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Via Electronic Mail

Administrative Law Judge Emily I. DeVoe
Administrative Law Judge Ann Quimby
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Piatt Place - 301 Fifth Avenue, Suite 220
Pittsburgh, PA 15222
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Re: Joint Application of American Water Works Company, Inc., Essential Utilities, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Alpha Merger Sub, Inc. for a Certificate of Public Convenience Under Sections 1102(A)(3) and 2210(C) of the Public Utility Code and All Other Necessary Approvals to Effect A Change of Control of Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., and Peoples Natural Gas Company LLC

Docket Nos. A-2025-3058927, A-2025-3058928, A-2025-3058929

Your Honors:

Enclosed please find the following prepared Reply Brief of Municipal Intervenors the County of Delaware, County of Montgomery, and East Whiteland Township.

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

Respectfully yours,

Matthew S. Olesh, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Emily I. DeVoe and Ann Quimby, Presiding

Joint Application of American Water Works Company, Inc., Essential Utilities, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC, and Alpha Merger Sub, Inc. for a Certificate of Public Convenience under Sections 1102(a)(3) and 2210(c) of the Public Utility Code and All Other Necessary Approvals to Effect a Change of Control of Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., and Peoples Natural Gas Company LLC	A-2025-3058927 A-2025-3058928 A-2025-3058929
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**REPLY BRIEF OF THE COUNTY OF DELAWARE, THE COUNTY OF
MONTGOMERY, AND EAST WHITELAND TOWNSHIP IN OPPOSITION TO THE
JOINT PETITION FOR APPROVAL OF NON-UNANIMOUS SETTLEMENT**

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Intervenors the County of Delaware (“DelCo”), the County of Montgomery (“MontCo”) and East Whiteland Township (“East Whiteland”) (collectively, the “Objecting Municipal Intervenors”) respectfully submit this reply brief in further opposition to the Joint Petition for Approval of Non-Unanimous Settlement (the “Settlement” or “Joint Petition”) filed on September 15, 2026, by American Water Works Company, Inc. (“American Water”), Essential Utilities, Inc., f/k/a Aqua America, Inc. (“Essential”), Aqua Pennsylvania, Inc. (“Aqua PA”), Aqua Pennsylvania Wastewater, Inc. (“Aqua PA Wastewater”), Peoples Natural Gas Company LLC (“Peoples”), and Alpha Merger Sub, Inc. (collectively, the “Joint Applicants”), along with the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”) (collectively, the “Joint Petitioners”).

I. INTRODUCTION AND PROCEDURAL HISTORY

In their principal brief, the Objecting Municipal Intervenors articulated the various reasons why, even as modified by the Settlement, the Commission should reject the Proposed Transaction.¹ Now, the Objecting Municipal Intervenors respectfully submit this reply brief in further opposition to the Joint Petition in order to address the points raised in the principal brief of the Joint Applicants that have not yet been addressed in the Objecting Municipal Intervenors’ briefing.

II. NON-UNANIMOUS SETTLEMENT

The Objecting Municipal Intervenors addressed this section in their principal brief and have nothing further to add.

¹ All defined terms herein shall have the same definitions ascribed to them in the Objecting Municipal Intervenors’ principal brief.

III. LEGAL STANDARDS

While the Objecting Municipal Intervenors addressed this section in their principal brief, they respond here to address the Joint Applicants' assertions with respect to both the *Popowsky* and *Lawrence* cases on which they rely.

A. *Popowsky*

The Joint Applicants argue that under *Popowsky*, they are not necessarily required to provide evidence of “quantifiable benefits” in order for the Proposed Transaction to meet the requisite legal standards. Specifically, they rely on the holding in *Popowsky* that “the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.” *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1057 (Pa. 2007).

The Joint Applicants' reliance on this jurisprudence in an effort to excuse the complete lack of detail that they provided as to benefits of the Proposed Transaction is grossly misplaced. The Objecting Municipal Intervenors do not dispute that *Popowsky* excuses precise quantification where quantification is genuinely impractical. However, *Popowsky* does not stand for the proposition the Joint Applicants effectively ask the Commission to adopt here: that an applicant may satisfy its burden under Sections 1102 and 1103 by offering only generalized, qualitative assertions of anticipated efficiencies and synergies, unaccompanied by any reasoned estimate, range, or methodology, and that the absence of quantification itself becomes evidence that quantification was impossible rather than simply not undertaken.

The record does not support treating quantification here as impractical or impossible. I&E witness Patel testified that the Joint Applicants “have not identified any significant distinguishable

and measurable substantial affirmative benefits of this merger,” concluding that the Joint Applicants “did not prove substantial affirmative public benefits that support the approval of the proposed merger transaction.”² The Joint Applicants then had every opportunity to substantiate their claimed synergies with even the most minimal amount of evidence in order to rebut this but failed to do so. CAUSE-PA witness Cicero similarly testified in surrebuttal that “[t]he Joint Applicants presume savings because of efficiencies and economies of scale but then balk at providing commitments or quantification.”³ This captures precisely the evidentiary gap *Popowsky* does not excuse.

