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November 27, 2019

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Joint application of Aqua America, Inc. for approval to acquire ownership of Peoples Natural Gas Company, LLC, Peoples Natural Gas Company, LLC—Equitable Division and Peoples Gas Company, LLC, through the purchase of LDC Funding, LLC. LDC Funding, LLC is the indirect parent of Peoples Natural Gas Company, LLC, Peoples Natural Gas Company, LLC—Equitable Division and Peoples Gas Company, LLC. Under the proposed transaction, LDC Funding, LLC will become a direct subsidiary of Aqua America, Inc., Docket Nos. A-2018-3006061, A-2018-3006062, A-2018-3006063

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Direct Energy Business Marketing, LLC and Direct Energy Small Business, LLC's ("Direct Energy") Reply Exception with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Kristine E. Marsilio

KEM/lww  
Enclosure

cc: Hon. Mary D. Long w/enc.  
[ra-OSA@pa.gov](mailto:ra-OSA@pa.gov)  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Direct Energy's Reply Exception upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Kristine E. Marsilio, Esq.

Dated: November 27, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua America, Inc.,	:	Docket Nos.	A-2018-3006061
Aqua Pennsylvania, Inc., Aqua Pennsylvania	:		A-2018-3006062
Wastewater, Inc., Peoples Natural Gas	:		A-2018-3006063
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 LDC Funding,	:		
LLC's Membership Interests by Aqua	:		
America, Inc.	:		

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**REPLY EXCEPTION  
OF DIRECT ENERGY BUSINESS MARKETING, LLC  
AND  
DIRECT ENERGY SMALL BUSINESS, LLC**

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Pursuant to 52 Pa. Code § 5.535, Direct Energy Business Marketing, LLC and Direct Energy Small Business, LLC (collectively, "Direct Energy") submit this Reply Exception in response to the Exceptions filed on behalf of the Office of Small Business Advocate ("OSBA") in the above-captioned proceeding.

**I. BACKGROUND**

On December 11, 2018, Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Peoples Gas Company LLC (collectively, "Joint Applicants") filed a Joint Application with the Pennsylvania Public Utility Commission ("Commission") seeking approval for Aqua America, Inc. ("Aqua") to acquire ownership of Peoples Natural Gas Company LLC ("Peoples Natural Gas") and Peoples Gas Company LLC ("Peoples Gas") through the purchase of LDC Funding LLC ("LDC"). A number

of parties intervened in this proceeding, including Direct Energy, who filed a Petition to Intervene on December 31, 2018.

On June 26, 2019, Joint Applicants, the Office of Consumer Advocate (“OCA”), the Coalition of Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”), 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 Utilities Workers Union of America, Local 612 (“UWUA”) (collectively referred to as the “Settlement Parties”) filed a Joint Petition for Approval of Non-Unanimous, Complete Settlement Among Most Parties (“Joint Petition” or “Settlement”). The Commission’s Bureau of Investigation & Enforcement (“I&E”) and the OSBA were not signatories to the Joint Petition. Equitrans, LP (“Equitrans”) and Duquesne Light Company (“Duquesne Light”) were also not signatories, although they indicated that they did not oppose the Joint Petition.

The Settlement approved the change in control of the Peoples Companies by way of the purchase of all of LDC’s membership interests by Aqua, subject to certain conditions outlined in the Settlement. Joint Petition at ¶ 28. Of relevance to these Reply Exceptions, the Settlement addresses numerous concerns that had been raised by Direct Energy related to certain operational practices and procedures in the context of the proposed transaction. Specifically, the Settlement provides that, in implementing the proposed transaction, Peoples will maintain its Local Production Pool Tracking System, upgraded Electronic Bulletin Board (“EBB”), Local Production Pool invoicing that includes identifying information, and group contact e-mail. Joint Petition at ¶¶ 120-23. Additionally, the Settlement provides for certain modifications to Peoples’ current practices and procedures related to the competitive retail gas market, including the following: 1) Peoples will provide to each supplier, through existing billing files, the total

