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September 18, 2017

Via UPS Delivery

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
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SEP 18 2017

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Re: Docket Nos. U-2017-2610587; C-2017-2616962
Red Lion v. York Water Authority
Answer of Red Lion to Preliminary Objections of York Water**

Dear Secretary Chiavetta:

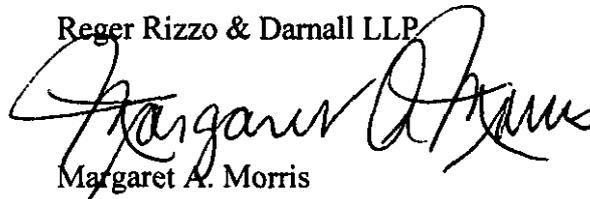
Enclosed for filing are the original and one (1) copy of the Answer of Red Lion Municipal Authority to the Preliminary Objections filed by York Water Company in the above captioned consolidated proceedings. Kindly file the original of record and return the date stamped copy in the enclosed self-addressed, stamped envelope.

A copy of Answer to Preliminary Objections has been provided to the parties in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Enclosures

cc: The Hon. Joel Cheskis, PA Public Utility Commission [w/enc.]
Service List [w/enc.]
Keith Kahwajy, Red Lion Municipal Authority [w/enc.]

**Re: Docket Nos. U-2017-2610587; C-2017-2616962
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CERTIFICATE OF SERVICE

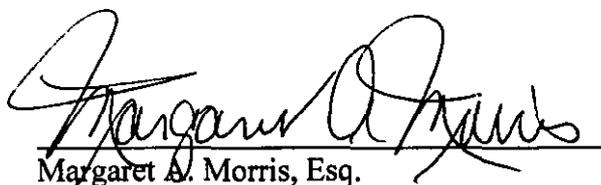
I hereby certify that a true and correct copy of the foregoing document has been served upon the person(s) listed below, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Dated: September 18, 2017


Margaret A. Morris, Esq.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | |
|----------------------------------|----------------|
| APPLICATION OF THE YORK WATER : | |
| COMPANY FOR APPROVAL OF AN : | U-2017-2610587 |
| EMERGENCY INTERCONNECT : | |
| AGREEMENT BETWEEN THE YORK : | |
| WATER COMPANY AND DALLASTOWN- : | |
| YOE WATER COMPANY : | |
| : | |
| : | |
| RED LION MUNICIPAL AUTHORITY : | |
| : | C-2017-2616962 |
| v. : | |
| : | |
| THE YORK WATER COMPANY AND : | |
| DALLASTOWN-YOE WATER AUTHORITY : | |

**RED LION MUNICIPAL AUTHORITY'S ANSWER TO THE
PRELIMINARY OBJECTIONS OF THE YORK WATER
COMPANY**

TO ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

Red Lion Municipal Authority (Red Lion Authority), by and through its attorneys, pursuant to 52 Pa. Code § 5.101(f), hereby files its Answer to the Preliminary Objection of the York Water Company (York Water) filed in the above-captioned consolidated proceedings. Red Lion Authority respectfully requests that the Preliminary Objections be denied and in support thereof avers as follows.

I. BACKGROUND

1. Red Lion Authority admits that York Water is a public utility supplying water and wastewater in the Commonwealth and subject to the regulatory jurisdiction of the Pennsylvania Public Utilities Commission (Commission). Red Lion Authority lacks knowledge or information

sufficient to form a belief as to the truth of the averments regarding the approximate number of York Water customers and counties served and therefore, such averments are denied.

2. Red Lion Authority admits Paragraph 2 of York Water's Preliminary Objections.
3. Red Lion Authority admits Paragraph 3 of York Water's Preliminary Objections.
4. Red Lion Authority admits Paragraph 4 of York Water's Preliminary Objections.
5. Red Lion Authority admits Paragraph 5 of York Water's Preliminary Objections.
6. Red Lion Authority admits Paragraph 6 of York Water's Preliminary Objections.
7. Red Lion Authority admits Paragraph 7 of York Water's Preliminary Objections.
8. Red Lion Authority admits Paragraph 8 of York Water's Preliminary Objections.

By way of further answer, Red Lion Authority avers that its unopposed Petition to Intervene was granted at the September 13, 2017 Prehearing Conference.

