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October 15, 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**

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Dear Secretary Chiavetta:

Enclosed for filing is the Answer of The York Water Company to the Petition for Reconsideration and Stay of Red Lion Municipal Authority in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



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).

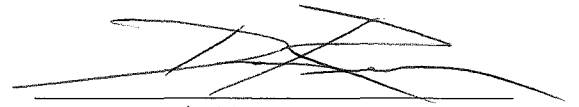
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Date: October 15, 2018



Devin T. Ryan

**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. : Docket No. C-2017-2616962  
:  
The York Water Company :

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**ANSWER OF THE YORK WATER COMPANY TO  
THE PETITION FOR RECONSIDERATION AND STAY OF  
RED LION MUNICIPAL AUTHORITY**

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Of Counsel:

Post & Schell, P.C.

Date: October 15, 2018

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The York Water Company (“York Water” or the “Company”), pursuant to 52 Pa. Code §§ 5.61 and 5.572, hereby respectfully submits this Answer to the Petition for Reconsideration and Stay filed by Red Lion Municipal Authority (“Red Lion”) on October 5, 2018. In its Petition, Red Lion seeks reconsideration of the Opinion and Order of the Pennsylvania Public Utility Commission (“Commission”) entered September 20, 2018 (“*Order*”) approving York Water’s Application for Approval of an Emergency Interconnect Agreement between the Company and Dallastown-Yoe Water Authority (“DYWA”) and dismissing Red Lion’s Formal Complaint in its entirety and with prejudice. Red Lion further seeks a stay of the *Order*. Red Lion’s requests for reconsideration and stay completely lack merit and should be denied for several reasons.

With respect to the request for reconsideration, Red Lion first fails to meet the standard for granting reconsideration set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) because it re-raises arguments that were already considered and rejected by the Commission. In the *Order*, the Commission fully addressed Red Lion’s arguments that: (1) the negotiation of the Emergency Interconnect Agreement violated Rule 4.3 of the Company’s tariff; and (2) the Emergency Interconnect Agreement is not in the public interest because it, according to Red Lion, is a bulk water sales agreement. Red Lion makes the same arguments in its Petition for Reconsideration. However, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided previously, such that the petitioner obtains a second opportunity to argue properly resolved matters. Therefore, Red Lion fails to meet the standard for granting reconsideration.

Second, Red Lion’s request for reconsideration presents other issues and arguments that Red Lion failed to raise in its Exceptions to the Initial Decision. Nothing in Red Lion’s

Exceptions mentioned or referred to: (1) “the mixing of two differently treated water sources”; (2) the operation and control of the emergency interconnect; (3) the area of DYWA’s service territory to be supplied by the emergency interconnect; (4) the minimum charge for service under the Emergency Interconnect Agreement; (5) the amount of water necessary to maintain the emergency interconnect; or (6) York Water allegedly approaching DYWA first about the emergency interconnect. Thus, these arguments and issues have been waived and should not now be presented to the Commission through reconsideration.

Third, Red Lion’s request for reconsideration improperly attempts to present extra-record material in its Petition, including the Company’s “internal emails,” the meeting minutes for York Water’s June 26, 2017 Board of Directors meeting, information about an interconnect between the Company and Hanover Borough, and a contention that bulk water sales agreements tend to include conservation terms and rights of first refusal whereas emergency interconnect agreements do not. None of this alleged evidence is in the record, and Red Lion has offered no excuse for its failure to present this material prior to the close of the record.

Fourth, even if the Commission were to consider the merits of Red Lion’s issues and arguments, which it should not, York Water presented thorough, credible, and persuasive evidence refuting all of Red Lion’s claims. Based on this evidence, the Commission correctly decided that the Emergency Interconnect Agreement did not violate York Water’s Tariff Rule 4.3 and is in the public interest. Further, York Water demonstrated that there will be no issues with the mixing of two differently-treated water supplies and that DYWA would control the flow of water through the emergency interconnect. Moreover, the record demonstrates that if an issue arises with Red Lion’s supply, it is better to have an alternative source of supply for some of DYWA’s requirements territory rather than none at all. Additionally, the minimum purchase

requirement under the Emergency Interconnect Agreement was established to cover the capital costs and expenses of the emergency interconnect because DYWA was unwilling to make an upfront contribution. Therefore, absent the minimum purchase requirement, York Water would be unable to construct and maintain the emergency interconnect, which will benefit DYWA and its customers by providing an alternative source of water supply.

