

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of York Water Company for an	:	
Expedited Order Authorizing Limited Waivers	:	
of Certain Tariff Provisions and Granting	:	P-2016-2577404
Accounting Approval to Record Cost of	:	
Certain Customer-Owned Service Line	:	
Replacements to the Company's Services	:	
Account	:	

RECOMMENDED DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This decision recommends granting York Water Company's Petition for an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to Record Cost of Certain Customer-Owned Service Line Replacements to the Company's Services Account (Petition) as modified by a Joint Petition for Settlement (Settlement) filed on January 23, 2017, and as modified by recommendations herein.

Specifically, this decision recommends that York Water Company be granted a limited two-phase waiver from compliance with its Tariff Rule 3.4, which provides that each customer's service line shall be installed by or on behalf of such customer at his expense. The limited waiver is in two phases. The first phase is a four-year waiver involving the replacement of lead customer-owned service lines that are discovered when the Company replaces the approximately 1,660 lead Company-owned service lines that exist in the Company's system at the Company's initial cost. The second phase is a nine year waiver involving the annual

replacement of up to 400 lead customer-owned service lines whenever they are discovered, regardless of the material used for the Company-owned service line.

HISTORY OF THE PROCEEDINGS

York Water Company (York Water or Company) is a public utility engaged in the business of supplying water and wastewater services to approximately 66,100 customers in York and Adams Counties, Pennsylvania. In September 2016, York Water completed its triennial water sampling required by the EPA. The Company's tests concluded that 6 of the 50 buildings tested had samples greater than 15 parts per billion of lead. As a result, York Water is required to optimize its corrosion control program, fulfill a series of public education requirements, and replace at least 7% of its lead service lines annually.¹ While the Company already exceeds the 7% level of lead service line replacement, York Water is planning on expediting these replacements over the next four years.

The York Water tariff divides ownership of service lines that deliver water to a customer's premises into two parts; one part is Company-owned and the other is customer-owned. The Company-owned line extends from the water main to the curb stop and curb box. The customer-owned line extends from the curb stop and curb box to the premises. Under the existing York Water tariff, it is the customer's responsibility to own and maintain the customer-owned line.

The York Water tariff does not permit the utility to replace a customer-owned service line at the Company's initial cost. Rule 3.4 of the tariff provides that "[e]ach Customer's Service Line shall be installed . . . by or on behalf of such Customer at his expense." Rule 3.4, Supp. No. 68 to Water Pa. P.U.C. No. 14, Fourth Revised Page No. 10.

On November 28, 2016, York Water filed a Petition For an Expedited Order Authorizing Limited Waivers of Certain Tariff Provisions and Granting Accounting Approval to

¹ The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with 40 C.F.R. § 141.86 is greater than 0.015 mg/L.

Record Cost of Certain Customer-Owned Service Line Replacements to the Company's Services Account at Docket No. P-2016-2577404. Specifically, York Water sought limited waivers of York Water Tariff Water – Pa. P.U.C. No 14, Supplement No. 68, Fourth Revised Page No. 10, Tariff Rule 3.4, which provides that customers are responsible for the installation, maintenance, and replacement of customer-owned service lines. York Water initially sought limited waivers of these tariff provisions in order to replace lead customer-owned service lines concurrent with its planned replacement of 1,660 Company-owned lead service lines over the next 4 years. Petition at 5-6. Additionally, the Company requested a limited waiver in perpetuity of its tariff rule to replace customer-owned lead service lines when discovered, regardless of the material used for the Company-owned service line. York Water initially requested permission to capitalize these costs and an order granting the waivers by December 22, 2016. Petition at 5-6.

On December 13, 2016, York Water filed a letter amending footnote 4 on page 4 of the Petition. On December 16, 2016, the Commission's Bureau of Investigation and Enforcement (I&E) filed an Answer averring the petition was vague, insufficient, and unsupported by record evidence. I&E requested discovery and an evidentiary hearing prior to a Commission determination regarding whether the relief requested was in the public interest. On December 19, 2016, the Office of Consumer Advocate (OCA) filed an Answer, which generally supported the Petition but also expressed some reservations.

On December 23, 2016, a Consent Order and Agreement was issued *In the Matter of: The York Water Company: Violations of the Pennsylvania Safe Drinking Water Act and Regulations*, PWSID No. 7670100, City of York, York County. Stipulation Exhibit B. On January 12, 2017, a prehearing conference was held and on January 23, 2017, a Joint Petition for Settlement and Request for Certification Pursuant to 52 Pa. Code § 5.531 (Settlement) and a Joint Stipulation of Facts (Stipulation) were filed. Joint Petitioners requested I certify the record to the Commission without issuing a decision in order to expedite the approval of the settlement on or before January 26, 2016. On January 26, 2017, a Secretarial Letter was issued by the Commission denying the request for certification of the record without a decision from the presiding officer and directing me to prepare a Recommended Decision regarding the Joint Petition as expeditiously as possible.

SETTLEMENT TERMS

Joint Petitioners request that York Water's Petition filed on November 28, 2016, be granted as modified by the following terms of settlement filed on January 23, 2016.

A. PHASE 1 REPLACEMENTS

1. York Water shall be granted a limited waiver of Rule 3.4 of its tariff so that it may replace lead customer-owned service lines that are discovered when the Company replaces the approximately 1,660 lead Company-owned service lines that exist in the Company's system.

2. The waiver shall be limited to those customers affected by York Water's lead Company-owned service replacement plan and does not change the rules regarding a customer's obligation to replace or repair leaking or otherwise defective customer-owned service lines unrelated to the replacement plan.

3. If a lead customer-owned service line that qualifies as a Phase 1 replacement is leaking or otherwise defective at the time it is discovered, the customer will not be required to repair the line prior to it being replaced by York Water.

4. Subsequent to replacing the customer-owned service lines, the customers' ownership of and duty to maintain the service lines will remain unchanged.

5. York Water shall replace these customer-owned service lines at its initial expense and shall record the costs of the Phase 1 replacements as a regulatory asset, to be recovered in future base rate proceedings as detailed in Subsection III.C of the Settlement.

B. PHASE 2 REPLACEMENTS

6. York Water shall be granted a limited waiver of Rule 3.4 of its tariff so that it may, from time to time, replace lead customer-owned service lines whenever they are discovered, regardless of the material used for the Company-owned service line.

7. The Company shall make a payment towards the replacement cost of the lead customer-owned service line up to an amount not to exceed the Company's average contracted cost for replacing the customer-owned lead service in the year the replacement is made. For 2017, the average contracted cost is \$1,150 for a service line replacement under 10 feet and \$1,250 for a service line replacement over 10 feet. Customers shall be permitted to pay any difference as a lump sum, or as an amount added to the customer bill, to be paid over a reasonable period not to exceed one year. If the difference is included on the customer bill, the provisions of 52 Pa. Code § 56.23 shall apply, and the Company shall not terminate for non-payment of the amount included on the customer's bill. The Company agrees not to charge interest on any payment period for the difference, other than interest for late payment. If the Company is unable to collect the difference from a customer and the difference or any portion is written off as uncollectible, York Water will be permitted to include the uncollected amount in the regulatory asset account established pursuant to Paragraph 18.

8. If York Water uses its own contractors to replace the lead customer-owned service line (see Petition at 6), there will be a 12-month warranty from the contractor and the customer will be required to sign an agreement authorizing York Water or its contractors to enter the customer's property to replace the service line. The Company will restore the property as nearly as practicable to its former condition.

