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February 28, 2018

VIA ELECTRONIC FILING

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: Application of The York Water Company for Approval of Emergency Interconnect Agreement Between The York Water Company and Dallastown-Yoe Water Authority - Docket No. U-2017-2610587

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

Dear Secretary Chiavetta:

Enclosed for filing is the Main Brief of The York Water Company in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "DR", written over a horizontal line.

Devin Ryan

DTR/jl
Enclosures

cc: Honorable Joel H. Cheskis
Certificate of Service

CERTIFICATE OF SERVICE

(Docket Nos. U-2017-2610587 & C-2017-2616962)

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).

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Date: February 28, 2018



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of The York Water Company for :
Approval of Emergency Interconnect :
Agreement Between The York Water : Docket No. U-2017-2610587
Company and Dallastown-Yoe Water :
Authority :

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

**MAIN BRIEF OF
THE YORK WATER COMPANY**

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TABLE OF CONTENTS

| | Page |
|---|------|
| I. INTRODUCTION | 1 |
| II. STATEMENT OF THE CASE..... | 1 |
| III. QUESTIONS PRESENTED..... | 3 |
| IV. LEGAL STANDARDS | 4 |
| A. BURDEN OF PROOF | 4 |
| B. APPLICABLE LEGAL STANDARDS | 5 |
| V. SUMMARY OF ARGUMENT | 8 |
| VI. ARGUMENT | 10 |
| A. THE EMERGENCY INTERCONNECT AGREEMENT SHOULD BE APPROVED BECAUSE IT IS REASONABLE AND IN THE PUBLIC INTEREST..... | 10 |
| 1. Overview Of The Proposed Emergency Interconnect Agreement | 10 |
| a. Details of the Emergency Interconnect Agreement | 10 |
| b. Details of the Emergency Interconnect Facilities | 12 |
| 2. The Emergency Interconnect Agreement Is Reasonable And In The Public Interest..... | 13 |
| a. The Alternative Source of Supply Benefits DYWA and Its Customers | 13 |
| b. The Minimum Purchase Requirement Meets DYWA’s Goals and Prevents a Negative Impact on York Water’s Customers | 15 |
| c. There Will Be No Negative Operational Impact on York Water’s Customers | 19 |
| d. There Will Be No Negative Impact on Red Lion’s System or Operations | 22 |
| e. There Will Be No Negative Impact on DYWA’s System or Operations | 26 |
| 3. Conclusion | 31 |

B. THE COMMISSION LACKS SUBJECT MATTER JURISDICTION TO INTERPRET RED LION'S WATER SALES AGREEMENT WITH DYWA.....32

VII. CONCLUSION.....37

APPENDIX A – PROPOSED FINDINGS OF FACT

APPENDIX B – PROPOSED CONCLUSIONS OF LAW

APPENDIX C – PROPOSED ORDERING PARAGRAPHS

TABLE OF AUTHORITIES

Page

Pennsylvania Court Decisions

| | |
|--|--------|
| <i>Adams v. Pa. PUC</i> , 819 A.2d 631 (Pa. Cmwlth. 2003)..... | 33 |
| <i>Allegheny Cnty. Port Auth. v. Pa. PUC</i> , 237 A.2d 602 (Pa. 1967)..... | 32 |
| <i>Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.</i> , 923 A.2d 1220 (Pa. Cmwlth. 2007) | 5 |
| <i>Allport Water Auth. v. Winburne Water Co.</i> , 393 A.2d 673 (Pa. Super. 1978)..... | 33, 35 |
| <i>Barasch v. Pa. PUC</i> , 532 A.2d 325 (Pa. 1987) | 15 |
| <i>Bell Tele. Co. v. Pa. PUC</i> , 408 A.2d 917 (Pa. Cmwlth. 1979)..... | 15 |
| <i>Blackwell v. State Ethics Comm'n</i> , 567 A.2d 630 (Pa. 1989)..... | 36 |
| <i>Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n</i> , 942 A.2d 274 (Pa. Cmwlth. 2008)..... | 5 |
| <i>Branch v. Cohen</i> , 736 A.2d 732 (Pa. Cmwlth. 1999)..... | 36 |
| <i>Brown v. Commonwealth</i> , 940 A.2d 610 (Pa. Cmwlth. 2008)..... | 4 |
| <i>Colonial Products Co. v. Pa. PUC</i> , 146 A.2d 657 (Pa. 1958)..... | 18 |
| <i>Commonwealth v. UEC, Inc.</i> , 397 A.2d 779, 785 (Pa. 1979)..... | 36 |
| <i>Commonwealth v. Williams</i> , 557 Pa. 207, 732 A.2d 1167 (1999)..... | 4 |
| <i>Del. River Port Auth. v. Pa. PUC</i> , 145 A.2d 172 (Pa. 1958)..... | 32 |
| <i>Dist. of Columbia's Appeal</i> , 21 A.2d 883 (Pa. 1941) | 4 |
| <i>Fairview Water Co. v. Pa. PUC</i> , 502 A.2d 162 (Pa. 1985)..... | 32 |
| <i>Fed. Deposit Ins. Corp. v. Bd. of Fin. & Revenue</i> , 84 A.2d 495 (Pa. 1951) | 32 |
| <i>Feingold v. Bell of Pa.</i> , 383 A.2d 791 (Pa. 1977)..... | 32 |
| <i>City of Lancaster (Sewer Fund) v. Pa. PUC</i> , 793 A.2d 978 (Pa. Cmwlth. 2002) | 15 |
| <i>In re Condemnation by Sunoco Pipeline, L.P.</i> , 2017 Pa. Commw. Unpub. LEXIS 386 (Pa. Cmwlth. 2017)..... | 6 |

| | |
|---|--------|
| <i>Kossman v. Pa. PUC</i> , 694 A.2d 1147 (Pa. Cmwlth. 1997) | 18 |
| <i>Kyu Son Yi v. State Bd. of Veterinary Med.</i> , 960 A.2d 864 (Pa. Cmwlth. 2008)..... | 5 |
| <i>MacDonald v. Pa. R.R. Co.</i> , 348 Pa. 558, 36 A.2d 492 (1944) | 4 |
| <i>Met-Ed Indus. Users Grp. v. Pa. PUC</i> , 960 A.2d 189 (Pa. Cmwlth. 2008) | 5 |
| <i>Pettko v. Pa. Am. Water Co.</i> , 39 A.3d 473 (Pa. Cmwlth. 2012)..... | 33 |
| <i>Pickford v. Pa. PUC</i> , 4 A.3d 707 (Pa. Cmwlth. 2010) | 30 |
| <i>Popowsky v. Pa. PUC</i> , 910 A.2d 38 (Pa. 2006)..... | 18 |
| <i>Rovin v. Pa. PUC</i> , 502 A.2d 785 (Pa. Cmwlth. 1986)..... | 30 |
| <i>Samuel J. Lansberry, Inc. v. Pa. PUC</i> , 578 A.2d 600 (Pa. Cmwlth. 1990)..... | 4 |
| <i>Shenango Twp. Bd. of Supervisors v. Pa. PUC</i> , 686 A.2d 910 (Pa. Cmwlth. 1996)..... | 8, 34 |
| <i>Virgilli v. Sw. Pa. Water Authority</i> , 427 A.2d 1251 (Pa. Cmwlth. 1981)..... | 33, 35 |
| <i>W. Pa. Water Co. v. Pa. PUC</i> , 370 A.2d 337 (Pa. 1977)..... | 32 |
| <i>White Rock Sewage Corp. v. Pa. PUC</i> , 578 A.2d 984 (Pa. Cmwlth. 1990) | 8, 35 |

Pennsylvania Administrative Agency Decisions

| | |
|--|-----------|
| <i>ALLTELL Pa., Inc. v. West Penn Power Co.</i> , 2000 Pa. PUC LEXIS 88 (Sept. 26, 2000) (Initial Decision), <i>adopted as modified</i> , 2001 Pa. PUC LEXIS 27 (Order entered July 26, 2001) | 8 |
| <i>Apollo Gas Co. v. Heilman</i> , 1994 Pa. PUC LEXIS 30 (Order entered Mar. 10, 1994) | 7, 19, 35 |
| <i>Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence Cnty., Pa.</i> , Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008) | 5 |
| <i>Application of West Penn Power Co.</i> , Docket No. A-111250F0065, 1996 Pa. PUC LEXIS 32 (Feb. 20, 1996) (Recommended Decision)..... | 5 |
| <i>Application of The York Water Co.</i> , 2011 Pa. PUC LEXIS 81 (Order entered Sept. 23, 2011)..... | 6 |

| | |
|---|------------|
| <i>Borough of Montrose v. Keystone Water Co. -- Montrose District,</i> 1983 Pa. PUC LEXIS 72 (Order entered Mar. 18, 1983)..... | 6 |
| <i>Clepper Farms v. Grantham Water Co.,</i> 41 P.U.C. 562 (1964)..... | 19 |
| <i>Pa. PUC v. Bell Atlantic-Pa., Inc.,</i> 1995 Pa. PUC LEXIS 193 (Order entered Sept. 29, 1995)..... | 6 |
| <i>Petition of Pa. Power Co. for Expedited Declaratory Order,</i> 1990 Pa. PUC LEXIS 56 (Order entered Aug. 16, 1990)..... | 6 |
| <i>Petition of The York Water Co. for a Declaratory Order Confirming the Co.'s</i> <i>Auth. to Offer or Furnish Water Serv. to the Cross Keys Vill. – The Brethren</i> <i>Home Cmty. in the Twp. of Oxford, Adams Cnty., Pa.,</i> Docket No. P-2010-2195786 (Order entered Dec. 22, 2010)..... | 33, 34, 35 |
| <i>Replegle v. Pa. Elec. Co.,</i> 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980)..... | 4 |

Pennsylvania Statutes & Regulations

| | |
|--|---------------|
| 1 Pa.C.S. § 1932..... | 7 |
| 2 Pa.C.S. § 704..... | 5 |
| 66 Pa.C.S. § 332(a)..... | 4 |
| 66 Pa.C.S. § 507..... | <i>passim</i> |
| 66 Pa.C.S. § 508..... | <i>passim</i> |
| 66 Pa.C.S. § 1301..... | 15 |
| 66 Pa.C.S. § 1308(d)..... | 15 |
| 25 Pa. Code §§ 1.1, <i>et seq.</i> | 30 |
| 52 Pa. Code § 65.21 | 18 |

I. INTRODUCTION

On June 16, 2017, The York Water Company (“York Water” or the “Company”) filed the above-captioned Application with the Pennsylvania Public Utility Commission (“Commission”) seeking approval of an Emergency Interconnect Agreement (“Agreement”) entered into by and between the Company and Dallastown-Yoe Water Authority (“DYWA”). DYWA is a municipal water authority and is not regulated by the Commission. If approved, York Water will construct an emergency interconnect in its certificated service territory that provides an alternative source of water supply to DYWA when called upon. Currently, DYWA only has one source of water supply—Red Lion Municipal Authority (“Red Lion”). Red Lion also is a municipal water authority and is not regulated by the Commission. Red Lion has filed a Complaint challenging the proposed Emergency Interconnect Agreement.

As explained in this Main Brief, the Commission should dismiss Red Lion’s Complaint and approve the proposed Emergency Interconnect Agreement because the Agreement is reasonable and in the public interest.

II. STATEMENT OF THE CASE

On June 16, 2017, pursuant to 66 Pa. C.S. § 507, York Water filed a proposed Emergency Interconnect Agreement entered into by and between the Company and DYWA. The proceeding was assigned Docket No. U-2017-2610587.

On July 5, 2017, Red Lion filed a letter at Docket No. U-2017-2610587 advising that it is opposed to the Agreement for various reasons and would be filing a Formal Complaint with the Commission to that effect.

By letter dated July 17, 2017, Red Lion filed a Formal Complaint with the Commission against the Company and DYWA at Docket No. C-2017-2616962.

Subsequently, Red Lion advised the other parties that it intended to amend its Formal Complaint.

