

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PA 17120**

**Petition of 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**

**Public Meeting held March 2, 2017  
2577404 – ALJ  
Docket No. P-2016-2577404**

**MOTION OF CHAIRMAN GLADYS M. BROWN**

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

As a water company subject to the Lead and Copper Rule (LCR) at 25 Pa. Code §109.1101 through 109.1108, York Water must conduct periodic monitoring of the drinking water at consumer taps to determine the concentration of lead in the drinking water. The Company's most recent results for this test exceeded the lead action level set in the LCR. Consequently, York Water is presently subject to a Consent Order and Agreement (COA) with the Pennsylvania Department of Environmental Protection (DEP) that requires the Company to take specific action to reduce lead levels at customer taps.<sup>1</sup>

Pursuant to this COA, York Water plans to expeditiously replace its Company-owned service lines where lead is involved. In the instant proceeding York proposes to replace customer-owned portions of lead service lines that are discovered in the areas where construction of Company-owned service lines is being conducted. The efficiency of this approach minimizes total costs, thereby providing better service to York Water customers, particularly to those who might find the total cost of replacing the customer-owned line to be burdensome or too expensive a task to undertake independently.

First, I commend York Water for its quick response to ameliorate an unacceptable level of lead discovered in portions of its system. Although the amount discovered is still quite low, the effects of lead are insidious and the elimination of the problem is the best solution.

The parties involved have worked quickly to reach a very reasonable Settlement that is, without a doubt, in the best interest of the public who will benefit from the line replacements.

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<sup>1</sup> Consent Order and Agreement entered into on December 23, 2016

York Water's existing tariff specifically states that customers are responsible for the lines that are owned by them and makes no provision for the Company to bear either the responsibility or any portion of the cost for the replacement of customer-owned lines. In light of the gravity of the situation, York requested, and the settling parties agreed, to a waiver of that tariff provision.

Historically, the Commission has granted tariff waivers in very limited circumstances.<sup>2</sup> Considering the important role of utility tariffs, waiving such provisions is generally disfavored as a matter of law and policy. Tariffs set forth in writing the rules and provisions by which a utility operates so as to provide the utility and the public with a transparent understanding of a utility's obligation to provide non-discriminatory service.<sup>3</sup> As such, I believe it is more appropriate for York Water to make the changes agreed upon in the Settlement through a tariff revision. Moreover, I strongly encourage any future applicants seeking to address a situation similar to the one faced by York Water to propose a tariff amendment, as opposed to requesting a waiver of tariff language.

Here, I cannot disregard that this case needs to move forward, as York is already gearing up for construction to ameliorate a problem of the utmost importance to its customers. Further, the proposed course of action by York Water coordinates the replacement of Company-owned and adjoining customer-owned service lines. As such, delay of customer-owned line replacements can result in a delay of Company-owned replacements, unnecessarily stalling the actions necessary under the COA and potentially harming the health and safety of York Water's customers. Accordingly, in order to delay this matter no longer, the Joint Petition will be treated as a petition for approval to file a tariff supplement, and will be approved as such.<sup>4</sup> York Water shall file a tariff supplement that reflects the terms of the Settlement, including sunset dates consistent with the parties agreed upon waiver expiration timelines, within seven days of entry of this Order. Once filed, the amended tariff will be effective upon three days' notice, which will give Commission Staff and the other parties involved in this matter an opportunity to ensure that the proposed tariff is consistent with the Settlement.

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<sup>2</sup> See *Petition of Peoples Natural Gas Co., LLC for Approval of Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement*, Docket Nos. P-2013-2346161, et al. 2013 Pa. PUC LEXIS 543, at 95-97 (Order Entered May 23, 2013); *Petition of Columbia Gas of Pennsylvania, Inc. for Limited Waivers of Certain Tariff Rules Related to Customer Service Line Replacement*, Docket No. P-000724337, 2008 Pa. PUC LEXIS 344, at 9 (Order Entered May 19, 2008).

