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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | |  |
|  | | Public Meeting held March 2, 2017 | | |
| Commissioners Present: | |  | | |

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| Gladys M. Brown, Chairman |  |
| Andrew G. Place, Vice Chairman  John F. Coleman, Jr. |  |
| Robert F. Powelson, Statement |  |
| David W. Sweet |  |

Petition of The York Water Company for an Expedited P-2016-2577404

Order Authorizing Limited Waivers of Certain Tariff

Provisions and Granting Accounting Approval to Record

Costs of Certain Customer-Owned Service Line

Replacements to the Company’s Service Account

**ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) is the Recommended Decision of Administrative Law Judge (ALJ) Elizabeth H. Barnes recommending approval of a Joint Settlement Petition (Settlement) of all parties to a case filed by the York Water Company (“York Water” or “Company”). The Settlement seeks expedited approval of two issues: (1) a waiver of the portion of York Water’s tariff that does not allow the Company to bear the costs associated with the replacement of customer-owned lines and (2) approval to record the associated costs as a regulatory asset to be amortized over a reasonable period as determined in the next base rate case.

As a water company subject to the Lead and Copper Rule (LCR) at 25 Pa. Code §§ 109.1101 through 109.1108, York Water must conduct periodic monitoring of the drinking water at consumer taps to determine the concentration of lead in the drinking water. The Company’s most recent results for this test exceeded the lead action level set in the LCR. Consequently, the Pennsylvania Department of Environmental Protection (DEP) issued a Consent Order and Agreement (CO&A) requiring the Company to take specific action to reduce lead levels at customer taps.[[1]](#footnote-1)

To that end, York Water filed a 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) on November 28, 2016. 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 customer-owned lead service lines concurrent with its planned replacement of 1,660 Company-owned lead service lines over the next 4 years. Additionally, the Company requested an extended waiver 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.

On December 19, 2016, the Commission’s Bureau of Investigation and Enforcement (I&E) filed an Answer requesting discovery and an evidentiary hearing. On December 19, 2016, the Office of Consumer Advocate (OCA) filed an Answer, which generally supported the Petition but also expressed some reservations.

On January 12, 2017, a prehearing conference was held and on January 23, 2017, the Company, OCA, and I&E (collectively, (“Joint Petitioners”) filed the Settlement petition. Joint Petitioners also requested that ALJ Barnes certify the record to the Commission without issuing a decision in order to expedite the approval of the settlement on or before January 26, 2017. 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 ALJ Barnes to prepare a Recommended Decision regarding the Joint Petition as expeditiously as possible. On February 6, 2017, ALJ Barnes issued the Recommended Decision approving the Petition as modified by the Settlement.

**Background**

York Water 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 Environmental Protection Agency. The Company’s tests concluded that 6 of the 50 buildings tested had samples greater than 15 parts per billion of lead. Consequently, York Water is presently subject to a CO&A with the DEP that requires the Company to take specific action to reduce lead levels at customer taps.[[2]](#footnote-2) Pursuant to this CO&A, York Water plans to expeditiously replace the 1,660 Company-owned service lines known to be constructed of lead.

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 current 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.

Replacing the Company-owned lead lines addresses only part of the problem. Customer-owned lead lines also need to be replaced. Under York Water’s existing tariff, replacement of customer-owned lead lines would depend upon each customer assuming the burden and full expense of the replacement. Rather than rely upon customers to replace their lead service lines, which would result in a haphazard approach, York Water proposes to assume that responsibility at its initial expense. While performing the replacement of the Company-owned lead service lines, York Water proposes to simultaneously replace the customer-owned portions of the lead service lines as they are discovered. In instances where the customer-owned lead service line is connected to a Company-owned non-lead service line, York Water would still replace customer-owned lead service lines, as they are discovered. York Water proposes to pay up to the Company’s average contracted cost for replacing a customer-owned lead service.

Under the terms of the Settlement, the waiver allowing the Company to assume the initial cost of replacing customer-owned lines would not extend to line repair/replacement for reasons other than the presence of lead. The Settlement also addresses limitations on later replacements. Finally, the Settlement addresses the rate treatment of York Water’s initial expense and requires the Company to record the costs as a regulatory asset, to be recovered in future base rate proceedings.

The ALJ recommended granting York Water’s Petition, as modified by the Settlement. Specifically, the ALJ recommended granting a limited two-phase waiver from compliance with its Tariff Rule 3.4: (1) a four-year waiver involving the replacement, at the Company’s initial cost, of lead customer-owned service lines discovered when the Company replaces its own lead service (Phase 1) and (2) a nine year waiver involving the annual replacement of customer-owned lead service lines as they are discovered (Phase 2).

**Discussion**

In light of the gravity of the situation, York Water requested, and the settling parties agreed to, a waiver of Tariff Rule 3.4.  Historically, the Commission has granted tariff waivers in very limited circumstances.[[3]](#footnote-3) Considering the important role of utility tariffs, waiving such provisions is generally disfavored as a matter of law and policy. Tariffs set forth in writing the rules and provisions by which a utility operates so as to provide the utility and the public with a transparent understanding of a utility’s obligation to provide non-discriminatory service.[[4]](#footnote-4) As such, it is more appropriate for York Water to make the changes agreed upon in the Joint Settlement Petition through a tariff revision.

