

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2018-3000019
Office of Consumer Advocate	:	C-2018-3002564
Office of Small Business Advocate	:	C-2018-3002811
Michael Eifert	:	C-2018-3003908
	:	
v.	:	
	:	
The York Water Company	:	

RECOMMENDED DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

The York Water Company filed Supplement No. 130 to its Tariff Water – Pa. P.U.C. No. 14 which proposed a general increase in water base rates of \$6,398,961, or 13.1%, per year and Supplement No. 6 to Tariff Wastewater – Pa. P.U.C. No. 1 which proposed a general increase in wastewater base rates of \$288,623 per year. The parties in this matter have reached a settlement relating to these base rate increases. The settlement rates are designed to produce \$3.65 million in additional annual base rate operating revenue, which consists of \$3,361,375, or 7.3%, in additional water revenue and \$288,625 in additional wastewater revenue respectively. This decision finds that the joint petition for settlement filed by the parties complies with the relevant sections of the Public Utility Code regarding rate filings and rate increases and is consistent with Commission regulations promoting settlements. This decision therefore recommends that it be approved in its entirety without modification because it is in the public interest.

HISTORY OF THE PROCEEDING

On May 30, 2018, the York Water Company (“York Water”, “York” or “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) Supplement No. 130 to its Tariff Water – Pa. P.U.C. No. 14 (“Supplement No. 130”) and Supplement No. 6 to Tariff Wastewater – Pa. P.U.C. No. 1 (“Supplement No. 6”), along with supporting testimony and information required by 52 Pa. Code §§ 53.52 and 53.53, to become effective August 1, 2018. In Supplement No. 130, York proposed a general increase in water base rates of \$6,398,961 per year, and in Supplement No. 6, the Company proposed a general increase in wastewater base rates of \$288,623 per year. These matters were docketed at R-2018-3000019.

On June 7, 2018, the Office of Consumer Advocate (“OCA”) filed a notice of appearance, complaint, and public statement which was docketed at C-2018-3002564.

On June 11, 2018, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a notice of appearance.

On June 14, 2018, the Commission entered an order suspending Supplement No. 130 and Supplement No. 6 by operation of law until March 1, 2019, unless otherwise directed by order of the Commission. On June 15, 2018, a prehearing conference order was issued scheduling this matter for a prehearing conference on June 26, 2018.

On June 19, 2018, the Office of Small Business Advocate (“OSBA”) filed a notice of appearance, complaint, public statement, and verification which was docketed at C-2018-3002811.

The prehearing conference was held as scheduled on June 26, 2018. On June 27, 2018, an order was issued consolidating the proceedings at Docket Nos. R-2018-3000019, C-2018-3002564 and C-2018-3002811. On June 28, 2018, a scheduling order was issued setting forth the agreed upon procedural schedule and certain procedural rules for this proceeding.

On July 10, 2018, York served supplemental written direct testimony and exhibits. On July 16, 2018, York filed a petition for protective order as well as a corrected Exhibit No. FIV-17-10. On July 18, 2018, an order was issued granting the petition for protective order.

On August 9, 2018, Michael Eifert filed a formal complaint at Docket No. C-2018-3003908 against York's requested water revenue increase. On August 20, 2018, York filed an answer to the complaint.

On August 23, 2018, I&E, OCA and OSBA served their written direct testimony and exhibits.

On August 27, 2018, an order was issued consolidating the proceedings at Docket Nos. R-2018-3000019, C-2018-3002564, and C-2018-3002811 with the proceeding at Docket No. C-2018-3003908.

On September 7, 2018, Michael Eifert filed correspondence with the Commission in the form of a reply to York's answer.

On September 20, 2018, York, OCA and OSBA served their written rebuttal testimony and exhibits.

On October 4, 2018, I&E, OCA and OSBA served their written surrebuttal testimony and exhibits and I&E served errata to its written direct testimony.

On October 10, 2018, York served its written rejoinder testimony and outlines.

On October 12, 2018, I&E served errata to its written surrebuttal testimony.

On October 15, 2018, York, I&E, OCA and OSBA ("Joint Petitioners") advised that they had reached a settlement in principle and of their intent to file a joint petition for

settlement and statements in support by the scheduled reply brief due date of November 21, 2018. It was agreed that the evidentiary hearings scheduled for October 15 – 17, 2018 would be canceled and that the parties’ written testimony and exhibits could be admitted into the record by stipulation.¹

On November 20, 2018, the Joint Petitioners filed the joint petition for settlement and statements in support as agreed. In addition, a joint stipulation for admission of evidence was also filed on this date. The stipulation requests admission into the record of:

York’s Testimony and Exhibits

- York Water Statement No. 1 – Direct Testimony of Jeffrey R. Hines.
- York Water Statement No. 2 – Direct Testimony of Joseph T. Hand.
- York Water Statement No. 3 – Direct Testimony of Matthew E. Poff.
- York Water Statement No. 3W – Direct Testimony of Matthew E. Poff.
- York Water Statement No. 4 – Direct Testimony of Daniel E. Coppersmith.
- York Water Statement No. 4W – Direct Testimony of Daniel E. Coppersmith.
- York Water Statement No. 103 – Direct Testimony of Matthew E. Poff.
- York Water Statement No. 103W – Direct Testimony of Matthew E. Poff.
- York Water Statement No. 104 – Direct Testimony of Daniel E. Coppersmith.
- York Water Statement No. 104W – Direct Testimony of Daniel E. Coppersmith.