Red Lion also fails to demonstrate that a stay of the Commission's *Order* is warranted. For all of the reasons outlined above, Red Lion is not likely to prevail on the merits in either seeking reconsideration or appealing the Commission's *Order*. Furthermore, Red Lion has not established that it will suffer irreparable harm absent the issuance of a stay. Lastly, Red Lion has failed to demonstrate that a stay will not cause substantial harm to the interested parties and will not adversely affect the public interest, in particular the interest of DYWA's customers in having an emergency interconnect to address concerns in relying solely upon Red Lion.

For these reasons, as more fully explained below, York Water respectfully requests that the Commission deny Red Lion's Petition for Reconsideration and Stay.

## **I. INTRODUCTION AND BACKGROUND**

This proceeding was initiated on June 16, 2017, when, pursuant to 66 Pa. C.S. § 507, York Water filed an Application for approval of the proposed Emergency Interconnect Agreement entered into by and between the Company and DYWA. The proceeding was assigned Docket No. U-2017-2610587. Subsequently, Red Lion filed a Formal Complaint at Docket No. C-2017-2616962 concerning the Emergency Interconnect Agreement, which was consolidated with the ongoing proceeding.

Following the exchange of written testimony, discovery, and an evidentiary hearing, Administrative Law Judge Joel H. Cheskis (the "ALJ") issued a well-reasoned Initial Decision

(“ID”) that approved the Company’s Application and denied Red Lion’s Complaint in its entirety and with prejudice.

On July 6, 2018, Red Lion filed Exceptions to the ID. York Water filed Replies to Red Lion’s Exceptions on July 16, 2018.

On September 20, 2018, the Commission entered its *Order* denying Red Lion’s Exceptions, approving the Company’s Application, and dismissing Red Lion’s Complaint in its entirety and with prejudice.

On October 5, 2018, Red Lion filed the pending Petition for Reconsideration and Stay.

For the reasons explained below, as well as those more fully explained in the Commission’s *Order*, Red Lion’s Petition for Reconsideration and Stay should be denied.

## II. LEGAL STANDARDS

The Commission’s standard for granting reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) (emphasis added):

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them....” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Consequently, for a petition to warrant reconsideration by the Commission, it must demonstrate new and novel arguments that were raised below by the petitioner, but not previously considered by the Commission. The Commission has cautioned that the last portion of the operative

language of the *Duick* standard -- “by the Commission” -- focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, p. 3 (Order entered May 22, 2014). Therefore, a petition for reconsideration cannot be used to raise new arguments or issues that should have been, but were not, previously raised.

A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Id.* Further, as explained by the Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh v. Pa. Dep’t of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980).

A stay is appropriate and necessary where a party demonstrates that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable injury without the requested relief; (3) issuance of a stay will not substantially harm interested parties in the proceedings; and (4) issuance of the stay will not adversely affect the public interest. *See Pa. PUC v. Process Gas Consumers Grp.*, 467 A.2d 805 (1983). Further, the Commission has observed that:

[I]n deciding whether to stay one of our orders pending appeal, this Commission should not indulge in a further review of the case. Rather, this Commission should concentrate solely on the effect our order will have pending appeal.

*Pa. PUC v. Makovsky Brothers, Inc.*, 53 Pa. P.U.C. 510, 511 (1979).

As explained below, Red Lion's Petition clearly fails to satisfy the standards for granting either reconsideration or a stay.

