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November 6, 2013

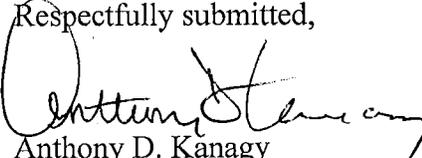
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
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Re: Pennsylvania Public Utility Commission, The Office of Consumer Advocate, The Office of Small Business Advocate, Larry L. Wolfe and John C. Eline v. The York Water Company - Docket Nos. R-2012-2336379, C-2013-2367038, C-2013-2375700, C-2013-2370416 and C-2013-2374421

Dear Secretary Chiavetta:

Enclosed please find the Main Brief of The York Water Company in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Anthony D. Kanagy

ADK/skr
Enclosures

cc: Certificate of Service
Honorable Kandace F. Melillo
Honorable Joel H. Cheskis

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).

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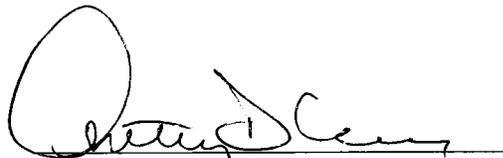
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Date: November 7, 2013



Anthony D. Kanagy

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2012-2336379
The Office of Consumer Advocate	:		C-2013-2367038
The Office of Small Business Advocate	:		C-2013-2375700
Larry L. Wolfe	:		C-2013-2370416
John C. Eline	:		C-2013-2374421
	:		
v.	:		
	:		
The York Water Company	:		

MAIN BRIEF OF THE YORK WATER COMPANY

TO ADMINISTRATIVE LAW JUDGES

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I. INTRODUCTION

The York Water Company (“York Water” or the “Company”) initiated this proceeding on May 29, 2013, when it filed with the Commission Supplement No. 111 to its Tariff Water – Pa. P.U.C. No. 14 (“Water Supplement No. 111”) and Supplement No. 1 to Tariff Wastewater – Pa. P.U.C. No. 1 (“Wastewater Supplement No. 1”), along with supporting information required by 52 Pa. Code §§ 53.52 and 53.53, pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d). In Water Supplement No. 111, York Water proposed rates designed to produce an increase in water base rate revenues of \$7,116,392, and in Wastewater Supplement No. 1, York Water proposed rates designed to produce an increase in wastewater base rate revenues of \$27,960. In Exhibit No. FVIII, Schedule H, of its filing, the Company calculated the additional revenue requirement for wastewater customers to be \$123,980, or an approximately 111% increase over currently effective rates. The Company proposed to allocate \$96,020 (\$123,580-\$27,960) of the wastewater revenue requirement increase to water customers, pursuant to 66 Pa.C.S. § 1311(c), resulting in a proposed 25% increase to wastewater customers.

A Formal Complaint was filed by Larry L. Wolfe (“Mr. Wolfe”) alleging, in part, that the allocation of a portion of the wastewater revenue requirement increase to water customers is not in the public interest. While the Company was able to reach a settlement of all issues in this combined rate case with the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”), Mr. Wolfe maintained his complaint that the allocation of a portion of the wastewater revenue requirement increase to water customers is not in the public interest.¹ At hearing, Administrative Law Judges Kandace F. Melillo and Joel H. Cheskis (the “ALJs”) instructed the parties to

¹ Although Mr. Wolfe’s Formal Complaint raised other issues, Mr. Wolfe indicated that he does not object to the remaining provisions of the Settlement Petition, and reserved only the issue of the allocation of the wastewater revenue requirement for briefing.

prepare briefs on Mr. Wolfe's issue of the allocation of a portion of the wastewater revenue requirement increase to water customers. York Water hereby files this Main Brief pursuant to the procedural schedule adopted in this proceeding.

II. BACKGROUND AND PROCEDURAL HISTORY

York Water is a public utility subject to the Commission's regulatory jurisdiction. York Water provides water service in the City of York, surrounding communities in York County and portions of Adams County. The Company provides water service to an estimated 62,740 water customers. In addition, the Company provides wastewater service to one community in East Manchester Township, York County. The Company provides wastewater service to approximately 233 customers. This service is being provided as a result of York Water's acquisition of the wastewater system of Asbury Pointe Water and Sewer Company LLC ("Asbury Pointe").

