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Secretary
PA Public Utility Commission
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JAN - 3 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Docket Nos. U-2017-2610587; C-2017-2616962
Red Lion Municipal Authority v. The York Water Company and
Dallastown-Yoe Water Authority
Petition of Red Lion for Reconsideration and Stay of Commission Order

Dear Secretary Chiavetta:

Attached for filing is the Petition for Reconsideration and Stay of Commission Order of Complainant, Red Lion Municipal Authority (RLMA) to the September 20, 2018 Commission Order in the above referenced proceeding.

A copy of Petition 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: Office of Special Assistants, PA Public Utility Commission [w/enc.]
Andrew J. Miller, Esquire, MPL Law Firm, LLP [w/enc.]
Michael W. Hassell, Post & Schell, P.C. [w/enc.]

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BEFORE THE

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PENNSYLVANIA PUBLIC UTILITY COMMISSION PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

PETITION FOR RECONSIDERATION AND STAY

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Date: October 5, 2018

Counsel for Red Lion Municipal Authority

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PETITION FOR RECONSIDERATION AND STAY

Red Lion Municipal Authority (“Red Lion”), by and through its counsel, Margaret Morris, Esquire, Andrew J. Miller, Esquire and Stephanie J. Kogut, Esquire, hereby submit to the Pennsylvania Public Utility Commission (“Commission”) their Petition for Reconsideration and Stay of the Commission’s September 20, 2018 Opinion and Order (“Order”) in this matter, specifically as it relates to Red Lion’s Exceptions to the Initial Decision.

I. PETITION FOR RECONSIDERATION

Pursuant to 66 Pa C.S. § 703(d), a party “may properly raise 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.” *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (December 17, 1985). When submitting a Petition for Reconsideration to the Commission,

the petitioning party must raise issues that it may not have had the opportunity to address in proceedings or pleadings prior to the issuance of the Commission's Order. *Id.*

First and foremost, the Commission overlooked how the circumstances leading up to execution of the Interconnect Agreement blatantly contradicts Section 4.3 of York Water Company's ("York") tariff. Specifically, no evidence was presented that to demonstrate that Red Lion does not provides an adequate source of water to Dallastown-Yoe Water Authority ("Dallastown"). In fact, ALJ Cheskis found 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 [Dallastown's] customers." *Finding of Fact no.52*. York's tariff specifically states that the company can only engage in discussions to provide water services under Section 4.3 of the tariff if a municipal corporation exhausts all other avenues and is still unable to obtain a safe and adequate source of water. As the evidence presented shows that Red Lion is able to provide an adequate and safe supply of water, the Commission, in essence, ignored the plain language of Section 4.3 of York's Commission approved tariff by approving York's Interconnect Agreement with Dallastown.

The record evidence reflects that York failed to demonstrate that the proposed Interconnect is in the best interest of any party except for York. Specifically, 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. Additionally, the testimony from York and Dallastown clearly showed that little to no discussion had occurred between York and Dallastown regarding any facet of the system other than York's financial gain. Tr. Pg. 82, Lines 9-25, Pg. 83, Lines 1-5. It is impossible for a system to be in the best interest of the public when issues such as who will control the main valve system is up for debate between the two

contracting parties. In overlooking the overall lack of planning and understanding of the water systems at issue, the Commission should not have approved York's Application without further assurances that the interconnect was, in fact, in the public's best interest.

Additionally, throughout the course of the instant litigation, York has continuously hung its hat on the notion that the interconnect agreement is in the best interest of all of Dallastown's customers despite the fact that York's interconnect will only supply enough water to cover a small portion of Dallastown's customer base. Regardless of only covering a small portion of Dallastown's customers, the purchase of water from York will likely be borne by all of Dallastown's customers due to Dallastown's rate per gallon cost to York representing an increase of almost \$3.00 per 1,000 gallons over what Dallastown pays to Red Lion currently. In reality, York is not even providing an emergency interconnect to the vast majority of Dallastown's customers. Tr. Pg. 36, Lines 21-25; Pg. 37, Lines 1-2. York is simply selling bulk water at an additional cost to the many users who will receive absolutely no benefit.

This is further demonstrated by the interconnect agreement itself. Red Lion encourages the Commission to look past the title of the interconnect agreement at issue and examine the substantive sections of the agreement itself. Specifically, the introductory provisions of the agreement expressly state that York will be providing water to Dallastown for resale to customers, not for emergency purposes. Further, the agreement specifies conservation terms and a right of first refusal which runs more akin to a bulk water sales agreement rather than emergency agreement. Further, the minimum required purchase of 3,000,000 gallons per month is far in excess of what is needed to maintain an emergency interconnection. This is a fact that York cannot deny as it has previously, and potentially currently, maintained a completely dry

interconnect with Hanover Borough that required no minimum amount of water purchased from York to remain operable.

