

COMMONWEALTH OF PENNSYLVANIA



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November 27, 2019

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Exceptions in the above-referenced, consolidated proceedings.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "H. Breitman".

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cc: Honorable Mary D. Long, ALJ  
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Certificate of Service

\*281205

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 27<sup>th</sup> day of November 2019.

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Dated: November 27, 2019  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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REPLY EXCEPTIONS OF  
THE OFFICE OF CONSUMER ADVOCATE

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## Table of Contents

I.	INTRODUCTION.....	1
II.	REPLY EXCEPTIONS.....	1
	OCA Reply to I&E Exception No. 2 and OSBA Exception Nos. 5, 6 and 8: Judge Long Correctly Found That The Proposal To Rehabilitate The GT Systems As Set Out In The Settlement Represents A Substantial Affirmative Public Benefit And Is Consistent With The Public Interest.....	1
	a. Goodwin/Tombaugh Gathering Systems (GT Systems).....	1
	OCA Reply to I&E Exception No. 3 and OSBA Exception Nos. 10 and 11: Judge Long Correctly Found That SteelRiver And Peoples Have Complied With The Terms Of The 2013 Settlement As To The GT Systems.....	4
	OCA Reply to I&E Exception No. 4 and OSBA Exception No. 7: Judge Long Correctly Found That Applying The 2013 Settlement To The Facts Of Record In This Proceeding Would Require The Abandonment Of Over 900 Current Natural Gas Customers. ....	5
	OCA Reply to OSBA Exception No. 9: Judge Long Thoroughly Considered The Evidence Of Record And Correctly Found That Substantial Evidence Supported The Position Of Peoples As To The Cost Of A Complete Rehabilitation Of The GT Systems. ....	7
	OCA Reply to I&E Exception No. 11 and OSBA Exception No. 21: Judge Long Correctly Concluded That The \$10 Million Rate Credit Is A Substantial, Affirmative Benefit Resulting From The Proposed Transaction. ....	8
	OCA Reply to I&E Exception No. 12: Judge Long Correctly Concluded That The Requirement Of The Peoples Companies To Intervene In Abandonment Proceedings Does Not Harm Ratepayers. ....	10
	OCA Reply to OSBA Exception No. 12: Judge Long Engaged In A Reasonable And Thoughtful Evaluation, Based On The Evidence Of Record, In Concluding That The Public Interest Is Best Served By Adopting The Settlement Provisions For The GT Systems. ....	11
	OCA Reply to I&E Exception No. 1: Judge Long Did Not Err By Determining That Aqua America Is Technically And Financially Fit To Operate A Natural Gas Distribution Company. ....	11
	b. Financial and Technical Fitness .....	11
	OCA Reply to I&E Exception No. 6 and OSBA Exception Nos. 1, 14, and 15: Judge Long Did Not Err In Determining That Access To Equity Will Be Even Greater In The Future As A Result Of Public Ownership.....	13

c. Other Substantial, Affirmative Benefits.....	13
OCA Reply to I&E Exception No. 5 and OSBA Exception No. 13: Judge Long Correctly Concluded That The Commitment In The Settlement To Increase Spending To Levelize The Replacement Of Pipeline On The Peoples System Is An Important And Substantial Affirmative Public Benefit. ....	15
OCA Reply to OSBA Exception No. 15: Judge Long Found that Workforce Benefits Would Result From The Infrastructure Projects In The Settlement.....	15
OCA Reply to I&E Exception No. 7 and OSBA Exception No. 17: Judge Long Did Not Err In Concluding That The Analysis Of Peoples’ SAP System Prior To The Proposed Implementation Of The SAP System At Aqua Is A Public Benefit.....	16
OCA Reply to I&E Exception Nos. 9, 10 and OSBA Exception No. 19: Judge Long Correctly Concluded That The Joint Applicants’ Commitment To Improve Customer Service Metrics Provides A Substantial, Affirmative Benefit. ....	17
OCA Reply to OSBA Exception No. 22: Judge Long Correctly Concluded That The Charitable Contributions Commitments Made In The Settlement Provide A Substantial, Affirmative Benefit. ....	19
OCA Reply to OSBA Exception Nos. 2, 3, and 4: Judge Long Correctly Concluded That There Was No Reason To Delve Into The Purchase Price Of The Proposed Transaction Because Ratepayers Were Adequately Protected From Recovery Of The Full Purchase Price.....	20
d. Ratepayer Protections.....	20
OCA Reply to OSBA Exception No. 18: Judge Long Correctly Concluded That Commitments For Low-Income Customers And Universal Service Are Affirmative Public Benefits.....	22
OCA Reply to OSBA Exception No. 24: Judge Long Correctly Concluded That The Settlement And Proposed Transaction Are In The Public Interest And Supported By Substantial Evidence .....	23
III. CONCLUSION .....	25

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<u>Popowsky v. Pennsylvania Public Utility Commission,</u> 937 A.2d 1040 (Pa. 2007) .....	23
<u>Deborah L. Harris, et al. v. UGI Gas,</u> Docket Nos. C-20022233, C-20042659 (Initial Decision entered Aug. 19, 2004) .....	3
<u>Middletown Township v. Pennsylvania Public Utility Commission,</u> 482 A.2d 674 (Pa. Cmwlth. 1984) .....	22
<u>In re Mountain Energy,</u> Docket No. A-2013-2396198 (application submitted Dec. 9, 2013) .....	3
 <b>Administrative Decisions</b>	
<u>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,</u> Docket No. A-110550F0160 (Opinion and Order entered February 1, 2006) .....	28
 <b>Statutes</b>	
66 Pa C.S. §§ 1350-1360 .....	15



## I. INTRODUCTION

The Office of Consumer Advocate submits this Reply to the Exceptions of the Bureau of Investigation and Enforcement (I&E) and the Office of Small Business Advocate (OSBA) filed on November 18, 2019. For the reasons set forth below, the Commission should deny the Exceptions of I&E and OSBA and adopt Judge Long's Recommended Decision without modification. The proposed Non-Unanimous Complete Settlement Among Most Parties (Settlement) and the Proposed Transaction as modified by the Settlement are in the public interest and will provide substantial, affirmative benefits.

