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File #: 167578

January 23, 2017

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: 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
Services Account
Docket No. P-2016-2577404**

Dear Secretary Chiavetta:

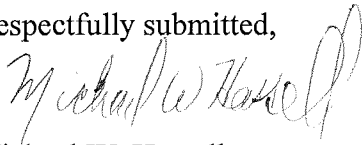
Enclosed please find the Joint Petition for Settlement and Request for Certification Pursuant to 52 Pa. Code § 5.531 in the above-referenced proceeding. As explained in the Joint Petition, the parties respectfully request that Administrative Law Judge Elizabeth H. Barnes (the "ALJ") certify the Settlement to the Pennsylvania Public Utility Commission ("Commission"), pursuant to 52 Pa. Code § 5.531, and that the Commission approve the Settlement expeditiously, preferably no later than the Commission's public meeting on January 26, 2017.

Expedited consideration and approval is necessary and in the public interest. York Water has committed to replacing all 1,660 Company-owned lead service lines in the next four years and seeks to begin that work immediately while contractors are available in the winter months. It is more cost-efficient to replace the Company-owned service line and the customer-owned service line at the same. Moreover, if a customer-owned lead service line is not replaced at the same time as the Company-owned service, there may be concerns about increased exposure to lead. Thus, in the interest of public safety, the Commission should approve the Settlement on an expedited basis.

Copies will be provided as indicated on the Certificate of Service.

Rosemary Chiavetta, Secretary
January 23, 2017
Page 2

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael W. Hassell".

Michael W. Hassell

MWH/skr
Enclosure

cc: Honorable Elizabeth Barnes
Certificate of Service

CERTIFICATE OF SERVICE

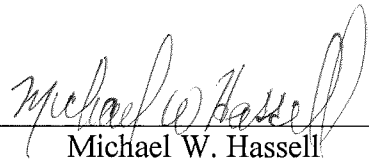
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

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Date: January 23, 2017



Michael W. Hassell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of The York Water Company for an	:	
Expedited Order Authorizing Limited	:	
Waivers of Certain Tariff Provisions and	:	
Granting Accounting Approval to Record	:	Docket No. P-2016-2577404
Cost of Certain Customer-Owned Service	:	
Line Replacements to the Company's	:	
Services Account	:	

**JOINT PETITION FOR SETTLEMENT AND
REQUEST FOR CERTIFICATION PURSUANT TO 52 PA. CODE § 5.531**

TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), the Office of Consumer Advocate (“OCA”), and The York Water Company (“York Water” or the “Company”), parties to the above-captioned proceeding (hereinafter collectively referred to as the “Joint Petitioners”), hereby join in this Joint Petition for Settlement (“Settlement”) and respectfully request that Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) certify the Settlement to the Commission, pursuant to the provisions of 52 Pa. Code § 5.531, and that the Commission approve the Settlement on an expedited basis, preferably no later than the Commission’s public meeting on January 26, 2017, as set forth below.

In support of the Settlement, the Joint Petitioners state the following:

II. BACKGROUND

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. *See* 66 Pa. C.S. § 102. 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. York Water provides wastewater service to approximately 642 customers in portions of York County.

2. On November 28, 2016, York Water filed a Petition requesting the Commission to issue an Order on an expedited basis¹ that: (1) grants limited waivers of certain tariff provisions to permit the Company to replace customer-owned service lines made of lead; and (2) grants accounting approval to record the cost of replacement of customer-owned services made of lead to the Company's Services Account – Account No. 333.

3. The purpose of the Petition is to facilitate York Water's replacement of customer-owned lead service lines that the Company encounters while replacing its approximately 1,660 Company-owned lead service lines over the next four years ("Phase 1"), as well as the replacement of any additional customer-owned lead service lines whenever they are discovered and regardless of the material used for the Company-owned service line ("Phase 2").

4. On December 19, 2016, OCA and I&E each filed an Answer to the Petition.

5. A prehearing conference was scheduled for January 12, 2017. The Joint Petitioners filed prehearing memoranda identifying potential issues and witnesses.

¹ The Company sought an Order granting the requested waiver, following consideration by the entire Commission, at the Commission's public meeting on December 22, 2016. Considering that date has passed and York Water's pressing need for the requested tariff waivers, the Joint Petitioners respectfully request that the Commission issue an Order granting York Water's Petition, as modified by and consistent with the Settlement, preferably no later than the Commission's public meeting on January 26, 2017.

6. The Joint Petitioners held numerous settlement discussions over the course of this proceeding. As a result of those discussions and the efforts of the Joint Petitioners to examine the issues in the proceeding, the Joint Petitioners have been able to agree to a settlement of all issues.

7. On January 18, 2017, the parties informed the ALJ that a settlement in principle of all issues had been reached.

8. The Settlement terms are set forth in the following Section III.

III. SETTLEMENT

9. The following terms of this Settlement reflect a carefully balanced compromise of the interests of all the Joint Petitioners in this proceeding. The Joint Petitioners unanimously agree that the Settlement, which resolves all issues in this proceeding, is in the public interest. The Joint Petitioners respectfully request that York Water'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 be granted subject to the terms and conditions of this Settlement specified below:

A. PHASE 1 REPLACEMENTS

10. 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.

11. This 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.

12. 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.

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

14. 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 this Settlement.

B. PHASE 2 REPLACEMENTS

15. 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.

16. 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 29.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

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

25. 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 this Settlement.

26. 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%. Payment not to exceed actual cost on invoice.

C. RATE TREATMENT

27. 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.

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

29. 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 this 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 this Settlement shall not enable any of the Joint Petitioners to withdraw from the Settlement, as provided in Paragraph 43 herein.

D. OTHER PROVISIONS

30. 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).

31. 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 Consent Order and Agreement (“COA”) with the Department of Environmental Protection (“DEP”) dated December 23, 2016, which is attached hereto as **Appendix A**.

32. 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 COA.

33. 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’s inspection confirms that there is a lead customer-owned service line, then York 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.

34. 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.

IV. REQUEST FOR CERTIFICATION OF SETTLEMENT

35. The Joint Petitioners respectfully request that the ALJ certify the stipulated record and this Settlement to the Commission pursuant to the provisions of 52 Pa. Code § 5.531. This request for expedited consideration is made in order to allow York Water to immediately begin work on Phase I replacements. As explained in the Petition, York Water has committed to replace all of the 1,660 Company-owned services in the next four years and desires to begin such replacements immediately. However, recent studies indicate that there may be concerns about increased exposure to lead through construction if a lead customer-owned service is permitted to remain in place when the Company-owned service is being replaced. In addition, replacement of a lead customer-owned service at the time a lead Company-owned service is being replaced is cost-efficient.

V. SETTLEMENT IS IN THE PUBLIC INTEREST

36. This Settlement was achieved by the Joint Petitioners after an investigation of York Water's filing, including informal discovery and settlement discussions.

37. Acceptance of the Settlement will avoid the necessity of further administrative and possibly appellate proceedings regarding the settled issues.

38. Acceptance of the Settlement will enable York Water to proceed with its plan to replace customer-owned service lines made of lead, thereby: (1) producing cost efficiencies by performing the Phase 1 replacements at the same time York Water is replacing its Company-owned service lines made of lead; and (2) the improving the safety and quality of York Water's service for customers.

39. This Settlement recognizes and will allow for York Water to take measures outlined in the COA.

40. The Joint Petitioners have submitted, along with this Settlement, their respective Statements in Support setting forth the basis upon which each believes the Settlement to be fair, just and reasonable, and therefore in the public interest. The Joint Petitioners' Statements in Support are attached hereto as **Appendices B** through **D**.

VI. CONDITIONS OF SETTLEMENT

41. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission modifies the Settlement, then any Joint Petitioner may elect to withdraw from this Settlement and may proceed with litigation and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all Joint Petitioners within five business days after the entry of any Order modifying the Settlement.

42. If the matter remains with the ALJ 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.

43. The Joint Petitioners acknowledge and agree that this Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding.

44. This Settlement and its terms and conditions may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

45. The Commission's approval of the Settlement shall not be construed to represent approval of any Joint Petitioner's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement in this and future proceedings involving York Water.

46. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would have been advanced by any Joint Petitioner in this proceeding if it were fully litigated.

47. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner which is fair and reasonable. The Settlement is the product of compromise between and among the Joint Petitioners. This 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 this Settlement. This Settlement does not preclude the Joint Petitioners from taking other positions in any other proceeding involving another public utility.