¹ On or about October 15, 2018, counsel for the OCA reached out to Mr. Eifert and informed him of the settlement. Mr. Eifert then authorized counsel for OCA to represent that he did not oppose the cancellation of the hearings. A copy of the settlement was served on Mr. Eifert so as to provide an opportunity to join in, object to or comment on the settlement. As of the date of this decision, the Office of Administrative Law Judge (OALJ) has not received any written comments or objections to the joint settlement petition.

- York Water Statement No. 105 – Direct Testimony of John J. Spanos, including Exhibit Nos. HVI, HVI-W, FVI-A, FVI-B, FVI-WA, and FVI-WB.
- York Water Statement No. 106 – Direct Testimony of Paul R. Moul, including Exhibit No. FVII.
- York Water Statement No. 107 – Direct Testimony of Paul R. Herbert, including Exhibit No. FVIII.
- The Exhibits accompanying the direct testimony of Jeffrey R. Hines, Joseph T. Hand, Matthew E. Poff, Daniel E. Coppersmith, and John J. Spanos, as identified in the list attached to the joint petition for settlement as Attachment A.
- York Water Statement No. 103-S – Supplemental Direct Testimony of Matthew E. Poff, including Exhibit No. MEP-1S.
- York Water Statement No. 103W-S – Supplemental Direct Testimony of Matthew E. Poff, including Exhibit No. MEP-1SW.
- The corrected Exhibit No. FIV-17-10, which was filed on July 16, 2018.
- York Water Statement No. 1-R – Rebuttal Testimony of Jeffrey R. Hines, including Exhibit Nos. JRH-1R through JRH-8R.
- York Water Statement No. 2-R – Rebuttal Testimony of Joseph T. Hand, including Exhibit No. JTH-1R.
- York Water Statement No. 103-R – Rebuttal Testimony of Matthew E. Poff, including Exhibit Nos. MEP-1R through MEP-13R.
- York Water Statement No. 105-R – Rebuttal Testimony of John J. Spanos, including Exhibit Nos. JJS-1R through JJS-2R.
- York Water Statement No. 106-R – Rebuttal Testimony of Paul R. Moul, including Exhibit No. PRM-2.
- York Water Statement No. 107-R – Rebuttal Testimony of Paul R. Herbert, including Exhibit Nos. 107-R-1 through 107-R-3.
- York Water Statement No. 106-RJ – Rejoinder Testimony of Paul R. Moul.

I&E's Testimony and Exhibits

- I&E Statement No. 1 – Direct Testimony of Brenton Grab, including I&E Exhibit No. 1.
- I&E Statement No. 2 – Direct Testimony of Christopher M. Henkel, including I&E Exhibit No. 2.
- I&E Statement No. 3 – Direct Testimony of Joseph Kubas, including I&E Exhibit No. 3.
- An Errata Sheet correcting I&E Statement No. 3: the Direct Testimony of Joseph Kubas.
- An Errata reflecting full testimony correcting I&E Statement No. 3: the Direct Testimony of Joseph Kubas.
- I&E Statement No. 4 – Direct Testimony of Ethan H. Cline, including I&E Exhibit No. 4.
- An Errata Sheet correcting I&E Statement No. 4: the Direct Testimony of Ethan H. Cline.
- I&E Statement No. 1-SR – Surrebuttal Testimony of Brenton Grab, including I&E Exhibit No. 1-SR.
- An Errata Sheet correcting I&E Statement No. 1 –SR: the Surrebuttal Testimony of Brenton Grab.
- I&E Statement No. 2-SR – Surrebuttal Testimony of Christopher M. Henkel, including I&E Exhibit No. 2-SR.
- I&E Statement No. 3-SR – Surrebuttal Testimony of Joseph Kubas, including I&E Exhibit No. 3-SR.
- I&E Statement No. 4-SR – Surrebuttal Testimony of Ethan H. Cline, including I&E Exhibit No. 4-SR.

OCA's Testimony and Exhibits

- OCA Statement No. 1 – Direct Testimony of Donna H. Mullinax, including Exhibit Nos. DHM-1 through DHM-31.