On May 29, 2013, York Water filed with the Commission Water Supplement No. 111 and Wastewater Supplement No. 1, along with supporting information required by 52 Pa. Code §§ 53.52 and 53.53, pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d). In the filing, the Company proposed to allocate a portion of the wastewater revenue requirement increase to water customers pursuant to 66 Pa.C.S. § 1311(c). York Water previously filed a Petition with the Commission under 66 Pa.C.S. § 1311(c) to present a combined filing for both its water and wastewater revenue requirements. The Commission granted the Petition by Order entered February 28, 2013, at Docket No. P-2012-2340409.

Notices of Appearance were filed by I&E and OCA. Formal Complaints were filed by the OCA and OSBA. The OCA also filed a Public Statement. In addition Formal Complaints were filed by John C. Eline, as well as Mr. Wolfe. Both Mr. Eline and Mr. Wolfe are customers of York Water. Mr. Eline was not an active party to this proceeding.

On July 16, 2013, the Commission entered an Order suspending Water Supplement No. 111 and Wastewater Supplement No. 1 by operation of law until March 1, 2014, unless permitted by the Commission to become effective at an earlier date. An initial prehearing conference was held on August 1, 2013, before the ALJs. Parties who participated in the prehearing conference filed prehearing memoranda identifying potential issues and witnesses. A schedule for hearings was established.

The parties undertook formal and informal discovery, both prior to and subsequent to the initial prehearing conference. Direct testimony was filed by I&E, OCA, OSBA, and Mr. Wolfe. Rebuttal testimony was filed by the Company and the OSBA. Surrebuttal testimony was filed by I&E, OCA, OSBA, and Mr. Wolfe.

I&E, OCA, OSBA and the Company held several settlement conferences. As a result of these conferences and the efforts to examine the issues raised in the proceedings, a Settlement in Principle to resolve all issues in this case was achieved by York Water, I&E, OCA, and OSBA prior to the date for hearings. On October 21, 2013, the Company advised the ALJs of the Settlement in Principle. Mr. Wolfe was advised that a Settlement in Principle among the Company and the statutory parties had been reached.

On October 22, 2013, a hearing was held to move testimony and exhibits into the record and to discuss procedural issues relating to the conclusion of this proceeding. Mr. Wolfe reviewed the settlement terms prior to the hearing on October 22, 2013, and indicated during the hearing that he did not agree to the Settlement in Principle because it allows a portion of the wastewater revenue requirement increase to be allocated to water customers. Mr. Wolfe did not object to the other terms of the Settlement in Principle. Parties are filing Main Briefs and Reply Briefs as to Mr. Wolfe's issue regarding allocation of a portion of the wastewater revenue

requirement to water customers.

On October 23, 2013, the ALJs issued a Briefing Order, establishing the due dates and other associated procedural rules for the briefs on Mr. Wolfe's issue regarding allocation of the wastewater revenue requirement. Pursuant to the Briefing Order, included as Attachment A to this Main Brief are proposed findings of fact, conclusions of law, and ordering paragraphs. Main Briefs are due on November 6, 2013, and Reply Briefs are due on November 14, 2013. In addition, the Settlement Petition is due on November 7, 2013.²

III. SUMMARY OF ARGUMENT

Act 11 amended Section 1311(c) of the Public Utility Code to allow public utilities that furnish water and wastewater service to combine their water and wastewater revenue requirement, and to allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base, if doing so is in the public interest. In this base rate proceeding, York Water has proposed that a portion of its wastewater revenue requirement increase be allocated to residential water customers. As part of the Settlement Petition, the parties have agreed that York Water should allocate \$58,826 of the wastewater revenue requirement increase to water customers. The allocation is necessary to avoid significant rate impacts for wastewater customers.

As an initial matter, York Water's acquisition of the Asbury Pointe wastewater system was in the public interest. The Commission has encouraged larger and well-managed utilities to acquire nonviable and/or troubled wastewater systems, and has identified these acquisitions as being in the public interest. The Commission has identified that the public interest may be served

² As explained later in this Main Brief, under the Settlement Petition \$58,826 of the wastewater revenue requirement increase is being reallocated to water customers. The calculation of that amount is set forth in III.22(b) to the Settlement Petition. In addition, the Company makes reference in this Main Brief to the increase in rates to wastewater customers proposed in the Settlement Petition. For ease of reference, the Company has included the proof of revenues for the wastewater increase proposed in the Settlement, which is Appendix D to the Settlement Petition, as Attachment B to this Main Brief.

if properly incurred costs to upgrade nonviable systems are allocated to the combined wastewater and water customer base. Absent the proposed allocation, York Water and other larger and more well-managed utilities will be discouraged from acquiring and upgrading small nonviable wastewater systems, because the resulting rate increases to wastewater customers may be substantial.

