

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**THE JOINT APPLICATION OF AQUA )  
AMERICA, INC., STEELRIVER )  
INFRASTRUCTURE 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, PEOPLES GAS KY LLC AND DELTA )  
NATURAL GAS COMPANY, INC. )**

**CASE NO. 2018-00369**

**DELTA NATURAL GAS COMPANY, INC.'S AND ITS AFFILIATES'  
POST-HEARING BRIEF**

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Comes SteelRiver Infrastructure Fund North America LP, SteelRiver LDC Investments LP, LDC Parent LLC, LDC Funding LLC, LDC Holdings LLC, PNG Companies LLC (“PNG”), Peoples Gas KY LLC, and Delta Natural Gas Company, Inc. (“Delta”) (collectively, “Joint Applicants”), by counsel, for their Post-Hearing Brief in support of approval of the acquisition of Delta and PNG by Aqua America, Inc. (“Aqua”).

**I. Overview of Transaction and Procedural History**

On November 20, 2018, the Joint Applicants filed an application with the Commission under KRS 278.020(6) and (7) for the acquisition by Aqua of ownership and control of PNG and Delta. The acquisition of ownership and control of PNG and Delta will result from a single transaction that transfers control of LDC Funding LLC to Aqua. Delta is wholly owned by PNG, which in turn is wholly owned by LDC Holdings LLC, which in turn is wholly owned by LDC

Funding LLC, which in turn is wholly owned by LDC Parent LLC. Therefore, as a result of Aqua's acquisition of LDC Funding LLC, Aqua will acquire indirect control of Delta.<sup>1</sup> The Commission accepted the application for filing on November 26, 2018.<sup>2</sup>

The Attorney General moved to intervene on November 27, 2018, which was granted on November 28, 2018. The Joint Applicants responded to two sets of information requests from the Commission and the Attorney General. The Commission conducted an evidentiary hearing on February 14, 2019, in which Christopher Franklin, Daniel Schuller, Morgan O'Brien, and John Brown testified for the Joint Applicants in support of the proposed acquisition. This brief is filed in accordance with the schedule established by the Commission at the conclusion of the hearing.

**II. Pursuant to KRS 278.020(6), Aqua Has the Necessary Financial, Technical, and Managerial Abilities to Provide Reasonable Service through PNG and Delta after the Proposed Transfer of Ownership and Control**

In evaluating the proposed transfer of ownership and control of Delta, the Commission is guided by the statutorily defined requirements in KRS 278.020(6) and (7), which state that:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

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No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first

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<sup>1</sup> Aqua will also acquire indirect control of Peoples Gas KY LLC. Peoples Gas KY LLC is a farm tap company operating under KRS 278.485 and is not a "utility" as defined in KRS 278.010(3). See Commission's Order of September 3, 2013 in *In the Matter of: Joint Application of PNG Companies LLC, Peoples Natural Gas Company LLC, EQT Corporation, Distribution Holdco, LLC and Equitable Gas Company, LLC For Approval of Acquisition of Ownership and Control of Equitable Gas Company, LLC*, Case No. 2013-00163 (Ky. PSC 2013).

<sup>2</sup> November 26, 2018 Letter from Gwen R. Pinson.

obtained the approval of the commission ... The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with the law, for a proper purpose and is consistent with the public interest.

The record of evidence in the case demonstrates that Aqua has the necessary financial, technical, and managerial abilities to provide reasonable service through PNG and Delta following consummation of the proposed transaction.

**A. Aqua Has the Financial Ability to Provide Reasonable Service Following the Proposed Transaction.**

Aqua has sufficient assets and access to credit facilities to provide reasonable service if the proposed transaction receives approval, as evidenced by Aqua's strong financial profile and success as a parent company for other pipe-based utilities through operating subsidiaries in Pennsylvania, Ohio, North Carolina, Illinois, Texas, New Jersey, Indiana, and Virginia.<sup>3</sup> As of December 31, 2018, Aqua America had total assets of \$5.9 billion and \$838 million in annual revenues.<sup>4</sup> Aqua America has added approximately \$100 million of rate base from three municipal acquisitions in 2018 and expects to add another approximately \$100 million in 2019 from other commitments, exclusive of the proposed transaction in this proceeding.<sup>5</sup>

The sole cash component of consideration of the proposed transaction is a base price of \$4.275 billion, which includes the assumption of approximately \$1.3 billion in debt.<sup>6</sup> This cost will be financed through a combination of equity capital and third party debt financing.<sup>7</sup> Aqua has secured a fully committed bridge facility to fund the transaction; however, Aqua intends to raise permanent debt and equity capital for the long term.<sup>8</sup> Aqua's ability to complete this transaction, along with its history of acquisition execution, demonstrate Aqua's ability to acquire

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<sup>3</sup> Application at 7.

<sup>4</sup> Joint Applicants' Response to Item No. 1 of the Attorney General's Post-Hearing Data Requests at 57-58.

<sup>5</sup> Application at 13-14.