## II. REPLY EXCEPTIONS

### a. Goodwin/Tombaugh Gathering Systems (GT Systems)

**OCA Reply to I&E Exception No. 2 and OSBA Exception Nos. 5, 6 and 8: Judge Long Correctly Found That The Proposal To Rehabilitate The GT Systems As Set Out In The Settlement Represents A Substantial Affirmative Public Benefit And Is Consistent With The Public Interest.** (R.D. at 42-55; I&E Exc. at 7-11; OSBA Exc. at 6-10, 13-15; OCA R.B. at 17-27; OCA S.I.S. at 3-8).

Judge Long reached the right decision as to the GT Systems. A complete rehabilitation of the natural gas infrastructure serving approximately 1700 customers is reasonable and necessary in order to provide safe service to these public utility customers. As Judge Long provided in the Recommended Decision, "...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." R.D. at 50.

I&E and OSBA each submitted numerous Exceptions to the Recommended Decision as to the GT Systems issue. There are two common themes in these Exceptions: (1) the "economic test" as set out in the 2013 Settlement should be applied here so that only a part of the GT Systems could potentially be repaired, and (2) if the economic test is not strictly applied then any

“uneconomic” expenditures, as I&E and OSBA define such, should be the sole responsibility of SteelRiver. As many of the OSBA’s Exceptions are only very slight modifications that reach the same issue, the OCA will deal with them in groups within these Reply Exceptions as appropriate.

The OCA submits that I&E’s and OSBA’s Exceptions here are misplaced and are without merit. From the start of this matter, both of these Parties chose to view the approximately 1700 customers on the GT Systems as something other than what they collectively are – Pennsylvania public utility customers. This misplaced focus has resulted in I&E and OSBA analyzing this matter as one of simple dollars and cents, similar to the type of analysis that would be performed in evaluating a possible main line extension. Judge Long, however, engaged in a much broader evaluation.

In the Recommended Decision, Judge Long discussed the social and economic costs of potentially abandoning over 900 public utility customers. R.D. at 51. As Judge Long explained, the total economic and social costs from the loss of natural gas service, the loss of public utility consumer protections, the loss of low-income customer assistance programs, coupled with higher energy costs and unknown but likely considerable litigation resources to be absorbed by all stakeholders were not issues that the objecting Parties here adequately considered. R.D. at 51. Judge Long evaluated these factors, and more, in finding that the best course of action for all of Peoples’ customers was the rehabilitation of the GT Systems as set out in the Settlement. As the Recommended Decision provides:

Although replacing the Goodwin and Tombaugh Systems places a burden on 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.

R.D. at 53.

In its Exception No. 2, I&E argues that a complete repair of the GT Systems would not be economic and thus should not be done. I&E attempts to compare the current matter with a recent Columbia case where *three* customers were being abandoned by Columbia. I&E Exc. at 9. The simple conclusion here is that if any revenue deficiency results from a pure quantitative analysis, then customers should be abandoned. In kind, OSBA's Exceptions 5, 6 and 8 similarly argue that a complete repair of the GT Systems is "uneconomic" and should not be approved. OSBA Exc. at 6-10, 13-15.

The OCA submits that the analysis by OSBA and I&E misses a very important point. NGDCs like Peoples own a collection of interconnected assets that, taken as a whole, comprise the system that is used to deliver service to all of their customers. Socializing the costs across the entire customer base for repairs to one discreet area of this system is not only an accepted and approved practice, it is a primary tenet of how public utility systems are built and continue to exist. See OCA R.B. at 19-20. Further, attempting to engage in a pure economic analysis to determine whether large groups of **current** public utility customers should be abandoned has previously and decisively been disapproved by the Commission. See Deborah L. Harris, et al. v. UGI Gas, Docket Nos. C-20022233, C-20042659 (Initial Decision entered Aug. 19, 2004); see also OCA R.B. at 20-21.

This important aspect of the matter at hand was recognized by Judge Long, as the Recommended Decision provides that "[t]he socialization of costs associated with infrastructure improvement is not an unusual concept and has been approved by the Commission in the past." R.D. at 51. See also In re Mountain Energy, Docket No. A-2013-2396198 (application submitted Dec. 9, 2013).

I&E and OSBA have failed to fully evaluate the total economic and social outcomes of the positions they have advocated for as to the GT Systems. Additionally, as noted in the Settlement, regardless of the actual capital spent to rehabilitate the GT Systems, Aqua America will provide a \$13 million rate credit to all Peoples Companies customers. Settlement at ¶ 33. Judge Long provided a thorough, reasoned analysis considering the totality of the issues and the impacts to all stakeholders. The OCA submits that the Recommended Decision should be accepted in total without modification.

**OCA Reply to I&E Exception No. 3 and OSBA Exception Nos. 10 and 11: Judge Long Correctly Found That SteelRiver And Peoples Have Complied With The Terms Of The 2013 Settlement As To The GT Systems.** (R.D. at 42-55; I&E Exc. at 11-14; OSBA Exc. at 17-20; OCA R.B. at 17-27; OCA S.I.S. at 3-8).

In the Recommended Decision, Judge Long found no failure on the part of SteelRiver or Peoples in adhering to the requirements of the 2013 Settlement as to the GT Systems. R.D. at 55. Judge Long also accurately noted that the 2013 Settlement provided no timeframe in which the analysis and final assessment as to the GT Systems was to be completed. R.D. at 54. Further, Judge Long recounted in detail all of the steps that Peoples has taken in order to complete its assessment of the GT Systems. R.D. at 44-45. Based on the facts of record, there is no evidence to support the idea that Peoples did not substantially execute its duties under the 2013 Settlement as to the GT Systems.

