

August 18, 2017

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
Commonwealth Keystone Building, 2 North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2017-2616962
Red Lion Municipal Authority v. The York Water Company
Amended Complaint of Red Lion Municipal Authority**

Dear Secretary Chiavetta:

Attached for filing is the Amended Complaint of Red Lion Municipal Authority, (RLMA), in the above referenced proceeding.

A copy of the Amended Complaint has been forwarded to the parties in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Attachment

cc: The Hon. Joel Cheskis, PA Public Utility Commission [w/enc.]
Keith Kahwajy, Red Lion Municipal Authority [w/enc.]
Andrew J. Miller, Esquire, MPL Law Firm, LLP [w/enc.]

**Re: Docket No. C-2017-2616962
Red Lion Municipal Authority v. The York Water Company
Amended Complaint of Red Lion Municipal Authority**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the person(s) listed below, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via Electronic and First Class Mail

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Dated: August 18, 2017


Margaret A. Morris, Esq.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RED LION MUNICIPAL AUTHORITY	:	
	:	
v.	:	Docket No. C-2017-2616962
	:	
THE YORK WATER COMPANY	:	

AMENDED COMPLAINT OF RED LION MUNICIPAL AUTHORITY

Now comes the Complainant, Red Lion Municipal Authority (Complainant or Red Lion Authority), by and through its counsel, Reger Rizzo & Darnall LLP, pursuant to Section 701 of the Public Utility Code (Code), 66 Pa.C.S. § 701, and Sections 5.21 and 5.91 of the Commission’s regulations, 52 Pa. Code §§ 5.21 and 5.91, files this Amended Complaint against York Water Company (Respondent or York Water) alleging violations of the Respondent’s Tariff and the Code.¹

I. Commission Jurisdiction and Authority

1. The Pennsylvania Public Utility Commission (Commission), is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Code, 66 Pa.C.S. §§ 101, *et seq.*

2. Section 701 of the Code, 66 Pa.C.S. § 701, allows any person, corporation or municipal corporation, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any

¹ This Amended Complaint is intended to replace the original complaint filed at Docket U-2017-2610587, which was re-docketed by the Secretary’s Office.

public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer. *See also*, 52 Pa. Code § 5.21(a).

3. Section 501(a) of the Code, 66 Pa.C.S. § 501, authorizes and obligates the Commission to execute and enforce the provisions of the Code.

4. A contract between a public utility and a municipal corporation to furnish service not at the regularly filed and published tariff rate is not valid unless filed with the Commission at least 30 days prior to its effective date. 66 Pa.C.S. § 507

5. Section 507 of the Code, 66 Pa.C.S. § 507, authorizes the Commission, prior to the proposed effective date of a contract or agreement, to institute proceeding to determine the reasonableness, legality or any other matter affecting the validity of a contract between a regulated utility and municipal corporation. (Emphasis added).

II. Procedural Background: Docket No. U-2017-2610587

6. On June 16, 2017, York Water filed a proposed Emergency Interconnect Agreement between it and Dallastown Authority, pursuant to Section 507 of the Code. The matter was assigned Docket No. U-2017-2610587 (Proposed Agreement).

7. On July 5, 2017, Red Lion Authority filed a letter with the Commission opposing the Agreement.

8. A Prehearing Conference was held on August 11, 2017 before the Honorable Joel Cheskis. Red Lion Authority was permitted until August 18, 2017 to file the instant Amended Complaint in the above-captioned docket.²

9. On August 15, 2017, Red Lion Authority filed a Petition to Intervene seeking full party status. The Petition is pending.

III. Parties

10. Complainant is a municipal authority organized and existing under the Municipality Authorities Act of 1945, as amended (MAA), with a principal office located at 11 East Broadway, P.O. Box 190, Red Lion, Pennsylvania 17356.

11. Respondent is a public utility corporation certificated by the Commission to offer, render, furnish or supply water service within certain counties in the Commonwealth. Its principal office is located at 130 East Market Street, P.O. Box 15089, York, Pennsylvania 17405.

