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| PUC logo | COMMONWEALTH OF PENNSYLVANIAPENNSYLVANIA PUBLIC UTILITY COMMISSIONCOMMONWEALTH KEYSTONE BUILDINGHARRISBURG, PA 17105-3265 | **IN REPLY PLEASE REFER TO OUR FILE****P-2016-2577404** |

January 26, 2017

Re: **Petition of The York Water Company for an Expedited**

 **Order Authorizing Limited Waivers of Certain Tariff**

 **Provisions and Granting Accounting Approval to Record**

 **Costs Related to Customer Service Line Replacement**

 **Docket No. P-2016-2577404**

TO ALL PARTIES:

On November 28, 2016, The York Water Company (York Water or Company) filed the above-captioned Petition requesting limited waivers of certain tariff rules relating to customer service line replacement and accounting approval to record such costs to the Company’s services account.[[1]](#footnote-1) On December 18, 2016, both the Commission’s Bureau of Investigation and Enforcement (I&E) and the Office of Consumer Advocate (OCA) filed Answers to the Petition. Thereafter, the matter was assigned to Administrative Law Judge (ALJ) Elizabeth H. Barnes who held a prehearing conference on January 12, 2017.

On January 23, 2017, York Water, I&E, and the OCA (collectively, the Joint Petitioners) filed a Joint Petition for Settlement and Request for Certification Pursuant to 52 Pa. Code § 5.531 (Joint Petition). The Joint Petitioners request that ALJ Barnes certify the proposed Settlement without a decision of the presiding officer, and that the Commission approve the Settlement expeditiously, preferably no later than January 26, 2017. As of this date, no Answers to the Joint Petition have been filed.

Upon due consideration, the Commission hereby denies the Joint Petition, in part. Section 5.531 of our Regulations, 52 Pa. Code § 5.531, provides that the “record will be certified to the Commission without a decision from the presiding officer only as required or allowed by the Commission.” Thus, preliminarily, the ALJ is not independently authorized to certify the record without the approval of the Commission. Furthermore, certification pursuant to 52 Pa. Code § 5.531 is a rare procedure usually involving cases with pressing statutory deadlines. *See e.g.*, *In re PECO*, 87 Pa. P.U.C. 714 (1997). The procedure is usually invoked to streamline the consideration period by eliminating the issuance of a Recommended Decision, to which the parties have a statutory right to file exceptions. 66 Pa. C.S. § 335(b). Usually in a fully litigated case, the establishment of an exception period can add up to thirty (30) additional days to the consideration period. 52 Pa. Code § 5.533. However, in this proceeding, there is a fully proposed Settlement. Accordingly, there would not be a need for a thirty-day period for exceptions and replies. Rather, the Commission would establish a three-day period for exceptions to give the Parties the opportunity to comment on the ALJ’s decision. Furthermore, we note the rationale behind the limited use of the certification procedure. The Commission generally benefits from the expertise of the presiding officers who have already been exposed to the case in formulating an Initial or Recommended Decision which considers all the issues raised by the parties.

Here, the Joint Petitioners cite to the Consent Order and Agreement (COA), entered into by the Company and the Pennsylvania Department of Environmental Protection, dated December 23, 2016. Joint Petition at App. A. The COA requires, in part, that York Water take corrective action pertaining to the approximately 1,660 customers currently receiving water through Company-owned lead service lines. According to the COA, York Water shall replace these lines at a rate of approximately twenty-five percent per year over a four-year period, commencing in 2017 and finishing no later than December 31, 2020. In our view, the four-year deadline set forth in the COA, while requiring deliberate action, does not mandate the certification of the record in this proceeding.

Even if we were to certify the record without a decision of the ALJ, the Joint Petition provides insufficient time for the Commission to evaluate the Joint Petition by the requested public meeting date of January 26, 2017. Moreover, we do not find that the Joint Petitioners’ request to certify the record would expedite the evaluation of the Joint Petition in any significant manner.

Accordingly, we shall deny the request to certify the record and direct the ALJ to prepare a Recommended Decision on the Joint Petition as expeditiously as possible.

Very truly yours,

Rosemary Chiavetta

Secretary

cc: Chief ALJ Charles E. Rainey, Jr.

 ALJ Elizabeth H. Barnes

1. York Water requests a waiver of Rule 3.4 of its tariff so that it can replace lead customer-owned service lines that are discovered when it replaces lead Company-owned service lines in its system. Rule 3.4 of York Water’s tariff states that the Company’s customer is responsible for installing and maintaining the customer service line. [↑](#footnote-ref-1)