012-2312577 (Opinion and Order entered April 4, 2013), at p. 8.

¹¹⁵ BIE Ex. 2 at Schedule 3.

execute the Goodwin and Tombaugh project, but does not explain in detail any specific issue other than its observation that Aqua America has no experience with gas pipeline replacement. Moreover, it is hard to see how a resolution with a specific timeline that would begin soon does not improve the safety of the Goodwin and Tombaugh customers in a concrete way.

OSBA argues that approving the Settlement and replacing the Goodwin and Tombaugh Systems would “reward SteelRiver for doing nothing with natural gas gathering systems that it knew had serious problems.” This argument does not address Mr. Gregorini’s testimony where he detailed the actions that had been taken on the Systems, culminating in the development of the three scenarios. There is no testimony that the Peoples Companies are not in compliance with the 2013 Equitable Settlement or that the failure to develop the assessment sooner is due to malfeasance or incompetence.

The Settlement terms which call for the replacement of the pipeline in the Goodwin and Tombaugh Systems in the next seven years are a significant public benefit and it is in the public interest to approve the proposal. The burden on the customers who would otherwise be abandoned far outweighs the impact of socializing these costs to other the Peoples Companies’ ratepayers. Further, the serious safety and reliability issues on the systems will be resolved much more quickly than they would be if the Peoples Companies are forced to utilize the economic test set forth in the 2013 Equitable Settlement.

2. Reliability and Pipe Replacement

In the Application, the Joint Applicants committed to continue the existing Peoples Companies’ Combined Distribution LTIP, and to review this plan to determine whether a more aggressive approach to the replacement of at-risk pipe would benefit customers. Several of the parties raised concerns regarding Aqua America’s plan to review and potentially modify the Peoples Companies’ existing Combined Distribution LTIP. In its expert testimony, BIE contended that the Peoples Companies should submit a revised LTIP to levelize the pace of

pipeline replacement by increasing at-risk pipe replacement in the short-term and reduce replacements in later years.¹¹⁶

In response to these concerns, the Joint Applicants included specific commitments that detailed their proposal to accelerate the replacement of at-risk pipe. These conditions would increase capital spending under the Combined Distribution LTIP by \$30 million per year, starting in 2021, to allow for approximately 25 additional miles of pipe to be replaced each year.¹¹⁷ This commitment directly addresses the issue raised by BIE and accelerates the amount of pipe replaced by scheduling it forward in the LTIP. The Joint Applicants committed to filing a revised LTIP within six months of closing, that explained the strategy for the contemplated additional pipe replacement. According to the Joint Applicants, these commitments would provide for a modified plan that would levelize the pace of the replacement of risky pipe.

According to the Joint Applicants and the Settling Parties, this commitment to increase LTIP replacement of at-risk pipe is a substantial public benefit, made possible by Aqua America's commitment to safety, infrastructure replacement, and access to capital for infrastructure improvement. Currently, at the end of 2021, the Peoples Companies anticipate that the number of customers remaining on at-risk pipe will be 62% of the original number served off of at-risk pipe. This number will be reduced to 25% by 2026, under the Peoples Companies' current LTIP. These percentages will be further reduced by replacement of an additional 25 miles of pipe per year. Furthermore, to meet this increased replacement commitment, the Joint Applicants estimate that approximately 100 new employees, inclusive of contracted labor and the Peoples Companies employees, will be added. The Joint Applicants observe that the accelerated infrastructure program is an opportunity to increase jobs in Western Pennsylvania and is a further substantial public benefit. The accelerated replacement of at-risk pipe will also significantly enhance the safety and reliability of the system.

¹¹⁶ BIE St. No. 3 at 8-9.

¹¹⁷ Settlement ¶ 69.

The Settling Parties also agreed to other provisions which address system reliability. In particular, the Settlement makes clear that Aqua America commits to continue the Combined UFG Mitigation plan, as a part of its efforts to accelerate the replacement of risky pipe.¹¹⁸ In addition, the Settlement contains an additional commitment by the Peoples Companies to propose a damage prevention program by March 31, 2020, which would be designed to reduce line hit damages.¹¹⁹ Furthermore, the Settlement ensures that qualified operators and contractors will be utilized to accelerate the replacement of risky pipe.¹²⁰ As a whole, the commitments in the Settlement associated with Reliability and Pipe Replacement constitute a comprehensive effort to more rapidly reduce the amount of risky pipe in the Peoples Companies' system and thereby improve service reliability and safety for customers, employees and the public.

BIE and OSBA contend that the proposed acceleration plan is not a public benefit. BIE contends that the proposal is not an affirmative public benefit to support the Proposed Transaction, because it is a commitment that could have been made by SteelRiver. Further, the benefit is speculative because in order to execute the commitment, the Joint Applicants would have to seek approval of the revised LTIIP by the Commission. Finally, there are obstacles to executing the proposal because the Joint Applicants may not be able to secure adequate staffing and pipeline supplies.

OSBA also takes the position that the proposal is not an affirmative public benefit because the Joint Applicants have not demonstrated that the \$30 million is cost-effective and reasonable. The increased cost will be passed on to ratepayers in the form of higher rates. Second, the Joint Applicants will earn a return on the infrastructure investment which is a benefit to shareholders. And third, the proposal is simply a commitment to file a revised LTIIP and does not meet the public benefit requirement.

¹¹⁸ Settlement, ¶ 68.

¹¹⁹ Settlement, ¶ 70.

¹²⁰ Settlement, ¶¶ 71-72.

The Peoples Companies have a LTIIIP in place and have been making infrastructure replacements in accordance with that plan. At the evidentiary hearing, Mr. Franklin observed that the Peoples Companies “have made good investments within the constraints that they had under the current owner.”¹²¹ And yet, in its direct testimony, BIE criticized the current replacement plan and recommended that the existing LTIIIP should be more levelized, i.e., the plan should be accelerated for an increase in pipe replacement in the short-term and a reduction of number of replacement miles currently scheduled to be replaced later in the 20-year replacement schedule.¹²² The Joint Applicants have taken the advice of BIE’s witness and have memorialized the commitment in the Settlement. But for the Joint Application, there is nothing in the record which suggests that the additional spending to replace more pipeline earlier than originally planned would have occurred.

BIE denigrates the quality of the accelerated LTIIIP as a benefit of the Proposed Transaction because SteelRiver could just as easily file a revised LTIIIP to do the same thing. However, there is no evidence that the Peoples Companies have made a filing to accelerate infrastructure spending. There is no evidence that they planned to do so before filing the joint applications. There is no evidence that the Commission commenced any formal or informal action to direct SteelRiver to modify the Peoples Companies’ LTIIIP. Therefore, this criticism of the proposal is flatly speculative and unsubstantiated.

Both OSBA and BIE charge that the accelerated LTIIIP should not be considered an affirmative benefit under the *City of York* standard because it is speculative. Specifically, there is no guarantee that the Commission will approve the plan as submitted. According to OSBA and BIE, it is effectively an empty promise. Yet, there is no evidence that the Commission has ever rejected an LTIIIP filing proposing a further acceleration,¹²³ and there is no reason to anticipate rejection of a proposal to increase miles replaced and dollars spent by about

¹²¹ N.T. 89.

¹²² BIE St. 3 at 8-9.

¹²³ 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, p. 15 (Initial Decision dated Nov. 6, 2013)(Adopted by Commission Order entered November 14, 2013).

18% annually.¹²⁴ 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.

BIE contends that the accelerated LTIIP should be rejected as a benefit because there may be obstacles to meeting the targets set forth in the Settlement and there is no guarantee that the Joint Applicants will in fact replace more pipeline more quickly. However, the *City of York* does not require a benefit to be an ironclad certainty and without risk. Rather, in order to be a substantial benefit, it must be feasible. Here, the Joint Applicants express confidence that they will be able to secure personnel to fill the 100 jobs necessary to accelerate the replacement of high-risk pipe and meet the commitments of the Settlement. This number was generated based on Aqua America's experience in accelerating infrastructure replacements. The intervenors representing organized labor represented that union personnel were available to fill these positions. Finally, it is not likely that BIE's own expert would have suggested the modification to the LTIIP if it were impossible to execute.

OSBA also charges that the increased spending to achieve the acceleration of the replacement of at-risk pipeline will be borne by ratepayers in the form of higher rates. However, the Joint Applicants considered the potential impact of the spending on ratepayers by choosing to make an additional investment of \$30 million rather than a higher number. The Joint Applicants determined that \$30 million would move the replacement program forward faster "but not at such a pace that it would drive rates to a higher level."¹²⁵

However, the Joint Applicants will be required to show that a modified LTIIP is cost effective and in accordance with the Public Utility Code.¹²⁶ The Settlement commits the Company to an LTIIP filing indicating a yearly replacement of 25 miles of high-risk pipe.¹²⁷

¹²⁴ 25 miles ÷ 132 miles = 18.9%. \$30 Million ÷ \$176.7 Million = 16.9%. (Joint Applicants St. 5-R at 18 (table, 2020 data).)

¹²⁵ N.T. 177-78.

¹²⁶ See 66 Pa C.S. §§ 1350-1360.

¹²⁷ See Settlement at ¶ 69.

OCA, in its support of the Settlement, further notes that approval of projected spending in an LTIIP filing is not approval of cost recovery in the DSIC and that the Joint Applicants will still be required to make a showing that costs should be recovered.

Finally, OSBA takes issue with the pipeline acceleration because the shareholders of Aqua America will earn a return on the infrastructure investment. Mr. Knecht, OSBA's expert witness, argued that Aqua America had a strong interest in increasing LTIIP spending and that the Joint Applicants did not conduct an analysis of factors associated with LTIIP to support this proposal.¹²⁸ As such, he concluded that the Joint Applicants' commitment "appears to be self-serving and unsupported by any credible evidence."¹²⁹

No doubt this is true, that stockholders benefit from the returns earned on infrastructure replacement. However, this is the essence of the regulatory compact: utilities are mandated to provide safe and reliable utility service, and in return they may earn a return on their prudent investment.¹³⁰ The fact that shareholders will earn a return is not nefarious or manipulative. Nor does this dilute the benefits derived from increased safety and reliability of at-risk pipeline.

In sum, the Commission has traditionally encouraged the replacement of at-risk pipeline and viewed the expeditious replacement of such pipeline with favor. The proposal set forth in the Settlement which memorializes the commitment to increase spending in order to levelize the replacement of pipeline in the Peoples Companies' system, as recommended by BIE's expert, is an important and significant public benefit which favors approval of the Proposed Transaction as modified by the Settlement.

¹²⁸ OSBA St. 1-SR at 12.

¹²⁹ OSBA St. 1-SR at 15.

¹³⁰ *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944).