Before York Water acquired the Asbury Pointe wastewater system, that wastewater system was facing significant regulatory problems, which York Water has remedied through capital-intensive facilities upgrades. These upgrades were necessary in order to make the wastewater system compliant with regulatory requirements.

In this instance, the facilities upgrades undertaken by York Water have contributed substantially to the large revenue requirement increase for the wastewater system. Without the allocation of a portion of the wastewater revenue requirement increase to water customers, wastewater rates would increase by more than 77% based on the revenue increase agreed upon in the Settlement Petition. This would be a significant rate impact for wastewater customers. Even with the allocation, wastewater rates are being increased by 25%, which is almost double the percentage increase for residential water customers. Further, the amount of the allocation, which will average out to 8.5 cents per month per residential water customer, will have a very minor impact on water customers' bills. Because wastewater customers would experience significant rate impacts if they were required to bear the entire wastewater revenue increase and because the impact of the allocation of a portion of the wastewater revenue requirement increase to water customers will be minimal, the Settlement allocation of \$58,826 of the wastewater revenue requirement increase to water customers is in the public interest and should be approved.

The Commission has significant discretion in its authority to approve the allocation of

costs in a base rate proceeding, and has been specifically authorized by Section 1311(c) to make the type of allocation requested by York Water in this proceeding. In this case, the Settlement provides for a percentage increase, and per customer dollar increase for wastewater customers, that is well above the percentage increase and dollar increase to an average residential water customer. Such increase is well within the Commission's discretionary authority to approve. The allocation of a portion of the wastewater revenue requirement increase to water customers is in the public interest, is consistent with the Commission's ratemaking principles, and should be approved.

IV. ARGUMENT

A. INTRODUCTION

On February 14, 2012, Governor Corbett signed Act 11 of 2012 ("Act 11") into law, which amended Chapters 3, 13 and 33 of the Pennsylvania Public Utility Code. As relevant to this Main Brief, Act 11 amended Section 1311(c) of the Public Utility Code to allow public utilities that furnish water and wastewater service to combine their water and wastewater revenue requirement, and to allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base, if doing so is in the public interest.

Consistent with the Final Implementation Order on Act 11 issued by the Pennsylvania Public Utility Commission ("Commission") at Docket No. M-2012-2293611, York Water filed its *Petition of The York Water Company For Authorization to Present a Combined Filing for a General Rate Increase Under 66 Pa.C.S. § 1308(d) Covering both its Water and Wastewater Revenue Requirements Pursuant to 66 Pa.C.S. § 1311(c)* at Docket No. P-2012-2340409 on December 21, 2012, wherein the Company requested authority to present a combined water and wastewater revenue requirement in its next base rate proceeding. The Company provides both water and wastewater service, and was therefore eligible to combine its revenue requirements

and allocate a portion of the wastewater revenue requirement to water customers under Section 1311(c). The Commission granted the Petition to present a combined rate filing by Order entered February 28, 2013.

Pursuant to the Commission's Order, York Water presented in this base rate proceeding a combined water and wastewater revenue requirement. The filing included an allocation of a portion of the wastewater revenue requirement increase to water customers. The Company originally proposed to allocate \$96,020 of the wastewater revenue requirement increase to water customers, and to increase wastewater revenues by \$27,960, or by 25%. Under the Settlement Petition, the wastewater increase remains \$27,960, or 25%. However, because the Settlement scales back the Company's originally proposed rate increase, the portion of the wastewater revenue requirement increase that has been allocated to water customers has been reduced to \$58,826.³ York Water has presented evidence in this proceeding that the allocation is in the public interest, is consistent with the intent of the General Assembly in passing Act 11, and is consistent with prior Commission precedent relating to ratemaking principles. The ALJs and the Commission should deny the Formal Complaint of Mr. Wolfe and approve the Settlement Petition, including the proposed allocation of a portion of the wastewater revenue requirement increase to water customers.

