



November 27, 2019

VIA E-File

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Filing Room
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 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.
A-2018-3006061, A-2018-3006062, A-2018-3006063**

Dear Secretary Chiavetta,

Enclosed, please find the *Reply Exceptions* of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) in the above referenced proceeding.

Copies will be served consistent with the attached Certificate of Service. Please contact me with any questions or concerns.

Respectfully submitted,

A handwritten signature in black ink that reads "John W. Sweet". The signature is written in a cursive style with a horizontal line above the name.

John W. Sweet
Counsel for CAUSE-PA

Cc: *Certificate of Service*
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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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	:	Docket Nos. A-2018-3006061
Authority and Necessary Certificates of	:	A-2018-3006062
Public Convenience to Approve a	:	A-2018-3006063
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.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the attached *Reply Exceptions of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania* upon the parties of record in the above-captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

VIA FIRST CLASS MAIL AND EMAIL

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The Honorable Emily DeVoe
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November 27, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of Aqua America, Inc.,	:	
Aqua Pennsylvania, Inc., Aqua	:	
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Company LLC by way of the Purchase of	:	
all of LDC Funding LLC's Membership	:	
Interests by Aqua America, Inc.	:	

**REPLY EXCEPTIONS OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA (“CAUSE-PA”)**

PENNSYLVANIA UTILITY LAW PROJECT

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November 27, 2019

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 “Peoples”) (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 June 26, 2019, after extensive litigation by multiple intervening parties, including the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”), a Joint Petition for Approval of Non-Unanimous, Complete Settlement Among Most Parties (“Settlement” or “Joint Petition”) was filed along with the settling parties’ respective statements in support.¹

On July 10, 2019, Joint Applicants, OSBA, and I&E submitted main briefs. On July 25, 2019, CAUSE-PA, Joint Applicants, OCA, OSBA, and I&E submitted reply briefs. On October 28, 2019, ALJ Long issued her Recommended Decision (RD). In her RD, Judge Long recommended the adoption of the Joint Petition for Settlement determining that in total, the

¹ The non-unanimous settlement was between CAUSE-PA, the Joint Applicants, the Office of Consumer Advocate (“OCA”), 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”). The Bureau of Investigation and Enforcement (“I&E”), and the Office of Small Business Advocate (“OSBA”) are not signatories to the Settlement.

“Proposed Transaction and Settlement are in the public interest and is supported by substantial evidence.”²

On November 18, 2019, both OSBA and I&E submitted Exceptions to the Recommended Decision. In general, both I&E and OSBA argue that, in reaching her decision, the ALJ overlooked evidence and that even as modified by the proposed settlement terms that the transaction did not produce a significant public benefit.

As argued in its statement in support, CAUSE-PA submits that the Settlement should be approved because it will – as a whole – provide substantial benefit to the public, consistent with the applicable legal standard in this proceeding.³ This is consistent with the ALJ’s findings in her recommended decision. Nothing argued by either I&E or OSBA changes this position. CAUSE-PA hereby files these limited Reply Exceptions in response to certain exceptions of I&E and OSBA regarding their respective assertions that the low income commitments contained in the Settlement do not constitute substantial affirmative public benefits.⁴ For the reasons that follow, and for the reasons outlined in its Statement in Support, CAUSE-PA argues for the adoption of the Settlement. The Commission should deny I&E and OSBA’s exceptions.

² RD at 103.

³ CAUSE-PA St. in Supp., Joint Pet., App. C at 3. The law requires the Public Utility Commission to find that the acquisition will substantially benefit the public prior to providing its approval. (CAUSE-PA St. 1 at 5; see also Popowsky v. Pa. PUC, 937 A.2d, 1040, 549 Pa. 583 (Pa. 2007)). Further, in granting a certificate of public convenience necessary for the acquisition, the Public Utility Commission “may impose such conditions as it may deem to be just and reasonable. (CAUSE-PA St. 1 at 5; see also 66 Pa. C.S. § 1103(a)).

⁴ See I&E Exception No. 8, OSBA Exception No. 18.

II. REPLY EXCEPTIONS

Reply to I&E Exception No. 8: The ALJ was correct that the low income and universal service commitments in the Settlement constitute a substantial affirmative public benefit.

