



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 18, 2019

Via Hand-Delivery

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

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

Dear Secretary Chiavetta,

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

Copies are being served on all active parties of record per the attached Certificate of
Service. Should you have any questions or concerns, please do not hesitate to contact me.

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Sincerely,

Carrie B. Wright
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Bureau of Investigation & Enforcement
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CBW/ac
Enclosure

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS
OF THE
BUREAU OF INVESTIGATION & ENFORCEMENT**

Carrie B. Wright
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Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: November 18, 2019

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I. INTRODUCTION

On November 13, 2018, Aqua America, Inc. (“Aqua”) and its subsidiaries, Aqua Pennsylvania, Inc. (“Aqua PA”), Aqua Pennsylvania Wastewater, Inc. (“Aqua PA Wastewater”), along with Peoples Natural Gas Company LLC (“Peoples Natural Gas”) and Peoples Gas Company LLC (“Peoples Gas”) (collectively the “Joint Applicants”) filed an *Application for All of the Authority and the Necessary Certificates of Public Convenience to Approve a Change in Control of Peoples Natural Gas Company LLC and Peoples Gas Company LLC by Way of the Purchase of All of LDC Funding, LLC’s Membership Interests by Aqua America, Inc.* (“Application”).

On November 19, 2018, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issued a *Secretarial Letter that acknowledged receipt of the Application* and directed the Joint Applicants to publish notice of the Application. The Joint Applicants filed Direct Testimony on December 7, 2018.

The Commission assigned this proceeding to the Office of Administrative Law Judge. Administrative Law Judge Mary D. Long (“ALJ”) convened a Prehearing Conference on January 18, 2019. At that time, a litigation schedule was developed that provided for the filing of testimony, hearings, and briefs as follows:

April 2, 2019	Direct Testimony of all other Parties
April 30, 2019	Service of Rebuttal Testimony by all Parties
May 21, 2019	Service of Surrebuttal Testimony by all Parties
June 4, 2019	Service of Rejoinder Testimony
June 11-13, 2019	Evidentiary Hearings in Harrisburg, PA
July 10, 2019	Filing and service of Main Briefs by all Parties
July 25, 2019	Filing and service of Reply Briefs by all Parties

ALJ Long conducted an evidentiary hearing on June 11, 2019. At the hearing, the following Bureau of Investigation and Enforcement (“I&E”) testimony and exhibits were entered into the evidentiary record: I&E Statement No. 1, I&E Exhibit No. 1, I&E Statement No. 1-SR, I&E Exhibit No. 1-SR, I&E Statement No. 2, I&E Exhibit No. 2, I&E Statement No. 2-R, I&E Exhibit No. 2-R, I&E Statement No. 2-SR, I&E Statement No. 3, I&E Exhibit No. 3, I&E Statement No. 4, I&E Exhibit No. 4, and I&E Statement No. 4-SR. I&E witnesses Zalesky, Cline, and Orr were cross-examined.

On June 11, 2019, ALJ Long was notified of a Non-Unanimous Settlement between the Joint Applicants, the Office of Consumer Advocate (“OCA”), the Coalition of Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Direct Energy Business Marketing, LLC and Direct Energy Small Business Marketing, LLC (“collectively, “Direct Energy”), the Natural Gas Supplier Parties and the Retail Energy Supply Association (“collectively, “NGS/RESA”), Pennsylvania Independent Oil and Gas Association (“PIOGA”), Laborers’ District Council of Western Pennsylvania (“Laborers’ District Council”) and Utility Workers Union of America, Local 612 (“UWUA”). I&E and the Office of Small Business Advocate (“OSBA”) are not signatories to the Settlement. This Non-Unanimous Settlement was filed on June 26, 2019 along with the settling parties’ statements in support. Both I&E and OSBA addressed the Non-Unanimous Settlement as part of their Main Briefs as requested by the ALJ.

Pursuant to the procedural schedule and in accordance with Sections 5.501- 5.502¹ of the Public Utility Code, I&E submitted its Main Brief on July 10, 2019, which contained the legal and technical reasons why the Settlement and the acquisition should not be approved. I&E further submitted its Reply Brief on July 25, 2019.

On October 28, 2019, the ALJ issued a Recommended Decision (“RD”) dated October 3, 2019 approving Aqua’s Application as modified by the Non-Unanimous Settlement. This recommendation is in error because the Company has not shown that the acquisition, even as modified by the Non-Unanimous Settlement, should be approved under Section 1102 of the Public Utility Code. As such, I&E now files these timely Exceptions to the ALJ’s RD. Accordingly, in these Exceptions, I&E requests that the Commission reconsider the ALJ’s recommendation with respect to issues identified in detail below.

II. EXCEPTIONS

A. Fitness of the Acquisition

I&E Exception No. 1: The ALJ erred by determining that Aqua is technically and financially fit to operate a natural gas distribution company.

Recommended Decision: Pages 21-40

I&E Main Brief: Pages 8-13

I&E Reply Brief: Pages 3-7

An acquiring entity must show that it possesses the necessary fitness to own,

¹ 52 Pa. Code §§ 5.501- 5.502.

operate and manage the utility it seeks to acquire.² In her recommended decision, the ALJ determined that Aqua has the requisite technical, financial and legal fitness to own and operate the Peoples Companies. Although I&E did not challenge the legal fitness of Aqua, it disagrees with the ALJ's determination of Aqua's technical and financial fitness and continues to recommend that the Settlement and Application not be approved by the Commission.