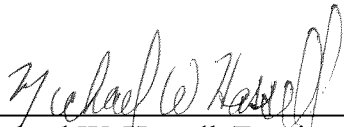
WHEREFORE, the Joint Petitioners, by their respective counsel, respectfully request as follows:

1. That the Honorable Administrative Law Judge Elizabeth H. Barnes certify this Settlement to the Commission and that the Commission approve this Settlement including all terms and conditions thereof without modification;

2. That the proceeding at Docket No. P-2016-2577404 shall be marked closed.

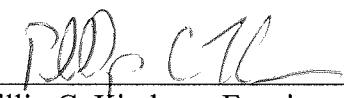
3. That the Commission enter an expedited Order approving York Water's requested tariff waivers and accounting treatment, as modified by and consistent with this Settlement, preferably no later than the Commission's public meeting on January 26, 2017.

Respectfully submitted,

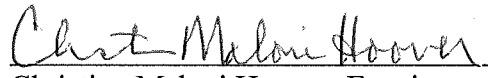


Michael W. Hassell, Esquire
Devin T. Ryan, Esquire
Post & Schell, P.C.
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Harrisburg, PA 17101-1601
For: The York Water Company

Date: 1/23/2017



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For: Bureau of Investigation and Enforcement



Christine Maloni Hoover, Esquire
Erin L. Gannon, Esquire
Office of Consumer Advocate
555 Walnut Street
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Harrisburg, PA 17101-1923
For: Office of Consumer Advocate

Appendix A

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

The York Water Company	:	
130 East Market Street	:	Violations of the Pennsylvania Safe
York, PA 17401	:	Drinking Water Act and Regulations
	:	PWSID No. 7670100
	:	City of York, York County

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 23 day of Dec., 2016, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), and The York Water Company ("York Water").

The Department has found and determined the following:

- A. The Department is the agency with the duty and authority to administer and enforce the Pennsylvania Safe Drinking Water Act, Act of May 1, 1984, P.L. 206, *as amended*, 35 P.S. §§ 721.1 – 721.17 ("SDWA"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P. L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder ("Regulations").
- B. The York Water Company, Inc. (hereinafter "York Water") is a Pennsylvania corporation registered with the Pennsylvania Department of State. York Water maintains a business mailing address of 130 East Market Street, York, PA 17401.
- C. York Water owns and operates the York Water public water system.
- D. York Water is a "person" and a "public water supplier" as these terms are defined in Section 3 of the SDWA, 35 P.S. § 721.3, and Section 109.1 of the Safe Drinking Water Regulations, 25 Pa. Code § 109.1.
- E. York Water owns and operates a "public water system" and a "community water system" as these terms are defined by Section 3 of the SDWA, 35 P.S. § 721.3, and Section 109.1 of the Safe Drinking Water Regulations, 25 Pa. Code § 109.1.
- F. The York Water public water system consists of Lakes Redman and Williams, intakes on the Susquehanna River and the South Branch Codorus Creek, multiple raw water pump stations, the Grantley Road filter plant, multiple finished water pump stations, multiple finished water storage tanks, and a distribution system. York Water serves approximately 194,000 individuals through approximately 66,046 metered and unmetered service connections.

- G. The York Water public water system is operated pursuant to multiple SDWA permits issued by the Department and has been assigned Public Water System Identification No. 7670100.
- H. York Water is subject to the Lead and Copper Rule (“LCR”) found at 25 Pa. Code §§ 109.1101 through 109.1108. York Water is a “large” system for purposes of the LCR. 25 Pa. Code § 109.1101(b).
- I. The term “lead service line” is defined at 25 Pa. Code § 109.1 as “a service line made of lead which connects a water main to a building inlet and a lead pigtail, gooseneck or other fitting which is connected to the lead line.” In York Water’s system, there are two parts to service lines that deliver water to a customer’s premises. The first part is the York Water-owned service line. This service line extends from the water main to the curb stop or valve. The second part of the service line is the customer-owned service line, which extends from the curb stop or valve into the premise.
- J. York Water reports that it stopped installing company-owned lead service lines in 1935 and that approximately 1,660 of its customers currently receive water through company-owned lead service lines.
- K. All public water suppliers subject to the LCR must conduct initial and periodic monitoring of the drinking water at consumer taps to determine the concentration of lead in drinking water in accordance with 25 Pa. Code § 109.1103. The suppliers must then assure that the results of this monitoring are reported to the Department within the first 10 days following the end of each applicable monitoring period in accordance with 25 Pa. Code § 109.1107(a)(2).
- L. All large community water systems subject to the LCR must also conduct periodic water quality parameter (“WQP”) monitoring in accordance with 25 Pa. Code § 109.1103, and must then assure that the results of this monitoring are reported to the Department within the first 10 days following the end of each applicable monitoring period in accordance with 25 Pa. Code § 109.1107(a)(2).
- M. All public water suppliers subject to the LCR must develop a LCR sample site location plan in accordance with 25 Pa. Code § 109.1103(g).
- N. If a public water system has lead service lines in its distribution system, the public water supplier must draw at least 50% of its samples taken during monitoring from sites served by lead service lines in accordance with 25 Pa. Code § 109.1103(g)(2)(v).
- O. If the 90th percentile result of tap water samples taken during a monitoring period exceeds the lead action level (“AL”) of 15 parts per billion, then the public water supplier is required to take specific actions including: taking further steps to optimize the corrosion control treatment; educating the public about lead in drinking water and about the actions consumers can take to reduce their exposure to lead; replacing the portions of lead service lines under the water supplier’s control; and offering to replace the portions of lead service lines owned by the customer (at the customer’s cost). See 25 Pa. Code §§ 109.1102, 109.1104 and 109.1107.
- P. On February 29, 2016, the U.S. Environmental Protection Agency (“U.S. EPA”) issued a clarification related to tap water sampling procedures used for LCR monitoring. In this

clarification, U.S. EPA recommended that water suppliers no longer instruct customers participating in the monitoring to flush their taps prior to starting the 6-hour stagnation time required for samples collected for LCR monitoring.

- Q. During 2010, 2013 and 2016, York Water conducted periodic lead and copper monitoring of its drinking water at consumer taps.
- R. During the spring of 2016, York Water reviewed its LCR sample site location plan which had been used to conduct its LCR monitoring for the 2010 and 2013 monitoring periods. York Water had not updated its LCR sample site location plan after either the 2010 LCR monitoring period or the 2013 LCR monitoring period.
- S. York Water found that, during both the 2010 and the 2013 LCR monitoring periods, York Water had collected 100% of its samples from Tier 1 locations with copper pipes and lead solder rather than collecting at least 50% of its samples from sites with lead service lines.
- T. York Water revised its LCR sample site location plan prior to conducting its 2016 LCR monitoring to ensure that at least 50% of its samples were collected from sites with lead service lines.
- U. Prior to conducting its 2016 LCR monitoring, York Water also revised the tap water sampling instructions it provided to customers participating in its LCR monitoring. As recommended by the U.S. EPA in the February 29, 2016 clarification, York Water revised its tap water sampling instructions to eliminate any mention of pipe flushing prior to the start of the mandatory 6-hour pre-sampling stagnation period.
- V. York Water conducted its periodic LCR monitoring from June through September 2016 using the revised LCR sample site location plan and the updated sampling instructions.
- W. After sampling in accordance with the updated LCR sample site location plan and updated sampling instructions, York Water found that the 90th percentile result exceeded the lead AL of 15 parts per billion.

LEAD MONITORING SAMPLE SITE SELECTION

- X. 25 Pa. Code § 109.1103 requires that public water systems conduct regular lead monitoring at consumer taps to determine the concentrations of lead in drinking water being served.
- Y. 25 Pa. Code § 109.1103(g) requires that all public water systems develop a sample site location plan for use during lead monitoring. Sample sites are classified into three tiers, depending upon the materials of construction and type of customer being served. Tier 1 sites are those most likely to contain elevated lead, and are the highest priority sample sites. If available in the system, the public water system must utilize all Tier 1 sites for LCR monitoring.
- Z. 25 Pa. Code § 109.1103(g)(2)(v) requires a water supplier that has a distribution system containing lead service lines to draw 50% of the samples it collects during each monitoring period from sites that contain lead pipes or copper pipes with lead solder and 50% of those samples from sites served by a lead service line.