- OCA Statement No. 2 – Direct Testimony of Aaron L. Rothschild, including Schedules ALR-1 through ALR-8.
- OCA Statement No. 3 – Direct Testimony of Jerome D. Mierzwa, including Schedules JDM-1 through JDM-3.
- OCA Statement No. 3-R – Rebuttal Testimony of Jerome D. Mierzwa.
- OCA Statement No. 1-SR – Surrebuttal Testimony of Donna H. Mullinax, including Exhibit Nos. DHM-1-SR through DHM-4-SR.
- OCA Statement No. 2-SR – Surrebuttal Testimony of Aaron L. Rothschild.
- OCA Statement No. 3-SR – Surrebuttal Testimony of Jerome D. Mierzwa, including Schedules JDM-4S through JDM-7S
- OCA Statement No. 4-SR – Surrebuttal Testimony of Terry L. Fought, including Exhibit Nos. TLF-1 through TLF-8.

OSBA’s Testimony and Exhibits

- OSBA Statement No. 1 – Direct Testimony and Exhibits of Brian Kalcic.
- OSBA Statement No. 1-R – Rebuttal Testimony of Brian Kalcic.
- OSBA Statement No. 1-S – Surrebuttal Testimony of Brian Kalcic.

Verifications for the parties’ testimony and exhibits was attached to the joint stipulation for admission of evidence as Appendix A.

This stipulation will be granted as part of the ordering paragraphs below. The parties will be required to provide two copies of all documents referenced in the stipulation to the Commission’s Secretary’s Bureau for inclusion in the official record.

The record in this matter closed on November 20, 2018, the date the Joint Petitioners filed the joint petition for settlement and statements in support of that settlement.

The Joint Petitioners have agreed to a base rate increase for both water and wastewater revenues and to a revenue allocation and class rate designs to recover said increase. The Joint Petitioners have indicated that they are able to agree to a settlement of all issues in these proceedings and that the settlement is in the best interests of York and its customers. For the reasons set forth below, it will be recommended that the Commission approve and adopt the settlement agreement.

DISCUSSION

The Commission applies certain principles in deciding any general rate increase case brought pursuant to 66 Pa.C.S. § 1308(d). A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of its property dedicated to public service. Pa. Gas and Water Co. v. Pa. Pub. Util. Comm'n, 341 A.2d 239 (Pa.Cmwlth. 1975). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679 (1923) and Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944). In Bluefield the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679, 692-93 (1923).

The public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request, pursuant to 66 Pa.C.S. § 1308(d). The statute at 66 Pa.C.S. § 315(a) sets forth the standard to be met by the public utility:

Reasonableness of rates. –In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceeding upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. . . .

In a general rate increase proceeding, the burden of proof does not shift to parties challenging a requested rate increase. The utility has the burden of establishing the justness and reasonableness of every component of its rate request throughout the rate proceeding. Other parties to the proceeding do not have the burden of proof to justify an adjustment to the public utility's filing. In this regard, the Pennsylvania Supreme Court in Berner v. Pa. Pub. Util. Comm'n, 116 A.2d 738, 744 (Pa. 1955) stated:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations, and that is the burden which the utility patently failed to carry.

However, a public utility, in proving that its proposed rates are just and reasonable, does not have the burden to affirmatively defend claims it has made in its filing that no other party has questioned. In Allegheny Center Assocs. v. Pa. Pub. Util. Comm'n, 570 A.2d 149, 153 (Pa.Cmwlth. 1990), the Pennsylvania Commonwealth Court stated:

While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called

upon to account for every action absent prior notice that such action is to be challenged.

In analyzing a proposed general rate increase, the Commission determines a rate of return to be applied to a rate base, measured by the aggregate value of all the utility's property used and useful in the public service. In determining a proper rate of return, the Commission calculates the utility's capital structure and the cost of the different types of capital during the period in issue. The Commission has wide discretion, because of its administrative expertise, in determining the cost of capital. Equitable Gas Co. v. Pa. Pub. Util. Comm'n, 405 A.2d 1055 (Pa.Cmwlth. 1979).

In this general rate increase case, York, I&E, OCA and OSBA have reached a settlement. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve precious administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.

In order 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 October 4, 2004); Pa. Pub. Util. Comm'n v. C S Water and Sewer Assoc., 74 Pa. PUC 767 (1991).

In this case, the parties have reached what is referred to as a "black box" settlement where the settlement provides for an increase in the utility's revenues but does not indicate how the parties calculated the increase. The Commission has permitted "black box" settlements as a means of promoting settlements in contentious base rate proceedings. Pa. Pub. Util. Comm'n v. Wellsboro Electric Co., Docket No. R-2010-2172662 (Order entered January 13, 2011); Pa. Pub. Util. Comm'n v. Citizens' Electric Co. of Lewisburg, Docket No. R-2010-2172665 (Order entered January 13, 2011). The Commission has observed that determining a utility's revenue requirement is a calculation that involves many complex and interrelated adjustments affecting expenses, depreciation, rate base, taxes and the utility's cost of capital. Reaching an agreement among the parties on each component can be difficult and impractical.