Specifically, in the RD, ALJ Long stated that the commitments made by Aqua in the Settlement dispel any concerns regarding the fitness of Aqua to operate a natural gas distribution company.³ As stated in I&E's Main and Reply Briefs, I&E maintains that the Settlement does not provide adequate assurances that Aqua is technically fit to operate and manage a natural gas distribution company. It is important to note, that Aqua is not acquiring a small natural gas utility but rather one of the largest natural gas distributors in Pennsylvania. This transaction should not be used to test Aqua's technical fitness in the natural gas realm.

The Joint Applicants argue and the RD indicates that the day to day operations and service of the Peoples Companies will be unaffected by the acquisition.⁴ The ALJ went on to state, "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."⁵ This is

² *Application of Penn Estates Utilities, Inc., Utilities, Inc., Utilities, Ind. Of Pennsylvania and Utilities, Inc. – Westgate for Approval of Stock Transfer Leading to a Change in Control of their Parent Corporation, Utilities, Inc.*, Docket No. A-210072F0003, et al, Statement of Chairman Wendell F. Holland (Public Meeting March 16, 2006).

³ RD, p. 28.

⁴ RD, p. 26.

⁵ RD, p. 28.

contrary to the record evidence as it is undisputed that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL] and there is no evidence that the Peoples Companies will retain enough experienced personnel to be versed in the operation of a natural gas utility.

Additionally, OSBA correctly pointed out that Aqua's position that it is technically fit to operate a natural gas distribution company because the day to day operations will be managed by the experienced teams at the Peoples Companies fails because the burden is on Aqua to demonstrate that Aqua is fit to operate a natural gas distribution company.⁶ The Commission has already determined that the Peoples Companies have the requisite technical fitness to operate a natural gas distribution company.

The ALJ determined that Aqua is financially fit to own and operate the Peoples Companies and stated, "no financial transaction is without some level of risk."⁷ I&E agrees that almost all financial transactions have risk attached; however, here, Aqua's acquisition of the Peoples Companies goes far beyond average transactional risk given the approximately \$4 billion purchase price. I&E's Main Brief discussed that as part of the transaction, Aqua agreed to pay more than double book value for the Peoples Companies assets, this includes \$2 billion in goodwill.⁸ While Aqua believes that this transaction's risk is immaterial, ALJ Long correctly stated, "market conditions could

⁶ OSBA MB, pp. 7-8.

⁷ RD, p. 29.

⁸ I&E MB, p. 10.

change.”⁹

The Joint Applicants have failed to make a showing that the combined entity will be strengthened financially or be more financially stable than the Companies currently are on a separate basis. Further, they are unable to show any merger synergies. The only definitive showing the Joint Applicants have made is that there will be a large increase in debt. Furthermore, as OBSA has pointed out, both Standard & Poor’s, as well as Moody’s have recognized that this acquisition will increase riskiness at Aqua America.¹⁰ What is likely to flow from this increased riskiness is higher interest rates on debt which then must be borne by ratepayers.

B. Lack of Affirmative Public Benefits

This Commission may only issue a certificate of public convenience in situations in which it is necessary or proper for the service, accommodation, convenience or safety of the public.¹¹ In its public interest analysis, the Commission should consider the benefits and **detriments** of the transaction “with respect to the impact on all affected parties.”¹² As Commissioner Place has noted, “...this Commission has a statutory charge to carry out a proper analysis of the proposed transaction and ascertain with confidence whether it produces net affirmative benefits and serves the broader public interest.”¹³ The fatal flaw in the ALJ’s analysis in this proceeding is that detriments that would flow

⁹ RD, p. 39.

¹⁰ OSBA MB, p. 14.

¹¹ 66 Pa. C.S. § 1103.

¹² *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984) (emphasis added).

¹³ Statement of Commissioner Andrew G. Place re: *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township and the New Garden Township Sewer Authority*, Docket No. A-2016-2580061 (Order Entered June 14, 2017).

from the acquisition were not weighed against the alleged benefits of the transaction. In the instant transaction, when the alleged benefits are weighed against the detriments that will result, it is clear that the public interest will not be served. The Recommended Decision merely discusses the alleged benefits of the transaction without discussing the potential detriments of the transaction.

In this proceeding, the Joint Applicants themselves were unable to offer substantial affirmative public benefits. As a result, the Parties to this proceeding attempted to extract a wish list “benefits” from the Joint Applicants. However, even with the alleged benefits the settling Parties agreed to, when weighed against the detriments of the transaction, it is clear that the public interest will not be served by approving this acquisition.

Goodwin and Tombaugh Gathering System

I&E Exception No. 2: The ALJ erred in determining that the resolution to the Goodwin and Tombaugh Gathering System issues contained in the Non-unanimous Settlement was appropriate and in the public interest.

Recommended Decision: Pages 42-55

I&E Main Brief: Pages 24-35

I&E Reply Brief: Pages 15-30

Should this acquisition be approved, the most complicated issue to be resolved is what should occur with the Goodwin and Tombaugh Gathering Systems. The resolution advocated for in the Non-Unanimous Settlement and accepted by the ALJ is simply inappropriate and contrary to the public interest.

