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17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Michael W. Hassell

mhassell@postschell.com
717-612-6029 Direct
717-720-5386 Direct Fax
File #: 174732

November 27, 2019

*VIA ELECTRONIC FILING*
*VIA OVERNIGHT DELIVERY*

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**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 and A-2018-3006063**

Dear Secretary Chiavetta:

Enclosed for filing please find the Replies to Exceptions of the Joint Applicants. The Joint Applicants are filing and serving these Replies to Exceptions before the date on which they are due, consistent with the Letter filed on November 12, 2019, by the Joint Applicants, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate.

There is a Public and a CONFIDENTIAL version of the Replies to Exceptions. The Public version has been electronically filed with the Pennsylvania Public Utility Commission ("Commission") and the CONFIDENTIAL version has been deposited in overnight delivery for filing, consistent with the notice regarding the Thanksgiving holiday from the Secretary's Bureau that appears on the Commission's website. In addition, the CONFIDENTIAL version of the Joint Applicants' Replies to Exceptions will only be provided to parties that have executed an appropriate non-disclosure certificate.

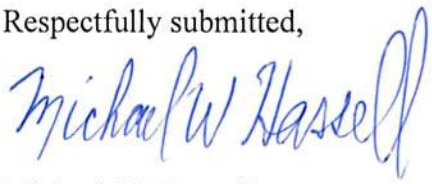
**REQUEST FOR PROTECTED TREATMENT OF CONFIDENTIAL INFORMATION**

As noted above, this filing includes information that the Joint Applicants consider to be proprietary and confidential. The CONFIDENTIAL version of the Replies to Exceptions is contained in a separately sealed envelope, which has been stamped "CONFIDENTIAL."

The Joint Applicants request that the materials that have been labeled "CONFIDENTIAL" be given the appropriate, non-public treatment by the Commission. That is, the Joint Applicants request that these materials be excluded from the public documents folder and that such copies not be disclosed to the public.

Please feel free to contact me should you have any questions. Thank you.

Respectfully submitted,



Michael W. Hassell

MWH/kls
Enclosures
cc: Honorable Mary D. Long
Office of Special Assistants
Certificate of Service

**PUBLIC VERSION – CONFIDENTIAL MATERIALS REDACTED**

**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 Authority And Necessary Certificates Of Public Convenience To Approve A Change In Control of Peoples Natural Gas Company LLC And Peoples Gas Company LLC By Way Of The Purchase Of LDC Funding LLC's Membership Interests By Aqua America, Inc. | : | Docket Nos. A-2018-3006061<br>A-2018-3006062<br>A-2018-3006063 |

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**REPLIES TO EXCEPTIONS OF THE JOINT APPLICANTS**

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Kimberly A. Joyce (ID # 86605)
Alexander R. Stahl (ID # 317012)
Regulatory Counsel
Aqua America Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
Phone: 610-645-1077
E-mail: kajoyce@aquaamerica.com
E-mail: astahl@aquaamerica.com

Michael W. Gang (ID # 25670)
Michael W. Hassell (ID # 34851)
Garrett P. Lent (ID # 321566)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: mgang@postschell.com
E-mail: mhassell@postschell.com
E-mail: glent@postschell.com

*Counsel for Aqua America, Inc. and its subsidiaries, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*

William H. Roberts II, Esq. (PA ID # 54724)
Peoples Natural Gas Company LLC
375 North Shore Drive
Pittsburgh, PA 15212
Phone: (412) 208-6527
E-mail: william.h.robertsii@peoples-gas.com

David P. Zambito, Esq. (PA ID # 80017)
Jonathan P. Nase, Esq. (PA ID # 44003)
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
Phone: (717) 703-5892
Fax: (215) 989-4216
E-mail: dzambito@cozen.com
E-mail: jnase@cozen.com

*Counsel for Peoples Natural Gas Company LLC and Peoples Gas Company LLC*


Date: November 27, 2019

## Contents

**PUBLIC VERSION – CONFIDENTIAL MATERIALS REDACTED**

# TABLE OF AUTHORITIES

## I. INTRODUCTION

The Joint Applicants[1] hereby file these Replies to Exceptions in response to the Exceptions of the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") and the Office of Small Business Advocate ("OSBA"). Combined, I&E and OSBA have filed nearly 40 Exceptions to the well-reasoned Recommended Decision ("RD") of Administrative Law Judge Mary D. Long (the "ALJ"). In many instances, those Exceptions quote the ALJ out of context, or otherwise misstate and fail to reference all of the record evidence weighed by the ALJ in recommending that the Proposed Transaction,[2] as conditioned by the Joint Petition for Approval of Non-Unanimous Complete Settlement ("Settlement"), be approved. Because of page limitations, the Joint Applicants will provide summary responses to explain the errors in I&E's and OSBA's Exceptions, and reference their Main and Reply Briefs for further details.

I&E's and OSBA's efforts to disparage the ALJ's analysis of the public benefits of the Proposed Transaction, as conditioned by the Settlement, recall the contentions made by I&E (then OTS) in opposing the original acquisition of Peoples Natural Gas by SteelRiver. In that case, the Commission strongly rejected I&E's arguments, concluding that "[e]ven a cursory review of benefits...leads to the conclusion that the Application as modified by the settlement will provide affirmative and substantial benefits to the public."[3] The commitments in the Proposed Transaction and Settlement compare favorably to the substantial public benefits

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[1] The Joint Applicants are Aqua America, Inc. ("Aqua America"), Aqua Pennsylvania, Inc. ("Aqua PA"), Aqua Pennsylvania Wastewater, Inc. ("Aqua PA Wastewater"), Peoples Natural Gas Company LLC ("Peoples Natural Gas") and Peoples Gas Company LLC ("Peoples Gas"). Aqua America, Aqua PA and Aqua PA Wastewater are collectively referred to as "Aqua." Peoples Natural Gas and Peoples Gas are collectively referred to as the "Peoples Companies."

[2] As proposed, Aqua America will acquire all of the membership interests of LDC Funding LLC ("Funding") by Aqua America. Funding is a wholly-owned subsidiary of SteeRiver Infrastructure Fund North America LP ("SteelRiver"). Funding is the indirect parent of the Peoples Companies, as well as utilities in Kentucky and West Virginia. The Kentucky Public Service Commission and the West Virginia Public Service Commission have already approved the Proposed Transaction.