- AA. By failing to draw at least 50% of its samples from sites that were served by lead service lines, York Water violated 25 Pa. Code § 109.1103(g)(2)(v) in both 2010 and 2013.

FAILURE TO UPDATE A SAMPLE SITE LOCATION PLAN AND FAILURE TO SUBMIT TO THE DEPARTMENT

- BB. 25 Pa. Code § 109.1107(a)(1) requires water systems to prepare and maintain a lead and copper sample site location plan and to update the plan within the first 10 days following the end of each applicable monitoring period.
- CC. York Water failed to prepare an updated sample site location plan following the monitoring period ending September 30, 2010 and following the monitoring period ending September 30, 2013, in violation of 25 Pa. Code § 109.1107(a)(1).

FAILURE TO REPORT WQP DATA TO THE DEPARTMENT

- DD. 25 Pa. Code § 109.1107(a)(2) requires a water supplier to assure that the results of analyses conducted in accordance with 25 Pa. Code § 109.1103, including WQP monitoring for large systems, be reported to the Department within 10 days following the end of each applicable monitoring period.
- EE. York Water failed to report the results of analysis for WQP data for the monitoring period ending September 30, 2013 in violation of 25 Pa. Code § 109.1107(a)(2). For the monitoring period ending September 30, 2016, York Water failed to report the results within 10 days following the end of the monitoring period in violation of 25 Pa. Code § 109.1107(a)(2).

FAILURE TO SUBMIT TO DEPARTMENT A COPY OF CONSUMER NOTICE OR CERTIFICATION

- FF. 25 Pa. Code § 109.1107(a)(5) states that a water supplier shall submit to the Department, within 3 months of the end of the monitoring period in which lead tap monitoring was conducted, a sample copy of the consumer notice of lead tap monitoring results along with a certification that the notices were distributed in accordance with 25 Pa. Code § 109.1104(b).
- GG. York Water failed to submit the required certification to the Department following the monitoring periods ending September 30, 2010 and September 30, 2013, in violation of 25 Pa. Code § 109.1107(a)(5).
- HH. The violations described in Paragraphs AA., CC., EE., and GG. above constitute a public nuisance under Section 12 of the SDWA, 35 P.S. § 721.12, and subject York Water to the Department's enforcement authority under Section 13(g) of the SDWA, 35 P.S. § 721.13(g).

ORDER AND AGREEMENT

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and

intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by York Water as follows:

1) **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the SDWA, 35 P.S. § 721.5; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2) **Findings.**

- (a) York Water agrees that the findings in Paragraphs A. through HH, except Paragraphs AA., CC., EE., GG., and HH., are true and correct and, in any matter or proceeding involving York Water and the Department, York Water shall not challenge the accuracy or validity of these findings.
- (b) The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3) **Corrective Actions.**

- (a) As to those customers' premises which are served by York Water-owned lead service lines in its distribution system, York Water shall do the following. These requirements shall apply to all premises with active and identified York Water-owned lead service lines. As of the date of this Consent Order and Agreement, York Water has identified approximately 1,660 York Water-owned lead service lines in this category.
 - i) York Water shall provide to the Department a list containing the addresses of the approximately 1,660 active York Water-owned lead service lines.
 - ii) York Water shall replace these York Water-owned lead service lines at a rate of approximately 25% per year over a four year period, commencing in 2017 and finishing no later than December 31, 2020.
 - iii) For each of the customers served by York Water-owned lead service lines identified in 3(a)i) above, York Water shall take actions to determine whether the adjoining customer-owned portion of the service line is also a lead service line. These actions shall include reviewing the construction of the adjoining customer-owned service lines, reviewing test data and requesting these customers to inform York Water as to whether the customer-owned lines are lead service lines. York Water shall provide instructions to these customers as to how to determine whether the adjoining customer-owned service line is a lead service line.
 - iv) York Water is subject to regulation by the Pennsylvania Public Utility Commission (PUC). According to York Water's PUC-approved tariff, customers are responsible, at their own cost, for the installation, maintenance and replacement of their service lines. York Water has filed a Petition (Petition) with the PUC seeking, *inter alia*, a waiver of the tariff rule to allow it to replace the customer-owned portion of the lead service line when it replaces the company-owned portion of the same line. York Water has also requested the permission of the PUC to capitalize those costs. If the PUC grants the relief

requested in the Petition, and if York Water determines that, for this category of customer, the adjoining customer-owned service line is also a lead service line, York Water will offer to replace the adjoining customer-owned lead service line at York Water's own cost. York Water shall conduct this work simultaneously with the work required in 3 (a)ii) and iii) above and pursuant to the same schedule.

- v) For each of the customers identified in 3(a), and until each of these customers' York Water-owned lead service line is replaced, York Water will offer to conduct one initial tap water test prior to replacement of the York Water-owned service line and one more tap water follow-up test after replacement of the company-owned lead service line. Two bottles shall be provided during each of these two sampling events to those customers that choose to have such testing: one for pre-flush sampling and one for post-flush (3 minute flush) sampling. York Water shall report all results from such sampling to the Department as special (S) sample results unless these samples are part of York Water's compliance sampling plan, as required by the regulations.
 - vi) Until all active and identified York Water-owned and all identified adjoining customer-owned lead service lines are replaced for willing customers, York Water shall provide the Department with a written quarterly status report on its progress toward completion of the tasks of 3(a). These quarterly reports shall be submitted to the Department no later than the 10th day of the month following the end of the last month for each quarter. The first such quarterly report shall be due at the end of the first quarter of 2017.
 - vii) For the customers served by York Water-owned lead service lines or a combination of York Water-owned and customer owned lead service lines, York Water shall provide a 200-gallon tap water month billing credit for flushing of water. York Water shall instruct these customers on the benefits of flushing and on how to properly flush the tap water daily prior to use. This 200-gallon tap water billing credit shall end when: 1) York Water has replaced the York Water-owned lead service lines; and 2) if PUC grants the relief requested in the Petition, York Water has replaced the customer-owned lead service lines; or the customer has refused York Water's offer to replace the customer-owned lead service lines.
 - viii) York Water may identify additional York Water-owned lead service lines after the date of this Consent Order and Agreement and/or may identify additional adjoining customer-owned lead service lines at premises where York Water has lead service lines. In addition, York Water may activate York Water-owned lead service lines which were inactive as of the date of this Consent Order and Agreement. For York Water-owned lead service lines in this category, York Water will replace those York Water-owned lead service lines within the longer of one year of discovery or activation, or December 31, 2020. Subject to approval of the Petition by the PUC, York Water shall offer to replace those adjoining customer-owned lines within ten days of discovery and, for those customer's that accept York Water's offer, York Water shall replace these customer-owned lead service line within the longer of one year of the acceptance of York Water's offer, or December 31, 2020.
- (b) In addition to 3(a) above, some of York Water's customers have customer-owned lead service lines which are not adjoining active, identified York Water-owned lead service lines.

York Water has not currently identified all customers who have customer-owned lead service lines. For these customer-owned lead service lines which are not adjoining York Water-owned lead service lines, York Water shall do the following:

- i) To determine which customers have customer-owned lead service lines, York Water shall, in addition to other corrective actions in this Consent Order and Agreement, review test data and request all customers to inform York Water as to whether the customer-owned lines are lead service lines. York Water shall provide instructions to its customers as to how to determine whether the customer-owned portion of the service lines is a lead service line.
 - ii) For those customers with verified customer-owned lead service lines, York Water shall offer to test the customer's tap water. For the customers that accept this offer, York Water shall take and analyze a sample at York Water's own expense.
 - iii) York Water shall, for those customers identified in 3)(b)ii) above which accepted York Water's offer and for whom the tap water test results indicate that the tap water exceeds the 15 ppb lead AL, instruct these customers as to the benefits of flushing the tap water, and on how to properly flush the tap water daily and shall provide these customers with a 200-gallon per month tap water billing credit for the recommended daily flushing, until the customer-owned lead service line is removed, or a follow-up test indicates that the tap water no longer exceeds 15 ppb lead action level.
 - iv) York Water shall provide a written report to the Department on a quarterly basis, commencing in the 2nd quarter of 2017 and every quarter thereafter during the duration of this Consent Order and Agreement regarding York Water's progress in identifying customer-owned lead service lines. These reports shall be submitted within ten days of the month following the end of each quarter.
 - v) York Water shall also inform the Department prior to its implementation of any plans for the replacement of these customer-owned lead service lines.
- (c) All sampling conducted pursuant to the Consent Order and Agreement shall be conducted in accordance with the LCR.
- (d) No later than January 31, 2017, York Water shall submit to the Department evidence that it has conducted a complete materials evaluation of its system to identify all York Water-owned lead service lines. Such materials evaluation shall be conducted in accordance with 25 Pa. Code § 109.1103(g)(1).
- (e) No later than January 31, 2017, York Water shall submit to the Department a copy of its 2016 updated sampling site location plan. York Water shall include in this submittal all the information York Water relied upon to determine its Tier 1 sites and for selection of the 50% of sites with lead service lines. In the event that York Water subsequently makes any changes to the sample site location plan, York Water shall submit all changes to the Department within ten days of the date each change is made.