One of the most fundamental requirements in the utility industry is that a utility must provide its customer with safe and reliable service at just and reasonable rates. The

resolution proposed in the Settlement and approved in the RD fails to adhere to these fundamental ratemaking principles because it puts the full cost recovery of the estimated \$120 million on ratepayers to replace all 368 miles of the Goodwin and Tombaugh gathering lines. To illustrate why full replacement of Goodwin and Tombaugh contained in the Settlement is contrary to the public interest, there are approximately eight to ten customers per mile on the Goodwin and Tombaugh Systems as compared to the approximately 50 customers per mile on Peoples distribution system and the cost to replace the entirety of the Goodwin and Tombaugh Systems will be approximately \$72,000 per customer.¹⁴ The total effect of replacement of the entirety of the Goodwin and Tombaugh Systems is a net present value cost to ratepayers of \$91.7 million.¹⁵ This will result in full replacement costing almost \$92 million more than the Company will recover in revenue which will be placed into rate base and recovered from ratepayers.¹⁶ And, to be clear, I&E believes that the \$120 million estimate for full replacement, a cost of approximately \$326,090 per mile (\$120 million /368 miles), contained in the Settlement is artificially low; therefore, ratepayers are likely at risk for much more than what is agreed upon. I&E has estimated the Goodwin and Tombaugh replacement cost to be \$184 million to \$368 million based on a replacement cost of \$500,000 to \$1,000,000 per mile,¹⁷ which appears to be conservative given that Peoples reported that its investment in mains and services in its most recent LTIP was approximately \$1,273,000

¹⁴ Tr. at 135.

¹⁵ OSBA St. No. 1-S, p. 17 and Joint Applicants Exh. JAG-3R.

¹⁶ Tr. at 135.

¹⁷ I&E St. No. 2-SR, p. 11.

per mile in 2017, \$1,323,000 per mile in 2018 and \$1,317,000 per mile in 2019.¹⁸ Even when taking into account the \$13 million rate credit related to Goodwin and Tombaugh in the Settlement, it is clear that ratepayers will bear a far more significant portion of this burden than shareholders. It is difficult to see how the Settlement that provides for recovery of an initial \$120 million from customers and potential recovery of untold more millions of additional ratepayer funds is in the public interest.

Recently, in 2017, the Commission entered an order in which Columbia Gas was allowed to abandon customers in an area where, due to the age of the pipeline, replacement of a certain portion of the line these customers were served would need to occur and if it was not replaced these customers would need to be abandoned. In that order the Commission noted that "...replacement of this line would result in a revenue deficiency of approximately \$574,371.00 per year. The annual cost of the pipeline based on the cost of capital and depreciation, will be approximately \$576,061.00. Columbia maintains that the pipeline must provide at least this amount in annual non-gas distribution revenues to be economically justified."¹⁹ The Commission agreed that the evidence supported the fact that it would not be economical to maintain the line due to its age and condition.²⁰ Therefore, it is clear that the Commission considers the economic impact important when considering the replacement and rehabilitation of natural gas pipeline. In this proceeding, the ALJ erred because she failed to address the economic

¹⁸ Peoples LTIIP for January 1, 2017 through December 31, 2021, Docket No. P-2013-2342745, P-2013-2344596, Appendix A, p. 7. I&E St. No. 1-SR, p. 17.

¹⁹ *Application for Approval of Abandonment of Service by Columbia Gas of Pennsylvania, Inc. to Three Customers Located in York County, Pennsylvania*, Docket No. A-2017-2604409 (Order Entered July 13, 2017), p. 2.

²⁰ *Id.*, at 3.

realities of replacing the entire Goodwin and Tombaugh Systems. The ALJ instead focused on the social and political issues, which although important should not have been the sole focus of the public interest analysis.

Based on the information provided thus far, it does appear that adherence to 2013 Settlement would result in abandonment of at least some of the customers served off of the Goodwin and Tombaugh Systems. I&E would note that adherence to the 2013 Settlement is the current accepted position of this Commission. In criticizing I&E and OSBA's preference for adhering to the 2013 Settlement, ALJ Long notes that many Goodwin and Tombaugh 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."²¹ Yet, she concludes that, "[a]lthough 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."²² This is a clear conflict within this recommended decision. *Low-income customers are not protected by allowing a utility to make irresponsible financial choices and obtain recovery from its customers.*

To accept the resolution contained in the Non-unanimous Settlement is tantamount to ignoring the requirement that rates be just and reasonable and that there be some economic analysis to allow a utility to recover the cost of replacing pipeline from ratepayers. The clear economic analysis shows that it is not in the public interest to

²¹ RD, p. 51.

²² RD, p. 53.

replace all 368 miles of the Goodwin and Tombaugh Systems. If this Commission orders that every mile of the Goodwin and Tombaugh Systems be replaced, as explained more fully below, I&E has provided a resolution that would provide for complete replacement while still protecting People's ratepayers. The ultimate impact of accepting the resolution contained in the Non-Unanimous Settlement was succinctly stated by OSBA. "Under this precedent, Pennsylvania public utilities will know that they do not need to address politically difficult problems, because the Commission will simply shift the cost responsibility to ratepayers."²³

I&E Exception No. 3: The ALJ erred in not addressing I&E's proposal that \$127 million of the purchase price be set aside in a restricted account to pay for the uneconomic portion of the replacement of the Goodwin and Tombaugh Gathering Systems.

Recommended Decision: Pages 42-55
I&E Main Brief: Pages 24-35
I&E Reply Brief: Pages 15-30

While the ALJ noted that I&E recommended that \$127 million of the purchase price in this acquisition be set aside and held in a separate fund to pay for the uneconomic portion of replacement of the Goodwin and Tombaugh Gathering Systems, the ALJ failed to address this recommendation.

The Public Utility Code does not limit the conditions that this Commission can impose on public utilities. As discussed in I&E's Reply Brief, the range of just and reasonable conditions that the PUC has imposed on public utilities as part of its approval of a sale or various other proceedings over the years is wide and varied.²⁴ This

²³ OSBA RB, pp. 22-23.

²⁴ I&E MB, p. 29.