<sup>6</sup> Application at 11.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

companies and finance the growing capital needs associated with owning and operating public utility companies.<sup>9</sup>

The record shows that Aqua has the financial ability to provide reasonable service if the acquisition is approved.

**B. Aqua Has the Technical Ability to Provide Reasonable Service Following the Proposed Transaction.**

Aqua is a very experienced operator of regulated utilities. Indeed, it is the second largest investor-owned water utility in the country, and has extensive experience in operating regulated pipe-based utilities in multiple jurisdictions. Aqua presently serves over 3 million customers across 8 states.<sup>10</sup> Importantly, Aqua has extensive experience implementing and managing infrastructure replacement program with purposes similar to those of Delta's current Pipeline Replacement Program. As an example, Aqua has replaced over 1,300 miles of pipe, investing \$1.1 billion, over ten years—just in Pennsylvania.<sup>11</sup> Aqua understands the importance of Delta's Pipeline Replacement Program and the role it plays in the delivery of safe and reliable service to Delta's customers.

In addition to Aqua's experience, Aqua intends to retain the existing employees and leadership of PNG and Delta who are responsible for the safe, reliable, and efficient operation of those companies.<sup>12</sup> Delta has very experienced personnel, including its President, John Brown. Aqua has committed to honoring Mr. Brown's contract with Delta.<sup>13</sup> Delta's operational performance since being acquired by PNG has been strong; Delta has added nearly 600 new

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<sup>9</sup> Direct Testimony of Daniel Schuller at 8.

<sup>10</sup> Application at 16.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 17.

<sup>13</sup> Joint Applicants' Response to Item No. 1 of the Commission's Post-Hearing Data Requests.

customers, installed nearly 29 miles of pipeline, and hired several employees to fill openings left due to attrition over the course of the year, all while keeping customer rates stable.<sup>14</sup>

Based on this experience and the testimony provided in this proceeding, Aqua has the necessary technical ability to provide reasonable service to Delta's ratepayers following consummation of the proposed transaction through Delta and PNG.

**C. Aqua Has the Managerial Ability to Provide Reasonable Service Following the Proposed Transaction.**

Given Aqua's substantial experience in operating pipe-based regulated utilities, it has the managerial ability to provide reasonable service following the proposed transaction. Although Aqua does not presently serve gas customers, a significant number of its Board of Directors have experience in operating natural gas utilities, beginning with Aqua's Chairman, Chief Executive Officer and President, Mr. Christopher Franklin. Mr. Franklin previously worked at PECO Energy Company, a gas and electric utility, where he was regional, civic and economic development officer.<sup>15</sup> Aqua's Chairman Emeritus, Mr. Nicholas DeBenedictis, was also previously employed at PECO Energy Company, and presently serves on Exelon's Board of Directors.<sup>16</sup> Moreover, Board Member Ellen Ruff previously served in multiple executive positions for Duke Energy Corporation.<sup>17</sup>

In addition to Aqua's capable oversight, Delta will continue to benefit from the experience and expertise of Delta's and PNG's current employees. In addition, Aqua has committed to the appointment of an independent director to Delta's Board of Directors post-

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<sup>14</sup> Application at 17.

<sup>15</sup> 2/14/19 Hearing, VR 9:39:10.

<sup>16</sup> 2/14/19 Hearing, VR 9:40:10.

<sup>17</sup> 2/14/19 Hearing, VR 9:42:02.

closing.<sup>18</sup> Therefore, it is clear that Aqua possesses the requisite managerial ability to provide reasonable service following the proposed transaction.

**III. Pursuant to KRS 278.020(7), the Proposed Transfer of Ownership and Control Is Being Made in Accordance with Law, Is for a Proper Purpose, and Is Consistent with the Public Interest**

KRS 278.020(7) states that the Commission shall approve the change of ownership and control if it finds that the transaction “is to be made in accordance with the law, for a proper purpose and is consistent with the public interest.” As shown below, the proposed transaction satisfies each of these requisites.

**A. The Proposed Transfer of Ownership and Control Is Being Made in Accordance with Law.**

The proposed transfer of ownership has been approved by Aqua’s Board of Directors and SteelRiver Infrastructure Fund North America LP’s investors.<sup>19</sup> The Joint Applicants explained in their Application that the closing of the proposed acquisition is subject to several regulatory conditions, in addition to approval by this Commission. These include approval by the Pennsylvania Public Utility Commission and the West Virginia Public Service Commission. Proceedings in both of those tribunals are progressing. The Hart-Scott-Rodino antitrust review, the only regulatory approval other than the state commissions’ approvals, has been completed.<sup>20</sup> As such, the proposed transaction is being made in accordance with federal and state law.

**B. The Proposed Transaction Is for a Proper Purpose.**

The proposed transaction will make Delta part of a larger utility system with the resources to enable it to maintain, and likely enhance, the company’s performance and stability. Significantly, Aqua, PNG, and Delta have substantially agreed to honor the relevant

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<sup>18</sup> Joint Applicants’ Response to Item No. 1 of the Commission’s Post-Hearing Data Requests.