- (f) No later than January 31, 2017, York Water shall submit to the Department evidence that it has initiated an evaluation of its current corrosion control treatment system. Said evaluation shall be completed no later than June 30, 2017. If recommendations for enhancements and/or optimization of the current corrosion protection are identified during this evaluation, York Water shall work together with the Department, acquire any needed authorizations from the Department, and then commence the SDWA process of modifying its treatment in accordance with a time frame approved by the Department. York Water shall implement the approved enhancement and/or optimization and, until implementation is completed, shall submit written quarterly progress reports to the Department detailing its progress in implementing the enhancement and/or optimization.
- (g) York Water shall conduct initial six-month lead and copper tap monitoring of its public water system in accordance with 25 Pa. Code § 109.1103(a)(1). York Water shall continue initial, six-month monitoring until it complies with the lead AL for two consecutive six-month monitoring periods.
- (h) York Water shall conduct two consecutive periods of initial WQP monitoring of its public water system in accordance with 25 Pa. Code § 109.1103(a)(2), as follows:
 - i) Lead and copper tap monitoring and the WQP monitoring for the first initial lead monitoring period shall be completed no later than June 30, 2017, and York Water shall report the results to the Department no later than July 10, 2017.
 - ii) The lead and copper tap monitoring and the WQP monitoring for the second monitoring period shall be completed between July 1, 2017 and December 31, 2017, and York Water shall report the results to the Department no later than January 10, 2018.
- (i) If York Water exceeds the 15 ppb lead AL after either of the 2017 initial six-month LCR tap monitoring periods, York Water shall conduct a new LCR corrosion control treatment feasibility study that meets the requirements of 25 Pa. Code § 109.1102(b)(3). That study shall be prepared by a professional engineer, licensed to practice in Pennsylvania, and shall be submitted to the Department within ninety days of the end of the six month monitoring period in which the AL was exceeded.
- (j) On a continuing basis, York Water shall submit to the Department the results of all customer-requested lead testing within 10 days of receipt of the sample analysis.
- (k) Within sixty (60) days of completion of all the above corrective measures, York Water shall provide to the Department for its approval a final written completion report which includes, but is not limited to, a description of all tasks taken to comply with each Corrective Action of this Consent Order and Agreement.

4) Stipulated Civil Penalties.

- (a) In the event York Water fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, York Water shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100.00 per day for each violation.

- (b) Stipulated civil penalty payments shall be made payable monthly on or before the fifteenth day of each succeeding month, shall be made payable to the "Commonwealth of Pennsylvania," and shall be forwarded as described in Paragraph 9 (Correspondence with the Department) below.
- (c) Any payment under this paragraph shall neither waive York Water's duty to meet its obligations under this Consent Order and Agreement, nor preclude the Department from commencing an action to compel York Water's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only York Water's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.
- (d) Stipulated civil penalties shall be due automatically and without notice.

5) Additional Remedies.

- (a) In the event York Water fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.
 - (b) The remedies provided by this paragraph and Paragraph 4 (Stipulated Civil Penalties), are cumulative, and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.
- 6) **Reservation of Rights.** The Department reserves the right to require additional measures to achieve compliance with applicable law. York Water reserves the right to challenge any action that the Department may take to require those measures.
- 7) **Liability of Operator.** York Water shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Except as provided in Paragraph 8(c), York Water shall also be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

8) Transfer of Site.

- (a) The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the York Water public water system, the water supply, or any part thereof.
- (b) If York Water intends to transfer any legal or equitable interest in the York Water's public water system which is affected by this Consent Order and Agreement, York Water shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the

legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the named individual in Paragraph 9 below of such intent.

- (c) The Department, in its sole discretion, may agree to modify or terminate York Water's duties and obligations under this Consent Order and Agreement upon transfer of York Water's public water system. York Water waives any right that it may have to challenge the Department's decision in this regard.

- 9) **Correspondence with Department.** A copy of all correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Ms. Lynne Scheetz
Operations Chief
PA DEP, Safe Drinking Water
909 Elmerton Avenue
Harrisburg, PA 17110-8200

- 10) **Correspondence with York Water Company.** All correspondence with York Water concerning this Consent Order and Agreement shall be addressed to:

Jeffrey R. Hines, P.E.
President and Chief Executive Officer
The York Water Company
130 East Market Street
York, PA 17401

York Water shall notify the Department whenever there is a change in the contact person's name, title, or address for receipt of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

11) Force Majeure.

- (a) In the event that York Water is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstances beyond York Water's control and which York Water, by the exercise of all reasonable diligence, is unable to prevent, then York Water may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond York Water's control. York Water's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.
- (b) York Water shall only be entitled to the benefits of this paragraph if they notify the Department within five (5) working days by telephone and within ten (10) working days in writing of the date they become aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as

well as a notarized affidavit from York Water, specifying the reasons for the delay, the expected duration of the delay, and the efforts that have been made and are being made by York Water to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten working days of its submission. York Water's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

- (c) The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by York Water and other information available to the Department. In any subsequent litigation, York Water shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

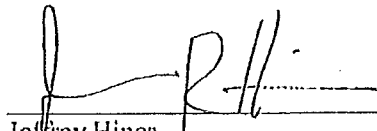
- 12) **Severability.** The paragraphs of this Consent Order and Agreement shall be severable, and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.
- 13) **Entire Agreement.** This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.
- 14) **Attorney Fees.** The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.
- 15) **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.
- 16) **Titles.** A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.
- 17) **Decisions Under Consent Order.** Any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection that York Water may have to any such decision will be preserved until the Department enforces this Consent Order and Agreement.
- 18) **Termination.** York Water's obligations, but not the Findings, of this Consent Order and Agreement shall terminate when York Water has paid any outstanding stipulated penalties due under Paragraph 4 (Stipulated Civil Penalties), and the Department has approved the final completion report required in Paragraph 3(k) above.
- 19) **Execution of Agreement.** This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Execution of this Consent Order and Agreement is in settlement of the

Department's civil claims for the violations set forth in Paragraphs AA., CC., EE., GG., and HH., above.

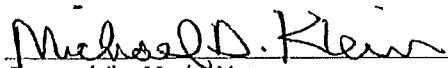
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of York Water certify under penalty of law, as provided by 18 Pa. C. S. § 4904, that they are authorized to execute this Consent Order and Agreement, that it consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that York Water hereby knowingly waive its rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by York Water's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR:

YORK WATER COMPANY

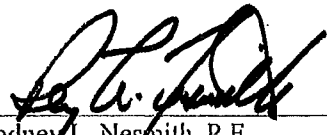


Jeffrey Hines,
President
York Water Company

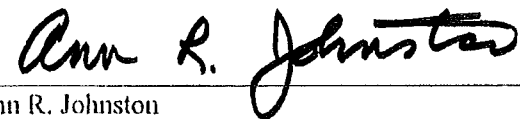


Michael D. Klein
Counsel for York Water

**THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION**



Rodney L. Nesmith, P.E.
Program Manager



Ann R. Johnston
Assistant Counsel

Appendix B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of The York Water Company for	:	
an Expedited Order Authorizing Limited	:	
Waivers of Certain Tariff Provisions and	:	
Granting Accounting Approval to Record	:	Docket No. P-2016-2577404
Cost of Certain Customer-Owned Service	:	
Line Replacements to the Company's	:	
Services Account	:	

**STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

I. INTRODUCTION

The York Water Company ("York Water" or the "Company") hereby files this Statement in Support of the Joint Petition for Settlement ("Settlement") entered into by York Water, the Bureau of Investigation & Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission"), and the Office of Consumer Advocate ("OCA") (hereinafter, collectively "Joint Petitioners") in the above-captioned proceeding. York Water respectfully requests that Administrative Law Judge Elizabeth H. Barnes (the "ALJ") certify the Settlement to the Commission and that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

The Settlement, if approved, will enable York Water to proceed with its plan to replace customer-owned service lines made of lead, thereby: (1) producing cost efficiencies by replacing customer-owned lead service lines at the same time York Water is replacing its Company-owned lead service lines; and (2) improving the safety and quality of York Water's service for customers by eliminating lead customer-owned services as a source of lead. The Settlement

provides benefits to customers and is in the public interest. Thus, it should be approved without modification.