B. ACT 11 ALLOWS THE COMMISSION TO ALLOCATE A PORTION OF THE COMPANY'S WASTEWATER REVENUE REQUIREMENT TO WATER CUSTOMERS.

Act 11 allows for the allocation of wastewater revenue requirements to water customers.

Act 11 modified 66 Pa. C.S. 1311(c) to provide as follows:

(c) Segregation of property.--When any public utility furnishes more than one of the different types of utility service, the commission shall segregate

³ Under the Settlement Petition, the wastewater revenue requirement increase, before allocation, is \$86,786. This would represent an approximately 77.6% increase to wastewater customers. *See* Settlement Petition, III.22(b).

the property used and useful in furnishing each type of such service, and shall not consider the property of such public utility as a unit in determining the value of the rate base of such public utility for the purpose of fixing **base rates. A utility that provides water and wastewater service shall be exempt from this subsection upon petition of a utility to combine water and wastewater revenue requirements. The commission, when setting base rates, after notice and an opportunity to be heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest.**

(emphasis in original). The clear language of Act 11 allows a utility that provides both water and wastewater service, such as York Water, to allocate a portion of the wastewater requirement to the combined water and wastewater customer base.

Mr. Wolfe has argued in his testimony that an allocation of the wastewater revenue requirement increase to water customers is, in and of itself, not in the public interest. Wolfe Direct at p. 5. This statement is contrary to the express language of Act 11. The Court has held that “a statutory command defines the public interest, and an administrative agency established to enforce that statutory command simply lacks the authority to issue countermand orders.” *Philadelphia Suburban Water Co. v. Pa. P.U.C.*, 808 A.2d 1044, 1057 (Cmwlth Ct 2002). Act 11 has identified that there are instances where allocating a portion of the wastewater revenue requirement to water customers is in the public interest. Mr. Wolfe’s argument that such an allocation is never in the public interest cannot be correct, as it would eviscerate the plain language of the statute, and render the language added to the Public Utility Code by Act 11 moot.

In applying the additional language provided by Act 11, the Company must address three issues affirmatively. First, the utility must provide both water and sewer service. Second, the utility must give its customers notice and an opportunity to be heard. Finally, the proposed allocation must be in the public interest. The Commission, in its disposition of the Company’s

Petition at Docket No. P-2012-2340409, has already answered the first issue in the affirmative. Through this base rate proceeding, the Company provided notice to customers via a bill insert, which advised water and wastewater customers of the Company's intent to combine, in part, the revenue requirement for the wastewater operations to the Company's water operations, and customers have had the opportunity to be heard by filing comments or a formal complaint. Therefore, the second issue has been addressed affirmatively. Finally, the Company has shown through record evidence submitted in this proceeding, and described herein, that the allocation is in the public interest, affirmatively answering the third and final issue identified in the statute. Thus, as shown in this Main Brief, the allocation should be approved.

C. IT WAS IN THE PUBLIC INTEREST FOR YORK WATER TO ACQUIRE THE ASBURY POINTE WASTEWATER SYSTEM AND TO ALLOCATE A PORTION OF THE WASTEWATER REVENUE REQUIREMENT INCREASE TO WATER CUSTOMERS.

1. Public Interest Factors

In determining whether the allocation proposed in this proceeding is appropriate, the Commission must determine whether it is in the public interest. In the Commission's Orders implementing its *Policy Statement Re: Incentives for the Acquisition and Merger of Small, Nonviable Water and Waste Water Systems*, Docket No. M-00950686, (Order entered February 23, 1996) ("Policy Statement") the Commission explained that it is in the public interest for larger and more stable utilities to acquire nonviable wastewater systems.⁴ Nonviable systems may not be economically self-sustaining, may not meet all regulatory mandates, and may have quality issues. Proposed Policy Statement at pp. 2-3.