3. Public Ownership

The Joint Applicants contend that returning the Peoples Companies to public, Pennsylvania-based ownership provides substantial public benefits. In my view, the Joint Applicants are really saying that Aqua America has organizational characteristics and a management philosophy that differs from SteelRiver. The Joint Applicants do not contend that SteelRiver's stewardship of the Peoples Companies has been inadequate; this is not the standard. The Joint Applicants' contend the organizational characteristics and management philosophy of Aqua America offer distinct advantages to the Peoples Companies which will improve their operation and benefit the public. Specifically, according to the Joint Applicants, Aqua America's ownership of the Peoples Companies will provide various benefits, including: (1) a track record of long-term ownership; (2) expanded access to sources of capital; (3) enhanced transparency in corporate and capital structure; and (4) a commitment to issues of concern to all Pennsylvanians—jobs, community and infrastructure.

BIE and OSBA dispute the Joint Applicant's position that Aqua America's ownership of the Peoples Companies offers benefits to the public. They first contend that there is no guarantee that Aqua America will hold the Peoples Companies long-term. The longest commitment made in the Settlement is in regard to the Goodwin and Tombaugh Systems, and that commitment is for seven years. According to BIE, although the Commission was aware that SteelRiver has a finite life, this did not concern the Commission in prior acquisitions.

The Joint Applicants observe that stability of ownership generally leads to greater willingness to make long-term capital investments to provide continued safe and reliable utility service.¹³¹ Long-term ownership also promotes a sustained commitment to, and engagement with, the communities served.¹³² Aqua America has a demonstrated track record of long-term ownership of utility assets. Aqua America has owned and operated water systems in Pennsylvania for over 130 years. Aqua America has also owned and operated water systems in

¹³¹ Joint Applicants St. 1 at 10; Joint Applicants St. 2 at 8.

¹³² Joint Applicants St. 2 at 8-9.

other states since 1999, and has operated wastewater systems since 1996. Aqua America is not an investment fund with a defined investment time horizon. Its investment horizon is perpetuity and its business model is based on long-term ownership of long-lived assets.¹³³ Aqua America is known to the market as a long-term investor in long-lived utility assets. The *City of York* does not require a public benefit to be guaranteed.

I agree with the Joint Applicants that Aqua America is not likely to change its investment strategy and divest itself of the Peoples Companies with unseemly haste. OSBA and BIE did not offer any evidence which contradicts Aqua America's characterization of its track record of holding acquired assets. The lack of a guarantee regarding Aqua America's term of ownership of the Peoples Companies does not offset the evidence of its track record. It is not unusual in acquisitions for commitments to be modest in duration. The short duration of some of the commitments made in the Settlement does not signal a change in Aqua America's overall investment and management philosophy of long-term ownership.

OSBA and BIE similarly dispute that Aqua America's superior access to capital is a benefit. OSBA expressed doubt as to whether Aqua America would have better access to capital than SteelRiver. OSBA observed that the Joint Applicants offered no evidence that SteelRiver has experienced any difficulty in raising capital and provided no quantification of any improved access to equity markets. Additionally, OSBA noted that the publicly-owned companies are subject to more scrutiny than privately-held firms, which would make privately held firms more attractive to some investors. OSBA further alleges that there is a trend towards more private equity and less public ownership as a favored source of company financing. OSBA also notes that Mr. Knecht suggested that there is some thinking among investors that in the current market private equity may in fact be able to access capital on more favorable terms than public companies.

The Joint Applicants counter that Aqua has a proven record of access to expanded sources of capital which will benefit the Peoples Companies. As a publicly-traded company,

¹³³ Joint Applicants St. 2-R at 32.

Aqua America has access to equity capital from a broad range of investors through highly-liquid public markets. These investors range from small individual investors to large investment funds, including mutual funds.¹³⁴ This access was recently reaffirmed when Aqua America raised approximately \$2.7 billion in equity capital to finance the Proposed Transaction, with public demand of nearly four times the supply raised publicly. Access to equity will be even greater in the future after Aqua America becomes a larger public utility. Aqua America also has access to debt capital both through private placements (typically undertaken at the utility subsidiary level) and public market debt. The ability to raise public market debt was recently demonstrated when Aqua America raised \$436 million in debt to finance the Proposed Transaction, in an offering that was more than four times oversubscribed.

Mr. Knecht's observation regarding the theoretically superior access of private equity to capital does not overcome the Joint Applicants evidence of Aqua America's investment experience. The Peoples Companies currently have access to equity from the finite number of investors in the SteelRiver equity funds and debt from private placements to debt-buying life insurance companies. The broader sources of capital available to Aqua America creates an enhanced ability to finance infrastructure improvement and to meet the commitments for more ambitious infrastructure replacement as set forth in the Settlement.

BIE and OSBA finally argue that the Joint Applicants' claim of increased transparency is not a significant public benefit. BIE and OSBA concede that public ownership of the Peoples Companies may have some small advantages but public ownership should not be considered a substantial public benefit. BIE noted that while publicly owned and traded companies are subject to additional reporting requirements, public utilities in Pennsylvania are fairly open with information provided to the Commission. BIE cited to OCA testimony which stated that there is no transparency issue under the current ownership, SteelRiver. The Commission already has a substantial amount of information regarding the operations of the public utilities and there is no proof that the Commission will get more information than it does now.

¹³⁴ Joint Applicants St. 2-R at 32.

The Joint Applicants do not claim that the Commission will have access to more information about the public utility subsidiaries. What the Joint Applicants are saying is that there is a benefit to having more transparency and information regarding the parent of the public utility subsidiaries, Aqua America. Also, while the ownership of subsidiaries that are not directly within the chain of ownership of Pennsylvania utilities may not be jurisdictional, public knowledge of such non-jurisdictional ownership can provide important information to investors, potential investors, customers, and the Commission on potential changes to a corporation's investment focus. Further, increased financial information regarding the parent company can provide a broader context for the Commission in reviewing the operational information provided by the public utility subsidiaries. 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.¹³⁵ 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. While I agree that this additional transparency is not the most substantial benefit offered by the Proposed Transaction, it is nevertheless a positive characteristic of Aqua America that will enhance the Commission's ability to evaluate the operations of the regulated utility subsidiaries.

Finally, BIE noted that the Peoples Companies already have a strong commitment to Pennsylvania under the current ownership and that the provisions contained in the Settlement do not constitute affirmative public benefits. BIE and OSBA do not believe that the argument that Aqua America understands and is responsive to the local concerns of Pennsylvania because SteelRiver has already made similar contributions to the community. The Joint Applicants point out that Aqua America is and always has been a Pennsylvania-based company throughout its 130-year life. Although Aqua America has expanded to serve customers in eight states, its primary service area remains Pennsylvania. Aqua America's position as a Pennsylvania-based company means that it understands, and is responsive to, issues of concern to all Pennsylvanians. These include, in particular: jobs, community concerns and infrastructure improvement.

¹³⁵ See, e.g., Appendix I to Joint Applicants Ex. DJS-1, the annual 10-K report of Aqua America for 2017.

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,¹³⁶ an additional \$225,000 over three years for emergency furnace repairs for the Peoples Companies' low-income customers¹³⁷ and \$200,000 over the next four years for a hardship grant component for Aqua PA's Helping Hand program.¹³⁸

According to the Joint Applicants, 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 2013.¹³⁹ Furthermore, the Commission has accepted charitable commitments as public benefits in prior acquisition approvals, without mandating customer control over chosen recipients.

The Joint Applicants have also made commitments in the Settlement including a number of conditions that serve to reaffirm Aqua America's intent to maintain the Peoples Companies' presence in the Pittsburgh area. This includes a commitment to maintain the current Peoples Companies' corporate headquarters at least through January 31, 2029. Thereafter, the Peoples Companies' headquarters will continue to remain in the Peoples Companies' service territory unless through application to, and approval by, the Commission.¹⁴⁰

It is important to point out that the Joint Applicants need not demonstrate that SteelRiver is not making adequate investments or is not adequately stewarding the utility service rendered by the Peoples Companies. Indeed, Mr. Franklin conceded that the Peoples Companies have been well run. Rather, the Joint Applicants must show that the characteristics of Aqua

¹³⁶ Settlement ¶ 100.

¹³⁷ Settlement ¶ 101.

¹³⁸ Settlement ¶ 109.

¹³⁹ See 2013 Equitable Application.

¹⁴⁰ Settlement ¶¶ 81-82.

America create additional benefits to the public in addition to the competent management by SteelRiver. The fact that SteelRiver has not had difficulty accessing capital, for example, does not erode the Joint Applicants' argument that Aqua America has access to a broader range of financing resources. While the increased transparency to the Commission of Aqua America as a publicly traded company may offer only moderate benefits, overall, the characteristics of Aqua America in contrast to SteelRiver, translate into a public benefit which supports the approval of the Proposed Transaction.

4. Workforce Benefits

The Joint Applicants admit that the Proposed Transaction will not generate large synergies of operation because the utility subsidiaries will remain separate with their own personnel compliment. Therefore, the Joint Applicants do not propose the elimination of jobs from either the Peoples Companies or Aqua PA to generate cost savings. Instead, the Joint Applicants will retain the existing workforce at the utility subsidiaries and will add jobs as part of the proposed infrastructure commitments memorialized in the Settlement. In the Joint Applicants view, the addition of jobs, coupled with the retention of existing workforce, is a substantial public benefit.

Specific workforce commitments highlighted by the Joint Applicants include specific commitments to retain jobs at the call centers of the Peoples Companies and Aqua, as well as to retain the Peoples Companies' field operations center jobs. Specifically, the Peoples Companies committed to maintain field staffing levels for the next five years.¹⁴¹ The Joint Applicants further committed to maintain or increase staffing of call centers located in Pennsylvania, maintain the Peoples Companies' call center within the Peoples Companies' service territory in or near Pittsburgh, and only reduce staffing or relocate call center employment upon Commission approval.¹⁴² These specific commitments provide guarantees of job retention in Pennsylvania that do not currently exist, and benefit customers by ensuring that

¹⁴¹ Settlement ¶ 76.

¹⁴² Settlement ¶¶ 94-95.

they enjoy the same services provided by Pennsylvania-based employees. Keeping jobs in the Joint Applicants' service territories will benefit local Pennsylvania economies.

In addition, the Joint Applicants' commitment to accelerate the replacement of at-risk pipe, will result in approximately 100 new jobs, inclusive of contracted labor and the Peoples Companies' employees, being added in Western Pennsylvania. According to the Joint Applicants, this opportunity to increase jobs in Western Pennsylvania is a further substantial public benefit.

In their statement in support of the Settlement, UWUA Local 612 pointed to several provisions of the Settlement that may enhance employment opportunities, at least for union members. These Settlement provisions include the rehabilitation of the Goodwin and Tombaugh Systems,¹⁴³ continuation of the Peoples Companies' programs to reduce unaccounted for gas,¹⁴⁴ continuation and enhancement of Peoples' Long Term Infrastructure Improvement Plans,¹⁴⁵ creation of a new program to reduce line hit damages,¹⁴⁶ and continuation of the field appointments performance standard.¹⁴⁷ UWUA Local 612 agrees that the Proposed Transaction, as modified by the Settlement, adequately addresses its concerns related to the employment of its members before this Commission and is in the public interest. UWUA Local 612 submits that the Settlement contains sufficient protections for the Commission to find that the transaction would not have an adverse effect on the Peoples Companies' employees or UWUA Local 612 as the authorized collective bargaining agent representing those employees.