9. York Water shall only make payments toward the cost of up to 400 Phase 2 replacements each year from the date a Commission Order approving this Settlement is entered; provided, however, that York Water may petition the Commission to increase this number if it demonstrates that 400 per year is inadequate to replace all requests for replacement. All parties reserve their rights to support or oppose such petition.

10. In the event less than 400 customer-owned services are replaced in a year, the difference between 400 and the actual number replaced shall be added to the number of Phase 2 replacements that may be undertaken in subsequent years.

11. In the event the number of eligible Phase 2 replacements exceed the number of replacements authorized under Paragraphs 20 and 21 above, York Water will process requested replacements on a first-come, first served basis; provided, however, that if water test results reveal an exceedance of 15 parts per billion (“ppb”), then York Water may prioritize such customer for replacement.

12. This waiver shall be effective for nine years from the date a Commission Order approving this Settlement is entered. York Water may petition the Commission to extend the term of the Phase 2 waiver. All parties reserve their rights to support or oppose such petition.

13. This waiver shall be limited to those customers with a lead customer-owned service line not connected to a lead Company-owned service line and does not change the rules regarding a customer’s obligation to replace or repair leaking or otherwise defective customer-owned service lines.

14. If a lead customer-owned service line that qualifies as a Phase 2 replacement is leaking or otherwise defective at the time it is discovered, the customer will not be required to repair the line prior to it being replaced by York Water.

15. Subsequent to replacing the customer-owned service lines, the customers’ ownership of and duty to maintain the service lines will remain unchanged.

16. York Water shall replace these customer-owned service lines at its initial expense and shall record the costs of the Phase 2 replacements as a regulatory asset, to be recovered in future base rate proceedings as detailed in Subsection III.C of the Settlement.

17. If a customer has replaced their customer-owned lead service line in the past 4 years, and the Company's representative visits the site and determines that the service line has been replaced, and the customer provides the Company with a paid invoice, a certification from a certified plumber, and other documentation as determined by the Company, the Company will offer a cash payment as follows: between 3 and 4 years from date of this agreement: 20% of Company's current contractor lump sum rate; between 2 and 3 years: 40%; between 1 and 2 years 60%; and in the past year: 80%. The payment shall not exceed the actual cost on the invoice.

C. RATE TREATMENT

18. The Joint Petitioners agree that York Water shall be permitted to record the cost of all customer-owned service line replacements to a regulatory asset account. York Water will be permitted to amortize the amounts booked to the regulatory asset account in a base rate proceeding over a reasonable period to be not less than four years and not to exceed six years. No amortization will commence until the effective date of new rates in a base rate proceeding that establishes the amortization. The regulatory asset account will remain in place until all eligible costs are finally amortized. Because costs may be booked to the regulatory asset account for up to nine years, York Water will reconcile amounts amortized to amounts incurred, and the difference shall continue to be amortized in subsequent base rate proceedings. York Water agrees that it will not be permitted to recover interest or return on any unamortized balance.

19. The allocation among customer classes of the recovery of amortized costs will be determined in a base rate proceeding.

20. If the Commission subsequently permits any other water utility in Pennsylvania to capitalize for ratemaking purposes the costs of replacing customer-owned service lines made of lead, York Water shall be permitted to file a petition requesting that the Commission: (1) amend its Order approving the Settlement only as it pertains to the rate treatment of such costs to the extent not already collected in rates through the amortization; and

(2) permit York Water to capitalize the Phase 1 replacement costs and/or Phase 2 replacement costs to its services account on a going-forward basis to the extent not already collected in rates through the amortization. All parties reserve their rights to support or oppose such petition if filed. Such amendment of the Commission's Order approving the Settlement shall not enable any of the Joint Petitioners to withdraw from the Settlement, as provided in Paragraph 43 of the Settlement.

D. OTHER PROVISIONS

21. York Water agrees to provide the other Joint Petitioners and the Commission annually a report on the number of Company-owned and customer-owned services replaced, and the cost of replacements, broken down by customer rate category (*i.e.*, residential, commercial, industrial).

22. York Water agrees to provide the other Joint Petitioners and the Commission annually an accounting of the cost of the tap water billing credit provided pursuant to Paragraphs 3(a)(vi) and (b)(iii) of the CO&A with the Department of Environmental Protection ("DEP") dated December 23, 2016, attached as Exhibit A to the Settlement.

23. York Water agrees to provide the other Joint Petitioners with a copy of the evaluation of its corrosion control treatment system that it is required to perform under Paragraph 3(f) of the CO&A.

24. York Water shall undertake appropriate customer outreach efforts to advise customers to check their services for the possibility of lead. The customer outreach efforts will be an ongoing effort. Upon receipt of a customer report of a lead customer-owned service, York Water will dispatch York Water personnel to check the report and, if appropriate, to offer a kit for the customer to take a water sample that will then be tested for lead by York Water. If the result of York Water's inspection confirms that there is a lead customer-owned service line, then York Water agrees to proceed with replacement as described above. York

Water shall report on its outreach efforts and results to the other Joint Petitioners and the Commission every six months.

25. York Water commits to search for opportunities for low or no cost funding of the cost of replacement of lead customer-owned services, including grants and loans. This commitment will run for as long as the waivers described above are in place. Any grants obtained for payment of replacement of lead customer-owned services shall be booked to the regulatory asset account, as an offset to costs. York Water agrees to include information regarding any funding it receives in its report it will be providing to the Joint Petitioners and to the Commission on an annual basis.

The Joint Petitioners agree that if the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from the Settlement and may proceed with litigation and, in such event, the Settlement shall be void and of no effect. Further, if the matter remains with the Office of Administrative Law Judge (OALJ) for the issuance of an Initial Decision, and the Initial Decision approves the Settlement without modification, the Joint Petitioners waive their right to file any exceptions to the Initial Decision. The Settlement is presented without prejudice to any position that any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the Settlement.

FINDINGS OF FACT

I adopt the following undisputed and stipulated findings of fact as jointly filed on January 23, 2017.

1. York Water is a public utility engaged in the business of supplying water and wastewater service in Pennsylvania subject to the regulatory jurisdiction of the Commission. York Water first began providing water service to the public in 1816.

2. York Water provides water service to approximately 66,100 customers throughout its certificated service territory, which includes the City of York and surrounding municipalities in portions of York and Adams Counties, Pennsylvania.

3. York Water provides wastewater service to approximately 642 customers in portions of York County.

4. In September 2016, York Water completed its triennial water sampling required by the U.S. Environmental Protection Agency (“EPA”).

5. These water samples are taken from the customer’s faucet or tap.

6. Under current water sampling procedures, customers are instructed not to let water flow from the tap before taking a sample.

7. Under EPA and DEP requirements, if more than 10% of samples show more than 15 parts per billion (“ppb”) of lead, an action level exceedance is deemed to have occurred.

8. York Water’s tests concluded that six of the 50 buildings tested had samples with more than 15 ppb of lead, and this was the first time York Water had an action level exceedance.

9. As a result of this action level exceedance, the Company is required to optimize its corrosion control program, fulfill a series of public education requirements, and replace at least 7% of its total Company-owned lead service lines annually.

10. York Water has already contracted with an outside consultant to review its corrosion control over the next several months to determine if any improvements can be made.

11. The Company has already begun the public education requirements, including directly notifying potentially affected customers, issuing several press releases, sending bill inserts, posting information on York Water's website regarding the health effects of lead, and creating a lead information pamphlet to be distributed to all customers.

12. In addition to these activities, the Company must take 100 samples rather than 50 and must test every six months rather than triennially until the exceedances have been rectified and the Company's samples meet the requirements for two sequential testing periods.