The Commission noted that for these systems, the customer base is too small to support

⁴ While the *Proposed Policy Statement Re: Incentives for the Acquisition and Merger of Small, Nonviable Water Systems* ("Proposed Policy Statement") at this docket, issued on July 10, 1995, addressed only nonviable water systems, the Commission's Policy Statement noted that the Proposed Policy Statement should be expanded to include wastewater systems. Policy Statement at p. 20.

the costs of a well-managed and properly functioning system, and may not be able to complete appropriate infrastructure upgrades due to lack of available capital. *Id.* at p. 4. The Commission stated that the public interest is served by the elimination of these inadequately operated small companies. *Id.* at p. 8. The Commission has also previously noted that spreading costs across a larger rate and revenue base is in the public interest because it ameliorates the impact of major capital additions needed from time to time in every service area, promotes flexibility in timing and financing major capital additions, and mitigates instability. Policy Statement at p. 21-22, citing *Pa. P.U.C. v. Western Pennsylvania Water Co.*, 72 PUR 4th 103 (1986).

In addition, in the Commission's Tentative Implementation Order on Act 11, issued on May 10, 2012 at Docket No. M-2012-2293611, the Commission noted that one of the benefits of 1311(c) is that the costs of necessary upgrades to wastewater systems to maintain safe and reliable service, which can be substantial on a stand-alone basis, can be spread among the common customer base of water and wastewater utilities. *Tentative Implementation Order* at p. 5. The Commission reaffirmed this statement in its Final Implementation Order. *Final Implementation Order* at p. 8. The public interest is served if properly incurred costs to upgrade a nonviable system can be allocated to the combined wastewater and water customer base. Absent such allocation, larger, well-managed water utilities, like York Water, will be discouraged from acquiring and upgrading small nonviable wastewater systems, because the resulting rate increases to wastewater customers may be substantial.

As explained below, the allocation of a portion of the wastewater revenue requirement to water customers is in the public interest because acquisition of the Asbury Pointe wastewater system, and the upgrades that have led, in part, to the revenue deficiency, were necessary to ensure safe service to customers which complied with state and federal regulatory requirements.

In addition, the Company has shown that the cost of the necessary improvements to the Asbury Pointe system have contributed to a significant increase in rates for wastewater customers, and that an allocation of a portion of the wastewater revenue requirement increase across York Water's entire residential customer base would have a minimal impact on water customers' rates. The allocation and resulting rates are consistent with the Commission's long-standing ratemaking principles, which have been found by the courts to be in the public interest.

2. It is in the Public Interest for the Commission to Allocate a Portion of the Wastewater Revenue Requirement Increase to Water Customers to Support York Water's Acquisition of Systems like the Asbury Pointe Wastewater System

The Asbury Pointe wastewater system fits perfectly within the description of nonviable wastewater systems that the Commission encourages companies like York Water to acquire. York Water acquired and began to provide wastewater service to Asbury Pointe in 2012, with the Commission's approval. York Water St. No. 1, p. 10.⁵ When York Water acquired the Asbury Pointe wastewater system, the system was facing serious environmental issues, which the Company was aware of and, pursuant to the Commission's policies, intended to remedy. The previous owner had received a Notice of Violation from the Department of Environmental Protection ("DEP") for violating reporting requirements, as well as having improper operation and maintenance violations. *Id.* at p. 10. To address the noncompliance issues, the previous owner had entered into a Consent Order and Agreement ("COA") with DEP. *Id.*

Since acquiring the wastewater system, York Water has remedied a storm damaged detention pond, and has made other capital-intensive necessary improvements in order to bring this system into compliance with the COA. *Id.* at p. 11. This system is now in compliance with

⁵ York Water had previously acquired the water system serving the Asbury Pointe community in 2007, and began providing water service in 2008. York Water St. No. 1, p. 20. Thus, these customers will be impacted by both the increase in wastewater rates, as well as the increase in residential water rates. As a result, they will pay an allocated portion of their own wastewater service through water rates.

regulatory requirements, and York Water has improved the reliability of service to these customers. *Id.* This system is exactly the type of system that larger and more stable utilities, such as York Water, have been encouraged to acquire by the Commission's policy, as well as the revisions to 1311(c) accomplished by Act 11. As explained herein, the rate increase that would be needed to recover the full cost of service for York Water's wastewater customers would be substantial. If the full amount of the increase is required to be recovered from the wastewater customers, it would signal to large, well-run water utilities that the tools provided to the Commission under Act 11 to mitigate such increases will not be used. This will tend to discourage future acquisitions of small wastewater systems. It is clearly in the public interest to encourage such future acquisitions, in order to remedy service inadequacies that are frequently experienced by these small systems.