Finally, the plain language of York's Tariff states that Dallastown must exhaust all other remedies before York can provide water service. Dallastown specifically testified that there was no investigation into any other sources of emergency water. Tr. Pg. 59, Lines 6-9. It is well known that York has previously approached Dallastown prior to the negotiation of interconnect agreement for the purposes of securing water services to Dallastown's customers. Additionally, York's internal emails document a concerted effort to pursue Dallastown as a potential customer. The emails included requests for yearly "updates" on the status of securing the system and occurred well before the interconnect negotiations commenced. Finally, in the York's Board of Director's June 26, 2017 meeting minutes, the interconnect agreement with Dallastown is referenced as a customer acquisition, rather than an emergency interconnect, making it abundantly clear that Dallastown is an ordinary customer to York, under an ordinary bulk sales agreement.

II. REQUEST FOR STAY

Pursuant to Pa. RAP 1781(a) and 52 Pa. C.S. § 5.572, Red Lion respectfully requires that a stay or supersedeas of the Commission's Order granting the York's Application for Approval, pending the resolution of Red Lion's Petition for Reconsideration and any subsequent judicial review of the Commission's Order. The Commission is required to grant a stay of its Order if Red Lion shows: (1) that Red Lion is likely to prevail on the merits of the case; (2) that Red Lion will suffer irreparable injury without the stay or supersedeas; (3) that the issuance of the stay or supersedeas will not substantially harm interested parties in the proceedings; and (4) that issuance of the stay or supersedeas will not adversely affect the public

interest. *Application of West Penn Power Company*, 2011 WL 544710, *slip op.* at 2 (Pa. P.U.C. 2011). Red Lion successfully meets each requirement to permit the stay.

- a. ***Likelihood to prevail on the merits:*** For the reasons set forth in the Petition for Reconsideration *supra*, Red Lion is likely to prevail on the merits of its Petition and in any subsequent review of the Commission's Order. York's main argument hinges on York's strict compliance with its tariff from the inception of the interconnect agreement. The testimony presented at the hearing, coupled with York's yearly follow-up with Dallastown and the plain text of the interconnect agreement, clearly demonstrates York's violation of its tariff.
- b. ***Irreparable injury:*** Red Lion will most certainly suffer irreparable harm if the stay is not granted. York's interconnect agreement allows Dallastown to purchase up to 250,000 gallons of water per day from York. This figure amounts to approximately 1/3 of the water supplied to Dallastown by Red Lion each month. Dallastown testified that it intends to use the water that is purchased monthly from York. As this matter proceeds through reconsideration and any subsequent court action, Red Lion will incur a substantial loss in revenue that will not be recoverable in the event the Commission's Order is reversed resulting in the revision or dismissal of York's Application. Monetary losses alone can satisfy the irreparable harm requirement. *West Penn Power Co. v. Pennsylvania Public Utility Commission*, 615 A.2d 951, 959 (Pa. Cmwlth 1992).

Additionally, as no expert testimony has been presented by York that expressly concludes that no damage or harm will occur to any of the system or the public at large from the blending of two differently treated water supplies in a system with two different pressure zones, there is the potential for a real and unknown risk to permitting the interconnect to move forward at this time.

- c. ***No substantial harm to interested parties:*** A stay in the instant proceeding will not harm any interested parties. Most important, Dallastown has an adequate and perfectly fit source of water from Red Lion. Dallastown does not have an immediate need for the interconnect. Construction on the interconnect has not yet begun. Even so, Dallastown is under no obligation to make a financial contribution to the construction; therefore, York will not suffer any current loss of income from delaying construction of the interconnect. If anything, the stay would protect the financial interests of the interested parties in the event of a reversal of the Commission's Order.
- d. ***The issuance of the stay will not adversely affect the public:*** A stay will not adversely affect the public. For almost 60 years, Red Lion has provided adequate and safe drinking water to Dallastown with few service interruptions. Dallastown's testimony at the hearing supports that Dallastown has no reason to believe that Red Lion will not continue to supply high quality water in an amount sufficient to service all of Dallastown's customers while the parties proceed through Court. Additionally, Red Lion has an established emergency management plan in place with secondary sources of supply in the

event of a failure in Red Lion's current supply. It is notable that York's secondary supply is the same source that Red Lion would use if needed.

For these reason, the Commission should grant a stay of its order pending resolution of Red Lion's Petition for Reconsideration and any subsequent judicial review.

Respectfully submitted,



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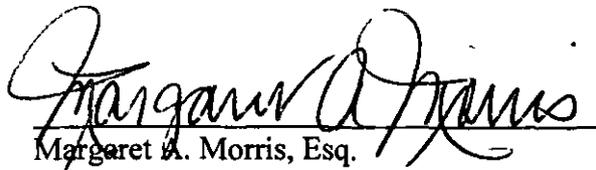
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Dated: October 5, 2018


Margaret A. Morris, Esq.

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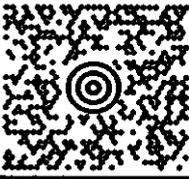
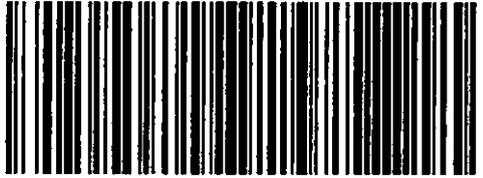
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