9. Red Lion Authority admits Paragraph 9 of York Water's Preliminary Objections.

By way of further response, while the Amended Complaint does not specifically name Dallastown-Yoe Water Authority (Dallastown Authority) as a Respondent, the Amended Complaint references Docket No. U-2017-2610587 to which Dallastown Authority is a party. Furthermore, Docket Nos. U-2017-2610587 and C-2017-2616962 were consolidated without objection at the Prehearing Conference held on September 13, 2017.

10. Red Lion Authority admits Paragraph 10 of York Water's Preliminary Objections.

II. STANDARD OF REVIEW

11. No response is required to Paragraph 11 of York Water's Preliminary Objections.

By way of further response, Red Lion Authority avers that Section 52 Pa. Code § 5.101(a) of the Commission's regulations speaks for itself and any characterization of the regulation is expressly denied.

12. No response is required to Paragraph 12 of York Water's Preliminary Objections. To the extent that a response is required to the conclusion of law, the averments are expressly denied.

13. No response is required to Paragraph 13 of York Water's Preliminary Objections. To the extent that a response is required to the conclusion of law, the averments are expressly denied.

14. No response is required to Paragraph 14 of York Water's Preliminary Objections. To the extent that a response is required to the conclusion of law, the averments are expressly denied.

III. RESPONSE TO PRELIMINARY OBJECTIONS

A. RESPONSE TO PRELIMINARY OBJECTION NO. 1.

THE AMENDED COMPLAINT DOES NOT REQUEST THE COMMISSION TO INTERPRET, ENFORCE OR ADJUDICATE ANY CLAIMS ARISING FROM THE WATER SALES AGREEMENT BETWEEN DALLASTOWN AUTHORITY AND RED LION AUTHORITY.

15. No response is required to Paragraph 15 of York Water's Preliminary Objections, which is an incorporation paragraph. Red Lion Authority hereby incorporates its prior responses herein.

16. Red Lion Authority denies Paragraph 16 of York Water's Preliminary Objections. By way of further response, Red Lion Authority's averments, relative to the executed Water Sales Agreement between Dallastown Authority and Red Lion Authority, are stated to evidence the unreasonableness of the proposed Emergency Interconnect Agreement submitted by York Water seeking Commission approval pursuant to 66 Pa.C.S. § 507. The terms of the Water Sales Agreement specifically permit Dallastown Authority to negotiate and enter into an emergency

interconnect agreement but may only purchase the minimum amount of water necessary to maintain the interconnection. The language in the Water Sales Agreement is in stark contrast to the language of the proposed Emergency Interconnect Agreement. Without any mention or inclusion of the Water Sales Agreement, the Commission will not be unable to properly exercise its discretion to determine the reasonableness, legality and validity of the proposed Emergency Interconnect Agreement pursuant to 66 Pa.C.S. § 507.

17. Red Lion Authority admits Paragraph 17 of York Water's Preliminary Objections. Red Lion incorporates its response to Paragraph 16 as though more thoroughly set forth herein. By way of further response, the proposed Emergency Interconnect Agreement is a disguised bulk water agreement, which York Water pursued with Dallastown Authority in violation of Rule Section 4.3 of its Commission-approved Tariff.

18. Red Lion Authority admits Paragraph 18 of York Water's Preliminary Objections.

19. Red Lion Authority admits Paragraph 19 of York Water's Preliminary Objections. The Amended Complaint speaks for itself and any such characterization in this paragraph is expressly denied. By way of further response, the averments referenced in Paragraph 19 address the reasonableness, legality and validity of the proposed Emergency Interconnect Agreement. Dallastown Authority's current obligations are relevant and intertwined with the Commission's determination of the reasonableness, legality and validity of the proposed Emergency Interconnect Agreement.

20. Red Lion Authority admits Paragraph 20 of York Water's Preliminary Objections. The Amended Complaint speaks for itself and any such characterization of the Amended Complaint in this paragraph is expressly denied. Red Lion incorporates its response to Paragraph 19 as though more thoroughly set forth herein.