3. Allocating a Portion of the Wastewater Revenue Requirement to Water Customers will Mitigate Significant Rate Impacts for Wastewater Customers

As explained above, one of the public interest benefits of Act 11 is to avoid substantial rate increases for wastewater customers. The allocation agreed to in the Settlement would accomplish this public interest objective by limiting the magnitude of the wastewater increase and spreading a portion of the increase to the larger customer base of the water residential customer class. York Water St. No. 3-R, p. 42.

The Asbury Pointe community has approximately 233 customers, all of whom are in the residential rate class. *See* Appendix D; Exhibit No. FII-3W. If York Water allocated the full cost of service, as reflected in Appendix D of the Settlement Petition (Attachment B to this Main Brief), to only wastewater customers, wastewater rates would increase by approximately 77.6% over currently effective rates. This amount is determined by adding the increase in the wastewater revenues plus the amount of the proposed allocation, divided by the current

wastewater revenues, as represented in Appendix D. In dollars to individual customers, this would increase wastewater rates from \$40.00 per month to more than \$71.00 per month per customer. The Settlement limits the wastewater increase to 25%, which is much higher than the percentage increase for water customers under the Settlement.⁶ Thus, the allocation accomplishes the important public interest of ensuring that the Asbury Pointe wastewater system is viable and compliant with regulatory requirements, and the allocation ameliorates the rate impact of these major and mandatory improvements.

Large rate increases have the potential to cause rate shock among customers. To mitigate rate shock, the Commission allows utilities to increase rates to certain customer classes by less than full cost of service. This policy is known as gradualism, and can be considered as a factor in setting rates. The Courts have held that gradualism is in the public interest. *See, e.g., Sharon Steel Corp. v. Pa P.U.C.*, 468 A.2d 860 (Cmwlth Ct. 1983).

In *Pa P.U.C. v. Philadelphia Suburban Water Company*, Docket No. R-891270 (December 29, 1989), the Commission denied the company's request to increase rates to one of its divisions by 47% in a single proceeding. *Id.* at p. 133. In the previous rate proceeding, the company proposed to increase the rates for that same division by 96%, but the Commission limited the company to an increase of 52%. *Id.* at 130. Allowing the 47% increase would have resulted in a 99% increase in rates over an 18 month period. While keeping the division below the cost of service would result in some allocation of costs to other customers, the Commission held that such result was justified under the principle of gradualism. *Id.* at 133. Mr. Wolfe's proposal, that no amount of the wastewater revenue requirement be allocated to water customers, will result in a 77.6% increase in wastewater rates. This is inconsistent with the principle of gradualism, and the policy judgment of Act 11 that a substantial wastewater increase be

⁶ Under the Settlement, the average increase is 12.9%, and the residential class increase averages 12.7%.

mitigated through allocating a portion of the increase to water customers.

4. Allocating A Portion Of The Wastewater Revenue Requirement To Water Customers Will Not Significantly Impact Water Customers' Bills

Importantly, the allocation of the wastewater revenue requirement to water customers will result in a very small increase to the average water customer's bill. York Water has approximately 57,582 residential water customers. *See* Exhibit No. FII-9, p. 2. Pursuant to the Settlement Agreement, \$58,826 of the wastewater revenue requirement increase will be allocated to water customers. Dividing this amount by the total number of residential customers produces a total cost per customer of \$1.02 per year.⁷ Divided out over twelve months, the allocation of a portion of the wastewater revenue requirement increase to water customers will produce a total cost per customer per bill of approximately 8.5 cents. This is a minimal increase for water customers, and avoids a significant rate impact for wastewater customers. The average residential repumped water customer's monthly bill, as a result of the Settlement and including the allocation, is under \$45.00 per month. Without the allocation, the average wastewater customer's bill would be \$71.00 per month. With the allocation, wastewater bills will be \$50.00 per month (as detailed in Attachment B), which is still more than the average water customer's bill, including the allocation. Mr. Wolfe's Formal Complaint should be denied, and the allocation proposed in the Settlement Petition should be approved, as it is in the public interest and is consistent with prior Commission practice.

D. THE COMMISSION HAS SUBSTANTIAL DISCRETION WITH RESPECT TO COST ALLOCATION.

The Commission has a great deal of discretion in determining the allocation of costs in a

⁷ The Asbury Pointe wastewater customers are solely residential customers. In its filing, the Company allocated the portion of the wastewater revenue requirement increase solely to residential water customers, and no party, other than Mr. Wolfe, opposed this allocation.