12. Dallastown-Yoe Water Authority (Dallastown Authority) is a municipal authority organized and existing under MAA, with a principal office located at 175 East Broad Street, Dallastown, Pennsylvania 17313.

IV. Water Sale Agreement between Red Lion Authority and Dallastown Authority

13. Red Lion Authority was established in 1959 for the specific purpose of purchasing substantially all of the assets of the Red Lion Water Company and to provide water

² The parties agreed that York Water did not have to file a responsive pleading to the original filed complaint .

services to the Borough of Red Lion and other adjacent municipalities, including the Borough of Dallastown and the Borough of Yoe.

14. Dallastown Authority was a joint creation of the Boroughs of Dallastown and Yoe to oversee and manage the Boroughs' water services. Since 1959, Red Lion Authority has been the exclusive supplier of water for Dallastown Authority.

15. The most recent Water Sale Agreement between Red Lion Authority and Dallastown Authority was entered into on May 8, 2013 for a term of ten (10) years.

16. Pursuant to Section 1.1 of the Water Sale Agreement, Dallastown Authority agreed to exclusively purchase its water supply from Red Lion Authority with two noted exceptions which would permit Dallastown Authority to purchase water from another entity: (1) Red Lion Authority's inability to supply water due to a *force majeure*; or (2) for the purchase of water necessary to maintain an emergency interconnect.

17. Specifically, Section 4.1 of the Water Sales Agreement states that Dallastown Authority shall have the right to purchase/use the minimum amount of water necessary to maintain the emergency interconnection with the alternative supplier.

V. Violation of York Water Tariff

18. The Proposed Agreement violates York Water's Commission-approved tariff, specifically Tariff Supplement 20 to Water-Pa. P.U.C. No 14, First Revised Page No. 21, effective September 5, 1996. A copy of the Tariff Supplement 20 is provided as Attachment 1.

19. The Respondent's Commission-approved tariff has the force and effect of law and is binding on both the public utility and its customers. 66 Pa.C.S. § 1301; *DiSanto v. Dauphin Consolidated Water Supply Company*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1967, 1070 (Pa. Cmwlth. 1981).

20. Section 4.3 of the Tariff clearly states that York Water may only provide water services to an authority when the authority has "exhausted all alternatives to obtaining an adequate high-quality source of supply" and only upon application by the authority (Emphasis added).

21. Dallastown Authority's Board meeting minutes, dated June 10, 2015, July 8, 2015 and September 15, 2015, confirm that York Water solicited Dallastown Authority seeking an interconnect agreement. A copy of the minutes is provided as Attachment 2.

22. The plain language of the Proposed Agreement makes it clear that York Water will be supplying water to Dallastown Authority *via* an ordinary bulk water purchase agreement.³

³ The Proposed Agreement contemplates the installation of a 12" main connection between the respective systems of York Water and Dallastown Authority, which exceeds the connection needed to maintain an emergency interconnect.

The passing reference to the “emergency purchase” appears in the third recital when referencing the Water Sales Agreement. Quite remarkably, there are no other references in the Proposed Agreement as means for Dallastown Authority to purchase water on an emergency basis from York Water. Finally, the fourth recital of the Proposed Agreement expressly states the true intent between York Water and Dallastown Authority, to wit: provide for the additional sale of water to Dallastown Authority for **resale** to its customers.

23. The Proposed Agreement allows Dallastown Authority to purchase up to 250,000 gallons of water per day. York Water is intentionally providing Dallastown Authority with water in quantities far above what is actually required to maintain the emergency interconnect.

24. In addition to violating York Water’s tariff, the Proposed Agreement intentionally and improperly interferes with Dallastown Authority’s performance under the Water Sales Agreement by requiring Dallastown Authority to purchase water in excess of what is actually necessary to maintain the emergency interconnect. If the Proposed Agreement is permitted to become effective, Dallastown Authority will breach the Water Sales Agreement y each and every month.

VI. Violation of Section 1501 of the Code

25. Section 1501 of the Code, 66 Pa.C.S. § 1501, requires York Water to furnish and maintain adequate, efficient, safe and reasonable service and facilities.