In the Recommended Decision, ALJ Long determined that “the low-income commitments made by the Joint Applicants as a result of the Settlement will materially improve affordability for vulnerable consumers, which in turn benefits the system, other ratepayers, and ultimately the entire community.”⁵ I&E excepts to this finding and asserts that the ALJ is wrong to conclude that these low income commitments would materially improve affordability for low income customers.⁶ I&E argues that the ALJ failed to consider that other commitments in the Settlement, including major upgrades to Peoples’ distribution system, will raise rates for these same consumers.⁷

CAUSE-PA agrees that the settlement must be looked at in totality, but disagrees with I&E’s position that the commitments for low income customers contained in the settlement are not significant public benefits. To be sure, CAUSE-PA is concerned with increased costs of service that may result from system upgrades. These costs may increase rates for customers to the point where customers who do not need assistance now, may need assistance in the future. However, at this point we do not know what that need is and I&E’s assertion that infrastructure upgrades – presumably those planned for the Goodwin Tombaugh gathering system – will exacerbate unaffordability does not mean that increases to low income programming that are paid for by Aqua’s shareholders do not constitute a substantial affirmative public benefit.

⁵ RD at 81.

⁶ I&E Exceptions at 22.

⁷ I&E Exceptions at 22.

Indeed, to the extent that I&E's predictions about the future are true and other settlement commitments cause rates to rise, and that any increase would impact Peoples' low income customers, the best way to mitigate that impact would be through additional low income improvements and outreach of the types contained in this Settlement.

Low income customers make up a substantial portion of both Peoples' and Aqua's residential customers.⁸ The terms of the Settlement ensure that these customers will not be harmed by the proposed acquisition, but instead will derive specific and quantifiable benefits.⁹ The Settlement includes a number of specific commitments which both preserve and enhance Peoples' existing low income programming over the long term.¹⁰ The Settlement also contains provisions that will help Aqua improve its low income program, which will in turn help Aqua's low income customers to connect to and maintain service.¹¹

The Settlement includes a number of provisions which will quantifiably improve both Peoples' and Aqua's low income programming.¹² The bulk of the increased funding for these commitments comes from contributions from Aqua's shareholders, not ratepayers. Aqua shareholders will contribute:

- historical universal service program contribution levels for Peoples Companies' LIURP for four years, which will help low income customers afford energy efficiency measures to reduce energy burdens and health and safety risks;¹³
- an additional \$100,000 each year for four years to Peoples' hardship fund, which will help prevent terminations and help struggling households stay connected;¹⁴
- an additional \$75,000 each year for three years to Peoples' emergency furnace repair program, which will help reduce the health and safety risks from operating dangerous

⁸ See CAUSE-PA St. in Supp., Joint Pet., App. C at 2 (citing CAUSEPA St. 1 at 10-12).

⁹ CAUSE-PA St. in Supp., Joint Pet., App. C at 6.

¹⁰ CAUSE-PA St. in Supp., Joint Pet., App. C at 7-12.

¹¹ CAUSE-PA St. in Supp., Joint Pet., App. C at 13-14.

¹² See CAUSE-PA St. in Supp., Joint Pet., App. C at 2.

¹³ CAUSE-PA St. in Supp., Joint Pet., App. C at 10.

¹⁴ CAUSE-PA St. in Supp., Joint Pet., App. C at 11.

furnaces or resorting to alternative heating methods, which is good for the entire community;¹⁵ and

- an additional \$50,000 per year for four years to Aqua's hardship fund, which will help more of Aqua's customers afford to connect to and maintain water service.¹⁶

These commitments provide specific quantifiable benefits to the low income customers of both Peoples and Aqua, which will be paid for by Aqua America shareholders and will not require recovery through rates. While other commitments in the settlement may cause rates to increase in the future, there is no evidence showing whether and how much rates will go up as a result of this transaction. In contrast, the low income commitments in the Settlement are specific, quantifiable, and beneficial to both utilities' customers, as well as the community at large.

In its exceptions, I&E also argues that certain commitments in the Settlement may increase the number of customers eligible for low-income programs; which, in turn, would lessen the benefit to those vulnerable consumers.¹⁷ This may happen and, if it does, the most appropriate scenario would be for Peoples to increase its universal service budgets to ensure that it is adequately funded to meet the need within its service territory. The specific and quantifiable benefits obtained as a result of the settlement are substantial public benefits and are not outweighed by the speculative possibility that more customers may qualify for them at some unknown point in the future.

Finally, I&E asserts in its exceptions that its proposal that Joint Applicants 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 would have provided a substantial

¹⁵ CAUSE-PA St. in Supp., Joint Pet., App. C at 10. (Joint Applicants have also agreed to extend the program to include renters.).

¹⁶ CAUSE-PA St. in Supp., Joint Pet., App. C at 13-14.