<sup>19</sup> Application at 18.

<sup>20</sup> 2/14/19 Hearing, VR 10:09:45.

commitments from the 39 commitments adhered to by the parties to Case No. 2017-00125, the proceeding in which PNG obtained approval to acquire Delta.<sup>21</sup>

### **C. The Proposed Transaction Is Consistent with the Public Interest.**

During the evidentiary hearing, the Attorney General asked several witnesses what benefits Delta's customers will have under Aqua's indirect ownership that customers presently do not have. Although the witnesses were able to explain that PNG and Delta will have greater access to capital if the transaction occurs, given that Aqua is a publicly traded company with broad access to a range of capital sources, it is important to note that showing such improvements is not the statutory standard for approval of this transaction. Under KRS 278.020(6), "[t]he commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to *provide reasonable service*." (emphasis added). Regardless, capital resources will be readily available to support Delta's ongoing operations and future changes and improvements.<sup>22</sup>

The Commission has defined the "public interest" standard pursuant to KRS 278.020(7) to require a showing either that "the proposed transfer will not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the commission's imposition of reasonable conditions on the acquiring party."<sup>23</sup> The Commission

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<sup>21</sup> Joint Applicants' Response to Item No. 1 of the Commission's Post-Hearing Data Requests.

<sup>22</sup> *Id.*

<sup>23</sup> *In the Matter of: Application for Approval of the Transfer of Control of Kentucky-American Water Co. to RWE Atkiengesellschaft and Thames Water Aqua Holdings GmbH* (Case No. 2002-00018) Order on Rehearing (Ky. PSC, July 10, 2002), at 9, quoting Final Order dated May 30, 2002). See also *In the Matter of: Application of DLR Enterprises, Inc. and Cow Creek Gas, Inc. for Approval of the Transfer of Certain Assets Formerly Owned and Controlled by Sigma Gas Corporation* (Case No. 2007-00419) (Ky. PSC, November 21, 2007), at 6 (stating simply that "The Commission has previously held that a transfer is in the 'public interest' if it does not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the Commission's imposition of reasonable conditions on the acquiring party."); *In the Matter of Application of Worldcom, Inc. and MFS Communications Company, Inc., for Approval of Agreement and Plan of Merger and Related Transaction* (Case No. 96-432) (Ky. PSC, Nov. 25, 1996) (approving a change of control and noting only that the manner in which services are provided "will not . . . change" and that the change of control "will not disrupt service or cause inconvenience or confusion to the customers").

has further explained that, although “readily quantifiable benefits” may be “achievable in limited instances,” “most transfers of control that are presented to this Commission would be unable to meet this standard.”<sup>24</sup> Therefore, a proposed transfer for which readily quantifiable benefits can be shown is the exception, not the rule, for meeting (or perhaps exceeding) the public interest standard.

Although this transaction does not involve typical synergies because Aqua is a water utility acquiring gas utilities, there will be immediate benefits to Delta through the broadened access to capital sources given that Aqua is a public company. Second, this access to capital will ensure that Delta can maintain, and perhaps even accelerate, the rate at which aging infrastructure is being replaced under Delta’s pipeline replacement program. This demonstrates that the proposed transaction is in the public interest.

#### **IV. Conclusion**

The Joint Applicants have shown that Aqua’s proposed acquisition of PNG and Delta satisfies the requirements of KRS 278.020(6) and (7). Aqua is a large publicly traded company that successfully operates water utilities serving 3 million customers across 8 states. The record demonstrates that Aqua has the financial, technical, and managerial abilities necessary to own and operate Delta, thereby satisfying KRS 278.020(6). In addition, the proposed transaction is legal, and is in the public interest for the reasons set forth herein.

For the foregoing reasons, Delta respectfully requests the Commission approve the proposed acquisition by Aqua of indirect ownership and control of Delta. Delta further respectfully requests that the Commission relieve the parties in Case No. 2017-00125 of the commitments agreed to therein, so that the Applicants to this proceeding do not have inconsistent

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<sup>24</sup> *In the Matter of: Application for Approval of the Transfer of Control of Kentucky-American Water Co. to RWE Atkiengesellschaft and Thames Water Aqua Holdings GmbH* (Case No. 2002-00018) Order on Rehearing (Ky. PSC, July 10, 2002), at 9-10.



commitments, and SteelRiver Infrastructure Fund North America LP and SteelRiver LDC Investments LP have no ongoing commitments with regard to Delta.

Dated: March 5, 2019

Respectfully submitted,



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### **CERTIFICATE OF COMPLIANCE**

This is to certify that Delta Natural Gas Company, Inc.'s March 5, 2019, electronic filing is a true and accurate copy of the same documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on March 5, 2019; that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means; and that the original copy of this filing in paper medium will be filed by hand-delivery with the Commission within two business days from the date of the electronic filing.



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Counsel for Delta Natural Gas Company,  
Inc.