26. Upon information and belief, York Water employs the use of chloramine to treat and disinfect its water supply prior to distribution to customers.

27. In contrast, the water supplied by Red Lion Authority to Dallastown Authority is treated and disinfected with free chlorine.

28. The introduction of York Water's chloramine treated water into Dallastown Authority's water supply will negatively affect the water chemistry and the stability of the water systems of the Dallastown Authority.

29. Free chlorine and chloramine are two chemically distinct compounds that, when mixed, can substantially alter the individual disinfectant qualities of the chemicals and could cause the disinfecting properties of the compounds to dissipate altogether, which could leave the water with inadequate disinfectant and potentially cause public health issues.

30. Red Lion Authority and York Water will each have separate connection points that may dramatically affect the hydraulics of all three systems. To Red Lion's knowledge, no comprehensive hydraulic study has been performed to determine whether York Water's interconnect can be safely operated without potentially endangering the safe operation of all three systems.

31. The Proposed Agreement is silent regarding how a joint supervisory control and data acquisition system (SCADA) will be established and operated by York Water and Red Lion to assure safe and consistent water supply and pressure of the three systems.

VII. Requested Relief

32. The Proposed Agreement should not be permitted to become effective with an evidentiary hearing to develop a record to address the reasonableness and legality of the Proposed Agreement as well as York Water's violation of its tariff by soliciting Dallastown Authority to enter into the Proposed Agreement.

WHEREFORE, Red Lion Municipal Authority respectfully requests that the proposed Emergency Interconnect Agreement between York Water Company and Dallastown-Yoe Water Authority not be permitted to become effective and provide any other relief that the Commission may deem appropriate.

Respectfully submitted,

Dated: August 18, 2017



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Counsel for Red Lion Municipal Authority

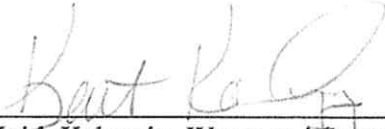
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RED LION MUNICIPAL AUTHORITY :
v. : Docket No. C-2017-2616962
THE YORK WATER COMPANY :

VERIFICATION

I, Keith Kahwajy, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect Red Lion Municipal Water Authority to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904.

Dated: August 19, 2017



Keith Kahwajy, Water and Sewer Superintendent
Red Lion Municipal Authority

Docket No. C-2017-2616962
Red Lion Municipal Authority v. The York Water Company

Attachment 1

Tariff Supplement 20

RULES (Continued)

4. Meter Service (Continued)

Conditions Applicable to Condominium Complex Single-Point Meter Service (Continued)

Where single-point service has been provided and where, thereafter, any building which was part of the original condominium complex is no longer part of the same condominium complex, the Company, after 60 days' notice, shall terminate water service to any such building, and water service to any such building shall be provided only after the Owner or Owners of any such building shall connect such building, at his or their sole expense, by a separate service line or separate service lines to the Company's waterworks facilities. If the Owner or Owners of two or more of such buildings desire to receive single-point meter service for any such buildings, such service shall be provided only upon compliance with conditions for service to an apartment complex or to a condominium complex, as applicable.

Conditions Applicable to Municipalities or Authorities Single-Point Meter Service (C)

- 4.3(a) When a York County municipality or authority has exhausted all alternatives to obtaining an adequate high quality source of supply, they may apply to the Company for the purchase of water. Upon the execution of an agreement satisfactory to the Company, the Company will supply water to the municipality or authority for resale within the service boundaries of the municipality or authority. The Company will bill the municipality or authority at the Company's single-point meter rate where monthly the number of customers of the municipality or authority times 1200 gallons will be billed at the first block rate and any remainder consumption will be billed at the regular block rate or rates.

Separate Meters for Centers, Apartments and Condominiums

- 4.4 Separate meter may be installed for each individual unit in a commercial or industrial center or for each dwelling or other unit in an apartment building or complex or condominium building or complex as heretofore defined after application therefor by the Owner or Owners thereof or by their duly authorized agent, where all the following conditions are satisfied:
1. The service line from the Company's main to the building or buildings containing such units to be metered is less than 100 feet. If the distance is greater than 100 feet, the meter shall be installed in a meter pit or meter pits located at the curb line or the option for separate meters cannot be elected.