¹⁷ I&E Exceptions at 22.

benefit to all customers' rate affordability.¹⁸ CAUSE-PA takes no position about whether this is the correct approach with Goodwin and Tombaugh Gathering Systems, but does note that the test the Commission must apply is whether the commitments in the Settlement create a substantial affirmative public benefit as a result of a transaction, not whether any party's given proposal would create a "better" benefit.¹⁹ As explained above and at length in both CAUSE-PA's Statement in Support²⁰ and Reply Brief²¹, the Settlement, in its totality, provides substantial affirmative benefits to the customers of both utilities.

The low income commitments combined with the community commitments and quality of service commitments in the Settlement create an affirmative public benefit to the Joint Applicants' respective customer base and the community as a whole.²² Thus, ALJ Long was correct to find that these commitments constitute an affirmative public benefit as a result of the proposed transaction. I&E's Exception number 8 should be denied.

Reply to OSBA Exception No. 18: The ALJ was correct that the low income and universal service commitments in the Settlement will benefit the system, other ratepayers, and ultimately the entire community.

In the Recommended Decision, ALJ Long found that the Commonwealth Court's holding in Middletown Township did not support OSBA's position that the low income commitments failed to provide affirmative public benefits because they only benefit one class of ratepayers.²³ ALJ Long explained that not all types of customers must receive specific benefits from the transaction.²⁴ The Recommended Decision further explains, "[h]ere, certain benefits of the

¹⁸ I&E Exceptions at 23.

¹⁹ See City of York et al., v. Pa. P.U.C., 295 A.2d 825 (Pa. 1972).

²⁰ CAUSE-PA St. in Supp., Joint Pet., App. C at 4-15.

²¹ CAUSE-PA Reply Br. at 5-12.

²² Joint Pet. at ¶¶ 81, 82, 94, 95, 105-107, 112-114, App. C (CAUSE-PA St. in Supp.) at 4-6, 15.

²³ RD at 78; see also Middletown Township v. Pa. P.U.C., 482 A.2d 674 (Commw. Ct. 1984).

²⁴ RD at 79; see also Popowsky v. Pa. P.U.C., 937 A.2d 1040, 1061 (Pa. 2007).

transaction benefit low-income ratepayers. Other provisions of the Proposed Transaction reach other classes of ratepayers.”²⁵

In its Exceptions, OSBA argues that ALJ Long erred in rejecting OSBA’s argument that the low income commitments were not affirmative public benefits because they “only benefit one class of ratepayers.”²⁶ OSBA argues that the expansion of low income programming does not constitute an affirmative public benefit because it benefits one class of customers at the expense of others.²⁷ However, as explained more fully below, and in CAUSE-PA’s Reply Brief, the low income commitments in the Settlement help improve service and affordability for low income customers, which in turn, benefits the entire community and all ratepayers therein.²⁸

OSBA erroneously interprets the Commonwealth Court’s decision in Middletown Township as holding that class-specific benefits cannot constitute affirmative public benefits.²⁹ In Middletown Township, the Commission rejected Middletown Township’s proposal to acquire the portion of Newton Artesian Water Company located within the township.³⁰ The Commission rejected the proposed acquisition, holding that approval of the acquisition would only benefit residents of Middletown Township and would have an adverse effect on the company’s remaining customers.³¹ Middletown Township represents a different factual scenario than the one at hand because it deals with the effect of the acquisition on the customers who remain with a utility after a portion of its service territory is acquired. This issue is distinguishable from the

²⁵ RD at 79.

²⁶ OSBA Exceptions at 24.

²⁷ OSBA Exceptions at 25.

²⁸ CAUSE-PA Reply Br. at 5-11.

²⁹ OSBA Exceptions at 25-26.

³⁰ Middletown Township, 482 A.2d at 678.

³¹ Middletown Township, 482 A.2d at 678.

argument made by OSBA that the low income commitments in the Settlement do not constitute affirmative public benefits because they only provide benefits to the residential class.

Middletown Township holds that, in order to determine an affirmative public benefit, the benefits and detriments of the acquisition must be measured as they impact all affected parties, and not merely on one particular group or geographic subdivision.³² The low income commitments in this Settlement satisfy this standard because they provide affirmative benefits to all customers of both the acquiring and acquired utilities, as well as the community at large, and are therefore distinguishable from the terms of the Settlement addressed in Middletown Township.³³ The low income program commitments contained in the Settlement are specific and quantifiable, and will provide both direct and indirect benefits for the customers of both Aqua and Peoples.³⁴

The Recommended Decision correctly finds that certain benefits of this transaction benefit low income ratepayers while other provisions of the Proposed Transaction reach other classes of ratepayers.³⁵ ALJ Long points out that, “The Supreme Court has soundly rejected the notion that all types of customers must receive specific benefits from the transaction, where there is no evidence that other customer classes will suffer harm.”³⁶ There is no conclusive evidence that other customer classes will suffer harm as a result of the low income commitments in the Settlement. OSBA’s assertion that the transaction will harm ratepayers are speculative and based solely on the possibility that certain commitments in the Settlement will drive up rates at some time in the future. There is insufficient evidence in the record to support OSBA’s claim that

³² Middletown Township, 482 A.2d at 682.