In addition, the Settlement contains a specific commitment to maintain the level of field staffing -- both in total and for UWUA Local 612-represented employees -- for a period of five years. The baseline number of employees will be determined at closing, but will be no

¹⁴³ Settlement ¶¶ 29-40.

¹⁴⁴ Settlement ¶ 68.

¹⁴⁵ Settlement ¶¶ 69 and 72.

¹⁴⁶ Settlement ¶ 70.

¹⁴⁷ Settlement ¶ 92.

fewer than the number of field employees when the proposed acquisition was announced (October 31, 2018).

Laborers' District Council of Western Pennsylvania (LDC) agrees. The LDC's members work in the construction and general laboring industries.¹⁴⁸ Through collective bargaining agreements with the Peoples Companies' pipeline replacement contractors, union laborers provide a highly-skilled, experienced and safety-conscious workforce. The LDC has enjoyed a long-standing and cooperative relationship with these contractors, and the maintenance of this relationship following the proposed acquisition would promote the public interest in several respects. The Peoples Companies employ a "hybrid" approach to its pipeline infrastructure modernization projects, utilizing third-party contractors for installation of mains, services and restorations. Over 70% of the work on pipeline installation and throughout the Peoples Companies' gas system are performed by contractors.

LDC explains the continuation of a commitment to utilizing union labor by the Joint Applicants for the ongoing pipeline infrastructure improvement project serves the public interest in several respects. For example, the Peoples Companies' largest pipeline contractor, M. O'Herron, is a signatory to collective bargaining agreements with LDC, and performs 24% of the Peoples Companies pipeline installation activities. There are typically approximately 600 LDC members employed regularly on the Peoples Companies installation and restoration projects.¹⁴⁹ Union members employed on pipeline projects participate in extensive training through the LDC Training Center in Western Pennsylvania, which offers an 80-hour pipeline technology class and certification to laborers seeking employment in the field. This program focuses on safety and construction processes and standards and is provided both prior to and during employment.¹⁵⁰

¹⁴⁸ LDC is a labor organization providing administrative, training and organizational services to its constituent local unions and members in the 33-county geographical area of Western Pennsylvania, comprised of over 13,000 members. Laborers District Council of Western Pa. LDC St. 1. Its largest local unions are in the geographic area served by applicant the Peoples Companies.

¹⁴⁹ LDC St. 1 at 4.

¹⁵⁰ *Id.*

According to LDC, a commitment to the continuation of the use of contractors that are parties to collective bargaining agreements with LDC will ensure the continuing availability of qualified, trained workers as the pipeline replacement and restoration projects accelerate. LDC negotiates fair wage and benefit packages with its signatory employees, which further promotes the supply of competent and skilled workers for this vitally important work.

BIE and OSBA contend that the Joint Applicants analysis of the effect of the Proposed Transaction on job growth is based on the view that “absent this transaction some other utility would buy the Peoples Companies 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.”¹⁵¹ BIE takes the position that the Joint Applicants have only shown that there will be no job losses if the Proposed Transaction is approved, and have made no commitment to add 100 new jobs as a result of the proposed infrastructure projects. OSBA adds that the Joint Applicants have only done a cursory evaluation of the availability of qualified workers to achieve the replacement of risky pipe.¹⁵² Therefore, compared to the status quo, there are no likely increases in workforce that would create a substantial public benefit.

I agree with BIE and OSBA that it is not appropriate to weigh the value of a proposed public benefit against a change of circumstance that might occur, such as the acquisition of a utility by an entity other than the proposed new owner. Rather, the consideration should be whether the transaction as proposed brings improvements to the current operation. Therefore, to the extent the Joint Applicants argue that the Peoples Companies might be acquired by a company that would reduce the workforce or shift workforce outside of the Pennsylvania, those arguments are rejected.

But the Joint Applicants’ assertion that the Proposed Transaction will accrue increases in workforce is not as simplistic as articulated by BIE and OSBA. As has been discussed in prior sections, this transaction is not typical. Aqua America intends to operate the

¹⁵¹ BIE Reply Brief at 13.

¹⁵² OSBA St. 1-S at 15.

Peoples Companies and Aqua PA as independent utility subsidiaries. Therefore, there will not be the usual duplication of jobs that would be expected if the operations of the companies were to be combined. There is not a “services” entity that provides administrative services to the subsidiaries, such as the one that serves the FirstEnergy subsidiaries, for example. That said, Aqua America expects that the acquisition of the Peoples Companies will provide growth opportunities for both the gas and water utility subsidiaries – these opportunities will be long-term opportunities and accrete over time. Therefore, the extent of expanded employment opportunities, with the exception of the 100 jobs related to pipeline replacement, cannot be quantified or measured.

As for the 100 additional pipeline jobs, BIE only argues that these jobs are not guaranteed because the Joint Applicants have not memorialized the additional jobs as a commitment. OSBA simply questions whether the Joint Applicants will be able to find enough qualified bodies to fill these jobs.

The *City of York* standard, as refined by *Popowsky (Verizon)*, requires a “substantial benefit.” Where a benefit can be quantified it should be, but the court contemplates circumstances where it is impossible to do so. But there is nothing that mandates benefits, such as job growth, be “guaranteed.”¹⁵³ The fact that there is no commitment to add 100 jobs in the Settlement or that the Joint Applicants may face challenges in filling those jobs, does not mean that there is no benefit from the Proposed Transaction as it relates to workforce increases. The analysis of the number of additional jobs necessary to meet proposed increases in pipeline replacement were part of the analysis by James C. Barbato.¹⁵⁴ The Joint Applicants point out OSBA witness Knecht concedes that the Joint Applicants have based their understanding of labor availability upon conversations with the local unions associated with the necessary

¹⁵³ *Popowsky (Verizon)*, 937 A.2d at 1057 (the Commission is “not required to secure legally binding commitments or to quantify benefits” of the proposed transaction).

¹⁵⁴ Joint Applicants St. 5-R at 20. Mr. Barbato serves as the Vice President, Corporate Engineering of Aqua America, Inc.

workforce.¹⁵⁵ Laborers District Council witness Philip Ameris¹⁵⁶ further testified that local contractors are “well positioned to ramp up quickly to provide the Peoples Companies with the trained and qualified local labor needed to support the ambitious infrastructure goals.”¹⁵⁷ Therefore, the addition of jobs specifically to execute the planned infrastructure replacement is a substantial public benefit.

The notion that combining the utility subsidiaries under one corporate umbrella is likely to achieve increases in employment opportunities is, as suggested by BIE and OSBA, more speculative than the estimate of 100 jobs related to infrastructure projects in the Settlement. But logically, it follows that Aqua America’s vision for improved customer service, reliability improvements and overall corporate growth is likely to require additional personnel to achieve. Coupled with the concrete estimate of additional pipeline jobs and settlement commitments, overall the Proposed Transaction offers workforce benefits as a substantial public benefit.

5. Implementation of SAP at Aqua PA

The Joint Applicants identified the potential implementation of the Peoples Companies SAP platform at Aqua PA, as a significant benefit of the Proposed Transaction. According to the Joint Applicants, there are concrete benefits associated with the implementation of the Peoples Companies’ SAP platform at Aqua.

According to the Joint Applicants, customers’ expectations with respect to their interactions with utilities have changed. Customers desire a number of different channels to interact and demand that the utilities provide information promptly and accurately.¹⁵⁸ The Peoples Companies have responded to those expectations through their use of the SAP platform,

¹⁵⁵ OSBA St. 1-SR at 15 (conceding local unions have not identified potential labor shortages).

¹⁵⁶ Mr. Ameris is the Business Manager of LDC.

¹⁵⁷ Laborers District Council St. 1 at 5.

¹⁵⁸ Joint Applicants St. 1-R at 10.

and Aqua PA's customers can also obtain those service benefits once Aqua America installs the SAP platform at that utility as well.

For instance, SAP implementation will allow Aqua PA to run a fully integrated contact center system that allows a Customer Service Representative to have immediate access to SAP customer information through automated screen pops, similar to the Peoples Companies, and would create more personalized customer interactions through additional communication channels and an online customer portal.¹⁵⁹ It is also beneficial for Aqua PA to adopt and implement this platform while interfacing with the Peoples Companies, because working with an experienced utility team who has continually implemented SAP and surrounding technology, will minimize risks associated with timing, budget and planning associated with adopting a new information technology platform.¹⁶⁰

While the Joint Applicants have not yet quantified the dollar value of savings associated with implementing the Peoples Companies' SAP system at Aqua PA, the Joint Applicants explain that two categories of cost savings will result: savings associated with the mitigation of implementation risk; and savings from consulting. The Peoples Companies have already successfully implemented SAP. Mr. Franklin explained the value of the risk mitigation provided by access to the Peoples Companies expertise. Teams implementing the system for Aqua PA will be able to see the system operating and in-place. The team of the Peoples Companies employees and some of the consultants used to launch the system at the Peoples Companies are still in place, and available to Aqua PA. Aqua America believes that working with these teams will translate into cost and efficiency savings when the system is implemented at Aqua PA, and avoid many of the pitfalls that can occur when data is migrated from one computer system to another.¹⁶¹

¹⁵⁹ Joint Applicants St. No. 4-R at 10-11.

¹⁶⁰ See Joint Applicants St. No. 4-R at 11-12, 15-16.

¹⁶¹ N.T. 84-85.

The Peoples Companies have responded to those expectations through their use of the SAP platform, and Aqua PA's customers can also obtain those service benefits once Aqua PA installs the SAP platform as well.

The Settlement bolsters the impact of this benefit by providing that Aqua PA will conduct a cost, benefit, timetable and rate impact analysis for implementation of the Peoples Companies' SAP system and submit the analysis and report to OCA, BIE and OSBA prior to any implementation of the SAP system to Aqua PA.¹⁶² This process recognizes the benefits associated with the implementation of SAP at Aqua PA, and provides the statutory advocates with the information necessary to validate the benefits claimed by the Joint Applicants in this proceeding. OCA explains that it supports this Settlement commitment because the reporting requirements contained in the Settlement are important and they will allow OCA and other parties to track best practices shared between the companies. The reporting provisions provide OCA and other parties with important data in a future base rate case. As such, OCA submits that these reporting requirements are in the public interest and in the interest of the Joint Applicants' customers.

BIE and OSBA both argued in their respective Main Briefs that Aqua's implementation of the Peoples Companies' SAP system does not rise to the level of an affirmative public benefit. OSBA noted that, while the Peoples Companies' SAP system is generally superior, it is "plausible" that Aqua would implement the SAP system in the absence of the Proposed Transaction. OSBA also claims that Mr. Franklin stated at the evidentiary hearing that Aqua is currently not in need of an upgrade.