13. Lead is a toxic element that is hazardous to a person's health if ingested, particularly by children and pregnant women.

14. Lead has been found to affect children's mental development and learning capabilities.

15. Lead also can cause anemia, issues with hearing, and, in some circumstances, seizures or comas.

16. The issues related to lead in a person's water supply can be compounded in lower income areas, where houses may still contain lead paint.

17. Lead can come from a variety of potential sources, including lead service lines.

18. Lead also can leach from brass fixtures and lead solder within a building. Lead solder was banned in Pennsylvania in 1991.

19. Lead pipe was permitted to be installed in public water systems and plumbing for residential or non-residential facilities providing water for human consumption until June of 1986, when it was prohibited by the EPA.

20. Before June of 1986, the amount of permitted lead in water systems and plumbing had been reduced several times.
21. York Water's records indicate that its most recently installed lead service lines date back to 1934.
22. The Company stopped installing lead service lines in the mid-1930's.
23. According to York Water's records, no water mains in service are constructed of lead.
24. Because portions of York Water's system had been constructed pre-1935, lead service lines do exist.
25. There are two parts to service lines that deliver water to a customer's premises.
26. The first part is the company-owned and maintained service line, which extends from the water main to a curb stop or valve.
27. The second part is the customer-owned service line, which extends from the curb stop or valve to the premises on private property and is the customer's responsibility to own and maintain pursuant to York Water's Tariff Rule 3.4.
28. According to the Company's records, approximately 1,660 customers/buildings are served by lead Company-owned service lines, and this represents approximately three percent (3%) of the properties served by York Water. Approximately 82 of these buildings are identified as commercial properties, and all of these are small commercial customers with services under 2" in diameter.

29. York Water has committed in the Consent Order and Agreement to replace the approximately 1,660 Company-owned lead services over the next four years, ending December 31, 2020. Some replacements may be undertaken as part of main replacements to minimize cost and disruption.

30. It is possible that additional lead Company-owned services may be discovered in the future, particularly in the event of acquisitions. York Water has committed in the Consent Order and Agreement to replace any other lead Company-owned services discovered on an expedited basis.

31. The Company had been replacing its lead Company-owned service lines over the past few years at more than 7% per year.

32. York Water estimates that the cost of replacing the 1,660 Company-owned lead services will be approximately \$2.0 million.

33. York Water believes that some customer-owned service lines are made of lead.

34. The Company does not have records of the composition of all customer-owned service lines because it neither owned the service lines nor had a responsibility to record their composition.

35. Some customers are likely to have replaced their service lines in the past, although York Water has no records of customer-owned service line replacements.

36. Premises constructed after 1986 should not have lead customer-owned services, due to EPA's prohibition. Other, less-expensive material was available for customer-owned services previously and, thus, not all pre-1986 customer-owned services are likely to be constructed of lead.

37. York Water believes that these customer-owned lead service lines are most likely to be found in the urban areas of the Company's service territory, which are generally the oldest portion of the Company's service territory.

38. In recent months, York Water has kept track of lead customer-owned services that are identified as Company-owned services are replaced. Based upon a very small sample size, when York Water replaced a Company-owned lead service line, approximately 25% of customer-owned services were also found to be made of lead. This is not necessarily indicative of the future.

39. Under DEP requirements, the Company is required to inform the customer when the Company-owned lead service line is being replaced and whether the customer's service is lead.

40. DEP requires the Company to offer to replace the customer portion of the service line at the customer's sole expense. In York Water's limited sample, no customers have accepted this offer.

41. The Company currently is neither required nor permitted to replace the customer's lead service line at its own cost, pursuant to Rule 3.4 of its Commission-approved tariff.

42. As part of replacing the approximately 1,660 Company-owned lead services over the next four years, York Water has proposed to replace, at the Company's initial cost, any corresponding customer-owned service lines made of lead that the Company encounters, subject to the customer's permission.

43. The replacements of these corresponding customer-owned lead service lines will be known as the "Phase 1 replacements."

44. York Water estimates that the cost of the Phase 1 replacements will be \$2.7 million. This estimate assumes all customer-owned services associated with the approximately 1,660 Company-owned lead services are constructed of lead. The Company has obtained bids from contractors and plumbers to replace customer-owned services in 2017. Based upon the bids, a service line replacement under 10 feet will cost approximately \$1,150 to install, and a service line replacement over 10 feet will cost approximately \$1,250 to install. York Water intends to obtain bids for replacements in future years, which may be higher or lower than 2017 bids.

45. Further, York Water has proposed to replace, at its initial cost, lead customer-owned service lines whenever they are discovered, regardless of the material used for the Company-owned service line.

46. These replacements will be known as the “Phase 2 replacements.”

47. York Water is unable to develop a total estimated cost of the Phase 2 replacements because it does not know how many customer-owned lead service lines are in use.

48. York Water’s contracted plumbers will give a standard one-year warranty for replacement of customer-owned services.

49. Since customer-owned lead service lines are most likely to be located in urban areas, York Water anticipates that, in most instances, the lengths of customer-owned service lines to be replaced will be relatively short.

50. The Company has proposed to offer to make a payment towards the Phase 2 replacement cost up to an amount not to exceed the Company’s average cost of replacing the customer-owned lead service line as part of the Company-owned lead service line replacement plan.

51. The Company may offer to engage plumbers to do the work and then bill the customers for any difference between the actual cost and the maximum payment amount.

52. Subsequent to performing a Phase 1 replacement or Phase 2 replacement, the customer's ownership of and duty to maintain the service line will remain unchanged.

53. York Water will not take ownership of the customer-owned lead service lines after replacing them.

54. If a customer-owned lead service line is leaking or otherwise defective, and otherwise qualifies as a Phase 1 or Phase 2 replacement, the customer will not be required to repair the service line before York Water replaces it.

55. Rule 3.4 of York Water's tariff currently prohibits York Water from performing the Phase 1 and Phase 2 replacements of customer-owned service lines.

56. Rule 3.4 of York Water's tariff provides that "[e]ach Customer's Service Line shall be installed . . . by or on behalf of such Customer at his expense." *See* Settlement Exhibit D.

57. York Water filed the instant Petition seeking limited waivers of Rule 3.4 so that it could proceed with the Phase 1 and Phase 2 replacements.

58. Joint Petitioners stipulate that it is in the best interest of York Water's customers for the Company to obtain these limited waivers and perform the Phase 1 and Phase 2 replacements at its initial cost for several reasons.

59. Replacing lead customer-owned service lines at the same time as the Company-owned service is replaced will eliminate this source of lead from affected premises. Absent the waiver, lead customer-owned services would still present a potential exposure to lead

at the affected premises even after the Company replaces all of its Company-owned services made of lead.

60. York Water seeks to begin replacing its approximately 1,660 Company-owned lead services as soon as possible. Contractors are available to replace services in the winter months when they are less busy, and York Water seeks to take advantage of this opportunity.

61. There are efficiencies and economies of scale by performing the Phase 1 replacements at the same time when York Water replaces its Company-owned lead services. As mentioned previously, York Water will replace all Company-owned lead service lines over the next four years. To do this, York Water must disconnect all customer-owned service lines connected to the existing Company-owned service lines. York Water will be able to determine if the customer-owned service line is constructed of lead. It would be more efficient for York Water to replace any customer-owned service lines made of lead, rather than coordinating with individual customers to accomplish these tasks.