21. Red Lion Authority denies Paragraph 21 of York Water's Preliminary Objections. The averments set forth in the Amended Complaint are well within the Commission's jurisdiction, specifically 66 Pa.C.S. §§ 507 and 508. The Commission has broad discretion to determine the "reasonableness, legality and **any other matter affecting the validity of thereof.**" The Water Sales Agreement, which was included in York Water's filing seeking approval of the proposed Emergency Interconnect Agreement, falls directly into the broad discretion afforded by the Code. In any event, York Water opened the door to the Commission's review of the underlying Water Sales Agreement by its own submission of same when it filed the Application seeking Commission approval of the proposed Emergency Interconnect Agreement.

22. Red Lion Authority admits in part and denies in part Paragraph 22 of York Water's Preliminary Objections. Red Lion Authority admits that the Commission only has the powers expressly conferred but denies that Red Lion Authority is requesting the Commission to interpret, enforce or adjudicate the Water Sales Agreement between Dallastown Authority and Red Lion Authority. By way of further response, Red Lion incorporates its response to Paragraph 21 as though more thoroughly set forth herein.

23. Red Lion Authority denies Paragraph 23 of York Water's Preliminary Objections. Red Lion Authority does not request the Commission to interpret, enforce or adjudicate the Water Sales Agreement. Red Lion Authority is requesting the Commission to exercise its authority under the Code and review the reasonableness and legality of the proposed Emergency Interconnect Agreement in light of the Water Sales Agreement. York Water's argument that the Commission should not review, evaluate or even consider the Water Sales Agreement essentially results in a blanket approval of the proposed Emergency Interconnect Agreement with no context or consideration of the impact of that Agreement on the public.

24. Red Lion Authority denies Paragraph 24 of York Water's Preliminary Objections. Red Lion incorporates its response to Paragraphs 22-23 as though more thoroughly set forth herein. By way of further response, Red Lion Authority avers that York Water is in violation of Section 4.3 of its Tariff which states that "[w]hen a York County municipality or authority has exhausted all alternatives to obtaining an adequate high quality source of supply, they may apply to [York Water] for the purchase of water." (Docket No. U-2017-2610587, York Water Response to Data Request 1, U-5). Red Lion Authority avers that, upon information and belief, York Water approached and pursued Dallastown Authority regarding the formation and creation of the proposed Emergency Interconnect Agreement. Said pursuit is a *de facto* violation of York Water's Tariff; however, without evidence regarding the creation and intention of the proposed Emergency Interconnect Agreement or inclusion of the underlying Water Sales Agreement, the Commission will be without pertinent information when making the final determination regarding the proposed Emergency Interconnect Agreement.

25. Red Lion Authority admits in part and denies in part Paragraph 25 of York Water's Preliminary Objections. It is admitted that York Water correctly states the issues over which the Commission has jurisdiction. It is denied that the proposed Emergency Interconnect Agreement's effect on the Water Sales Agreement is not an integral part of the consolidated proceedings, which directly relates to the reasonableness of the proposed Emergency Interconnect Agreement and the Commission's determination of whether the proposed Emergency Interconnect Agreement should be approved.

26. Red Lion Authority denies Paragraph 26 of York Water's Preliminary Objections. Red Lion Authority is not requesting the Commission to interpret or enforce the Water Sales Agreement. Rather, it is imperative that the Commission take notice of and

understand the Water Sales Agreement to determine whether the proposed Emergency Interconnect Agreement actually accomplishes its purported purpose or if it is, in fact, simply a bulk water sales agreement in disguise, a situation which would violate of York Water's Tariff. Red Lion Authority posits that the proposed Emergency Interconnect Agreement violates York Water's Tariff. The issues stated herein are clearly within the Commission's jurisdiction and the Water Sales Agreement is relevant to the determination of those issues. York Water appears to argue that the Commission should simply ignore all relevant evidence outside of the four corners of the proposed Emergency Interconnect Agreement to determine the reasonableness, legality and validity. York Water's position would result, in essence, in the Commission blindly rubberstamping its approval of the Emergency Interconnect Agreement.

27. No response is required to Paragraph 27 of York Water's Preliminary Objections. To the extent that a response is required to the conclusion of law, the averments are expressly denied.

WHEREFORE, Red Lion respectfully requests that this Honorable Court deny York Water's Preliminary Objection No. 1.

B. RESPONSE TO PRELIMINARY OBJECTION NO. 2.

THE COMMISSION HAS CONCURRENT JURISDICTION WITH THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND MAY CONSIDER WATER SUPPLY ISSUES WHEN DETERMINING WHETHER A CONTRACT IS IN THE PUBLIC INTEREST.