³³ CAUSE-PA Reply Br. at 6.

³⁴ See CAUSE-PA St. in Supp., Joint Pet., App. C at 6-14).

³⁵ See RD at 79.

³⁶ RD at 79 , see also Popowsky, 937 A.2d at 1061.

these commitments, which consist primarily of shareholder contributions, would have an adverse impact on customers of either service territory.³⁷

The low income commitments in the Settlement will help protect both the customers and communities served by Peoples and Aqua by improving affordability, reducing terminations, controlling uncollectible expenses, helping maintain a strong customer base, and helping increase the utilization of energy efficiency measures.³⁸ By improving affordability for low income customers and, in turn, helping to reduce involuntary terminations and the accumulation of uncollectible expenses, the Settlement will bring measurable improvement to customers of both companies. These benefits will not be limited to one particular group or geographic subdivision, but will instead provide positive and quantifiable benefits to all ratepayers and the broader community. Low income customers struggle to make ends meet each month and are consistently forced to juggle expenses, trim expenditures, and forgo necessities to pay for essential utility services and, as a result, they are uniquely vulnerable to changes in the provision of service.³⁹ Failing to address the unaffordability of service for low income customers can result in increased terminations and uncollectible expenses, increases costs on other ratepayers, and creates costly impacts on the community as a whole.⁴⁰ These impacts on the community can include fires from the use of dangerous alternative heat sources, increased homelessness, family separation, neighborhood blight, and workforce instability.⁴¹ The low income commitments in the Settlement will help protect the communities served by both Peoples and Aqua from this host of ills.

³⁷ CAUSE-PA Reply Br. at 6.

³⁸ CAUSE-PA Reply Br. at 7; see also CAUSE-PA St. in Supp., Joint Pet., App. C, at 6-14.

³⁹ CAUSE-PA St. 1 at 10-12.

⁴⁰ CAUSE-PA St. 1 at 27.

⁴¹ CAUSE-PA St. 1 at 27.

Furthermore, the benefits of the low income commitments extend beyond customers who currently qualify for low income programming. Many customers who do not qualify for these programs today may fall upon hard times and find themselves in need of the programs in the future, while others who are currently enrolled will hopefully rise out of poverty and no longer require assistance. Joint Applicants' low income programming along with the improvements in this settlement will provide additional tools to help current low income consumers to maintain service, while acting as a safety net for all residential ratepayers in the event of future need.⁴²

Of course, the benefits in the Settlement also extend beyond the low income commitments. The Settlement also contains a number of provisions intended to keep jobs in the local community, ensure continuity in staffing and program delivery, and protect the quality of customer service of the acquired utility.⁴³ It also sets forth several requirements designed to ensure that Peoples maintains at least its current level of community commitment post acquisition, thus providing a direct financial benefit to the local community.⁴⁴ It also includes specific, time-certain commitments to a continued presence in the communities that Peoples serves.⁴⁵ These commitments will ensure that the larger community benefits from the proposed transaction by helping to keep jobs in the local community, ensuring continuity in staffing, and protecting the quality of customer service of the acquired utility.⁴⁶

Thus, the record in this proceeding clearly supports ALJ Long's conclusion that the low income commitments in the Settlement provide a substantial benefit to all ratepayers, regardless

⁴² CAUSE-PA Reply Br. at 9.

⁴³ Joint Pet. at ¶¶ 81, 82, 94, 95, 105-107.

⁴⁴ Joint Pet. at ¶¶ 112-114.

⁴⁵ CAUSE-PA Reply Br. at 9-10; See also CAUSE-PA St. in Supp., Joint Pet., App. C at 4-6, 8-9, 12, 15.

⁴⁶ CAUSE-PA St. in Supp., Joint Pet., App. C at 4-6.

of income level, rate division, or geographic location. OSBA's exception number 18 should be rejected.

III. CONCLUSION

For the reasons stated above, CAUSE-PA respectfully asserts that the Commission should reject OSBA and I&E's exceptions and affirm the ALJ's findings in the Recommended Decision that the low income commitments in the Settlement constitute substantial affirmative public benefits. The Commission should affirm the Recommended Decision and approve the transaction as modified by the Settlement.

PENNSYLVANIA UTILITY LAW PROJECT

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Date: November 27, 2019