number of individual customer burns that make up the aggregate burn pool; 2) Peoples will undertake an assessment on the ability to accelerate the timing of issuance of daily delivery requirements and capacity requests and share the result of the assessment with suppliers; 3) Peoples will identify customer billing cycles on its invoices; and 4) Peoples will add a posting date to the daily billing files to serve as an indicator of the month being billed for all accounts, including the largest high-pressure accounts. Joint Petition at ¶¶ 124-27. The Settlement also provides, in pertinent part:

Within 90 days of the closing of the merger, the Peoples Companies will commence a process to obtain the input of interested stakeholders, including but not limited to, NGSs, public advocates, and customers, regarding the broad subject of increasing customer participation in the competitive natural gas market in their service territories.

Joint Petition at ¶ 128.

On October 3, 2019, Administrative Law Judge Mary D. Long (“ALJ Long”) issued a Recommended Decision (“RD”), approving the Joint Petition. In the RD, ALJ Long held: “The Settlement adopts many of the proposals by the supplier parties to maintain and enhance the existing choice and transportation programs of the Peoples Companies.” RD at 87. ALJ Long noted that the Commission has supported settlement terms in a merger which enhance operational practices in the competitive retail gas market. *Id.* at 89. ALJ Long concluded, “I agree that these improvements are a public benefit and weigh in favor of approval of the Proposed Transaction.” *Id.*

On November 18, 2019, the OSBA filed Exceptions to the Recommended Decision. The OSBA raised twenty-five (25) Exceptions. The OSBA’s Exception No. 20 provides, “The ALJ erred in finding that the provision in the Non-Unanimous Settlement related to enhancing operational practices in the competitive retail gas market are affirmative public benefits.”

Direct Energy files this Reply Exception for the limited purpose of responding to the OSBA's Exception No. 20.

**II. REPLY EXCEPTION: THE ALJ DID NOT ERR IN FINDING THAT THE PROVISIONS IN THE SETTLEMENT RELATED TO ENHANCING OPERATIONAL PRACTICES IN THE COMPETITIVE RETAIL GAS MARKET PROVIDE AFFIRMATIVE PUBLIC BENEFITS.**

In Exception No. 20, the OSBA makes the unsupported statement that agreeing to maintain programs already in place is not an affirmative public benefit. OSBA Exceptions at 28. Further, the OSBA argues that, regarding changes to existing practices, the Settlement is silent as to who will bear any associated costs and fails to quantify the impacts of these changes. *Id.* at 28-29. Based solely on this analysis, the OSBA makes the unfounded conclusion that "there is no evidence these changes represent a material affirmative public benefits." *Id.* at 29.

Contrary to the OSBA's argument, the ALJ did not err in finding that the provisions in the Settlement related to enhancing operational practices in the competitive retail gas market provide affirmative public benefits. First, the OSBA's argument that a commitment by a public utility to continue existing practices cannot provide an affirmative public benefit is not supported by the law or Commission precedent. The OSBA cites no authority to support this proposition. The standard established in *City of York* is that a utility must demonstrate "more than the mere absence of any adverse effect upon the public" and that the merger must affirmatively promote the "service, accommodation, convenience, or safety of the public" in some substantial way. *City of York v. Pa. PUC*, 295 A.2d 825 (Pa. 1972).

The problem with the OSBA's interpretation of this standard is that the OSBA mistakenly assumes that a utility merger will result in the maintenance of the status quo. Such an assumption completely ignores the reality that mergers/acquisitions, by their nature, change the status quo in terms of ownership and, as a result, often alter previously-established company practices and procedures. As explained by Direct Energy witness Mr. Orlando Magnani in his

Direct Testimony in this proceeding, “it is important to ensure that a change in ownership of Peoples does not negatively impact these important processes and procedures.” Direct Energy. St 1. at 5.