As a result of this complexity, the Commission supports the use of ‘black box’ settlements. Pa. Pub. Util. Comm’n v. Peoples TWP LLC, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013). For the following reasons it is found that the settlement, which is unopposed by any party, is in the public interest.

TERMS OF THE SETTLEMENT

In the settlement, the parties agreed to resolve all outstanding issues and to seek Commission approval for the matters settled. The relevant terms of the settlement are as follows - paragraph numbers are listed as they appear in the original settlement filed with the Commission:

28. The settlement rates will be designed to produce \$3.65 million in additional annual base rate operating revenue, which consists of \$3,361,375 in additional water revenue and \$288,625 in additional wastewater revenue, based upon the pro forma level of operations for the twelve (12) months ended February 29, 2020. York will be permitted to file tariff supplements to become effective March 1, 2019.

29. York Water will provide a refund to customers of \$2,117,143 via a reconcilable surcharge mechanism (“Federal Tax Adjustment Credit” or “FTAC”) over a one-year period. This amount resolves the Joint Petitioners’ positions regarding the return of the revenue requirement change associated with the reduction in federal income tax expense and Excess Deferred Income Taxes (“EDIT”) from January 1, 2018, through the effective date of new rates arising from the Tax Cuts and Jobs Act of 2017 (“TCJA”). This amount includes interest of \$119,051, which is calculated at the residential mortgage lending rate specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law (41 P.S. §§ 101 *et seq.*) that was published on August 18, 2018. The refund amount will be provided entirely to water customers. The provision of this credit to customers will be subject to audit to ensure that the Company has returned the full amount of the credit to customers.

The Joint Petitioners agree that the surcharge mechanism will be added to the Company's water tariff as follows:

Federal Tax Adjustment Credit (FTAC)

The FTAC will refund the difference in revenue requirement created by the Tax Cuts and Jobs Act (TCJA) plus interest. The amount to be returned shall be \$2,117,143. A credit value of 4.29% will apply to all charges except the DSIC during the period March 1, 2019 through February 29, 2020 to pass the January 1, 2018 through February 28, 2019 revenue requirement change created by the TCJA to customers.

After the twelve-month period elapses, the Company will prepare a reconciliation of the difference between the calculated refund of \$2,117,143 and the actual amount credited to customers by the FTAC as applied. Any such difference will be refunded/recouped over an additional one-month period commencing April 1, 2020.

30. The following amortizations are specifically approved and are reflected in the Settlement's base rate allowance:

<u>Description</u>	<u>Amortization Period</u>	<u>Annual Amortization</u>
York Starview, LP Positive Acquisition Adjustment	10 years ending December 31, 2023	\$3,590.00
Section A Positive Acquisition Adjustment	10 years ending December 31, 2023	\$3,473.00
Margaretta Mobile Home Park	10 years beginning with the effective date of rates in this proceeding	\$5,551.00
Legal and communication fees associated with lead testing and renewal	4 years beginning with the effective date of rates in this proceeding	\$22,281.00

<u>Description</u>	<u>Amortization Period</u>	<u>Annual Amortization</u>
Customer-Owned Lead Service line Replacement	4 years beginning with the effective date of rates in this proceeding.	\$67,174

31. The Joint Petitioners agree that they will not propose, in this or any future proceeding, to amortize or otherwise pass through to ratepayers the difference between depreciated original cost and acquisition cost (“negative acquisition adjustment”) with respect to the water and wastewater following system acquisitions:

- Windy Brae Mobile Home Park
- Forest Lakes Water Association
- Paradise Homes Mobile Home Park
- Newberry Farms Mobile Home Park
- East Prospect Borough Authority (Wastewater)

The Joint Petitioners agree, and the Company requests the Commission to find, pursuant to Section 1327(e) of the Public Utility Code, 66 Pa. C.S. § 1327(e), that matters of “substantial public interest” exist with respect to such acquisitions, which justifies this ratemaking treatment.

The Joint Petitioners agree that agreement to these specific acquisitions, in Paragraphs 28 and 29, cannot be construed as precedent for any future acquisitions by York Water of either water or wastewater systems, nor can this agreement be construed as precedent for any future acquisitions by any other water or wastewater utility.