In its Exception No. 3, I&E argues that the Commission should impose a condition on this Application that SteelRiver be required to submit \$127 million towards the repair of the GT Systems. I&E Exc. at 11-14. I&E also continues to argue that repairing the entirety of the GT Systems is uneconomic. Id. I&E argues that this recommendation is reasonable, in part, because SteelRiver has owned Peoples for six years and has yet failed to fix the leaks on the GT Systems.

I&E Exc. at 13. OSBA's Exception Nos. 10 and 11 largely track I&E's arguments as just recounted. OSBA Exc. at 17-20.

Contrary to the assertions of I&E and OSBA, Peoples has substantially complied with the agreed-to requirements of the 2013 Settlement. As the Recommended Decision provides:

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

R.D. At 44-45 (emphasis added).

While the OCA agrees with I&E and OSBA that the Commission has the authority to impose conditions associated with any approval in this matter, Judge Long reviewed the evidence and found that no modification to the Settlement was needed. The OCA respectfully disagrees with I&E's assertion that Judge Long "failed to address" the \$127 million assessment to SteelRiver. I&E Exc. at 11. As to OSBA's arguments here, the record evidence does not support a charge that either Peoples or SteelRiver "did nothing" or "failed to address" the GT Systems as contemplated by the 2013 Settlement. OSBA Exc. at 18-20.

**OCA Reply to I&E Exception No. 4 and OSBA Exception No. 7: Judge Long Correctly Found That Applying The 2013 Settlement To The Facts Of Record In This Proceeding Would Require The Abandonment Of Over 900 Current Natural Gas Customers.** (R.D. at 42-55; I&E Exc. at 14-17; OSBA Exc. at 10-13; OCA R.B. at 17-27; OCA S.I.S. at 3-8).

Peoples developed three scenarios for addressing the repair or rehabilitation of the GT Systems and submitted those potential options for review in this proceeding. Only one of these

scenarios would pass the economic test as contained in the 2013 Settlement. As the Recommended Decision provides:

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.

R.D. at 45. Judge Long concluded that, based on the evidence of record, strict adherence to the economic test would result in over 900 current public utility customers being abandoned. R.D. at 51.<sup>1</sup>

In its Exception No. 4, I&E objects to any characterization that I&E would “wish for these customers to be abandoned.” I&E Exc. at 14. I&E then goes on to fault Peoples/SteelRiver for not fixing the GT Systems over these last 6 years; reaffirms that its primary position here is that the 2013 Settlement should be adhered to; but if not, then the Commission should condition its approval on a \$127 million payment from SteelRiver. I&E Exc. at 14-17.

In its Exception No. 7, OSBA argues that it has never advocated for abandoning customers in this matter. OSBA Exc. at 10. OSBA alleges that there are a “multitude of options to address the GT Systems.” OSBA Exc. at 11. Some of these options are listed by OSBA in its Exceptions, such as requiring SteelRiver to set aside \$127 million to facilitate the GT Systems, requiring a portion of the purchase price to be set aside to pay for the uneconomic cost to replace the GT Systems, and requiring Peoples and SteelRiver to begin repair of the GT Systems immediately, with the cost of repair primarily borne by SteelRiver. See OSBA Exc. at 11-12.

The OCA notes that many of the arguments put forth by I&E and OSBA in this area have already been addressed in these Reply Exceptions and the OCA’s Reply Brief and will not be

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<sup>1</sup> The OCA notes that in 2012 the GT Systems had 1602 customers. R.D. at 42. The GT Systems currently serves 1695 customers. R.D. at 11. The record evidence here shows that demand for natural gas service in this area is growing, even under the current conditions.

repeated here. Judge Long's conclusions as set out in the Recommended Decision that strict adherence to the "economic test" would result in a massive number of current public utility customers being abandoned is sound and fully supported by the evidence of record. Moreover, Judge Long's findings that such an abandonment would harm customers is supported by substantial evidence and those findings are uncontested. R.D. At 51.

The record evidence is clear that customers served on the GT Systems would suffer substantial harm if they were to lose natural gas service. In addition to providing a solution for the customers currently being served by the GT Systems which permits current customers to continue receiving natural gas service, the Settlement provides that, regardless of the actual capital spent to rehabilitate the GT Systems, Aqua America will provide all Peoples Companies customers with a \$13 million rate credit. See Settlement at ¶ 33. The Settlement provides a clear path forward to repair and modernize this important infrastructure. The OCA submits that Judge Long's well-reasoned decision here should be accepted in its entirety.

**OCA Reply to OSBA Exception No. 9: Judge Long Thoroughly Considered The Evidence Of Record And Correctly Found That Substantial Evidence Supported The Position Of Peoples As To The Cost Of A Complete Rehabilitation Of The GT Systems.** (R.D. at 42-55; OSBA Exc. at 15-17; OCA R.B. at 17-27; OCA S.I.S. at 3-8).

Judge Long thoroughly reviewed the evidence of record and concluded that Peoples' estimate of \$120 million to rehabilitate the entire GT Systems was reasonable. R.D. at 53. Judge Long also recounted several of the substantial ratepayer protections found in the Settlement that require continuing reporting and consultation with the Statutory Advocates during the repairs, that none of the repair costs will be eligible for inclusion in Peoples' DSIC but rather must be claimed in future rate cases, and that any potential costs above the \$120 million would be subject to negotiation as to any possible recovery. R.D. at 53-54. Judge Long noted that Aqua America will

provide all Peoples Companies customers a rate credit of \$13 million before the end of 2019 to offset the cost to current customers for rehabilitation of the GT Systems. R.D. at 46.