### III. ARGUMENT

#### A. RED LION'S REQUEST FOR RECONSIDERATION SHOULD BE DENIED

##### 1. Red Lion Fails to Satisfy the Standard for Granting Reconsideration

Red Lion fails to meet the *Duick* standard for granting reconsideration because it re-raises arguments that were already considered and rejected by the Commission. In its Petition, Red Lion first alleges that the negotiation of the Emergency Interconnect Agreement violated Rule 4.3 of the Company's tariff because: (1) the ALJ's Finding of Fact 52 stated that "[t]here 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 (2) DYWA "testified that there was no investigation into any other sources of emergency water." (Petition at 3, 5) Further, Red Lion contends that the Agreement is not in the public interest because, based on the terms of the agreement, it is allegedly a bulk water sales agreement, not an emergency interconnect agreement. (Petition at 3-4) However, for Red Lion to meet the *Duick* standard for granting reconsideration, it cannot simply re-raise the same arguments that were considered and rejected by the Commission. *See Duick*, 56 Pa. P.U.C. at 559.

Here, the Commission fully addressed and rejected these arguments in its *Order*. First, regarding the alleged violation of Tariff Rule 4.3, Red Lion argued in its Exceptions to the ID that Ms. Connie Stokes, the manager for DYWA, stated that DYWA did not exhaust "any alternatives to obtaining an adequate high-quality source of water." *Order* at 21. Likewise, as Red Lion does in the instant Petition, Red Lion averred that Finding of Fact 52 contradicts the ALJ's ruling. *Id.* at 22. Ultimately, the Commission "conclude[d] that Red Lion has failed to

satisfy its burden of proof to show that York Water violated the Code, a Commission Order or Regulation, or its Commission-approved Tariff, when it entered into the instant emergency interconnect agreement with DYWA.” *Id.* Therefore, the Commission already has considered and rejected these arguments about the alleged violation of Tariff Rule 4.3.

Second, Red Lion claimed in its Exceptions to the ID that the Emergency Interconnect Agreement was simply a bulk water sales agreement and, therefore, not in the public interest. *Id.* at 17-18. Red Lion contended that the word “emergency” is not used enough in the Agreement and that the “fourth recital” of the Agreement states its purported “true intent,” which “is to provide for the additional sale of water to DYWA for resale to its customers.” *Id.* at 18. The Commission expressly rejected these arguments. *Id.* at 20-21. Specifically, the Commission stated it is “not convinced by the arguments set forth by Red Lion to support its position that the agreement is not an emergency interconnect agreement but rather a bulk water sales agreement.” *Id.* at 20. In fact, the Commission found “no merit in Red Lion’s argument that the Interconnect Agreement is a bulk water sales agreement because the word ‘emergency’ is only referenced in passing.” *Id.* at 21. Thus, the Commission previously considered and rejected Red Lion’s arguments about the Agreement allegedly being a bulk water sales agreement.

Based on the foregoing, Red Lion is trying to re-raise in its Petition the same arguments that the Commission rejected in its *Order*. As a result, Red Lion fails to meet the *Duick* standard for reconsideration.

**2. Red Lion Waived the Remaining Issues and Arguments in Its Petition by Failing to Raise Them in Its Exceptions to the Initial Decision**

Red Lion waived all of the remaining issues and arguments in its Petition because it failed to raise them in its Exceptions to the ID. The Commission has held that parties waive any arguments that they fail to raise in their Exceptions and properly preserve for appeal. *See Merritt*

*v. Duquesne Light Co.*, 2011 Pa. PUC LEXIS 1197, at \*9-10 (Order entered Mar. 31, 2011) (quoting *Generic Investigation Regarding Transp. Assessments*, Docket No. I-2008-2022003 (Order entered Aug. 26, 2008)). Indeed, “[i]n the interest of judicial economy,” the Commission “will not grant reconsideration based on an argument which that same party abandoned earlier in the proceedings.” *Id.*

Here, among other things in its Petition, Red Lion raises issues and arguments relating to: (1) “the mixing of two differently treated water sources”; (2) the operation and control of the emergency interconnect; (3) the area of DYWA’s service territory to be supplied by the emergency interconnect; (4) the minimum charge for service under the Emergency Interconnect Agreement; and (5) the amount of water necessary to maintain the emergency interconnect. (Petition at 3-5) However, none of these issues and arguments was raised in Red Lion’s Exceptions to the ID. (See Red Lion Exceptions at 2-5) Therefore, all of these remaining issues and arguments in Red Lion’s Petition were waived.

For these reasons, the Commission should disregard all of the remaining issues and arguments in Red Lion’s Petition.