62. A “partial lead service line” replacement may not significantly reduce the lead level at the customer’s tap, but may temporarily increase lead at the customer’s tap due to disturbing the customer-owned service line during the partial replacement. A “biofilm” lines the inside of these lead service lines and prevents lead from leaching into the water supply. However, that biofilm may be disturbed when a partial replacement occurs, thereby allowing lead to leach into the customer’s water.

63. During a partial replacement, DEP requires additional coordination with the customer, including installation of a temporary by-pass hose, extensive flushing, and follow-on sampling of the water at the tap. These costs would be avoided by replacing the lead customer-owned service line at the same time that the Company-owned service line is replaced.

64. In 2016, the American Water Works Association (“AWWA”) and the National Drinking Water Advisory Council (“NDWAC”) both passed policy statements

recommending the complete removal and replacement of Company and customer-owned lead service lines.

65. Because customer-owned lead service lines are most likely located in urban, lower income areas, the customers may not have the financial means available to replace lead service lines, and York Water does not have the authority to order lines to be replaced.

66. York Water is unaware of any grants currently available to replace customer-owned service lines.

67. York Water currently offers a pilot customer service line protection program. Fewer than 100 customers have signed up for this program. The program does not cover replacement of lead service lines that are not broken.

68. York Water coordinates with municipalities and other utilities as part of main and service line replacements.

DISCUSSION

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231(a). Settlements reduce the time and expense that the parties must expend litigating a case and, at the same time, conserve administrative resources. The Commission has stated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401. To accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order Entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.* 74 Pa. P.U.C. 767 (1991).

The parties are in agreement as to a limited waiver of a tariffed rule and have stipulated that the granting of the Petition as modified by the Settlement is in the public interest. Finding of Fact No. 58. However, whether the Commission has the authority to waive Tariff

Rule 3.4, even if it is in the public interest, is a preliminary issue in this proceeding. A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Electric Utilities Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Cmwlth. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices such that the public may inspect its contents. Tariffs are open to public scrutiny. 66 Pa. C.S. § 1302; 52 Pa. Code §53.25. Public utility tariffs have the force and effect of law and are binding upon the public utility and its customers. *Pennsylvania Electric Company v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995).

Pennsylvania courts have stated that administrative agencies do not have the authority to order a regulated company to change lawful conduct on the theory that it is in the best interest of their customers. *Aetna Casualty and Surety Insurance Co. v. Insurance Department*, 638 A. 2d 194 (Pa. 1994). Pennsylvania courts have also stated that charges deviating from those established in a tariff are unlawful even if found to be in the public interest by the Commission. *Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 808 A.2d 1044 (Pa. Cmwlth. 2002). In *Philadelphia Suburban*, the Commonwealth Court held that an agency cannot waive a mandate of statute because it is in the public interest. Specifically, the Court held that the law did not permit an arrangement between the City of Coatesville (City) and Pennsylvania-American Water Company (PAWC) from relieving the City of its obligation to pay PAWC's tariffed amount for fire hydrant service. The Commonwealth Court found that the agreement between the City and PAWC established a device which violated Section 1303 of the Public Utility Code, 66 Pa. C.S. § 1303. The Commonwealth Court held that the Commission has no authority to allow a public utility to deviate from its tariff and provide free hydrant service to a city by paying the same fee to the city's economic fund on a monthly basis even though no party to Commission-approved agreements objected and where the Commission concluded the sales agreement was in the public interest.

In *Philadelphia Suburban*, City announced it would accept bids for the acquisition of its water system, stating that the bid had to include free fire hydrant service to City, in perpetuity, as a non-negotiable term. Philadelphia Suburban Water Company (Suburban Water),

a putative bidder, sought a declaratory judgment from the PUC on the question of whether City's non-negotiable term was lawful. The Commission declined to declare the term void and unlawful. PAWC was selected the winning bidder and it submitted an application to the Commission requesting approval of the proposed acquisition including an Agreement providing that PAWC would pay City \$37,000,000 for its water system and would give City free fire hydrant service in perpetuity. Protests were filed, and the Agreement was modified such that City would pay the tariffed amount for hydrant service; however, PAWC agreed to make an annual contribution of the tariffed amount to City's Economic Development Fund. PAWC's shareholder funds rather than ratepayer funds were to be used in the contribution. The Commission approved the Amendment reasoning that PAWC's shareholder, American Water Works could bear the obligation to make eternal donations to the City's Economic Development Fund. Suburban Water challenged the Commission's approval of the Amendment on Appeal and succeeded in showing the Amendment violated the statutory prohibition against a utility giving an "unreasonable preference" to one customer while subjecting another to an "unreasonable disadvantage." *Id.*, Pa. C.S. §1304. This case may be distinguished from the facts in the instant proceeding, wherein there is no agreement between a seller and buyer at issue, and there is no losing bidder. Additionally, York Water is not acquiring a municipal system. However, it is similar in that York Water is requesting the Commission permit it to deviate from its tariffed provision.

The Commission-approved York Water's Tariff No. 3.4 is *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa.Cmwlth. 1981). If there were a complainant customer seeking to evade the affect of an existing tariff provision, then he or she would carry a heavy burden of proving the facts and circumstances leading to the creation of the tariff provisions have changed so drastically as to render the application of the tariff provision unreasonable. *Shenango Twp. v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996); *St. Andrew's Church v. Pennsylvania American Water Company*, C-2009-2139206 (Initial Decision entered July 14, 2010) (Final Order entered December 2, 2010). Even if the customer met the burden of proving the tariff was unreasonable, then the utility would normally be directed to revise its tariff, and the relief would not be granting the customer a waiver from a tariffed provision.

In the instant case, no one is before the Commission challenging the reasonableness or validity of Tariff Rule 3.4. Neither is the Company requesting to amend or supplement the tariff to address customers with lead service lines. Rather, the Company seeks a limited tariff waiver applicable to the replacement of customer-owned lead service lines as being cost-effective and in the public interest. The Company reasons that it is cost effective to replace these lead lines at the same time as it is replacing its own lead service lines and it is in the public interest to reduce the amount of lead levels in the customers' water.

Section 1303 of the Public Utility Code addresses adherence requirements to tariffs as follows.

66 Pa. C.S. § 1303. Adherence to tariffs.

No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part. Any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron.

66 Pa. C.S. § 1303.

The Public Utility Code prohibits unreasonable discrimination in rates between customer classes of service. Specifically, Section 1304 provides in pertinent part:

66 Pa. C.S. § 1304. Discrimination in rates.

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service. . .

66 Pa. C.S. § 1304.

York Water advocates that the Commission has authority and has exercised it before to grant limited waivers such as those requested in the instant Petition. York Water avers that the Commission has the authority to grant an exception to a tariffed provision and cites as authority *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067, 1070 (Pa. Cmwlth. 1981) (quoting *Bell Tele. Co. v. Pa. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. 1980)).

In comparing these two cases to the instant one, the Commonwealth Court upheld tariffed provisions in these cited cases. In the *Brockway* case, the Commonwealth Court held that an approved tariff is legally binding on both the utility and its customers. *Brockway Glass Company v. Public Utility Commission*, 437 A.2d 1067, 1070 (Pa. Cmwlth. 1981). The Court held: "We have previously held that the rate in effect at the time of delivery of service, rather than the rate at the time of contracting is controlling, because, "[t]here can be no lawful rate *except* the last tariff published as provided by law." *Bell*, 53 Pa. Commw. at 244, 417 A.2d at 828 (emphasis in original).

The *Bell* case involved tariff limitations on liability. The Commonwealth Court recognized "the power vested in the PUC to evaluate the reasonableness of tariffs or regulations filed with it and to determine whether the provisions therein are compatible with the code and policies of the commission and consistent with its regulatory scheme."