<sup>3</sup> A public utility may not charge a rate other than the rates set forth in its tariff. 66 Pa. C.S. 1303A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Electric Utilities Corp. v Pa. PUC*, 912 A.2d 386 (Pa. Cmwlth. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices so that the public may inspect its contents. 66 Pa. C.S. 1302; 52 Pa.Code 53.25. The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. *Philadelphia Suburban Water Co. v. Pa PUC*, 808 A.2d 1044 (2002); Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pennsylvania Electric Co. v Pa PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); Tariff provisions previously approved by the Commission are prima facie reasonable. *Zucker v. Pa PUC*, 437 A.2d 1067 (Pa.Cmwlth. 1981)

<sup>4</sup> The Joint Petition for Settlement already includes all of the necessary agreements among the litigating parties, so there is no prejudice in treating the Joint Petition as a petition for approval to file a tariff supplement.

In the meantime, recognizing the pressing health and safety issue at hand, as well as the delay that has ensued in addressing this case of first impression, we will grant York Water a temporary waiver of Tariff Rule 3.4. This waiver will expire upon the effective date of the tariff supplement required by this Order. The Commission has, in narrow circumstances, issued such time-limited waivers, and doing so here is necessary to allow York Water to begin work replacing customer-owned lead service lines immediately in the context of a DEP issued consent order.<sup>5</sup>

Further, as a matter of procedural housekeeping, this Motion designates specific Commission Bureaus as responsible for following up on the terms of the Joint Petition for Settlement to ensure that the terms are met.

**THEREFORE, I move:**

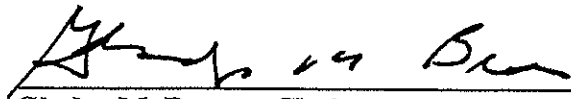
1. That the Petition of York Water at Docket No. P-2016-2577404, as modified by the Joint Petition for Settlement filed January 23, 2017, shall be treated as a petition for approval to file a tariff supplement.
2. That the Petition of York Water, as modified by the Joint Petition for Settlement, in the nature of a petition for approval to file a tariff supplement, is approved.
3. That York Water is granted a temporary waiver of Tariff Rule 3.4, which will expire upon the effective date of the tariff supplement required in paragraph 4.
4. That York Water is required to file a tariff supplement consistent with the Joint Petition for Settlement and the Commission's final Order in this matter within seven (7) days of entry of this Order, and which will be effective upon three (3) days' notice.
5. That York Water shall provide the other Joint Petitioners and the Commission an annual report on the number of Company-owned services replaced, and the cost of replacements, broken down by customer rate category (i.e., residential, commercial, industrial).
6. That York Water shall provide the other Joint Petitioners and the Commission an annual accounting of the cost of the tap water billing credit provided pursuant to paragraphs 3(a)(i)(c) and (b)(iii) of the Consent Order And Agreement with the DEP dated December 23, 2016, attached as Exhibit A to the Settlement.
7. That York Water shall 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 Consent Order And Agreement with DEP.

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<sup>5</sup> *Joint Application of West Penn Power Company and Airco Carbon Division, BOC Group, Inc., for Temporary Waiver of Maximum Electrical Demand Provisions of Utility Tariff for Temporary Provision of Electric Service to Airco Carbon Division, BOC Group, Inc.'s St. Marys, Pennsylvania Facility*, Docket No. A-111250F009, 1987 Pa. PUC LEXIS 319; 63 Pa. PUC 557 (Order Entered April 16, 1987).

8. That York Water shall search for opportunities for low or no cost funding of the cost of replacement of lead customer-owned services, including grants and loans. Any grants obtained for payment of replacement of lead customer-owned services shall be booked to the regulatory asset account, as an offset to costs. York Water agrees to include information regarding any funding it receives in its annual line replacement report provided to the Joint Petitioners and Commission.
9. That York Water shall undertake appropriate customer outreach efforts to advise customers to check their services for the possibility of lead. Upon receipt of a customer report of a lead customer-owned service, York Water will dispatch York Water personnel to check the report and, if appropriate, to offer a kit for the customer to take a water sample that will then be tested for lead by York Water. If the result of York Water's inspection confirms that there is a lead customer-owned service line, then York Water agrees to proceed with replacement as described above. York Water shall report on its outreach efforts and results to the other Joint Petitioners and the Commission every six months.
10. That the Bureau of Technical Utility Services is designated to monitor York Water's annual reporting in conjunction with the Joint Petition for Settlement, as modified by this Motion.
11. That the Bureau of Technical Utility Service and the Law Bureau prepare an appropriate order on an expedited basis.

March 2, 2017  
Date

  
Gladys M. Brown, Chairman