### **3. Red Lion Improperly Attempts to Rely on Extra-Record Evidence in Its Petition**

Red Lion improperly attempts to rely on extra-record evidence in its Petition. The Commission has declared that it “cannot consider extra-record evidence” that is presented in a petition for reconsideration in support of the party’s “on-the-record position.” *Rudnick v. Verizon Pa. Inc.*, 2011 Pa. PUC LEXIS 1263, at \*11 (Order entered Apr. 1, 2011). Therefore, such extra-record evidence cannot be used to support the grant of reconsideration.

Here, Red Lion attempts to rely on several documents and allegations that are not in the record. For example, Red Lion points to the Company’s “internal emails” and the meeting

minutes for York Water's June 26, 2017 Board of Directors meeting as alleged support that the negotiation of the Emergency Interconnect Agreement violated Tariff Rule 4.3. (Petition at 5) Red Lion also tries to introduce information about an interconnect between the Company and Hanover Borough, which, according to Red Lion, proves that interconnects can be maintained without a minimum purchase requirement. (Petition at 5) Moreover, as alleged support of its claim that the Emergency Interconnect Agreement is a bulk water sales agreement, Red Lion contends that bulk water sales agreements tend to include conservation terms and rights of first refusal whereas emergency interconnect agreements do not. (Petition at 4)

As stated above, none of this alleged evidence is in the record. Furthermore, Red Lion never establishes that such evidence is newly discovered or constitutes a change in circumstances. *See Duick*, 56 Pa. P.U.C. at 559. Therefore, none of this extra-record evidence can be used to support Red Lion's request for reconsideration of the *Order*.

Based on the foregoing, the Commission should disregard all of Red Lion's extra-record evidence.

**4. Red Lion's Arguments Challenging the Commission's *Order* Contradict the Record and Completely Lack Merit**

Even if the Commission were to reconsider the merits of Red Lion's issues and arguments, which it should not for all of the reasons stated above, Red Lion's arguments challenging the Commission's *Order* contradict the record and completely lack merit. (Petition at 3-5)

**a. The Commission Correctly Held that the Emergency Interconnect Agreement Did Not Violate Rule 4.3 of York Water's Tariff**

The Commission properly found that Red Lion did not meet its burden to prove that the Emergency Interconnect Agreement violated Rule 4.3 of York Water's tariff. *Order* at 25-26.

Although Red Lion claims that the Company violated Rule 4.3 because DYWA allegedly did not exhaust all of its alternatives before approaching York Water, the Company explained that this particular allegation was raised for the first time in Red Lion's Main Brief. (York Water RB at 4-5) Therefore, Red Lion's actions have prejudiced York Water, and this new argument should be disregarded.<sup>1</sup> (York Water RB at 5) Nevertheless, even if this alleged allegation were properly raised, the Commission soundly rejected it for several reasons.

First, York Water explained that under Rule 4.3(a), the Company is responsible for analyzing the alternatives available to a municipal authority that is applying for water service. (York Water RB at 5) Here, there is nothing in the record about York Water's analysis of DYWA's available alternatives when DYWA approached the Company about an emergency interconnect. (York Water RB at 5)

Second, Red Lion solely relied on a single comment by Ms. Stokes in support of its allegation. *Order* at 25. As the Commission soundly determined, this "mere trace of evidence or a suspicion of the existence of a fact" cannot be considered substantial evidence sufficient to sustain Red Lion's burden of proof. *Id.*

Third, Red Lion failed to identify "any viable alternative water supplier located at the proposed point of interconnection or within the general vicinity of DYWA's lower pressure zone." *Id.* In fact, York Water demonstrated that it is the only water utility certificated to provide service at the proposed point of interconnection or even within the general vicinity of

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<sup>1</sup> See, e.g., *Pa. PUC v. Pa. Power and Light Co.*, Docket Nos. R-822169, *et al.*, 55 P.U.R.4th 185, 57 Pa. PUC 559, 596-97 (Order entered Aug. 19, 1983) ("Merits aside, it is highly inappropriate for a party to propose a completely new adjustment for the first time in its brief."); *Enron Capital & Trade Res. Corp. v. Peoples Natural Gas Co.*, Docket No. R-00973928C0001, 1997 Pa. PUC LEXIS 178, at \*10-11 (Nov. 13, 1997) (Recommended Decision) ("Enron cannot be permitted to introduce an argument at the briefing stage which it did not introduce in the evidentiary phase of this proceeding . . . Imposing [the alternative proposal] without the other parties having notice and an opportunity to be heard would violate their due process rights."), *affirmed*, 1998 Pa. PUC LEXIS 199 (Order entered Aug. 24, 1998).