On August 11, 2017, an informal prehearing conference was held before Administrative Law Judge Joel H. Cheskis (the "ALJ") to discuss the amendment of the Formal Complaint. As a result of that prehearing conference, Red Lion was given until August 18, 2017, to file its Amended Complaint, after which York Water would have until September 7, 2017, to file any responsive pleadings.

On August 14, 2017, the Commission issued a Telephonic Prehearing Conference Notice scheduling a prehearing conference for September 13, 2017, before the ALJ.

On August 15, 2017, Red Lion filed a Petition to Intervene at Docket No. U-2017-2610587.

On August 18, 2017, Red Lion filed its Amended Complaint at Docket No. C-2017-2616962, which replaced the original Formal Complaint. The Amended Complaint did not name DYWA as a respondent.

On August 23, 2017, a Prehearing Conference Order was issued by the ALJ at Docket Nos. C-2017-2616962 and U-2017-2610587, setting forth certain rules and requirements for the prehearing conference and the proceeding generally. The Prehearing Conference Order also directed the parties to submit prehearing memoranda on or before September 6, 2017.

Prehearing memoranda were filed by York Water, Red Lion, and DYWA on September 6, 2017, in accordance with the Prehearing Conference Order.

On September 6, 2017, DYWA filed a Notice of Appearance.

On September 7, 2017, York Water filed an Answer, New Matter, and Preliminary Objections to the Amended Complaint.

On September 13, 2017, a Telephonic Prehearing Conference was held before the ALJ.

On September 14, 2017, the ALJ issued a Scheduling Order that, among other things, established the litigation schedule and procedural rules for the proceeding.

Also on September 14, 2017, a Hearing Notice was issued scheduling the evidentiary hearing for January 23, 2018, at 10:00 AM in Harrisburg, Pennsylvania.

On September 29, 2017, the parties filed a Joint Petition for Protective Order.

On October 16, 2017, the ALJ issued an Order Denying York Water's Preliminary Objections.

On October 23, 2017, the ALJ issued an Order Granting the Joint Petition for Protective Order.

On October 30, 2017, York Water served its direct testimony and exhibits in support of its Application.

On December 4, 2017, Red Lion served its direct testimony and exhibit.

On January 12, 2018, York Water served its rebuttal testimony and exhibits.

On January 23, 2018, an evidentiary hearing was held, at which: (1) York Water's and Red Lion's pre-served testimony and exhibits were admitted into the record; and (2) the parties conducted cross-examination of the witnesses.

On January 25, 2018, the ALJ issued a Briefing Order setting forth requirements for the briefs to be submitted in this proceeding.

III. QUESTIONS PRESENTED

1. Whether the Emergency Interconnect Agreement entered into by and between York Water and DYWA is reasonable and in the public interest and should be approved.

Suggested answer: *in the affirmative.*

2. Whether the Commission lacks subject matter jurisdiction to interpret Red Lion's Water Sales Agreement with DYWA.

Suggested answer: *in the affirmative.*

IV. LEGAL STANDARDS

A. BURDEN OF PROOF

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of*

Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence Cnty., Pa., Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).¹

B. APPLICABLE LEGAL STANDARDS

Section 507 of the Public Utility Code requires Commission approval of contracts between a public utility and a municipal corporation, except for contracts to furnish service at regularly filed and published tariff rates.² *See id.* § 507. To be valid, the contract must be filed with the Commission at least 30 days prior to its effective date. *See id.* “Upon notice to the municipal authorities, and the public utility concerned,” the Commission can institute proceedings prior to the contract’s effective date “to determine the reasonableness, legality or any other matter affecting the validity thereof.” *Id.* The contract is then not effective until the Commission approves it. *See id.*

In reviewing such a contract, the Commission will approve the contract if it determines the contract is reasonable and in the public interest. *See Application of West Penn Power Co.*, Docket No. A-111250F0065, 1996 Pa. PUC LEXIS 32, at *32, 34 (Feb. 20, 1996) (Recommended Decision) (approving municipal agreement to transfer facilities pursuant to Section 507 because it was “reasonable”), *adopted*, (Order entered Mar. 14, 1996); *Borough of*

¹ In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

² The proposed contract between York Water and DYWA does provide for service at York Water’s regularly filed and published tariff rates. The contract also provides for a minimum bill provision and for York Water to construct facilities necessary to provide the requested service. These contract provisions are described later in this Brief.

Montrose v. Keystone Water Co. -- Montrose District, 1983 Pa. PUC LEXIS 72, at *9-15 (Order entered Mar. 18, 1983) (stating that although the Commission had the power to reform the settlement agreement between the Borough of Montrose and Keystone Water Company under 66 Pa. C.S. § 508 if necessary, the contract was approved without modification because it was “in the public interest”); *Application of The York Water Co.*, 2011 Pa. PUC LEXIS 81, at *11 (Order entered Sept. 23, 2011) (approving settlement agreement pursuant to Section 507 because it was “just and reasonable”).

“Historically, the public interest has been defined . . . to include ratepayers, shareholders, and the regulated community.” *Pa. PUC v. Bell Atlantic-Pa., Inc.*, 1995 Pa. PUC LEXIS 193, at *34 (Order entered Sept. 29, 1995). When determining if a public utility’s proposal is in the public interest, the Commission generally evaluates the benefits of the proposal. *See Petition of Pa. Power Co. for Expedited Declaratory Order*, 1990 Pa. PUC LEXIS 56, at *4-6 (Order entered Aug. 16, 1990) (finding that the special contract with Sharon Steel was in the public interest because it conferred benefits to the utility, its ratepayers, and Sharon Steel); *In re Condemnation by Sunoco Pipeline, L.P.*, 2017 Pa. Commw. Unpub. LEXIS 386, at *13 (Pa. Cmwlth. 2017) (observing that the Commission found the petition to be in the public interest and that the proposed service “will result in numerous potential public benefits”), *appeal denied*, 2018 Pa. LEXIS 475 (Pa. Jan. 22, 2018).

In addition, Section 508 of the Public Utility Code empowers the Commission to revise, reform, or vary public utility contracts in certain circumstances. *See* 66 Pa. C.S. § 508. Specifically, Section 508 states as follows:

The commission shall have power and authority to vary, reform, or revise, upon a fair, reasonable, and equitable basis, any obligations, terms, or conditions of any contract heretofore or hereafter entered into between any public utility and any person, corporation, or

municipal corporation, which embrace or concern a public right, benefit, privilege, duty, or franchise, or the grant thereof, or are otherwise affected or concerned with the public interest and the general well-being of this Commonwealth. Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms, and conditions of such contract. Such contract, as modified by the order of the commission, shall become effective 30 days after service of such order upon the parties to such contract.

Id. (emphasis added). Stated otherwise, the Commission can only revise, reform, or vary a public utility contract when: (1) the contract embraces a public right or concerns the public interest and general wellbeing of Pennsylvania; and (2) the contract terms being revised are found to be unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and general wellbeing of Pennsylvania. *See id.*; *see Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 913-14 (Pa. Cmwlth. 1996) (“Section 508 does not establish precise guidelines for the exercise of the PUC’s contract reformation authority, but it does give the PUC broad and flexible range to find that a contract’s terms are ‘unjust, unreasonable, inequitable, or otherwise contrary or adverse to public interest.’”) (quoting 66 Pa. C.S. § 508).

The Commission’s authority under Section 508 is not unlimited. The Commission can only revise, reform, or vary a public utility contract that is “imbued with the public interest,” such as contracts between utilities and ratepayers, service contracts, procurement contracts, and agreements that affect the costs borne by a utility’s ratepayers. *Apollo Gas Co. v. Heilman*, 1994 Pa. PUC LEXIS 30, at *17 (Order entered Mar. 10, 1994). Further, “Section 508 must be read *in pari materia* with other sections of the Public Utility Code that may be relevant to determining if a particular factual scenario is a proper subject for the exercise of the PUC’s contract reform

power.” *Shenango Twp.*, 686 A.2d at 914 (citing 1 Pa. C.S. § 1932; *White Rock Sewage Corp. v. Pa. PUC*, 578 A.2d 984 (Pa. Cmwlth. 1990)). Moreover, Section 508 does not empower the Commission to vary, reform, or revise a contract provision simply because “the result will be undesirable, aesthetically displeasing, inefficient, or disadvantageous” to a party. *ALLTELL Pa., Inc. v. West Penn Power Co.*, 2000 Pa. PUC LEXIS 88, at *52 (Sept. 26, 2000) (Initial Decision), *adopted as modified*, 2001 Pa. PUC LEXIS 27, at *24-25 (Order entered July 26, 2001).

V. SUMMARY OF ARGUMENT

York Water’s proposed Emergency Interconnect Agreement is reasonable and in the public interest and, therefore, should be approved. The emergency interconnect that would be constructed pursuant to that Agreement would confer substantial benefits to DYWA. DYWA only has one source of water supply currently, and the emergency interconnect would provide an alternative source of water supply if called upon by DYWA. Indeed, the Pennsylvania Department of Environmental Protection (“DEP”) has encouraged water providers, including DYWA, to secure alternative sources of supply in case an issue arises with their current supplier. In fact, York Water’s emergency interconnect with another municipal entity proved to be vital in allowing that water provider to continue meeting its customers’ demands.

In addition, the Emergency Interconnect Agreement includes a minimum purchase requirement that meets DYWA’s goals and prevents a negative impact on York Water’s customers. DYWA did not want to provide an upfront capital contribution toward the construction of new York Water facilities needed for the emergency interconnect. Therefore, the parties agreed on a minimum purchase requirement that would produce sufficient revenues to

cover the capital costs and expenses of York Water's emergency interconnect and associated facilities.

Further, the Agreement will not otherwise have any negative operational impact on York Water. York Water's available water supply and existing and proposed facilities are more than sufficient to meet the requirements under the Agreement. There also will be no negative impact on Red Lion's system or operations. York Water's un rebutted hydraulic analyses demonstrate that there will be no impact on the hydraulics of Red Lion's system, namely because York Water's emergency interconnect will be in the lower pressure zone of DYWA's distribution system, whereas Red Lion's interconnects are in the upper pressure zone.

In addition, DYWA's system and operations will not be negatively affected by the Agreement. To the contrary, the emergency interconnect will confer substantial benefits to DYWA's system and operations as it will be an alternative source of water supply. Red Lion's claims that the interconnection would harm DYWA's operations are unsupported and must be rejected. Moreover, Red Lion's claims that DYWA's tanks could overflow should be rejected because York Water and Red Lion will be pumping water into different tanks and because York Water's pumps and DYWA's valves automatically shut off when tank levels reach a defined elevation. Furthermore, there should be no issues with the blending of York Water's and Red Lion's differently-treated water supplies. Although DEP has exclusive jurisdiction over the disinfectant treatment of water suppliers, York Water has demonstrated that no issues will occur so long as the appropriate ratio of ammonia to chlorine is maintained in the water supply, and Red Lion has not rebutted the Company's findings with any credible analysis.

Finally, Red Lion has claimed that the Emergency Interconnect Agreement violates the terms of its Water Sales Agreement with DYWA. As a creature of statute, the Commission only

has those powers granted to it by the General Assembly, and no waiver, agreement, or stipulation by a party can afford the Commission subject matter jurisdiction. Nothing in the Public Utility Code empowers the Commission to interpret and enforce the terms of the Water Sales Agreement between two municipal water authorities that are not subject to the Commission's regulatory oversight. Therefore, Red Lion's attempt to bring these contract issues into this case should be denied.

For these reasons, and as further explained in detail below, the Commission should grant the above-captioned Application and approve the Emergency Interconnect Agreement by and between York Water and DYWA.