Neither BIE nor OSBA provide convincing arguments for dismissing the implementation of SAP at Aqua PA as an affirmative public benefit. Both concede that the Peoples Companies' SAP system is superior to the computer system in place at Aqua PA. Neither disputed the testimony that utilizing the expertise of the Peoples Companies' teams that transitioned the Peoples Companies to the SAP system mitigates risk and reduces costs.

¹⁶² Settlement ¶ 96.

Further, OSBA mischaracterized Mr. Franklin's testimony. He did not testify that the computer system in place at Aqua PA is not in need of an upgrade. He said the system currently operates and "meets every standard in the market." He also testified that Aqua PA's current system is approaching its "end of life,"¹⁶³ as computer technology often does. Read in context with the customer service improvements which will be provided by SAP, the current system may not be in immediate need of an upgrade, but the new system will offer clear improvements to the service that Aqua PA is able to provide to its customers. It is not necessary for the Joint Applicants to wait until an existing system reaches the end of its useful life before replacing it with a superior system can be considered a public benefit.

In sum, the upgrade of Aqua PA's computer system with the superior SAP system currently in place at the Peoples Companies is a clear public benefit resulting from the Proposed Transaction.¹⁶⁴ Not only will Aqua PA's customers benefit from the risk mitigation provided by the expertise of the Peoples Companies' teams, and inevitable cost savings likely to be derived, but they will also benefit from the enhanced customer service features that the SAP provides. Although the timeline for the project and the projected cost savings have not been fully developed, the reporting requirements included in the Settlement provide the Commission and the statutory advocates with a tool to ensure that the project is executed in a reasonable and cost-effective manner.

6. Universal Service and Low-Income Commitments

OCA and CAUSE-PA raised concerns regarding the effect of the Proposed Transaction on low-income customers because the application did not propose any changes to rates or other programs affecting low-income customers.¹⁶⁵ The Joint Applicants addressed many of these concerns, and proposed acceptable conditions that would ensure certain benefits

¹⁶³ N.T. 235.

¹⁶⁴ *Joint Application Of United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania and Embarq Communications, Inc.*, Docket No. A-2008-2076038 (Opinion and Order entered May 28, 2009) (integration of "best practices" including SAP is a substantial public benefit).

¹⁶⁵ OCA St. No. 3 at 32-34; CAUSE-PA St. No. 1 at 9-13.)

inured to the low-income customers of the Peoples Companies and Aqua PA if the Proposed Transaction were approved. These commitments were memorialized in the Settlement and are explicitly supported by OCA and CAUSE-PA.¹⁶⁶ The Settlement will provide public benefits to the low-income customers of both the Peoples Companies and Aqua PA.

a. Benefits to The Peoples Companies' Low-Income Customers

The Peoples Companies will continue to fund their existing Universal Service Programs at levels that are not less than the funding levels proposed in its most recent Universal Service and Energy Conservation Plan for 2019-2021 at Docket No. M-2018-3003177, and Aqua America's shareholders will contribute additional funds to these programs.¹⁶⁷ The contribution of additional funds to low-income programs will provide substantial public benefits by assisting customers to maintain gas service.

In addition, the Peoples Companies will continue their long-standing partnerships with existing Community Based Organizations (CBOs), other stakeholder agencies, and the Peoples Universal Service Advisory Group to ensure the effective administration of these programs.¹⁶⁸ Moreover, the Settlement contains commitments that maintain the Peoples Companies' current Universal Service organizational structure and staffing levels, and maintain the existing field employee referral program (i.e. "Help At Peoples Now").¹⁶⁹ According to the Joint Applicants, these commitments maintain and improve upon the low-income programs and services currently offered to the Peoples Companies customers, and evidence Aqua America's commitment to building upon these programs in the future.

The Settlement requires Aqua America to increase the Peoples Companies' LIURP emergency furnace repair by \$75,000 and specifies that this increase will be paid by

¹⁶⁶ Settlement ¶¶ 98-111.

¹⁶⁷ Settlement ¶¶ 98-101.

¹⁶⁸ Settlement ¶¶ 102-104.

¹⁶⁹ Settlement ¶¶ 110-111.

Aqua America shareholders for a three-year period post-closing.¹⁷⁰ The increase to the budget for the Peoples Companies' LIURP will assist customers with emergency repair and replacement, and in particular, customers who otherwise fall into the gap of emergency assistance. The Settlement also provides that the Peoples Companies will continue utilizing community-based organizations and its Universal Service Advisory Group to provide low-income advocates and other stakeholders with the opportunity to share ideas and initiatives directly with the Peoples Companies personnel responsible for the planning and implementation of the Peoples Companies' universal service programs.¹⁷¹

b. Benefits to Aqua PA's Low-Income Customers

The universal service programs at the Peoples Companies are more robust than the programs currently in place at Aqua PA.¹⁷² Therefore the Joint Applicants have agreed to provide benefits in the Settlement to the low-income customers of Aqua PA. Importantly, Aqua PA will leverage the Peoples Companies' experience with programming and invite one member of its current Universal Service Staff to Aqua PA's Helping Hand collaborative meetings and invite staff in charge of collections to the Peoples Companies' Universal Service Advisory Committee meetings.¹⁷³ These commitments will ensure that Aqua PA's employees interface with and learn from the Peoples Companies and share in their practices with respect to low-income programming.¹⁷⁴

In addition, Aqua PA has committed to review the feasibility of collecting data in accordance with its recent rate case settlement in Docket No. R-2018-3003558, as set forth in each settlement.¹⁷⁵ Collecting this information will provide Aqua PA additional information

¹⁷⁰ Settlement ¶ 101.

¹⁷¹ Settlement ¶¶ 102-06.

¹⁷² See CAUSE-PA St. 1 at 13.

¹⁷³ Settlement ¶¶ 105-106.

¹⁷⁴ See Joint Applicants St. No. 7-R at 10.

¹⁷⁵ Settlement ¶ 107 (detailing low-income data collection).

about the low-income population it serves, which will benefit future efforts to address these customers' needs.¹⁷⁶ Furthermore, Aqua PA will include in the Helping Hand collaborative agreed to in its recent rate case settlement,¹⁷⁷ discussion of the development of a comprehensive universal service and conservation program that will be proposed by Aqua PA, as set forth in the Settlement.¹⁷⁸ The discussion and development of this program will benefit low-income customers by creating solutions to promote water conservation that are not currently provided.¹⁷⁹

Finally, Aqua America's shareholders will contribute an additional \$50,000 to the hardship grant component being developed for Aqua PA's Helping Hand Program. This contribution will be made annually for four years. The Joint Applicants also commit to evaluate whether to increase this contribution as a part of Aqua PA's next base rate case.¹⁸⁰ This provision benefits the public because it increases funds available to low-income customers under Aqua PA's program above current levels.

c. Objections of BIE and OSBA

BIE agrees that it is important to consider the effect of the Proposed Transaction on low-income customers. However, BIE maintains that the settlement terms which benefit low-income ratepayers should not be considered a benefit because these measures could be achieved absent the acquisition. Further, according to BIE, the financial commitments the Joint Applicants have made in other areas could have a substantial negative impact on low-income ratepayers. OSBA argues that the low-income proposals are of a relatively short duration and should therefore not be considered a benefit. OSBA also contends that a benefit to one class of

¹⁷⁶ See Joint Applicant St. No. 7-R at 10-11.

¹⁷⁷ Docket No. R-2018-3003558.

¹⁷⁸ Settlement ¶ 108.

¹⁷⁹ Joint Applicants St. No. 7-R at 11-12.

¹⁸⁰ Settlement ¶ 109.

ratepayer cannot support an acquisition as an affirmative public benefit, citing *Middletown Township v. Pa. Pub. Util. Comm'n.*¹⁸¹

In contrast, the Joint Applicants, OCA and CAUSE-PA contend that BIE and OSBA take too narrow a view of the value of the low-income and universal service commitments made in the Settlement.

The standard for evaluating the alleged benefits of an acquisition is not whether or not the Joint Applicants could have developed the low-income program in the absence of the Proposed Transaction. BIE does not cite any authority to support this argument, nor has my research found such authority where the Commission applied this standard. Much like OSBA's argument that the benefits of the transaction cannot be compared to the event of an unidentified alternate buyer, the transaction is compared to the programs that are in place now, not what might be. Therefore, this argument by BIE is rejected because neither of the Joint Applicants made these proposals before the application was filed.

OSBA's argument must also be rejected. *Middletown Township* does not support OSBA's position that the commitments for low-income customers and universal service must be rejected as benefits because they only benefit one class of ratepayers. In the *Middletown Township* case, Middletown Township filed an application with the Commission for a certificate of public convenience that would allow it to purchase that part of the Newton Artesian Water Company located within the township.¹⁸² There, the Commission rejected the proposed acquisition because the acquisition would only benefit residents of Middletown Township and "would have an *adverse* effect on the [Newton Artesian] Water Company's remaining customers."¹⁸³

¹⁸¹ 482 A.2d 674 (Pa.Cmwlth. 1984) (*Middletown Township*).

¹⁸² *Middletown Township*, 482 A.2d at 678.

¹⁸³ *Id.* at 679, 682 (emphasis added).

Here, certain benefits of the transaction benefit low-income ratepayers. Other provisions of the Proposed Transaction reach other classes of ratepayers. The Supreme Court has soundly rejected the notion that all types of customers must receive specific benefits from the transaction, where there is no evidence that other customer classes will suffer harm.¹⁸⁴

CAUSE-PA disputes the contention that benefits to low-income ratepayers only benefits those ratepayers. According to CAUSE-PA, the low-income program commitments contained in the Proposed Settlement are specific and quantifiable, and will provide both direct and indirect benefits for the customers of both Aqua PA and the Peoples Companies. Indeed, by improving affordability for low-income customers and, in turn, helping to reduce involuntary terminations and the accumulation of uncollectible expenses, the Settlement will bring measurable improvement to customers of both companies. These benefits will not be limited to one particular group or geographic subdivision, but will instead provide positive and quantifiable benefits to all ratepayers and the broader community. The Joint Applicants' funding commitment will help strengthen the financial stability of their respective rate bases, will reduce reliance of low-income families on potentially dangerous alternative heating sources, and will help prevent evictions and homelessness which may result from the loss of water or heat-related services. The Joint Applicants' low-income programming along with the improvements in this settlement will provide additional tools in helping current low-income consumers to rise above their current circumstances, while acting as a safety net for those who fall from affluence. CAUSE-PA also points out there is no evidence in the record to support OSBA's claim that these commitments, which consist primarily of shareholder contributions, would have an adverse impact on customers of either service territory.

OCA also supports the low-income commitments made by the Joint Applicants in the Settlement. OCA was concerned that as a consequence of the Proposed Transaction, attention and funds would be diverted from vital universal service programs in the process of Aqua America acquiring the Peoples Companies.¹⁸⁵ Therefore, Ms. Alexander recommended

¹⁸⁴ *Popowsky (Verizon)*, 937 A.2d at 1061.

