

March 22, 2018

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket Nos. U-2017-2610587; C-2017-2616962
Red Lion v. The York Water Company
Reply Brief of Red Lion**

Dear Secretary Chiavetta:

Attached for filing is the Reply Main Brief of Red Lion Municipal Authority in the above referenced proceeding.

A copy of the attached Reply Main Brief has been forwarded to the parties in the manner indicated on the attached Certificate of Service.

If there are any questions, please feel free to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Attachment

cc: The Hon. Joel Cheskis, PA Public Utility Commission [w/enc.]
Andrew Miller, Esquire, MPL Law Firm, LLP [w/enc.]
Peter T. Ruth, Esquire, Stock and Leader [w/enc.]
Michael W. Hassell, Post & Schell, P.C. [w/enc.]

**Re: Docket Nos. U-2017-2610587; C-2017-2616962
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Reply Brief of Red Lion**

CERTIFICATE OF SERVICE

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

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Dated: March 22, 2018


Margaret A. Morris, Esq.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**REPLY BRIEF OF
RED LION MUNICIPAL AUTHORITY**

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I. INTRODUCTION

Pursuant to the litigation schedule established by the Honorable Judge Joel H. Cheskis (“Judge Cheskis”), Red Lion Municipal Authority (“Red Lion”) and the York Water Company (“York Water”) filed Main Briefs on February 28, 2018, in the instant consolidated proceeding. As expected, the Main Briefs present a sharp contrast.

II. COUNTER STATEMENT

The record evidence supports denying York Water’s Application seeking approval of a Proposed Emergency Interconnect Agreement with Dallastown-Yoe Water Authority (“Dallastown”). The Proposed Emergency Interconnect Agreement, on its face, violates York Water’s Commission-approved Tariff¹ as Dallastown admits that it did not explore any, let alone exhaust all, alternatives for water supply prior to contacting York Water. The “take or pay” nature of the Proposed Emergency Interconnect Agreement evidences that it does not serve an emergency interconnect purpose but is quite simply a bulk water agreement, which violates a plain reading of the Water Sales Agreement between Red Lion and Dallastown. York Water Exhibit CLS-2. Finally, according to Witness Stokes, who oversees Dallastown’s water operations, not all the details of the Proposed Emergency Interconnect Agreement have been worked out. Tr. 82. The Commission should reject the Proposed Emergency Interconnect Agreement when one of the signatories readily admits that York Water and Dallastown are “just in the midst of the agreement” and have not worked out many of the specifics of the practical implications of the Proposed Emergency Interconnect Agreement. Tr. 82.

¹Tariff Supplement 20 to Water-Pa. P.U.C. No 14, First Revised Page No. 21, effective September 5, 1996.

In its Main Brief, York Water tries to muddy the issues before the Commission by inappropriately limiting the Commission's discretion to review, modify or deny its Application. Additionally, York Water argues that the Commission should completely ignore the contractual obligations set forth in the Water Sales Agreement between Red Lion and Dallastown, which was admitted into evidence by York Water. This argument was found to be without merit and soundly dismissed by Judge Cheskis. See, Order Denying Preliminary Objections, dated October 11, 2017 ("*PO Order*").

III. SUMMARY OF ARGUMENT

Red Lion demonstrated and the record evidence supports a finding that York Water's Application should be denied for the following reasons: (1) Dallastown did not pursue any, let alone exhaust all, measures to obtain an adequate and safe supply of drinking water before contacting York Water as required by York Water's Tariff; (2) the Proposed Emergency Interconnect Agreement is simply a water sales agreement disguised as an emergency interconnect agreement; and (3) Dallastown has not "worked out all the details" under the Proposed Emergency Interconnect Agreement related to the blending of the two differently treated water sources.

IV. ARGUMENT

Violation of York Water's Tariff

Witness Stokes freely admits that Dallastown did not explore any, let alone exhaust all, "alternatives to obtaining an adequate high-quality source of water." Tr. 59. Based on that testimony alone, Dallastown does not meet the criteria under York Water's Tariff to

apply and enter into negotiations with York Water for the proposed Emergency Interconnect Agreement.

Proposed Emergency Interconnect Agreement is Simply a Bulk Water Sales Agreement

The plain language of the proposed Emergency Interconnect Agreement makes it clear that York Water will be supplying water to Dallastown *via* an ordinary bulk water purchase agreement. The passing reference to the “emergency purchase” appears in the third recital when referencing the Water Sales Agreement. Quite remarkably, there are no other references in the Proposed Emergency Interconnect Agreement as means for Dallastown to purchase water on an emergency basis from York Water. Finally, the fourth recital of the Proposed Emergency Interconnect Agreement expressly states the true intent between York Water and Dallastown, to wit: provide for the additional sale of water to Dallastown for **resale** to its customers. York Water Exhibit JTH-1.