VI. ARGUMENT

A. THE EMERGENCY INTERCONNECT AGREEMENT SHOULD BE APPROVED BECAUSE IT IS REASONABLE AND IN THE PUBLIC INTEREST

1. Overview Of The Proposed Emergency Interconnect Agreement

a. Details of the Emergency Interconnect Agreement

York Water and DYWA have entered into a proposed Emergency Interconnect Agreement, under which the Company would design, construct, operate, and maintain (at its sole expense) an emergency interconnect and related facilities to serve as an additional source of supply for DYWA's water distribution system. (York Water Statement No. 1, p. 4, lines 11-13) The Agreement was negotiated after DYWA representatives approached York Water about their desire for an alternative source of supply. (York Water Statement No. 3, p. 5, line 18 to p. 6, line 18) Currently, DYWA only has one source of supply—Red Lion. (York Water Statement No. 1, p. 9, line 13)

Through the emergency interconnect, the Company would only provide water supply to the extent called upon by DYWA. In other words, DYWA is not required to take a minimum amount of water under the Agreement. However, if called upon, the Agreement provides that the emergency interconnect could furnish water supply to DYWA in quantities of up to a maximum of 250,000 gallons per day at a flow rate not to exceed 200 gallons per minute. (York Water Statement No. 1, p. 5, lines 15-20)

Regardless of whether DYWA uses water or not, DYWA must make a monthly minimum payment to York Water under the Agreement. Specifically, DYWA will be billed for a minimum purchase of not less than 3 million gallons per month but not more than 250,000 gallons per day, even if it does not take any water through the emergency interconnect. (York Water Statement No. 1, p. 7, lines 8-11) Based on the minimum charge of 3 million gallons per month, DYWA would pay York Water approximately \$20,731 per month, *i.e.*, \$248,772 per year. (York Water Statement No. 1, p. 7, lines 15-17; York Water Exhibit JTH-2) DYWA has indicated that it intends to take a minimum of 3 million gallons per month from York Water because this would reduce its overall water purchase cost compared to paying York Water the minimum bill and taking no water from the Company. (Tr. 79, line 15 to Tr. 80, line 3)

This minimum purchase requirement was developed through an iterative negotiation process between York Water and DYWA. This process took into consideration the existing physical characteristics in both the York Water and DYWA distribution systems at the proposed interconnect location, projected revenues and expenses, anticipated capital costs for both York Water and DYWA, the hydraulic conditions in both the York Water and DYWA distribution systems, the effect on York Water's existing Water Allocation Permit due to York Water's commitment to provide a backup supply of water to DYWA, and the minimum amount of water

DYWA desired to have assurance of via an emergency interconnect. (York Water Statement No. 1-R, p. 6, lines 16-23)

b. Details of the Emergency Interconnect Facilities

To meet its obligations under the Agreement, York Water will build a not less than 12-inch water main extension approximately 600 feet long from the Company's existing distribution system to a proposed interconnection location within its certificated service territory.³ (York Water Statement No. 1, p. 5, lines 3-7) The planned location is shown in Exhibit "A" to the Agreement. (York Water Statement No. 1, p. 5, lines 1-2; York Water Exhibit JTH-1) In addition to the water main extension, York Water will construct a booster station with chemical feed systems, data controls, and backup power to supply water to DYWA. (York Water Statement No. 1, p. 5, lines 7-11) York Water must obtain a permit from DEP for the final design of the booster station. (York Water Statement No. 1, p. 8, lines 11-15)

The Company estimates that it will incur annual expenses of \$69,596 due to the emergency interconnect, based upon assumed purchased of 3 million gallons per month. (York Water Exhibit JTH-3) This estimate does not include a return on investment. (York Water Statement No. 1, p. 7, lines 21-23) The estimated costs for the 12-inch water main extension and the booster station are \$306,049 and \$420,000, respectively. (York Water Statement No. 1, p. 8, lines 5-15; York Water Exhibits JTH-4 and JTH-5)

As explained in Section VI.A.2.b., DYWA was unwilling to make an upfront contribution toward the emergency interconnect. Accordingly, the parties negotiated a minimum purchase requirement to ensure that York Water receives sufficient revenue to cover the capital

³ DYWA will build a water main extension not less than 6 inches in diameter to the proposed interconnection location in its system's lower pressure zone. Such water main extension should be physically able to receive the quantities of water at the flow rates set forth in the Agreement. (York Water Statement No. 3, p. 7, lines 10-22)

costs and expenses associated with the construction and operation of the emergency interconnect. Such alternative arrangements for extensions of facilities are expressly permitted by York Water's Commission-approved tariff. See Supplement No. 21 to Water-Pa. P.U.C. No. 14, First Revised Page No. 15, Rule 3.11.6 ("The Company, in its discretion, and with the agreement of the applicant, may enter into a Main Extension Agreement with alternative terms and conditions for funding of extensions if the Company concludes that the extension will provide a reasonable return or otherwise is in the long term interest of its customers.").

2. The Emergency Interconnect Agreement Is Reasonable And In The Public Interest

a. The Alternative Source of Supply Benefits DYWA and Its Customers

The proposed emergency interconnect will provide an alternative source of supply to DYWA, conferring substantial benefits to DYWA and its customers as a result. DYWA only has one current source of water supply – Red Lion. DYWA does not own or operate its own water treatment plant and is totally reliant upon Red Lion. If something were to happen that negatively affects Red Lion's source of supply, treatment works, or distribution system, DYWA may be unable to meet the water service demands of its customers. (York Water Statement No. 1, p. 9, lines 13-17; York Water Statement No. 3, p. 5, lines 4-12; p. 6, line 22 to p. 7, line 4)

Recent local and national incidents have demonstrated the benefits of having multiple sources of water supply, and alternate sources of supply have become a focus in not only Pennsylvania, but across the United States. (York Water Statement No. 1, p. 9, line 17 to p. 11, line 2; York Water Exhibit JTH-7) Indeed, York Water has several interconnections with other municipal entities, including an emergency interconnect with New Oxford Municipal Authority ("NOMA") that was constructed in 2011. (York Water Statement No. 1, p. 10, lines 14-15; p. 11, line 22 to p. 12, line 1) When a fire forced NOMA to shut down its single intake in June

2015, York Water was able to provide nearly 100% of NOMA's water demand for two and a half months through the emergency interconnect, which equated to over 52 million gallons of water. (York Water Statement No. 1, p. 10, lines 11-17) DEP commended NOMA for having the foresight to arrange for this emergency interconnect before this situation occurred. (York Water Statement No. 1, p. 10, lines 17-21; *see* York Water Exhibit JTH-7)

To prevent such incidents or mitigate their impact, DEP encourages community water suppliers ("CWSs") to maintain more than one source of supply. (York Water Statement No. 1, p. 9, lines 6-12; York Water Exhibit JTH-6) Similarly, DEP even recently spoke with DYWA in 2016 about securing another source of water supply. (York Water Statement No. 3, p. 5, lines 10-12) As demonstrated by NOMA's emergency interconnect with York Water, the emergency interconnect is only beneficial if it is in service prior to an incident affecting service. Thus, the proposed emergency interconnect will provide substantial benefits to DYWA and its customers because it will help ensure that DYWA can continue providing service to its customers, even if issues arise with Red Lion's water supply.

Red Lion may contend that the emergency interconnect's design cannot meet all of the water supply needs of DYWA in the event that Red Lion's system completely shuts down. DYWA acknowledges this fact. (Tr. 61, line 23 to Tr. 62, line 6) DYWA made the decision not to pay, or agree to a minimum bill, that would serve 100% of DYWA's normal requirements because of the substantial cost to do so. (York Water Statement No. 1-R, p. 7, lines 1-20) This fact does not negate the benefits of the emergency interconnect. The emergency interconnect would provide an additional source of supply if Red Lion were unable to meet DYWA's needs in part. (York Water Statement No. 1, p. 9, lines 13-20; p. 15, lines 16-17) The emergency interconnect also could be combined with other emergency measures that could be taken by

DYWA to reduce customer usage to essential human needs. The inability of DYWA to afford a 100% redundant emergency interconnect does not alter the fact that the alternative source of supply substantially benefits DYWA and its customers.

b. The Minimum Purchase Requirement Meets DYWA's Goals and Prevents a Negative Impact on York Water's Customers

The Emergency Interconnect Agreement will meet DYWA's goals and have no negative impact on York Water's customers because it includes a minimum purchase requirement. By way of background, the revenues, expenses, and plant associated with the proposed emergency interconnect will be reflected in base rates in future rate cases. *See* 66 Pa. C.S. §§ 1301, 1308(d); *Barasch v. Pa. PUC*, 532 A.2d 325, 335-36 (Pa. 1987); *City of Lancaster (Sewer Fund) v. Pa. PUC*, 793 A.2d 978, 981 n.1 (Pa. Cmwlth. 2002). As the Commonwealth Court has summarized:

The making of public utility rates requires four basic determinations:

1. The company's *gross utility revenues* under the rate structure examined.
2. The *operating expenses* including all taxes appropriately incurred to produce gross revenues.
3. The *rate base*, which is all property which actually provides the service for which rates are charged and represents the base on which a return should be earned.
4. The *rate of return*, a percentage figure applied to the rate base which yields the return to which investors in the utility are reasonably entitled.

Bell Tele. Co. v. Pa. PUC, 408 A.2d 917, 920-21 (Pa. Cmwlth. 1979) (emphasis in original).

Therefore, absent revenues sufficient to cover all of these capital costs and expenses associated with the emergency interconnect, such capital costs and expenses will be borne by York Water's other ratepayers. (*See* York Water Statement No. 1-R, p. 4, lines 18-19)

In negotiating the Emergency Interconnect Agreement, York Water and DYWA considered several options to cover the costs and expenses associated with establishing the emergency interconnect with a capability to deliver water at a rate of 250,000 gallons per day. (York Water Statement No. 1-R, p. 7, lines 1-20) Because DYWA was unwilling to make an upfront capital contribution toward construction of the necessary York Water facilities for the emergency interconnect, the parties examined alternatives. (York Water Statement No. 1-R, p. 7, lines 4-16)

Ultimately, the parties agreed on a minimum charge to DYWA that will produce sufficient revenue to cover the capital costs and expenses of constructing and maintaining the emergency interconnect. (York Water Statement No. 1-R, p. 7, lines 16-20) As explained previously, the minimum bill that DYWA would pay York Water, which is based upon 3 million gallons per month, is approximately \$20,731 per month, *i.e.*, \$248,772 per year, at current rates. (York Water Statement No. 1, p. 7, lines 15-17; York Water Exhibit JTH-2) The Company projects a capital investment of \$306,049.08 for the main extension and \$420,000 for construction of the booster station, which are necessary if York Water is to have the capability to supply up to 250,000 gallons per day if needed by DYWA.⁴ (York Water Statement No. 1-R, p. 4, lines 7-10) York Water's most recent pre-tax rate of return for Distribution System Improvement Charge ("DSIC") purposes is 11.93%. (York Water Statement No. 1-R, p. 4, lines 10-12) When using this number as a proxy, the return requirement is over \$86,600 annually. (York Water Statement No. 1-R, p. 4, lines 13-14) Moreover, the expense and return amounts above do not consider any contribution toward the investment in existing backbone plant, such as treatment facilities, standpipes, and existing mains. (York Water Statement No. 1-R, p. 4, lines

⁴ The Emergency Interconnect Agreement authorizes DYWA to purchase no more than 250,000 gallons per day. (York Water Statement No. 1, p. 5, lines 15-20)

16-18) It is reasonable and fair to York Water's existing customers that some amount of revenue be available to contribute toward backbone plant because the requested service could not be provided without those existing facilities that are reflected in customers' rates. It is clear that the minimum bill based upon 3 million gallons per month produces sufficient revenues to cover the expected costs associated with the proposed emergency interconnect and provide a contribution toward backbone plant. (See York Water Statement No. 1-R, p. 5, lines 2-5) This meets the terms of York Water's Commission-approved tariff, which requires alternative terms for financing extensions to provide a "reasonable return." See Supplement No. 21 to Water-Pa. P.U.C. No. 14, First Revised Page No. 15, Rule 3.11.6.