(C) Indicates Change

Docket No. C-2017-2616962
Red Lion Municipal Authority v. The York Water Company

Attachment 2

Dallastown Authority's Board Meeting Minutes
June 10, 2015; July 8, 2015; September 15, 2015

**DALLASTOWN-YOE WATER AUTHORITY
175 E. BROAD STREET
DALLASTOWN, PA 17313
JUNE 10, 2015 – 7:00 PM
MEETING MINUTES**

CALL TO ORDER

The June 10th meeting of the Dallastown-Yoe Water Authority was called to order by Authority Chairman, Arthur Wertz, followed by the pledge of allegiance.

MEMBERS PRESENT

Arthur Wertz
Steve Malesker
Tana Bentzel
Patrick Callahan

ALSO PRESENT

Connie Stokes – Borough Manager
David Jones – Stock & Leader - Solicitor
Joe Joines - Maintenance

ABSENT

Patricia Myers
Dennis Sarpen – Engineer

ACTION ON THE 5/13/2015 MEETING MINUTES

Motion: Mr. Callahan moved and was seconded by Mr. Malesker to approve the 5/13/2015 meeting minutes as presented.

Motion carried 4-0.

VISITORS

There were no visitors present.

ENGINEER'S REPORT

Mr. Sarpen, Authority Engineer, was absent from the meeting. No report.

SOLICITOR'S REPORT

- Attorney Jones distributed the draft of the revised Water Authority Rules & Regulations for the Authority members review. There will be a discussion at the next meeting for any questions or concerns the Authority members might have. Disconnection of services needs to be addressed when properties are torn down. The feeling was that it should be on a case by case basis.
- The final version of the Verizon Agreement was ready for approval and signatures. The monthly fee will be \$1300.00.

Motion: Mr. Malesker moved and was seconded by Ms. Bentzel to approve and execute the Verizon Agreement.

Motion carried 4-0.

MANAGER'S REPORT

- The York Water Company is working on their budget and would like to know where DYWA stands with the agreement for the emergency interconnect. Attorney Jones has some issues with the agreement

that York Water drafted concerning the minimum amount of water to be purchased and additional supply of water to be used for re-sale. A meeting is to be scheduled with York Water again in order to discuss.

- The Red Lion Municipal Authority now wants to move DYWA's Scada to their new plant control panel at a cost of \$1800.00. This would allow Red Lion the ability to control the Hardees & Sheetz valves from their computer at the new filter plant. DYWA asked about moving it when the new filter plant was being built, but RLMA did not think it was necessary and did not want to move it at that time. Keith Kahwajy, of RLMA, requested the estimate directly from Keystone. Keystone, in turn, sent the estimate to Joe Joines since DYWA is their actual customer. Attorney Jones suggested that the estimate be forwarded to RLMA. Per the agreement between DYWA & RLMA, any changes requested must be paid by the requestor.
- There are issues with Red Lion keeping the tanks full while DYWA is flushing. The tanks are to be maintained at 77 feet. This will be discussed at the joint meeting in July.
- Tank Level Report
- Master Meter Reads
- Maintenance Log

OTHER BUSINESS TO COME TO THE ATTENTION OF THE AUTHORITY

- Yoe Borough now wants to pave Broad Street in the next couple of years. The project will not include curb and sidewalks, only paving the street. They would like to co-ordinate with DYWA and would like the Authority to do the work next year if possible. Ms. Stokes and Mr. Malesker will do a cost estimate and come up with a plan for the next meeting.

APPROVAL OF BILLS

Motion: Ms. Bentzel moved and was seconded by Mr. Callahan to approve the bills as presented.

Motion carried 4-0.

APPROVAL OF FINANCIAL STATEMENTS

Motion: Mr. Malesker moved and was seconded by Ms. Bentzel to approve the financial statements as presented.

Motion carried 4-0.