In its Exception No. 9, based on I&E testimony, OSBA challenges the accuracy of the \$120 million estimate. OSBA Exc. at 15. OSBA also alleges that due to Aqua America's inexperience in remediating natural gas systems, the actual repair costs could be much higher. OSBA Exc. at 16. Further, OSBA argues that since there is no cap on the repair costs the Settlement would allow any additional costs to be passed on to ratepayers. Id.

The OCA submits that Peoples has had the last six years to assess, analyze and investigate the GT Systems and has now submitted three separate, detailed scenarios for potential repairs and accompanying cost estimates. Judge Long was correct to accept Peoples' \$120 million estimate over OSBA's objection. In addition, other than bare assertions that Aqua has no remediation experience with natural gas systems, there is no evidence to indicate that Peoples would not be able to execute on the GT Systems remediation. R.D. at 54-55. Further, Judge Long accurately detailed the substantial ratepayer protections in the Settlement regarding any potential cost issues. R.D. at 53-55.

In accord with the weight of the evidence, OSBA's Exception here should be denied.

**OCA Reply to I&E Exception No. 11 and OSBA Exception No. 21: Judge Long Correctly Concluded That The \$10 Million Rate Credit Is A Substantial, Affirmative Benefit Resulting From The Proposed Transaction.** (R.D. at 42-55; I&E Exc. at 24-26; OSBA exc. at 29; OCA R.B. at 9-10; OCA S.I.S. at 6-7).

Judge Long held that, although the Proposed Transaction is not predicated on achieving synergies or savings, synergies and savings may nonetheless arise as a result of this Transaction. R.D. at 90-91. After recognizing that cost savings from any synergies are inherently difficult to quantify, Judge Long concluded that the \$10 million rate credit provided for by the Settlement



represents a substantial, affirmative benefit that will partially offset increased spending that may result from the Settlement. R.D. 91-92.

I&E and OSBA claim that the \$10 million rate credit is not a benefit. I&E Exc. 24-26; OSBA Exc. 29. Both I&E and OSBA argue that the immediate rate credit does little to mitigate increased spending in the future that may result from the remediation of the GT Systems and the accelerated LTIIP as provided for by the Settlement. I&E Exc. 25; OSBA Exc. 29. The concerns of I&E and OSBA are unfounded.

The ALJ considered the arguments of I&E and OSBA and agreed that the rate credit will not offset the increased spending in its entirety. R.D. at 92. The ALJ correctly concluded, however, that the rate credit is a product of compromise and designed to capture synergies or cost savings that are not and may never be completely quantifiable. R.D. at 91. As the OCA noted in its Reply Brief:

The \$10 million rate credit in the Settlement recognizes that synergies and savings could be achieved as a result of the Proposed Transaction and passes those savings on to the Joint Applicants' customers in the near term future, as opposed to attempting to divine possible savings that may have occurred at some future date.

OCA R.B. at 9. An immediate rate credit thus acts as “a vehicle to pass on some savings that would otherwise be deferred indefinitely into the future.” R.D. at 92. Further, Judge Long recognized that, while no immediate savings are contemplated by the Proposed Transaction, the Joint Applicants committed in the Settlement to “passing any future cost savings or rate benefits that may result from the acquisition to customers in future base rate proceedings.” R.D. at 91.

The concerns raised by I&E and OSBA are unfounded. As a result of the Settlement, customers of the Joint Applicants will experience a substantial one-time rate credit and the possibility of future rate credits to offset increased spending should synergies and efficiencies be

realized as a result of the Proposed Transaction. The OCA submits that I&E's Exception No. 11 and OSBA's Exception No. 21 should therefore be dismissed.

**OCA Reply to I&E Exception No. 12: Judge Long Correctly Concluded That The Requirement Of The Peoples Companies To Intervene In Abandonment Proceedings Does Not Harm Ratepayers.** (R.D. at 94-96; I&E Exc. at 26-27; OCA R.B. at 28-29; OCA S.I.S. at 21-22).

The ALJ found that the Settlement provision requiring the Peoples Companies to intervene in abandonment proceedings does not harm ratepayers. R.D. at 96. I&E disagrees and claims that the commitment to intervene in abandonment cases is “*at best neutral, but at worst harmful to ratepayers.*” I&E Exc. at 26 (emphasis in original). I&E's concern arises from the fact that ratepayers will be responsible for paying for the Companies' participation in such abandonment proceeding. *Id.* I&E's concerns are without merit.

As noted by the OCA, the Peoples Companies have historically been willing to assist ratepayers that face abandonment by their natural gas service providers. OCA R.B. at 28. The Peoples Companies have previously assisted in these matters without any legal obligation to participate. *Id.* The Settlement memorializes the Peoples Companies' willingness to continue assisting customers facing abandonment.

I&E claims that this provision will cause customers harm by forcing customers to pay for the Peoples Companies' participation in abandonment cases. As the ALJ noted, however, [a]ny additional costs to ratepayers can be controlled in base rate proceedings[.]” R.D. at 96. Moreover, the OCA explained that the Peoples Companies' “prior assistance in matters like these have been both cost effective and reasonable as to maintaining natural gas service for Pennsylvania customers.” OCA R.B. at 29.

I&E's claim that this provision will harm ratepayers lacks merit. No evidence has been provided to demonstrate that ratepayers will experience harm as a result of this provision, and

history has demonstrated that the Peoples Companies' can intervene in abandonment proceedings in a cost effective and reasonable manner. The OCA submits that I&E's Exception No. 12 should therefore be dismissed.

**OCA Reply to OSBA Exception No. 12: Judge Long Engaged In A Reasonable And Thoughtful Evaluation, Based On The Evidence Of Record, In Concluding That The Public Interest Is Best Served By Adopting The Settlement Provisions For The GT Systems.** (R.D. at 42-55; OSBA Exc. at 20-21; OCA R.B. at 17-27; OCA S.I.S. at 3-8).

