

July 6, 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 Municipal Authority v. The York Water Company and
Dallastown-Yoe Water Authority
Exceptions of RLMA to Initial Decision**

Dear Secretary Chiavetta:

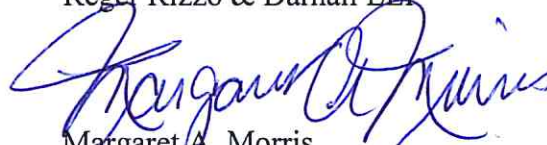
Attached for filing are the Exceptions of Complainant, Red Lion Municipal Authority (RLMA) to the June 7, 2018 Initial Decision of the Hon. Joel H. Cheskis in the above referenced proceeding.

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

Please contact me if there are any questions.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Attachment

cc: The Hon. Joel Cheskis, PA Public Utility Commission
Office of Special Assistants, PA Public Utility Commission
Andrew J. Miller, Esquire, MPL Law Firm, LLP
Michael W. Hassell, Post & Schell, P.C.
Peter T. Ruth, Esquire, Stock and Leader

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CERTIFICATE OF SERVICE

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

Via Electronic and First Class Mail

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Dated: July 6, 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 COMPANY AND DALLASTOWN-	:	
YOE WATER COMPANY	:	
	:	
	:	
RED LION MUNICIPAL AUTHORITY	:	
	:	C-2017-2616962
	:	
v.	:	
	:	
THE YORK WATER COMPANY AND	:	
DALLASTOWN-YOE WATER AUTHORITY	:	

**EXCEPTIONS/CLARIFICATION OF RED LION MUNICIPAL AUTHORITY TO THE
INITIAL DECISION OF THE HONORABLE JOEL H. CHESKIS**

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RED LION MUNICIPAL AUTHORITY	:	
	:	C-2017-2616962
v.	:	
	:	
THE YORK WATER COMPANY AND	:	
DALLASTOWN-YOE WATER AUTHORITY	:	

**EXCEPTIONS/CLARIFICATION OF RED LION MUNICIPAL AUTHORITY TO THE
INITIAL DECISION OF THE HONORABLE JOEL H. CHESKIS**

Pursuant to 52 Pa Code § 5.533, Red Lion Municipal Authority (Red Lion) hereby files its Exceptions to the Initial Decision of Administrative Law Joel H. Cheskis (Judge Cheskis) issued on June 7, 2018, which approved the Application of The York Water Company (York) for Approval of an Emergency Interconnect Agreement with Dallastown-Yoe Water Authority (DYWA) and dismissed the Formal Complaint filed by Red Lion in the above-referenced consolidated proceedings. In the alternative, Red Lion requests that the Commission clarify that its finding to approve the proposed Emergency Interconnect Agreement does not alter the legal rights/obligations under the executed Water Sale Agreement between Red Lion and DYWA.

Initial Decision

In his Initial Decision, Judge Cheskis found that the proposed Emergency Interconnect Agreement was reasonable and in the public interest. ID at 26. He also ruled that Red Lion did not demonstrate that there are alternatives to obtaining an adequate high-quality source of supply available that DYWA should have considered before entering into the agreement with York finding:

Red Lion offered no identification of viable alternatives for the record and York is the only water utility certified to provide service within the general vicinity of DYWA's lower pressure zone. York R.B. at 5-6. In sum, there are no other viable alternatives for DYWA to have considered prior to approaching York.

ID at 29

Exceptions

Exception #1: Red Lion excepts to Conclusion of Law No. 9.

Red Lion excepts to Conclusion of Law No. 9 that York satisfied its burden that the proposed Emergency Interconnect Agreement is reasonable and in the public interest. The proposed Emergency Interconnect Agreement is ordinary bulk water rather than a true emergency interconnect agreement. Pursuant to Section 1.1 of the Water Sale Agreement between DYWA and Red Lion, DYWA agreed to exclusively purchase its water supply from Red Lion with two noted exceptions which would permit DYWA to purchase water from another entity: (1) Red Lion's inability to supply water due to a *force majeure*; or (2) **for the purchase of water necessary to maintain an emergency interconnect.** (Emphasis added). York Exhibit CLS-3. Specifically, Section 4.1 of the Water Sales Agreement between Red Lion and DYWA states that DYWA shall have the **right to purchase/use the minimum amount of water**

necessary to maintain the emergency interconnection with the alternative supplier.
(Emphasis added). York Exhibit CLS-3