[3] *Joint Application for Approval of the Transfer of the Issued and Outstanding Stock of the Peoples Natural Gas Company*, Docket No. A-2008-2063737 (Order entered November 19, 2009) ("*SteelRiver Application Order*") p. 32.

accepted in the *SteelRiver Application Order*. *See* JA RB, pp. 13-14. The benefits include:

- Return of ownership of the Peoples Companies to a Pennsylvania-based publicly-owned company, Aqua America, with its 130-year history of committed investment in utility assets and strong access to public and private capital markets;
- Commitments to further accelerate at-risk pipeline replacements, resulting in the Peoples Companies' distribution systems being made safer, more quickly;
- Creating new Pennsylvania jobs;
- Two separate base rate credits, totaling $23 million;
- Commitment to fix, once and for all, the Goodwin-Tombaugh Gathering Systems ("G/T Systems"), thereby preserving regulated gas utility services for nearly 1,700 existing customers, many of whom are low-income;
- Increased charitable commitments;
- Affirmative commitments to improve low-income programs of the utilities;
- Efficient adoption of a new, SAP-based customer information system by Aqua PA patterned after the existing SAP system used by the Peoples Companies, which will improve customer service and convenience;
- Commitments to improve customer service for both the Peoples Companies and Aqua PA;
- Further commitment to retain the Peoples Companies' headquarters at the current location for an additional nine years, and to not move the headquarters outside the Peoples Companies' service territory thereafter without Commission approval;
- Commitments to retain current levels of field service and call center employees;
- Commitment to file a new damage prevention program to reduce line hit damages, which will further increase the safety of the Peoples Companies' distribution systems;
- Long-term efficiencies in back office functions, which will benefit customers of the utilities;
- Additional ring fencing and debt ratio commitments to assure financial integrity; and
- Additional enhancements for retail supply competition.

The continuation of service for the nearly 1,700 existing Peoples Natural Gas customers on the G/T Systems has drawn the greatest focus in this case. RD, pp. 42-55. In the Application, the Joint Applicants made no proposal regarding the G/T Systems (JA St. 5-R, pp. 2-6) as there was a formally agreed-upon process for dealing with the G/T Systems that was contained in the 2013 Peoples/Equitable Settlement. However, in direct testimony, witnesses for I&E and OCA presented opposing proposals to add conditions to approval of the Proposed Transaction related to the G/T Systems—OCA seeking commitment to replace all at-risk pipe (OCA St. 4, p. 7) and I&E proposing that SteelRiver be charged a $127 million "exit fee" (I&E St. No. 2-SR, p. 18).

In rebuttal, the Joint Applicants presented information consistent with the "economic test" set forth in the 2013 Peoples/Equitable Settlement. That information showed that the

economic test, if adopted, would require the Commission to direct abandonment of service to over 900 existing Peoples Natural Gas customers, many of whom are low-income. (*See* JA St. 6-R, pp. 6-13.) Critically, nothing in the 2013 Peoples/Equitable Settlement obligated the Peoples Companies or their owners to bear the cost of either replacement or abandonment. The Settlement establishes an expedited replacement of pipe on the G/T Systems to allow these customers to remain utility customers, with a contribution by Aqua America of $13 million toward that replacement cost as an immediate rate credit. *See* JA MB, Section V.B.5.

As explained in the RD, the Peoples Companies inherited the G/T Systems' problems as a result of the 2013 acquisition of Equitable Gas Company, which was "a transaction rich with customer benefits." (Tr. 116.) The greatest benefit was to eliminate the need to replace overlapping at-risk pipelines owned by Peoples Natural Gas and Equitable Gas Company. The benefits of that acquisition also included an over four-year rate stay-out, improved customer service and universal service programs and a substantial resolution of gas-on-gas competition issues. (JA St. 3-R, pp. 5-7; Tr. 116.) However, the transaction could not be done without a transfer of the G/T Systems' assets. Since that time, the Peoples Companies essentially started from scratch to locate facilities and identify leaks, and have been working diligently to identify and develop a solution for the G/T Systems. JA MB, Section V.B.5; JA RB, Section V.B.5.

For reasons further summarized below and in the RD, the Settlement should be adopted without modification, so that the Peoples Companies, with the financial backing of Aqua America, can further enhance their provision of service to the public.

## II. REPLIES TO EXCEPTIONS

### A. Replies To Exceptions Regarding Aqua America's Fitness.

#### 1. Reply to I&E Exc. No. 1 – Aqua America is technically and financially fit to own and operate the Peoples Companies.

I&E continues to assert that Aqua America lacks the technical and financial fitness to

own the Peoples Companies. I&E Exc., pp. 4-6. I&E's argument ignores Commission precedent, mischaracterizes or ignores record evidence, and advocates for an untenable and illogical standard of evaluating the fitness of an acquiring entity.[4]

I&E argues that the Settlement does not provide adequate assurances that Aqua America is fit to act as a utility holding company. This assertion ignores the RD's detailed analysis and also ignores the *SteelRiver Application Order*. RD, pp. 26-27. In that order, the Commission rejected the same arguments made by I&E and concluded that (a) retention of essential natural gas management personnel and employees and (b) the expertise in capital markets and over-all operations at the new parent were consistent with what "one would expect to find at the ultimate parent company level." *SteelRiver Application Order*, pp. 40-41; *see also* JA RB, pp. 10-11. The ALJ correctly reasoned that Aqua America is fit to operate the Peoples Companies, citing Aqua America's experience in infrastructure replacement and the additional Settlement commitments related to governance, succession planning and the preservation of existing personnel with the expertise to effectively operate the Peoples Companies. RD, pp. 26-28.

I&E takes umbrage with the ALJ's recognition of the Joint Applicants' efforts and commitments to maintain sufficient, experienced personnel at the Peoples Companies, contending there is no evidence that Aqua America will retain existing Peoples Companies' employees. I&E Exc., pp. 4-5. I&E's exception ignores post-structure organization charts that demonstrate the Peoples Companies will continue to be led by presidents, supervisors, managers and directors with significant natural gas experience. *See* JA MB, pp. 11-12; JA RB, pp. 9-10. I&E's further argument that Aqua America's technical fitness cannot be satisfied by retention of experienced teams at the Peoples Companies is contrary to Commission precedent that permitted SteelRiver to acquire Peoples Natural Gas. Aqua America made significant commitments to

[4] Notably, I&E does not except to the ALJ's finding that Aqua America is the second largest investor-owned water utility in the country and financially strong owner and manager of pipe-based assets (RD, FoF ¶ 2), an undisputed fact which the RD correctly relied upon in its analysis.

maintaining sufficient, experienced personnel of an already technically fit company and is committed to allowing those personnel to maintain day-to-day operational control of the Peoples Companies. JA MB, pp. 11-12, JA RB, pp. 8-11. Consistent with the *SteelRiver Application Order*, these commitments by Aqua America weigh in favor of its fitness, not against it.

**2. Reply to I&E Exc. No. 1 and OSBA Exc. Nos. 2, 3 and 4[5] – The ALJ properly concluded Aqua America is financially fit.**

I&E argues the purchase price is unreasonable and calls into question Aqua America's financial fitness. I&E Exc., p. 5. However, the purchase price is reasonable and consistent with the price paid for other comparable utility transactions. JA MB, pp. 14-17; JA RB, pp. 15-18. Importantly, the Joint Applicants' analyses of comparable utility transactions were unrebutted. Therefore, the ALJ properly concluded the purchase price was "not unreasonable and would not be financially destabilizing to Aqua America." RD, p. 34. OSBA similarly excepts to the RD's analysis of the purchase price, and argues that the purchase price calls into question Aqua America's financial fitness to own and operate the Peoples Companies. OSBA contends the purchase price is a detriment that is not mitigated by the commitments in the Application or the Settlement. OSBA Exc., pp. 3-5. All of these exceptions should be disregarded.