The OSBA's Exception No. 12 is misplaced and without merit. The OSBA's continued insistence that the potential abandonment of public utility customers is not a part of this matter and that no consideration should be given to this issue is, quite simply, inconsistent with the evidence. OSBA Exc. at 20. Resolution of the GT Systems has been a critical part of this proceeding. All parties agree that the GT Systems are displaying an unacceptable level of leakage, such natural gas leakage presents a serious safety concern, and a resolution should be found.

The Settlement provides a clear and focused path forward to correct this long-standing concern and provides a substantial public benefit. As the Recommended Decision provides:

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.

R.D. at 55. As the OCA understands this Exception, OSBA argues that any discussion of abandonment in this matter is improper. In the OCA's view, failing to address the hard facts of this matter and the potential consequences of inaction would be untenable. As such, OSBA's Exception No. 12 is misplaced, without merit and should be denied.

b. Financial and Technical Fitness

**OCA Reply to I&E Exception No. 1: Judge Long Did Not Err By Determining That Aqua America Is Technically And Financially Fit To Operate A Natural Gas Distribution Company.** (R.D. at 21-40; I&E Exc. at 3-6; OCA R.B. at 3-7).

Judge Long determined that Aqua is technically and financially fit to own and operate a natural gas distribution company. R.D. at 21-40. Regarding technical fitness Judge Long found that, while some attrition may be expected, neither OSBA nor I&E presented any evidence suggesting that the Peoples companies will lose so much experienced personnel as to impact Peoples Companies' ability to provide safe and reliable service. R.D. at 28. The ALJ further determined that Aqua is financially fit to operate the Peoples Companies because neither I&E nor OSBA offered evidence to counter the Joint Applicants' testimony regarding Aqua America's ability to raise capital and earnings on equity. R.D. at 39. The ALJ also correctly noted that the Settlement addresses the concerns raised in the OCA's testimony regarding Aqua America's fitness to own and operate the Peoples Companies. R.D. at 39.

In its Exception No. 1, I&E argues that the Settlement does not provide adequate assurances that Aqua is technically and financially fit. I&E Exc. at 4-6. In regard to technical fitness, I&E argues that Aqua's position that it is fit to operate the Peoples Companies because the day-to-day operation will be managed by the experienced teams currently at the Peoples Companies fails to meet Aqua's burden to demonstrate fitness. I&E Exc. at 5. Regarding financial fitness, I&E argues that Aqua's acquisition of the Peoples Companies goes beyond the average transactional risk as the purchase price is in excess of \$4 billion. I&E Exc. at 5. I&E also argues that the Joint Applicants fail to show that the combined entity will be strengthened financially or be more financially stable than the Companies currently are on a separate basis. I&E Exc. at 6.

As discussed in the OCA's Reply Brief, in regard to the technical fitness of Aqua's management to operate a Natural Gas Distribution Company, the Settlement ensures that the current organizational structure in which natural gas operational workers are reporting directly to trained natural gas managers is maintained. OCA R.B. at 4; Settlement at ¶ 75. Additionally, as

noted by the Joint Applicants in their Main Brief, Peoples will be operated by the same personnel that are currently responsible for the day-to-day natural gas operations. See JA M.B. at 11-12; OCA R.B. at 4. Moreover, under the Settlement, Aqua America's Board is required to meet with the executive management of Peoples at least twice per year for five years post-closing. OCA R.B. at 6; Settlement at ¶ 78. As noted in the OCA's Reply Brief, required meetings between Aqua America's Board and the executive management at Peoples will enable Peoples integration with Aqua. OCA R.B. at 6. The OCA submits that the provisions relating to Aqua America's organizational structure and Board of Directors, when viewed as a part of the overall Settlement, satisfactorily addresses the OCA's concerns regarding the technical fitness of Aqua's management to operate a NGDC.

In regard to financial fitness, the OCA agrees with Judge Long's determination that OSBA and I&E did not offer evidence to counter Aqua America's testimony regarding its success in raising capital and earnings on equity. See R.D. at 39. Additionally, the commitments made in the Settlement regarding the financing of the Proposed Transaction, including maintaining a debt ratio for both Aqua PA and the Peoples Companies' of no more than 50% for five years post-closing, demonstrates that Aqua America has a concrete plan to finance the proposed transaction in a fiscally responsible manner. See Settlement at ¶¶ 51-52. As such, the OCA submits that I&E Exception No. 1 should be denied.

c. Other Substantial, Affirmative Benefits

**OCA Reply to I&E Exception No. 6 and OSBA Exception Nos. 1, 14, and 15: Judge Long Did Not Err In Determining That Access To Equity Will Be Even Greater In The Future As A Result Of Public Ownership.** (R.D. at 61-66; I&E Exc. at 19-21; OSBA Exc. at 2-3, 22; OCA R.B. at 11-12; OCA S.I.S. at 20-21).

Judge Long determined that Aqua America's access to broader sources of capital as a publicly-traded company creates an enhanced ability to finance infrastructure improvement and to meet the commitments contained in the Settlement for more ambitious infrastructure replacement. R.D. at 62.

In Exception No. 6, I&E argues that the Joint Applicants fail to provide facts that show that public ownership will provide greater benefits to ratepayers. I&E Exc. at 19-20. OSBA Exception No. 1 argues that the Joint Applicants never quantified their claim that Aqua America will have better access to equity markets post-transaction. OSBA Exc. at 2. In Exception No. 14, OSBA argues that the ALJ erred in concluding that broader sources of capital creates an enhanced ability to finance infrastructure improvements. OSBA Exc. at 22. Additionally, OSBA argues in Exception No. 15 that the ALJ erred in concluding that additional transparency due to public ownership will enhance the Commission's ability to evaluate Peoples operations post-transaction. OSBA Exc. at 23.