A failure to attempt quantification is not the same as a demonstration that quantification was impractical or impossible. As cited in the Objecting Municipal Intervenors’ principal brief, the Joint Applicants repeatedly responded to discovery requests for quantification of claimed synergies and savings by stating that no such analysis had been performed, rather than that none could be performed. This, plus the Joint Applicants’ own failure to cite to anything of substance in discovery supporting their inability to quantify benefits, makes clear that the Joint Applicants cannot rely on *Popowsky* to excuse their lack of diligence.

B. *Lawrence*

The Joint Applicants also offer misplaced reliance on the recent *Lawrence* case. The Joint Applicants suggest that *Lawrence* held that the Commission can consider an acquiring utility’s “size, financial strength, and fitness to provide service as affirmative public benefits.” See Joint Applicants’ Principal Brief, p. 13. This, however, distorts what *Lawrence* actually held: “We emphasize that an acquiring utility’s size and fitness are not benefits in and of themselves but,

² See I&E Statement No. 1, p. 34:5-10.

³ See CAUSE-PA Statement No. 1-SRa, p. 9:7-8.

rather, simply hold that the Commission can properly consider benefits deriving from that size and fitness in its affirmative benefits analysis.” *Lawrence v. Pa. PUC*, 348 A.3d 108, 130 (Pa. 2025).

Thus, it is incumbent on the Joint Applicants not just to rely on size and fitness, but to actually substantiate that benefits exist that are derived from such size and fitness. As is evident from their submissions, they have failed to do this, instead continuing to rely on generalized, unsupported claims that lack any actual evidentiary support in the record. While the Joint Applicants claim that the Merger will realize benefits “by increasing the scale of the combined company, facilitating the sharing of best practices, unlocking synergies and cost savings, providing employees with more opportunities, and guaranteeing that Aqua PA and Peoples will continue their generous community support,” they have failed to provide any actual, concrete support for these bald claims in this proceeding.

IV. SUMMARY OF ARGUMENT

The Joint Applicants’ principal brief confirms that the questions before the Commission are (a) whether or not the Settlement provides sufficient public benefits to overcome the fact that the Proposed Transaction, as initially submitted, was woefully deficient, and (b) does quantity matter more than quality? The answer to both questions is “no.” As detailed in the Objecting Municipal Intervenor’s principal brief, the benefits provided by the Settlement are largely illusory and do not suffice to meet the legal standard for transaction approval. The Settlement is a superficial attempt to give the appearance of benefits that will not actually have any meaningful positive public impact, if any at all.

As detailed herein, the Joint Applicants’ principal brief doubles down on this approach, attempting to emphasize volume – \$80+ million in bill credits and 70 Settlement conditions – to distract from the fact that on an individual level, the impact felt by ratepayers will be a net negative. The only true benefits that will result from the Proposed Transaction are the increased revenue and

profits felt by the Joint Applicants' shareholders – something they implicitly recognize when they discuss how those shareholders will be temporarily inconvenienced by the ratepayer bill credits the Settlement provides. Once those bill credits have been provided and the short-term rate stay-out periods expire, ratepayers will see nothing but increased rates.

For these reasons, and for the other reasons set forth herein, the Objecting Municipal Intervenor respectfully request that the Commission reject the Proposed Transaction as modified by the Settlement.

V. ARGUMENT

A. *Overall Position on the Transaction and Settlement*

1. The Settlement's "Shareholder-Funded" Rate Credit Does Not Establish a Net Ratepayer Benefit

The Joint Applicants attempt to make much of the "\$82 million of shareholder rate credits" that are being provided to ratepayers. As addressed in their principal brief, this supposed "benefit" is illusory. While the aggregate number may be large on its face – and indeed, may be large enough to impact the Joint Applicants' bottom line – that does not mean that it is impactful on a ratepayer level. A \$40-per-ratepayer credit simply does not provide enough of an individual benefit to ratepayers to be truly considered a benefit for purposes of determining whether the Proposed Transaction should be approved. Moreover, the Joint Applicants' attempt to frame this as pure additive benefits carrying no offsetting ratepayer cost does not withstand scrutiny and should be rejected.