Specifically, the Court stated,

In so doing we recognize the power vested in the PUC to evaluate the reasonableness of tariffs or regulations filed with it and to determine whether the provisions therein are compatible with the code and policies of the commission and consistent with its regulatory scheme. Because Bell's tariff was properly filed under the law, we cannot do otherwise than enforce its provisions as they apply to both Bell and its customer. In the present case where omission from the directories and poor service are alleged, application of the tariff would result in the limited recovery provided for in the tariff if the damages were caused by the negligence of Bell or its employees.

Id.

The facts in these above-cases are not similar to the ones in the instant case. In *Bell* and *Brockway*, consumer complainants requested tariff provisions be waived, or found to be invalid and unreasonable. In the instant case, York Water, OCA, and I&E are advocating that public policy is a basis for waiving the tariff provisions pertaining to customer-owned service lines without a request for holding that Tariff Rule 3.4 is either unreasonable or invalid. Rather, York Water, OCA and I&E argue the public benefit should be the basis for the waiver. Further, York Water is not petitioning to either amend or supplement Tariff Rule 3.4. I am unaware of any case whereby a water utility company has received a similar waiver in order to replace customer-owned lead service lines. Thus, I believe the request is precedent in nature in that it departs from a more traditional route of filing an amendment to a tariffed provision specifying how the Company will handle lead service lines, including but not limited to specific conditions qualifying for the provision and any rates associated with addressing the removal of lead from water. The Company could have pursued an amendment to its Tariff; however, it chose to petition for limited waivers instead.

York Water states in its Statement in Support that the Commission previously has granted limited waivers relating to the replacement of customer-owned service lines in cases involving public safety. See *Petition of Peoples Natural Gas Co., LLC for Approval of Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement*, Docket Nos. P-2013-2346161, *et al.*, 2013 Pa. PUC LEXIS 543, at 95-97 (Order Entered May 23, 2013)(*Peoples*); *Petition of Columbia Gas of Pennsylvania, Inc. for Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement*, Docket No. P-00072337, 2008 Pa. PUC LEXIS 344, at 9 (Order Entered May 19, 2008)(*Columbia*).

Regarding these above-cited cases, both Peoples Natural Gas Company (Peoples) and Columbia Gas of Pennsylvania, Inc. (Columbia) were permitted to replace customer-owned natural gas service lines without retaining ownership of the lines pursuant to a statute specific to natural and artificial gas services lines, 66 Pa. C.S. §1510, which provides as follows.

§1510. Ownership and maintenance of natural and artificial gas service lines. .

When connecting the premises of the customer with the gas utility distribution mains, the public utility shall furnish, install and maintain the service line or connection according to the rules and regulations of the filed tariff. A public utility shall not be authorized or required to acquire or assume ownership of any pipe or appurtenances installed after the effective date of this section between its main and the meter unless the utility would have been authorized or required to do so according to the rules and regulations of its filed tariff if the pipe or appurtenances had been installed on or before the effective date of this section. Maintenance of the service lines shall be the responsibility of the owner of the service line.

66 Pa. C.S. § 1510.

This statute specifically applies to natural gas distribution companies and does not mention water utilities or water service lines. In *Columbia* and *Peoples*, the Commission observed safety concerns with customer-owned bare steel service lines. *Peoples* and *Columbia* were directed to replace customer-owned bare steel service lines as part of their respective infrastructure replacement programs. Although Section 1510 may not be applicable to the instant matter, as it is specific to natural gas distribution companies, the public policy behind the statute is public safety, similar to the public policy behind the instant Petition and Settlement.

In the *Peoples* case, pursuant to Sections 4 and 19 of *Peoples*' tariff, the customer was responsible for installation, maintenance and replacement of the customer service line, except for customers in the cities of Johnstown and Altoona. By petition filed on February 1, 2013, *Peoples* sought a limited waiver of this tariff provision in Section 4, to allow the Company to replace customer-owned service lines in conjunction with the main replacements. The cost of the replacement service would be recorded as part of the associated mains replacement, similar to the accounting for the cost of repairing other customer-owned property, such as driveways, that may be necessary as part of a main replacement. By order entered May 23, 2013, the Commission granted the petition for the tariff waiver. *Id.*

Peoples proposed to recover the cost of such customer-owned service line replacements through its Distribution System Improvement Charge (DSIC). As the cost of

replacement would be booked to the mains account, it qualified as part of the cost of piping or, alternatively, as other related capitalized costs, under 66 Pa. C.S. §1351. Due to the unique circumstances and the efficiencies gained by replacing customer-owned service lines in coordination with the accelerated mains replacement program, none of the other parties opposed recovery of these costs and they agreed that recovery of these costs through DSIC was appropriate and in the public interest.

In the *Peoples* case, as Peoples implemented its replacement of mains program, it tested the bare steel customer-owned lines for integrity, and as a customer line failed a pressure test, it was replaced before service would be restored. If a customer refused to allow Peoples to replace the line, then service would be shut off to the customer-owned line for safety reasons related to pressure concerns. Peoples persuaded the Commission to find that leaving the individual customers to bear financial responsibility for the cost of replacement of their lines would hamper Peoples' ability to coordinate replacement activities with customers and may negatively impact cost and time efficiencies. Therefore, Peoples proposed in its Long-term Infrastructure Improvement Plan (LTIP) to repair or replace customer-owned service lines that failed the pressure test during main replacement and to include the associated costs as a recoverable item under Peoples' DSIC. Peoples would not take ownership of, or maintain in the future, the customer-owned service lines that are replaced. Peoples' Petition for a waiver of tariff regarding replacement of these customer-owned service lines was granted by Commission Order dated May 23, 2013 at Docket No. P-2013-2346161 *et seq.*

In the *Columbia* case, Columbia had different tariff rules for each set of customers; one tariff rule for those customers that own their own service lines and another tariff rule for those customers that do not own their own service lines. *See Columbia Tariff Gas – Pa. P.U.C. No. 9. Supplement No. 78, Rules 4.7, 4.8, 4.9, 4.10, 4.13, 5.3, 8.1(a), and 8.4.*

The new distribution system operating at higher pressures enabled Columbia to install new safety devices in areas to be upgraded. As part of the upgrade, Columbia installed excess flow valves on services connected to the replacement mains. Columbia states that these

excess flow valves will shut off gas to a residence or business in the event of a large pressure differential indicating a possible gas leak.

Columbia petitioned that it was necessary to replace bare steel customer service lines and any other lines incapable of handling the new system pressures, along with meter risers and other related facilities in conjunction with Columbia's main replacement program. Columbia asserted that it was reasonable for Columbia to pay for the cost of replacing customer-owned service lines when the customer service lines cannot or potentially cannot operate safely at the new pressures and are to be replaced in conjunction with the main replacement program.

In its Petition, Columbia proposed to replace all customer service lines at its cost where replacement is necessary for the main replacement and upgrade program. Columbia planned to capitalize these costs of replacing customer service lines. However, Columbia would not take ownership of, or maintain in the future, the customer-owned service lines in the areas as delineated as customer-owned lines in Columbia's tariff. Columbia would inform the customer that he or she would lose service if the upgrades were not timely implemented.