In contrast, Red Lion avers that DYWA once represented in 2011 that the minimum amount necessary to maintain an interconnect with York Water would be 1,000 gallons per day. (Red Lion Statement No. 1, p. 12, lines 11-13) A minimum bill based upon 1,000 gallons per day is woefully inadequate to cover even the annual expenses for the emergency interconnect. Under the Company's current tariffed rates, 1,000 gallons per day would only produce approximately \$5,114 in annual revenue, including monthly customer charge revenues. (York Water Statement No. 1-R, p. 4, lines 1-3; York Water Exhibit JTH-1R) By comparison, based on Red Lion's 1,000 gallons per day figure, the total annual expenses York Water would expect to incur, excluding return on capital to be invested, would be \$24,478. (York Water Statement No. 1-R, p. 4, lines 3-6; York Water Exhibit JTH-2R) Therefore, 1,000 gallons per day would not even produce revenues sufficient to cover the expenses incurred in operating and maintaining the emergency interconnect, let alone cover all of the other capital costs identified previously. Such a minimum bill provision completely fails to meet the "reasonable return" criteria for an alternative agreement for extension of facilities. Moreover, such a minimum bill would fail to

satisfy the “public interest” standards of Sections 507 and 508 of the Public Utility Code, as York Water’s existing customers would receive no benefit.⁵

Furthermore, Red Lion’s entire argument is solely based on the meeting minutes from a joint meeting held by RLMA and DYWA representatives on July 13, 2011, where an unnamed DYWA representative apparently said that someone at York Water is “requiring that DYWA use 1,000 gals per day.” (See RLMA Exhibit KK-1, p. 2; York Water Exhibit JTH-3R) York Water has no records or recollection of that representation, nor could its representatives make such representation. (York Water Statement No. 1-R, p. 5, lines 11-22) At that time, the Company had neither even made any estimate of the cost of facilities to connect, nor had any information as to what DYWA’s maximum daily deliveries through the emergency interconnect might be. (York Water Statement No. 1-R, p. 5, line 22 to p. 6, line 2) Moreover, the meeting referenced by Red Lion occurred over six years ago and predates Red Lion’s most recent Water Sales Agreement with DYWA. (York Water Statement No. 1-R, p. 6, lines 6-9) Therefore, even if someone from DYWA believed over six years ago that York Water would construct an emergency interconnect with a minimum volumetric commitment of 1,000 gallons per day, such a claim is no longer relevant to DYWA’s current needs, York Water’s necessary investment and costs to serve DYWA, or the proposed emergency interconnect. (York Water Statement No. 1-R, p. 6, lines 9-13)

⁵ See *Popowsky v. Pa. PUC*, 910 A.2d 38, 55-56 (Pa. 2006) (recognizing that well-established case law generally requires water utilities “to fund main line extension requests made by bona fide service applicants, but only so long as the project would not burden existing customers nor cause material economic harm to the companies”) (emphasis added) (citations omitted); *Kossmann v. Pa. PUC*, 694 A.2d 1147, 1150 (Pa. Cmwlth. 1997) (“Where one customer receives the benefit and convenience of a utility’s improvements, that customer should be expected to contribute to the cost of those improvements.”) (citing *Colonial Products Co. v. Pa. PUC*, 146 A.2d 657, 663 (Pa. 1958)); see also 52 Pa. Code § 65.21 (setting forth the Commission’s policy statement on public utilities’ line extensions and stating that a customer advance may be required “[i]f the annual revenue from the line extension will not equal or exceed the utility’s annual line extension costs”).

For these reasons, establishing the proposed emergency interconnect based upon a minimum bill of 1,000 gallons per day would be unreasonable and adverse to the public interest, and Red Lion's argument should be rejected.

Based on the foregoing, the Emergency Interconnect Agreement should be approved because the minimum purchase requirement aligns with DYWA's goal of not making an upfront capital contribution and will prevent a negative impact on York Water's customers. *See Apollo Gas*, 1994 Pa. PUC LEXIS 30, at *30 ("We have refused to interfere with private contractual arrangements so long as the utility's practices and commitments are not prejudicial to its customers and do not impose any unreasonable rate burden upon them.") (emphasis in original) (citing *Clepper Farms v. Grantham Water Co.*, 41 P.U.C. 562, 566 (1964)).

c. There Will Be No Negative Operational Impact on York Water's Customers

The Emergency Interconnect Agreement will have no negative operational impact on York Water's customers because the Company's available water supply and its existing and proposed facilities are more than sufficient to meet the requirements under the Agreement.

First, York Water has demonstrated that it has more than enough available water to meet its supply requirements under the Agreement. As explained previously, if called upon, the Agreement provides that the emergency interconnect could furnish water supply to DYWA in quantities of up to a maximum of 250,000 gallons per day at a flow rate not to exceed 200 gallons per minute. (York Water Statement No. 1, p. 5, lines 17-20)

Here, the Company holds a water allocation permit issued by DEP, which grants the Company the right to withdraw up to a maximum of 12.0 million gallons per day ("mgd") from the Susquehanna River at Long Level from the Safe Harbor Pool and up to a maximum of 42.0 mgd from the South Branch of the Codorus Creek. (York Water Statement No. 1, p. 6, lines 4-8)

The Company's Grantley Road Water Treatment Plant has a permitted capacity of 39.0 mgd (DEP Permit No. 6715506 MA).⁶ (York Water Statement No. 1, p. 6, lines 8-10) By comparison, in calendar year 2016, York Water's average daily demand was 18.3 mgd and the Company's total peak day demand was approximately 24.4 mgd, well below the Plant's permitted capacity of 39 mgd. (York Water Statement No. 1, p. 6, lines 10-12; York Water Statement No. 2, p. 7, lines 3-7) Thus, York Water has more than enough available water to supply DYWA through the emergency interconnect.

Second, the Company's existing and proposed facilities also are more than sufficient to meet the requirements under the Agreement and to provide safe and reliable service to DYWA. York Water's proposed emergency interconnect will be a not less than 12-inch ductile iron pipe water main extension. This main will run approximately 600 feet to a location in York Water's service territory⁷ where it will interconnect with DYWA's system. (York Water Statement No. 2, p. 3, lines 20-22) Water will be supplied through the emergency interconnect from York Water's Southern Repump Zone. Because the Southern Repump Zone tanks have high water levels below the DYWA tank operating levels, York Water needs to pump water into the emergency interconnect. (York Water Statement No. 2, p. 5, lines 6-10) Accordingly, York Water proposes to construct a pumping station with two pumps to supply the emergency interconnect, and check valves will be installed on the discharge side of each pump to prevent

⁶ York Water also owns two man-made impoundments (reservoirs) with a capacity (when full) of 2.4 billion gallons of water and has significant operational redundancy to keep providing reliable service to customers. (York Water Statement No. 1, p. 6, lines 11-18)

⁷ In fact, under the Emergency Interconnect Agreement, all of the facilities to be constructed and operated by York Water, including the pumping station, will be located in the Company's existing certificated service territory, as DYWA must extend its facilities to the boundary line of York Water's service territory for the interconnect. (See York Water Exhibit JTH-1)

water from flowing backwards from DYWA's system to York Water's system.⁸ (York Water Statement No. 2, p. 5, lines 10-13)

These facilities will enable York Water to meet the flow rate and quantity requirements under the proposed Emergency Interconnect Agreement. (York Water Statement No. 2, p. 6, lines 6-7) At 200 gallons per minute, pressure losses in the proposed 12-inch water main extension will be minimal. (York Water Statement No. 2, p. 6, lines 8-9) Further, each of the two pumps to be installed in York Water's proposed pumping station will be sized to provide the maximum flow rate of 200 gallons per minute. Therefore, if one of the pumps requires maintenance, York Water would still be able to meet its commitments under the Emergency Interconnect Agreement to provide the maximum allowable volume of 250,000 gallons per day.⁹ (York Water Statement No. 2, p. 6, lines 9-13)

In addition, the existing York Water pumps that supply the Company's Southern Repump Zone have total capacity of approximately 4,800 gallons per minute. By comparison, the equivalent peak day demand within the Southern Repump Zone was approximately 2,700 gallons per minute in 2016. Considering the Emergency Interconnect Agreement has a maximum flow rate of 200 gallons per minute, the Company's Southern Repump Zone pumps will be able to supply water to the booster station in an amount sufficient to meet the maximum flow rate. (York Water Statement No. 2, p. 6, line 19 to p. 7, line 2)

⁸ A flow meter also will be installed to measure the instantaneous flow rate in gallons per minute and total pumped volume in gallons per day, and such information will be recorded by both York Water's and DYWA's Supervisory Control and Data Acquisition ("SCADA") systems. (York Water Statement No. 2, p. 5, lines 14-17) York Water also will install equipment to: (1) add fluoride to the water; and (2) add supplemental chlorine, when and if needed to maintain an acceptable residual. (York Water Statement No. 2, p. 5, lines 18-21)

⁹ Assuming DYWA draws the maximum allowable volume of 250,000 gallons per day, one of the proposed pumps would need to operate for approximately 21 hours to provide the maximum allowable volume for that day. As a result, the Company's proposed facilities are designed to supply the emergency interconnect at the flow rate set forth in the Emergency Interconnect Agreement. (York Water Statement No. 2, p. 6, lines 13-15)

Thus, the Emergency Interconnect Agreement will have no negative operational impact on York Water or its customers because the Company's available water supply and its existing and proposed facilities will be adequate to meet the maximum contracted volumes under the Emergency Interconnect Agreement.

d. There Will Be No Negative Impact on Red Lion's System or Operations

York Water's emergency interconnect also will have no negative impact on Red Lion's system or operations. DYWA's system is divided into an upper pressure zone and a lower pressure zone, which are separated by control valves. (York Water Statement No. 2, p. 4, lines 3-4) Both of Red Lion's interconnects with DYWA are in the upper pressure zone. (York Water Statement No. 2, p. 4, lines 5-6) York Water's emergency interconnect will be in the lower pressure zone. (York Water Statement No. 2, p. 5, lines 1-2)

York Water's Vice President of Engineering has conducted ongoing hydraulic analyses, examining many different potential operating parameters. (York Water Statement No. 2, p. 7, lines 14-15) Importantly, the Company has determined there will be no impact on Red Lion's system, based on these hydraulic analyses. (York Water Statement No. 2, p. 9, lines 11-15) York Water interconnect will only supply DYWA's lower pressure zone, whereas the Red Lion system supplies DYWA's upper pressure zone, which is at a higher operating hydraulic grade line ("HGL"). Consequently, York Water's supply of water to the lower pressure zone is projected to have no effect on the hydraulics of Red Lion's system. (York Water Statement No. 2, p. 9, lines 11-15)

Nevertheless, Red Lion witness Kahwajy alleges that there could be hydraulic issues, contending that if the DYWA tanks are full and Red Lion's system is full, Red Lion's water treatment plant would need to be shut down, because no water would be flowing through the

system, and that such repeated shut downs could place a strain on the system. (Red Lion Statement No. 1, p. 13, lines 16-20) Further, Mr. Kahwajy claims that “the chemicals in the water could become unbalanced due to the constant and unpredictable shut downs of the Water Treatment Plant.” (Red Lion Statement No. 1, p. 13, lines 20-21) Red Lion’s alleged issues are unfounded and should be disregarded for several reasons.

To begin, Mr. Kahwajy is not an engineer, does not have a college degree in engineering, and never performed any formal hydraulic analyses about the hydraulic impact of the emergency interconnect. (Tr. 104, lines 22-25; Tr. 105, lines 10-13) As such, he has not provided, and does not have the expert training to support, his hydraulic claims. In contrast, York Water’s Vice President of Engineering has performed ongoing hydraulic analyses using a multitude of different operating parameters and has determined there would be no impact to Red Lion’s system.