The following amortizations are specifically approved and are reflected in the settlement’s base rate allowance:

<u>Description</u>	<u>Amortization Period</u>	<u>Annual Amortization</u>
Lincoln Estates Mobile Home Park Negative Acquisition Adjustment	10 years beginning with the effective date of rates in this proceeding	(\$7,719.00)
The Meadows Negative Acquisition Adjustment	10 years beginning with the effective date of rates in this proceeding	(\$15,882.00)
Westwood Mobile Home Park Negative Acquisition Adjustment	10 years beginning with the effective date of rates in this proceeding	(\$7,547.00)

32. The Company will amortize the benefit of the catch-up deduction permitted under the Internal Revenue Service's tangible property regulations over a fifteen-year period commencing with the effective date of rates in this proceeding. The benefit totals \$1,302,030 in Pennsylvania income taxes and \$2,585,217 in federal income taxes. This amortization results in an annual reduction of \$259,150 to the Company's claimed income tax expense. The amortization shall be without interest and without deduction of the unamortized balance from rate base. The amortization is subject to adjustment in future cases, in the event the Internal Revenue Service determines the Company is not entitled to the full amount of the catch-up deduction.

33. Rates under this Settlement will be presumed to provide for recovery of a cash contribution to pensions in the amount of \$2,300,000. York Water commits to deposit such amount into its pension trust on an annual basis during the period that rates under this Settlement remain effective, provided that such deposit does not exceed the deductibility limits under the Internal Revenue Code. If the minimum required contribution under Code Section 430 of the Internal Revenue Code exceeds \$2,300,000, York Water will contribute the minimum required contribution under Code Section 430. Until changed by agreement of the Joint Petitioners or Commission Order, York Water will continue to account for differences between the cash contribution and the pension cost calculated pursuant to FASB ASC 715-20 and FASB ASC 715-30 as follows:

The Company has calculated and accrued on its books of account its pension liability incurred for its present employees under the terms of FASB ASC 715-20 and FASB 715-30. The Company makes cash contributions into qualified trusts to fund its pensions. The amount contributed is determined annually pursuant to actuarial studies that use criteria which may be different from criteria used under FASB ASC 715-20 and FASB 715-30. For financial reporting purposes, the Company will record the amount accrued in excess of the cash contribution as a regulatory (deferred) asset in accordance with FASB ASC 980 until the cash amount equals or exceeds the accrual. When the cash contribution exceeds the accrual amount, the Company will correspondingly reduce the regulatory (deferred) asset. For ratemaking purposes in the future, the Company will continue to use cash contributions plus pension administrative costs as the basis for its ratemaking claim for pension expense.

34. In accordance with the provisions of 52 Pa. Code § 69.55, the STAS for York Water shall be established at 0% effective with the effective date of settlement rates in this proceeding.

35. The water Distribution System Improvement Charge (“DSIC”) for York Water shall be established at 0% of billed revenues effective with the effective date of Settlement Rates. The DSIC shall remain at 0% of billed revenues until the later of: (i) the end of the FPFTY; or (ii) the quarter following the point in time at which York Water’s total eligible account balances, net of plant funded with customer advances and customer contributions, exceed the levels projected by York Water as of February 29, 2020 (*i.e.*, the end of the FPFTY) per Exhibit Nos. FV-12-4, FV-16-3 and FV-16-4. The foregoing provision is included solely for purposes of calculating the DSIC and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a FPFTY filing.

36. For purposes of calculating its DSIC, York Water shall use the equity return rate for water utilities contained in the Commission’s most recent Quarterly Report on the earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for water utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa. C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa. C.S. § 1358(b)(1).

37. The Joint Petitioners acknowledge that issues regarding the impact of 66 Pa. C.S. § 1301.1 on the treatment of federal and state income tax deductions in calculating DSIC charges are currently on appeal before the Commonwealth Court in *McCloskey v. Pennsylvania Public Utility Commission*, Case No. 697 C.D. 2018 (“*McCloskey*”). The Company will not contest the right of a party to raise issues regarding the impact of 66 Pa. C.S. § 1301.1 on the treatment of federal and state income tax deductions in calculating DSIC charges by filing a complaint against the Company’s first quarterly DSIC charge filed after the resolution of *McCloskey* or by filing a pleading to initiate a generic proceeding.

38. On or before June 1, 2019, York Water will provide the Commission’s Bureau of Technical Utility Services (“TUS”), I&E, OCA and OSBA an update to York Water’s Exhibit Nos. FV-12-1 and FV-12-1W, which will include actual capital expenditures, plant additions and retirements for the twelve months ended December 31, 2018. On or before June 1, 2020, York Water will update Exhibit Nos. FV-12-4 and FV-12-4W, which will include actual capital expenditures, plant additions and retirements through February 29, 2020.

39. The Company’s proposed \$20,000 budget for The York Water Cares Low Income Customer Assistance Program is approved on a pilot basis until York Water’s next base rate case on the condition that: (i) all of the program’s annual expenditures funded by ratepayers will be for direct payment of customer assistance to York Water customers and will not include any payments for administrative, overhead, or other indirect costs or contributions related to administration of the program; (ii) York Water will work with I&E and OCA to develop the details of the program including eligibility, enrollment and customer education/outreach, and incorporate the results into the program before the effective date of new rates; (iii) at the end of each fiscal year, all unspent annual program funds will be rolled over to the program for spending in the next fiscal year; and (iv) at the end of the pilot and until base rates are reset in York Water’s next base rate case, any unspent program funds will be refunded to ratepayers with interest. Additionally, York Water will evaluate the pilot and, in its next base rate case, York Water will: (i) provide a detailed accounting of all funds expended, including the information listed in Paragraph 12 of York Water Exhibit MEP-11R and (ii) make a recommendation to the Commission regarding the operation of the program and appropriate level of funding supported

by a needs assessment. The Joint Petitioners agree that this \$20,000 pilot budget is a settlement amount and has not been set pursuant to any need-based determination.