¹⁸⁵ OCA St. 3 at 27-28.

that the Peoples Companies maintain its obligations to improve its universal service programs for an additional five years after the final order in this proceeding.¹⁸⁶ Ms. Alexander also recommended increasing Peoples' Low Income Usage Reduction Program (LIURP) funding levels and recommended that Aqua America shareholders fund the increase for a period of four years.¹⁸⁷

The Settlement addresses these concerns to the satisfaction of OCA. The Settlement provides that the Peoples Companies will continue to fund its Customer Assistance Program (CAP), LIURP, CARES, and hardship funds at levels that are not less than the funding levels proposed in its most recent Universal Service and Energy Conservation Plan for 2021, in addition to the increased funding outlined in the Settlement.¹⁸⁸ Accordingly OCA believes that the Proposed Transaction as modified by these commitments is in the public interest.

The Joint Applicants' commitments extend beyond what is legally required and will be largely financed by Aqua's shareholders.¹⁸⁹ The Joint Applicants have made substantial additional commitments to improve low-income programming beyond the initial proposal and to have Aqua's shareholders shoulder the cost. The Settlement contains a multi-year commitment to increase annual voluntary shareholder donations to the Peoples Companies and Aqua's respective hardship funds, as well as the Peoples Companies' LIURP and emergency furnace repair program, amounting to a total of \$825,000.¹⁹⁰

In the absence of the Settlement, Joint Applicants would not be legally required to make these additional funding commitments to universal service programs, let alone pay with shareholder dollars. Furthermore, the record evidence does not support a conclusion that the terms of the Proposed Settlement could have a "substantial negative impact" on low-income

¹⁸⁶ OCA St. 3 at 6.

¹⁸⁷ OCA St. 3 at 23.

¹⁸⁸ Settlement ¶ 98.

¹⁸⁹ Settlement ¶¶ 98-111, 104.

¹⁹⁰ Settlement ¶¶ 100, 101, 109.

ratepayers. For the reasons stated above, the low-income commitments made by the Joint Applicants as a result of the Settlement will materially improve affordability for vulnerable consumers, which in turn benefits the system, other ratepayers, and ultimately the entire community.

7. Customer Service Improvements

a. Aqua America and Aqua PA Customer Service Improvements

OCA noted in testimony that there was a significant difference between the customer service metrics of the Peoples Companies and Aqua PA, and that Aqua PA should strive to meet the metrics currently being achieved by the Peoples Companies.¹⁹¹ The Joint Applicants have committed to improving Aqua PA call center performance, to match the performance standards applicable to the Peoples Companies, which would result in improved performance compared to current levels.¹⁹² The Settlement also provides for Aqua PA to track Pennsylvania customer complaints, and to conduct annual reviews of the tracked information to determine the cause of any adverse trends.¹⁹³ This condition will provide Aqua PA information regarding complaint trends, which could be used to more effectively and efficiently address complaints to the benefit of its customers. In addition, the Settlement contains a commitment by Aqua PA to reduce the number of days to respond to complaints, which also will improve the service it provides to its customers beyond current levels.¹⁹⁴

The Joint Applicants also agreed to develop and adopt a method to track field operations appointments at Aqua PA, similar to the method used by the Peoples Companies, and

¹⁹¹ OCA St. 3 at 23-25.

¹⁹² Settlement ¶ 83.

¹⁹³ Settlement ¶ 85.

¹⁹⁴ Settlement ¶ 86.

adopt performance standards that meet or exceed the standard of the Peoples Companies for this metric, for five years.¹⁹⁵ Customers have increased expectations that utilities will set and meet appointments for field work, according to the Joint Applicants, and this commitment benefits Aqua PA's customers by enhancing the service Aqua PA provides them beyond current levels.¹⁹⁶

In addition, Aqua PA commits to meet its internal 2019 performance objectives as set forth in the Settlement and will continue to establish and strive to meet comparable or more strict performance objectives for five years.¹⁹⁷ This commitment ensures that Aqua PA will continue to meet or exceed its existing performance metrics, which help it provide safe and reliable service to its customers.

Finally, Aqua PA will provide a report to OCA, BIE, and OSBA each calendar year for a period of five years following closing regarding its achievement of these service quality metrics, which will outline the actual metrics achieved and additional actions expected to be taken in the following year to further improve customer service.¹⁹⁸ This commitment further provides that if Aqua PA has not achieved an identified metric, the report must also include the reasons for the failure and Aqua PA's plan to reach the service quality metric and that Aqua PA must then convene a collaborative with OCA, BIE, and OSBA to discuss the report. In this regard, the Settlement provides an additional, substantial affirmative benefit that ensures Aqua PA will strive to meet the identified metrics and, if it does not meet a given metric, that there is a course of action to move forward.

Neither BIE nor OSBA challenged the proposals to improve the customer service metrics at Aqua PA. OCA and the Joint Applicants state that these customer service improvements are important public benefits. I agree.

¹⁹⁵ Settlement ¶ 87

¹⁹⁶ N.T. 236. *See also* discussion of SAP system in Section E. 5.

¹⁹⁷ Settlement ¶ 88.

¹⁹⁸ Settlement ¶ 89.

b. The Peoples Companies' Customer Service Improvements

The Settlement also provides for the improvement of customers service programs at the Peoples Companies. The Joint Applicants agreed to maintain the Peoples Companies' capital expenditures at pre-acquisition budgeted levels, and to provide projected expenditures to the statutory advocates for 2019 and 2020.¹⁹⁹ This commitment would ensure that the Peoples Companies continue to possess the requisite capital to provide safe and reliable service to their customers.

The Peoples Companies have committed to meet performance standards at or stricter than those enumerated in the Settlement for a five-year period.²⁰⁰ This commitment ensures that the Peoples Companies will continue to meet or exceed their existing performance metrics, which help them provide safe and reliable service to their customers.

In addition, the Peoples Companies are committed to continuing to track their field operations appointments and continuing the existing performance standard of meeting 99% of all appointments.²⁰¹ Further, the Peoples Companies are committed to meeting the overall average performance customer survey results reflected in 2017-2018 results for a period of five years.²⁰² These commitments will ensure that the Peoples Companies' will continue their long-term commitment to finding better ways to serve their customers.²⁰³

Finally, the Settlement requires Aqua America to ensure that the Peoples Companies will file a similar report to the report Aqua PA has committed to file with the Commission and the statutory advocates, and to have a similar plan of action if the reported

¹⁹⁹ Settlement ¶ 84.

²⁰⁰ Settlement ¶ 91.

²⁰¹ Settlement ¶ 92.

²⁰² Settlement ¶ 93.

²⁰³ Joint Applicants St. 6-R at 44-46.

metrics do not meet the levels set forth in the Settlement.²⁰⁴ If the Peoples Companies do not meet a given metric, there is a course of action to move forward to make improvements.

BIE contends that these conditions are nothing more than the maintenance of the status quo. Because there is no enforceable commitment to improve customer service metrics at the Peoples Companies, these provisions are not benefits arising from the Proposed Transaction.

The Joint Applicants acknowledge that the Settlement matches the Peoples Companies' performance goals for 2019. However, according to the Joint Applicants, the Settlement terms do represent commitments, and not just goals, and exceed certain commitments that were contained in the 2013 Equitable Settlement.²⁰⁵ According to the Joint Applicants, BIE also fails to recognize that these commitments have reporting and resolution requirements that are not currently in place. The Settlement provides that the statutory advocates and the Commission can monitor the Peoples Companies' service quality and reliability.²⁰⁶ These commitments ensure that the Peoples Companies will continue to meet specific customer service and quality standard metrics. The reporting and resolution requirements provide specific benefits by implementing a new mechanism to ensure that the Peoples Companies continue to provide a high level of service to their customers, and at a level that meets or exceeds current metrics.

OCA agrees with the Joint Applicants and submits that BIE's argument fails to acknowledge the importance of maintaining the Peoples Companies' service-related commitments. OCA was initially concerned that, due to the size of the proposed transaction and the attention that would potentially be diverted as a result of the Proposed Transaction, a lack of specific commitments could result in a deterioration of customer service and service quality at the Peoples Companies. As such, OCA recommended that the Peoples Companies should continue to meet its service performance goals for 2019 and provided several recommended

²⁰⁴ Settlement

²⁰⁵ OCA St. 3 at 21.

²⁰⁶ Settlement at ¶ 90.

metrics by which the Peoples Companies could be evaluated.²⁰⁷ The Settlement adopted OCA's recommendations for a period of five years.²⁰⁸ OCA submits that the Joint Applicants' adoption of OCA witness Alexander's metrics enumerating specific performance objectives helps ensure that best practices are shared between the Joint Applicants to benefit the public. These benefits were not originally included in the initial application. The service commitments in the Settlement represents a reasonable product of compromise.

The Joint Applicants have made commitments to improve their customer service and related metrics as part of the Proposed Transaction. The Settlement reflects the Joint Applicants' commitment to maintain or increase the location and staffing of call centers and their local workforce.²⁰⁹ These commitments by the Joint Applicants constitute significant public benefits because they would (1) maintain or increase Pennsylvania-based jobs, (2) ensure Pennsylvania customers are interfacing with Pennsylvania-based employees, and (3) ensure the Joint Applicants continue to maintain the call center and workforce staffing levels necessary to provide safe and reliable service. The Joint Applicants and OCA submit these commitments will have a positive effect on customer service for both the Peoples Companies' customers and Aqua PA's customers.²¹⁰

The customer service commitments in the Settlement provide important benefits to both the customers of the Peoples Companies and Aqua PA. BIE is correct in observing that simply meeting metrics which are already in place is not a substantial benefit. But the Settlement includes additional reporting requirements which create a mechanism for the statutory advocates to enforce these metrics. More importantly, the Settlement includes provisions for the substantial improvement of customer service metrics at Aqua PA which are not currently in place. Neither BIE nor OSBA challenges the value of these specific improvements and these commitments provide important public benefits as a result of the Proposed Transaction.

²⁰⁷ See OCA St. 3 at 4-6.

²⁰⁸ See Settlement ¶¶ 90-92.

²⁰⁹ Joint Applicants St. 7-R at. 6-7.

²¹⁰ Settlement ¶¶ 83-95.

Therefore, the customer service commitments in the Settlement are a substantial benefit of the Proposed Transaction.²¹¹

8. Supplier Improvements

The NGS Parties/RESA and Direct Energy proposed various modifications to the Peoples Companies' choice programs and supplier tariffs, which they asserted would enhance retail gas competition. NGS Parties/RESA raised a number of operational issues in this proceeding that directly impact the manner in which they serve their customers on the Peoples' systems, and consequently, which impact their profitability.