In addition, Mr. Kahwajy’s speculative claim that if Red Lion’s system is full and DYWA’s tanks are full, Red Lion’s water treatment plant will need to shut down, is dubious at best. (York Water Statement No. 2-R, p. 5, lines 5-6) Under the proposed Emergency Interconnect Agreement, DYWA may take no more than 250,000 gallons per day from York Water. (York Water Statement No. 1, p. 5, lines 17-20) In discovery, Red Lion stated that the annual total flow from its Water Treatment Plant averaged 726,461,140 gallons for the period of 2013 to 2017. (See York Water Exhibit MS-2R) This equates to approximately 1,990,305 gallons per day. Therefore, the maximum possible contribution from York Water of 250,000 gallons per day represents approximately 12.6% of the Water Treatment Plant’s total production, whereas the average contribution of 100,000 gallons per day would be only approximately 5%. Such reductions in flow should have no impact on the operation of any water treatment plant,

and Mr. Kahwajy has not presented any quantitative analysis to support his claim. (York Water Statement No. 2-R, p. 5, lines 5-16)

In fact, Mr. Kahwajy admitted in discovery that “[s]ince opening the [Water Treatment Plant (“WTP”)], RLMA has not had to shut down the WTP because of no water flowing through the system.” (York Water Exhibit MS-3R) Indeed, Red Lion’s lowest daily customer demands over each of the past five years were 1,887,100 gallons on June 7, 2013, 1,627,400 gallons on October 31, 2014, 332,600 gallons on April 7, 2015, 1,693,300 gallons on March 4, 2016, and 1,638,700 gallons on November 24, 2017. (See York Water Exhibit MS-2R) Mr. Kahwajy explained that April 7, 2015, was an outlier because that is when Red Lion’s new water treatment plant was opening. (Tr. 112, lines 15-20; Tr. 113, lines 20-23) Therefore, Red Lion’s lowest daily customer demands are normally in the range of 1.6 to 1.8 million gallons. (Tr. 113, lines 24-25)

Moreover, Mr. Kahwajy acknowledged that these figures do not even account for the usage of Red Lion’s two bulk water purchase customers: Windsor Borough and DYWA. (Tr. 107, lines 21-25) Over the past five years, the lowest daily customer demands for these two customers have averaged 53,950 gallons¹⁰ and 609,667 gallons,¹¹ respectively, for a total of 663,617 gallons. Therefore, when added to the lowest daily customer demands for Red Lion’s other customers, which typically range between 1.6 and 1.8 million gallons, Red Lion’s lowest daily customer demands on a total system basis are normally in the range of approximately 2.26 to 2.46 million gallons.

¹⁰ Windsor Borough’s lowest daily customer demands were 75,000 gallons in 2013, 58,000 gallons in 2014, 55,000 gallons in 2015, 37,750 gallons in 2016, and 44,000 gallons in 2017, resulting in an average of 53,950 gallons. (Tr. 109, lines 5-7)

¹¹ DYWA’s lowest daily customer demands were 564,000 gallons in 2013, 547,000 gallons in 2014, 597,000 gallons for 2015, 697,000 for 2016, and 661,334 gallons for 2017, resulting in an average of 609,667 gallons. (Tr. 107, lines 1-3)

Based on this information, Red Lion's lowest daily customer demands still would be at least over 2 million gallons if York Water were to provide the maximum contribution of 250,000 gallons to DYWA. Further, even in the extreme scenario of April 7, 2015, Red Lion's customer demands were at least 984,600 gallons, when including the lowest daily customer demands for Windsor Borough and DYWA in 2015. (Tr. 109, lines 13-23) Therefore, even on April 7, 2015, Red Lion still would have had at least 734,600 gallons flowing through its system if York Water supplied the maximum 250,000 gallons to DYWA. Thus, Mr. Kahwajy's argument that Red Lion would need to shut down its Water Treatment Plant because it would have absolutely no water flowing through its system is neither based on any calculations nor actual experience and should be disregarded. (York Water Statement No. 2-R, p. 6, lines 2-3)

Finally, even assuming (without evidentiary support) that Red Lion's Water Treatment Plant might shut down infrequently due to DYWA taking water from York Water, any resulting chemical imbalances would suggest a lack of operational control, planning, and preparation on the part of Red Lion. (York Water Statement No. 1-R, p. 12, lines 7-10) Tank levels, system pressures, set points, and operational limitations should be monitored and factored into the water treatment plant's operational scope. (York Water Statement No. 1-R, p. 12, lines 10-11) A competent plant operator must know the volume of the tanks in DYWA's system and any in Red Lion's system as well as how fast they fill at specific treatment flow rates, because these factors affect how much water should be treated at any given time by a treatment plant. (York Water Statement No. 1-R, p. 12, lines 12-15) Moreover, shutting down a water treatment plant should be a controlled event that should not have an impact on chemical balances in the system unless the treatment plant operators allow the chemicals to continue to feed for a significant time after water stops flowing through the treatment plant. (York Water Statement No. 1-R, p. 12, lines

16-19) Allowing chemicals to continue to feed for a significant time is also something a competent plant operator would not allow to occur. (York Water Statement No. 1-R, p. 12, lines 19-20) Therefore, a competent plant operator should be well-prepared for infrequent treatment plant shutdowns.

For these reasons, the Emergency Interconnect Agreement, if approved, will have no negative impact on Red Lion's system or operations.

e. There Will Be No Negative Impact on DYWA's System or Operations

Red Lion also raises issues about the impact of the emergency interconnect on the hydraulics of DYWA's system as well as the disinfectant level in DYWA's water due the blending of York Water's and Red Lion's differently-treated water supplies. As explained in the following sections, neither of these concerns has merit.

Before responding to Red Lion's specific concerns about the purported adverse effects on DYWA's system from the emergency interconnect, it is important to recognize that DYWA supports the Emergency Interconnect Agreement. (See York Water Statement Nos. 3 and 3-R) DYWA is the entity charged with protecting its interests and its customers' interests, not Red Lion. It would be antithetical for DYWA to enter into an agreement that would negatively affect its system or operations.

For these reasons, and as further explained below, Red Lion's claims about the impact of the emergency interconnect on DYWA's system or operations should be rejected.

i. The Hydraulics of DYWA's System Will Not Be Negatively Affected by the Proposed Emergency Interconnect

Mr. Kahwajy alleges that there could be hydraulic issues on DYWA's system because York Water has not disclosed the rate or time of day at which water will be pumped into the

DYWA tanks by York Water and there is a possibility the tanks could overflow. (Red Lion Statement No. 1, p. 13, lines 13-16) Mr. Kahwajy's claim should be disregarded.

York Water's pumping of water through the emergency interconnect will not cause the tanks to overflow, as alleged by Mr. Kahwajy. Indeed, Mr. Kahwajy has a fundamental misunderstanding about York Water's proposed emergency interconnect—it will not supply DYWA's upper pressure zone, *i.e.*, the Park Street Standpipes, to which both of Red Lion's interconnects with DYWA's system are connected. In reality, York Water's proposed emergency interconnect will be connected to and exclusively supply DYWA's lower pressure zone, which includes the Denton and Lion's Park Tanks. Therefore, it is wholly unclear how York Water's proposed facilities would pump water into the same tanks used by Red Lion and cause the tanks to overflow, when York Water's proposed facilities will not be pumping water into the Park Street Tanks at all. (York Water Statement No. 2-R, p. 3, line 23 to p. 4, line 8)

As to any allegations that the Denton and Lion's Park tanks will overflow, DYWA has valves that control the flow of water from Red Lion into the Park Street Standpipes, in the upper pressure zone, and from the Park Street Standpipes into the Denton and Lion's Park Tanks, in the lower pressure zone. All of these valves automatically prevent the flow of water into the Denton and Lion's Park Tanks once the water level in a tank reaches a defined elevation. That is, there are sensors at the Denton and Park Street tanks that close the valves when the water in the tanks reaches a certain elevation. (York Water Statement No. 2-R, p. 4, lines 9-15)

In addition, York Water will be installing pumps to supply water through the proposed emergency interconnect into the lower pressure zone that includes the Lion's Park and Denton Tanks. Similar to the valves mentioned previously, these pumps will be connected to the sensors at the tanks and will automatically shut off if the water level in a tank reaches a defined

elevation. (York Water Statement No. 2-R, p. 4, lines 15-18) Thus, the sensors and valves will prevent any tank overflows.

For these reasons, York Water's pumping of water into the lower pressure zone will not cause any of the DYWA tanks to overflow, as alleged by Mr. Kahwajy. (York Water Statement No. 2-R, p. 4, lines 19-20) The only way the tanks could overflow is if the valves or pumps fail to stop the supply of water into the Lion's Park and Denton Tanks; a possibility that can occur regardless of whether York Water has an interconnect with DYWA's system. (York Water Statement No. 2-R, p. 4, lines 20-23) And even if the upper pressure zone tanks overflow, due to a sensor or valve failure, there would be no harm to the Red Lion or DYWA water distribution systems. It would simply waste potable water. Because DYWA is paying for that water from Red Lion, DYWA has an incentive not to allow such a situation to occur. (York Water Statement No. 2-R, p. 5, lines 1-4)

Thus, the Emergency Interconnect Agreement will have no negative impact on the hydraulics of DYWA's system.

ii. No Issues with the Blending of York Water's and Red Lion's Water Supplies

Mr. Kahwajy also contends that DYWA could have water disinfection issues by taking water from two separate sources of supply. York Water treats or disinfects the Company's water supply with chloramines, whereas Red Lion relies upon free chlorine.¹² (York Water Statement

¹² Chloramine is created through the combination of chlorine and ammonia. Chloramine differs from chlorine in that chlorine has no ammonia. Both chloramine and chlorine are regulated disinfectants for the treatment of water. When chloraminated water mixes with water that is disinfected with free chlorine, the ammonia causes what is known as "nitrification," which has the effect of reducing the amount of free chlorine in the blended water. Although there may be a reduction in the amount of free chlorine in the blended water, this is not a static environment, and mixing will propagate through the DYWA lower pressure zone. York Water currently treats its water supply at a mixture of 1.5 ppm of total chlorine and 0.3125 ppm of ammonia (NH₃). The Company will maintain this ratio in the water it supplies to DYWA through the proposed emergency interconnect, consistent with

No. 1, p. 11, lines 14-16) Mr. Kahwajy believes, based on “research and talking with others in the water industry,” that the mixing of these two differently-treated water supplies “may actually cancel out the disinfectant quality of the chemical and creates [sic] a potential issue of bacterial growth in the water supply.” (Red Lion Statement No. 1, p. 13, lines 4-7) Mr. Kahwajy’s analysis wholly lacks merit and should be rejected.