Pursuant to 66 Pa. C.S. §1510, the Commission granted Columbia's request for limited waivers of the provisions of its tariff and found it was in the public interest for Columbia to replace at its expense certain customer-owned service lines during Columbia's main replacement and upgrade program. The Commission considered that the limited waivers were unopposed and appeared to serve a useful and beneficial purpose designed to improve the quality of service. Therefore by Order entered May 19, 2008, the Commission granted Columbia's petition for limited waivers of tariff rules 4.7, 4.8, 4.9, 4.10, 4.13, 5.3, 8.1(a), and 8.4 related to customer service line replacement at Docket No. P-00072337.

Although the instant Petition does not claim that customers refusing to allow the Company to replace their service lines will have their lines shut off due to safety concerns such as with the natural gas pressure concerns, I am persuaded to find that similar to the *Peoples* and *Columbia* cases, the cost efficiencies and general public interest is benefited by the proposed petition for waivers, as York Water is in a cost-efficient position to test customers' services for

lead at the time they are replacing their own lead service lines over the next four years and to inform the consumers of an opportunity to have their lead lines replaced at the company's initial cost expeditiously. There is a health and safety benefit to full lead line rather than partial lead line replacements as a spike in lead levels may be realized initially in a partial line replacement, and York Water is being judged by DEP by lead levels measured at the end of the line, the customer's tap. If the requested waivers will assist the Company in achieving goals and conditions required by the CO&A, that is also a beneficial outcome.

Further, the Company's agreement to offer a sliding-scale reimbursement to those customers with lead services that may have already recently replaced their services at cost within the past four years, improves the fairness of the waiver among individuals and entities within the same class, those with and without lead services. The waiver appears to be reasonable in that customers with leaky lead lines are not first required to repair the leaks prior to the Company's replacement of the line, and the Phase 2 provisions for customers owning lead lines that are not directly connected to the 1,660 company-owned lead services planned for replacement, provides some equity in treatment to that subclass of customers in that they also can have replacements on a first-come, first-serve basis up to a proposed cap of 400 annually.

The reimbursement clauses of the Settlement make the waivers reasonable and non-discriminatory among the classes of customers. 66 Pa. C.S. §§1303 and 1304. Otherwise, a customer who just last year replaced a line at cost might be financially disadvantaged by such a waiver not reimbursing the customer and also potentially requiring the customer to contribute to a neighbors' lead line replacements, as the cost of replacements will be allocated as regulatory assets recoverable in future rate proceedings. Additionally, it appears that customers will neither be charged interest on non-payment of differentials nor will they have service terminated, and this non-payment of differentials will eventually be written off by the Company. Thus, the burden for replacement of customer-owned service lines will eventually be borne by all ratepayers. The Company has not yet filed a rate increase; however, if it does, OCA and I&E have not waived any right to intervene if one were to be filed. Individual consumers could also oppose any proposed rate increases in the future.

York Water has requested limited waivers of the tariff rules relating to customer service line replacement. The Company's requested waivers are "limited" in that the waivers will only apply to customer-owned lead service lines and York Water will not take ownership of or assume maintenance responsibilities for the customer-owned service lines replaced by York Water. According to York Water's existing tariff, customers are responsible for the installation, maintenance and replacement of their service lines. Absent such waivers, York Water cannot replace customer owned service lines at the Company's initial cost. The waiver does not pertain to those customers who have leaks in their service lines if those lines are not at least in part made of lead. Those customers would bear the cost of replacement of a leaky line that did not contain at least in part lead. Additionally, for those customers who may have had lead pipes, but prior to today replaced their lead service lines already at their own cost, there is a provision in the Settlement designed to address graduated reimbursement. A customer who replaced a line within one year may recoup 80% of the cost of replacement from the company, and as the replacement was older, so the reimbursement is less of a percentage of actual costs.

I am persuaded by the undisputed and stipulated facts to agree that lead in drinking water presents health risks and that the use of lead pipe has been prohibited by the EPA for over 30 years. Replacing a lead customer-owned service line at the same time as lead Company-owned service line is in the public interest. The Company has access to determine the composition of the customer-owned line and will only realize an incremental cost to replace both lines. Replacing both parts of the service line at the same time makes economic sense and greatly simplifies the replacement process. There is a reduction in coordination requirements between customer and Company as well as an elimination of a costly financial burden to the customer.

Phase 1 Replacements

In this proceeding, York Water requested a limited waiver of Rule 3.4 of its tariff so that it can replace lead customer-owned service lines that are discovered when the Company replaces the 1,660 lead Company-owned service lines in its system ("Phase 1 replacements").

Petition; Finding of Facts Nos. 46-47. After the replacement, the customer would continue to own the service line and be responsible for its maintenance and repair. Finding of Fact No. 56.

OCA does not oppose the request to replace customer-owned lead service lines at the same time the company-owned lead service lines are replaced over the next 4 years. OCA's Answer raised issues regarding ratemaking treatment for customer-owned lead service lines that are replaced and on which the customer has coverage under the Water Service Line Protection Plan. Additionally, OCA recommended that: 1) York Water track capital costs for the customer-owned lead service line replacement program and provide that information on a semi-annual basis to the Commission and the OCA; and 2) York Water explore available funding options, now and in the future, at the state and federal level that might alleviate some of the replacement costs that will ultimately be borne by its ratepayers. OCA Answer at 5.

Regarding Phase I replacements, OCA states that the provision at Joint Stipulation of Fact No. 36 will permit York Water to replace customer-owned lead service lines in a cost-effective manner at the same time it is planning to spend approximately \$2,000,000 to replace its company-owned lead lines. The parties now agree that instead of capitalizing the replacement costs for customer-owned lines, the costs will be recorded as a regulatory asset recoverable in future base rate proceedings. Settlement at Par. 16, 29-31. The determination of the amortization period will be addressed in future base rate proceedings, but will be a period of no less than four years and no more than six. Settlement at Par. 29. Additionally, if York Water receives state or federal funding for replacement of lead customer-owned service lines, that funding will be reflected as credits to the regulatory asset. Settlement at Par. 36. York Water agrees it will not seek interest or a return on any unamortized balance. Settlement at Par. 29. The parties reserved the allocation of cost among customer classes for a future base rate proceeding. Settlement at Par. 29. The use of the regulatory asset for costs incurred by York Water will allow all parties and the Commission to track all costs and credits if any, related to the limited waiver of Tariff Rule 3.4. York Water's commitment to seeking funding and crediting such funding against costs of replacements addresses the OCA's concern that the Company seeks funding to relieve customers from some of the costs of replacement. OCA Statement in Support at 4. OCA is further satisfied that York Water has agreed to not require a

customer with a leaky lead pipe to repair that first at the customer's cost before the lead pipe is replaced at York Water's cost. I agree with OCA and find that this agreement regarding the limited waiver is fairer to all customers in the same class to which Tariff Rule 3.4 applies. Further, the Settlement shows the limited waiver will not change ownership of the customer-owned service line.

I further agree with I&E that there is a public policy health and safety reason to approve the settlement and waiver. Without it, York Water would only be able to remove the company-owned portion of the service lines and could not address any lead service lines found after the curb stop. This is called a partial service line replacement and studies conducted by the EPA have shown that this measure does not reliably reduce lead levels in drinking water and typically produces a spike in lead levels following the replacement.² In contrast, the EPA has deemed total lead service line replacement to be generally effective at removing lead from drinking water. *Id.*

York Water, in accordance with the Consent Order and Agreement (CO&A) with DEP, will be eliminating a quarter of its lead service lines every year, which will require the excavation and replacement of the service lines. This will allow York Water to identify customer-owned portions of service lines made of lead with minimal additional labor. Furthermore, if lead is found, the replacement will be greatly expedited and completed at a significantly reduced cost since the excavations will already be complete, the contractors will be on-site with supplies at hand, and since York Water will be able to leverage economies of scale with its contractors that would be unavailable to consumers. Prior to this Petition, when a customer was found to be served by a lead service line during replacement of Company-owned portions of service line, York Water was required to offer replacement of customer-owned lead service line at the expense of the customer. Stipulation Par. 43-44. In the available, albeit small, sample of York Water's customers in this scenario, no customer accepted this offer. It is unknown if this was due to choice, insufficient financial resources, or other reasons.