40. Within 30 days of a final disposition of the tariff supplement filing of Pennsylvania-American Water Company at Docket Nos. R-2018-3002502 and R-2018-3002504, York Water shall file a tariff supplement consistent with the Commission's resolution in that proceeding of the issue of prospective cost responsibility for, and prospective ratemaking treatment of, income taxation of Contributions in Aid of Construction ("CIAC").

41. In future base rate proceedings, the Company will present a wastewater allocated cost of service study.

42. In future base rate proceedings, York Water will present separately amounts related to deferred taxes associated with accelerated depreciation and deferred taxes associated with excess accumulated deferred income tax and continue to reflect each category as a reduction to rate base in future base rate filings.

43. The Joint Petitioners acknowledge the issue raised by I&E in I&E Statement No. 3, pages 60-74, regarding the manner in which utilities should present financial results of operations adjusted on a ratemaking basis for future plant additions in their Quarterly Earnings Reports (the "QER Issue") but do not agree on the substantive issue or relevance to this proceeding. In the event the Commission issues a final order that adopts the I&E position on the QER Issue in any proceeding in which the Commission states that the I&E position will be applied to all regulated utilities or via a secretarial letter after notice to York Water and an opportunity to be heard, York Water will comply with the Commission's final directives with respect to the QER issue.

44. The Company agrees that it will not file another base rate case before May 1, 2020; provided, however, that the foregoing provision shall not prevent York Water from filing a tariff or tariff supplement proposing a general increase in rates in compliance with

Commission orders or in response to fundamental changes in regulatory policies or federal tax policies affecting York Water's rates.

45. The water revenue increase and rate design are as set forth in Appendix "C". The rate design includes an increase to the residential (5/8" meter) customer charge to \$16.25 per month, with equivalent percentage increases to other customer charges. The wastewater rates are as set forth in Appendix "D" and are as originally filed by the Company.

CONDITIONS OF SETTLEMENT

There are several relevant conditions of settlement which the Joint Petitioners have also agreed upon.

The settlement is conditioned upon the Commission's approval of the terms and conditions contained therein without modification. If the Commission modifies the settlement, any Joint Petitioner may elect to withdraw from the settlement and may proceed with litigation. In such an event, the Joint Petitioners have agreed that the settlement shall be void and of no effect.

If the Commission does not approve the settlement and the proceedings continue to further hearings, the Joint Petitioners reserve their respective rights to present additional testimony and to conduct full cross-examination, briefing and argument. The settlement may not be cited as precedent in any future proceeding, except to the extent required to effectuate its implementation. The settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced, and without prejudice to the position any of the Joint Petitioners may advance in the future, on the merits of the issues in future proceedings except to the extent necessary to effectuate the terms and conditions of the settlement. If the ALJ adopts the settlement without modification, the Joint Petitioners have agreed to waive their right to file exceptions.

PUBLIC INTEREST

As noted above, it is the policy of the Commission to promote settlements. 52 Pa. Code § 5.231(a). The benchmark for determining whether a settlement should be approved is whether the proposed terms and conditions are in the public interest. *See Pa. Pub. Util. Comm'n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011); *citing, Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996). In the settlement, the parties noted in general that the settlement is in the public interest as it resolves all issues raised by the Joint Petitioners and given the diverse interests of the Joint Petitioners and the active role they had taken in this proceeding, the resolution of all of their respective issues provides strong evidence that the settlement is reasonable and in the public interest. The Joint Petitioners further noted that the settlement was achieved after a thorough review of York's proposal, responses to numerous interrogatories and multiple rounds of testimony from each of the Joint Petitioners who had all participated in a number of discussions that ultimately led to the settlement.

It was further emphasized that their knowledge, experience and ability to evaluate the strengths and weaknesses of their respective litigation positions provided the Joint Petitioners with a strong base upon which to build a consensus resolving the disparity between the parties' positions on the revenue requirement for York. The revenue increase in the settlement falls within the range of outcomes bounded by the proposed increase and the revenue requirements identified in the testimony of I&E and OCA. The Joint Petitioners believe that the settlement they have reached promotes the Commission's policies regarding settlements as an effective tool to reduce the time and expense the parties must expend litigating a case and, at the same time, conserve precious administrative resources.

