



Agenda Date: 6/21/19  
Agenda Item: 5B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

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IN THE MATTER OF AQUA AMERICA, INC'S  
ACQUISITION OF LDC FUNDING, LLC

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ORDER

DOCKET NO. WM19050565

**Parties of Record:**

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel  
**Colleen Foley, Esq.**, Saul Ewing Arnstein & Lehr LLP, on behalf of Aqua America, Inc.

BY THE BOARD:

**BACKGROUND**

On November 1, 2018, Aqua New Jersey, Inc. ("Aqua New Jersey") filed a letter with the Board of Public Utilities ("Board") to advise the Board that Aqua New Jersey's parent, Aqua America, Inc. ("Aqua America" or "Company") agreed to acquire Peoples Gas ("Peoples"), a natural gas distribution company. The letter described "an all-cash transaction that reflects an enterprise value of \$4.275 billion, and includes the assumption of approximately \$1.5 billion of debt." It stated that the acquisition is supported by a "fully committed bridge facility" pending permanent financing through "an appropriate mix of equity and debt to target a strong balance sheet and investment-grade credit ratings." The letter stated that Aqua America expected, following closing, that the Company's operational makeup would be more than 99 percent in regulated utilities with total rate base of more than \$7.2 billion, reflecting a 70/30 split between water/wastewater and natural gas assets.

The submission asserted that the acquisition at the parent level would have no impact on competition in New Jersey nor any impact on Aqua New Jersey rates, employees or its provision of safe, adequate and proper utility service in New Jersey, and also emphasized that there would be no change of control of a New Jersey utility as a result of the transaction. The letter noted that Peoples does not operate in New Jersey and is not regulated by the Board and stated that the permanent financing of the acquisition would not involve any pledges or encumbrances of Aqua New Jersey assets with the Aqua New Jersey remaining as a first-tier subsidiary of Aqua America. Finally, the letter asserted that the transaction "will not alter Aqua America's strong commitment to New Jersey or Aqua New Jersey's focus on providing quality service to New Jersey customers and investing in New Jersey infrastructure."

By correspondence dated January 9, 2018, Aqua New Jersey provided an update to the Board on behalf of Aqua New Jersey and Aqua America in their efforts to acquire Peoples and reiterated that the acquisition did not trigger Board review. The letter stated that the parties were nonetheless willing to meet with Board staff to answer any questions and provide additional information on the acquisition. It also provided an update on regulatory reviews required in Pennsylvania, Kentucky and West Virginia where Peoples operates.

Thereafter, on May 6, 2019, Aqua America and Aqua New Jersey filed this matter with the Board, along with exhibits, to reflect the use of the LDC Funding, LLC ("Funding") entity to effectuate Aqua America's acquisition of Peoples. Aqua America purchased all the membership interests of Funding which is a wholly owned direct subsidiary of LDC Parent, LLC ("Parent") and is indirectly owned by SteelRiver Infrastructure Fund North America, LP ("SRIFNA") and an "affiliated fund" both of which are managed by SteelRiver Infrastructure Associates, LLC and its affiliated investment management entities that are defined collectively as "SteelRiver." Funding is the parent of LDC Holdings, LLC which is the parent of PNG Companies, LLC ("PNG"). PNG in turn is the parent of Peoples Natural Gas Company, LLC and Peoples Gas Company, LLC operating in Pennsylvania; Peoples Gas West Virginia, LLC; and Peoples Gas Kentucky, LLC and Delta Natural Gas Company, Inc. of Kentucky.

The filing states that Peoples is not a public utility providing service in New Jersey and neither owns nor operates any natural gas plant or equipment in New Jersey. The filing also indicates that post-acquisition, while Funding will become a direct subsidiary of Aqua America, Peoples, a subsidiary of Funding, will be an indirect wholly owned subsidiary of Aqua America. According to Exhibit C of the filing, Aqua New Jersey will remain a direct subsidiary of Aqua America post-acquisition, just as Aqua New Jersey presently exists, and the filing concludes that the transaction will not result in a change of control of the ownership of Aqua New Jersey, pursuant to either N.J.S.A 48:2-51.1 or N.J.S.A. 43:3-10.