Red Lion excepts to the finding that the proposed Emergency Interconnect Agreement is reasonable and in the public interest and should be approved. ID at 32. The record evidence reflects that the plain language of the proposed Emergency Interconnect Agreement makes it clear that York will be supplying water to DYWA *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 as means for DYWA to purchase water on an emergency basis from York. Finally, the fourth recital of the proposed Emergency Interconnect Agreement expressly states the true intent between York and DYWA, to wit: provide for the additional sale of water to DYWA for **resale** to its customers. Exhibit JTH-1.

For the reasons set forth above, Red Lion respectfully requests that Exception #1 be granted.

Exception #2: Red Lion excepts to Conclusion of Law No. 10.

Red Lion excepts to Conclusion of Law No. 10 that Red Lion failed to demonstrate that York violated its Tariff with respect to the proposed Emergency Interconnect Agreement. Section 4.3 of York’s Tariff¹ clearly states that York may only provide water services to an authority **when the authority has “exhausted all alternatives to obtaining an**

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

adequate high-quality source of supply” and only upon application by the authority. (Emphasis added). Judge Cheskis inappropriately shifted the burden of proof from DYWA to Red Lion to show that DYWA had viable alternatives. Witness Stokes, Manager for DYWA, freely admitted that DYWA did not explore, let alone exhaust, “any alternatives to obtaining an adequate high-quality source of water.” Finding of Fact No. 90. Judge Cheskis erred by holding that the admission of Witness Stokes was not substantial evidence sufficient to support Red Lion’s argument. ID at 29. Witness Stokes’ admission should not have been summarily dismissed as a “comment” and should be sufficient evidence to support that DYWA did not exhaust all reasonable alternatives as required by the York’s Tariff. York’s Commission-approved tariff has the force and effect of law and is binding on both the public utility and its customers. 66 Pa.C.S. § 1301; *DiSanto v. Dauphin Consolidated Water Supply Company*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1967, 1070 (Pa. Cmwlth. 1981).

Furthermore, Judge Cheskis ruling is inconsistent with Findings of Fact #52 (“There has never been an issue resulting from Red Lion’s conduct that has resulted in Red Lion being unable to adequately supply water to meet the demands of DYWA’s customers”) and Findings of Fact #55 (“Red Lion’s current system is not connected to an alternative supply source but if a problem arises with Red Lion’s main source of supply, Red Lion has the option to use water from both Beaver Creek and the Susquehanna River”). The record reflects that DYWA does have an alternative feasible source of water, i.e., Beaver Creek and the Susquehanna River. Therefore, under its Commission-approved Tariff, York cannot provide a second source.

Based on Witness Stokes' testimony and open admission, DYWA did not meet the criteria under York's Tariff to even begin negotiations with York for the proposed Emergency Interconnect Agreement. Judge Cheskis' finding warps the policy of the Department of Environmental Protection, as set forth in Finding of Fact #26 (" . . . DEP 2006 Public Water Supply Manual that indicates that each community water suppliers should maintain more than one source of supply"), into an amendment of York's Tariff to allow a secondary source.

For the reasons set forth above, Red Lion respectfully requests that Exception #2 be granted.

Clarification Request

Red Lion requests that any Order entered approving the Emergency Interconnect Agreement specifically state that the Commission's regulatory review was limited to the terms of the proposed agreement under the Pennsylvania Public Utility Code and no substantive determination was reached regarding the legal rights/obligations of either Red Lion or DYWA under their executed Water Sale Agreement.

WHEREFORE, Red Lion Municipal Authority, requests that its Exceptions be granted, the Initial Decision be reversed based on the lack of substantial record evidence to support the findings of Judge Cheskis. In the alternative, Red Lion Municipal Authority respectfully requests that the Commission specifically clarify that approval of the proposed agreement does not alter the legal rights of the parties to the executed Water Sale Agreement.

Respectfully submitted,



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Date: July 6, 2018

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