The RD properly rejected OSBA's contention that the purchase price will increase the riskiness of Aqua America's debt and lead to higher interest rates that will be passed on to ratepayers (OSBA Exc. No. 2). JA MB, pp. 17-18; RD, pp. 36-38.[6] Moreover, OSBA's specific claims were based upon assumptions of its witness regarding the amount of debt to be raised and the applicable interest rate. These assumptions were incorrect; in fact, OSBA later acknowledged Aqua's cost of capital would not be adversely affected. JA MB, pp. 18-19.

Furthermore, OSBA's arguments regarding Aqua America's stock price were

[5] The Joint Applicants note that OSBA also relies on these arguments in subsequent exceptions to assert that the purchase price and financing of the Proposed Transaction constitute a public detriment offsetting other benefits. These later contentions should be rejected for the same reasons set forth in this section.

[6] The Settlement provides that the debt and equity financing of the acquisition will not be included in any Pennsylvania utility's capital structure. (Settlement ¶ 45.)

appropriately weighed and rejected by the ALJ. RD, pp. 37-38. The RD properly credits record evidence that demonstrates: (1) Aqua America's stock price quickly recovered; (2) Aqua America was able to raise sufficient debt at favorable terms; and (3) demand for Aqua America's issuances of equity was approximately four times the amount of new equity sought. *Id.*; *see also* JA MB, pp. 17-20; JA RB, pp. 15-21. The markets have spoken positively and conclusively.

The RD also correctly rejected OSBA's claims that the consideration paid as a part of the Proposed Transaction is unreasonable (OSBA Exc. No. 3). OSBA's exceptions continue to advance a mischaracterized interpretation of the Fairness Opinion obtained by Aqua America regarding the purchase price (OSBA Exc., p. 4). The RD properly rejected these claims. RD, p. 34, n. 62; *see also* JA MB, pp. 16-17. OSBA further argues that the RD's price premium analysis does not cite record evidence, but conveniently ignores the RD's reliance on JA Ex. DJS-2R and the testimony of Mr. Schuller. *See* RD, p. 10. Finally, the OSBA speculates for the first time that "the high market to book ratio observed by the ALJ for Aqua America may result from many other factors that do not apply to a natural gas distribution company...." OSBA Exc., p. 4. OSBA provides no citation to its briefs or the record to support this new speculation and it should be rejected. The RD properly concluded that the purchase price was reasonable based on a wealth of record evidence presented by the Joint Applicants. *See* RD, pp. 32-41.[7]

Finally, OSBA attempts to twist the RD's rejection of its arguments, contending that the ALJ set "too low a standard" in not requiring the Joint Applicants to show an affirmative public benefit in financing the transaction. OSBA Exc., p. 5. However, there is no requirement that the acquisition price or financing be shown as an affirmative public benefit; the standard is financial fitness. Record evidence conclusively demonstrated Aqua is and will remain financially fit. JA MB, pp. 14-24, JA RB, pp. 15-21. Therefore, OSBA Exception Nos. 2-4 should be denied.

[7] *See also* JA MB, pp. 12-24, JA RB, pp. 12, 15-21.

**B. Replies to Exceptions Regarding The Substantial Affirmative Public Benefits Contemplated By The Application, As Conditioned By The Settlement.**

Under the standard enunciated by the Pennsylvania Supreme Court in *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825 (Pa. 1972) ("*City of York*"), the RD properly concluded that the Proposed Transaction as conditioned by the Settlement is in the public interest because it will promote the public interest in a substantial way. *See* RD, p. 40. Importantly, the RD correctly explained that: "This does not mean that there can be no negative effects resulting from the transaction. This standard means that on balance, the benefits arising from the transaction outweigh any negative effects." RD, pp. 40-41. (citations omitted). Consistent with this standard, the ALJ conducted a well-reasoned and thorough analysis and concluded: "In sum, the benefits of the Proposed Transaction as modified by the commitments set forth in the Settlement affirmatively benefit the public." RD, p. 41 (emphasis added); *see also* JA MB, pp. 6-7.

I&E and OSBA both filed numerous exceptions to the ALJ's analysis of the substantial affirmative public benefits of the transaction. However, I&E's and OSBA's exceptions are flawed in three fundamental ways. First, I&E and OSBA attack individual commitments and/or benefits as insufficient; however, this cherry-picking strategy is contrary to precedent which makes clear the transaction and Settlement are to be evaluated as a whole. *See* RD, pp. 40-41, 105-106; *see also* JA MB, pp. 6-7. Second, I&E and OSBA argue that numerous commitments do not constitute benefits because they are outweighed by alleged detriments related to the purchase price; however, this comparison is a non-sequitur because the purchase price will not be recovered in utility rates. Third, I&E and OSBA attack commitments designed to replace infrastructure, improve safety and reliability, and improve service because the cost of implementing these commitments may be recovered from ratepayers. This argument ignores the fact that such commitments do benefit the "service," "accommodation" or "safety" of the public, as required by Section 1103(a) of the Code, 66 Pa. C.S. § 1103(a).

Indeed, the ALJ succinctly summarized I&E's and OSBA's objections and persuasively explained these problems as follows:

> It is this concern for costs to ratepayers which inform the objections of BIE and OSBA to the Proposed Transaction.
>
> While the financial implications to ratepayers are important, this laser focus loses sight of the value of the significant improvements to service and reliability offered by the Proposed Transaction, as well as provisions put in place to mitigate some of the potential negative impacts of the proposals on ratepayers. The most significant benefit is the proposal for the expeditious remediation of the Goodwin and Tombaugh Systems which will preserve gas service for a significant number of customers as well as provide important benefits to gas producers. Also of significant importance is Aqua America's appetite and commitment to the accelerated replacement of at-risk pipeline on the Peoples Companies' system. Also, Aqua PA's customers will benefit by improved customer service and universal service programs, as well as the improvements which will be realized with the upgrade to an SAP system. Taken as a whole, these commitments to service and reliability improvements will benefit ratepayers. The ratemaking process will provide a check on the rate and nature of the spending to achieve these benefits...
>
> In sum, this Proposed Transaction and Settlement are in the public interest and is supported by substantial evidence; therefore, I recommend that it be approved.

RD, pp. 105-106 (emphasis added).

For the reasons more fully explained below, and the reasons set forth in the Joint Applicants' Briefs, the Commission should adopt the RD, and the Exceptions of I&E and OSBA regarding substantial affirmative public benefits should be denied.

### 1. Reply to OSBA Exc. Nos. 1 and 14 – The Proposed Transaction will improve the Peoples Companies' access to equity.

OSBA's Exc. Nos. 1 and 14 ignore the credible record evidence relied upon by the ALJ. The ALJ credited OSBA's own Exhibit IEc-3 (referencing the response to OSBA-I-7), wherein Aqua America explained that it will have "access to equity capital that can be raised in all market environments...through both public and private markets." *See* Exhibit IEc-3 (emphasis added) (referencing the response to OSBA-I-7); RD, p. 6. Other record evidence demonstrates that the Peoples Companies' current owner only has access to private markets. JA MB, p. 24; JA RB,

pp. 21-24. The ALJ properly concluded that the Peoples Companies' access to equity will increase because the types of markets and investors to which the Peoples Companies' will have access will increase. This ability to access substantial amounts of equity is further demonstrated by the fact that demand for equity raised to finance the purchase price was four times the amount sought. RD, p. 63; *see also* JA MB, pp. 24-25. OSBA Exc. Nos. 1 and 14 should be denied.