#### **New Jersey Statutes-Change of Control**

The filing acknowledges New Jersey statutes applicable to "any person or entity from acquiring control of a New Jersey public utility, directly or indirectly" require written approval of the Board. N.J.S.A. 48:2-51.1. It also recognizes that the Board must also evaluate the impact of the acquisition on competition, the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility, and on the provision of safe and adequate service at just and reasonable rates. Further, the filing indicates that the Board must be satisfied that the change of control of the New Jersey public utility will result in positive benefits to New Jersey customers and the state of New Jersey, pursuant to N.J.A.C. 14:1-5.14(c). Lastly, the filing cites N.J.S.A. 48:3-10, stating that "no public utility incorporated under the laws of this State "shall sell, transfer or permit to be transferred, shares of its capital stock to any person or corporation which would vest in that person a majority interest in the capital stock of the public utility unless authorized to do so by the Board," and notes the added provision that the Board is also required to assure that pension benefits of New Jersey public utility employees will be fulfilled in the event of any stock sale or transfer.

The filing asserts that the proposed transaction does not involve a change in control of Aqua New Jersey or any Aqua America public utility subsidiary in that Aqua New Jersey is a direct, wholly-owned subsidiary of Aqua America currently, and it will remain so following completion of the transaction. The filing states that Aqua America is not itself undergoing a change in control; rather, only Funding and the Peoples entities will experience a change of control as a result of

the transaction, and because Funding and the Peoples entities do not operate in New Jersey, they and are not subject to the jurisdiction of the Board. The filing maintains that there is no sale or transfer of the capital stock of Aqua New Jersey as it remains wholly-owned by Aqua America and argues “[a]s such, it is the view of Aqua America and Aqua New Jersey that Board approval is not required pursuant to N.J.S.A. 48:2-51.1, N.J.A.C. 14:1-5.14(c) or N.J.S.A. 48:3-10.”

While asserting that the acquisition does not trigger New Jersey’s statutory merger review, the filing alternatively argues that the transaction nonetheless “would fully satisfy the requirements of N.J.S.A. 48:2-51.1, N.J.A.C. 14:1-5.14(c) and N.J.S.A. 48:3-10....”

### **Impact on Rates**

According to the filing, the transaction will not result in any change in rates for Aqua New Jersey customers and rates will remain the same. Specifically, the filing indicates that when Aqua New Jersey files a base rate case in the future, “no claim will be made...to recover the transaction costs associated with the Transaction or with any acquisition premium associated with the Transaction.”

### **Impact on Competition**

The filing asserts that there will be no adverse impact on competition in that Peoples entities do not provide service in New Jersey and the Peoples natural gas operations do not compete with Aqua America’s water and wastewater operations.

### **Impact on Employees**

The filing states that there will be no adverse impact on the employees of Aqua New Jersey, Aqua America or the Peoples entities, as Aqua America will continue to maintain separate headquarters for gas operations in Pittsburgh, Pennsylvania and water/wastewater operation in Bryn Mawr, Pennsylvania. According to the filing, Aqua New Jersey employees will experience no change in employment levels, management, staffing, or job responsibilities as a result of the transaction and may find opportunities for career advancement in the combined larger entity.

### **Impact on Provision of Safe, Adequate, Proper Service**

The filing represents that Aqua America has invested \$3.5 billion in infrastructure improvements throughout its system, including in New Jersey, over the last 10 years and will continue those levels of investment in the foreseeable future.

### **Positive Benefit Test**

The filing states that Aqua America “anticipates that the combined entity will be able to identify and implement best practices across its utility platform” to enhance operating efficiencies in and cost-savings for Aqua New Jersey customers and New Jersey.

### **The Financing**

In the filing, Aqua America states that the financing arrangements to effectuate the acquisition all took place “at the holding company level — not at the Aqua New Jersey level — and do not involve any guarantees, pledges or encumbrances of Aqua New Jersey assets or rights, or the issue or transfer of Aqua New Jersey stock.” Therefore, Aqua America and Aqua New Jersey

assert that the Board is not required to approve the financing under N.J.S.A. 48:3-7 or N.J.S.A. 48:3-9.

According to the filing, Aqua America announced on April 15, 2019 concurrent public offerings of \$1 billion of Aqua America common stock and \$725 million of tangible equity units<sup>1</sup> which were separate public offerings. Aqua America announced on April 24, 2019 that it had priced a public offering \$400 million aggregate principal amount of 3.566% senior notes due 2029 and \$500 million aggregate principal amount of 4.276% senior notes due 2049 and the offering closed the same day.