The Settlement was achieved only after the Joint Petitioners investigated York Water's Petition and held numerous settlement discussions and formal negotiations, which ultimately led to the Settlement.

Finally, the Joint Petitioners, as well as their experts and counsel, have considerable experience in Commission proceedings. Their knowledge, experience, and ability to evaluate the strengths and weaknesses of their litigation positions provided a strong base upon which to build a consensus on the settled issues.

For these reasons and the reasons set forth below, the Settlement is just and reasonable and York Water's Petition, as modified by the Settlement, should be approved.

II. THE COMMISSION SHOULD ACT IN AN EXPEDITED MANNER TO REVIEW AND APPROVE THE SETTLEMENT

The Settlement requests that the Commission act, pursuant to its authority under 52 Pa. Code § 5.531, to direct that the record and Settlement be certified to the Commission directly for review without the issuance of an Initial Decision by the ALJ. York Water and the Joint Petitioners recognize that this is an unusual request. However, there are exigent circumstances that supported expedited review.

As explained in the Petition, and the Consent Order and Agreement ("COA") with the Department of Environmental Protection, and the Joint Stipulation of Facts, York Water has committed to replacing the approximately 1,660 lead Company-owned services by no later than December 31, 2020. York Water wants to proceed immediately with those replacements. York Water anticipates that it will discover at least some lead customer-owned services connected to

those Company-owned services being replaced. If York Water only replaces the lead Company-owned services, there is a risk that the lead customer-owned service would be disturbed and could cause lead to leach. Due to this risk, if a lead customer-owned service must remain in place because the Commission has not yet approved the waiver, customers would have to undertake additional precautions and flushing for a period of time. Further, if the lead customer-owned service cannot be immediately remediated because of a delay in granting the waiver, the cost savings that can be achieved from digging up and replacing both the Company-owned and customer-owned services at the same time would be lost. Finally, the sooner replacements can be started, the faster potential customer concerns about lead can be alleviated.

Thus, for these unusual and exigent reasons, the Settlement requests that the Commission direct the ALJ to certify the record and the Settlement to the Commission for review without the issuance of an Initial Decision.

III. COMMISSION POLICY FAVORS SETTLEMENT

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).

IV. THE COMMISSION HAS AUTHORITY TO GRANT WAIVERS OF TARIFF PROVISIONS

The Commission has authority to grant the limited waivers requested by York Water. It is well-settled that a public utility must adhere to the rates for services in its tariff, unless it has been granted “an exception by the Commission.” *See 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)). Moreover, the Commission previously has granted limited waivers relating to the replacement of customer-owned service lines. *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-00072337, 2008 Pa. PUC LEXIS 344, at *9 (Order Entered May 19, 2008). It is to be emphasized that no parties to this proceeding oppose the requested waivers, which serve the interest of customer safety.

In addition, York Water notes that the Settlement does not propose that York Water take ownership of customer-owned service lines. Utility assumption of customer-owned service lines raises a number of legal issues, including whether this becomes a condemnation and whether compensation could be required. In these circumstances, a major change in standard water utility operations would slow, rather than accelerate, resolution of this matter.

V. THE SETTLEMENT IS IN THE PUBLIC INTEREST

The Settlement reflects a carefully-balanced compromise of the interests of all of the Joint Petitioners. The record supports that it is in the best interest of York Water’s customers for

the Company to obtain the limited tariff waivers and perform the Phase 1 and Phase 2 replacements at its initial cost. (Joint Stipulation of Facts ¶ 62) The tariff waivers will enable the Company to begin its plan to replace the 1,660 Company-owned lead services while simultaneously replacing lead customer-owned services that are discovered, obtain efficiencies and economies of scale, eliminate sources of lead from customers' water supply, and prevent the negative effects of partial service line replacements. (Joint Stipulation of Facts ¶¶ 63-66) Furthermore, as explained below, the Settlement addresses many of the concerns raised by the OCA and I&E in this proceeding.

A. 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 ¶ 13; Joint Stipulation of Facts ¶¶ 46-47) After the replacement, the customer would continue to own the service line and be responsible for its maintenance and repair. (Petition ¶ 13; Joint Stipulation of Facts ¶ 56)

Under the Settlement, York Water shall be granted the limit tariff waiver and perform the Phase 1 replacements at its initial expense. (Settlement ¶¶ 12, 16) Moreover, the Settlement addresses a concern raised by OCA about whether York Water would replace lead customer-owned service lines that are leaking. (*See* OCA Answer, pp. 6-7; Settlement ¶ 14) The Settlement clarifies that when 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. (Settlement ¶ 14)

This portion of the Settlement addresses the most immediate concern, which is to replace any lead customer-owned service at the same time a lead Company-owned service is replaced. This is important from a public safety perspective and is in the public interest.

B. 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 ("Phase 2 replacements). (Petition ¶ 13; Joint Stipulation of Facts ¶¶ 49-50) 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. (Petition ¶ 14; Joint Stipulation of Facts ¶ 54) The customer would continue to be responsible for maintaining and repairing the service line after the replacement. (Petition ¶ 14; Joint Stipulation of Facts ¶ 56)

The Settlement provides that York Water shall be granted the limited tariff waiver and perform the Phase 2 replacements at its initial expense. (Settlement ¶¶ 17-18, 27) 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. (Settlement ¶ 18) Further, as explained below, the Settlement addresses concerns raised by the OCA and I&E about the Phase 2 replacements.

First, the OCA raised a concern about whether York Water would replace lead customer-owned service lines that are leaking. (OCA Answer, pp. 6-7) Under the Settlement, York Water clarifies that when 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. (Settlement ¶ 25) This exception to the

first-come, first served standard will allow the Company to address immediately any situation in which lead test results exceed federal water quality action levels.

Second, the OCA questioned how York Water would “triage requests” for Phase 2 replacements. (OCA Answer, p. 6) Under the Settlement, the Joint Petitions have agreed to the following prioritization of the Phase 2 replacements: if the number of eligible Phase 2 replacements exceeds the number of replacements authorized in a given year, they will be processed on a first-come, first served basis. (Settlement ¶ 22) However, York Water may prioritize a customer whose water test results reveal an exceedance of 15 parts per billion (“ppb”). (Settlement ¶ 22)

Third, the OCA averred that the scope of the Phase 2 replacements was hard to quantify, as the Company did not provide an estimated number of customers that may participate. (OCA Answer, p. 6) I&E also raised a general concern with the lack of an estimated number of customer-owned lead service lines and an estimated cost for their replacement. (I&E Answer, p. 4) Although the Company was able to provide the average contracted cost for the service line replacements in 2017, York Water explained that it is unable to develop a total estimated cost of the Phase 2 replacements because it does not know how many customer-owned lead services are in use. (Joint Stipulation of Facts ¶¶ 48, 52) To address the parties’ concerns about the scope of the Phase 2 replacements, the Settlement provides a nine-year limit on the tariff waiver and a limit of 400 Phase 2 replacements per year. (Settlement ¶¶ 20-21, 23) York Water also can petition the Commission to extend the nine-year waiver period and to increase the number of Phase 2 replacements that can be replaced in a given year. (Settlement ¶¶ 20, 23) Moreover, if the Company replaces less than 400 customer-owned services in a year, the difference between 400 and the actual number replaced will be added to the number of Phase 2 replacements that

can be performed in subsequent years. (Settlement ¶ 21) As a result, there is a control on the potential annual number of replacements and costs, which can be revisited if the number of lead customer-owned services is found to be higher after experience with replacements.¹