Direct Energy also proposed various improvements to certain protocols and took the position that a number of current procedures/operations employed by the Peoples Companies must be maintained during the transition and post-merger in order for Direct Energy to continue to offer NGS services in the Peoples Companies' service territory in an efficient and effective manner.²¹²

Both Direct Energy and NGS Parties/RESA supported the proposal recommending that the Peoples Companies "exit the merchant function" (i.e., no longer provide supplier of last resort services and, instead, rely on market-based prices and solutions). Orlando Magnani, Direct Energy's witness, testified that implementing this proposal will provide the public with the benefits of a properly functioning and effectively competitive retail natural gas

²¹¹ *ARIPPA v. Pa. Pub. Util. Comm'n*, 792 A. 2d 636 (Pa.Cmwlth. 2002)(en banc); *Joint Application of Equitable Resources, Inc., and The Peoples Natural Gas Company, d/b/a Dominion Peoples, for approval of the transfer of all stock and rights of The Peoples Natural Gas Company to Equitable Resources, Inc., and for the approval of the transfer of all stock of Hope Gas, Inc., d/b/a Dominion Hope, to Equitable Resources, Inc.*, A-122250F5000 (Opinion and Order entered April 13, 2007); *Joint Application of United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania and Embarq Communications, Inc.*, Docket No. A-2008-2076038 (Opinion and Order entered May 28, 2009).

²¹² Direct Energy St. 1.

market.²¹³ BIE, OSBA and OCA objected to the contention that the Joint Applicants should exit the merchant function.

The Settlement adopts many of the proposals by the supplier parties to maintain and enhance the existing choice and transportation programs of the Peoples Companies. The Peoples Companies committed to programmatic changes that would enhance retail gas competition, including: (1) providing natural gas suppliers with heating and base load information for customers, including the weather station associated with the customer, upon request; (2) providing a minimum of 20 rate codes, up to 40 rate codes, per supply pool; (3) examining potential opportunities to expedite issuance of daily delivery requirements and capacity requests; and (4) identifying customers' billing cycles on customers' invoices, to the extent that suppliers find this information valuable and are willing to pay for it.²¹⁴ The NGS Parties/RESA explain in their support of the Settlement that these provisions are important to their programs. Additional data that the Peoples Companies have agreed to provide are centered on the regular provision of data to suppliers, data that will allow suppliers to better forecast their customers' consumption. More accurate forecasts mean more precise purchasing and the reduced need to purchase excess gas as a margin – particularly when prices are high – or the converse problem of purchasing too little gas, which can lead to penalties and the forced purchase of make-up supplies at higher-than-market prices. Regularly updated heat load and baseload factors allow suppliers to maintain a higher level of accuracy, thus reducing risk and the associated costs, which leads to lower prices and better service. More rate codes make it possible to update prices without retiring older products and thus allow for a greater mix of products—with differing prices, to better meet customer demands. Because unique customers may have pricing that extends for many years, those rate codes are not reusable until after the expiration of that agreement.

The Peoples Companies also agreed to other enhancements. Specifically, the Peoples Companies would maintain: (1) the Local Production Pool Tracking system; (2) the

²¹³ Direct Energy St. 1 at 7-8.

²¹⁴ Settlement ¶¶ 115-118.

upgraded Electronic Bulletin Board; (3) the Local Production Pool invoicing and associated identifying information; and (4) the group contact e-mail process.²¹⁵ In its statement in support, Direct Energy explains that these provisions address many of the issues raised by Direct Energy. These Settlement provisions are consistent with Direct Energy's recommendations that the Peoples Companies maintain certain, current practices and procedures. Adoption of these provisions will enable NGSs, including Direct Energy, to continue to offer NGS services to ratepayers in the Peoples Companies' service territories in an efficient and effective manner post-merger, facilitating the provision of efficiently priced competitive options and services. In this regard, the Joint Petition is in the public interest and in the interest of NGSs and the Peoples Companies' ratepayers.

Direct Energy also points to additional modifications to the Peoples Companies' current practices, including: 1) the Peoples Companies will provide to each supplier, through existing billing files, the total number of individual customer burns that make up the aggregate burn pool; 2) the Peoples Companies will undertake an assessment on the ability to accelerate the timing of issuance of daily delivery requirements and capacity requests and share the result of the assessment with suppliers; 3) the Peoples Companies will identify customer billing cycles on its invoices; and 4) the Peoples Companies will add a posting date to the daily billing files to serve as an indicator of the month being billed for all accounts, including the largest high-pressure accounts.²¹⁶ According to Direct Energy, these commitments will help to ensure that the merger results in an affirmative public benefit. These Settlement provisions will allow suppliers to receive timely and accurate data and help to eliminate potential NGS confusion. As a result, NGSs will be able to better serve customers in the Peoples Companies' service territories. For these reasons, Direct Energy asserts the Settlement will result in an affirmative public benefit.

²¹⁵ Settlement ¶¶ 120-123.

²¹⁶ Settlement ¶¶ 124-27.

Finally, the Joint Applicants have agreed to convene a stakeholders process with the purpose of increasing customer participation in the competitive natural gas market.²¹⁷ Direct Energy supports this provision, explaining that efforts aimed at increasing customer participation in the competitive natural gas market will enable more natural gas customers to enjoy the benefits of a competitive retail natural gas market and will provide an affirmative public benefit. Although NGS Parties/RESA is disappointed that the exit of the distribution companies from the merchant function is excluded from discussion in the stakeholder collaborative, the collaborative at hand should focus on ensuring that customers have a positive shopping experience each and every time and serve as a discussion platform for new and innovative ways to better inform customers of the products being offered and the basic economics of the energy market. Better informed customers make better consumers and will force suppliers across the board to raise their game to meet customer expectations. Other items that can be discussed are limitless and should focus on voluntary compliance with new and existing requirements, with increased enforcement if needed. This collaborative will focus on the Peoples Companies' territories, but it is expected to produce portable ideas that can be used across the Commonwealth.

In the spirit of compromise, the Settlement does not require the Peoples Companies to exit the merchant function. BIE and OSBA do not take a position on the Settlement terms related to suppliers, but note, with approval, that the Settlement does not require the Peoples Companies to exit the merchant function.

In sum, the commitments in the Settlement regarding supplier issues address many of the concerns identified by the NGS Parties/RESA and Direct Energy. According to the suppliers, these conditions will enhance the competitive retail gas landscape in the Peoples Companies' service territories. The Settlement terms will make it easier for suppliers to provide customer-focused service. They support the Settlement.

²¹⁷ Settlement ¶ 128.

The Commission has supported settlement terms in a merger which enhance operational practices in the competitive retail gas market.²¹⁸ No party objects to the agreement reached between the Joint Applicants and the supplier representatives. Both the NGS Parties/RESA and Direct Energy strongly support the settlement terms and assert that the enhanced operational and procedural practices will improve the competitive market and ultimately benefit consumers. I agree that these improvements are a public benefit and weigh in favor of approval of the Proposed Transaction.

9. Other Miscellaneous Provisions of the Settlement

a. Rate Credit

The Joint Applicants committed in their initial filing that the Proposed Transaction would not have an immediate, adverse effect on the rates of existing utility customers.²¹⁹ The Joint Applicants have explained that the Proposed Transaction is expected to produce long-term savings, or process improvements, in a number of back-office functions, such as finance and accounting, human resources, regulatory functions, legal functions, information technology, payroll and supply chain. Other areas of overlap include: fleet management, purchasing, capital planning, meter reading, customer field services, engineering management, budgeting, planning, execution and rate recovery of capital. Although the Joint Applicants have not specifically quantified the benefits of consolidation and best practices review, Aqua America's experience with numerous utility acquisitions is that savings or process improvements will be developed. However, large, short-term synergy savings are not expected, given Aqua America's plans and commitments to retain and grow jobs, as explained above.

²¹⁸ *Joint Application of Equitable Resources, Inc., and The Peoples Natural Gas Company, d/b/a Dominion Peoples, for approval of the transfer of all stock and rights of The Peoples Natural Gas Company to Equitable Resources, Inc., and for the approval of the transfer of all stock of Hope Gas, Inc., dba Dominion Hope, to Equitable Resources, Inc., Docket No. A 122250F5000 (Opinion and Order entered April 13, 2007).*

²¹⁹ Joint Applicants Ex. DJS-1at 19-20.

OCA contended in its direct testimony that the Joint Applicants should provide a rate credit to capture potential synergies or savings from the Proposed Transaction.²²⁰ Although the Joint Applicants initially did not believe that a rate credit was necessary, they ultimately agreed. The Settlement contains an additional \$10 million rate credit provided to the customers of the Peoples Companies and Aqua PA customers in 2019.²²¹ This rate credit provides an immediate pass through of potential savings to existing customers, and constitutes an affirmative public benefit.²²² Further, in recognition of the expectation that no immediate synergies or savings were contemplated by the acquisition or proposed to be passed-through to customers, the Joint Applicants explicitly committed to passing any future cost savings or rate benefits that may result from the acquisition to customers in future base rate proceedings.²²³

BIE and OSBA challenge the value of the rate credit as a public benefit. BIE contends that the credit only benefits current customers, the amount is arbitrary, and that there has not been sufficient analysis of the rate impacts of the Proposed Transaction. OSBA adds that this rate credit does not offset the additional costs resulting from the additional LTIIP spending, the Goodwin and Tombaugh rehabilitation and increased financial risks which may result from the acquisition.

The rate credit is a product of settlement discussions. The Joint Applicants made it clear through the testimony of their witnesses, that the driving force of the Proposed Transaction was not the creation of synergies and resultant cost savings. While there is likely to be some cost savings gained through efficiencies, as discussed above, these cost savings are not likely to develop until well into the future.²²⁴ Further, synergy cost savings can be difficult to quantify. Therefore, the Joint Applicants agreed to OCA's proposal to offer an immediate rate

²²⁰ OCA St. No. 2 at 32.

²²¹ Settlement ¶ 41.

²²² See OCA St. No. 2 at 32-34; see also N.T. 214. This rate credit is in addition to the previously described \$13 million rate credit associated with the Goodwin and Tombaugh Systems.

²²³ Joint Applicants St. No. 1-R at 12-13; Joint Applicants St. No. 2-R at 26.

²²⁴ Joint Applicants St. 1-R at 12; St. 2-R at 29; 4-R at 3-4.

credit. This rate credit will offset at least some of the increased spending contemplated by the Proposed Transaction. The Commission has held in other proceedings that similar rate credits constitute a public benefit for the purposes of the *City of York*.²²⁵ Neither the Joint Applicants nor OCA represent that the rate credit is meant to completely offset the additional spending. Therefore, the \$10 million rate credit is a sensible resolution to address a unique feature of the Proposed Transaction and is a vehicle to pass on some savings that would otherwise be deferred indefinitely into the future.²²⁶

b. Financial Safeguards in the Settlement

Several of the parties argued that the Proposed Transaction might have a negative impact on customers' rates, because the purchase price might present a substantial risk to the financial stability of the combined companies following closing and/or no synergies would be created by the acquisition. The Joint Applicants addressed many of these concerns by proposing to accept a number of conditions to ensure the financial integrity of the combined entity after closing.²²⁷

The Settlement also contains numerous financial safeguards to which the Joint Applicants committed as a part of their litigation position, or were adopted to address concerns identified by other parties. For example, the Joint Applicants committed to maintaining separate books, records, and separate capital structures for the Peoples Companies, and Aqua PA. These commitments are reflected in the Settlement.²²⁸

²²⁵ E.g., *Joint Application of West Penn power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and First Energy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket No. A-2010-2176520 (Opinion and Order entered March 8, 2011); *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, currently owned by Dominion Resources, Inc., to Peoples Hope Gas Companies, LLC, and to Approve the Resulting Change in Control of The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. A-2008-2063737 (Opinion and Order entered November 19, 2009).