Revenue Requirement (Joint Petition ¶ 28)

In filing Supplement No. 130, York proposed a general increase in water base rates of \$6,398,961 per year, and in Supplement No. 6, proposed a general increase in wastewater base rates of \$288,623 per year. The revenue deficiency later decreased due to the

adoption of other proposed adjustments to wastewater system remediation expenses, health insurance expense, and credit card rebates. (York Water Statement No. 103-R, p. 3, lines 3-6). These adjustments resulted in a revised revenue deficiency of \$6,327,225, consisting of \$288,623 for wastewater and \$6,038,602 for water (including a wastewater allocation of \$906,967). (York Water Statement No. 103-R, p. 39, lines 20-21; York Water Exhibit MEP-1R). York feels that this settlement reflects a reasonable compromise between the parties' various positions. I&E originally proposed a combined water and wastewater revenue increase of \$1,740,618 (I&E Statement No. 1, p. 3, lines 7-8), while the OCA originally proposed a combined water and wastewater revenue decrease of \$3,094,712, which was later corrected to a proposed decrease of \$343,732 (OCA Statement No. 1, p. 6, lines 10-12; OCA Statement No. 1-SR, p. 3, lines 12-15). The parties have designed the settlement rates to produce \$3.65 million in additional annual base rate operating revenue, which consists of \$3,361,375 in additional water revenue and \$288,625 in additional wastewater revenue. York's water and wastewater base rates are designed to produce total revenues of approximately \$51,805,326 and will become effective March 1, 2019. York feels that this amount will allow it to continue to provide safe and reliable service to its customers and provide an opportunity to earn a reasonable return.

The OCA acknowledges that York initially proposed to increase its total annual operating revenues by approximately \$6.69 million per year, or 13.1% for water service and 25% for wastewater service. Under the settlement, York will be permitted a total annual revenue increase of \$3.65 million, which consists of \$3,361,375 in additional water revenue and \$288,625 in additional wastewater revenue. This represents an increase of 7.3% over present revenues and is approximately \$3 million less than the amount originally requested by York. The OCA submits that the revenue increase under the settlement represents a result that would be within the range of likely outcomes if this matter were to be fully litigated. The OCA feels the increase is reasonable and yields a result that is in the public interest particularly when accompanied by other important conditions contained in the settlement and provides adequate funding to allow the Company to continue to provide safe, adequate, reliable, and continuous service.

The OSBA also evidenced support for the revenue allocation provided in the settlement. It cited to the testimony of its witness, Brian Kalcic, and his general agreement with York's revenue allocation. In particular, OSBA noted that the combined Commercial and Industrial ("C&I") increase under the settlement is \$1.048 million. This amount is within \$65,000 of Mr. Kalcic's recommended C&I increase of \$0.983 million. On the other hand, the combined C&I settlement increase is approximately \$343,000 less than the OCA's recommended C&I increase of \$1.392 million. The OSBA feels that this is consistent with Mr. Kalcic's testimony, provides a meaningful benefit to C&I customers, and eliminates the litigation risk associated with the OCA's proposed increase to C&I customers. Therefore, the OSBA feels that the settlement is in the best interest of York's C&I customers.

I&E also indicated its support for the revenue requirement outlined in the settlement. It noted that the settlement provides that average residential customer base rates would increase by approximately 7.3%, average commercial customer base rates would increase by approximately 7.3%, average industrial customer base rates would increase by approximately 9.7%, public fire service rates in the gravity service area would increase by approximately 0.3%, and private fire service rates are increased by approximately 5.7%. In addition, metered and unmetered rates for residential, commercial, and commercial/industrial customers would increase by 25%. I&E asserted that the settlement would provide over \$3 million in savings for York's water customers. I&E believes that the settlement balances the interests of York and its customers in a fair and equitable manner and allows for the recovery of prudently incurred expenses as well as the opportunity to earn a reasonable return on the value of assets used and useful in public service. It is I&E's position that customers will continue to receive safe and reliable service at just and reasonable rates while allowing York sufficient additional revenues to meet its operating and capital expenses and providing the opportunity to earn a reasonable return on its investment.

Tax Cuts and Jobs Act of 2017 (Joint Petition ¶ 29)

York also indicated that the settlement reached in this matter resolved issues related to 2018 federal income taxes due to Public Law No. 115-97 that was signed into law by

the President of the United States on December 22, 2017. The short title of this law is the Tax Cuts and Jobs Act (“TCJA”). For water, York initially proposed to include a negative surcharge on the water customers’ bills that would return the excess income taxes of \$1,693,763 to the ratepayers over a one-year period. For wastewater, York initially proposed to include a surcharge on the wastewater customers’ bills that would bill the increased income taxes of \$144,930 to the ratepayers over a one-year period. Both OCA and I&E recommended certain adjustments to York’s proposal. After extensive negotiations, York ultimately agreed with OCA that the refund amount should include tax savings or deficiencies through the actual effective date of the new rates. As a result, the savings for water customers were recalculated to be \$1,976,057 and the deficiency for wastewater customers to be \$169,085.