Commission has the authority to reject conditions even in situations such as this where some parties have agreed to a resolution by settlement of various issues. In *Glenside Suburban Radio Cab, Inc. v. Pennsylvania Pub. Util. Comm'n*, the Court stated, “The power to impose just and reasonable conditions necessarily implies the power to reject conditions, even if imposed by agreement of the parties, which the Commission deems to be unjust and unreasonable.”²⁵

In this instance the Commission is vested with the authority to reject, in whole or in part, the Non-unanimous Settlement as the conditions contained therein produce a result that is contrary to the public interest for ratepayers. Asking ratepayers to fund replacement of the entire Goodwin and Tombaugh Systems is neither just, nor reasonable. This Commission has already determined that the resolution contained in the 2013 Goodwin and Tombaugh Settlement, which contained an economic test for replacement and did not require that ratepayers be responsible for funding the entire replacement, is reasonable and in the public interest. However, should the Commission determine that instead the entirety of these gathering systems must be replaced as part of this proceeding, I&E has demonstrated in Main and Reply Briefs, as well as these Exceptions, that its proposal to require SteelRiver to contribute \$127 million to this effort is permissible and in the public interest.

Based on the Public Utility Code and precedent, the I&E proposal regarding the Goodwin and Tombaugh Gathering Systems is well within the Commission’s authority. Here, I&E’s recommendation is supported by the longstanding safety and ratemaking

²⁵ *Glenside Suburban Radio Cab, Inc. v. Pennsylvania Pub. Util. Comm'n*, 49 Pa. Cmwlth. 523, 526, 411 A.2d 874, 876 (1980).

concerns raised about the Goodwin and Tombaugh gathering lines and is supported by the ratemaking principle that rates must be just and reasonable. SteelRiver was aware of these issues when it purchased the system in 2013, it failed to remedy them in the six years since it acquired Peoples and it is now seeking to sell the lines to Aqua who plans to recover the vast majority of the costs from ratepayers. This is simply not an equitable resolution of this issue. I&E's recommendation should not be a surprise as it argued for a similar contribution from EQT when SteelRiver purchased Peoples in 2013. There, I&E recommended a \$20.8 million purchase price reduction due to the condition of the gathering systems and, ultimately through the settlement, that amount was reduced to a \$5 million contribution from EQT to SteelRiver because the parties in that proceeding indicated that Peoples simply needed some time to fix the problems. The only difference between the 2013 proceeding and this proceeding is that we now have a better estimate of the cost to fully replace the gathering lines and now know that quick, inexpensive fixes will not remedy UFG on these lines. However, the principle that the seller bears responsibility for the uneconomic portion of the replacement remains sound. SteelRiver had no objection accepting the \$5 million contribution from EQT in 2013 when it acquired the Goodwin and Tombaugh Systems and it is not unreasonable for this Commission to now require that SteelRiver similarly contribute to fix these gathering lines now that it is seeking to sell to Aqua.

While the ALJ is correct that "...socialization of costs associated with infrastructure improvement is not an unusual concept,"²⁶ it is both the scale on which this

²⁶ RD, p. 51.

is being done and the manner in which it is being done that is problematic. As explained above, full replacement will cost approximately \$92 million more than the Company will get back in revenue and it seems clear that ratepayers are being viewed as a never-ending funding source. I&E's position that SteelRiver be required to contribute to the replacement efforts is a condition that the Commission is lawfully allowed to place on the acceptance of the instant acquisition. Accordingly, if it is this Commission's preference that the entirety of the Goodwin and Tombaugh Systems be replaced, a resolution that as explained above is clearly uneconomic, this is the best way to deal with the replacement. If dealt with in this manner, it will eliminate the ALJ's concerns about the political and social aspects of having to abandon some customers, and I&E's concerns about requiring ratepayers to pay for uneconomic replacements.

I&E Exception No. 4: The ALJ erred in asserting that I&E and OSBA both advocated for the abandonment of customers served off of the Goodwin and Tombaugh Gathering Systems.

Recommended Decision: Page 51

I&E Main Brief: Pages 24-35

I&E Reply Brief: Pages 15-30

The Recommended Decision erroneously implies that I&E and OSBA are in favor of abandoning the Goodwin and Tombaugh customers, and I&E does, in fact, take great umbrage to that implication.²⁷ Stating that both I&E and OSBA wish for these customers to be abandoned unfairly shifts the blame from EQT, Equitrans, Equitable, and Peoples, all of whom should have been doing more to ensure these customers received safe and reliable service, to I&E and OSBA. Abandonment of some of these customers will likely

²⁷ RD, p. 51.

occur no matter what path the Commission orders Peoples to follow, this eventuality is simply the result of inaction on the part of others to do what was necessary to keep these lines in safe and adequate condition. In the 2013 Settlement when SteelRiver acquired Peoples, the signatories agreed that Peoples would complete an assessment of the gathering systems and present a plan to the Commission that would recommend whether to proceed with rehabilitation of some or all of the gathering lines and/or with abandonment of some or all of the customers served off those lines. The parties further agreed to an economic test comprised of the EQT \$5 million contribution, the \$12 million cost to convert customers to alternative fuels, and the \$6 million of incremental rate base supported by revenues from the Gathering System customers. If the economic test was satisfied, the 2013 Settlement provided that Peoples would be permitted to include its investments to the Gathering Systems in rate base to be recovered from ratepayers; however, if the economic test is not satisfied, Peoples agreed that it would make a recommendation not to further invest in the Gathering Systems. These detailed settlement terms balanced the need to address the safety concerns on the Goodwin and Tombaugh gathering lines in a manner that was in keeping with sound ratemaking principles. This Commission approved those terms, which Peoples is currently bound by but now seeks to circumvent in the Non-unanimous Settlement by not performing any economic analysis and obtaining full recovery from its customers.