ADJOURNMENT

Motion: Mr. Malesker moved and was seconded by Mr. Callahan to adjourn the meeting.

Motion carried 4-0. 7:48 PM

Respectfully Submitted,

Susan A. Wertz

**DALLASTOWN-YOE WATER AUTHORITY
175 E. BROAD STREET
DALLASTOWN, PA 17313
JULY 8, 2015 – 7:00 PM
MEETING MINUTES**

CALL TO ORDER

The July 8th meeting of the Dallastown-Yoe Water Authority was called to order by Authority Chairman, Arthur Wertz, followed by the pledge of allegiance.

MEMBERS PRESENT

Arthur Wertz
Patricia Myers
Steve Malesker
Pat Callahan

ALSO PRESENT

Connie Stokes – Borough Manager
David Jones – Stock & Leader - Solicitor
Dennis Sarpen – Holley & Assoc. - Engineer
Joe Joines - Maintenance

ABSENT

Tana Bentzel

ACTION ON THE 6/10/2015 MEETING MINUTES

Motion: Mr. Malesker moved and was seconded by Ms. Myers to approve the 6/10/2015 meeting minutes as presented.

Motion carried 4-0.

VISITORS

William L. Taylor – 20 S. Charles Street, Dallastown

James Ferner – 233 W. Broad Street, Dallastown

Corporal Miller – York Area Regional Police Department

- James Ferner approached the DYWA concerning the new delinquent procedures which started in June. He felt the fees were extraordinary and poorly executed with no time frame. Attorney Jones stated that the due date for the bills was June 20th. There was a 10 day period between the due date and when the termination notices were mailed (6/30/15) which added \$15.00 to the bill. The posting of the properties that are still delinquent must be done within 10 days of actual water shut offs and that added \$35.00 to the bill. These new procedures were all done according to the law (Water Services Act). The information was advertised and disclosed to all customers beginning in 2014. It was also explained on both water bills this year plus the shut off notice.
- William Taylor complained about the taste & frequent discoloration of the water. Ms. Stokes explained to him that when he has problems with discoloration, he should call the office and a sample will be taken for testing. Mr. Wertz explained to Mr. Taylor that RLMA is responsible for the water quality. With the new filter plant that Red Lion has built, better water quality was promised. Mr. Joines stated that DEP has not given Red Lion the approval to switch back to chloramines from chlorine at this point.
- Cpl. Miller, representing York Area Regional Police Department, was present at the request of the Authority. The Office received a threat from a customer for trespassing at his home stating that someone would be arrested by the evening. The customer did not attend the meeting, so Cpl. Miller was going to pay a visit to his home.

ENGINEER'S REPORT

- Mr. Sarpem had nothing new to report, but asked Mr. Joines if the Red Lion Filter Plant was able to keep up with the tanks. Mr. Joines stated that everything was running good. They were able to make the minimum tank levels on Monday mornings. All tanks are being drafted at this point.
- Mr. Joines also stated that now that the system is split and all the tanks are fluctuating, Red Lion's tanks fill up before Dallastown's do. Mr. Sarpem will check on it. There were some valve problems yesterday which caused the low level alarm from 11:00 am to 8 pm. Red Lion never checked the SCADA due to it being in the old plant, therefore never picked up the alarm.
- The updating of the water lines on Broad Street in Yoe will stay on the agenda. Mr. Malesker stated that it could be Contract #2 of next year's Charles Street project.

SOLICITOR'S REPORT

- The Rules & Regulations are still in review. Mr. Wertz stated that he didn't see anything about the \$35.00 fee for posting. Attorney Jones stated that is done as a resolution.
- The lease for tank usage was sent to Verizon, but Attorney Jones has not received the executed one back yet.
- The posting of the properties for the new procedures was just done this week for the first time. Since it takes about 1-1 ½ days to post 400+, the Authority could postpone the start of the posting by 2 or 3 days.