² EPA-SAB-11-015: Science Advisory Board Evaluation of the Effectiveness of Partial Lead Service Line Replacements (Dated Sept. 28, 2011).

I agree with I&E that this settlement allows York Water to comply with the terms of its CO&A, and produces a quicker, safer, and more cost-effective service line replacement for the public who are served by Company and customer owned lead service lines. Additionally, through this Settlement, there are limits on the number of customers per year whose lead service lines will be replaced by the Company, the total number of years that this waiver shall be effective, and the Settlement includes a preliminary anticipated cost for this program with an approximate cost of \$1,200 per customer. Settlement Par. 8.

Phase 2 Replacements

York Water also requested a limited waiver of Rule 3.4 of its tariff so that it can address replacing lead customer-owned service lines regardless of the Company-owned service line's composition and whenever they are discovered. Under the Company's proposal, York Water would offer to make a payment towards the replacement cost of the customer-owned lead service line as part of the Company-owned lead service line replacement plan. The customer would continue to be responsible for maintaining and repairing the service line after the replacement.

The Settlement provides that York Water shall be granted the limited tariff waiver and perform the Phase 2 replacements at its initial expense. As a result, York Water shall make a payment towards the replacement cost of the lead customer-owned service line up to an amount not to exceed the Company's average contracted cost for replacing the customer-owned lead service in the year the replacement is made. Further, as explained below, the Settlement addresses concerns raised by the OCA and I&E about the Phase 2 replacements.

OCA raised a number of concerns about the Phase 2 replacement proposal. OCA Answer at 6-7. The Settlement quantifies the amount York Water will pay towards the cost of the lead customer-owned service line and how that amount will be updated each year. Settlement at Par. 18. The Settlement provides more detail regarding how any additional replacement costs that the customer would be responsible for can be paid by the customer. Settlement at Par. 18. The customer can pay York Water in a lump sum or can have the amount

added to the customer's water bill, to be paid over one year. *Id.* York Water agrees that the Company will not terminate for non-payment of the replacement amount included on the customer's bill. *Id.* The inclusion on the bill of the replacement amount will be subject to 52 Pa. Code § 56.23.³ *Id.* York Water also agrees it will not charge interest during any payment period for these amounts and if it is unable to collect the difference from a customer over a reasonable amount of time, that amount can be written off by York Water, the uncollected amount will be permitted to be included in the regulatory asset account.

The proposed Settlement shows there would be a 12-month warranty if York Water's contractors replace the lead customer-owned service line. Settlement at Par. 19. Additionally, the customer will be required to sign an agreement authorizing York Water or its contractors to enter the customer's property to replace the service line. York Water agrees to restore the properties to their former condition, as nearly as practicable after completion of the service line replacements.

The Settlement provides for an annual cap of 400 on the number of Phase 2 lead service line replacements that York Water will undertake each year from the date a Commission Order approving the Settlement is entered. Settlement at Par. 20. York Water may petition the Commission for permission to increase the cap if 400 is inadequate to replace all requests it receives. If less than 400 lines are replaced in a year, the difference between actual lines replaced and 400 may be added to the cap the following year. Settlement at Par. 21. OCA is satisfied the Settlement addresses prioritization of customers on a first come, first served basis and using water test results. Additionally, the Phase 2 waiver would be in place for nine years and York Water may petition to extend the waiver. OCA believes this provision provides a reasonable time frame for the Phase 2 replacements, especially because it is not known how many lead customer-service lines are in existence.

³ Section 56.23 provides, "Payments received by a public utility without written instructions that they be applied to merchandise, appliances, special services, meter testing fees or other nonbasic charges and which are insufficient to pay the balance due for the items plus amounts billed for basic utility service shall first be applied to the basic charges for residential public utility service." 52 Pa. Code § 56.23.

I agree with OCA that public health concerns justify the limited waiver of Tariff Rule 3.4 and the use of the regulatory asset for the related costs. I also agree with the consumer-education requirements agreed to in the Settlement.

Regarding those customers that already replaced their lead service lines at their own expense, the Settlement provides for a sliding reimbursement scale (using the current year's contractor lump sum) based upon when the customer-owned lead service line was replaced, if replaced within the last four years, from the date of Settlement. OCA is satisfied with partial reimbursement for customers replacing their lines within the past 4 years. Finally, OCA supports additional reporting requirements outlined in the Settlement, which OCA intends to monitor. OCA further retains its right to oppose any future petition requesting amendment of the rate treatment of costs as addressed in the Settlement and as approved by the Commission if the Commission permits any other water utility to capitalize, for ratemaking purposes, lead customer-owned service line replacement costs. Settlement at Par. 31.

I further agree with I&E that the second phase of York Water's lead service line replacement program, through this Settlement, is a 9 year limited program that will financially assist up to 400 customers per year who are found to own lead service lines. The expense per customer in Phase II will be limited to the average replacement cost from Phase I. Through this settlement, limits have been implemented on the number of customers per year, the total number of years that this waiver shall be effective, and a limitation on costs that were not in the original petition. Phase II will aid York Water in achieving the desired lead reduction goals of the DEP-mandated CO&A, allow for the expeditious removal of harmful lead lines from service, and permit the economies of scale to maximize savings for consumers through this limited tariff waiver. In neither Phase 1 nor Phase 2 will the Company retain ownership and maintenance duties of the service lines.

Recovery Mechanisms

I&E raised a concern with York Water's proposal to capitalize the costs of replacing the customer-owned service lines. (I&E Answer, pp. 3-4, 6-7) Although the OCA did

not oppose York Water's proposal to capitalize the costs of the Phase 1 replacements, it stated that the rate treatment for customer-owned lead service lines would need to be addressed in more detail. (OCA Answer, p. 5).

The Settlement addresses these concerns by specifying that York Water shall perform the Phase 1 and Phase 2 replacements at its initial expense and shall record the costs as a regulatory asset to be recovered in future base rate proceedings. The Company will be permitted to amortize the amounts booked to the regulatory asset account in a base rate proceeding over a reasonable period of at least four but not more than six years. York Water also will reconcile amounts amortized to amounts incurred, and the difference shall continue to be amortized in subsequent base rate proceedings. The Settlement further provides that the allocation among customer classes of the recovery of amortized costs will be determined in a base rate proceeding. Moreover, the Settlement states that if the Commission subsequently permits another water utility to capitalize the costs of replacing customer-owned lead services, York Water may file a petition seeking to capitalize the costs on a going-forward basis to the extent not already collected in rates through amortization.

The rate provisions of the Settlement are reasonable and I recommend approval. These provisions provide a reasonable mechanism to spread the cost of customer-owned services to York Water's customers. A substantial concern has been that lead customer-owned services are likely to be an urban issue, because lead services have not been installed, by law, for many years. Some customers may not have the financial means to replace their service lines, and if not provided an option to replace them at no or low cost, the customer might elect to keep a lead customer-owned service line in operation.