DYWA's lower pressure zone. *See id.* Therefore, York Water is the only viable alternative water supplier.

Fourth, Red Lion fails to recognize that the purpose of Rule 4.3(a) is not to prevent York Water from providing any water service to a municipality or authority until every potential alternative for water supply is exhausted; rather, the rule exists to protect against a municipality or authority in York Water's service territory demanding water service from the Company in a way that would negatively affect the Company's facilities, service, and operations. (York Water RB at 6-7)

Fifth, the record demonstrates that Red Lion is incapable of providing the backup service that DYWA desires. Although Red Lion has maintained that DYWA has two alternative supplies of water, because Red Lion has two sources of supply (Petition at 7-8), such contention is without merit. Red Lion treats all of its supplies at a single location and provides all of the water presently to DYWA. (Tr. 87) Therefore, any problem at the treatment plant, or downstream, has impaired and will impair DYWA's access to water. Obviously, DEP does not agree with Red Lion's assertion, or it would not have recommended to DYWA to obtain a backup source of supply for emergencies. (York Water RB at 8) Moreover, DYWA has, over several years, afforded Red Lion the opportunity to provide an adequate high quality source of supply to DYWA, but Red Lion has been unable to do so. (York Water RB at 8) Indeed, on at least 36 dates over an 8-month period, Red Lion has failed to keep the water levels in DYWA's Park Street tanks at the required 77 feet. (York Water RB at 8)

Finally, Red Lion's claim that "[i]t is well known that York has previously approached Dallastown prior to the negotiation of the interconnect agreement for the purposes of securing water services to Dallastown's customers" is completely contradicted by the record. (Petition at

5) In fact, Ms. Stokes testified in her written direct testimony that “DYWA instructed [her] to initially contact York Water concerning the emergency interconnection into the DYWA water system.” (York Water Statement No. 3, p. 6, lines 6-7) During cross-examination at the evidentiary hearing, Ms. Stokes testified that York Water did not approach DYWA to start discussing the supply of water to DYWA and that DYWA was the entity who initiated contact. (Tr. 73)

For these reasons, the Commission correctly held that Red Lion did not meet its burden to prove that the Emergency Interconnect Agreement violated Rule 4.3 of York Water’s tariff.<sup>2</sup>

**b. The Commission Properly Concluded that the Emergency Interconnect Agreement Is in the Public Interest**

The Commission correctly determined that the Emergency Interconnect Agreement is in the public interest. *Order* at 20-21. The emergency interconnect will provide an alternative source of water supply for DYWA, which currently only has one source of treated water supply—Red Lion. *Id.* at 21. Recent local and national incidents have shown the substantial benefits of multiple sources of water supply. (York Water RB at 4) Moreover, the Pennsylvania Department of Environmental Protection (“DEP”) has “encouraged DYWA to secure an additional water provider.” *Order* at 21. None of the arguments raised in Red Lion’s Petition should disturb the Commission’s findings.

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<sup>2</sup> Even if the record could support a conclusion that DYWA had alternatives other than York Water to obtain an emergency source of supply, which it does not, York Water explained in its Reply Brief that the Commission has the power to grant a waiver of Rule 4.3(a) so long as “it is not inconsistent with [the Commission’s] regulations or policies and appears to be in the public interest.” (York Water RB at 8-9) (quoting *Joint Application of West Penn Power Co. and Airco Carbon Div., BOC Grp., Inc.*, 1987 Pa. PUC LEXIS 319, at \*3 (Order entered Apr. 16, 1987)). No Commission regulation or policy prohibits a municipality or authority from applying for water service from an adequate water utility until it has exhausted every potential alternative to securing a high quality source of water supply. *See* 52 Pa. Code §§ 1.1, *et seq.* Therefore, the waiver of Rule 4.3(a) would not be inconsistent with any Commission regulation or policy. Further, as explained in York Water’s Main Brief, the proposed Emergency Interconnect Agreement is in the public interest for several reasons, including that it will confer substantial benefits to DYWA and its customers while having no negative impact on the systems and operations of York Water, Red Lion, and DYWA. (York Water MB at 13-31) Thus, to the extent necessary, a waiver of Rule 4.3(a) of York Water’s Commission-approved tariff would be justified.