York Water’s Chief Operating Officer, Mr. JT Hand, is a civil engineer who offered his opinion that no issues will occur with the blending of York Water’s chloraminated water supply and Red Lion’s chlorinated water supply, so long as both entities meet the requirements under their DEP water supply permits and DYWA monitors and controls the two water supplies into its system. (York Water Statement No. 1, p. 2, lines 5-22; p. 13, lines 20-22; York Water Statement No. 1-R, p. 9, lines 11-15) Mr. Hand explained that while there would be some blending of the two supplies in the lower pressure zone of DYWA’s water distribution system, any mixing would be too minimal to affect the level of disinfectant in the water.¹³ (York Water Statement No. 1-R, p. 9, lines 15-17)

Mr. Hand’s opinion is in part informed by York Water’s substantial experience in this area, as the Company has multiple interconnects with municipal entities who treat their water supplies using free chlorine and has operated those interconnects for several years. (York Water Statement No. 1, p. 12, lines 8-11; York Water Statement No. 1-R, p. 9, lines 18-19, p. 10, lines 13-18) To date, there have been no issues with York Water’s supply of its chloramine-treated water supply to those entities. (York Water Statement No. 1, p. 12, lines 16-22; York Water Statement No. 1-R, p. 9, lines 19-20) Moreover, DEP, the regulatory agency responsible for

the anticipated conditions of the Water Supply Permit that the Company will seek from DEP. (York Water Statement No. 1-R, p. 8, line 21 to p. 9, line 8)

¹³ There should be no mixing in the upper pressure zone because the emergency interconnect is not designed to provide water to the upper zone. (York Water Statement No. 2, p. 5, lines 1-2; p. 9, lines 11-15)

permitting and oversight of water disinfection, has no regulation prohibiting a public water system from establishing an interconnect to receive a chloramine-treated water supply when the system already utilizes a free chlorine-treated water supply.¹⁴ See 25 Pa. Code §§ 1.1, *et seq.*; (York Water Statement No. 1, p. 13, lines 5-9) York Water will apply its substantial experience and expertise with these interconnects to the supply of water to DYWA through the proposed emergency interconnect.¹⁵ (York Water Statement No. 1-R, p. 10, lines 16-18)

The Company further demonstrated that no issues will occur so long as the appropriate ratio of ammonia to chlorine is maintained in the water supply. (York Water Statement No. 1-R, p. 9, line 23 to p. 10, line 6) York Water's proposed design of the pumping station to serve the emergency interconnect includes chemical feed systems that will allow York Water to maintain an appropriate level of disinfectant in the Company's water supplied to DYWA. (York Water Statement No. 1, p. 5, lines 7-9) In fact, assuming York Water maintains the appropriate ratio in the water it supplies to DYWA, the only way there could be an exceedance of chlorine on the DYWA system is if Red Lion were to supply more than the maximum contaminant level of 4.0 ppm of free chlorine at the entry point with DYWA's system. (York Water Statement No. 1-R, p. 10, lines 6-10)

Red Lion has offered absolutely no evidence to refute York Water's analysis. Mr. Kahwajy has no college degrees in chemistry or water chemistry, nor any experience in

¹⁴ The quality of water supplies and disinfection of DYWA's water are solely within the jurisdiction of DEP and the ultimate responsibility of DYWA. (York Water Statement No. 1, p. 13, lines 1-3); *see, e.g., Pickford v. Pa. PUC*, 4 A.3d 707, 713 (Pa. Cmwlth. 2010) (emphasis in original) (citing *Rovin v. Pa. PUC*, 502 A.2d 785, 787 (Pa. Cmwlth. 1986)). Indeed, when obtaining the Water Supply Permit from DEP for the proposed emergency interconnect, York Water will have to demonstrate that "the water which is to be delivered to the consumers will consistently meet the drinking water standards of DEP." (York Water Exhibit JTH-6) Moreover, at any time, DEP may examine the disinfectant treatment of water in DYWA's system. (York Water Statement No. 1, p. 13, lines 15-16) Therefore, DEP has exclusive jurisdiction over the disinfectant treatment in DYWA's water supply, and any issues concerning the blending of York Water's and Red Lion's water supplies can and will be addressed by DEP.

¹⁵ York Water observes that Red Lion has consulted with York Water on issues related to Red Lion's water distribution system. (Tr. 105, lines 18-25)

operating, managing, or overseeing a water system with multiple sources of water supply that utilize different treatment methods. (Tr. 110, lines 9-11, 20-23) Moreover, Mr. Kahwajy never performed any scientific analysis or study on the impact of DYWA's receiving the two differently-treated water supplies. (Tr. 110, lines 16-19; York Water Exhibit JTH-5R) His testimony is entirely based on a conversation with Wendy Melhorn at the Pennsylvania Rural Water Association and a document provided by Ms. Melhorn about the mixing of chloramine and free chlorine. (York Water Exhibit JTH-6R) Generally speaking, this document and the materials it references only detail the chlorination breakpoint curve and the need for a water supplier to maintain operational controls in the water distribution system, which will be DYWA's ultimately responsibility. (York Water Statement No. 1-R, p. 10, lines 2-5; York Water Statement No. 3, p. 8, line 11) Nothing in this material demonstrates that York Water's provision of water supply will result in inadequate chlorine residual in DYWA's system.

For these reasons, there should be no issues with the blending of the two differently-treated water supplies, and Red Lion's unsupported argument to the contrary should be rejected.

3. Conclusion

Based on the foregoing, York Water has demonstrated that the Emergency Interconnect Agreement will confer substantial benefits to DYWA while having no negative impact on the systems or operations of York Water, DYWA, and Red Lion. Accordingly, the Emergency Interconnect Agreement is reasonable and in the public interest and, therefore, should be approved.

B. THE COMMISSION LACKS SUBJECT MATTER JURISDICTION TO INTERPRET RED LION'S WATER SALES AGREEMENT WITH DYWA

Red Lion has maintained that the proposed Emergency Interconnect Agreement should not be approved because it allegedly violates the terms of the Water Sales Agreement between Red Lion and DYWA.¹⁶ (See Red Lion Statement No. 1, p. 4, lines 1-17; p. 12, lines 1-13) Because York Water is not a party to the Water Sales Agreement, the Commission lacks subject matter jurisdiction to interpret or enforce that contract.

As a “creature of statute,” the Commission “has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.” *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citing *Allegheny Cnty. Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967); *Del. River Port Auth. v. Pa. PUC*, 145 A.2d 172 (Pa. 1958)). The Commission cannot grant itself by regulation or order authority that was not conferred upon it by the Legislature. See *W. Pa. Water Co. v. Pa. PUC*, 370 A.2d 337, 339-40 (Pa. 1977) (citations omitted); *Fairview Water Co. v. Pa. PUC*, 502 A.2d 162, 165-66 (Pa. 1985) (citations omitted); *Fed. Deposit Ins. Corp. v. Bd. of Fin. & Revenue*, 84 A.2d 495, 499 (Pa. 1951) (citations omitted).

¹⁶ Section 4.1 of the Water Sales Agreement contains the following provision:

4.1 Emergency Interconnect. Buyer shall have the right at Buyer's sole cost and expense to negotiate and enter into an emergency interconnect agreement(s) with public water utilities, municipalities and/or other municipal authorities for the supply of potable water as well as construct and maintain the infrastructure as deemed necessary by Buyer to ensure an adequate water supply, in terms of quantity, pressure and water quality, in the event Seller is unable to adequately supply water to Buyer per the terms of this Agreement as a result of any fault of Buyer or Seller and/or any emergencies or catastrophes, including without limitation, power outages, water main breaks, equipment failures, acts of terrorism, droughts or other acts of God or any other cause set forth in Section 1.3 above. Further, Buyer shall have the right to purchase/use the minimum amount of water necessary to maintain such emergency interconnection with said alternative supplier(s).

(York Water Exhibit CLS-2)

Here, nothing in the Public Utility Code grants the Commission jurisdiction to interpret and enforce the terms of a water sales contract between two municipal authorities, neither of which is regulated by the Commission. In fact, the Commission generally lacks jurisdiction to interpret, enforce, or adjudicate claims regarding a contract between private entities. *See Pettko v. Pa. Am. Water Co.*, 39 A.3d 473, 478 n.9 (Pa. Cmwlth. 2012) (“[T]here can be no dispute that the courts of common pleas have subject matter jurisdiction over common law claims such as conversion and breach of contract involving private individuals and businesses.”); *Adams v. Pa. PUC*, 819 A.2d 631, 635 (Pa. Cmwlth. 2003) (“[T]he PUC lacks jurisdiction over private contractual disputes.”). The Commission is not even “jurisdictionally empowered to decide private contractual disputes between a citizen and a utility.” *Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. Super. 1978) (citations omitted); *see also Virgilli v. Sw. Pa. Water Authority*, 427 A.2d 1251, 1254 (Pa. Cmwlth. 1981) (“[T]he Code does not grant the PUC general supervisory powers over contracts involving public utilities.”).

Despite this well-established precedent, Red Lion is attempting to have the Commission pass judgment on whether the proposed Emergency Interconnect Agreement is permissible under the terms of Red Lion’s Water Sales Agreement with DYWA. Such contract issues are reserved for courts of common pleas. *See Pettko*, 39 A.3d at 478 n.9.

Indeed, the Commission previously relied on this principle when a municipal water authority contested York Water’s proposed service to a customer on the grounds that such service violated terms of the authority’s contract with that customer. *See Petition of The York Water Co. for a Declaratory Order Confirming the Co.’s Auth. to Offer or Furnish Water Serv. to the Cross Keys Vill. – The Brethren Home Cmty. in the Twp. of Oxford, Adams Cnty., Pa.*, Docket No. P-2010-2195786, pp. 5-6, 11 (Order entered Dec. 22, 2010) (“*Cross Keys*”). In that

case, the customer had a water service contract with a municipal water authority, which the authority alleged did “not allow the discontinuance of service by a customer without the consent of the Authority.” *Id.*, p. 5. When the customer terminated its contract with the authority anyway and sought service from York Water, the municipal water authority argued, among other things, that such actions were a breach of the contract. *Id.* The Commission “deliberately declined to address in this order the extraneous arguments” about the municipal water authority’s contract with the customer. *Id.*, p. 11. The Commission held that “[c]learly, these contractual issues are beyond the scope of this Commission’s jurisdiction and will probably be the subject of future civil litigation.” *Id.* Consistent with its holding in *Cross Keys*, the Commission should find here that it lacks subject matter jurisdiction to address Red Lion’s argument that York Water’s proposed emergency interconnect and service to DYWA may breach the terms of Red Lion’s Water Sales Agreement with DYWA.

Furthermore, Sections 507 and 508 of the Public Utility Code, 66 Pa. C.S. §§ 507-508, do not expand the Commission’s jurisdiction to include the interpretation and enforcement of the Water Sales Agreement. Section 507 only provides that the Commission may, before the effective date of a contract or agreement between a public utility and municipal corporation, “institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof.” 66 Pa. C.S. § 507. Accordingly, the Commission’s inquiry is focused on the reasonableness, legality, and validity of the proposed Agreement between York Water and DYWA. Importantly, however, the Commission only can inquire into matters over which it has jurisdiction when reviewing contracts between public utilities and municipal corporations. *See Shenango Twp.*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) (citations omitted) (finding that “Section 508 must be read *in pari materia* with other sections of the Public Utility Code that may be

relevant to determining if a particular factual scenario is a proper subject for the exercise of the PUC's contract reform power"); *White Rock Sewage Corp. v. Pa. PUC*, 578 A.2d 984, 986-87 (Pa. Cmwlth. 1990) (holding that although Section 508 of the Public Utility Code allowed the Commission to evaluate the reasonableness of the agreement between a public utility and a municipal corporation, the statute did not allow the Commission to regulate the rates charged and services provided by the municipal corporation pursuant to that agreement). Nothing in the Public Utility Code grants the Commission power to interpret the terms of a contract between two non-utilities. Therefore, the Commission cannot interpret the Water Sales Agreement as a part of its evaluation of the Emergency Interconnect Agreement.

In addition, the Commission's approval of the Emergency Interconnect Agreement would not prejudice Red Lion's pursuit of contract claims related to the Water Sales Agreement in a Court of Common Pleas. *See Cross Keys*, p. 11. In fact, if a contractual dispute ever arose concerning the interpretation or enforcement of the Emergency Interconnect Agreement, such contractual issues would have to be litigated before a Court of Common Pleas. *See Apollo Gas*, 1994 Pa. PUC LEXIS 30, at *26 ("[O]ur determination that such a contract comports with the public interest under Section 508 would not, in any way, deter either party from seeking contractual performance or damages in the general courts of the Commonwealth."); *see also Allport.*, 393 A.2d at 675; *Virgilli*, 427 A.2d at 1254.¹⁷

Red Lion may argue that York Water has brought issues related to the interpretation of the Water Sales Agreement into this case by including such contract as an exhibit to Ms. Stokes's testimony. (*See York Water Exhibit CJS-2*) However, the Water Sales Agreement was

¹⁷ Even assuming, *arguendo*, that the Commission has jurisdiction to interpret or enforce the Water Sales Agreement, York Water notes that DYWA was advised by its counsel that the Emergency Interconnect Agreement is permissible under the terms of the Water Sales Agreement. (York Water Statement No. 3, p. 8, line 22 to p. 9, line 2)

only provided as background about DYWA's decision to enter into the Emergency Interconnect Agreement. (See York Water Statement No. 3, p. 8, line 14 to p. 9, line 2) Furthermore, it is well-established that subject matter jurisdiction cannot be conferred through waiver, agreement, or stipulation of the parties. *Blackwell v. State Ethics Comm'n*, 567 A.2d 630, 636 (Pa. 1989) (citations omitted); *Commonwealth v. UEC, Inc.*, 397 A.2d 779, 785 (Pa. 1979) (citations omitted); *Branch v. Cohen*, 736 A.2d 732, 735 n.5 (Pa. Cmwlth. 1999). Therefore, York Water's inclusion of the Water Sales Agreement does not grant the Commission subject matter jurisdiction to interpret and enforce that contract's terms. Thus, contract interpretation issues concerning whether the proposed Emergency Interconnect Agreement between York Water and DYWA qualifies as an emergency interconnect agreement under the terms of the Water Sales Agreement between Red Lion and DYWA are not for the Commission to decide.