Moreover, the OSBA’s unsupported assumption is inconsistent with Commission precedent, which establishes that an agreement to maintain or continue existing, beneficial practices can constitute an affirmative public benefit supporting a proposed merger/acquisition. *See e.g. Amended Application of Joint Application of United Water Pennsylvania, Inc. and United Water Beth, Inc.*, Docket No. A-210013F0017, Initial Decision (June 23, 2008), *adopted* by Final Commission Order (July 17, 2008) (“*Amended Application of UWP/UWB*”); *see also North Pittsburgh Telephone Company and Penn Telecom, Inc.*, Docket No. A-310074F0004, Initial Decision (Nov. 16, 2007), *approved* by Final Commission Order (Dec. 5, 2007) (“*Joint Application of NPTC/PT*”). For example, in the *Amended Application of UWP/UWB*, the Commission adopted a Recommended Decision, which concluded that the affirmative benefits of a Joint Petition for Settlement authorizing a merger included, among other things: 1) the continuation of a utility’s pension and post-retirement benefit programs; 2) a utility’s commitment to continue providing no less than its current level of support for and involvement in local and community projects; and 3) a commitment by the utility to continue to maintain offices in its service territory. *Joint Application of UWP/UWB*, RD at 19-20.

Similarly, the benefits identified in the *Joint Application of NPTC/PT* that supported the Commission-approved Settlement authorizing a proposed acquisition, included, *inter alia*: 1) post-acquisition, NPTC will remain committed to completing 100% broadband availability and the transfer of control will have no impact on this commitment; 2) a commitment to continue the safe, efficient, reasonable, and adequate telecommunication service by NPTC and PTI; 3) a promise that tariffed rates will remain unchanged, unless and until a revised tariff is submitted



and approved by the Commission; 4) a guarantee that NPTC will continue to allow eligible Lifeline customers to purchase local service and subscribe to other telecommunication services; and 5) an agreement that NPTC will continue to employ the appropriate level of resources necessary to achieve the continuation of quality service. *Joint Application of NPTC/PT*, Initial Decision at 19-23. As such, contrary to the OSBA's assertion, an agreement by a utility to maintain certain practices and procedures post-transaction can constitute an affirmative public benefit, and ALJ Long did not err in concluding that Peoples' commitments in this case to continue certain practices provides an affirmative public benefit.


Similarly, the OSBA's argument that the record lacks evidence to support a finding that the proposed changes to Peoples' operational practices will provide an affirmative public benefit is equally unfounded. Mr. Magnani specifically testified that the operational enhancements "will enable NGSs to receive the information that is necessary to serve customers in the Peoples' service territory in a timely and efficient manner and, in turn, provide an affirmative public benefit." Direct Energy St. 1 at 6. Mr. Magnani also testified as to how specific operational enhancements would benefit the retail market and, in turn, the public. For example, Mr. Magnani explained that the timely identification of billing cycles is very important for suppliers to ensure timely enrollment and that Peoples should identify the month being billed for high pressure accounts in order to "eliminate NGS confusion, assist NGSs in servicing customers in Peoples' service territory, and, in turn, create a public benefit." *Id.* at 7. As such, contrary to the OSBA's assertion, the record contains sufficient evidence to support a finding that the proposed changes to Peoples' operational practices in the competitive retail natural gas market provide an affirmative public benefit. The Settlement Parties all agreed to the benefits of these operational enhancements, and no party challenged the associated costs. As such, the ALJ did not err in

finding that these enhancements to Peoples' operational practices related to the competitive retail natural gas market will provide an affirmative public benefit.

### III. CONCLUSION

WHEREFORE, Direct Energy Business Marketing, LLC and Direct Energy Small Business, LLC respectfully request that the Commission deny the Exceptions of the Office of Small Business Advocate and adopt the Recommended Decision.

Respectfully submitted,

  
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