

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF)	
AQUA AMERICA, INC.,)	
STEELRIVER INFRASTRUCTURE)	CASE NO. 2018-00369
FUND NORTH AMERICA LP,)	
STEELRIVER LDC INVESTMENTS)	
LP, LDC PARENT LLC, LDC)	
FUNDING LLC, LDC HOLDINGS)	
LLC, PNG COMPANIES LLC,)	
PEOPLES GAS KY LLC, AND)	
DELTA NATURAL GAS COMPANY,)	
INC. FOR APPROVAL OF AN)	
ACQUISITION OF OWNERSHIP)	
AND CONTROL OF PNG)	
COMPANIES LLC AND DELTA)	
NATURAL GAS COMPANY, INC.)	

AQUA AMERICA, INC.’S MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

Aqua America, Inc. (“Aqua America”) respectfully submits this motion pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1) for confidential treatment of certain documents and information contained in materials responsive to the Attorney General’s Initial Data Requests. Specifically, Aqua America requests confidential treatment for the following documents:

1. Aqua America requests confidential treatment for its filing made pursuant to the Hart-Scott-Rodino Antitrust Improvements Acts of 1976 (15 U.S.C. § 18a) (the “HSR Act”), which is labeled KYOAG-20-CONF. This document contains confidential and proprietary information relating to the business of Aqua America and its subsidiaries. Much of the

information is not publicly disseminated and could be used by competitors to the disadvantage of Aqua America and its subsidiaries.

2. 15 U.S.C. § 18a(h) provides that any information or documentary material filed pursuant to the HSR Act shall not be subject to the federal Freedom of Information Act, 5 U.S.C. § 552, and “no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding.”

3. KRS 61.878(1)(k) protects from disclosure “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation.” Because federal law bars the disclosure of Aqua America’s HSR Act filing, it is exempt from disclosure under the Kentucky Open Records Act.

4. Aqua America also requests confidential treatment for the documents labeled KYOAG-42-CONF, KYOAG-42-CONF-R, KYOAG-67-CONF, and KYOAG-68-CONF. These documents contain proprietary and confidential information that is not publicly disseminated and could be used by competitors to the disadvantage of Aqua America and its subsidiaries.

5. Much of the information in these documents is treated as confidential by Aqua America and is not widely disseminated, even among Aqua America’s employees. Only personnel with a business reason to use the confidential information are permitted to view it.

6. KYOAG-42-CONF contains due diligence reports that present detailed information about Aqua America’s finances, retirement programs, health insurance policies, and strategic analysis. Access to this information by Aqua America’s competitors would provide those competitors with an unfair advantage in the marketplace.

7. KYOAG-42-CONF-R contains detailed information about certain of Aqua America's information technology contracts. Access to this information by Aqua America's competitors would provide those competitors with an unfair advantage in the marketplace.

8. KYOAG-67-CONF and KYOAG-68-CONF present detailed information about the operations and analysis of Aqua America's Board of Directors. Access to this information by Aqua America's competitors would provide those competitors with an unfair advantage in the marketplace.

9. Under KRS 61.878(1)(c)(1), commercial information generally recognized as confidential is protected if disclosure would cause competitive injury and permits competitors an unfair commercial advantage. Much of the information contained in KYOAG-42-CONF, KYOAG-67-CONF, and KYOAG-68-CONF, and all of the information in the redacted portion of KYOAG-42-CONF-R, meets this standard.

10. As permitted by 807 KAR 5:001, Section 13(2)(a)(3)(b), Aqua America is seeking confidential treatment for KYOAG-20-CONF, KYOAG-42-CONF, KYOAG-67-CONF, and KYOAG-68-CONF in their entirety due to the confidential and proprietary nature of much of the information contained therein. Even though all of the information contained in KYOAG-20-CONF, KYOAG-42-CONF, KYOAG-67-CONF, and KYOAG-68-CONF is not confidential, it is impractical to redact and highlight only the confidential portions, as they constitute a large percentage of the information contained in KYOAG-20-CONF, KYOAG-42-CONF, KYOAG-67-CONF, and KYOAG-68-CONF.

11. If the Commission disagrees with Aqua America that KYOAG-20-CONF, KYOAG-42-CONF, KYOAG-67-CONF, and KYOAG-68-CONF, and the redacted portion of KYOAG-42-CONF-R, are exempt from disclosure, it must hold an evidentiary hearing to protect

the due process rights of Aqua America and permit it to supply the Commission with a complete record to enable it to reach a decision with regard to this matter.

12. Aqua America does not object to the disclosure of KYOAG-20-CONF, KYOAG-42-CONF, KYOAG-67-CONF, and KYOAG-68-CONF, and the redacted portion of KYOAG-42-CONF-R, pursuant to a confidentiality agreement, to the Attorney General or any intervenor who can demonstrate a legitimate interest in reviewing the confidential information for the purpose of participating in this proceeding.

13. In compliance with 807 KAR 5:001, Section 8(3) and 13(2)(e), Aqua America is filing with the Commission one paper copy of KYOAG-20-CONF, KYOAG-42-CONF, KYOAG-67-CONF, and KYOAG-68-CONF, and the redacted portion of KYOAG-42-CONF-R, in its entirety.

14. 807 KAR 5:001, Section 13(2)(a)(2) provides that a motion thereunder shall state the time period in which the material should be treated as confidential and the reasons for this time period. Aqua America respectfully submits that five years from the date of the filing of the Joint Application is a reasonable period of time for the material in KYOAG-20-CONF, KYOAG-42-CONF, KYOAG-67-CONF, and KYOAG-68-CONF, and the redacted portion of KYOAG-42-CONF-R, to be treated as confidential in light of the competitive conditions in the water, wastewater, and natural gas industries.

WHEREFORE, Aqua America, Inc. respectfully requests that the Commission grant confidential treatment of the information described herein.

Dated: December 17, 2018

Respectfully submitted

/s/Allison L. Brown

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Counsel for Aqua America, Inc.

CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001, Section 8(7), this is to certify that Aqua America, Inc.'s December 17, 2018 electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on December 17, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; that an original and one copy of the Motion and one unobscured copy of the material for which confidentiality is being sought sealed in an opaque envelope, will be hand delivered to the Commission within two business days.

/s/Allison L. Brown

Counsel for Aqua America, Inc.