Fourth, the OCA questioned the payment and billing for the Phase 2 replacements. (OCA Answer, p. 6) The Settlement specifies the process by which the Company portion of the cost will be calculated and how customers will be billed for any remainder, as well as the average contracted costs for replacements in 2017. (Settlement ¶ 18) Customers may pay the difference directly or they may be offered to include the payment spread out over a period of months. Furthermore, 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 through this Settlement. (Settlement ¶ 18) The Settlement includes certain customer protections regarding payment and billing for the Phase 2 replacements, including that York Water will not terminate service for failure to pay the amount included on the customer's bill and not charging interest on any payment period for the difference, other than interest for late payment. (Settlement ¶ 18)

Fifth, the OCA contended that York Water's Petition raised equity issues for customers who already replaced their customer-owned lead service lines and, therefore, would not be eligible. (OCA Answer, p. 7) The OCA was particularly concerned with customers who replaced their lead service lines recently. (OCA Answer, p. 7) The Settlement addresses these concerns by paying calculated amounts to customers who provide documents to York Water verifying that they replaced their customer-owned lead service lines. (Settlement ¶ 28) The customers eligible must have replaced the service line within the past four years from the date of

¹ York Water will undertake an aggressive customer notification effort. In addition, York Water service personnel will be looking for lead service lines whenever possible, such as during meter replacements or in person readings, and whenever the service outside is exposed, such as any replacement of a Company-owned service.

the Settlement, and the payment amount varies depending on how many years ago the line was replaced and the current contractor lump sum rate. (Settlement ¶ 28)

Sixth, in this proceeding, questions were raised about warranties for the Phase 2 replacements and the restoration of the property after the services are replaced. Under the Settlement, York Water commits that if it uses its own contractors, there will be a 12-month warranty from the contractor. (Settlement ¶ 19) Further, York Water will restore the property to its former condition as nearly as practicable. (Settlement ¶ 19)

The Settlement provisions regarding the Phase 2 replacements address the safety issue of lead in water, while establishing limits on costs that are reasonable.

C. RATE TREATMENT

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. (Settlement ¶¶ 16, 27, 29-30) 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. (Settlement ¶ 29) York Water also will reconcile amounts amortized to amounts incurred, and the difference shall continue to be amortized in subsequent base rate proceedings. (Settlement ¶ 29) The Settlement further provides that the allocation among customer classes of the recovery of amortized costs will be determined in a base rate proceeding. (Settlement ¶ 30) 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. (Settlement ¶ 31)

The rate provisions of the Settlement are reasonable and should be approved. 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.

D. 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. (Settlement ¶¶ 32, 36) 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 COA. (Settlement ¶ 33; see Exhibit B for a copy of the COA) 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 COA. (Settlement ¶ 34)

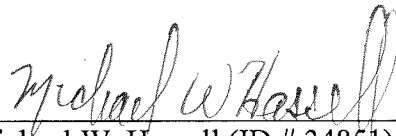
The OCA also raised an issue about customer awareness, particularly how York Water will make customers aware of the customer-owned lead service line replacement program. (OCA Answer, p. 6) York Water explained that it already has begun the public education requirements, including directly notifying potentially 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. (Joint Stipulation of Facts ¶ 15 and Exhibit C) Moreover, the Settlement commits York Water to undertaking appropriate and ongoing customer outreach efforts. (Settlement ¶ 35)

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 ¶ 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. (Settlement ¶ 36) To the extent that it obtains any grants, they will be booked to the regulatory asset account as an offset to costs. (Settlement ¶ 36)

VI. CONCLUSION

Through cooperative efforts and the open exchange of information, the Joint Petitioners have arrived at a Settlement that resolves all issues in the proceeding in a fair and equitable manner. A fair and reasonable compromise has been achieved in this case, as is evident by the fact that all active parties have agreed to the resolution of the issues in this proceeding. Therefore, the Commission should approve the Settlement without modification.

Respectfully submitted,



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Of Counsel:

Post & Schell, P.C.

Dated: January 23, 2017

For: The York Water Company

Appendix C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC
UTILITY COMMISSION**

v.

YORK WATER COMPANY

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:
:
:
:
:**

**DOCKET NO.
P-2016-2577404**

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF
JOINT PETITION FOR SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor, Phillip C. Kirchner, hereby respectfully submit that the terms and conditions of the foregoing *Joint Petition For Settlement* (“Joint Petition” or “Settlement Agreement”) are in the public interest and represent a fair, just, reasonable and equitable balance of the interests of the York Water Company (“York” or “Company”) and its customers. The parties to this Settlement Agreement have conducted extensive yet expedited discovery and negotiations which have resulted in the submission of the attached Joint Petition. The request for certification of the

Joint Petition for Settlement and Joint Stipulation of Facts is based on I&E's conclusion that the Settlement Agreement is in the public interest, which is the "prime determinant in the consideration of a proposed Settlement."¹ In support of this, I&E respectfully avers the following:

I. INTRODUCTION

1. On November 28, 2016, the York Water Company filed a document entitled *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 Services Account* ("Petition"). Although York stopped installing lead service lines in the mid-1930's, some lead pipe remains in service.²

2. Service lines components are owned separately by York and by consumers. The former extending from the water main to a curb stop or valve and the latter extending from the curb stop or valve to the premises.³ These components are maintained by their respective owners. Approximately 1,660 customers are served by lead Company-owned service lines; however, York does not know how many customer-owned service lines are lead pipe.⁴

3. Lead is a toxin and can affect the human body in numerous harmful ways including seizures and comas. Furthermore, lead can impair brain function, hearing, and

¹ *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

² Petition ¶ 4.

³ Petition ¶ 5.

⁴ Petition ¶¶ 6-7.

circulatory systems. This manifestation of symptoms is particularly acute in susceptible populations such as children.⁵

4. After conducting mandated water testing in September of 2016, York Water determined that six out of 50 buildings tested had more than 15 parts per billion of lead.⁶ These water test samples were taken from customers' taps and faucets.⁷ Following this determination, the Department of Environmental Protection ("DEP") has required York to optimize its corrosion control program, fulfill a series of public education requirements, increase its water testing, and replace at least seven percent of its total lead service lines per year as memorialized in a Consent Order and Agreement ("CO&A") dated December 23, 2016 (Appendix A to the Joint Petition).

5. Pursuant to the CO&A, York is proposing a commendably aggressive replacement plan that would achieve full removal of 1,660 Company-owned lead service lines in four years.⁸ In conjunction with this plan, York is now seeking Commission approval to replace the customer-owned portions of service lines made of lead at the Company's initial cost, which would be subsequently capitalized and recovered from its ratepayers. These lines would then go back to the ownership of the customers.

6. This proposal to replace customer-owned service lines at York's expense is in contravention of York's tariff, which requires that service lines owned by customers be

⁵ Joint Stipulation of Facts ¶¶ 17-19.

⁶ Petition ¶ 3.

⁷ Petition Footnote 2.

⁸ Petition ¶ 6.

installed at their expense.⁹ Accordingly, York now seeks a waiver of such provisions by and through this Petition.

7. This matter was suspended following an Answer by I&E that was filed on December 19, 2016. A Prehearing Conference was held on January 12, 2016, with Administrative Law Judge Elizabeth Barnes presiding.

8. In accordance with the Commission's policy at 52 Pa. Code §5.231 that encourages settlements over costly and time-consuming litigation, a settlement in principal was reached on January 18, 2017 between York, the Office of Consumer Advocate ("OCA"), and I&E (collectively, "the parties"). I&E now respectfully submits this Statement in Support of the settlement and request for certification of the record.

II. DISCUSSION

A. Phase I

9. The first phase of York's Petition addresses the 1,660 customers who are known to be served by company-owned service lines made out of lead. Without this settlement and waiver, York 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 Environmental Protection Agency ("EPA") have shown that this measure does not reliably reduce lead levels in drinking water and typically produces a spike in lead levels

⁹ Rule 3.4, Supp. No. 68 to Water Pa.P.U.C. No. 14, Fourth Revised, Pg. 10.

following the replacement.¹⁰ In contrast, the EPA has deemed total lead service line replacement to be generally effective at removing lead from drinking water.¹¹

10. York, in accordance with the CO&A, 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 to identify customer-owned portions of service lines made of lead with minimal additional labor.

11. Furthermore, if lead is found, the replacement will be greatly expedited and able to be 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 will be able to leverage economies of scale with its contractors that would be unavailable to consumers.

12. 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 was required to offer replacement of customer-owned lead service line at the expense of the customer.¹² In the available, albeit small, sample of York's customers in this scenario, no customer accepted this offer.¹³ It is unknown if this was due to choice, insufficient financial resources, or other reasons.