**2. Reply to I&E Exc. Nos. 2-4 and OSBA Exc. Nos. 5-12 – The Settlement's resolution of the G/T Systems issues is reasonable, in the public interest, and constitutes an affirmative public benefit.**

Despite acknowledging that safety and reliability issues exist on the G/T Systems, both I&E and OSBA: (1) oppose the Settlement terms which would promptly resolve these issues; (2) obfuscate and attempt to minimize the crucial and substantial steps taken by the Peoples Companies to identify, map and analyze the subject facilities under the terms of the 2013 Peoples/Equitable Settlement; (3) propose to condition approval on a substantial, illegal penalty that would charge SteelRiver for the cost to resolve the issues; and (4) advocate for adherence to a procedure/economic test that could[8] result in the abandonment of over 900 existing customers of the Peoples Companies and subject those customers to substantially higher energy costs.

The RD carefully detailed the issues associated with the G/T Systems, considered and weighed the arguments of the parties, and correctly concluded that the Settlement reasonably balances the economic, social and safety issues surrounding these systems. Therefore, the RD should be adopted without modification and the exceptions of I&E and OSBA should be denied.

**a. The Peoples Companies have complied with the 2013 Peoples/Equitable Settlement by analyzing the G/T Systems.**

Both I&E and OSBA incorrectly assert that the Peoples Companies have failed to adhere to the 2013 Peoples/Equitable Settlement. I&E Exc., pp. 12-13; OSBA Exc., pp. 5-8, 14-15, 17-

[8] The Joint Applicants note that the Commission could not order the abandonment of any customers served by the G/T Systems in this proceeding, without violating the due process rights of those customers. JA MB, pp. 44-45. Separate proceedings would have to be initiated. The economic, administrative and regulatory costs associated with abandonment proceedings would be immense and weigh in favor of the Settlement proposal. *See* RD, p. 51.

18. Both parties state that SteelRiver failed to remedy the issues associated with the G/T Systems over the course of its ownership. OSBA in particular decries the actions the Peoples Companies have taken under SteelRiver's ownership and incorrectly asserts that the actions taken by the Peoples Companies were "designed to simply measure just how poor the system performance actually was rather than to make serious repairs or to meaningfully comply with the 2013 Equitable Settlement." OSBA Exc., pp. 14, 18.

The RD detailed the expansive scope of actions taken by the Peoples Companies under SteelRiver's ownership to locate, map, inspect and study the pipelines comprising these systems. RD, pp. 44-45. It is important to recognize that the Peoples Companies mowed rights-of-way, leak surveyed the lines throughout the systems, walked all 368 miles of the systems to GPS-locate facilities and meters, placed all the facilities into their mapping system, replaced and/or installed line markers, placed all facilities into the PA OneCall System and incorporated the facilities into the Peoples Companies' damage prevention program. Without taking these actions, the Peoples Companies would not possess the data necessary to conduct the analyses contemplated by the 2013 Peoples/Equitable Settlement. *See* JA MB, p. 40. In addition, the Peoples Companies have made repairs and improvements to the G/T Systems under SteelRiver's ownership, but the real solution is to replace pipe, which would not occur until after the analyses and presentation to the Commission established by the 2013 Peoples/Equitable Settlement.[9]

These actions form the basis of the full replacement cost estimate presented in the case and relied upon by the RD, as well as the cost estimates for the other two options developed. *See* RD, p. 53. Moreover, I&E and OSBA cite no testimony that the Peoples Companies have failed to comply with the settlement, because there is no such testimony in the record. *See.* RD, p. 55.[10] As such, the RD correctly rejected OSBA's suggestion that the Peoples Companies or SteelRiver

[9] (Tr. 143; I&E St. No. 2-SR p. 4.)

[10] I&E witness Mr. Cline in fact testified at the hearing that I&E was not alleging that the Peoples Companies violated the 2013 Settlement. (Tr. 197.)

have failed to comply with the 2013 Equitable Settlement. RD, p. 55.

**b. I&E and OSBA's proposal to withhold a part of the purchase price is without support in law or fact.**

Both I&E and OSBA continue to advance a proposal that would unlawfully and unreasonably withhold part of the purchase price of the Proposed Transaction, to be used to remediate and repair the G/T Systems. *See, e.g.*, I&E Exc., pp. 11-14; OSBA Exc., pp. 11-12, 19-20. As in their Briefs, however, I&E[11] and OSBA do not cite any case in exceptions in which the Commission imposed an "exit fee" on a seller who did not voluntarily agree to a payment.[12] JA RB, pp. 42-43. In addition, their Exceptions claim the ALJ did not explicitly address and reject their proposal on its merits. I&E Exc. 3.

The ALJ explicitly acknowledged the "exit fee" proposal, and rejected it as a part of her recommendation that the Settlement be adopted without modification. RD, p. 55. In particular, the ALJ expressly rejected contentions that an "exit fee" should be imposed because the Peoples Companies violated the 2013 Peoples/Equitable Settlement.[13]

The ALJ had further good reason for rejecting I&E's proposed "exit fee." The Joint Applicants' Briefs included numerous, additional reasons why the ALJ and the Commission should reject the proposed "exit fee." Among other things, the Joint Applicants noted:

- The Transaction, as modified by the Settlement, satisfies the applicable legal standard without the requested condition;
- The Transaction was negotiated at arms-length between two sophisticated parties who had the opportunity to conduct customary due diligence;
- There is no statutory authority or case law for the Commission to condition its approval of an acquisition on the expropriation of a portion of a payment between private parties to use for

[11] To the extent that I&E or OSBA have suggested or advocated in their exceptions that the Commission can impose an "exit fee" as an equitable remedy, the Joint Applicants incorporate the case law cited in their Reply Brief. JA RB, p. 45, n.24.

[12] Furthermore, the penalty advocated by I&E and OSBA clearly violates the Excessive Fines Clauses, Article I, Section 13 of the Pennsylvania Constitution and the Eighth Amendment to the United States Constitution, U.S. Const. amend. VIII. *See* JA RB, p. 46.

[13] Moreover the ALJ need not explicitly address each and every argument raised in the case. As the Commission states in virtually every Opinion and Order: "It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties." *See, e.g., Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993)."

infrastructure improvements or other worthwhile projects;

- The "exit fee" would be an unconstitutional regulatory taking;
- The "exit fee" would be improper as a sanction against SteelRiver, because the Commission has not found that the Peoples Companies violated the Code, a Commission regulation or Order; and,
- The "exit fee" would violate the Excessive Fines clause of the Pennsylvania and United States Constitutions

JA MB, pp. 38-41; JA RB, pp. 41-47.