Given the extremely high levels of lost and unaccounted for gas (as of 2018 the Goodwin System's UFG was 83.52% and the Tombaugh System's UFG was at

43.95%²⁸), a natural consequence of the failures on the part of EQT, Equitrans, Equitable and Peoples to act, is that certain customers, likely even under the Non-unanimous Settlement presented in the instant proceeding, would necessarily need to be abandoned. Even Peoples recognizes that replacement of every mile of these Gathering Systems would not be economic²⁹ and that there are certain instances in which "...abandonment of the customer, and converting the customer to an alternative fuel source, would be more economic and in the public interest."³⁰

The Recommended Decision in this proceeding essentially concludes that abandonment of customers is never an option no matter what the economic analysis shows. This is dangerous precedent and is inconsistent with prior Commission orders. As noted above, in 2017, this Commission entered an Order allowing Columbia Gas to abandon certain customers based on an economic analysis that showed a revenue deficiency would occur if Columbia replaced that line.³¹ In his Statement on the Columbia order, Commissioner Place noted that "[t]his abandonment project is not only economic from a cost of service perspective, but will also contribute to a reduction in lost and unaccounted for natural gas with the concomitant benefit of reducing greenhouse gas emissions from these aging lines...It is critical that all NDGC efforts to replace at risk pipe are completed in a cost effective manner while maintaining safe and reliable

²⁸ I&E St. No. 2, pp. 3-4.

²⁹ I&E MB, p. 28.

³⁰ Joint Applicants St. No 6-SR, p.8.

³¹ *Application for Approval of Abandonment of Service by Columbia Gas of Pennsylvania, Inc. to Three Customers Located in York County, Pennsylvania*, Docket No. A-2017-2604409 (Order Entered July 13, 2017).

service.”³² This was also the position of the Commission in *Groff v. North Penn Gas Company* where the Commission noted that there were economic factors favoring abandonment over replacement.³³ The type of economic test agreed to by the Commission in 2013 is not a unique or unusual approach to issues of pipeline replacement. However, this Recommended Decision asks the Commission to abandon any economic analysis, which is necessary to determine just and reasonable rates, and require ratepayers be responsible for this project simply over the fear of social and political issues.

As noted above, the ALJ has inexplicably failed to address the proposed resolution by I&E that would essentially preserve most of the Goodwin and Tombaugh customers while relieving the ratepayers of the obligation to fund this endeavor. If the Commission determines it must deviate from the already approved 2013 settlement, I&E believes that the only palatable resolution is to set aside a portion of the purchase price to fund the repair and replacement of these gathering lines. It is certainly well within the Commission’s authority to place conditions, as it sees fit, on the approval of an acquisition.

³² Statement of Commissioner Andrew G. Place re: *Application for Approval of Abandonment of Service by Columbia Gas of Pennsylvania, Inc. to Three Customers Located in York County, Pennsylvania*, Docket No. A-2017-2604409 (Order Entered July 13, 2017).

³³ *Groff v. North Penn Gas Co.*, 77 Pa. P.U.C. 203 (1992).

Reliability and Pipeline Replacement

I&E Exception No. 5: The ALJ erred in determining that the reliability and pipeline replacement commitments contained in the Non-Unanimous settlement are sufficient to warrant substantial affirmative public benefits.

Recommended Decision: Pages 55-60

I&E Main Brief: Pages 23-24

I&E Reply Brief: Pages 14-15

The Recommended Decision attempts to trivialize I&E and OSBA's concerns regarding the revised LTIP contemplated in the Non-Unanimous Settlement by stating that those concerns are mere speculation.³⁴ I&E's concern in this respect is that merely committing to replace more pipeline does not translate into a benefit unless and until that pipeline is actually replaced.

As I&E explained in its Main Brief, LTIP acceleration is something that is necessary even independent of this acquisition and I&E believes that should the Commission disallow this acquisition Peoples should still be required to accelerate its pipeline replacement efforts.³⁵ In the Settlement, the signatories agree to increase Peoples' combined distribution LTIP spending by \$30 million per year beginning in 2021, and the replacement of an additional 25 miles of pipe per year.³⁶

While I&E believes acceleration is necessary and, when done in a fiscally responsible manner, benefits ratepayers, I&E is concerned about People's ability to effectuate this commitment. These concerns are not, as the ALJ has termed them, mere

³⁴ RD, p. 58.

³⁵ I&E MB, pp. 24-25.

³⁶ Settlement, para. 69.

speculation. As shown in I&E St. No. 3, between the years 2013 and 2018, Peoples only twice met the pipeline replacement goal spelled out in its LTIP.³⁷ Furthermore, to reach this goal, Peoples would need to compete with other NGDCs for manpower and material, which may not be available.

As noted above, fiscally responsible accelerated pipeline replacement is a benefit when that replacement actually occurs. However, Peoples has historically been unable to meet its pipeline replacement goals. It is, therefore, inaccurate to say that I&E's concern that Peoples will continue to be unable to meet those goals is mere speculation when this has been the trend. This Commission routinely relies on historical data to predict what may happen in the future. Accelerated pipeline replacement is not a benefit until the new pipe is actually in the ground, which at this point in time seem tenuous at best. Furthermore, this accelerated replacement comes at a cost to ratepayers who ultimately pay for the endeavor.

Public Ownership

I&E Exception No. 6: The ALJ erred in determining that public ownership is a substantial affirmative public benefit.

