

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

November 14, 2013

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

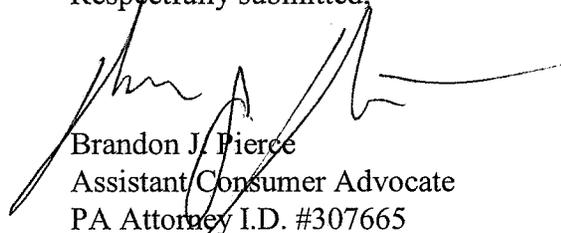
Re: Pa. Public Utility Commission
v.
The York Water Company
Docket No. R-2012-2336379

Dear Secretary Chiavetta:

Attached for electronic filing is the Reply Brief of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served on the parties as indicated on the Certificate of Service.

Respectfully submitted,



Brandon J. Pierce
Assistant Consumer Advocate
PA Attorney I.D. #307665

Attachment

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

176561.doc

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	:		

REPLY BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026

Brandon J. Pierce
Assistant Consumer Advocate
PA Attorney I.D. #307665

Counsel for
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: November 14, 2013

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ARGUMENT2

 A. The Wastewater Allocation to Water Customers in this Case Should be
 Approved2

 B. Reallocation of the Wastewater Revenue Requirement to Water Customers is
 not Analogous to a Tax.....4

III. CONCLUSION5

TABLE OF AUTHORITIES

Administrative Decisions

Delmarva Power & Light Co., 96 Pa.P.U.C. 307, 314, Order and Opinion
(September 7, 2001)4

Pa. PUC, et al. v. PPL Electric Utilities Corp., Docket No. R-2010-2161694, Opinion and
Order (December 21, 2010)6

Statutes

66 Pa. C.S. § 510 4

66 Pa. C.S. § 1311(c)*passim*

I. INTRODUCTION

The Office of Consumer Advocate (OCA) hereby submits this Reply Brief pursuant to the October 23, 2013 Briefing Order issued by Administrative Law Judges (ALJs) Kandace F. Melillo and Joel H. Cheskis. The ALJs established a briefing schedule regarding the remaining issue raised by *pro se* complainant Larry L. Wolfe, who filed Direct and Surrebuttal Testimony. Mr. Wolfe objects to York Water Company's (York or the Company) proposed use of Section 1311(c) of the Public Utility Code, 66 Pa. C.S. § 1311(c), as amended by Act 11 of 2012, which permits a utility providing both water and wastewater service to combine revenue requirements if it is found to be in the public interest.

On November 6, 2013, the OCA, the Company, and Mr. Larry Wolfe filed Main Briefs pursuant to the ALJ's October 23, 2013 Briefing Order. The OCA's position is set forth in its Main Brief. The OCA will limit its Reply Brief to responding to arguments that were raised by other parties and not already addressed in the OCA's Main Brief.

II. ARGUMENT

At the outset, the OCA submits that it does not generally disagree with a number of the concepts raised by Mr. Wolfe regarding fairness, efficiency, and clarity of purpose. However, in this case, under this set of facts, the OCA and its expert witness, Mr. Jerome Mierzwa, reached the conclusion that the Company's wastewater revenue requirement allocation to water customers is not unreasonable. OCA St. 3 at 21.

A. The Wastewater Allocation to Water Customers in this Case Should be Approved

Mr. Wolfe, in his Direct and Surrebuttal Testimony, and in his Main Brief, states that he does not believe it is ever appropriate for a wastewater revenue requirement to be allocated to water customers. *See, e.g.*, Wolfe Main Brief at 4-5. While the OCA understands Mr. Wolfe's argument that it is unfair to ask water customers to pay any increase for a service that they do not utilize (Wolfe Direct at 4-5), the General Assembly amended Section 1311(c). As amended, Section 1311(c) can mitigate the impact of potentially immense rate increases on wastewater consumers if the proposal is found to be in the public interest.

Mr. Wolfe also states that the Company's sole justification for the proposed allocation is that "it is not appropriate for wastewater customers to incur a 110.9% increase in rates." Wolfe M.B. at 2-3. He further states that the allocation is not in the public interest because "the interest of the public would be subordinated to the interest of a select few." *Id.*

Under Section 1311(c), the Commission must determine whether the allocation of a portion of a wastewater revenue requirement to water customers is in the public interest. The Commission has previously discussed the task of determining the public interest as follows:

this Commission must perform a balancing of customer and utility interests to achieve a result that is in the public interest -- a balancing that is not often easy. For customers, the right balance means rates that are reasonable but not excessive. For the utility, it also means that rates must be just and reasonable, i.e., rates are

set at a level to allow the utility to remain financially healthy in order to attract affordable capital for improvements and to maintain adequate, efficient, safe, and reasonable service and facilities to meet the statutory obligation under Section 1501 of the Code.

Pa. PUC, et al. v. PPL Electric Utilities Corp., Docket No. R-2010-2161694, Opinion and Order (December 21, 2010).