In the Recommended Decision, Judge Long discussed the likelihood that the broader sources of capital available to Aqua America enhances the ability to meet the more ambitious infrastructure replacement as set forth in the Settlement. R.D. at 63. Judge Long acknowledged that the increased transparency that results from Aqua America being a publicly traded company "may offer only moderate benefits", but overall, the characteristics of Aqua America in contrast to SteelRiver translates into a public benefit. R.D. at 66. The OCA submits that Judge Long is correct that improved transparency and greater access to capital markets are benefits of this transaction and are important components of the infrastructure improvements as set out in the Settlement. See OCA R.B. at 12. As such, I&E Exception No. 6 and OSBA Exception Nos. 1, 14, and 15 should be denied.

**OCA Reply to I&E Exception No. 5 and OSBA Exception No. 13: Judge Long Correctly Concluded That The Commitment In The Settlement To Increase Spending To Levelize The Replacement Of Pipeline On The Peoples System Is An Important And Substantial Affirmative Public Benefit.** (R.D. at 55-60; I&E Exc. at 18-19; OSBA Exc. at 21-22; OCA R.B. at 15-16; OCA S.I.S. at 5).

Judge Long concluded that the proposal set forth in the Settlement to increase spending in order to levelize the replacement of pipeline in the Peoples Companies' system is an important and significant public benefit that favors approval of the Proposed Transaction. R.D. at 60. In Exception No. 5, I&E takes issue with the Settlement's commitment to a revised Long Term Infrastructure Improvement Plan (LTIIP) and argues that Peoples' historical inability to meet its pipeline replacement goals calls into question the Companies' ability to meet the commitments contained in the Settlement. I&E Exc. at 18-19. OSBA in Exception No. 13 argues that a mere commitment to increase LTIIP spending, without a detailed analysis or systematic evaluation, does not rise to the level of a significant public benefit. OSBA Exc. at 21-22.

As discussed in the OCA's Reply Brief, Aqua America will be required to show that the modified LTIIP is cost effective and in accordance with the Public Utility Code. OCA R.B. at 16; 66 Pa C.S. §§ 1350-1360. The OCA submits that the accelerated replacement of high-risk pipe as agreed to in the Settlement is a substantial affirmative benefit. Judge Long correctly noted that the Commission has encouraged the expeditious replacement of at-risk pipes. R.D. at 60. In addition, the proposal to increase spending to levelize the replacement of at-risk pipe was recommended by I&E's expert. R.D. at 60. The OCA submits that the modified LTIIP which Aqua America commits to filing is in the interest of the Joint Applicants' customers. As such, I&E Exception No. 5 and OSBA Exception No. 13 should be denied.

**OCA Reply to OSBA Exception No. 15: Judge Long Found that Workforce Benefits Would Result From The Infrastructure Projects In The Settlement.** (R.D. at 70-71; OSBA Exc. at 23-24; OCA R.B. at 15-16; OCA S.I.S. at 25-26).

Judge Long found that Aqua America's commitment to improve customer service, reliability, and overall customer growth is likely to require additional personnel. R.D. at 71. In Exception No. 15, OSBA argues that the ALJ erred in concluding that there will be new jobs created to execute the planned infrastructure replacement. OSBA Exc. at 23. On this issue, the Recommended Decision provides that:

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 workforce. Laborers District Council witness Philip Ameris 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." Therefore, the addition of jobs specifically to execute the planned infrastructure replacement is a substantial public benefit.

R.D. at 71.

As the OCA provided in its Reply Brief, the proposed transaction as modified by the Settlement does not involve reductions in workforces for either company. OCA R.B. at 14. Moreover, the OCA notes that the labor union parties are signatories to the Settlement and that the Settlement as a whole produces favorable workforce outcomes that may not have been obtained through litigation. *Id.* As such, OSBA's Exception No. 16 should be denied.

**OCA Reply to I&E Exception No. 7 and OSBA Exception No. 17: Judge Long Did Not Err In Concluding That The Analysis Of Peoples' SAP System Prior To The Proposed Implementation Of The SAP System At Aqua Is A Public Benefit.** (R.D. at 71-74; I&E Exc. at 21-22; OSBA Exc. at 24; OCA R.B. at 29-30; OCA S.I.S. at 16-17, 30-31).

The ALJ concluded that the replacement of Aqua'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." R.D. at 74. I&E and OSBA both disagree and claim that the ALJ erred in finding that an analysis regarding the implementation of SAP at Aqua provided a benefit. I&E Exc. at 21-22; OSBA Exc. at 24.



OSBA argues that Aqua can implement the SAP system at any time, and “nothing prevents Aqua America from adopting the SAP platform today.” OSBA Exc. at 24. OSBA states that Aqua simply did not need to pursue this acquisition in order to justify its implementation of a new computer system. *Id.* Judge Long, however, found that this opportunity presents a public benefit. R.D. at 74. As the Recommended Decision provides:

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.

R.D. At 74.

I&E expresses concern that Aqua’s implementation of the SAP system has no timeline for completion or project cost savings. I&E Exc. at 21-22. As the OCA noted in its Reply Brief, however, the Settlement addresses I&E’s cost savings and timetable concerns by requiring Aqua to provide the Statutory Advocates with a cost, benefit, and timetable analysis of implementing the SAP system *prior to* implementing the SAP system. OCA R.B. at 30. Any concerns that I&E may have as to the cost and timetable for implementing the SAP system can thus be addressed at the time this information is received.

The arguments raised by I&E and OSBA are unfounded. As such, the OCA submits that I&E’s Exception No. 7 and OSBA’s Exception No. 17 should therefore be dismissed.

**OCA Reply to I&E Exception Nos. 9, 10 and OSBA Exception No. 19: Judge Long Correctly Concluded That The Joint Applicants’ Commitment To Improve Customer Service Metrics Provides A Substantial, Affirmative Benefit.** (R.D. at 81-86; I&E Exc. at 23-24; OSBA Exc. at 27-28; OCA R.B. at 27-29; OCA S.I.S. at 26-30).