²²⁶ See *2008 Peoples Natural Gas Application*, p. 52 (flow through of savings to ratepayers is generally an issue for a future rate proceeding).

²²⁷ Settlement ¶¶ 41-67.

²²⁸ See Settlement ¶¶ 42, 43

In addition, the Joint Applicants unequivocally committed that goodwill, transaction or transition costs, and the equity or debt issued to finance the acquisition premium or goodwill would not be passed through to Aqua PA or the Peoples Companies or be recovered in the utilities' rates. Furthermore, Aqua America committed that any new incremental debt issued to finance the acquisition premium would be completely separate from the Pennsylvania utilities' balance sheets. The Settlement reflects these commitments, and also includes additional commitments that any termination fees, if the transaction is not consummated, will not be recovered from ratepayers and that Aqua America will track and account for transition costs to permit parties to review and verify such costs were excluded from the costs of service for Aqua PA and the Peoples Companies.²²⁹ The Settlement also contains specific commitments, beyond the tracking of these costs to ensure there is no pass through to customers and that any accounting treatments associated with the transaction will be rate-neutral to Pennsylvania ratepayers.²³⁰

Beyond these commitments to ensure the transaction would be rate-neutral, the Joint Applicants further committed to appropriate debt-financing and ring-fencing protections, which would ensure the entities involved would be appropriately and separately financed. These protections and additional ring-fencing measures were adopted in the Settlement.²³¹ Additional financial protections have been incorporated into the Settlement. Both Aqua PA and the Peoples Companies will respectively maintain a debt ratio measured at an annual level of no more than 50% (inclusive of short term debt, but exclusive of goodwill) for at least five-years post-closing.²³² Aqua PA and the Peoples Companies also committed to maintain the capability of issuing their own long-term debt unless authorized otherwise by the PUC.²³³ These additional conditions will benefit ratepayers by ensuring that the cost of debt for each of the utilities is not negatively impacted by the Proposed Transaction.

²²⁹ Settlement ¶ 45, 45-47, 54, 57-60.

²³⁰ See Settlement ¶¶ 56, 63; see also Joint Applicants Ex. DJS-1R (CORRECTED), ¶¶ 23.

²³¹ See Settlement ¶ 48, 49, 66.

²³² Settlement ¶¶ 51-52.

²³³ Settlement ¶ 65.

The Joint Applicants also committed to seek Commission approval for all new or amended affiliated interest agreements. This commitment was adopted in the Settlement.²³⁴ The Joint Applicants also made specific commitments to address and notify the Commission of changes in credit ratings or metrics by the utilities. These reporting measures were also incorporated into the Settlement and provide further benefits associated with the transparency of the Joint Applicants' credit metrics.²³⁵

The Settlement includes specific commitments regarding the identification of tax impacts on the Peoples Companies resulting from post-merger participation in a federal consolidated tax return, and assurance that the acquisition will not affect accounting and ratemaking treatments of the Peoples Companies' Accumulated Deferred Income Taxes (ADIT), including excess deferred income taxes, accumulated deferred tax credits and net operating losses.²³⁶ The Joint Applicants made similar commitments in their testimony, recognizing that they would be necessary to ensure the transaction did not impact rates.

Neither OSBA nor BIE took issue with these provisions, except as addressed in their objections to the purchase price and financing of the Proposed Transaction. These commitments are important protections and I find that they are in the public interest.

c. The Peoples Companies' Intervention in Abandonments and Acquisition of Troubled Water and Wastewater Systems by Aqua PA

OCA explains that the Peoples Companies have been willing to work with Pennsylvania ratepayers that are faced with potential abandonment by their current natural gas service provider.²³⁷ OCA's witness, Jerome Mierzwa, explained that the Peoples Companies expended the time and resources necessary to maintain natural gas service for these customers

²³⁴ See Settlement ¶ 44.

²³⁵ Settlement ¶¶ 50, 64.

²³⁶ Settlement ¶¶ 61, 62.

²³⁷ OCA St. 4 at 8.

despite having no obligation to do so. Mr. Mierzwa expressed concern that, given the amount of debt Aqua America would incur because of the Proposed Transaction, the Peoples Companies may face constraints going forward in their attempts to assist natural gas customers facing abandonment.²³⁸ Mr. Mierzwa recommended that, at the request of the Statutory Advocates, the Peoples Companies be required to intervene in proceedings involving the potential abandonment of natural gas service to customers served by natural gas systems in close proximity to the Peoples Companies.²³⁹

The Joint Applicants agreed to include OCA's recommendation and the Settlement also includes a provision that states the Peoples Companies will intervene, at the request of a statutory advocate, in any proceeding involving the potential abandonment of natural gas customers by others in an area neighboring the Peoples Companies' existing pipeline distribution system, for the purposes of studying and evaluating the possibility of the Peoples Companies extending service to those customers.²⁴⁰ Joint Applicants believe the Peoples Companies' intervention may benefit 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.²⁴¹

BIE argues that this provision does not obligate the Peoples Companies to do anything of substance and may be harmful to ratepayers because it will increase litigations costs. Therefore, according to BIE, this provision of the Settlement is not a public benefit. OCA disagrees, submitting that the Settlement solidifies the Peoples Companies' current commitment to evaluating opportunities to acquire natural gas distribution systems that are at risk of abandoning their customers post-closing. The Peoples Companies' prior assistance in matters like these have been both cost effective and reasonable as to maintaining natural gas service for

²³⁸ OCA St. 4 at 9.

²³⁹ OCA St. 4 at 9-10.

²⁴⁰ Settlement ¶ 97.

²⁴¹ See Joint Applicants St. No. 6-R at 13-15; see also N.T. 154-156.

Pennsylvania customers. This Settlement provision solidifies Aqua America's commitment to continue having the Peoples Companies provide such assistance when necessary.

Aqua America committed to continue to seek to acquire and rehabilitate troubled Commission regulated water and wastewater systems and the Proposed Transaction will not interfere with Aqua PA's ability to finance or pursue these acquisitions.²⁴² According to the Joint Applicants, this commitment confirms that Pennsylvanians will continue to benefit from Aqua PA's efforts to acquire and rehabilitate troubled water and wastewater systems and that these efforts will not be hindered by the acquisition.

These Settlement provisions are certainly important measures to memorialize the important role played by the Peoples Companies and Aqua PA in ensuring that customers of troubled gas and water/wastewater systems have access to safe and reliable service. It is certainly a reason to approve the Settlement. Any additional costs to ratepayers can be controlled in base rate proceedings, as explained in other contexts above. However, I agree with BIE that for the purpose of evaluating whether the Proposed Transaction provides affirmative public benefits pursuant to the *City of York*, these commitments are neutral on balance. Rather than adding a significant new policy for the utilities, these Settlement provisions ensure that the Proposed Transaction does not harm ratepayers by ensuring that these important programs continue after the consummation of the acquisition.

d. Community Connections and Charitable Contributions

The Joint Applicants take the position that the Settlement demonstrates the Joint Applicants' commitment to the communities in which they provide utility service. Aqua PA currently participates in various volunteer opportunities and environmental initiatives, and supports non-profit organizations throughout the 32 Pennsylvania counties it serves. In addition, community commitment is one of the Peoples Companies' core values and the Peoples Companies have an active community presence in Western Pennsylvania. Aqua America

²⁴² Settlement ¶ 53.

demonstrated that it would maintain the strong community presence of both the Peoples Companies and Aqua PA following the consummation of the transaction.

According to the Joint Applicants, the Settlement affirms and builds upon these commitments.²⁴³ In particular, Aqua America will commit to increasing the percentage of pre-tax net income provided as charitable contributions over present levels and maintain the corporate contributions of the Peoples Companies at present levels for not less than five years.²⁴⁴ The Peoples Companies' commitments to provide specified levels of charitable contributions expire after 2019.²⁴⁵ These commitments will affirmatively benefit the public by maintaining and/or improving upon the Joint Applicants' existing commitments and involvement in the communities they serve. The Commission has held that charitable contributions are a public benefit because such commitments are not otherwise required.²⁴⁶

F. Section 2210

1. Anticompetitive or Discriminatory Conduct

Under Section 2210(a)(1) of the Code, the Commission is required to consider whether a proposed acquisition of the securities of a natural gas distribution company is likely to result in anticompetitive or discriminatory conduct.²⁴⁷ The Joint Applicants demonstrated that the Proposed Transaction would not have an anticompetitive impact on retail gas competition, because all rates, terms and conditions that have an impact on retail competition in the Peoples Companies' respective service territories would remain unaffected by the Proposed

²⁴³ Settlement ¶¶ 112-114.

²⁴⁴ Settlement ¶ 113.

²⁴⁵ See Settlement Parties Ex. 2 at 9.

²⁴⁶ *Joint Application of PECO Energy Company and Public Service Electric and Gas Company for Approval of the Merger of Public Service Enterprise Group Incorporated with and into Exelon*, Docket No. A-110550F0160 (Opinion and Order entered February 1, 2006), at p. 28.

²⁴⁷ 66 Pa.C.S. § 2210(a)(1).

Transaction.²⁴⁸ Furthermore, as an owner of water and wastewater utilities with no natural gas operations, Aqua America will not create anti-competitive or discriminatory conditions. Neither BIE nor OSBA, nor any of the other parties assert that the Proposed Transaction would create anti-competitive or discriminatory conditions.²⁴⁹ Therefore, I agree that the Proposed Transaction, as modified by the Settlement, satisfies Section 2210(a)(1) of the Code.

2. Employment Effects

Under Section 2210(a)(2) of the Code,²⁵⁰ the Commission is also required to consider the impact that a proposed acquisition of a natural gas distribution company may have on the employees of the natural gas distribution company.

As set forth above, the Joint Applicants state that they have demonstrated the Proposed Transaction will have a positive effect on the employees of the Peoples Companies and Aqua PA. Not only will the Proposed Transaction, as conditioned by the Settlement maintain jobs in Pennsylvania, it will also expand job opportunities for both gas and water/wastewater employees under combined ownership. According to the Joint Applicants, the Commission should find that the Proposed Transaction, as conditioned by the Settlement satisfies the requirements of Section 2210(a)(2) of the Code.

While the Settlement specifically addresses the issue of the union labor at the Peoples Companies, OSBA and BIE raise the concern that overall employment at the Peoples Companies **[BEGIN HIGHLY CONFIDENTIAL STATUTORY ADVOCATES ONLY]**

[REDACTED]

²⁴⁸ Joint Applicants Ex. DJS-1 at 20.