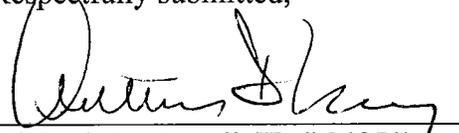
base rate proceeding. It is well settled that the establishment of a rate structure is an administrative function peculiarly within the expertise of the Commission. *Pittsburgh v. Pa P.U.C.*, 78 A.2d 35 (1951). Further, the courts have continually recognized that the findings of the Commission, if supported by competent evidence, will not be disturbed. *United States Steel Corp. v. Pa P.U.C.*, 390 A.2d 865 (1978); *Philadelphia Suburban Transportation Co. v. Pa P.U.C.*, 281 A.2d 179, 185 (1971). In *Peoples Natural Gas Co. v. Pa. P.U.C.*, 409 A.2d 446 (Cmwlth Ct. 1979), the Commonwealth Court held, “there is no set formula for determining proper ratios among the rates of different customer classes. What is reasonable under the circumstances, the proper difference among rate classes, is an administrative question for the Commission to decide.” *Id.* at 456 (internal citation omitted). As indicated in Section B of this brief, Act 11 gives the Commission the authority to approve the allocation of a portion of the wastewater revenue requirement to water customers.

York Water has shown in this proceeding that the allocation of a portion of the wastewater revenue requirement increase to water customers will produce just and reasonable rates. Such an allocation will mitigate significant rate impacts for wastewater customers, who would otherwise receive a rate increase of more than 77%, but for the allocation. The allocation does not present a hardship to water customers, as the average increase resulting from the allocation of the wastewater revenue requirement increase would be approximately 8.5 cents per month for water customers. Moreover, the allocation of a portion of the wastewater revenue requirement increase to water customers is consistent with the clear intent of Act 11 and prior Commission findings on similar allocation issues. The allocation proposed in the Settlement is in the public interest, and should be approved.

V. CONCLUSION

For the foregoing reasons, The York Water Company respectfully requests that the Formal Complaint of Larry L. Wolfe be denied in its entirety, and that the Administrative Law Judges and the Pennsylvania Public Utility Commission approve the Settlement Petition, including the proposal to allocate \$58,826 of the wastewater revenue requirement increase to water customers.

Respectfully submitted,



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Date: November 6, 2013

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Attachment A

PROPOSED FINDINGS OF FACT

1. York Water's *Petition of The York Water Company For Authorization to Present a Combined Filing for a General Rate Increase Under 66 Pa.C.S. § 1308(d) Covering both its Water and Wastewater Revenue Requirements Pursuant to 66 Pa.C.S. § 1311(c)* at Docket No. P-2012-2340409, which requested that the Company be allowed to present a combined water and wastewater rate filing, was approved by the Commission on February 28, 2013.

2. York Water originally proposed to allocate \$96,020 of the wastewater revenue requirement increase to water customers, and to increase wastewater revenues by \$27,960, or by 25%. York Water St. No. 103W, p. 7.

3. The Settlement Petition maintains the increase in wastewater revenues of \$27,960, or by 25%, but scales back the portion of the wastewater revenue requirement increase that has been allocated to water customers to \$58,826. Settlement Petition, III.22(b).

4. York Water acquired and began to provide wastewater service to Asbury Pointe in 2012, with the Commission's approval. York Water St. No. 1, p. 10.

5. York Water also provides water service to the customers of Asbury Pointe. York Water St. No. 1, p. 20.

6. The Asbury Pointe community has approximately 233 customers. Settlement Petition, Appendix D.

7. All of the Asbury Pointe customers are residential customers. Exhibit No. FII-3W.

8. At the time York Water acquired the Asbury Pointe wastewater system, the wastewater system was facing serious regulatory issues, including a Notice of Violation from the Department of Environmental Protection ("DEP") for violating reporting requirements, as well as having improper operation and maintenance violations. York Water St. No. 1, p. 10.

9. To address the noncompliance issues, the previous owner had entered into a

Consent Order and Agreement (“COA”) with DEP. York Water St. No. 1, p. 10.