Other Provisions

Both the OCA and I&E raised concerns about the scope of York Water's requests, including the number of service lines replaced and the cost of those replacements. (OCA Answer, p. 6; I&E Answer, p. 4) Further, the OCA recommended certain reporting requirements for York Water so that parties could track the program's progress. (OCA Answer, p. 5) Under

the Settlement, York Water will provide the other Joint Petitioners and the Commission with an annual report on the number of Company-owned and customer-owned service lines replaced, the cost of those replacements broken down by customer rate category, and information regarding any low or no cost funding York Water receives for the replacements. The Company also will provide an annual accounting to the other Joint Petitioners and the Commission about the cost of the tap water billing credit provided pursuant to the CO&A. Further, York Water will provide the OCA and I&E with a copy of the evaluation of its corrosion and control system, which was required under the CO&A.

The OCA also raised an issue about customer awareness, particularly how York Water will make customers aware of the customer-owned lead service line replacement program. (OCA Answer, p. 6) York Water explained that it already has begun the public education requirements, including directly notifying potentially affected customers, issuing several press releases, sending bill inserts, posting information on York Water's website regarding the health effects of lead, and creating a lead information pamphlet to be distributed to all customers. Moreover, the Settlement commits York Water to undertaking appropriate and ongoing customer outreach efforts.

Finally, the OCA recommended that the Company seek all available state and federal funding options to address the cost of replacing the lead service lines. (OCA Answer, pp. 5, 7). The Company noted that it is not aware of any grants currently available to replace customer-owned services. (Joint Stipulation of Facts No. 70) Nevertheless, under the Settlement, York Water will search for opportunities for low or no cost funding of the cost of replacement of lead customer-owned services, including grants and loans. To the extent that it obtains any grants, they will be booked to the regulatory asset account as an offset to costs.

I&E advocates that the cost of replacing customer owned service lines for Phase I and Phase II, as modified by this Settlement Agreement, will be accrued by York Water and treated as a regulatory asset. As a result, York Water will be permitted to recover costs incurred to replace customer owned lead service lines but it will not have an opportunity to earn a return

on investment.⁴ Regulatory assets are “recovered over a period of time through rates, therefore, represents a compromise between immediately expensing a cost (and an immediate loss to shareholders) and an immediate charge to ratepayers (and an immediate spike in rates),”⁵ which represents a fair balance of both interests. Regulatory assets directly tie the recovered amounts to the actual costs incurred by the utility without need for forward-looking speculation of costs,⁶ which removes any guesswork from the equation and promotes visibility and accountability of this process. Additionally, this methodology will eliminate any potential for unwarranted loading of assets⁷ and will, accordingly, provide substantial consumer safeguards not found in the original petition. Since this ratemaking treatment will allow York Water to recover the costs of the replacement of lead customer owned service lines but not to earn a return on those lines, it promotes the Company’s minimization of pertinent costs. Conversely, this ratemaking treatment will still ensure that York Water has the opportunity to earn full recovery of the costs and will be able to continue providing safe and reliable service to its customers. Furthermore, this mechanism will allow York Water to comply with its CO&A with DEP and the agreed upon annual reporting mechanism will permit continued monitoring of this novel program and help to ensure its success, both of which are in the public interest.

ALJ Recommended Modifications to Settlement

Additional Consumer Education

As approval of the Settlement involves the waiver of Tariff Rule 3.4, the Company should take additional steps to educate the public about the proposed waiver terms and conditions if they are granted by the Commission. Inserts in billings should notify customers of

⁴ Financial Accounting Standards Board, "FAS No. 71, Accounting for the Effects of Certain Types of Regulation," Original Pronouncements: Accounting Standards as of June 1, 1993, Volume I (Burr Ridge, IL: 1993), pars. 33-34.

⁵ NRRI 94-7: National Regulatory Research Institute: Generally Accepted Accounting Principles for Regulated Utilities: Evolution and Impacts – P. 6.

⁶ Financial Accounting Standards Board, "FAS No. 71, Accounting for the Effects of Certain Types of Regulation," Original Pronouncements: Accounting Standards as of June 1, 1993, Volume I (Burr Ridge, IL: 1993), pars. 122-124.

⁷ NRRI 94-7: National Regulatory Research Institute: Generally Accepted Accounting Principles for Regulated Utilities: Evolution and Impacts – P. 72.

the Company's plans as outlined in the Settlement including notifications of possible reimbursement to those customers that already replaced their lines and the sliding scale or reimbursement. A copy of any billing insert should be provided to the Bureau of Technical Utilities Services and the Bureau of Consumer Services within 60 days of date of final order granting the waiver petition in this proceeding to show the Company's compliance with consumer notification and educational requirements pertaining to the Phase 1 and 2 waivers. The language should be clear in the inserts informing customers how to have lines replaced or how to seek partial reimbursement for having already replacing their lead service lines within the past four years.

Additional Reporting Requirements

The Company has stated that it is unaware of state or federal funding that could reduce the costs to consumers. The Company should additionally show as part of its annual line replacement report filed with the Commission and served on the parties to this proceeding evidence of attempts to seek and obtain state and federal grant monies to lower the cost of replacement of lead service lines. Examples of documented evidence include but are not limited to letters of grants or denial.

CONCLUSION

The limited waivers are unopposed and appear to serve a useful and beneficial purpose designed to improve the safety of York Water's utility water service. Therefore, I recommend that limited waivers of York Water's Tariff Rule 3.4 relating to customer service lines are in the public interest and such related costs may be considered regulatory assets. I further recommend the Commission exercise its authority to grant the limited waivers as requested in the original Petition and as modified by the Settlement and presiding officer's modifications.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. §§1300 *et seq.*
2. An approved tariff is legally binding on both the utility and its customers. *Brockway Glass Company v. Public Utility Commission*, 437 A.2d 1067, 1070 (Pa.Cmwlth. 1981).
3. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231(a).
4. To accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order Entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).
5. It is reasonable and non-discriminatory to grant limited waivers relating to the replacement of customer-owned service lead lines in this case as the reduction of lead levels contributes to public safety and customers already replacing their lines within the past four years are entitled to a sliding-scale reimbursement. *See Petition of Peoples Natural Gas Co., LLC for Approval of Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement*, Docket Nos. P-2013-2346161, *et al.*, 2013 Pa. PUC LEXIS 543, at 95-97 (Order Entered May 23, 2013)(*Peoples*); *Petition of Columbia Gas of Pennsylvania, Inc. for Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement*, Docket No. P-00072337, 2008 Pa. PUC LEXIS 344, at 9 (Order Entered May 19, 2008) (*Columbia*).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Stipulation of Facts filed on January 23, 2017 at Docket No. P-2016-2577404 is admitted into the record.

2. That the York Water Company's petition for limited waivers of tariff rule 3.4 related to customer service lines as modified by the terms of settlement filed on January 23, 2017, and as modified in the below ordering paragraphs be approved.

3. That York Water Company is granted a limited waiver of Tariff Rule 3.4 as described herein for a period of nine (9) years from the date of entry of a final order approving the Petition as modified at Docket No. P-2016-2577404.

4. That York Water Company shall educate its consumers regarding the waiver terms and conditions through billing inserts, a copy of which shall be provided to the Bureau of Technical Utilities Services and Bureau of Consumer Services to show compliance within 60 days of the entry date of a final order approving the Settlement as modified at Docket No. P-2016-2577404.

5. That York Water Company shall show as part of its annual line replacement report, evidence of attempts to seek and obtain state and federal grant monies to lower the cost of replacement of lead service lines.

6. That this docket be marked closed.

Date: February 2, 2017

/s/
Elizabeth H. Barnes
Administrative Law Judge