In this case, York proposed to raise wastewater customers' rates by an amount that the OCA and its witness, Mr. Mierzwa determined was not unreasonable. OCA Main Brief at 7-8. Specifically, the Company proposed to raise wastewater customers' rates by 25%—from \$40 to \$50 per month—and shift the remaining \$96,020 of the unrecovered wastewater revenue requirement to water customers. *Id.* Without this allocation, wastewater rates would have increased by 110.9%. *Id.* at 7. The OCA submits that in this case, such an increase would not have been reasonable for the wastewater customers. The \$96,020 proposed to be allocated to water customers—scaled-back to \$58,826 in the Settlement—represented less than a 0.33% increase in rates for an average water customer. *Id.* Under the Company's original proposal, an average residential water customer would have seen an increase of approximately 13 cents per month, or \$1.50 per year, as a result of the allocation. *Id.* Due to the Settlement scale-back, an average residential water customer will see an even smaller increase than originally proposed—approximately 8.5 cents per month, or \$1.02 per year, as a result of the allocation.¹ OCA witness Mierzwa testified that this allocation is not unreasonable in this case. OCA M.B. at 7-8 and OCA St. 3 at 23. Similarly, the scaled-back Settlement allocation is not unreasonable because it moderates the impact of a large rate increase on wastewater consumers at one time—rate shock—and has a lower impact on water customers compared to the original proposal.

¹ The OCA's Main Brief, at pages 7 and 9, computes a shift of 7.7 cents per month, or 92 cents per year. OCA M.B. at 7, 9. The OCA has adopted the Company's calculation of 8.5 cents per month, or \$1.02 per year, as cited in the Company's Main Brief at page 14. York M.B. at 14. The OCA used a slightly different methodology to derive its numbers, and after consulting with the Company and confirming with OCA witness Mierzwa, submits that the Company's calculation reflects the terms of the Settlement.

Therefore, the OCA submits that under the facts of this case, the allocation of wastewater revenue to water customers should be approved.

B. Reallocation of the Wastewater Revenue Requirement to Water Customers is not Analogous to a Tax

Mr. Wolfe equates the reallocation of a portion of the wastewater revenue requirement to water customers to that of a tax. Wolfe M.B. at 4-5. When the General Assembly amended Section 1311(c), it did not permit a utility to collect any additional monies. Rather, Section 1311(c), as amended, only permits a company to reallocate a portion of the wastewater revenue requirement to water customers, if it is in the public interest.

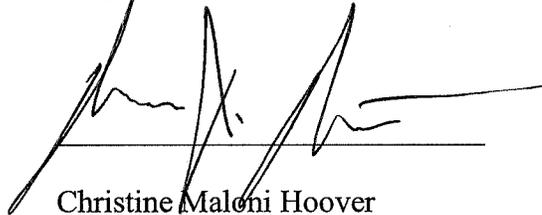
Further, a PUC tariffed rate is not a tax. As an analogy, the Commission has determined that an assessment, pursuant to Section 510 of the Public Utility Code, 66 Pa.C.S. § 510, is not a tax. *See, e.g., In re Delmarva Power & Light Co.*, 96 Pa.P.U.C. 307, 314, Order and Opinion (September 7, 2001) (overruled on other grounds).²

² In its September 7, 2001 Order, the Commission stated, “Utilities pay the assessment in exchange for the privilege of doing business in the Commonwealth. Commission assessments go entirely to defray Commission costs. Consistent with the Commonwealth Court’s ruling in *SEPTA*, *supra*, we find that the annual assessment is not a tax.” *In re Delmarva Power & Light Co.*, 96 Pa.P.U.C. at 314.

III. CONCLUSION

For the reasons set forth in this Reply Brief, York Water Company's proposed allocation of a portion of the wastewater revenue requirement, in the amount of \$96,020—scaled-back to \$58,826 under the Settlement—to water customers is not unreasonable in this case. Therefore, the OCA respectfully requests that the Commission approve the parties' Settlement Petition without modification.

Respectfully Submitted,



Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Brandon J. Pierce
Assistant Consumer Advocate
PA Attorney I.D. #307665
E-Mail: BPierce@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

DATED: November 14, 2013

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CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission
v.
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Docket No. R-2012-2336379

I hereby certify that I have this day served a true copy of the Reply Brief of the Office of Consumer Advocate upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 14th day of November 2013.

SERVICE BY EMAIL AND HAND DELIVERY

Richard A. Kanaskie, Esquire
Scott B. Granger, Esquire
Bureau of Investigation & Enforcement
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17101

SERVICE BY EMAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

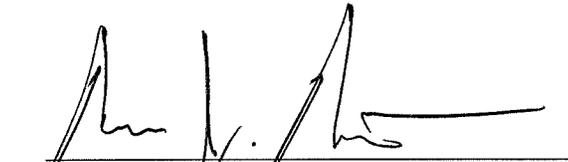
Michael W. Hassell, Esquire
Anthony D. Kanagy, Esquire
Jessica R. Rogers, Esquire
Post & Schell
17 N. 2nd Street, 12th Floor
Harrisburg, PA 17101-1601
Counsel for The York Water Company

Steven C. Gray
Assistant Small Business Advocate
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Larry L. Wolfe
2698 Forest Road
York, PA 17402
(C-2013-2370416)

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

John C. Eline
1208 West Princess Street
York, PA 17404
(C-2013-2374421)



Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. #50026
Email: CHoover@paoca.org

Brandon J. Pierce
Assistant Consumer Advocate
PA Attorney I.D. #307665
Email: BPierce@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
169992