28. No response is required to Paragraph 28 of York Water's Preliminary Objections, which is an incorporation paragraph. Red Lion Authority hereby incorporates its prior responses herein.

29. Red Lion Authority admits Paragraph 29 of York Water's Preliminary Objections. The Amended Complaint speaks for itself and any such characterization of the Amended Complaint in this paragraph is expressly denied.

30. Red Lion Authority admits Paragraph 30 of York Water's Preliminary Objections. The Amended Complaint speaks for itself and any such characterization of the Amended Complaint in this paragraph is expressly denied.

31. Red Lion Authority denies Paragraph 31 of York Water's Preliminary Objections. Contrary to York Water's assertions, the Commission is provided very broad jurisdiction under the Code to address issues related to the public interest or wellbeing of the Commonwealth. 66 Pa.C.S. § 508. Further, the Commission has concurrent jurisdiction regarding water quality and water service so as to be permitted to determine whether a water supply is safe and adequate as set forth under 66 Pa.C.S. § 1501. Furthermore, the definition of "service" is to be broadly construed. 66 Pa.C.S. § 102. *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm'n*, 654 A.2d 72, 75-6 (Pa. Cmwlth. 1995). Public utility service includes any and all acts related to the distribution of a utility service. *PECO Energy Co. v. Township of Upper Dublin*, 922 A.2d 996, 1005 (Pa. Cmwlth. 2007). "Any and all acts" clearly encompasses those acts by York Water which would result in the mixing of two separate and distinct chemical treatment processes. It is imperative that the Commission have a full record, which includes any potential ramifications related to the proposed Emergency Interconnect Agreement in order for the Commission to exercise its authority under Section 507 of the Code.

32. Red Lion Authority denies Paragraph 32 of York Water's Preliminary Objections, which repeats Paragraph 22. Red Lion Authority's response to Paragraphs 22 and 31 are incorporated as though more thoroughly set forth herein.

33. Red Lion Authority denies Paragraph 33 of York Water's Preliminary Objections. Red Lion's response to Paragraph 31 is incorporated as though more thoroughly set forth herein.

34. Red Lion Authority denies Paragraph 34 of York Water's Preliminary Objections. Red Lion's response to Paragraph 31 is incorporated as though more thoroughly set forth herein. Furthermore, the instant matter is distinguishable from the *Pickford* case¹ cited by York Water. As stated by York Water, in *Pickford*, the dispute related to the fact that a regulated water company treated their water with chloramine, rather than chlorine. 4 A.3d 707, 713-14. Red Lion Authority does not raise issues regarding the selection of a treatment process. Rather, Red Lion Authority avers the effect of mixing water from its system, treated with chlorine, with water from the York Water system, treated with chloramine, could potentially nullify the disinfectant properties of both supplies.

35. Red Lion Authority denies Paragraph 35 of York Water's Preliminary Objections. Red Lion Authority's responses to Paragraphs 31 and 34 are incorporated as though more thoroughly set forth herein.

36. Red Lion Authority denies Paragraph 36 of York Water's Preliminary Objections. Red Lion's response to Paragraph 31 is incorporated as though more thoroughly set forth herein.

37. Red Lion Authority denies Paragraph 37 of York Water's Preliminary Objections. Red Lion Authority's response to Paragraph 31 is incorporated as though more thoroughly set forth herein. The Commission has jurisdiction to determine the reasonableness and validity of the proposed Emergency Interconnect Agreement. The water safety issues clearly affect the reasonableness of the proposed Emergency Interconnect Agreement. Furthermore, as previously stated herein, the Code at 66 Pa.C.S. § 508 provide the Commission very broad jurisdiction to address any issues related to the approval of the proposed Emergency Interconnect Agreement.

¹ *Pickford v. Pa. PUC*, 4 A.3d 707 (PA. Cmwlth. 2010).

WHEREFORE, Red Lion Authority respectfully requests that this Honorable Court deny York Water's Preliminary Objection No. 2.

