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November 6, 2013

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

**RE: Pennsylvania Public Utility Commission v. The York Water Company
Docket No. R-2012-2336379**

Dear Ms. Chiavetta:

Enclosed is the original copy of the Main Brief of Larry L. Wolfe.

As evidenced by the enclosed certificate of service, all parties have been served as indicated.

Sincerely,


Larry L. Wolfe

Enclosures

cc: ALJ Judge Kandace F. Melillo
ALJ Judge Hoel H. Cheskis
Parties of Record

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**LARRY L. WOLFE
MAIN BRIEF
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**TO THE HONORABLE KANDACE F. MILILLO AND JOEL H. CHESKIS,
ADMINISTRATIVE LAW JUDGES:**

The Complainant respectfully submits the above captioned brief asserting that certain provisions of a petition submitted as Settlement Petition, and further identified herein, lack substantial evidence of being in the public interest, are not just, and are not reasonable as required by law. For those reasons the Complainant is requesting the Commission deny the petitioner's request.

I. BACKGROUND

1. Pursuant to the Public Utility Commission policy of encouraging settlement on such matters, the York Water Company (the Company) and the Statutory Advocates named above have constructed a proposed Settlement on the Company's tariff case as docketed above.

2. The terms of the proposed Settlement have been set out in a Settlement Petition (the draft Settlement) which, at the time this Main Brief was drafted and served, were available to the Complainant only in an undated, unsigned form with the caveat proffered by the Company Counsel that "there may be a few additional revisions that occur prior to filing." The draft Settlement makes reference to Appendices A, B, and C, however, it is noted for the record that those appendices were not appended to the draft Settlement which was provided to the Complainant.

3. The draft Settlement includes a provision that additional water revenue in the amount of \$58,826 shall be applied to the wastewater revenue requirement (the reallocation). The draft settlement also asks that the Commission approve it without modification. The Complainant opposes any allocation of additional water revenue to the wastewater revenue requirement.

4. When, at the October 22, 2013 hearing, the Complainant declined to consent to the reallocation provisions of an earlier version of the draft Settlement, the Commission ordered the Company and the Complainant to file Main Briefs regarding the issue of the proposed allocation of the wastewater revenue requirement.

II. DECISION ISSUE

1. Section 1311(c) of the Public Utility Code, 66 Pa. C.S. §1311(c) requires that the proposed reallocation must be in the public interest. The Commission further refined and quantified that requirement in its Procedural Order to the parties, dated August 1, 2013, by requiring “substantial evidence” of public interest as a precondition of any Commission Order approving a settlement.

2. Section 315 of the Public Utility Code, 66 Pa. C.S. §315 requires that the public utility prove that the rate involved is just and reasonable.

2. The issue before the Commission is: Has the Company met its burden of proof by presenting substantial evidence that the revenue reallocation it proposes is in the public interest and is it just and reasonable?

III. ARGUMENT

1. The proposed reallocation falls within the meaning of a “rate.” Accordingly, the Complainant is under no obligation to prove the proposed reallocation is unjust, unreasonable, or contrary to the public interest—the law places the burden of proof of justness and reasonableness on the Company and the Commission requires the Company to produce substantial evidence that the rate is in the public interest. Nevertheless, in anticipation that the Company's Main Brief will argue that the reallocation is just, reasonable, and in the public interest, this brief sets out the Complainant's arguments against that proposition.

2. In the draft Settlement the Company requests Commission approval to increase the residential water rate above the cost of service and to apply a portion of that additional revenue to offset the Company's unprofitable wastewater operations which services are currently being provided to wastewater customers at less than the cost of service.

3. To this point in the proceeding, the sole justification for the proposed allocation proffered

by the Company is that it does not believe it appropriate for wastewater customers to incur a 110.9% increase in rates. The inverse of that statement is to say that the Company believes it is appropriate that 57,582 residential water customers pay more so that 233 wastewater customers may pay less. There is no reasonableness, justness or public interest to be found in such a premise. Quite to the contrary, the interest of the public would be subordinated to the interest of a select few.

4. It is generally accepted that fairness is one of the primary principles of utility ratemaking.

The Company's proposal fails the fairness test on two important points:

- Some number of residential water customers of lesser financial means would be obliged to subsidize some number of wastewater customers of greater financial means.
- Worse, some number of those residential water customers of lesser financial means will include the aged, the disabled and the infirm. Those are the vulnerable people the Commission must shield from such discriminatory ratemaking.

5. Efficiency (the encouragement of economically efficient consumption and discouragement of waste) is another generally accepted principle of ratemaking. The Company's proposed reallocation fails the efficiency test because it does not replace the present flat rate for wastewater service with a volumetric rate.