This case needs to move forward, as York Water is already gearing up for construction to ameliorate a problem of the utmost importance to its customers. Further, the proposed course of action by York Water coordinates the replacement of Company-owned and adjoining customer-owned service lines. As such, delay of customer-owned line replacements can result in a delay of Company-owned replacements, unnecessarily stalling the actions necessary under the CO&A and potentially harming the health and safety of York Water’s customers. The efficiency of this approach minimizes total costs, thereby providing better service to York Water customers, particularly to those who might find the total cost of replacing the customer-owned line to be burdensome or too expensive a task to undertake independently. Additionally, 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.[[5]](#footnote-5)

Accordingly, in order to delay this matter no longer, the Joint Petition for Settlement will be treated as a petition for approval to file a tariff supplement, and will be approved as such.[[6]](#footnote-6) York Water shall file a tariff supplement that reflects the terms of the Settlement, including sunset dates consistent with the parties agreed upon waiver expiration timelines, within seven days of entry of this Order. Once filed, the amended tariff will be effective upon three days’ notice, which will give the Commission and the Joint Petitioners an opportunity to ensure that the proposed tariff is consistent with the Settlement.

In the meantime, recognizing the pressing health and safety issue at hand, as well as the delay that has ensued in addressing this case of first impression, we will grant York Water a temporary waiver of Tariff Rule 3.4. This waiver will expire upon the effective date of the tariff supplement required by this Order. The Commission has, in narrow circumstances, issued such time-limited waivers, and doing so here is necessary to allow York Water to begin work replacing customer-owned lead service lines immediately in the context of a DEP-issued consent order.[[7]](#footnote-7) **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of The York Water Company 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 Service Account, as modified by the Joint Petition for Settlement and this Order, shall be treated as a petition for approval to file a tariff supplement.
2. That the Petition of The York Water Company 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 Service Account, as modified by the Joint Petition for Settlement in the nature of a petition for approval to file a tariff supplement and this Order, is approved.
3. That The York Water Company is granted a temporary waiver of Tariff Rule 3.4, which will expire upon the effective date of the tariff supplement required in Ordering Paragraph 4.
4. That The York Water Company is required to file a tariff supplement consistent with the Joint Petition for Settlement and the Commission's final Order in this matter within seven (7) days of entry of this Order, and which will be effective upon three (3) days’ notice.
5. That The York Water Company will serve its tariff supplement on the Joint Petitioners, who will have three (3) days to object to the tariff as inconsistent with the Joint Petition for Settlement and the Commission's final Order.
6. That The York Water Company be permitted to book costs related to customer-owned lead service line replacements to a regulatory asset account.
7. That The York Water Company shall provide to the Joint Petitioners and to the Commission an annual report on the number of Company-owned service lines replaced, and the cost of replacements, broken down by customer rate class (i.e., residential, commercial, industrial).
8. That The York Water Company shall provide to the Joint Petitioners and to the Commission an annual accounting of the cost of the tap water billing credit provided pursuant to paragraphs 3(a)(i)(c) and (b)(iii) of the Consent Order And Agreement with the DEP dated December 23, 2016, attached as Exhibit A to the Settlement.
9. That The York Water Company shall provide the 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 Consent Order and Agreement with DEP.
10. That The York Water Company shall search for opportunities for low or no cost funding of the cost of replacement of lead customer-owned services, including grants and loans. 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. The York Water Company shall include information regarding any funding it receives in its annual line replacement report provided to the Joint Petitioners and Commission. If no funding is available, The York Water Company shall include any evidence of attempts to obtain said funding.
11. That The York Water Company shall undertake appropriate customer outreach efforts to advise customers to check their services for the possibility of lead. Upon receipt of a customer report of a customer-owned lead service line, The York Water Company will dispatch The York Water Company 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 The York Water Company. If the result of The York Water Company's inspection confirms a customer-owned lead service line, then The York Water Company shall proceed with replacement as described in the Joint Petition for Settlement. The York Water Company shall report on its outreach efforts and results to the Joint Petitioners and the Commission every six months.
12. That the Bureau of Technical Utility Services shall monitor The York Water Company's annual reporting in conjunction with the Joint Petition for Settlement, as modified by this Order.
13. That this docket be marked closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 2, 2017

ORDER ENTERED: March 8, 2017

1. *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. *See also,* Stipulations of Fact, Exhibit B [↑](#footnote-ref-1)
2. Consent Order and Agreement entered into on December 23, 2016. [↑](#footnote-ref-2)
3. *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); *Petition of Columbia Gas of Pennsylvania, Inc. for Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement,* Docket No. P-000724337, 2008 Pa. PUC LEXIS 344, at 9 (Order Entered May 19, 2008). [↑](#footnote-ref-3)
4. A public utility may not charge a rate other than the rates set forth in its tariff.  66 Pa. C.S. 1303A 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. PUC*, 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 so that the public may inspect its contents.  66 Pa. C.S. 1302; 52 Pa.Code  53.25. The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. *Philadelphia Suburban Water Co. v. Pa PUC*, 808 A.2d 1044 (2002); Public utility tariffs must be applied consistent with their language.  Public utility tariffs have the force and effect of law and are binding on the public utility and its customers.  *Pennsylvania Electric Co. v Pa PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); Tariff provisions previously approved by the Commission are prima facie reasonable*.  Zucker v. Pa PUC*, 437 A.2d 1067 (Pa.Cmwlth. 1981) [↑](#footnote-ref-4)
5. *See*, Stipulations of Fact, Item 67. [↑](#footnote-ref-5)
6. The Joint Settlement Petition already includes all of the necessary agreements among the litigating parties, so there is no prejudice in treating the Joint Petition as a petition for approval to file a tariff supplement. [↑](#footnote-ref-6)
7. *Joint Application of West Penn Power Company and Airco Carbon Division, BOC Group, Inc., for Temporary Waiver of Maximum Electrical Demand Provisions of Utility Tariff for Temporary Provision of Electric Service to Airco Carbon Division, BOC Group, Inc.'s St. Marys, Pennsylvania Facility*, Docket No. A-111250F009, 1987 Pa. PUC LEXIS 319; 63 Pa. PUC 557 (Order Entered April 16, 1987). [↑](#footnote-ref-7)