C. RESPONSE TO PRELIMINARY OBJECTION NO. 3:

RED LION AUTHORITY DOES NOT ALLEGE AN UNREASONABLE SERVICE CLAIM ON BEHALF OF DALLASTOWN AUTHORITY; RATHER, RED LION AUTHORITY'S AVERMENTS SET FORTH THE TOTALITY OF THE CIRCUMSTANCES REGARDING THE PROPOSED EMERGENCY INTERCONNECT AGREEMENT SO THAT THE COMMISSION IS AWARE OF ALL POTENTIAL ISSUES THAT COULD RESULT FROM THE APPROVAL OF THAT AGREEMENT.

38. No response is required to Paragraph 38 of York Water's Preliminary Objections, which is an incorporation paragraph. Red Lion Authority hereby incorporates its prior responses herein.

39. Red Lion Authority admits Paragraph 39 of York Water's Preliminary Objections.

40. Red Lion Authority admits Paragraph 40 of York Water's Preliminary Objections.

The Amended Complaint speaks for itself and any such characterization of the Amended Complaint in this paragraph is expressly denied.

41. Red Lion Authority denies Paragraph 41 of York Water's Preliminary Objections. Red Lion Authority is not seeking to bring an unreasonable service claim on behalf of Dallastown Authority or its customers. Red Lion Authority seeks the development of a complete record so that Commission can reach a decision regarding the reasonableness and legality of the proposed Emergency Interconnect Agreement that considers the totality of the circumstances.

42. Red Lion Authority admits Paragraph 42 of York Water's Preliminary Objections is a conclusion of law to which no response is required. To the extent a response is necessary, Red Lion's response to Paragraphs 41 is incorporated as though more thoroughly set forth herein.

43. No response is required Paragraph 43 of York Water's Preliminary Objections. To the extent that a response is required to the conclusion of law, the averments are expressly denied.

44. No response is required Paragraph 44 of York Water's Preliminary Objections. To the extent that a response is required to the conclusion of law, the averments are expressly denied.

45. Red Lion Authority denies Paragraph 45 of York Water's Preliminary Objections to the extent that it is not seeking to raise any claims on behalf of Dallastown Authority or its customers. The Amended Complaint speaks for itself and any such characterization of the Amended Complaint in this paragraph is expressly denied. By way of further response, Red Lion Authority's response to Paragraphs 41 is incorporated as though more thoroughly set forth herein. Furthermore, Red Lion Authority avers that no plans have been offered by York Water or Dallastown Authority to support the notion that there will be no issues with the Dallastown Authority system so long as Dallastown Authority "monitors and properly controls the two differently-treated water supplies" with York Water and Red Lion Authority both meeting "the requirements of their public water supply permits issued by DEP." (York Water Preliminary Objections ¶45). In a perfect world, the three systems would work together in harmony but that does not take away from the fact that the Commission needs to be made aware of all potential issues, consequences and effects on the public interest resulting from the proposed Emergency Interconnect Agreement.

46. Red Lion Authority denies Paragraph 46 of York Water's Preliminary Objections. The Amended Complaint speaks for itself and any such characterization of the Amended Complaint in this paragraph is expressly denied. By way of further response, Red Lion

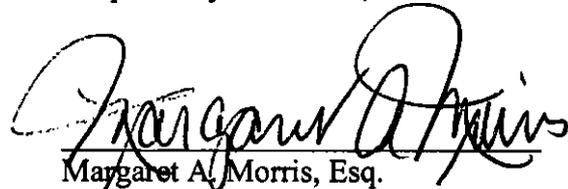
Authority's response to Paragraphs 41 is incorporated as though more thoroughly set forth herein.

WHEREFORE, Red Lion Authority respectfully requests that this Honorable Court deny York Water's Preliminary Objection No. 3.

IV. CONCLUSION

WHEREFORE, Red Lion Municipal Authority respectfully requests that this Honorable Court deny the Preliminary Objections of the York Water Company seeking to strike certain claims raised in the Amended Complaint of Red Lion Municipal Authority.

Respectfully Submitted,



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Dated: September 18, 2017

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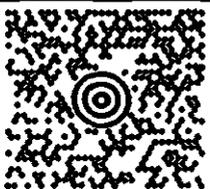
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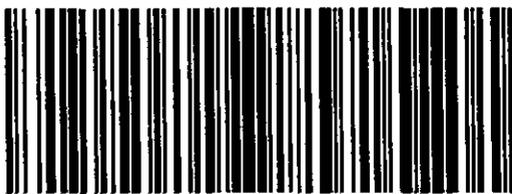


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