¹⁰ EPA-SAB-11-015: Science Advisory Board Evaluation of the Effectiveness of Partial Lead Service Line Replacements (Dated Sept. 28, 2011).

¹¹ *Id.*

¹² Joint Stipulation of Facts ¶¶43-44

¹³ *Id.*

13. 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.

14. Additionally, 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 the settlement includes a preliminary anticipated cost for this program with an approximate cost of \$1,200 per customer.¹⁴

B. Phase II

15. The second phase of York'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.

16. 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.

17. Phase II will aid York 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.

18. In neither Phase I nor Phase II will the Company retain ownership and maintenance duties of the service lines.

¹⁴ Joint Petition ¶ 18.

C. Recovery Mechanisms

19. 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 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.¹⁵

20. 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),”¹⁶ which represents a fair balance of both interests.

21. Regulatory assets directly tie the recovered amounts to the actual costs incurred by the utility without need for forward-looking speculation of costs,¹⁷ which removes any guesswork from the equation and promotes visibility and accountability of this process.

22. Additionally, this methodology will eliminate any potential for unwarranted loading of assets¹⁸ and will, accordingly, provide substantial consumer safeguards not found in the original petition.

¹⁵ 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.

¹⁶ NRRI 94-7: National Regulatory Research Institute: Generally Accepted Accounting Principles for Regulated Utilities: Evolution and Impacts – P. 6.

¹⁷ 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.

¹⁸ NRRI 94-7: National Regulatory Research Institute: Generally Accepted Accounting Principles for Regulated Utilities: Evolution and Impacts – P. 72.

23. Since this ratemaking treatment will allow York 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 will be allowed the opportunity to earn full recovery of the costs and will be able to continue providing safe and reliable service to its customers.

24. Furthermore, this mechanism will allow York to comply with its CO&A and the agreed upon annual reporting mechanism¹⁹ will permit continued monitoring of this novel program and help to ensure its success, both of which are in the public interest.

III. CONCLUSION

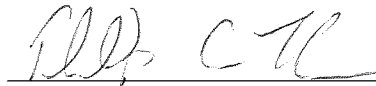
25. Based on I&E's analysis, acceptance of this proposed Joint Petition is in the public interest. Resolution of these provisions by settlement rather than continued litigation will avoid the additional time and expense involved in formally pursuing all issues in this proceeding and will help York in its swift removal of both Company owned and customer owned lead service lines.

26. I&E further submits that acceptance of this agreement will protect ratepayers' interests by allowing regulatory oversight while still ensuring that York recovers the costs incurred to replace customer owned lead service lines.

¹⁹ Joint Petition ¶ 32.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement supports the *Joint Petition For Settlement* as being in the public interest and respectfully requests that Administrative Law Judge Barnes allow the Joint Petition and the Joint Stipulation of Facts to serve as the record in this proceeding and to certify this record to the Commission in an expeditious manner. I&E further requests that the Commission to approve the foregoing settlement, including all terms and conditions contained therein.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Phillip C. Kirchner", is written over a horizontal line.

Phillip C. Kirchner, Esq.

Attorney ID# 313870

Prosecutor

Bureau of Investigation and Enforcement

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265
(717) 783-6151

Dated: January 23, 2017

Appendix D

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of The York Water Company for	:	
an Expedited Order Authorizing Limited	:	
Waivers of Certain Tariff Provisions and	:	
Granting Accounting Approval to Record	:	Docket No. P-2016-2577404
Cost of Certain Customer-Owned Service	:	
Line Replacements to the Company's	:	
Services Account	:	

**STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
IN SUPPORT OF THE PROPOSED SETTLEMENT**

The Office of Consumer Advocate of the Commonwealth of Pennsylvania (OCA), one of the signatory parties to the Joint Petition for Settlement (Settlement), finds the terms and conditions of the proposed Settlement to be in the public interest for the following reasons:

I. INTRODUCTION

On November 28, 2016, The York Water Company (York) filed with the Commission a Petition seeking a waiver of certain provisions of its tariff for two circumstances where York may replace certain customer-owned service lines (Petition). York seeks a Commission Order on an expedited basis. On December 19, 2016, the OCA and the Bureau of Investigation & Enforcement (BIE) filed Answers. The parties were able to exchange information informally and through meetings. On January 12, 2017, a Prehearing Conference was held before Administrative Law Judge (ALJ) Elizabeth Barnes. On January 18, the parties reached an agreement in principle and notified ALJ Barnes that a unanimous settlement had been reached.

The OCA submits that the proposed Settlement is in the public interest for the reasons

discussed below.

II. SETTLEMENT PROVISIONS

The OCA filed an Answer in this proceeding that identified issues the OCA sought to resolve prior to Commission approval of the Petition. Pursuant to York's existing tariff, customers are responsible for the installation, maintenance and replacement of their service lines. York Water Tariff Water – Pa. P.U.C. No. 14, Supplement No. 68, Fourth Revised Page No. 10, Tariff Rule 3.4. The Company is seeking a waiver of this tariff rule to allow it to replace the customer owned portion of the lead service line when it replaces the Company-owned portion of the same line. Petition at 5-6. The Company also sought permission to capitalize those costs. Id.

As stated in its Answer, the OCA does not oppose the concept of replacing the customer-owned lead service line at the same time as the Company-owned lead service lines are replaced over the next four years. The OCA's Answer raised issues such as the ratemaking treatment for customer owned lead service lines that may be replaced and on which the customer has coverage under the Water Service Line Protection Plan. In addition, the OCA recommended that 1) York track the capital costs for the customer-owned service lines that are replaced as part of the Company-owned lead service line replacement program and provide that information on a semi-annual basis to the Commission and the OCA and 2) York 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.

The Company also is seeking a limited waiver of Tariff Rule 3.4 to allow it to, "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." Petition at 5-6. York Water also

proposes that it would offer to pay a fixed amount towards replacement cost of the customer-owned lead service line and asks that that amount be permitted to be capitalized. Id.

Generally, the OCA's Answer expressed concerns that York's second proposal did not have sufficient details to allow the OCA to fully understand the possible scope of the waiver or how the program would work. OCA Answer at 5-7. With the information provided in the Petition, the OCA preliminarily identified a number of questions and concerns that it addressed through informal discussions with the Company: 1) how many potential customers may be in this situation, 2) how customers with lead service lines will be made aware of the program, 3) how the Company will bill the customers for any difference between the total cost and the maximum payment amount, 4) how York would triage requests for replacement of the customer-owned lead service line replacement, 5) what impact the stand alone customer-owned lead service line replacements that qualify for this program would have on the schedule for the Company-owned and customer-owned lead service line replacement program that is addressed in its first waiver request, 6) how to handle the remaining customer-owned lead service lines, and 7) fairness to customers who replaced their lead service line in the recent past. Through the exchange of information and meetings, the OCA has received additional information to better understand York's proposal, as will be discussed below. As discussed below, the proposed Settlement addresses these issues.

Phase 1 Replacements

The Settlement provides for the limited waiver of Rule 3.4 of York Water's tariff to permit it to replace lead customer-owned service lines that are discovered when the Company replaces the lead Company-owned service lines. York Water estimates that there are 1,660 lead Company owned service lines. Settlement Petition at ¶ 12. York Water estimates that the cost of

replacing the 1,660 Company-owned lead service lines will be \$2.0 million. Joint Stipulation of Facts # 36. This provision will permit York Water to address the replacement of lead customer-owned service lines in an efficient, cost effective and timely way.

York Water originally proposed that the replacement costs for lead customer-owned service lines be capitalized. Petition at 6. The parties have agreed that the costs incurred by York Water to replace the lead customer-owned service lines will be recorded as a regulatory asset that will be recovered in future base rate proceedings. Settlement Petition at ¶¶ 16, 29-31. The costs to be included will be reviewed in future base rate proceedings. The determination of the amortization period will also be addressed in future base rate proceedings, but it will be a period of no less than four years and no more than six years. Settlement Petition at ¶ 29. In addition, if York Water receives any state or federal funding for replacement of lead customer-owned service lines, that funding will be reflected as credits to the regulatory asset. Settlement Petition at ¶ 36. York has agreed that it will not seek interest or a return on any unamortized balance. Settlement Petition at ¶ 29. The parties have reserved the allocation among customer classes for a future base rate proceeding. Settlement Petition at ¶ 29. As a signatory to the Settlement, the OCA supports the proposed use of a regulatory asset for the costs incurred by York for the replacement of lead customer-owned service lines. The use of the regulatory asset will allow all parties and the Commission to track all of the costs and credits, if any, related to the limited waiver of Tariff Rule 3.4. York's commitment to look for funding, and then crediting any funding against the costs of the replacements addresses the OCA's concern that the Company seek funding to relieve customers from some of the costs of replacement. See OCA Answer at 7.