6. Clarity of process and interpretation is also a desirable characteristic of good ratemaking policy. Consider the sentence: *"The Company's filing with the PUC also requests to combine in part, the revenue requirement for the Company's wastewater operations with the Company's water operations as authorized by legislation enacted in 2012."* That is an exact quote from the *Notice Of Proposed Rate Changes* which the Company sent to its customers. The Company used the opacity of that legalistic language to veil the real effect of its proposal on residential water customers. Doubtless the Company knew that most customers would be unlikely to parse such obtuse phrasing in search of its true import. It was a devious tactic, wholly inconsistent with the imperative to serve the public interest. Compare that sentence from the notice to a sentence written in plain English: "The company

is also asking the PUC for permission to apply a portion of the rate increase collected from residential water customers to lessen the rate of increase to wastewater customers.” Both statements are factually correct, but where the former obscures, the latter informs.

7. Regulatory policy which incorporates ratemaking principles of fairness, efficiency and understandability serves the public interest. To the extent that the Company's proposed reallocation does not embody those principles, it runs counter to the public interest. Whether public interest is defined in the context of what is best for the public at large or whether it is used to quantify the level of public concern about an issue, one of the best means available to the Commission to assess public interest is to hold public input hearings in venues convenient to the customers who are impacted by the rate issue. However, in July, just two months after the rate increase was filed with the Commission, the Office of Consumer Advocate informed the Commission that while it would continue to monitor the level of interest in the case, it did not, at that juncture, believe that public input hearings were required. It is not apparent to the Complainant how the OCA reached that conclusion. While the number of formal and informal complaints filed with the Commission may offer some insight as to the public interest, it is not an accurate gauge of public interest in this case because the Company's *Notice Of Proposed Rate Changes* was deliberately obscure and uninformative. Many members of the public do not have the resources, time or inclination to research and translate the law (as recited in the Company's notice to its customers) into simple, understandable English. We depend on the OCA to do that for us and to represent our interest. We are undermined when the OCA unilaterally and prematurely decides that the level of public interest is insufficient to warrant public input hearings, and then acquiesces to the Company's unsupported assertion that matters of substantial public interest exist to justify the reallocation.

8. It is not within the scope of this brief to argue the merits or demerits of Title 66, but as a statute which purports to regulate utilities, it bears examination in the context of this case. Citizens of the Commonwealth have the expectation that taxing authority—and by extension the authority to levy a financial assessment which has the effect of a tax—will rest solely with duly elected public officials. Act 11 of February 2012, which amended Title 66, authorized utilities like the Company, a monopolistic private enterprise, to impose—with the approval of the Commission—a tax-like assessment on one class of customers and apply the proceeds of that assessment to benefit a different class of customers. As a result, the former class would pay more than the cost of its service while the

latter class would pay less than the cost of its service. The provision of law which permits this tax-like transfer of wealth is so antithetical to societal expectations that the Commission should apply the strictest interpretation of public interest and deny the proposed reallocation. To carry the tax analogy one step farther: Income tax law is progressive; the wealthy pay a higher rate than those of more moderate means. If the Company's reallocation proposal is approved, the Commission will have given the company a bludgeon with which the wealthy and poor will be hit equally hard but the poor will suffer the most.

9. Proponents of the proposed Settlement might be tempted to argue that the portion of the total water rate increase which would be diverted to fund wastewater operations is so small as to be insignificant. That would be a specious argument because the important elements in this case are matters of principle and equity. The amount of money involved is irrelevant to the fundamental issues of justness, reasonableness and public interest.

10. A proponent of the proposed allocation might also argue the allocation is necessary because clean Pennsylvania streams and a pollution-free Chesapeake Bay are in the public interest, and the ever-increasing cost of treating the effluent from wastewater treatment plants should be borne by all. Of course, it already is. The York Water Company customers who are connected to municipal sanitary sewer systems pay their fair share of that cost with each monthly or quarterly bill, and those who have on-lot septic systems pay their fair share each time they have their septic tank pumped. It is decidedly not just, reasonable or in the public interest to expect them to pay more than their fair share while others pay less than their fair share. It would be particularly inconsistent to use this argument as the justification for asking residential water customers to pay more while the commercial and industrial customers (who may well be the greater polluters) are not included in the reallocation formula.

IV. CONCLUSION AND REQUESTED RELIEF

1. The Company clearly has not met its burden to provide the Commission with substantial evidence that the revenue reallocation it proposes is just, reasonable, and in the public interest. Accordingly, pursuant to applicable law, the Commission is requested to deny the Settlement.