MANAGER'S REPORT

- Tank Level Report
- Master Meter Reads
- The joint meeting between RLMA and DYWA is on Wednesday, July 22nd starting at 6:00 pm at the Red Lion Borough Office.
Some items to be put on the agenda are:
 1. Tank levels and the return of water in case of a fire. Would they be able to compensate for it?
 2. Maintaining pressure vs. volume
 3. SCADA for the filter plant
- York Water started working on their budget and sent the Authority an agreement for the emergency interconnect. However, Attorney Jones, Mr. Wertz and Ms. Stokes have some concerns with some items and wording. They feel it goes against the contract with Red Lion. There will be a meeting scheduled with York Water to review.

OTHER BUSINESS TO COME BEFORE THE AUTHORITY

There was no other business to come before the Authority.

APPROVAL OF BILLS

Motion: Mr. Malesker moved and was seconded by Ms. Myers to approve the bills as presented.

Motion carried 4-0.

APPROVAL OF FINANCIAL STATEMENTS

Motion: Ms. Myers moved and was seconded by Mr. Callahan to approve the financial statement as presented.

Motion carried 4-0.

ADJOURNMENT

Motion: Mr. Malesker moved and was seconded by Mr. Callahan to adjourn the meeting.

Motion carried 4-0.

Respectfully Submitted,

Susan Wertz

**DALLASTOWN-YOE WATER AUTHORITY
175 E BROAD STREET
DALLASTOWN, PA 17313
SEPTEMBER 9, 2015 – 7:00 PM
MEETING MINUTES**

CALL TO ORDER

The September 9th meeting of the Dallastown-Yoe Water Authority was called to order by Authority Chairman, Arthur Wertz, followed by the pledge of allegiance.

MEMBERS PRESENT

Arthur Wertz
Patricia Myers
Steve Malesker
Pat Callahan

ALSO PRESENT

Connie Stokes – Borough Manager
David Jones – Stock & Leader - Solicitor
Dennis Sarpen – Holley & Assoc. - Engineer

ABSENT

Tana Bentzel

ACTION ON THE 8/10/15 MEETING MINUTES

Motion: Mr. Callahan moved and was seconded by Ms. Myers to approve the 8/10/15 meeting minutes as presented.

Motion carried 4-0.

VISITORS – N/A

ENGINEER'S REPORT

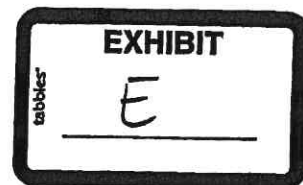
Mr. Sarpen had nothing new to report to the Authority.

SOLICITOR'S REPORT

- The agreement is signed with Verizon for Lion's Park tank.

MANAGER'S REPORT

- The installation of the water line at Ream Roofing is going well. The hydrant is in and Ms. Stokes is looking for completion in approximately 1 ½ to 2 weeks.
- On August 24th there was a 6" shear break on Leaderton which was repaired.
- A leaky valve on Frederick St was also repaired on August 25th.
- The tanks at Lions Park & Denton were emptied and cleaned. Everything went well.
- York Water is to be contacted concerning the Agreement they proposed. The Authority is not interested in anything but the emergency interconnect which will be discussed.
- A \$250,000.00 Certificate of Deposit was opened at Peoples Bank.
- Budget is coming up and Ms. Stokes asked that the Authority think about purchasing a new pickup truck. The Authority agreed that if they would purchase a truck, that it not be used to plow snow.
- Maintenance is exercising valves and installing new meters when able.



- The Open House at the new Red Lion Filter Plant is Saturday, September 26th from 9:00 am to noon. Authority members are to RSVP if they plan to attend.

OTHER BUSINESS TO COME TO THE ATTENTION OF THE AUTHORITY – N/A

APPROVAL OF BILLS

Motion: Mr. Malesker moved and was seconded by Ms. Myers to approve the bills as presented.

Motion carried 4-0.

APPROVAL OF FINANCIAL STATEMENTS

Motion: Ms. Myers moved and was seconded by Mr. Callahan to approve the financial statements as presented.

Motion carried 4-0.

ADJOURNMENT

Motion: Mr. Malesker moved and was seconded by Mr. Callahan to adjourn the meeting.

Motion carried 4-0. 7:13 PM

Respectfully Submitted,

Susan Wertz