In further support that the Proposed Emergency Interconnect Agreement is simply a bulk water sales agreement, the “take or pay” provision requires Dallastown to pay for a minimum of 100,000 gallons of water, per day, regardless of whether the water is taken or not. York Water calculated the minimum amount of water because Dallastown refused to contribute any capital to the infrastructure required to support the interconnect. Tr. 62. There is no dispute that the monthly revenues paid by Dallastown will cover the Operation and Maintenance (“O&M”) expenses for the interconnect and provide York Water a return on its facilities which will be built to provide the service. Tr. 31. The proposed minimum quantities are far above what is actually required to maintain an emergency interconnect. The minimum of 100,000 gallons of

water, per day of water was calculated to simply cover York Water's costs and is not indicative of Dallastown's actual emergency needs. The projected revenues guarantee that York Water's ratepayers are not subsidizing the proposed interconnect.

The Water Sales Agreement between Red Lion and Dallastown provides that Dallastown's water supply will be purchased exclusively from Red Lion except for as set forth in Provision 4.1 regarding an emergency interconnect. Red Lion Statement No. 1; York Water Exhibit CLS-2. Witness Stokes admitted that Dallastown intends to use the proposed Emergency Interconnect Agreement as a bulk purchase agreement. Tr. 80. She testified emphatically that Dallastown will "absolutely" take the minimum amount of water everyday under the Proposed Emergency Interconnect Agreement since Dallastown is paying for it. Tr. 79. Therefore, the water provided under the Proposed Emergency Interconnect Agreement will amount to a daily purchase of water. The Commission should not condone such a transparent attempt to circumvent the legal obligations and provisions of the Water Sales Agreement simply because York Water has labeled what is a bulk water connection as an "emergency interconnect."

Furthermore, the record evidence reflects that the Dallastown system consists of an upper pressure zone and a lower pressure zone. Tr. 61-62. Witness Snyder testified that under the Proposed Emergency Interconnect Agreement, York Water will only provide water to the lower pressure zone. York Water Statement No. 2, Tr. 47. Witness Snyder does not know how many customers are in the lower pressure zone or the upper pressure zone. Tr. 48-49. Most striking, though, despite the proposed Emergency Interconnect Agreement being marketed as an "emergency interconnect," Witness Snyder testified that if there is an issue with the upper

pressure zone that Red Lion cannot provide water, the proposed Emergency Interconnect Agreement cannot address it with the equipment proposed. Tr. 49. Witness Snyder further testified that Dallastown will notify York Water of its water needs using the same process as York Water's four other "active interconnects with bulk water, other bulk water suppliers" where water is pumped into those systems on a daily basis. Tr. at 53. Witness Snyder further confirmed that the Proposed Emergency Interconnect Agreement is nothing more than a bulk sales agreement when he testified that "[f]rom an engineering and operations standpoint, there's no difference" between the Dover Township bulk sales agreement and the proposed Emergency Interconnect Agreement with Dallastown. Tr. 55. The record evidence supports a finding that the Proposed Emergency Interconnect Agreement is simply a bulk water agreement, which violates the provisions of the Water Sales Agreement.

Blending of Water Supply

The Commission has an absolute obligation to ensure that approval of the proposed Emergency Interconnect Agreement does not create a potential health and safety issue to the public with the blending of the two differently treated water supplies. Witness Stokes testified that it is Dallastown's responsibility to treat the York Water supply with blending (Tr. 62-63) yet the engineering firm hired by Dallastown is still "researching the issue" and had not provided a written report because of the pending PUC proceeding. Tr. 67. The record does not reflect any evidence that potential unknown blending problems will not create a public health issue. Rather the record reflects that York Water believes that Dallastown will be responsible for blending and Dallastown believes York Water will be responsible. Tr. 82. Witness Stokes admitted that Dallastown and York Water were "just in the midst of the agreement" and "didn't

work all the details out.” Tr. 82. Red Lion asserts that such a critical determination must be clearly resolved and defined **before**, not after, York Water seeks approval of the Proposed Emergency Interconnect Agreement.

Commission Jurisdiction over the Water Sales Agreement

York Water contends that the Commission lacks jurisdiction to interpret the Water Sales Agreement, admitted into the record as York Water Exhibit CLS-2. The Commission does not need to interpret that Water Sales Agreement -- the plain language of York Water Exhibit CLS-2 speaks for itself. Dallastown has not met the requirements of Section 4.1 of the Water Sales Agreement since it has not established the purchase of water necessary to maintain an emergency interconnect.

As Judge Cheskis stated in his *PO Order*:

As Red Lion noted, it is not requesting that the Commission interpret or enforce the water sales agreement, but take notice and understand the water sales agreement to determine whether the emergency interconnect agreement accomplishes its purported purpose or is in fact a bulk water sales agreement in disguise in violation of York’s tariff.

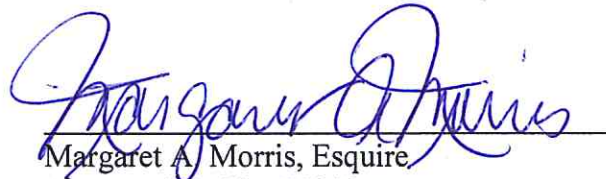
Red Lion’s arguments regarding whether York has violated its tariff or the Public Utility Code cannot be properly considered without considering the water sales agreement between Red Lion and DYWA as well.

PO Order at 7.

V. CONCLUSION

For the reasons set forth above and in its Main Brief, Red Lion respectfully requests that the Commission deny York Water's Application seeking approval of the Proposed Emergency Interconnect Agreement between York Water and Dallastown.

Respectfully submitted,



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