First, Red Lion continues to allege that the Agreement is not in the public interest because it is a bulk water sales agreement. (Petition at 4) As alleged support, Red Lion avers that the word “emergency” is not used enough in the Agreement. (Petition at 4) Both the ALJ and the Commission rejected this weak argument. As stated in the ID, “[T]he fact that the word ‘emergency’ is only used in the agreement in a passing reference” does not make “the emergency interconnect a bulk sales agreement.” (ID at 31) Likewise, the Commission concluded, “We are not convinced by the arguments set forth by Red Lion to support its position that the agreement is not an emergency interconnect agreement but rather a bulk water sales agreement.” *Order* at 20. Indeed, the purpose of the Emergency Interconnect Agreement is clear—to provide an alternative source of supply to DYWA in case something negatively affects the ability of Red Lion, DYWA’s current sole supplier, to provide safe and adequate water supply service. (York Water Replies to Exceptions at 7-8)

Second, Red Lion alleges that the minimum purchase requirement, which is equivalent to 3 million gallons per month, exceeds what is needed to maintain the emergency interconnect. (Petition at 4) In actuality, however, the minimum purchase requirement based on 3 million gallons per month is “the minimum amount of water necessary to maintain such emergency interconnection” that DYWA may “purchase/use” from York Water. (York Water RB at 14) York Water has presented undisputed evidence that the minimum charge is necessary to cover the Company’s capital costs and expenses associated with the emergency interconnect. (York Water MB at 15-17) Indeed, York Water would not establish an emergency interconnect with DYWA unless: (1) DYWA made an upfront contribution to cover the non-economic costs; or (2) agreed to a minimum charge sufficient to cover the capital costs and expenses of the emergency interconnect. (York Water MB at 15-17) A Contribution or minimum charge protects York

Water's existing customers from subsidizing the interconnection. Absent the agreed-upon minimum purchase requirement, there would be no Emergency Interconnect Agreement between York Water and DYWA.

Third, Red Lion criticizes the Emergency Interconnect Agreement because the emergency interconnect will not be able to supply the entirety of DYWA's service area. (Petition at 4) Red Lion's position is contradictory and untenable. (York Water RB at 15) On one hand, Red Lion argues that 3 million gallons per month is too much water to maintain the emergency interconnect. (Petition at 4) On the other hand, Red Lion criticizes the emergency interconnect as being unable to meet all of DYWA's water supply needs. (Petition at 4) Although the emergency interconnect will not provide a fully redundant supply, it still will confer substantial benefits. (York Water MB at 13-15) There is no dispute that Red Lion is DYWA's only source of water supply. If something were to happen either with Red Lion or DYWA that negatively affects DYWA's ability to serve the water service demands of its customers, an alternate source of supply for a portion of a water distribution system is certainly better than having none at all. (York Water RB at 16)

Fourth, Red Lion contends that DYWA's customers will end up paying more for water service because the Company's rates are higher than Red Lion's rates. (Petition at 4) Red Lion omits that, at the evidentiary hearing, Ms. Stokes testified that DYWA does not automatically increase its rates to reflect the supplier's rate increases. (Tr. 81) Thus, there is nothing in the record to support Red Lion's claim. Further, even if DYWA's rates were to increase as a result of the emergency interconnect, the alternative source of supply provides substantial benefits to DYWA and its customers. (York Water MB at 13-15) DYWA, as the entity charged with protecting its interests and its customers' interests, has weighed the costs and benefits of the

emergency interconnect and determined that the emergency interconnect is worth paying the charges set forth in the Emergency Interconnect Agreement. Red Lion should not be allowed to second-guess the judgment of DYWA regarding the interests of DYWA's customers.