For these reasons, the Commission lacks subject matter jurisdiction to interpret and enforce the terms of the Water Sales Agreement between two non-utilities, Red Lion and DYWA.

VII. CONCLUSION

WHEREFORE, The York Water Company respectfully requests that Administrative Law Judge Joel H. Cheskis recommend and the Pennsylvania Public Utility Commission: (1) grant the above-captioned Application and approve the proposed Emergency Interconnect Agreement by and between the Company and Dallastown-Yoe Water Authority; and (2) deny the Formal Complaint of Red Lion Municipal Authority with prejudice.

Respectfully submitted,



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Date: February 28, 2018

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Appendix A

Appendix A – Proposed Findings of Fact

1. The York Water Company (“York Water” or the “Company”) seeks approval by the Pennsylvania Public Utility Commission (“Commission”) of an Emergency Interconnect Agreement (“Agreement”) entered into by and between the Company and Dallastown-Yoe Water Authority (“DYWA”). (York Water Statement No. 1, p. 4, lines 5-7; York Water Exhibit JTH-1)

2. Under the proposed Agreement, York Water would design, construct, operate, and maintain (at its sole expense) an emergency interconnect and related facilities to serve as an additional source of supply for DYWA’s water distribution system. (York Water Statement No. 1, p. 4, lines 11-13)

3. The Agreement was negotiated after DYWA representatives approached York Water about their desire for an alternative source of supply. (York Water Statement No. 3, p. 5, line 18 to p. 6, line 18)

4. Through the emergency interconnect, the Company would only provide water supply to the extent called upon by DYWA. In other words, DYWA is not required to take a minimum amount of water under the Agreement. However, if called upon, the Agreement provides that the emergency interconnect could furnish water supply to DYWA in quantities of up to a maximum of 250,000 gallons per day at a flow rate not to exceed 200 gallons per minute. (York Water Statement No. 1, p. 5, lines 15-20)

5. To meet its obligations under the Agreement, York Water will build a not less than 12-inch water main extension approximately 600 feet long from the Company’s existing distribution system to a proposed interconnection location within its certificated service territory. (York Water Statement No. 1, p. 5, lines 2-5)

6. DYWA will build a water main extension not less than 6 inches in diameter to the proposed interconnection location that will connect to its system's lower pressure zone. Such water main extension should be physically able to receive the quantities of water at the flow rates set forth in the Agreement. (York Water Statement No. 3, p. 7, lines 10-22)

7. York Water also will construct a booster station with chemical feed systems, data controls, and backup power to supply water to DYWA. (York Water Statement No. 1, p. 5, lines 3-11)

8. York Water must obtain a permit from DEP for the final design of the booster station. (York Water Statement No. 1, p. 8, lines 11-15)

9. The Company estimates that it will incur annual expenses of \$69,596 due to the emergency interconnect. (York Water Exhibit JTH-3) This estimate does not include a return on investment. (York Water Statement No. 1, p. 7, lines 21-23)

10. Moreover, the estimated costs for the 12-inch water main extension and the booster station are \$306,049 and \$420,000, respectively. (York Water Statement No. 1, p. 8, lines 5-15; Exhibits JTH-4 and JTH-5)

11. By providing an alternative source of supply, the emergency interconnect will confer substantial benefits to DYWA and its customers. (York Water Statement No. 1, p. 9, lines 13-20)

12. DYWA only has one current source of water supply (*i.e.*, Red Lion), does not own or operate its own water treatment plant, and therefore is totally reliant upon Red Lion. (York Water Statement No. 1, p. 9, lines 13-15)

13. If something were to happen that negatively affects Red Lion's source of supply, treatment works, or distribution system, DYWA may be unable to meet the water service demands of its customers. (York Water Statement No. 1, p. 9, lines 15-17)

14. To prevent such incidents or mitigate their impact, DEP encourages community water suppliers ("CWSs") to maintain more than one source of supply. (York Water Statement No. 1, p. 9, lines 6-12; Exhibit JTH-6)

15. DEP recently spoke with DYWA in 2016 about securing another source of water supply. (York Water Statement No. 3, p. 5, lines 10-12)

16. As demonstrated by recent events, an emergency interconnect is only useful if it is in place before a situation occurs that affects a CWS's ability to provide water service. (York Water Statement No. 1, p. 9, line 17 to p. 11, line 2; York Water Exhibit JTH-7)

17. The Emergency Interconnect Agreement will meet DYWA's goals and have no negative impact on York Water's customers because it includes a minimum purchase requirement. (York Water Statement No. 1-R, p. 7, lines 1-20)

18. In negotiating the Emergency Interconnect Agreement, York Water and DYWA considered several options to cover the costs and expenses associated with establishing the emergency interconnect. (York Water Statement No. 1-R, p. 7, lines 1-20)

19. Because DYWA was unwilling to make an upfront capital contribution toward construction of the necessary York Water facilities for the emergency interconnect, the parties examined alternatives. (York Water Statement No. 1-R, p. 7, lines 4-16)

20. The parties ultimately agreed on a minimum charge that will be billed to DYWA for a minimum purchase of not less than 3 million gallons per month but not more than 250,000

gallons per day, even if it does not take any water through the emergency interconnect. (York Water Statement No. 1, p. 7, lines 8-11)

21. Based on the minimum charge of 3 million gallons per month, DYWA would pay York Water approximately \$20,731 per month, *i.e.*, \$248,772 per year. (York Water Statement No. 1, p. 7, lines 15-17; York Water Exhibit JTH-2)

22. The minimum bill ensures that York Water will receive sufficient revenue to cover the capital costs and expenses associated with the construction and operation of the emergency interconnect. (York Water Statement No. 1-R, p. 7, lines 16-20)

23. Red Lion avers that DYWA once represented in 2011 that the minimum amount necessary to maintain an interconnect with York Water would be 1,000 gallons per day. (Red Lion Statement No. 1, p. 12, lines 11-13)

24. A minimum bill based upon 1,000 gallons per day would not cover the annual expenses associated with the interconnect, let alone the associated capital costs. (York Water Statement No. 1-R, p. 4, lines 1-6; York Water Exhibits JTH-1R and JTH-2R)

25. Such a minimum bill would only produce approximately \$5,114 under current tariffed rates, whereas the annual expenses for the interconnect would be approximately \$24,478, based upon 1,000 gallons per day and excluding return on capital to be invested. (York Water Statement No. 1-R, p. 4, lines 1-6; York Water Exhibits JTH-1R and JTH-2R)

26. Red Lion's entire argument is solely based on the meeting minutes from a joint meeting held by RLMA and DYWA representatives on July 13, 2011, where an unnamed DYWA representative apparently said that someone at York Water is "requiring that DYWA use 1,000 gals per day." (See RLMA Exhibit KK-1, p. 2; York Water Exhibit JTH-3R)

27. York Water has no records or recollection of that representation, nor could its representatives make such representation. (York Water Statement No. 1-R, p. 5, lines 11-22)

28. At that time of the alleged representation, the Company had neither even made any estimate of the cost of facilities to connect, nor had any information as to what DYWA's maximum daily deliveries through the emergency interconnect might be. (York Water Statement No. 1-R, p. 5, line 22 to p. 6, line 2)

29. The meeting referenced by Red Lion occurred over six years ago and predates Red Lion's most recent Water Sales Agreement with DYWA. (York Water Statement No. 1-R, p. 6, lines 6-9)

30. Therefore, even if someone from DYWA believed over six years ago that York Water would construct an emergency interconnect with a minimum volumetric commitment of 1,000 gallons per day, such a claim is no longer relevant to DYWA's current needs, York Water's necessary investment and costs to serve DYWA, or the proposed emergency interconnect. (York Water Statement No. 1-R, p. 6, lines 9-13)

31. The Emergency Interconnect Agreement will have no negative operational impact on York Water's customers because the Company has more than enough available water to meet its supply requirements under the Agreement. (York Water Statement No. 1, p. 6, lines 4-12; York Water Statement No. 2, p. 7, lines 3-7)

32. The Company holds a water allocation permit issued by DEP, which grants the Company the right to withdraw up to a maximum of 12.0 million gallons per day ("mgd") from the Susquehanna River at Long Level from the Safe Harbor Pool and up to a maximum of 42.0 mgd from the South Branch of the Codorus Creek. (York Water Statement No. 1, p. 6, lines 4-8)

33. In calendar year 2016, York Water's average daily demand was 18.3 mgd and the Company's total peak day demand was approximately 24.4 mgd, well below its Water Treatment Plant's permitted capacity of 39 mgd. (York Water Statement No. 1, p. 6, lines 10-12; York Water Statement No. 2, p. 7, lines 3-7)

34. The Emergency Interconnect Agreement also will have no negative operational impact on York Water's customers because its existing and proposed facilities are more than sufficient to meet the requirements under the Agreement. (York Water Statement No. 2, p. 5, line 6 to p. 7, line 2)

35. Water will be supplied through the emergency interconnect from York Water's Southern Repump Zone, where the tanks have high water levels below the DYWA tank operating levels. (York Water Statement No. 2, p. 5, lines 6-9)

36. Therefore, York Water must pump water into the emergency interconnect. (York Water Statement No. 2, p. 5, lines 8-10)

37. Accordingly, York Water proposes to construct a pumping station with two pumps to supply the emergency interconnect, and check valves will be installed on the discharge side of each pump to prevent water from flowing backwards from DYWA's system to York Water's system. (York Water Statement No. 2, p. 5, lines 10-13)

38. These facilities will enable York Water to meet the flow rate and quantity requirements under the proposed Emergency Interconnect Agreement. (York Water Statement No. 2, p. 6, lines 6-7)

39. Each of the two pumps to be installed in York Water's proposed pumping station will be sized to provide the maximum flow rate of 200 gpm, thereby allowing York Water to meet its commitments under the Emergency Interconnect Agreement to provide the maximum

allowable volume of 250,000 gpd even if one of the pumps requires maintenance. (York Water Statement No. 2, p. 6, lines 9-13)

40. In addition, the existing York Water pumps that supply the Company's Southern Repump Zone have total capacity of approximately 4,800 gpm, whereas the equivalent peak day demand within the Southern Repump Zone was approximately 2,700 gpm in 2016. (York Water Statement No. 2, p. 6, lines 19-22)

41. Thus, the Company's Southern Repump Zone pumps will be able to supply water to the booster station in an amount sufficient to meet the maximum flow rate of 200 gpm. (York Water Statement No. 2, p. 6, line 19 to p. 7, line 2)

42. York Water's emergency interconnect will have no negative impact on Red Lion's system or operations. (York Water Statement No. 2, p. 7, lines 14-15; p. 9, lines 11-15)

43. Red Lion witness Kahwajy, who alleged there could be hydraulic issues, is not an engineer, does not have a college degree in engineering, and never performed any formal hydraulic analyses about the hydraulic impact of the emergency interconnect. (Tr. 104, lines 22-25; Tr. 105, lines 10-13; Red Lion Statement No. 1, p. 13, lines 16-21)

44. York Water's Vice President of Engineering has conducted ongoing hydraulic analyses, examining many different potential operating parameters. (York Water Statement No. 2, p. 7, lines 14-15)