### **New Jersey Division of Rate Counsel Comments**

On June 14, 2019, the New Jersey Division of Rate Counsel ("Rate Counsel"), after having been given notice of the transaction, filed comments with the Board stating that based on the assertions and commitments contained in the filing, Rate Counsel did not have any concerns regarding the acquisition. Rate Counsel noted that neither People's Gas nor Delta Natural Gas are New Jersey utilities or conduct business in the State of New Jersey. Rate Counsel added that it appears there will be no impact on the rates paid by or service to New Jersey customers. Further, Rate Counsel indicates that New Jersey utility employees and competition within New Jersey will remain unaffected by the acquisition. Therefore, Rate Counsel stated it does not oppose the transaction and will defer to the Board's determination with respect to the above-referenced filing.

### **FINDINGS AND CONCLUSION**

The Board has reviewed the record in this matter, including the correspondence and filing made on behalf of Aqua New Jersey and Aqua America, as well as Rate Counsel's comments. Notice of this transaction was provided to the Board through the submission of the filing; as described above. Because the Board's jurisdiction over public utilities is broad, the Board finds it appropriate to evaluate the present transaction and accepts the informational filing as adequate in this particular circumstance. See N.J.S.A. 48:2-13; Twp. Of Deptford v. Woodbury Ter. Sewerage Corp., 54 N.J. 418, 424 (1969) ("[T]he legislature in Title 48 intended to delegate the widest range of regulatory power over public utilities" to the Board.); In re Public Service Electric and Gas Co., 35 N.J. 358, 371 (1961).

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<sup>1</sup> According to footnote 7 on page 8 of the filing, each tangible equity unit will consist of a prepaid stock purchase contract and a senior amortizing note due April 30, 2022. Unless earlier settled or redeemed, each stock purchase contract will automatically settle on April 30, 2022 (subject to postponement in limited circumstances) for between 1.1790 and 1.4442 shares of common stock per purchase contract, subject to adjustment, based upon the applicable market value of the common stock, as described in the final prospectus supplement relating to the tangible equity unit offering. Each amortizing note will have an initial principal amount of \$8.62909 and bear interest at a rate of 3.00% per year. On each January 30, April 30, July 30 and October 30, commencing on July 30, 2019 and ending April 30, 2022, Aqua America will pay equal quarterly cash installments of \$0.75000 per amortizing note (except for the July 30, 2019 installment payment, which will be \$0.80833 per amortizing note), which will constitute a payment of interest and a partial repayment of principal, and which cash payment in the aggregate will be equivalent to 6.00% per year with respect to each \$50 stated amount of tangible equity units. The amortizing notes will be unsecured senior obligations of Aqua America.

The Board has evaluated Aqua America's and Aqua New Jersey's assertions regarding the change of control and its impacts on competition, on rates, on employees and on the provision of safe and adequate utility service at just and reasonable rates. The Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1, as set forth above. In addition, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees. Based upon the Board's review of the record in this matter pursuant to the above referenced statutes, the Board **HEREBY FINDS** that, as asserted in the filing, the transaction is not likely to create any adverse impacts, is in the public interest, and has the likelihood of creating positive benefits by creating opportunities to share best practices across water/wastewater and natural gas operations.

The Board is also satisfied that the transaction will exert no negative impact on competition in New Jersey in that no New Jersey water operations are changing as a result of the transaction and Peoples does not have any natural gas operations in New Jersey to consider. The Board therefore **FINDS** that the proposed transaction will have no impact on competition. The Board additionally **FINDS** that there will be no negative impact on rates or the present provision of safe, adequate, and proper service since Aqua New Jersey's customers will continue to receive the same services at the same rates and under the same terms and conditions. Moreover, the transaction will not result in any change in the ability of Aqua America or Aqua New Jersey to fulfill pension obligations. The Board **FURTHER FINDS** that the April 2019 Aqua America financing did not encumber or pledge any Aqua New Jersey assets and did not require Board approval.

Accordingly, the Board **FINDS** the proposed transaction is in compliance with relevant law and regulation and therefore **APPROVES** the transaction as described in the filing and related documents, including all the stated merits and assertions of neutral or positive benefits.

In the event that Aqua America or Aqua New Jersey enters into any future agreements resulting in the grant of any security interest or indebtedness of any public utility assets used to serve New Jersey customers, Aqua America and Aqua New Jersey shall file the appropriate petitions seeking prior approval, as required under governing laws. The Board **CONCLUDES** that approval of this transaction does not affect the obligations of Aqua America or Aqua New Jersey.