Recommended Decision: Pages 61-66

I&E Main Brief: Pages 17-21

I&E Reply Brief: Pages 8-12

Joint Applicants allege and the ALJ agrees that public ownership of the Peoples Companies provides substantial public benefits. However, the Joint Applicants fail to provide substantive facts that show that public ownership will provide greater benefits to ratepayers. I&E maintains that public ownership does not provide substantial public

³⁷ I&E St. No. 3, pp. 6-7.

benefits or any benefit to rate payers other than what they currently receive from the Peoples Companies ownership.

As was argued in I&E's Main and Reply Briefs, Aqua's commitments have not been evaluated to ensure they are benefits to the ratepayers. Aqua fails to provide new and additional benefits to the ratepayers under its ownership that they currently do not receive. Specifically, the ALJ determined that it is not unusual in acquisitions for commitments to be modest in duration and that the commitments made by Aqua in the Settlement do not signal that Aqua will not be a long-term owner.³⁸ However, Aqua failed to commit to any time frame in which their ownership would be certain notwithstanding the fact that they committed to a seven year infrastructure replacement project in the Settlement. Aqua could have simply guaranteed its ownership over that time frame to quash any argument as to its ownership duration and did not, leaving the Commission to draw its own conclusion of Aqua's intentions.

Next, ALJ Long noted the Joint Applicants commitment to contribute Aqua shareholders dollars to many customer assistance programs and corporate contributions to charitable entities as public benefits.³⁹ I&E's Main Brief pointed out that these commitments are completely debatable as the financial impact of the increased spending has not been evaluated and the ratepayers have no say in which charities are being committed to.⁴⁰

³⁸ RD, p. 62.

³⁹ RD, p. 65.

⁴⁰ I&E MB, p. 20.

Finally, the ALJ points to the Joint Applicants commitment to maintain the Peoples Companies' presence in the Pittsburgh area.⁴¹ This commitment by the Joint Applicants is not a benefit to ratepayers because had this transaction never been contemplated, headquarters would have remained in the Pittsburgh area. The Joint Applicants were successful in making commitments that were not quantifiable and do not go beyond what customers currently expect and receive from the Peoples Companies.

Implementation of SAP at Aqua

I&E Exception No. 7: The ALJ erred in determining that the implementation of SAP at Aqua is a substantial affirmative public benefit.

Recommended Decision: Pages 71-74

I&E Main Brief: Page 36

I&E Reply Brief: Pages 31-32

As an attempt to show a significant affirmative public benefit as a result of this acquisition, Aqua America identified the potential implementation of the Peoples Companies SAP platform at Aqua PA. Although the RD concluded that the potential implementation of SAP to be a clear public benefit, I&E maintains that the main or sole benefit touted by the Applicants is minimal at best as it will only potentially benefit Aqua PA customers.

The RD discounts the fact that the SAP implementation does not have a timeline or projected cost savings.⁴² Without a projected timeline of implementation or a cost savings analysis we cannot determine that this is indeed a benefit as opposed to Aqua PA implementing a SAP platform without the help of the Peoples Companies. Although the

⁴¹ RD, p. 65.

⁴² RD, p. 74.

Settlement calls for reporting requirements to the Commission and the statutory advocates, the implementation of the Peoples Companies SAP platform would already be approved irrespective of any reports showing cost savings or not. I&E maintains that the SAP implementation by Aqua PA does not rise to the level of affirmative public benefit required by *City of York*⁴³ particularly in this \$4 billion acquisition.

Universal Service and Low-Income Commitments

I&E Exception No. 8: The ALJ erred in determining that the low-income and universal service commitments contained in the Non-unanimous Settlement constitute substantial affirmative public benefits.

Recommended Decision: Pages 74-81

I&E Main Brief: Page 36

I&E Reply Brief: Pages 30-32

The Non-unanimous Settlement provided for low-income and universal service commitments by both Aqua PA and the Peoples Companies in which the RD concluded would materially improve affordability for vulnerable consumers, the system, other ratepayers and ultimately the entire community.⁴⁴ While these commitments may improve affordability to some consumers, the ALJ fails to take into consideration other commitments in the Settlement that would raise rates for the same consumers.⁴⁵ The Non-unanimous Settlement calls for major upgrades to the Peoples Companies distribution system, these costs will ultimately be borne by the ratepayers. The commitment for major upgrades may increase the number of consumers eligible for low-income programs; this in turn would lessen the benefit to those vulnerable consumers.

⁴³ *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825, 828 (Pa. 1972).

⁴⁴ RD, p. 81.

⁴⁵ I&E RB, p. 31.

Furthermore, I&E's position in this application was that if the acquisition was approved that the Commission require the Joint Applicants to set aside \$127 million in a restricted fund to cover the uneconomic portion of the cost associated with remediating the Goodwin and Tombaugh Gathering Systems. This position alone would have provided a substantial benefit to all customer rate affordability.

Customer Service Commitments

I&E Exception No. 9: The ALJ erred in concluding that I&E did not challenge the customer service metrics proposed in the Non-unanimous Settlement.

Recommended Decision: Pages 81-82
I&E Reply Brief: Page 30-31

The ALJ stated that I&E did not challenge the customer service metrics proposed in the Non-unanimous Settlement, which is inaccurate. In Reply Brief, I&E noted that Aqua had stated that it would merely strive to meet these metrics and that they did not appear to be firm commitments.⁴⁶ Based on I&E's review, there is no penalty for Aqua's failure to meet these metrics. As the ALJ noted, Aqua's commitments ensure that Aqua "will continue to meet or exceed its existing performance metrics..."⁴⁷ Merely meeting a pre-existing performance metric is not a substantial benefit. Further, as with many of these commitments, they never rise to the level of a benefit unless they actually occur.

I&E Exception No. 10: The ALJ erred in determining that reporting whether or not customer service metrics have been met to I&E, OCA and OSBA is sufficient to be considered a substantial benefit.