The fact that this credit is nominally funded by shareholders rather than recovered directly through rates does not, by itself, establish that the benefit represents new value to ratepayers rather than a partial offset against costs, risks, and uncertainties that the Merger itself introduces. As the Objecting Municipal Intervenor's Principal Brief explains, the Settlement's cost-recovery

provisions reserve the Joint Applicants' right to seek recovery, in future base rate cases, of costs to achieve savings or synergies and other costs the Joint Applicants deem necessary to provide service following the Merger. A rate credit funded by shareholders today does not offset costs the recovery of which may be sought from ratepayers tomorrow. Moreover, framing this credit as shareholder-funded does not respond to the fact that whatever the funding source, a \$40 credit distributed across the Joint Applicants' full customer base provides negligible tangible value to any individual ratepayer. This is especially the case when measured against the scale of the transaction and the magnitude of the many risks and uncertainties that the transaction introduces.

The Joint Applicants' repeated invocation of the shareholder-funded nature of the rate credit is merely an attempt to forestall scrutiny of the credit's substance by emphasizing its source rather than its magnitude. The Commission should reject this. The proper inquiry is whether the Merger, taken as a whole and inclusive of the Settlement's terms, produces a substantial affirmative public benefit, not whether isolated components of the Settlement happen to be funded from money that would otherwise be distributed to shareholders.

2. The Joint Applicants' Arguments Pertaining to the DELCORA Transaction Do Not Withstand Scrutiny.

The Joint Applicants attempt to frame the County of Delaware's invocation of the DELCORA transaction as an attempt to have the Commission rule on that transaction despite the fact that its review has been stayed in a separate proceeding. This is a distortion of the arguments made by the County and other Objecting Municipal Intervenors pertaining to DELCORA. The point is not that the Commission should make some sort of ruling on the DELCORA transaction – it is that the DELCORA transaction is already in dispute, and the natural consequence of this Merger is that it will provide another legal avenue by which it may be challenged.

First, the Joint Applicants seek to distort the relief sought by the Objecting Municipal Intervenor in this proceeding, claiming that DelCo's testimony represents an impermissible attempt to obtain, through this Merger proceeding, a favorable outcome that DelCo has been unable to secure in the separate, stayed DELCORA Transaction proceeding at Docket No. A-2019-3015173 (the "DELCORA Docket"). This argument misapprehends the nature of DelCo's position and cites to case law that is not applicable here.

The Joint Applicants seek to analogize this case with the problem presented by the doctrine of *lis pendens*, which involves parties litigating the same claim in two forums at once and presents the risk of duplicative or inconsistent relief on that claim. This is unequivocally not the case here. DelCo is not asking the Commission here to adjudicate any issue pending in the DELCORA Docket, to lift the stay in that docket, or to rule on the enforceability or terms of the DELCORA transaction. It is asking the Commission to consider the impact of the transaction as one relevant fact bearing on the wholly distinct question presented in this proceeding: whether the Joint Applicants have demonstrated that the Merger will produce a substantial affirmative public benefit. Approval of the Merger will create the collateral legal consequence of rendering the DELCORA APA voidable, further complicating an already muddled DELCORA Docket that involves a now-outdated \$276.5 million purchase price, a recommendation of denial in that proceeding, a stayed PUC docket, and active litigation with the County. These are consequences of approving this Merger, not claims DelCo seeks to litigate in this docket.

Second, the Joint Applicants are wrong about their claim that the Proposed Transaction will not have any impact on the DELCORA transaction. They claim that this is essentially because Essential, Aqua PA, and Peoples will each remain separate in terms of their respective corporate existence following the Merger, and because Aqua PA WW will remain the contracting party of record under the DELCORA APA. This argument mischaracterizes DelCo's position. DelCo has

never contended that Aqua PA WW will cease to exist, be renamed, or be replaced as the named counterparty to the DELCORA APA. DelCo's position, as set forth in its surrebuttal testimony, is that the Merger effects a change in ultimate control of Aqua PA WW, substituting American Water as the entity that will control Aqua PA WW's decision-making, corporate priorities, and operational practices going forward, notwithstanding that Aqua PA WW's own corporate shell remains formally unchanged.⁴

As DelCo's witness explained, “[t]his is not a merger of equals. Aqua is going to be acquired and controlled by American Water. This is tantamount to an assignment of the APA, something to which neither DELCORA nor the County consents.”⁵ The DELCORA APA “includes unique covenants not found in any other Section 1329 transaction, including a 25-year operations center commitment in Delco, a local-contractor preference, and an explicit covenant survival provision,” all of which “were negotiated specifically with Aqua/Essential,” and the buyer's representations and warranties in the APA “were premised on Aqua under Essential's ownership — not American Water's.”⁶ The fact that Aqua PA WW will retain its own name and corporate form after closing does not address any of these points. As if to drive home the point, the Joint Applicants' own brief recognizes that part of the regulatory approval it seeks is a “change of control” of Aqua PA (and thus, correspondingly, Aqua PA WW). *See* Joint Applicants' initial brief, p. 8. There thus can be no question that if the Proposed Transaction is approved by the Commission, a change of control will occur that will only further muddy the DELCORA waters.