The Board **HEREBY ORDERS** the following:

1. Aqua America agrees that it will not allocate, push down, or assign any purchase price, goodwill or any premium reflected in the purchase price to Aqua New Jersey, either directly or indirectly, for ratemaking purposes. Such items shall not be passed on to or funded by Aqua New Jersey customers after consummation of the proposed transaction. No acquisition adjustment amount, as defined in the Board-approved Uniform System of Accounts, related to the within transaction, shall be recovered from Aqua New Jersey customers.
2. Aqua America agrees that no transaction costs of this transaction (e.g., financial, legal, change in control agreement payments and investment services), shall be passed on to, recovered from, or funded by Aqua New Jersey customers, nor shall any of the

administrative costs of this transaction be allocated to Aqua New Jersey, either directly or indirectly from other subsidiaries or affiliates.

3. Subject to the execution, where appropriate, of acceptable confidentiality agreements, Aqua America shall provide the Board Staff and Rate Counsel reasonable access to its the books and records, and to the books and records of any of its regulated or non-regulated subsidiaries or affiliates, for the purposes of review of whether there has been a proper allocation of costs to Aqua New Jersey.
4. Aqua America and Aqua New Jersey shall maintain adequate resources to continue to be responsive to questions from customers and regulatory agencies.
5. Upon closing of the transaction, the Aqua America shall inform the Board of the date on which the acquisition of Peoples Gas shall have been consummated.
6. In their next rate proceedings, should Aqua New Jersey seek to recover in rates costs allocated by Aqua America or any of its subsidiaries or affiliates, Aqua America and Aqua New Jersey shall provide the parties with a written explanation, supported by sufficient credible evidence, including data, of the method of allocating such costs.
7. Subject to the execution, where appropriate, of acceptable confidentiality agreements, copies of the tax returns of Aqua America or any other entity consolidated with Aqua New Jersey for the purpose of reporting and calculating Federal Income Taxes shall be made available to the Board to the extent the Board determines that the information contained therein is necessary to resolve any regulatory or financial issues impacting Aqua New Jersey. This provision shall not impair the rights of any of the parties in any other proceeding.
8. Aqua America and Aqua New Jersey shall maintain a level of capital investment and best operating practices sufficient to ensure safe, adequate and proper service in compliance with applicable regulations and statutes and in accordance with prudent utility practice.
9. Recognizing that the Board has an ongoing concern with cross-subsidization and non-arm's-length transactions, Aqua America and Aqua New Jersey agree to file a report with the Board fully describing any changes in the corporate structure and corporate relationships impacting Aqua New Jersey, Inc. in sufficient detail to allow the Board's Division of Audits to monitor affiliate relationships, if so requested.

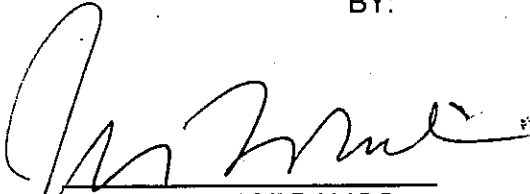
The approvals granted, hereinabove, shall be subject to the following provisions:

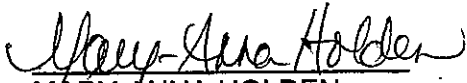
1. This Order shall not affect nor in any way limit the exercise of the authority of this Board or of this State in any future petition or in any proceedings with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or in any other matters affecting Aqua New Jersey.
2. Approval of this acquisition does not constitute review or approval of any subsequent mergers or corporate restructuring contemplated.

This Order is effective on July 1, 2019

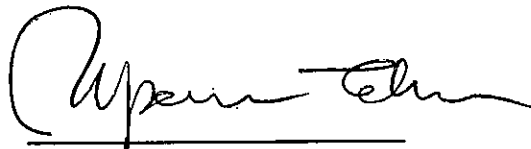
DATED: 6/21/19

BOARD OF PUBLIC UTILITIES  
BY:

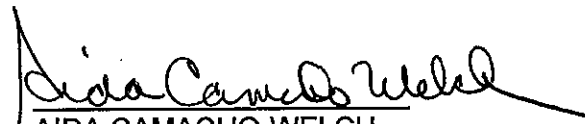
  
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JOSEPH L. FIORDALISO  
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MARY-ANNA HOLDEN  
COMMISSIONER

  
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UPENDRA J. CHIVUKULA  
COMMISSIONER

  
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ROBERT M. GORDON  
COMMISSIONER

ATTEST:   
\_\_\_\_\_  
AIDA CAMACHO-WELCH  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities.

IN THE MATTER OF AQUA AMERICA, INC'S ACQUISITION OF LDC FUNDING LLC

DOCKET NO. WM19050565

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