A concern raised by the OCA in its Answer was whether York Water would replace a lead customer-owned service line if it was leaking or otherwise defective at the time it was discovered. OCA Answer at 6-7. As clarified during this proceeding, York Water will not require the customer to repair the line prior to it being replaced by York Water under the Phase 1 or Phase 2 replacement provisions. Settlement Petition at ¶¶ 14 and 25. This provision will ensure the replacement of identified lead customer-owned service lines without requiring the customer to repair a line that will be replaced under the terms of the proposed waiver. It also maintains the same treatment for the replacement of all lead customer-owned service lines.

The Settlement reflects York Water's proposal that the limited waiver of Tariff Rule 3.4 for both Phase I and Phase II replacements will not change the ownership of the customer-owned service line. Settlement Petition at ¶¶ 13, 15, 24, and 26. The OCA supports York Water's proposal because it would keep the ownership of the line the same as it is currently for York Water's customers and it maintains the limited nature of the waiver which is for the replacement of lead customer owned service lines and not any other customer-owned service lines.

Phase 2 Replacements

Phase 2 replacements refer to York Water's request to address lead customer-owned service lines when they are discovered. Petition at 6-7. The OCA raised a number of concerns regarding York Water's proposal. See OCA Answer at 6-7. The Settlement Petition addresses the OCA's concerns by including the Phase 2 replacements as part of the regulatory asset treatment described above. The Settlement spells out the specific amount that York Water will pay towards the cost of the lead customer-owned service line and how that amount will be updated each year. Settlement Petition at ¶ 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 Petition at ¶ 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. Id. York Water also agrees that it will not charge interest during any payment period for these amounts. Id. Finally, the parties propose that if York Water is unable to collect the difference from a customer and that amount is written off by York Water, the uncollected amount will be permitted to be included in the regulatory asset account. Id.

The proposed Settlement reflects there will be a 12-month warranty if York Water's contractors replace the lead customer-owned service line. Settlement Petition at ¶ 19. In addition, 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. Id. York Water also agrees that it will restore the property to its former condition, as nearly as practicable. Id. These provisions provide certainty as to the options available for customers with lead-service lines that would be part of Phase 2 replacements. These provisions address the issues that the OCA raised in its Answer at page 6 regarding the proposed mechanism for the replacement of the lead customer-owned service lines and York Water's proposed capped payment towards the costs for replacement.

The Settlement provides for an annual cap of 400 on the number of Phase 2 replacements that York Water will undertake each year from the date a Commission order approving this Settlement is entered. Settlement Petition at ¶ 20. York Water is able to petition the Commission to increase this number if 400 is inadequate to replace all requests that it receives.

Id. If less than 400 lead customer-owned service lines are replaced in a year, then York Water can add the difference (between the number replaced and the cap of 400) to the number of Phase 2 replacements that can be done in subsequent years. Settlement Petition at ¶ 21. This provision is reasonable because the parties do not know how many replacements will be necessary in Phase 1 and Phase 2.

The Settlement Petition also addresses the issue raised by OCA in its Answer, at page 6, regarding how York will prioritize the Phase 2 replacements. Specifically, if the number of Phase 2 replacements exceeds 400, York Water will use a first come, first served basis. Settlement Petition at ¶ 22. If water test results show that a customer has lead levels exceeding 15 parts per billion (ppb), York Water can prioritize such customers for replacement. Id. The proposed prioritization satisfies the OCA's concerns about how York Water would prioritize the replacements.

The Phase 2 limited waiver would be in place for nine years from the entry date of a Commission Order approving the Settlement. Settlement Petition at ¶ 23. York Water may petition the Commission to extend the Phase 2 waiver and all parties preserve their rights to support or oppose the petition. Id. The OCA supports this provision because it provides a reasonable time frame for the Phase 2 replacements, especially because it is not known how many lead customer service lines are in York Water's system and would be eligible under the Phase 2 waiver, nor is that information available for Phase 1 replacements. See Joint Stipulation of Facts ##38, 51.

The OCA seeks to ensure that York Water is able to identify the lead customer-owned service lines so that those lines can be replaced in a reasonable time frame in order to protect the

public health of its customers. As part of the Settlement, York Water has agreed to ongoing customer outreach and education that will inform customers to check their service lines for lead and how to determine whether they have a lead service line. Settlement Petition at ¶35. If York Water receives a report of a lead customer-owned service line, it will send Company personnel to check and, if appropriate, to offer a kit for a water sample that will be tested for lead by York Water. Id. If the Company's inspection confirms there is a lead customer-owned service line, York will proceed with replacement. York Water's education and outreach efforts are an integral part of the Settlement Petition. It is the OCA's position that the public health impact that justifies the limited waiver of Tariff Rule 3.4 and the use of a regulatory asset for the related costs can only be fully realized if the lead customer-owned service lines are identified and replaced.

The OCA's Answer raised issues related to the equity of the proposed limited waiver of Tariff Rule 3.4 for customers who have recently replaced their lead service lines at their own expense. OCA Answer at 7. The Settlement Petition provides for a sliding scale of reimbursement (using the current year's contractor lump sum) based on when the lead customer-owned lead service line was replaced, if replaced within the last four years, from the date of the Settlement. Settlement Petition at ¶ 28. The provision sets forth the requirements a customer must meet in order to qualify for partial reimbursement, including a paid invoice, certification from a certified plumber and other documentation that the Company may require. Id. This provision addresses the OCA's concerns about customers who may have already replaced a lead service line, especially in the recent past.

Reporting Requirements

The OCA, in its Answer, noted that reporting requirements were necessary for all parties to monitor York Water's progress in replacing lead customer-owned service lines in Phases 1 and 2 as well as its progress in replacing the Company-owned lead service lines. OCA Answer at 5. The Settlement Petition has a number of reporting requirements that York Water will meet. York Water will provide the following information to the parties and the Commission:

- The number of Company-owned and customer-owned lead service lines replaced and the cost of replacement, broken down by customer rate category (residential, commercial, industrial); Settlement Petition at ¶ 32.
- Any low cost or no cost funding that York Water receives to offset the cost of the lead customer-owned service lines; Settlement Petition at ¶ 36.
- An accounting of the cost of the tap water billing credit that York Water is providing pursuant to the DEP COA Appendix B to Proposed Findings of Fact, (¶¶3(a)(vi) and (b)(iii)); Settlement Petition at ¶ 33.

Every six months, York Water agrees to provide a report on its outreach and education efforts. Settlement Petition at ¶ 35. York Water also agrees to provide a copy of its corrosion control evaluation (required by the Consent Order and Agreement with DEP) to the parties. Settlement Petition at ¶ 34.

All of the reporting requirements will allow the parties and the Commission to monitor York Water's progress in addressing the provisions of the Settlement Agreement. Given that there are a number of unknown factors, including the total cost of Phase 1 and Phase 2, being able to see the annual costs of replacement, and any funding that York Water receives, will be helpful to all parties and the Commission.

Other Provisions

The parties agree that York Water may file a petition requesting amendment of the rate treatment of costs as addressed in this 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 Petition at ¶ 31. All parties reserve their rights to oppose the petition if filed. Id. This provision is in the public interest because it permits York Water to file a petition if the Commission permits different rate treatment to another water utility in a future proceeding while preserving the parties' rights to oppose the petition.

In the OCA's view, the terms of the Settlement will help to ensure that York's customers with both Company and customer-owned lead service lines and those with customer-owned lead service lines, as well as all of its existing customers, are treated in a fair and just manner in accord with Pennsylvania law and Commission rules and regulations.

III. CONCLUSION

The terms and conditions of the proposed Settlement of this Petition proceeding represent a fair and reasonable resolution of the issues and claims arising in this proceeding. Finally, the Commission and all parties would benefit by the reduction in litigation expense and the conservation of resources made possible by adoption of the Settlement in lieu of full litigation, as well as the expedited resolution of York Water's Petition.

WHEREFORE, for the foregoing reasons, the Office of Consumer Advocate submits that the proposed Settlement should be adopted.

Respectfully submitted,



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