



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Anthony D. Kanagy

akanagy@postschell.com
717-612-6034 Direct
717-731-1985 Direct Fax
File #: 153504

November 25, 2013

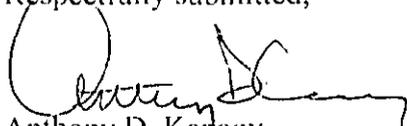
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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 Response of The York Water Company to the Comments Filed by Mr. John C. Eline and Mr. Larry L. Wolfe Regarding the Settlement Petition 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

RECEIVED
2013 NOV 25 PM 3:02
PA PUBLIC UTILITY
SECRETARY'S OFFICE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED
2013 NOV 25 PM 3:09
SECRETARY OF STATE

| | | | |
|--|---|-------------|----------------|
| 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 | : | | |

**RESPONSE OF THE YORK WATER COMPANY TO THE
COMMENTS FILED BY MR. JOHN C. ELINE AND MR. LARRY L. WOLFE
REGARDING THE SETTLEMENT PETITION**

TO ADMINISTRATIVE LAW JUDGES KANDACE F. MELILLO AND JOEL H. CHESKIS:

I. INTRODUCTION

On November 7, 2013, The York Water Company (“York Water”), the Bureau of Investigation (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”) filed a Settlement Petition (“Settlement”) which resolved all issues among these parties in the above-captioned proceeding. The Settlement was not joined by the two customer complainants in this proceeding, Mr. Larry Wolfe and Mr. John Eline. However, at the hearing held in this proceeding, Mr. Wolfe indicated he was not contesting any issue in the Settlement other than the issue of the allocation of a portion of the wastewater revenue requirement to water customers. (Tr. 52); Wolfe Letter, p. 1.

On November 8, 2013, Administrative Law Judges Kandace F. Melillo and Joel H. Cheskis (the “ALJs”) sent a letter to Mr. Eline and Mr. Wolfe advising them of their opportunity

to file comments or objections regarding the Settlement by November 18, 2013. The ALJs letter also provided other parties the opportunity to file responses to the comments or objections by November 25, 2013.

Pursuant to the ALJs' letter, Mr. Eline and Mr. Wolfe both filed comments in response to the Settlement. York Water hereby files its response to the comments filed by Mr. Eline and Mr. Wolfe.

II. DISCUSSION

A. RESPONSE TO MR. ELINE'S LETTER

In his letter, Mr. Eline cites to Harrisburg water issues, the funded status of the State Employee Pension Plan, decisions by other York County companies to require employees to pay a portion of health insurance costs, Harley Davidson's decision to improve its corporate profits, and York Water's corporate profits as support for his opposition to the Settlement. York Water respectfully notes that the statements made by Mr. Eline are not relevant to this proceeding. All of the statements, except for the reference to York Water's recent earnings, concern issues or companies that are completely unrelated to York Water. In addition, Mr. Eline's statement regarding York Water's experienced earnings is also not relevant. Mr. Eline presents no information regarding rate of return experienced, and thus offers no basis to assess the reasonableness of York Water's experienced earnings.¹ Further, in this proceeding, York Water produced substantial evidence to demonstrate its revenue deficiency for the Fully Projected Future Test Year ("FPFTY"). As explained in York Water's Statement in Support, the record evidence fully justifies the increase in revenues agreed to in the Settlement and the Settlement should be adopted without modification. The Commission should not rely on irrelevant evidence

¹ York Water assumes Mr. Eline is referencing the Company's announced financial results for the 3rd Quarter of 2013. Those results actually showed 3rd Quarter revenues and net income had declined from 3rd Quarter 2012 revenues and net income.

in making its decision in this proceeding. 66 Pa C.S. § 332(b) (Admissibility of evidence - any oral or documentary evidence may be received, but the Commission shall as a matter of policy provide for the exclusion of irrelevant evidence).

In further response to Mr. Eline's comments, York Water notes that it strives to provide affordable service to customers. As explained in this proceeding by Mr. Jeffrey Hines, the Company's President and Chief Executive Officer, the Company strives to provide affordable service by managing its costs. One way the Company manages costs is by partnering with the City of York with regard to paving. York Water St. No. 1, pp. 5-6. The Company has been recognized as having operating costs that are among the lowest in the state. York Water St. No. 1, p. 6. In addition, the Company provided a comparison of its water rates to other Class A water utilities regulated by the Commission. Mr. Hines explained that the Company's average residential customer pays less for water service than the majority of customers served by Class A water utilities in Pennsylvania. York Water St. No. 1, p. 6. Moreover, with respect to health insurance, York Water does require its employees to pay a portion of these costs. See Exhibit No. HIII-2-16, p.1.

York Water notes that I&E, OCA and OSBA all conducted a thorough review of the Company's base rate filing through discovery and by submitting several rounds of testimony in this proceeding. York Water's Statement in Support that is attached to the Settlement and is hereby incorporated by reference provides substantial explanation for why the Settlement is in the public interest and should be approved.

B. RESPONSE TO MR. WOLFE'S LETTER

In his Comments, Mr. Wolfe opposes the rate increase under the Settlement and the allocation of a portion of the wastewater revenue increase to water customers. As an initial matter, at the hearing in this proceeding, Mr. Wolfe expressly agreed not to contest any issue in

this proceeding except the allocation of a portion of the wastewater increase to water customers. (Tr. 52); Wolfe Letter, p. 1. Therefore, Mr. Wolfe's comments in opposition to the rate increase under the Settlement should not be considered. If Mr. Wolfe had not agreed to drop his opposition to the rate increase, York Water would have addressed these arguments in its Briefs. It is improper for Mr. Wolfe to agree not to oppose the Settlement rate increase at the hearing and then later file comments opposing the rate increase.