Recommended Decision: Pages 83-85
I&E Main Brief: Page 35

⁴⁶ I&E RB, p. 30.

⁴⁷ RD, p. 82.

Regarding customer service commitments, the ALJ notes that “BIE is correct in observing that simply meeting metrics which are already in place is not a substantial benefit.”⁴⁸ In Reply Brief, the Joint Applicants specifically state regarding the Peoples customer service commitments that “[w]ith respect to I&E’s arguments regarding service performance metrics, the Joint Applicants acknowledge that this commitment matches the Peoples Companies’ performance goals for 2019.”⁴⁹ Despite the ALJ’s acknowledgement that meeting a metric already in place is not a benefit and despite the Joint Applicant’s acknowledging that this is exactly what they plan to do, the ALJ still somehow concludes that the customer service commitments contained in the Non-unanimous Settlement amount to a substantial public benefit.⁵⁰ It is clear that the ALJ’s logic is flawed.

The Recommended Decision implies that because there are reporting requirements associated with Peoples commitments to meet the customer service commitments already in place the public benefit test is met.⁵¹ Simply reporting to I&E, OSBA and OCA is not a substantial public benefit, when according to the ALJ’s own analysis, meeting a metric already in place is not a public benefit.

Other Miscellaneous Provisions of the Settlement

I&E Exception No. 11: The ALJ erred in considering the one-time rate credit a substantial benefit.

Recommended Decision: Pages 90-92

I&E Main Brief: Pages 42-43

I&E Reply Brief: Page 32

⁴⁸ RD, p. 85.

⁴⁹ Joint Applicant RB, p. 47.

⁵⁰ RD, p. 86.

⁵¹ RD, p. 85.

In the Recommended Decision the ALJ concludes that because the \$13 million rate credit offered as part of the Non-unanimous Settlement will offset some of the increased spending costs the *City of York* standard is met.⁵²

The primary financial concession in Settlement are the proposed \$10 million and \$13 million distribution rate credits that will flow to ratepayers.⁵³ While the ALJ did not address the \$10 million rate credit related solely to Goodwin and Tombaugh in this section, the principle is the same.

First and foremost, this financial incentive does not outweigh the potential harm of a technically inexperienced parent taking ownership of the Peoples Companies. It is of little significance that ratepayers received a rate credit if the ultimate parent of the utility is not technically fit to operate it. Therefore, approving this acquisition based on these rate credits, which clearly pale in light of the \$4 billion acquisition cost, would be short-sighted.

Further, some of the costs, particularly those related to the Goodwin and Tombaugh Systems could far exceed expectations, thereby further diluting the rate credits. In addition, the rate credit is a short-lived benefit. It only benefits existing customers and not future customers,⁵⁴ and represents it a one-time opportunity for ratepayers to see a reduction in their bill. The ALJ's analysis does not take into account the fact that ratepayers will be financially impacted by the decision to repair the entire Goodwin and Tombaugh System for over a sixty year period.⁵⁵ The rate credit does little

⁵² RD, p. 92.

⁵³ Settlement paras. 33 and 41.

⁵⁴ Tr. at 214.

⁵⁵ Joint Applicant's Ex. JAG-2R.

to offset the years of negative impacts that will flow to ratepayers as a result of this acquisition.

I&E Exception No. 12: The ALJ erred determining that the commitment contained in the Non-unanimous Settlement that requires Peoples and Aqua to intervene in abandonment proceedings does not harm ratepayers.

Recommended Decision: Pages 94-96

I&E Main Brief: Pages 35-36

I&E Reply Brief: Pages 32-33

Regarding the commitments contained in the Settlement that Peoples and Aqua will intervene in proceedings near their respective service territories where it appears customers may be abandoned, the ALJ states "...I agree with BIE that for purposes of evaluating whether the Proposed Transaction provides affirmative public benefits...these commitments are neutral on balance."⁵⁶ This statement is somewhat erroneous as it is I&E's position that these commitments are *at best* neutral, but *at worst* harmful to ratepayers.

To be clear, these commitments require Peoples and Aqua to do nothing more than file a notice of appearance in these proceedings and even then, an appearance is only required if requested by one of the statutory advocates. They are not required to acquire these systems or do anything to assist these customers. In addition, this requirement is not without a cost to ratepayers. Ratepayers will be expected to pay for the Companies potentially costly involvement in these proceedings. Further, as evidenced by the Recommended Decision, these commitments are not new, but rather something that

⁵⁶ RD, p. 96.

Peoples and Aqua are already doing; the non-unanimous settlement merely memorializes this.⁵⁷

I&E Exception No. 13: The ALJ erred in considering only the purported benefits of the transaction without also weighing the detriments.

In sum, none of the purported benefits created in the Non-unanimous Settlement are sufficient to overcome the detriments of the proposed acquisition. In acquisition proceedings, the standard is not merely “do no harm,” but rather there should be new benefits provided for as a result of the acquisition. As expressed by OSBA witness Knecht, this acquisition can be likened to a feeding frenzy in which, because none of a substantial nature were offered by the Joint Applicants, the Parties attempted to extract their own affirmative public benefits.⁵⁸ In this instance, out of fear that the Commission would approve the acquisition as is, these alleged benefits came in the form of the Non-unanimous Settlement.

While the ALJ routinely criticizes I&E for its reservations regarding the Settlement by stating that I&E’s reservations are mere speculation, it is also mere speculation that none of I&E’s concerns are true. In fact, based on the fact that Peoples is now advocating that the settlement it signed in 2013 and was approved by the Commission simply be ignored, it is concerning to I&E that the instant Non-unanimous Settlement is not given more scrutiny. Just as in the 2013 acquisition proceeding, there is nothing in the instant proceeding that ensures these commitments will be followed

⁵⁷ RD, pp. 95-96.