Finally, any claim that a withholding of the purchase price is appropriate because of the amount of the purchase price, or is reasonable when compared to the purchase price, should be rejected. *See* I&E Exc., pp. 13-14; OSBA Exc., pp. 19-20. The buyer and seller, negotiating at arm's length based among other things, on customary due diligence, arrived at a purchase price that was acceptable to both. The evidence demonstrates that the purchase price was based on the parties' evaluation of the market value of the Peoples Companies. Under these circumstances, there is no basis to punish SteelRiver by imposing a punitive "exit fee." The Commission will have continuing jurisdiction to address the G/T Systems, under Aqua ownership, in future proceedings. *See* JA MB, p. 40; JA RB, pp. 45-46.

**c. The prompt remediation of the G/T Systems will benefit safety and reliability of service to existing customers.**

The RD correctly recognized that the Settlement provisions to repair and remediate the G/T Systems address important safety issues on a specific, accelerated timeline, and that the record evidence shows that "the serious safety and reliability issues on the systems will be resolved much more quickly than they would be if the Peoples Companies are forced to utilize the economic test set forth in the 2013 Equitable Settlement." RD, p. 55. Yet, I&E and OSBA attempt to discount these safety and reliability benefits by the recovery of remediation costs from ratepayers. I&E Exc., pp. 8-11; *see, e.g.*, OSBA Exc., pp. 8-10, 13-17, 18-21.

The RD correctly concluded that the Settlement's proposed method of addressing the G/T Systems are preferable to I&E and OSBA's proposal in light of: (1) the costs associated with

potentially abandoning over 900 existing customers and subjecting them to higher energy costs (RD, p. 51); (2) the safety, economic, and regulatory policy issues surrounding remediation (RD, pp. 51-53); (3) provisions in the Settlement that protect ratepayers from unreasonable costs (*e.g.*, costs can be recovered only in future base rate proceedings, and limitations upon recovery of costs in excess of $120 million (RD, pp. 53-54); and, (4) the fact that cost recovery for the G/T Systems' repairs will only occur through future base rate cases where the actual costs can be thoroughly reviewed (RD, p. 53)). I&E and OSBA further ignore record evidence demonstrating that the projected cost to customers of the Settlement proposal is modest; it could increase the monthly bill of the average Peoples residential customer by approximately 1%, or $1 dollar per month. (JA St. 5-R, pp. 15-16.)[14] Furthermore, the Settlement provides for a $13 million rate credit to existing Peoples Companies' customers to partially offset certain of the costs associated with remediation. JA MB, pp. 36-37 (citing Settlement ¶ 33).

In addition, the Joint Applicants demonstrated that I&E's and OSBA's arguments regarding rate recovery of the costs to remediate the G/T Systems were without basis in law or fact. JA MB, pp. 39-40; JA RB, pp. 41-42. Moreover, undisputed testimony demonstrates that the 2013 Peoples/Equitable Settlement recognized the remediation costs would be paid by ratepayers. (*See* JA St. 3-R, pp. 5-6.) The intervening acquisition by Aqua America does not alter that construct. As such, if the Commission finds that it is in the public interest to spend capital to rehabilitate the entire G/T Systems, as the RD recommends, then it is proper to allow Aqua to include a claim for recovery of the costs of that capital in a future base rate case. JA RB, pp. 41-42 (citing case law and (Tr. 108)).

[14] As the RD recognized, cross-subsidization of the cost of facility replacement is a natural consequence of single-tariff pricing. RD, pp. 51-52. In addition, existing customers on the G/T Systems are residential customers that have paid a residential rate for many years, which rate includes the costs of infrastructure improvements throughout the Peoples Companies' service area.

**d. The RD properly rejected proposals to follow the "economic" test under the 2013 Peoples/Equitable Settlement, and abandon over 900 existing Peoples Companies customers.**

Finally, I&E and OSBA contend that they have not advocated for the abandonment of existing Peoples Natural Gas customers. I&E Exc., pp. 14-17; OSBA Exc., pp. 10-13. Yet, both I&E[15] and OSBA oppose the Settlement, and continue to argue that the Commission should require implementation of the 2013 Peoples/Equitable Settlement test.

The RD correctly concluded the record demonstrates that implementing this test would, in fact, lead to the abandonment of existing customers. RD, p. 51. The Joint Applicants further explained this point in their Briefs and the record evidence demonstrates that following the test would potentially result in the abandonment of over 900 existing customers. JA MB, pp. 36-37, 42-45; JA RB, pp. 34-40. In recognition of this concern, the RD found that the potential abandonment of customers would: (a) impose upon Peoples, the Commission and other parties a substantial economic and regulatory burden in administrating the requisite abandonment proceedings; (b) subject abandoned customers to increased energy costs; (c) deprive those existing customers of consumer protection and low-income customer program provisions associated with regulated utility service; and (d) result in the shut-in of a number of existing shallow production wells that deliver Pennsylvania-produced natural gas into the G/T Systems. *See* JA MB, pp. 43-44; JA RB, pp. 36-40; RD, p. 51-53. Here, pursuant to the Settlement, the Peoples Companies (under Aqua America control) has committed to a rapid reconstruction of the G/T Systems, which will avoid the large scale abandonment of existing customers, and the resulting substantial increases to their energy costs. Without question, the Settlement's proposed

[15] I&E goes so far as to speculate that the RD errs because "[a]bandonment of some of these customers will likely occur no matter what path the Commission orders Peoples to follow...." I&E Exc., pp. 14-15. This fundamentally ignores that one of the primary purposes of the Settlement provisions addressing the G/T Systems: "to substantially avoid abandoning service to existing Peoples Natural Gas customers on the G/T Systems that were acquired in the Equitable acquisition" and have been ratepayers since that time. JA MB, p. 36.

resolution for the G/T Systems, as recognized by the ALJ, presents a clear affirmative benefit of substantial nature in and of itself.[16]

**e. Conclusion.**

The RD properly concluded that the Settlement provisions concerning the G/T Systems are in the public interest and should be approved without modification. I&E's and OSBA's positions would deny existing customers the substantial safety, reliability and service benefits associated with the Settlement's proposal to remediate these systems and maintain natural gas utility service. The exceptions of I&E and OSBA regarding the G/T Systems should be denied. .

**3. Reply to I&E Exc. No. 5 and OSBA Exc. No. 13 - The reliability and pipeline replacement commitments in the Settlement constitute an additional public benefit.**

I&E argues that the commitment to accelerate the replacement of at-risk pipelines does not constitute a benefit "unless and until" the pipeline is replaced. I&E Exc., p. 5. OSBA similarly argued the commitment is only to file a revised LTIIP and is not a public benefit. OSBA Exc., p. 21. However, the RD correctly concluded that making this commitment is sufficient to satisfy the affirmative public benefit standard. RD, pp. 58-59. Further, filing a modified LTIIP is required by the Commission to implement this commitment. The Commission has never rejected an LTIIP filing proposing further acceleration. JA RB, pp. 29-30.

I&E's assertion that "between the years 2013 and 2018...[the Peoples Companies] only twice met the pipeline replacement goals spelled out in its LTIIP" misstates its own testimony. I&E Exc., p. 19 (citing I&E St. No. 3, pp. 6-7). The actual evidence shows the Peoples Companies have exceeded their LTIIP replacements in 4 of 6 years and are 13 miles ahead of the LTIIP. *See* I&E St. No. 3, p. 7 (depicting chart).