²⁴⁹ BIE Main Brief at 37-38; OSBA Main Brief at 29.

²⁵⁰ 66 Pa.C.S. § 2210(a)(2).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁵¹ Neither BIE nor OSBA objected to the designation of this information as “Highly Confidential – Statutory Advocates Only.”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

252 OSBA Main Brief at 11.

253 Joint Applicants St. 1-R at 31.

254 Joint Applicants St. 6-R at 3-13; *see, e.g.*, N.T. 132-141.

255 N.T. 94-95.

[REDACTED]
[REDACTED]
[REDACTED]. [END HIGHLY CONFIDENTIAL STATUTORY ADVOCATES ONLY]

Finally, the Joint Applicants point to provisions in the Settlement 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. 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, according to the Joint Applicants, BIE's and OSBA's arguments are without merit and should be rejected.

I agree with the Joint Applicants that there is no evidence that the Proposed Transaction, as modified by the Settlement will have a negative impact on employment.

[BEGIN HIGHLY CONFIDENTIAL STATUTORY ADVOCATES ONLY] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. [END HIGHLY CONFIDENTIAL STATUTORY ADVOCATES ONLY] The concerns raised by BIE and OSBA are founded only on speculation and ignore measures put in place for succession planning and the preservation of technical expertise at the Peoples Companies. The requirements of Section 2210(a)(2) are satisfied and there is no evidence that the Proposed Transaction will have an unduly negative effect on employees.

V. CONCLUSION

There is no question that this acquisition presents unique issues. First, the public utilities involved render very different utility services. Second, the utility subsidiaries will be operated as separate companies with their own workforce and infrastructure; therefore, the usual cost savings achieved in most acquisitions which are central to the evaluation of the public benefits of the transaction are not the lodestar of this transaction.

This second factor served as the catalyst for many of the settlement provisions, which OSBA witness Knecht referred to as a “feeding frenzy, with participants attempting to use the affirmative benefits standard as a means to obtain handouts from the Applicants.”²⁵⁶ Mr. Knecht is also correct in observing that these benefits must be paid for, at least in part by ratepayers. It is this concern for costs to ratepayers which inform the objections of BIE and OSBA to the Proposed Transaction.

While the financial implications to ratepayers are important, this laser focus loses sight of the value of the significant improvements to service and reliability offered by the Proposed Transaction, as well as provisions put in place to mitigate some of the potential negative impacts of the proposals on ratepayers. The most significant benefit is the proposal for the expeditious remediation of the Goodwin and Tombaugh Systems which will preserve gas service for a significant number of customers as well as provide important benefits to gas producers. Also of significant importance is Aqua America’s appetite and commitment to the accelerated replacement of at-risk pipeline on the Peoples Companies’ system. Also, Aqua PA’s customers will benefit by improved customer service and universal service programs, as well as the improvements which will be realized with the upgrade to an SAP system. Taken as a whole, these commitments to service and reliability improvements will benefit ratepayers. The ratemaking process will provide a check on the rate and nature of the spending to achieve these benefits.

²⁵⁶ OSBA, St. 1-S at 3.

It is true, that as Aqua America evolves into an “infrastructure company” its shareholders will make money. This by itself is not a negative impact of the Proposed Transaction. Rather, as reflected by Aqua America stock’s strong performance in the market, shareholder profit will incentivize Aqua America to continue to make important infrastructure investments in both its gas and water utility subsidiaries. While SteelRiver was certainly willing to make infrastructure investments, as a fund managing pension assets, it does not have the same incentives for more ambitious infrastructure investment.

The Proposed Transaction as modified by the Settlement demonstrates a commitment to the stability of both the Peoples Companies and Aqua PA. Clearly Aqua America is committed to retaining the technical expertise of the current Peoples Companies and integrating this expertise into Aqua America’s Board. Aqua America has a tradition of presence and community involvement in Eastern Pennsylvania and has agreed to provisions memorialized in the Settlement to continue the Peoples Companies’ tradition of community involvement and presence in Western Pennsylvania.

It is also important to note the variety of stakeholders and interests which advocate for the Commission’s approval of the Proposed Transaction and Settlement: OCA as the advocate for residential consumers; CAUSE-PA, representing low-income ratepayers; as well as voices for labor, gas producers and gas suppliers were also represented. These parties all support the Proposed Transaction as modified by the Settlement.

In sum, this Proposed Transaction and Settlement are in the public interest and is supported by substantial evidence; therefore, I recommend that it be approved.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 1102, 1103 and 2210, *et seq.*

2. The Joint Applicants bear the burden of proving that they are entitled to the relief sought in this application proceeding. 66 Pa.C.S. § 332(a).

3. Under Sections 1102 and 1103, the Joint Applicants must demonstrate that the party to whom the assets and service obligations are being transferred is technically, legally and financially fit. *Chester Water Authority v. Pa. Pub. Util. Comm'n*, 868 A.2d 384 (Pa. 2005).

4. The Joint Applicants have demonstrated by a preponderance of the evidence that Aqua America is technically, legally and financially fit to assume control of the Peoples Companies. *Chester Water Authority v. Pa. Publ. Util. Comm'n*, 868 A.2d 384 (Pa. 2005).

5. The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a).

6. The Joint Applicants have demonstrated that the Proposed Transaction, as conditioned by the Settlement, will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972); *Popowsky v. Pa. Pub. Util. Comm'n*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007).

7. The Joint Applicants have demonstrated by a preponderance of the evidence that the Proposed Transaction, as modified by the Settlement, is not likely to result in anticompetitive or discriminatory conduct. 66 Pa.C.S. § 2210(a).

8. The Joint Applicants have demonstrated by a preponderance of the evidence that the Proposed Transaction, as modified by the Settlement, will not have an adverse effect on the employees of the Peoples Companies. 66 Pa.C.S. § 2210(a)(2).

9. Based on the record developed in this proceeding and a thorough review of the positions of the parties, the Proposed Transaction, as modified by the Settlement, is in the public interest.

VII. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That 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., and issue all Certificates of Public Convenience to the Joint Applicants necessary to effect its approval, is hereby approved subject to the terms and conditions of the Joint Petition for Settlement.

2. That the Joint Petition for Approval of Non-Unanimous, Complete Settlement entered into and filed by the Joint Applicants, OCA, CAUSE-PA, Direct Energy, NGS/RESA, PIOGA, Laborers' District Council and UWUA, including all terms and conditions contained therein, is hereby approved.

3. That Aqua America Inc. may purchase all of the membership interests of LDC Funding LLC, as proposed in Purchase Agreement, the Application, and the Joint Petition for Approval of Non-Unanimous, Complete Settlement and that a certificate of public convenience be issued evidencing such right.

4. That any other approvals or certificates appropriate, customary, or necessary under the Public Utility Code to carry out the transaction contemplated in the Joint Application subject to the terms and conditions of the Joint Petition for Settlement are hereby granted.

5. That the Secretary mark Docket Nos. A-2018-3006061, A-2018-3006062 and A-2018-3006063 closed.

Date: October 3, 2019

/s/
Mary D. Long
Administrative Law Judge

APPENDIX
CONTENTS OF THE RECORD

WRITTEN TESTIMONY ADMITTED INTO THE RECORD

JOINT APPLICANTS

Witness	Statement	Exhibits
Christopher H. Franklin	St. 1 - Revised	
	St. 1-R (Public)	CHF-1R-2R
	St. 1-R (Confidential)	
	St. 1-R (Highly confidential)	
	St. 1-R (Highly confidential – Statutory Advocates Only)	Ex. CHF-3R; CHF-4R
Daniel J. Schuler	St. 2	Ex. DJS-1-DJS-2 (Highly Confidential)
	St. 2-R	Ex. DJS 1-R(corrected); DJS 2-R; DJS-3-R (Confidential); DJS 4R-6R
	Sr. 2-R (Highly Confidential)	
	St.2-RJ (Public)	
	St. 2-RJ (Confidential)	
Morgan K. O'Brien	St. 3-Revised (Public)	
	St. 3-Revised (Confidential)	
	St. 3-R	
Richard S. Fox	St. 4-Revised	
	St. 4-R (Public)	
	St. 4-R (Confidential)	
	St. 4-R (Highly Confidential)	
James C. Barbato	St. 5-Revised	
	St 5-R	Ex. JCB 1R-2R
	St. 5-RJ	
Joseph A. Gregorini	St. 6-R	Ex. JAG1-R-JAG-3R
	St. 6-SR	
Georgetta Parisi-Knup	St. 7-R	Ex. GPL-1R

BIE

Witness	Statement	Exhibit
John Zalesky	St. 1	Ex. 1-2
	St. 1 (Confidential)	Ex. 1
	St. 1-SR (Public)	
	St. 1-SR(Confidential)	
Ethan Cline	St. 2	Ex. 2
	St. 2-R	Ex. 2R
	St. 2-SR	
Mathew Matse	St. 3	Ex. 3
Scott Orr	St. 4	Ex. 4
	St. 4-SR	

OCA

Witness	Statement	Exhibit
Mathew I. Kahal	St. 1	
	St. 1-SR	
Ralph C. Smith	St.2 (Public)	Ex. RCS -1, RCS-3, RCS-5
	St. 2(Confidential)	Ex. RCS-4, RCS-5
	St. 2(Highly Confidential – Statutory Advocates Only)	Ex. RCS-2, RCS-6A
	St. 2-SR	
Barbara Alexander	St. 3	
	St. 3-R	
	St. 3-SR	
Jerome D. Mierzwa	St. 4	
	St. 4-R	
	St. 4-SR	

OSBA

Witness	Statement	Exhibit
Robert D. Knecht	St. 1 (Public)	IEc-1-IEc-3
	St. 1 (Confidential)	
	St. 1 (Highly Confidential)	
	St. 1(Highly Confidential – Statutory Advocates Only)	
	St.1-S (Public)	IEc-S1-IEc-S3
	St. 1-S (Confidential)	

INTERVENORS

Witness	Statement	Exhibit
CAUSE-PA		
Harry Geller	St. 1	
	St. 1-R	
	St. 1-SR	
Duquesne Light		
C. James Davis	St. 1 (Public)	CJD 1-4
	St. 1(Confidential)	
Katherine Scholl	St. 1(Public)	KS 1-4
	St. 1 (Confidential)	
Direct Energy		
Orlando Magnani	St. 1	
	St. 1-SR	
Lab. Dist. sW		
Philip Ameris	St. 1	
NGS/RESA		
James L. Crist	St. 1	JC-1 - JC-6
	St. 1-R	
	St. 1-SR	
PIOGA		
Dan Weaver	St. 1-R	

OTHER EXHIBITS ADMITTED INTO THE RECORD

- Settlement Parties Joint Ex. 1 Settlement terms
- Settlement Parties Joint Ex. 2 Supporting discovery response
- Settlement Parties Joint Ex. 3 Supporting discovery response (Confidential)