V. PROPOSED FINDINGS OF FACT

1. Two questions are at the heart of this case. The first is “How should the public interest be defined?” The second is: “Has the Company met the burden of proof on the tests of justness, reasonableness and public interest?”

b. In the absence of evidence suggesting that the well being of the public at large, i.e. the population of the Commonwealth, will be negatively or positively affected by its ruling, the Commission takes the position that in this matter the public interest will be served if the interest of the majority of Company rate-payers is served.

c. The Commission finds that the Company knew, prior to its acquisition of the Asbury Pointe wastewater treatment system, that the extant rate produced less revenue than the cost of collecting and treating the wastewater. The Company also knew that the rate would have to be substantially increased to meet the cost of wastewater service.

d. The Commission finds that the Company has not met the burden of proof to show that the rate involved is just and reasonable, nor has it provided substantial evidence that the public interest would be served by the proposed reallocation.

VI. PROPOSED CONCLUSIONS OF LAW

1. Pursuant to Section 1311(c) of the Public Utility Code, 66 Pa. C.S. §1311(c) and pursuant to its Procedural Order to the parties, dated August 1, 2013, the Commission must find “substantial evidence” of the public interest as a precondition to any Commission Order approving a settlement.

2. Pursuant to Section 315 of the Public Utility Code, 66 Pa. C.S. §315, the burden of proving that the rate involved is just and reasonable rests with the public utility.

3. Absent substantial evidence that the allocation is in the public interest, and absent proof that the proposal is just and reasonable, the stipulation of law does not allow the Commission to approve the proposed Settlement.

VII. PROPOSED ORDERING PARAGRAPHS

Consistent with the foregoing proposed Findings of Fact and Conclusions of Law, the Complainant requests that the Commission issue an order denying the Settlement Petition as follows:

1. The Commission, finds that the Settlement Petition dated (the date of the petition) does not provide substantial evidence that the terms and conditions relating to the allocation of additional water revenue to the wastewater requirement are in the public interest or that those terms and conditions are just and reasonable.

2. Consistent with the foregoing finding, the Petitioner's request that the Commission approve the Settlement and that the proceeding be terminated is denied.

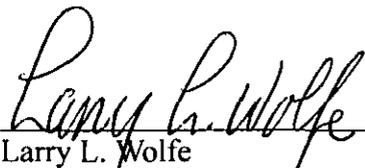
3. The Petitioners, at their option, may resubmit a Settlement Petition omitting all references, direct or inferential, to the allocation of additional water revenue to the wastewater requirement and reducing the total additional water revenue amount accordingly, or they may withdraw from the Settlement and proceed with litigation.

Date: _____ 2013

Kandace F. Melillo
Administrative Law Judge

Joel H. Cheskis
Administrative Law Judge

Respectfully submitted November 6, 2013



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Harrisburg, PA 17105-3265

**RE: Pennsylvania Public Utility Commission v. The York Water Company
Docket No. R-2012-2336379**

Dear Judge Melillo and Judge Cheskis:

Enclosed is one copy of the Main Brief of Larry L. Wolfe.

As evidenced by the enclosed certificate of service, all parties have been served as indicated.

Sincerely,



Larry L. Wolfe

Enclosure

cc: Rosemary Chiavetta, Secretary
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

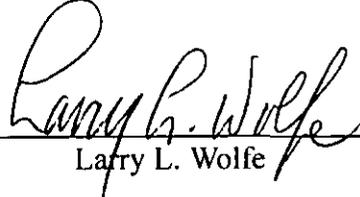
Pennsylvania Public Utility Commission	:	Docket No. R-2012-2336379
The Office of Consumer Advocate	:	C-2013-2367038
Larry L. Wolfe	:	C-2013-2370416
John C. Eline	:	C-2013-2374421
	:	
	:	
v.	:	
	:	
	:	
The York Water Company	:	

VERIFICATION

I, Larry L. Wolfe, hereby state that the testimony set forth in my Main Brief is true and correct to the best of my knowledge, information and belief, and that if asked orally at a hearing in this matter, my answers would be as set forth herein.

I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: November 6, 2013



Larry L. Wolfe

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket No. R-2012-2336379
The Office of Consumer Advocate	:	C-2013-2367038
Larry L. Wolfe	:	C-2013-2370416
John C. Eline	:	C-2013-2374421
v.	:	
The York Water Company	:	

CERTIFICATE OF SERVICE

I certify that I am serving copies of the Main Brief of Larry L. Wolfe by email and first-class mail (unless otherwise noted) upon the persons addressed below:

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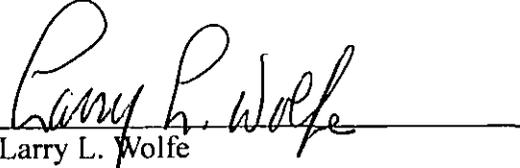
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