Both I&E and OSBA also assert that the RD erred in its analysis of the costs to accelerate

[16] The ALJ further noted that the Joint Applicants will be required to consult the Statutory Advocates and the Commission on a regular basis during the project and the repairs will only occur through a future base rate case, where the costs can be reviewed before recovery, and not through a DISC. *See* RD, pp. 53-54.

at-risk pipeline replacement. I&E Exc., pp. 18-19; OSBA Exc., pp. 20-21. OSBA goes so far as to assert accelerated pipeline replacement is a detriment. OSBA Exc., p. 22. Such assertion is in direct opposition to the Legislature's efforts to encourage accelerated pipeline replacement. *See* Act 11 of 2012, P.L. 72, No. 11. These assertions also ignore two important considerations identified by the RD: (1) the $30 million of additional investment was chosen to balance cost to ratepayers with improvements to safety and service reliability (Tr. 177-78); and (2) cost-recovery for these investments remains subject to Commission review. *See* RD, pp. 59-60.[17] I&E's and OSBA's exceptions regarding the benefits of accelerated at-risk pipeline should be denied.

**4. Reply to I&E Exc. No. 6[18] and OSBA Exc. No. 15 - Public ownership of the Peoples Companies constitutes an additional public benefit.**

I&E's and OSBA's exceptions regarding public ownership simply misconstrue the RD and the Joint Applicants' arguments. Indeed, "[t]he Joint Applicants do not claim that the Commission will have access to more information about public utility subsidiaries. What the Joint Applicants are saying is that there is a benefit to having more transparency and information regarding the parent of the public utility subsidiaries, Aqua America." RD, p. 63 (emphasis added); *see also* JA RB, pp. 21-22. The Joint Applicants showed the expanded public information available under new ownership is a benefit. JA MB, pp. 25-27; JA RB, pp. 21-22.

I&E also questions Aqua America's commitment to long-term ownership of long-lived utility assets. I&E Exc., p. 20. However, the RD correctly recognized that Aqua America's overall investment and management philosophy is based upon long-term ownership, and is consistent with record evidence. RD, p. 62; JA MB, pp. 21-24.

Finally, I&E questions the benefit of the commitments to maintain the Peoples Companies' presence in the Pittsburgh area. I&E Exc., p. 21. However, the commitment

[17] It is important to note that the commitments do not increase the total number of miles or replacement costs, but instead shift some of the miles and costs forward to accelerate replacement rates. JA RB, pp. 31-32 (citing JA St. 5-R, p. 21 and Tr. 174-176).

[18] The aspect of I&E Exc. No. 6 that attacks increases charitable contributions is addressed in Section II.B.11.

contained in the Settlement extends this presence beyond prior commitments. RD, p. 65. Moreover, I&E's exception ignores that Aqua America has always been a Pennsylvania-based company and will continue to be responsive to issues of concern to Pennsylvania. JA MB, pp. 27-29. I&E's and OSBA's exceptions should be denied.

**5. Reply to OSBA Exc. No. 16 – Commitments to replace infrastructure will create additional jobs and constitute additional public benefits.**

OSBA's exception regarding job creation misconstrues the RD. After noting that this transaction was not typical and did not involve combining similar utility companies, the ALJ explained that "...logically, it follows that Aqua America's vision for improved customer service, reliability improvements and overall corporate growth is likely to require additional personnel to achieve. Coupled with the concrete estimate of additional pipeline jobs and settlement commitments, overall the Proposed Transaction offers workforce benefits as a substantial public benefit." RD, pp. 71 (emphasis added). The RD conducted a thorough and holistic evaluation of the workforce benefits associated with the Proposed Transaction as conditioned by the Settlement and concluded these benefits further support Commission approval. RD, pp. 66-71. These workforce benefits, taken as a whole, are likely to occur and constitute another affirmative benefit. JA MB, pp. 29-32; JA RB, pp. 24-26.

**6. Reply to I&E Exc. No. 7 and OSBA Exc. No. 17 - Implementation of the SAP system at Aqua constitutes an additional public benefit.**

I&E's exception is based on its concern that there is no specific timeline or projection of savings for the implementation of SAP. I&E Exc., pp. 21-22. OSBA argues that SAP implementation has nothing to do with the Proposed Transaction. OSBA Exc., p. 24. Both then erroneously attempt to tie the implementation of SAP at Aqua to the purchase price of the Proposed Transaction. I&E Exc., p. 22; OSBA Exc., p. 24.

The RD correctly concluded that the implementation of the Peoples Companies' SAP at Aqua, resulting in a combined, unified information platform, constitutes another benefit under

the transaction. Specifically, the RD properly credited unrebutted evidence that savings associated with the mitigation of risk and savings associated with consulting costs are expected to occur. RD, p. 72. Importantly, these savings are expected to occur because the Peoples Companies have already successfully implemented SAP. JA MB, pp. 48-50; JA RB, pp. 49-50.

Finally, I&E's and OSBA's attempted comparison of the benefits of SAP implementation to the purchase price of the entire transaction is irrelevant. As explained previously, customers will not be responsible for the premium to be paid. Therefore, the premium is not a detriment to be offset against the benefits of SAP. The implementation of the Peoples Companies' SAP platform at Aqua is one of the many public benefits associated this transaction that demonstrate it should be approved. JA MB, pp. 48-50; JA RB, pp. 49-50

**7. Reply to I&E Exc. No. 8 and OSBA Exc. No. 18 – The low-income and universal service commitments constitute additional public benefits.**

I&E argues in its Exception No. 8 that the RD erred because it did not properly weigh the benefits associated with low-income and universal service commitments against other commitments which may raise rates. I&E Exc., pp. 22-23. I&E misrepresents the RD. The ALJ properly considered and weighed all of the benefits of the Proposed Transaction as conditioned by the Settlement as a whole. RD, p. 41.

OSBA's exception similarly misinterprets the RD. OSBA Exc., pp. 24-25. As explained above, the ALJ properly considered and weighed all of the benefits of the Proposed Transaction as conditioned by the Settlement as a whole. RD, p. 41.[19] Therefore, OSBA's attempt to single-out the commitments to low-income customers and universal service programs actually violates *Middletown Township*,[20] because it is attempting to analyze the low-income and universal service commitments in isolation. JA RB, p. 52. In addition, OSBA attempts to yet again resurrect its

[19] *See also* RD, p. 79 ("Here, certain benefits of the transaction benefit low-income ratepayers. Other provisions of the Proposed Transaction reach other classes of rate payers.").
[20] *Middletown Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 4674 (Pa. Cmwlth. 1984).

arguments regarding the financial risk of the Proposed Transaction, and seeks to compare the financial contributions to low-income and universal service programs of Aqua PA and the Peoples Companies to the purchase price of the transaction. These irrelevant comparisons were properly rejected by the ALJ. RD, pp. 51-55, 75-81. The Commission should similarly deny them for the reasons explained above. *See* Sections II.A.2, II.B. *supra*.