Judge Long found that the Settlement requires the Joint Applicants to improve their customer service metrics and maintain or increase call center staffing. R.D. at 85. Judge Long

concluded that the customer service commitments in the Settlement “provide important benefits to both the customers of the Peoples Companies and Aqua PA.” R.D. at 85.

I&E and OSBA both claim that the commitments made by the Joint Applicants to improve customer service metrics cannot be a public benefit. I&E Exc. at 23-24; OSBA Exc. at 27. Both argue that the commitments made by the Joint Applicants merely maintain the status quo instead of affirmatively improving the Joint Applicants’ customer service. I&E Exc. at 24; OSBA Exc. at 27.

As explained in its Reply Brief, the OCA was initially concerned that, among the busy logistics of acquiring a company, precious attention and resources would be diverted away from customer service operations, which might result in a deterioration of customer service quality. OCA R.B. at 27. In light of this risk, the OCA sought commitments from the Joint Applicants that would maintain or increase customer service metrics at the Companies. OCA R.B. at 27. As noted by Judge Long, these commitments provide a substantial, public benefit 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.

R.D. at 85. The commitments in the Settlement go beyond simply meeting current performance metrics. The Recommended Decision provides that:

[T]he 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.

R.D. at 85. Additionally, the Settlement includes new metrics by which the Peoples Companies can evaluate its customer service, and the Peoples Companies agreed to maintain or improve its customer service metrics for a period of five years after the Proposed Transaction closes. R.D. at

84-85. As explained by the ALJ, “[t]hese benefits were not originally included in the initial application.” R.D. at 85. As noted in the OCA’s Reply Brief, the Settlement includes several provisions to ensure that Aqua PA adopts Peoples’ best practices, specifically in regard to customer service and quality of service. OCA R.B. at 28; Settlement at ¶¶ 83, 85-88. The 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 Applicants to benefit the public.

In contrast to the characterizations of I&E and OSBA, the commitments in the Settlement related to customer service metrics provide a substantial, affirmative benefit to customers of the Companies. The OCA submits that I&E’s Exception Nos. 9, 10 and OSBA’s Exception No. 19 should therefore be dismissed.

**OCA Reply to OSBA Exception No. 22: Judge Long Correctly Concluded That The Charitable Contributions Commitments Made In The Settlement Provide A Substantial, Affirmative Benefit.** (R.D. at 96-97; OSBA Exc. at 30-31; OCA R.B. at 29-30; OCA S.I.S. at 33-34).

Judge Long found that the charitable contribution commitments made by the Joint Applicants provide a substantial, affirmative benefit. R.D. at 97. OSBA disagrees and argues that the commitments made by the Joint Applicants fall short of maintaining the status quo. OSBA also takes issue with the fact that Aqua is committing to contribute to charitable causes “rather than alleviate the financial burden it is placing on its customers.” OSBA Exc. at 30-31. OSBA’s Exception here is misplaced.

As Judge Long explained, “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.” R.D. at 97. As noted in the Settlement, Peoples will maintain their corporate headquarters through at least January 31, 2029 in Pittsburgh and will commit to not

moving their headquarters outside of the Peoples Companies service territory unless through application to, and approval by, the Commission. Settlement at ¶¶81-82

The Commission has held that charitable contributions are a benefit to the public,<sup>2</sup> and OSBA has not demonstrated that the Joint Applicants' customers will be so financially burdened that charitable contributions need to be curtailed. The OCA submits that OSBA's Exception No. 22 should therefore be denied.

d. Ratepayer Protections

**OCA Reply to OSBA Exception Nos. 2, 3, and 4: Judge Long Correctly Concluded That There Was No Reason To Delve Into The Purchase Price Of The Proposed Transaction Because Ratepayers Were Adequately Protected From Recovery Of The Full Purchase Price.** (R.D. at 33; OSBA Exc. at 3-5; OCA R.B. at 8-11; OCA S.I.S. at 12-13).

Judge Long found that there is no compelling reason for the Commission to delve into the purchase price because ratepayers are adequately protected from recovery of the full purchase price. R.D. at 33. As the Recommended Decision provides, “[a]s ratepayers are adequately protected from recovery of the purchase price, this matter is one for shareholders, not regulators.” R.D. at 33. In OSBA Exception No. 2, OSBA argues that the ALJ's conclusion regarding the purchase price ignores the “negative ratepayer impact” that will result from the Proposed Transaction by increasing the riskiness of Aqua America's debt. OSBA Exc. at 3. In OSBA Exception No. 3, OSBA argues that the ALJ erred in concluding that the purchase price is reasonable. OSBA Exc. at 4. In OSBA Exception No. 4, OSBA argues that the Joint Applicants demonstrated that the amount paid above book value would be financially destabilizing to Aqua America. OSBA Exc. at 5-6.

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<sup>2</sup> Citing 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.

As noted in the OCA's Reply Brief, given the size of the Proposed Transaction and the combination of a water/wastewater company with a natural gas distribution company, the OCA sought certain protections related to the financing of this transaction, the future ratemaking treatment of acquisition premiums and other costs, and the subsequent capital structure of the Joint Applicants. See OCA R.B. at 8-9. As such, the Settlement memorializes the OCA's recommendations concerning the \$2 billion of goodwill associated with the Proposed Transaction and provides as follows:

Aqua America commits that no equity or debt issued to finance the acquisition premium or goodwill will be included in ratemaking capital structure of any of the PA utility subsidiaries. Any goodwill resulting from this transaction on the balance sheet of Aqua PA or the Peoples Companies shall be excluded from that utility's ratemaking capital structure.