Ultimately, the Joint Applicants cannot have it both ways. They ask the Commission to credit claimed benefits based on synergies, efficiencies, and integration that by the Joint

⁴ *See* County of Delaware Statement 1-S, p. 13:1-3.

⁵ *See id.*, p. 13:3-5.

⁶ *See id.*, p. 13:5-12.

Applicants' own admission cannot yet be quantified and will not materialize until sometime after closing (if at all). Having asked the Commission to weigh speculative future benefits in their favor, the Joint Applicants cannot simultaneously ask the Commission to disregard a concrete liability and legal entanglement that the Proposed Transaction will indisputably exacerbate. The balancing that the Commission must undertake requires weighing both sides of that ledger, not crediting the Joint Applicants' speculative upside while categorically excluding a documented downside from consideration.

B. *Conditions Requested by the Parties Opposing the Settlement*

The Objecting Municipal Intervenors agree with other opposing intervenors that if the Proposed Transaction is to be approved, it must be subject to strict conditions that would serve to counterbalance the clear harms that would result. However, they maintain their position that no condition would serve to truly offset those harms to the extent that the Proposed Transaction would result in a net affirmative public benefit. Conditions such as a prohibition against acquiring healthy municipal systems for a number of years would likely serve to delay the harm that would result from the loss of competition that is a natural consequence of the Proposed Transaction, and could even mitigate against it if new competition appears during the time such a prohibition is in effect. However, these are solutions that would otherwise be unnecessary to harms that would not otherwise exist if not for the Proposed Transaction in the first place. For this reason, the Objecting Municipal Intervenors urge the Commission to deny approval of the Proposed Transaction and the Settlement.⁷

⁷ The Joint Applicants attempt to include conditions that they claim provide "service-related commitments specific to Delco and Montco" rings hollow. See Joint Applicants' initial brief, p. 29. In addition to the fact that these are commitments specific to MontCo but not DelCo, it is respectfully submitted that these commitments amount to nothing more than the Joint Applicants complying with their already-existing legal obligations and customer programs.

C. *Impact on Pennsylvania's Competitive Retail Gas Market and Peoples Employees*

The Joint Applicants defend the Settlement's competitive-market provisions primarily on the ground that American Water does not currently own or operate any company that competes with Peoples Natural Gas Company LLC, and that the Merger will therefore not result in anticompetitive or discriminatory conduct in the retail natural gas market. The Objecting Municipal Intervenors do not dispute that this response addresses a horizontal competition concern as framed. It does not, however, address a narrower and more concrete disparity in the Settlement's terms that the Joint Applicants do not mention at all: unlike Aqua PA and American Water, no rate case stay-out commitment is provided under the Settlement with respect to Peoples.

The Settlement provides that Aqua PA will not file for a general rate increase before June 1, 2027 and that American Water will not file before April 1, 2028. No comparable commitment protects Peoples' ratepayers from a near-term rate filing attributable to Merger-related integration or transition costs or otherwise. If, as the Joint Applicants maintain throughout their initial brief, the Merger's affirmative public benefits should extend to the customers of all three regulated utilities alike, the Joint Applicants have offered no explanation – in their submissions or in the record – for why Peoples' ratepayers were excluded from the near-term rate protection extended to Aqua PA's and PAWC's customers. This unexplained asymmetry undercuts the Joint Applicants' characterization of the Settlement as a balanced, comprehensive package of ratepayer protections and further illustrates that the Settlement's terms were shaped by negotiating dynamics among the Settling Parties rather than by a uniform assessment of what affirmative public benefit each utility's ratepayers require.

D. *Affiliated Interest Transactions*

The Objecting Municipal Intervenors addressed this section in their principal brief and have nothing further to add.

VI. CONCLUSION

For the foregoing reasons, as well as the reasons set forth in their principal brief, the Objecting Municipal Intervenors respectfully request that the Commission reject the Joint Petition for Approval of Non-Unanimous Settlement and deny the Joint Application, or, in the alternative, direct that this proceeding continue to a fully litigated resolution and reopen the record to allow for this to be properly conducted with respect to the Settlement's terms.

Respectfully submitted,

/s/ Matthew Olesh

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Dated: September 29, 2026

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CERTIFICATE OF SERVICE

I, Matthew Olesh, Esq., hereby certify that I have served a true and correct copy of the foregoing Reply Brief of the County of Delaware, County of Montgomery, and East Whiteland Township, upon all parties to this proceeding in accordance with the requirements of 52 Pa. Code §§ 1.54 (relating to service by a party) via electronic mail.

Dated: September 29, 2026

/s/ Matthew Olesh
Matthew Olesh, Esquire