Mr. Wolfe's primary opposition to the rate increase stems largely from his belief that the Company's rate increases should correlate to the Consumer Price Index. The Consumer Price Index is simply not relevant to the overall rate increase that should be granted in this proceeding. Under Pennsylvania law, a public utility is permitted to recover its reasonably incurred costs for providing service and earn a reasonable return on the value of its property that is dedicated to public service. *See Bluefield Water Works and Improvement Co. v. Public Services Comm'n. of West Virginia*, 262 U.S. 679 (1923); *Pa. PUC v. Pennsylvania Gas and Water Co.*, 341 A.2d 239, 251 (Pa. Cmwlth. 1975).

In a rate case, the Commission evaluates the specific costs for the utility and does not grant the increase based on the Consumer Price Index. In this proceeding, York Water presented substantial evidence of its particular costs to provide service to the public. Other parties proposed to disallow certain costs. However, the Company and the statutory parties were able to reach a compromise position under the Settlement. All of these parties agreed that the Settlement reflects a reasonable compromise, and it should be accepted. The Commission should not rely on the Consumer Price Index to set the Company's overall rates in this proceeding.

In his comments, Mr. Wolfe states that the Commission should rely on I&E's litigation position to set rates in this proceeding. In its Rebuttal Testimony, the Company provided substantial record evidence for why I&E's litigation position should not be adopted in this proceeding. *See* York Water St. Nos. 103-R, 107-R and 108-R. Moreover, I&E itself has agreed to the settlement increase of \$4,972,040 for water customers. Therefore, Mr. Wolfe's arguments regarding I&E's litigation position should not be adopted.

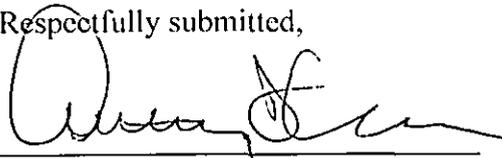
Mr. Wolfe also argues that York Water will continue to thrive with a \$2,000,000 rate increase as opposed to a \$4,972,040 rate increase for water customers. For the reasons stated above and in York Water's Rebuttal Testimony, a \$2,000,000 rate increase will not provide the Company an opportunity to earn a fair return on its investment and is not sufficient to meet the standards set forth in *Pennsylvania Gas* and *Bluefield* cases cited above.

In his comments, Mr. Wolfe also argues that the Commission should not approve the Settlement because it allocates \$58,826 of the wastewater revenue increase to water customers. York Water has explained the various reasons why this allocation is in the public interest under Act 11 of 2012, codified, in relevant part, at 66 Pa.C.S. § 1311(c), in the Company's Main Brief filed on November 6, 2013 and its Reply Brief filed on November 14, 2013 in this proceeding. *York Water will not repeat its arguments in detail herein but rather incorporates the arguments made in its Briefs by reference.* York Water further notes that allocation of a portion of the wastewater increase to water customers as proposed under the Settlement encourages the Company to acquire small, troubled wastewater systems that may not otherwise be acquired and would be left to their own devices. This is not in the public interest. The allocation of a portion of the wastewater revenue requirement to water customers under the Settlement is in the public interest and should be approved.

III. CONCLUSION

The York Water Company understands that Mr. Eline and Mr. Wolfe oppose the Settlement. However, the revenue increase under the Settlement is necessary for the Company to continue to provide safe and reliable water service to its customers and to continue to invest in its infrastructure. The Company strives to manage its expenses to mitigate rate increases and maintains rates that are among the lowest of the Class A water utilities in Pennsylvania. For the reasons explained in the Company's Statement in Support of Settlement, its Main Brief and its Reply Brief, the Settlement entered into by the Company, I&E, OCA and OSBA is in the public interest and should be approved without modification.

Respectfully submitted,



Michael W. Hassell (ID # 34851)
Anthony D. Kanagy (ID # 85522)
Jessica R. Rogers (ID #309842)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: mhassell@postschell.com
E-mail: akanagy@postschell.com
E-mail: jrogers@postschell.com

Of Counsel:

Post & Schell, P.C.

Date: November 25, 2013

Attorneys for The York Water Company

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).

VIA E-MAIL AND FIRST CLASS MAIL

Christine M. Hoover, Esquire
Brandon J. Pierce, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923

Steven Gray, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101

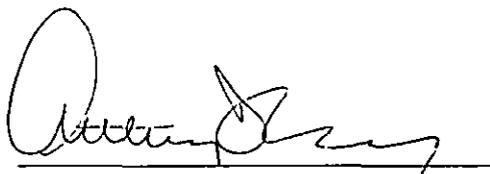
Richard A. Kanaskie, Esquire
Scott B. Granger, Esquire
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265

Larry L. Wolfe
2698 Forest Road
York, PA 17402

VIA FIRST CLASS MAIL

John C. Eline
1208 West Princess Street
York, PA 17404

Date: November 25, 2013



Anthony D. Kanagy

RECEIVED

2013 NOV 25 PM 3:02

**PA DEPT
SECRETARY'S BUREAU**