Fifth, Red Lion incorrectly asserts that "little to no discussion had occurred between York and Dallastown regarding any facet of the system," including "who will control the main valve system." (Petition at 3) Until such issues are resolved, Red Lion avers that the Emergency Interconnect Agreement is not in the public interest. (Petition at 4) Red Lion completely overlooks the actual evidence presented in this case. Mr. Hand testified that DYWA will be responsible for monitoring and controlling the two water supplies on its system. (York Water Statement No. 1, p. 13, line 22; York Water Statement No. 1-R, p. 9, lines 14-15) Specifically, DYWA's Supervisory Control and Data Acquisition ("SCADA") system will be connected to York Water's system and, through an automated process, will control the flow of water through the emergency interconnect. (Tr. 52-53) Further, York Water presented detailed evidence about the Company's existing and proposed facilities and demonstrated that it would be able to meet the flow rate and quantity requirements under the Agreement. (York Water MB at 20-22) Moreover, York Water's Vice President of Engineering conducted ongoing hydraulic analyses and determined that the supply of water through the emergency interconnect will not negatively affect the hydraulics Red Lion's system. (York Water MB at 22-23)

For these reasons, and as explained in more detail in the *Order*, the Commission correctly found that the Emergency Interconnect Agreement is reasonable and in the public interest.

**c. Red Lion's Argument about the Blending of Water Supplies Should Be Rejected**

In its Petition, Red Lion claims that the Company has failed to establish that there will be no issues with the blending of York Water's chloramine-treated water supply with Red Lion's

chlorinated water supplies. (Petition at 3) Red Lion even goes as far to say that “York provided anecdotes with no measurable evidence to prove that the mixing of two differently treated water sources would not result in system wide problems with water quality.” (Petition at 3) Nothing could be farther from the truth.

The Company presented substantial, thorough, and credible evidence that there will be no issues with the blending of these two water supplies. (York Water MB at 28-31) 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 MB at 29) Although there would be some blending of the two supplies in the lower pressure zone of DYWA’s water distribution system, Mr. Hand explained that any mixing would be too minimal to affect the level of disinfectant in the water. (York Water MB at 29) DYWA’s consulting engineer also concluded that, based upon his experience with other water systems receiving differently-treated water supplies, DYWA will be able to safely mix chlorinated and chloraminated water supplies. (Tr. 85-86)

Furthermore, 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 MB at 29) To date, there have been no issues with York Water’s supply of its chloramine-treated water supply to those entities. (York Water MB at 29) York Water will apply its substantial experience and expertise

with these interconnects to the supply of water to DYWA through the proposed emergency interconnect.<sup>3</sup> (York Water Statement No. 1-R, p. 10, lines 16-18)

In addition, the Company demonstrated that no issues will occur so long as the appropriate ratio of ammonia to chlorine is maintained in the water supply. (York Water MB at 30) 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 MB at 30) 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 MB at 30)

Red Lion offered absolutely no evidence to refute York Water's analysis. Red Lion's sole witness, Mr. Keith Kahwajy, 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) 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; York Water Exhibit JTH-5R) In sum, Red Lion's allegations are entirely based on conclusory statements and conjecture and are completely rebutted by the substantial and thorough evidence presented by York Water.

For these reasons, the Commission should reject Red Lion's argument that there will be issues with the blending of two differently-treated water supplies.

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<sup>3</sup> York Water observes that Red Lion has consulted with York Water on issues related to Red Lion's water distribution system. (Tr. 105.)

Based on the foregoing, the Commission should deny Red Lion's request for reconsideration and affirm the well-reasoned findings and conclusions set forth in the *Order*.

**B. RED LION FAILS TO MEET THE REQUIREMENTS FOR A STAY**

Red Lion has requested that the Commission issue a stay of its *Order* pending reconsideration and any subsequent appeal of the *Order*. (Petition at 5-8) According to Red Lion, (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm without the stay; (3) the issuance of the stay will not substantially harm the interested parties; and (4) the issuance of the stay will not adversely affect the public interest. (Petition at 5-8) As explained below, the Commission should reject Red Lion's request because Red Lion fails to meet the requirements for a stay.