The Joint Applicants demonstrated that commitments to increase funding for low-income and universal service are one of the many affirmative benefits of the transaction[21] and, therefore, I&E's and OSBA's exception should be denied.

**8. Reply to I&E Exc. Nos. 9-10 and OSBA Exc. No. 19 - The customer service metric commitments will result in additional public benefits.**

In these exceptions, I&E and OSBA both argue that the customer service commitments contained in the Settlement either maintain the status quo or are "illusory" because no benefit will occur unless the metrics are achieved. I&E Exc., pp. 23-24; OSBA Exc., pp. 27-28. The RD correctly analyzed these commitments. The RD correctly found that the Settlement includes additional reporting requirements which create a mechanism for the enforcement of these metrics, which are not currently in place. RD, p. 85. Thus, there is nothing "illusory" about these commitments. In addition, the Joint Applicants demonstrated that the commitment to maintain the existing Peoples Companies performance metrics for an additional, defined period of time is new; similarly, the service performance metrics applicable to Aqua PA are also new. JA MB, pp. 46-48; JA RB, pp. 47-48. I&E's and OSBA's exceptions should be denied.

**9. Reply to OSBA Exc. No. 20 – The commitments to enhance operational practices in the retail gas market will result in additional public benefits.**

The OSBA asserts the Settlement commitments that enhance operational practices in the retail gas market do not constitute a public benefit, based upon its same general objections it has

[21] JA MB, pp. 47, 50-51; JA RB, p. 52.

raised with respect to other commitments above—*i.e.* the commitments maintain the status quo, do not speak to cost recovery, and the costs and/or benefits have not been quantified. OSBA Exc., pp. 28-29. However, the RD properly concluded that, consistent with Commission determinations in prior acquisitions,[22] the commitments in the Settlement are additional public benefits because they enhance operational practices in the competitive retail gas market, consistent with changes sought by the natural gas suppliers. RD, p. 90. *See* JA MB, pp. 53-55; JA RB, pp. 52-53. As such, OSBA's exception should be denied.

**10. Reply to I&E Exc. No. 11 and OSBA Exc. No. 21 - The ALJ properly concluded that each rate credit constitutes an additional public benefit.**

I&E asserts that the RD errs in its determination that the two rate credits adopted in the Settlement constitute additional public benefits. I&E Exc., pp. 24-26. OSBA contests the $10 million rate credit and asserts it cannot be analyzed "on a standalone basis." OSBA Exc., p. 29. I&E Exc. No. 11 and OSBA Exc. No. 21 should be denied.

I&E, in part, bases its exception on its assertion that Aqua America is not fit to own and operate the Peoples Companies. I&E Exc., p. 25. This assertion is unsupported and was demonstrated incorrect by record evidence. *See* Section II.A. *supra*. I&E also attempts to compare the rate credits to the total purchase price of the acquisition. I&E Exc., p. 25. Again, this is an irrelevant comparison. *See* Sections II.A.2, II.B. *supra*. Finally, I&E's assertion that the rate credit is not a benefit because of the Settlement's conditions to address the G/T Systems should be rejected for the reasons described in Section II.B.2., above.[23]

OSBA's exception regarding rate credits mischaracterizes the RD. The RD properly analyzed the Proposed Transaction as modified by the Settlement as a whole, and determined

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

[23] *See also* RD, pp. 42-55; *see also* JA MB, pp. 35-46, JA RB, pp. 33-47.

that substantial public benefits would result. RD, p. 41. On the other hand, OSBA cherry picks specific "costs" it asserts would result from the transaction and attempts to compare them to the $10 million rate credit. This myopic review is improper and should be rejected. The Joint Applicants demonstrated that the Proposed Transaction as conditioned by the Settlement will affirmatively benefit the public. JA MB, Section V.B.; JA RB, Section V.B.

**11. Reply to I&E Exc. No. 6[24] and OSBA Exc. No. 22 – Commitments to increase charitable contributions are an additional public benefit.**

I&E argues that the RD did not properly analyze the financial impacts of the costs of other commitments or lack of control ratepayers have over the charitable contribution commitments in the Settlement. I&E Exc., p. 20. OSBA asserts that these commitments provide no public benefit because there is no evidence that Aqua America's contributions represent an increase in funding, and the charitable contributions alone will not offset the costs of other commitments. OSBA Exc., pp. 30-31. These exceptions should be denied.

The RD recognized that "[t]he Commission has held that charitable contributions are a public benefit because such commitments are not otherwise required." RD, p. 97 (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 Feb. 1, 2006), at p. 28). These contributions are not required, but for the Settlement.

Furthermore, I&E's argument that ratepayers "have no say" on which charities receive funds is irrelevant. I&E cites no precedent that imposes this requirement. The record is clear that these charitable contributions will benefit the areas where the Peoples Companies and Aqua PA serve, thus benefitting customers. *See* JA MB, pp. 28-29.

Finally, OSBA's argument that the charitable contributions alone will not offset the costs

[24] The aspect of I&E Exc. No. 6 that specifically disputes the benefits of public ownership is addressed in Section II.B.4., above.

of other commitments is flawed. OSBA continues to attempt to compare one benefit of the Settlement to certain of the alleged "costs" of the transaction. The RD properly analyzed the Proposed Transaction and Settlement as a whole. RD, pp. 41, 102-103.

**12. Reply to I&E Exc. No. 12 - The ALJ properly credits the commitment to intervene in abandonment proceedings.**

The RD properly analyzed this commitment in the overall context of the transaction. *See* RD, pp. 41, 95-96. Importantly, the ALJ recognized that "[t]hese settlement provisions are certainly important measures to memorialize the important role played by the Peoples Companies and Aqua PA in ensuring that customers of troubled gas and water/wastewater systems have access to safe and reliable service." RD, p. 96. However, the ALJ recognized that this commitment is "neutral on balance" and actively avoids harm to ratepayers. *Id.*, p. 96. As such, the ALJ properly concluded that these commitments, evaluated against the Proposed Transaction and Settlement as a whole, supported approval. I&E's exception should be denied.

**13. Reply to OSBA Exc. No. 23 – OSBA's alleged concerns regarding the costs of implementing the transaction are outweighed by its benefits.**

OSBA takes umbrage with the RD's explanation that it is a "concern for costs to ratepayers which inform the objections of BIE and OSBA to the Proposed Transaction." OSBA Exc., p. 31. However, OSBA reads this statement out of context, in an apparent attempt to mischaracterize the RD. The paragraph following this statement (quoted in Section II.B., above) makes clear that it is not OSBA's concern for costs that renders its objections flawed; it is OSBA's myopic view of costs and complete disregard for the attendant benefits that undermines its analysis.[25] Therefore, and for the reasons explained in the Joint Applicants' Briefs,[26] the transaction provides affirmative public benefits.

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[25] In addition, OSBA simply mischaracterizes how the costs of the acquisition will be treated, and states the transaction will add a "non-revenue-producing goodwill asset to Aqua PA's books." OSBA Exc., p. 31 (emphasis added). The Joint Applicants committed in testimony (Joint App. St. No. 2-R, p. 13) and in the Settlement (Settlement ¶ 45) that no good will would be record on the books of Aqua PA or the Peoples Companies.