45. The Company has determined there will be no impact on Red Lion's system, based on these hydraulic analyses. (York Water Statement No. 2, p. 9, lines 11-15)

46. York Water interconnect will only supply DYWA's lower pressure zone, whereas the Red Lion system supplies DYWA's upper pressure zone, which is at a higher operating hydraulic grade line ("HGL"). (York Water Statement No. 2, p. 9, lines 11-13)

47. As a result, York Water's supply of water to the lower pressure zone is projected to have no effect on the hydraulics of Red Lion's system. (York Water Statement No. 2, p. 9, lines 13-15)

48. The hydraulics of DYWA's system will not be negatively affected by the proposed emergency interconnect. (York Water Statement No. 2-R, p. 3, line 23 to p. 5, line 4)

49. York Water's emergency interconnect will not be pumping water into the upper pressure zone, *i.e.*, the Park Street Standpipes, to which both of Red Lion's interconnects with DYWA's system are connected. (York Water Statement No. 2-R, p. 3, line 23 to p. 4, line 8)

50. Therefore, York Water's supply of water through the emergency interconnect will not cause the Park Street Standpipes to overflow, as alleged by Red Lion. (York Water Statement No. 2-R, p. 3, line 23 to p. 4, line 8)

51. Even if the tanks overflow, it would simply waste potable water and would not harm the DYWA system. (York Water Statement No. 2-R, p. 5, lines 1-3)

52. DYWA has an incentive not to allow any overflow of its Park Street Standpipes to occur because DYWA is paying for that water from Red Lion. (York Water Statement No. 2-R, p. 5, lines 3-4)

53. As for the Denton and Lion's Park Tanks in the lower pressure zone, DYWA's valves and York Water's pumps will automatically shut off the flow of water if the water level in a tank reaches a defined elevation. (York Water Statement No. 2-R, p. 4, lines 9-18)

54. Red Lion witness Kahwajy's claim that if Red Lion's system is full and DYWA's tanks are full, Red Lion's water treatment plant will need to shut down is based on neither any calculations nor actual experience. (York Water Statement No. 2-R, p. 5, lines 5-20; p. 6, lines 2-3; York Water Exhibits MS-2R and MS-3R)

55. In addition, no issues also will occur with the blending of York Water's chloraminated water supply and Red Lion's chlorinated water supply, so long as both entities meet the requirements under their DEP water supply permits and DYWA monitors and controls the two water supplies into its system. (York Water Statement No. 1, p. 13, lines 20-22; York Water Statement No. 1-R, p. 9, lines 11-15)

56. York Water's Chief Operating Officer, Mr. JT Hand, is a civil engineer who offered his opinion that no issues from blending the water supplies using chloraminated and chlorinated treatment will occur as long as: (1) the Company and Red Lion meet their DEP regulatory requirements; and (2) DYWA monitors the disinfectant level in its water supply. (York Water Statement No. 1, p. 2, lines 5-22; p. 13, lines 20-22; York Water Statement No. 1-R, p. 9, lines 11-15)

57. York Water has substantial experience in this area, as the Company has multiple interconnects with municipal entities who treat their water supplies using free chlorine and has operated those interconnects for several years. (York Water Statement No. 1, p. 12, lines 8-11; York Water Statement No. 1-R, p. 9, lines 18-19, p. 10, lines 13-18)

58. To date, there have been no issues with York Water's supply of its chloramine-treated water supply to those entities. (York Water Statement No. 1, p. 12, lines 16-22; York Water Statement No. 1-R, p. 9, lines 19-20)

59. York Water will apply its substantial experience and expertise with these interconnects to the supply of water to DYWA through the proposed emergency interconnect. (York Water Statement No. 1-R, p. 10, lines 16-18)

60. Further, assuming York Water maintains the appropriate ratio in the water it supplies to DYWA, the only way there could be an exceedance of chlorine on the DYWA

system is if Red Lion were to supply more than the maximum contaminant level of 4.0 ppm of free chlorine at the entry point with DYWA's system. (York Water Statement No. 1-R, p. 10, lines 6-10)

61. Red Lion witness Kahwajy, who alleged potential issues with the blending of the two water supplies, has no college degrees in chemistry or water chemistry, nor any experience in operating, managing, or overseeing a water system with multiple sources of water supply that utilize different treatment methods. (Tr. 110, lines 9-11, 20-23; York Water Exhibit JTH-7R; Red Lion Statement No. 1, p. 13, lines 4-7)

62. Mr. Kahwajy also never performed any scientific analysis or study on the impact of DYWA's receiving the two differently-treated water supplies. (Tr. 110, lines 16-19; York Water Exhibit JTH-5R)

63. Mr. Kahwajy's testimony raising these issues with the blending of the two water supplies is entirely based on a conversation with Wendy Melhorn at the Pennsylvania Rural Water Association and a document provided by Ms. Melhorn about the mixing of chloramine and free chlorine. (York Water Exhibit JTH-6R)

64. Nothing in the documents provided by Ms. Melhorn demonstrates that there will be a problem in maintaining a chlorine residual in DYWA's system. (See York Water Exhibit JTH-6R)

65. Thus, York Water has demonstrated that the Emergency Interconnect will confer substantial benefits to DYWA while having no negative impact on the systems or operations of York Water, DYWA, and Red Lion.

Appendix B

Appendix B – Proposed Conclusions of Law

1. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

2. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact is more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008) (citation omitted).

3. Section 507 of the Public Utility Code requires Commission approval of contracts between a public utility and a municipal corporation, except for contracts to furnish service at regularly filed and published tariff rates. See 66 Pa. C.S. § 507. To be valid, the contract must be filed with the Commission at least 30 days prior to its effective date. See *id.*

4. “Upon notice to the municipal authorities, and the public utility concerned,” the Commission can institute proceedings prior to the contract’s effective date “to determine the reasonableness, legality or any other matter affecting the validity thereof.” *Id.*

5. The Commission will approve the contract if it determines the contract is reasonable and in the public interest. See *Application of West Penn Power Co.*, Docket No. A-111250F0065, 1996 Pa. PUC LEXIS 32, at *32, 34 (Feb. 20, 1996) (Recommended Decision) (approving municipal agreement to transfer facilities pursuant to Section 507 because it was “reasonable”), *adopted*, (Order entered Mar. 14, 1996); *Borough of Montrose v. Keystone Water Co. -- Montrose District*, 1983 Pa. PUC LEXIS 72, at *9-15 (Order entered Mar. 18, 1983)

(stating that although the Commission had the power to reform the settlement agreement between the Borough of Montrose and Keystone Water Company under 66 Pa. C.S. § 508 if necessary, the contract was approved without modification because it was “in the public interest”); *Application of The York Water Co.*, 2011 Pa. PUC LEXIS 81, at *11 (Order entered Sept. 23, 2011) (approving settlement agreement pursuant to Section 507 because it was “just and reasonable”).

6. Section 508 of the Public Utility Code empowers the Commission to revise, reform, or vary a public utility contract when: (1) the contract embraces a public right or concerns the public interest and general wellbeing of Pennsylvania; and (2) the contract terms being revised are found to be unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and general wellbeing of Pennsylvania. *See* 66 Pa. C.S. § 508.

7. The Commission’s authority under “Section 508 must be read *in pari materia* with other sections of the Public Utility Code that may be relevant to determining if a particular factual scenario is a proper subject for the exercise of the PUC’s contract reform power.” *Shenango Twp.*, 686 A.2d at 914 (citing 1 Pa. C.S. § 1932; *White Rock Sewage Corp. v. Pa. PUC*, 578 A.2d 984 (Pa. Cmwlth. 1990)).

8. Section 508 does not empower the Commission to vary, reform, or revise a contract provision simply because “the result will be undesirable, aesthetically displeasing, inefficient, or disadvantageous” to a party. *ALLTELL Pa., Inc. v. West Penn Power Co.*, 2000 Pa. PUC LEXIS 88, at *52 (Sept. 26, 2000) (Initial Decision), *adopted as modified*, 2001 Pa. PUC LEXIS 27, at *24-25 (Order entered July 26, 2001).

9. The revenues, expenses, and plant associated with the proposed emergency interconnect will be reflected in base rates in future rate cases. *See* 66 Pa. C.S. §§ 1301, 1308(d);

Barasch v. Pa. PUC, 532 A.2d 325, 335-36 (Pa. 1987); *City of Lancaster (Sewer Fund) v. Pa. PUC*, 793 A.2d 978, 981 n.1 (Pa. Cmwlth. 2002).

10. Water utilities' main line extensions should not burden existing customers nor cause economic harm to the utilities. See *Popowsky v. Pa. PUC*, 910 A.2d 38, 55-56 (Pa. 2006); *Kossman v. Pa. PUC*, 694 A.2d 1147, 1150 (Pa. Cmwlth. 1997).

11. The quality of water supplies and disinfection of water are solely within the jurisdiction of DEP. See, e.g., *Pickford v. Pa. PUC*, 4 A.3d 707, 713 (Pa. Cmwlth. 2010) (emphasis in original) (citing *Rovin v. Pa. PUC*, 502 A.2d 785, 787 (Pa. Cmwlth. 1986)).

12. As municipal water authorities, Red Lion and DYWA are not subject to the Commission's jurisdiction.

13. The Commission lacks subject matter jurisdiction to interpret or enforce the Water Sales Agreement by and between Red Lion and DYWA.

14. As a "creature of statute," the Commission "has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication." *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citing *Allegheny Cnty. Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967); *Del. River Port Auth. v. Pa. PUC*, 145 A.2d 172 (Pa. 1958)).

15. The Commission cannot grant itself by regulation or order authority that was not conferred upon it by the Legislature. See *W. Pa. Water Co. v. Pa. Pub. Util. Comm'n*, 370 A.2d 337, 339-40 (Pa. 1977) (citations omitted); *Fairview Water Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 162, 165-66 (Pa. 1985) (citations omitted); *Fed. Deposit Ins. Corp. v. Bd. of Fin. & Revenue*, 84 A.2d 495, 499 (Pa. 1951) (citations omitted).

16. The Commission generally lacks jurisdiction to interpret, enforce, or adjudicate claims regarding a contract between private entities. *See Pettko v. Pa. Am. Water Co.*, 39 A.3d 473, 478 n.9 (Pa. Cmwlth. 2012); *Adams v. Pa. PUC*, 819 A.2d 631, 635 (Pa. Cmwlth. 2003); *Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. Super. 1978) (citations omitted); *see also Virgilli v. Sw. Pa. Water Authority*, 427 A.2d 1251, 1254 (Pa. Cmwlth. 1981).

17. The Commission only can inquire into matters over which it has jurisdiction when reviewing contracts between public utilities and municipal corporations. *See Shenango Twp.*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) (citations omitted); *White Rock Sewage Corp. v. Pa. PUC*, 578 A.2d 984, 986-87 (Pa. Cmwlth. 1990).

18. Subject matter jurisdiction cannot be conferred through waiver, agreement, or stipulation of the parties. *Blackwell v. State Ethics Comm'n*, 567 A.2d 630, 636 (Pa. 1989) (citations omitted); *Commonwealth v. UEC, Inc.*, 397 A.2d 779, 785 (Pa. 1979) (citations omitted); *Branch v. Cohen*, 736 A.2d 732, 735 n.5 (Pa. Cmwlth. 1999).

19. The York Water Company has met its burden under 66 Pa. C.S. § 507 to prove that the proposed Emergency Interconnect Agreement is reasonable and in the public interest and, therefore, should be approved.

Appendix C

Appendix C – Proposed Ordering Paragraphs

1. That the Application of The York Water Company, docketed with the Pennsylvania Public Utility Commission at Docket No. U-2017-2610587, for approval of the Emergency Interconnect Agreement by and between The York Water Company and Dallastown-Yoe Water Authority is hereby granted without modification.

2. That the formal complaint filed by Red Lion Municipal Authority against The York Water Company at Docket No. C-2017-2616962 is dismissed in its entirety with prejudice.