10. The Asbury Pointe wastewater system was a nonviable wastewater system. York Water St. No. 1, pp. 10-11.

11. To bring the wastewater system into compliance with the COA, York Water had to make significant capital-intensive improvements, including \$86,000 to repair a storm damaged detention pond, and \$68,000 to install an effluent flow meter. York Water St. No. 1, p. 11.

12. The system is now in compliance with regulatory requirements, and York Water has improved the reliability of service to these customers. York Water St. No. 1, p. 11.

13. If York Water allocated the full cost of service, as reflected in the revenue requirement in the Settlement Petition, to only wastewater customers, wastewater rates would increase by approximately 77.6% over currently effective rates. Settlement Petition, III.22(b).

14. In dollars to individual customers, this would increase wastewater rates from \$40.00 per month to more than \$71.00 per month per customer. Settlement Petition, III.22(b).

15. Without the allocation of a portion of the wastewater revenue requirement increase to water customers, wastewater customers’ rates would increase significantly. York Water St. No. 103W, p. 7.

16. The allocation agreed to in the Settlement will limit the magnitude of the wastewater increase by spreading a portion of the increase to the larger customer base of the residential water customer class. York Water St. No. 3-R, p. 42.

17. Under the settlement, wastewater rates will increase by 25%, which brings wastewater rates up to \$50.00 per month. York Water St. No. 103W, p. 7.

18. The average residential repumped water customer’s monthly bill, as a result of the Settlement and including the allocation, is under \$45.00 per month. Settlement Petition, III.23.

19. The wastewater increase under the Settlement is 25%, which is much higher than the 12.7% increase for residential water customers under the Settlement. Settlement Petition, III.23.

20. York Water has approximately 57,582 residential water customers. Exhibit FII-9, p. 2.

21. The allocation of a portion of the wastewater revenue increase to water customers in the Settlement Petition will spread the cost of large capital improvements over a larger customer base. Exhibit FII-9, p. 2; York Water Statement No. 103W, p. 7.

22. Dividing the amount of the allocation agreed to in the Settlement, \$58,826, by the total number of residential water customers produces a total allocated cost per customer of \$1.02 per year. Exhibit FII-9, p. 2; Settlement Petition, III.22(b).

23. Divided out over twelve months, the allocation of a portion of the wastewater revenue requirement increase to water customers will produce a total cost per customer per bill of approximately 8.5 cents. Exhibit FII-9, p. 2; Settlement Petition, III.22(b).

PROPOSED CONCLUSIONS OF LAW

1. On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (“Act 11”), which amends Chapters 3, 13 and 33 of the Public Utility Code.

2. Act 11 amended Section 1311(c) to allow a utility that provides both water and wastewater service to allocate a portion of its wastewater revenue requirement increase to water customers.

3. The Commission has encouraged the acquisition of nonviable wastewater systems by larger and more stable utilities because it is in the public interest. *Policy Statement Re: Incentives for the Acquisition and Merger of Small, Nonviable Water and Waste Water Systems*, Docket No. M-00950686 (Order entered February 23, 1996).

4. York Water’s acquisition of the Asbury Pointe wastewater system was in the public interest.

5. The allocation of a portion of the wastewater revenue requirement increase to water customers in the Settlement Petition is consistent with the ratemaking principle of gradualism.

6. The allocation of a portion of the wastewater revenue requirement increase to water customers is within the Commission’s discretion. *Peoples Natural Gas Co. v. Pa. P.U.C.*, 409 A.2d 446 (Cmwlth Ct. 1979).

7. The allocation of a portion of the York Water Company’s wastewater revenue requirement increase to water customers is consistent with Act 11.

PROPOSED ORDERING PARAGRAPHS

It is hereby ordered that:

1. The Joint Petition for Settlement is approved.
2. The York Water Company's proposed allocation of \$58,826 of the wastewater revenue requirement increase to water customers is just and reasonable, and is approved.
3. The Complaint of Larry L. Wolfe is denied.

Attachment B

PROOF OF REVENUE WASTEWATER

Number of Wastewater Bills (233 customers x 12 months)	2,796
Settlement Base Rate	<u>\$50.00</u>
Revenue at Settlement Rate	<u>\$139,800.00</u>
Current Wastewater Revenues (See Schedule H of Exhibit No. FVIII)	\$111,840.00
Increase in Wastewater Revenues per Settlement	<u>27,960.00</u>
Total Wastewater Revenues per Settlement	<u>\$139,800.00</u>