First, Red Lion is not likely to prevail on the merits. As explained previously, Red Lion fails to meet the *Duick* standard for reconsideration because it re-raises arguments that were already considered and rejected by the Commission. *See* Section III.A. Red Lion's Petition presents several other serious flaws, such as trying to raise issues and arguments that were waived and attempting to rely on extra-record evidence. *See* Section III.B-C. Moreover, even assuming *arguendo* that Red Lion's arguments and issues were to be considered, York Water has thoroughly rebutted all of Red Lion's claims. *See* Section III.D. Thus, Red Lion is not likely to prevail on the merits.

Second, Red Lion has not established that it will suffer irreparable harm without the stay. Red Lion speculates that "[a]s this matter proceeds through reconsideration and any subsequent court action, Red Lion will incur a substantial loss in revenue" due to York Water's provision of service to DYWA. (Petition at 6) However, irreparable harm means that the injury is irreversible and cannot be adequately compensated by an award of monetary damages. *See Cosner v. United Penn Bank*, 517 A.2d 1337, 1341 (Pa. Super. 1986); *Schulman v. Franklin &*

*Marshall College*, 538 A.2d 49, 52 (Pa. Super. 1988). The U.S. Supreme Court declared the following about the irreparable harm element:

The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

*Sampson v. Murray*, 415 U.S. 61, 90 (1974) (quotation omitted) (emphasis added). Here, unlike in the *West Penn Power* case cited by Red Lion,<sup>4</sup> Red Lion's alleged future losses are not irreparable. Indeed, Red Lion could try to seek compensation through the courts of common pleas by filing an action against DYWA for an alleged breach of the Water Sales Agreement between DYWA and Red Lion. Moreover, Red Lion's claim that there is a risk from the blending of the two differently-treated water supplies is completely without merit, as explained in Section III.D.3. (Petition at 7)

Third, a stay of the *Order* would cause substantial harm to the interested parties and would adversely affect the public interest. After reviewing the evidence submitted in this proceeding, both the ALJ and the Commission agreed with York Water and DYWA that the emergency interconnect is in the public interest. DYWA only has one source of treated water supply (*i.e.*, Red Lion), so DYWA and its customers would be harmed by an issue arising with Red Lion's water supply. Although Red Lion claims to have a secondary source of raw supply itself (Petition at 7-8), the fact remains that Red Lion has a single treatment plant. Therefore, Red Lion's secondary source of raw water supply would not solve any issues arising at Red Lion's treatment facility or downstream from that location. Furthermore, as noted previously,

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<sup>4</sup> See *West Penn Power Co. v. Pa. PUC*, 615 A.2d 951, 959 (Pa. Cmwlth. 1992) (concluding that the "irreparable harm criterion was satisfied" because "there was a great deal of uncertainty as to whether or not Mon Valley could recover its good faith deposits").

recent local and national incidents have highlighted the need for alternative sources of supply, and DEP has encouraged DYWA specifically to obtain a secondary source of supply. The record also demonstrates that DYWA has had recurring issues with Red Lion's water supply service. Nevertheless, rather than allow DYWA to secure this alternative source of supply and be better prepared to respond to any such issues with Red Lion's supply, Red Lion would prefer to continue preventing the construction of the emergency interconnect solely to protect its own financial interests. Red Lion is unable to establish that the issuance of a stay will not substantially harm DYWA and its customers and will not adversely affect the public interest.

For these reasons, Red Lion's request for a stay of the *Order* pending reconsideration and any subsequent appeal should be denied.

**IV. CONCLUSION**

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in *Order* entered on September 20, 2018, The York Water Company respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Reconsideration and Stay filed by Red Lion Municipal Authority in its entirety.

Respectfully submitted,



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Date: October 15, 2018

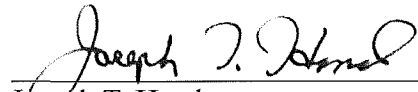
*Attorneys for The York Water Company*

**VERIFICATION**

I, Joseph T. Hand, being the Chief Operating Officer at The York Water Company, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief, and that if asked orally at a hearing in this matter, my answers would be as set forth therein.

I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: October 15, 2018

  
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Joseph T. Hand