Settlement at ¶ 45. Additionally, all goodwill associated with the proposed transaction must also be permanently excluded from the Joint Applicants' base rates. Settlement at ¶ 54; OCA R.B. at 9. Moreover, through the Settlement, Aqua America committed to a financing plan in which the Proposed Transaction is financed with at least fifty percent equity, which is calculated inclusive of the \$1.3 billion of debt assumed by Aqua America as a result of acquiring Peoples, and Aqua America's commitment to exclude from its subsidiaries' balance sheets any new equity or debt issued to finance the Proposed Transaction. Settlement at ¶¶ 46-47. Moreover, the Settlement also establishes maximum debt ratios that the Applicants must maintain post-closing. ¶¶ 51-52.

The commitments made in the Settlement demonstrate that Aqua America has a concrete plan to finance the proposed transaction in a fiscally responsible manner. This financing plan acknowledges and addresses the OCA's concerns with respect to the amount of debt that Aqua America will assume as part of the Proposed Transaction. See OCA R.B. at 8-11. As such, Judge Long was correct in determining that there is no compelling reason for the Commission to delve

into Aqua America's long-term investment strategy or its ultimate motivation, and that there is no reason to deny the Proposed Transaction based on the purchase price. See R.D. at 33-40. As such, OSBA exceptions Nos. 2, 3, and 4, should be denied.

**OCA Reply to OSBA Exception No. 18: Judge Long Correctly Concluded That Commitments For Low-Income Customers And Universal Service Are Affirmative Public Benefits.** (R.D. at 76-81; OSBA Exc. at 24-26; OCA R.B. at 30-32; OCA S.I.S. at 31-33).

Judge Long concluded in her Recommended Decision that the low-income commitments contained in the Settlement will “materially improve affordability for vulnerable customers, which in turn benefits the system, other ratepayers, and ultimately the entire community.” R.D. at 81. OSBA argues in Exception No. 18 that many of the commitments contained in the Settlement related to low-income assistance and universal service are continuations of the status quo and do not qualify as benefits. OSBA Exc. at 24-25. According to OSBA, the ALJ mis-applied *Middletown Township*<sup>3</sup> since the Commonwealth Court determined that class-specific benefits do not satisfy the *City of York* standard. OSBA Exc. at 26. Lastly, OSBA argues that the Settlement's commitment regarding an additional \$100,000 per year contribution to Dollar Energy by Aqua America's shareholders for four years, the Settlement's commitment that Peoples will contribute an additional \$75,000 per year to Low Income Usage Reduction Program (LIURP) for three years, and the Settlement's commitment that Aqua America' shareholders will contribute \$50,000 per year to the Helping Hand program for four years, are *de minimis* in the context of the proposed transaction. OSBA Exc. at 26.

The Recommended Decision contains a specific discussion of OSBA's citation to Middletown Township and notes that the case does not support OSBA's position because the PA

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<sup>3</sup> Middletown Township v. Pennsylvania Public Utility Commission, 482 A.2d 674 (Pa. Cmwlth. 1984) (Middletown Township).

Supreme Court has rejected the notion that all customers must receive specific benefits from the transaction when there is no evidence that other customer classes will suffer harm. See R.D. at 78-79.<sup>4</sup> The OCA agrees with Judge Long that, in the absence of the Settlement, the Joint Applicants would not be legally required to make these additional funding commitments to low-income and universal service programs with shareholder dollars. R.D. at 80. As discussed in the OCA's Reply Brief, the Settlement contains multiple and significant commitments to low-income issues which address the OCA's concern regarding the merger's effect on low-income and universal service programs in order to ensure that attention will not be diverted away from these programs as result of the proposed transaction. See OCA R.B. at 30-33. As such, OSBA Exception No. 18 should be denied.

**OCA Reply to OSBA Exception No. 24: Judge Long Correctly Concluded That The Settlement And Proposed Transaction Are In The Public Interest And Supported By Substantial Evidence** (*see generally* R.D.; OSBA Exc. at 32; OCA R.B. at 34).

The ALJ found that the Settlement and Proposed Transaction are in the public interest and recommended their approval. R.D. at 103. In Exception No. 24, OSBA counters that the Settlement and Proposed Transaction are not in the public interest. OSBA Exc. at 32. In support, OSBA claims that the acquisition premium paid by Aqua to SteelRiver as part of the Proposed Transaction "will be detrimental to ratepayers." Id. OSBA also claims that the accelerated LTIP and remediation plan for the GT Systems will result in financial harm to ratepayers. Id. OSBA's arguments are without merit.

OSBA ignores the Settlement's requirement that the acquisition premium paid by Aqua to SteelRiver be *permanently excluded* from rate base going forward. The acquisition premium thus cannot be detrimental to ratepayers because ratepayers will not bear the burden of paying for this

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<sup>4</sup> Citing Popowsky v. Pennsylvania Public Utility Commission, 937 A.2d 1040 (Pa. 2007) (Popowsky/Verizon).

premium. OSBA likewise fails to appreciate the rate credits and important public policy goals advanced by the accelerated LTIP and GT Systems remediation plan. While the \$23 million in rate credits being offered to ratepayers under the settlement will not offset every dollar of increased spending, such credits represent a significant reduction in the amount of spending that ratepayers must cover. Further, additional rate credits may be provided going forward as synergies and cost savings are realized. Additionally, the accelerated LTIP and GT Systems remediation plans advance important public policy by increasing the replacement of old, decaying, dangerous pipes and ensuring that customers are not abandoned in the process.

The ALJ correctly concluded that the Settlement and Proposed Transaction are in the public interest and supported by substantial evidence. The OCA submits that OSBA's Exception No. 24 should therefore be dismissed.



### III. CONCLUSION

As set forth above, the OCA respectfully requests that the Commission deny the Exceptions filed by I&E and OSBA and adopt Judge Long's Recommended Decision without modification. The Settlement and Proposed Transaction provide substantial, affirmative benefits and are in the public interest.

Respectfully Submitted,



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