⁵⁸ OSBA St. No. 1-S, p. 3.

through. Given that, there is also nothing that ensures that any of the alleged benefits will come to fruition.

What is clear, is that there are real, identifiable detriments to this acquisition. As explained by both I&E and OSBA, in order to carry out this transaction, indebtedness at Aqua will necessarily increase and with increased indebtedness comes increased risk.⁵⁹ As has been stated before, while debt will be increasing, all other things will largely remain equal. This means there are no additional revenue streams and, as the Joint Applicants continued to point out, this is not a synergy-based transaction so there are no real cost savings to be achieved. Regarding goodwill, as OSBA has explained, “Aqua America is paying the SteelRiver entities some \$2.0 billion for assets that will produce zero revenues.”⁶⁰ Clearly the real benefits of this acquisition will go to SteelRiver, not Aqua, not Peoples and certainly not ratepayers. In fact, what the Non-unanimous Settlement touts as the “benefits” of this acquisition are all things that ratepayers are expected to pay for.

Ratepayers are getting a less stable parent company, an increase in uneconomic infrastructure replacements that will be paid for by those ratepayers, and no cost savings related to this acquisition. In contrast, SteelRiver will be paid over \$4 billion dollars and bears no responsibility for the condition of the Goodwin and Tombaugh Systems. Finally, Aqua America gets more rate base put in place in the Peoples Companies through the accelerated LTIP and replacement of the Goodwin and Tombaugh Systems through which it will be able to recoup at least a portion of the \$2 billion in goodwill it

⁵⁹ I&E RB, p. 8.

⁶⁰ OSBA MB, p. 13.

paid for this acquisition. It is clear that ratepayers are receiving all of the detriment while not even benefitting from minor cost savings by way of synergies.

C. Section 2210

I&E Exception No. 14: The ALJ erred by failing to give due consideration to the concerns raised by I&E and OSBA under Section 2210(a)(2) of the Public Utility Code.

Recommended Decision: Pages 98-101

I&E Main Brief: Pages 38-40

I&E Reply Brief: Pages 34-35

The impact a proposed acquisition may have on the employees of a natural gas distribution company is one consideration the Commission must take into account under Section 2210(a)(2) of the Public Utility Code. As noted in I&E testimony and Briefs, one of the key selling points of this acquisition was that current leadership would continue to stay in place.⁶¹ In the instant acquisition, key personnel, namely [BEGIN

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁶¹ I&E St No. 1, p. 15, I&E MB, p. 38.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

⁶² RD at 99.

⁶³ I&E MB, p. 39, I&E RB, p. 35.

⁶⁴ RD at 101.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

Accordingly, it is unclear exactly what the effect on employees of this natural gas distribution company will be. Therefore, for the reasons noted above, as well as those in the I&E Main and Reply Briefs, I&E continues to believe this acquisition may have a negative impact on the employees of Peoples.

Beyond this, Aqua has touted the retention of jobs at the Peoples Companies as a public benefit. However, considering these jobs would likely be retained even absent this acquisition this certainly cannot be considered at substantial benefit.⁶⁶ At best, it appears the impact on employees at the Peoples Companies will be neutral and at worst the impact will be negative. Therefore, the Joint Applicants have failed to show any advantageous effects on these employees that would not occur absent Aqua's ownership.

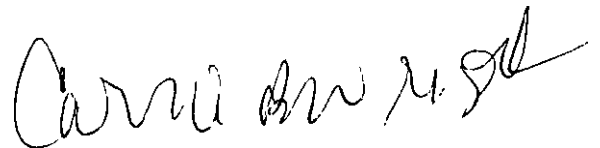
III. CONCLUSION

Despite the fact that the evidence does not support this acquisition being in the public interest, the ALJ recommended approval of the Non-unanimous Settlement, and thus, approval of the acquisition. The Commission has a duty to weigh both the benefits and the detriments of the proposed acquisition when making its determination. I&E submits that the detriments far outweigh the benefits. Therefore, for all the above

⁶⁵ RD at 100.
⁶⁶ I&E RB, p. 35.

reasons, as well as the reasons contained in its Main and Reply Briefs, the Bureau of Investigation and Enforcement respectfully requests that the Commission adopt its recommendations in this proceeding and determine that the proposed acquisition, even as modified by the Non-unanimous Settlement, is not in the public interest. In the alternative, should the Commission determine that the proposal contained in the Non-unanimous Settlement regarding the Goodwin and Tombaugh Gathering Systems is acceptable, the Bureau of Investigation and Enforcement respectfully requests that the Commission adopt its recommendation to place \$127 million of the purchase price in a restricted fund to cover the non-economic portion of replacement of these gathering systems.

Respectfully submitted,



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Dated: November 18, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Exceptions** dated November 18, 2019, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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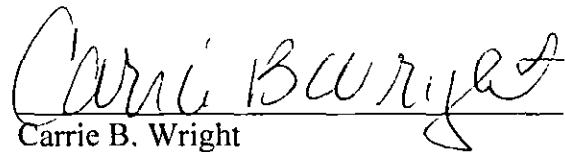
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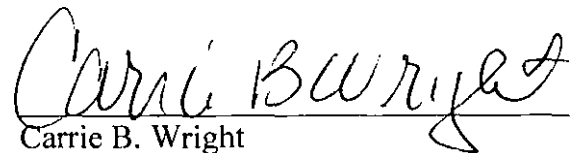
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