[26] JA MB, Section V.B.; JA RB, Section V.B.

**14. Reply to I&E Exc. No. 13 and OSBA Exc. Nos. 24-25 - The ALJ properly weighed the benefits and alleged costs of the transaction and determined that it satisfies the *City of York* standard.**

In these exceptions, I&E and OSBA both denigrate the acquisition and raise numerous arguments to attempt to suggest the RD did not properly weigh the benefits and alleged costs of the Settlement. I&E Exc., pp. 27-29; OSBA Exc., pp. 32-34. I&E criticizes the RD's determination that I&E's concerns are speculation and suggests that the Settlement was not thoroughly analyzed by the parties and the ALJ. *Id.*, p. 27. It also repeats its flawed arguments regarding the alleged detriments of the acquisition, which misstate the riskiness of the acquisition financing, misrepresent the stability of Aqua America and mischaracterize the purchase price. *Id.*, p. 28. OSBA similarly asserts that the Settlement will harm ratepayers and only benefit the shareholders of SteelRiver and Aqua America. OSBA Exc., p. 32.

I&E and OSBA repeatedly misstate the law and misrepresent the facts to attempt to mislead the Commission in its review of the RD and its analysis of the Settlement. As explained above, the concerns of I&E and OSBA were considered and rejected in a thorough and well-reasoned RD by the ALJ. The Proposed Transaction and Settlement provide substantial public benefits and should be approved.

**C. Replies to Exceptions Regarding Section 2210 of the Public Utility Code.**

**1. Reply to I&E Exc. No. 14 - The transaction will not adversely impact the employees of the Peoples Companies.**

The ALJ properly rejected I&E's concerns under Section 2210(a)(2) of the Code as speculation, and the Commission should do so as well.

**[BEGIN CONFIDENTIAL]** [redacted]

[redacted]

[END CONFIDENTIAL]

I&E also argues that the Proposed Transaction should be denied because "it is unclear exactly what the effect on employees" of the Peoples Companies will be. *See* I&E Exc., p. 31. The Joint Applicants demonstrated the Proposed Transaction as modified by the Settlement would not negatively impact existing employees. JA MB, pp. 29-32, 55; JA RB, pp. 53-55. The

[27] *See* Cert of Srvc Dit Test Stmt 1-4–BIE, Dkt. No. A-2018-3006061, et al. available at http://www.puc.state.pa.us/pcdocs/1613271.pdf.

RD properly rejected I&E's arguments to the contrary, because I&E's arguments were based "on speculation and ignore measures put in place for succession planning and the preservation of technical expertise at the Peoples Companies." RD, p. 101. I&E's exception should be denied and the RD should be adopted without modification.

## III. CONCLUSION

WHEREFORE, the Joint Applicants respectfully request that the Commission: (1) deny the Exceptions of the I&E and the OSBA; (2) adopt the Recommended Decision of the ALJ without modification; and (3) approve the Joint Application and the Settlement, and issue all Certificates of Public Convenience to the Joint Applicants necessary to effect its approval.

Respectfully submitted,

Kimberly A. Joyce (ID # 86605)
Alexander R. Stahl (ID # 317012)
Regulatory Counsel
Aqua America Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
Phone: 610-645-1077
E-mail: kajoyce@aquaamerica.com
E-mail: astahl@aquaamerica.com

Michael W. Gang (ID # 25670)
Michael W. Hassell (ID # 34851)
Garrett P. Lent (ID # 321566)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
E-mail: mgang@postschell.com
E-mail: mhassell@postschell.com
E-mail: glent@postschell.com

*Counsel for Aqua America, Inc. and its subsidiaries, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.*

Date: November 27, 2019

William H. Roberts II, Esq. (PA ID No. 54724)
Peoples Natural Gas Company LLC
375 North Shore Drive
Pittsburgh, PA 15212
Phone: (412) 208-6527
E-mail: william.h.robertsii@peoples-gas.com

David P. Zambito, Esq. (PA ID # 80017)
Jonathan P. Nase, Esq. (PA ID # 44003)
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
Phone: (717) 703-5892
Fax: (215) 989-4216
E-mail: dzambito@cozen.com
E-mail: jnase@cozen.com

*Counsel for Peoples Natural Gas Company LLC and Peoples Gas Company LLC*

Date: November 27, 2019

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

### VIA E-MAIL AND FIRST-CLASS MAIL:

Christine Maloni Hoover, Esquire
Darryl A. Lawrence, Esquire
Harrison W. Breitman, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

Erika L. McLain, Prosecutor
Carrie B. Wright, Prosecutor
PA Public Utility Commission
Commonwealth Keystone Building
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

John R. Evans, Esquire
Erin K. Fure, Esquire
Office of Small Business Advocate
555 Walnut Street, 1st floor
Forum Place
Harrisburg, PA 17101

Kimberly A. Joyce, Esquire
Alexander R. Stahl, Esquire
Aqua America, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
*Counsel for Aqua America Inc.*

Scott J. Rubin, Esquire
333 Oak Lane
Bloomsburg, PA 17815
*Counsel for Intervenor UWUA Local 612*

William H. Roberts, II, Esquire
Peoples Service Company LLC
375 North Shore Drive
Pittsburgh, PA 15212
*Counsel for Peoples Natural Gas Company LLC and Peoples Gas Company LLC*

David P. Zambito, Esquire
Jonathan P. Nase, Esquire
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
*Counsel for Peoples Natural Gas Company LLC and Peoples Gas Company LLC*

Melvin Vatz, Esquire
247 Fort Pitt Boulevard, 4th Floor
Pittsburgh, PA 15222
*Counsel for Intervenor Laborers' District Council of Western Pennsylvania*

Tanya C. Leshko, Esquire
Alan M. Seltzer, Esquire
Buchanan, Ingersoll & Rooney PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
*Counsel for Intervenor Equitrans, L.P.*

Kevin J. Moody, Esquire
General Counsel & VP Government Affairs
Pennsylvania Independent Oil & Gas Association
212 Locust Street, Suite 600
Harrisburg, PA 17101-1510
*Counsel for Intervenor PIOGA*

Michael A. Gruin, Esquire
Timothy K. McHugh, Esquire
Stevens & Lee
17 North Second Street, 16th floor
Harrisburg, PA 17101
*Counsel for Intervenor Duquesne Light Company*

David T. Fisfis, Esquire
Vice President, General Counsel & Corporate Secretary
Tishekia E. Williams, Esquire
Assistant General Counsel, Regulatory
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
*Counsel for Intervenor Duquesne Light Company*

Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
Kristine Marsilio, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th floor
Harrisburg, PA 17101
*Counsel for Intervenor Direct Energy*

Linda R. Evers, Esquire
Stevens &Lee
111 North Sixth Street
Reading, PA 19601
*Counsel for Intervenor Duquesne Light Company*

Patrick M. Cicero, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
*Counsel for Intervenor Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania*

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
*Counsel for Intervenor Natural Gas Supplier Parties and The Retail Energy Supply Association*

Date: November 27, 2019

Michael W. Hassell