York notes that under the settlement there will be a total refund of \$2,117,143 to water customers, via a reconcilable surcharge mechanism (“Federal Tax Adjustment Credit” or “FTAC”) over a one-year period beginning March 1, 2019 and the amount to be returned is fixed and will not be recalculated for actual tax liability. The reconciliation will compare actual refunds to the amount of \$2,117,143, and any difference will be refunded or recouped over a one-month period beginning April 1, 2020. York also asserted that the refund amount of \$2,117,143 also resolved issues regarding the return of the revenue requirement change associated with the reduction in federal income tax expense and Excess Deferred Income Taxes (“EDIT”) from January 1, 2018, through the effective date of new rates arising from the TCJA. This amount includes interest of \$119,051, which will be calculated at the residential mortgage lending rate specified by the Secretary of Banking. The provision of this credit to customers will be subject to audit to ensure that York has returned the full amount of the credit to customers and as a whole these provisions represent a reasonable compromise on the refund’s calculation and reconciliation between the parties.

OCA noted that the TCJA generated a positive revenue requirement change for water operations and a negative revenue requirement change for wastewater operations. However, the settlement provides that rather than imposing a surcharge on wastewater customers and a surcredit on water customers, the net revenue requirement change would be provided entirely to water customers. In addition to other settlement provisions, the OCA submitted that

these provisions were consistent with the Commission’s Order addressing the TCJA, which provided that “tax savings and associated reductions in utility revenue requirements should be flowed back to consumers on a current basis.” Tax Cuts and Jobs Act of 2017, Docket No. M-2018-2641242 (Temporary Rates Order entered May 17, 2018), at 15.

The Commission’s Order further provided that, with regard to utilities with pending base rate cases, including York, the Commission “expects the public utility and the parties in each such proceeding to address the effect of the federal tax rate reduction on the justness and reasonableness of the consumer rates charged during the term of the suspension period and, in particular, whether a retroactive surcharge or other measures is necessary to account for the tax rate changes.” Id. at 20-21.

I&E agreed with York to flow back to ratepayers the 2018 tax savings as a result of the TCJA, along with any over/under passback, calculated with interest. I&E noted that the settlement terms reflect a return of \$2,117,143 in tax savings to customers. This reflects a tax savings for water customers and tax deficiency for wastewater customers through the actual effective date of new rates, including interest, in the combined amount of \$1,914,637. This amount also reflects a flowback of EDIT of \$202,506, which includes interest. I&E asserted that the settlement represented a reasonable compromise of the parties’ positions and served the public interest by returning TCJA tax savings to ratepayers as directed by the Commission.

Acquisition Adjustments (Joint Petition ¶¶ 30-31)

York indicates that this settlement is in the public interest as it continues to allow it to amortize the positive acquisition adjustment for the acquisitions of the York Starview, LP (“York Starview”), and Section A Water Corporation (“Section A”) water systems and also allows the Company to amortize the positive acquisition adjustment associated with the acquisition of Margareta Mobile Home Park (“Margareta”). The amortizations for York Starview and Section A were established in York Water’s 2013 base rate proceeding. The amortization for Margareta is being established in this proceeding.

York further indicated that all parties agreed that matters of substantial public interest exist with respect to certain acquisitions. For example, York indicated that interconnecting its water distribution system with Windy Brae Mobile Home Park, Forest Lakes Water Association and Paradise Homes Mobile Home Park would allow it to provide the residents in those areas with a more reliable and plentiful supply of water. Issues such as adequate water pressures, a buildup of manganese in the pipes, inability of wells to meet current demand and increasing costs and the challenges of meeting regulatory oversight and reporting requirements would be resolved for numerous customers subject to these and other identified acquisitions. (York Water Statement No. 1, p. 11-31). The settlement also provides for amortizations of certain costs associated with lead testing and renewal and customer-owned lead service line replacements. As a whole, York asserted that the amortizations and the positive and negative acquisition adjustments, as modified by the settlement, reflect a reasonable compromise of the Joint Petitioners' positions.

OCA indicated that while it did have initial objections relating to positive acquisition adjustments for several water and wastewater systems, it supports the settlement which has been crafted. OCA agreed that York will recognize negative acquisition adjustments for Lincoln Estates Mobile Home Park, The Meadows and Westwood Mobile Home Park. The OCA indicated that this was a reasonable compromise and in the public interest given the evidence presented by the parties and likely litigation outcomes and that the amortized balances of the negative acquisition amounts will serve as an offset to any York revenue claim for 10 years beginning with the effective date of new rates in this proceeding.

I&E indicated that it had provided extensive testimony regarding York's requested acquisition adjustments. I&E initially recommended removing positive acquisition adjustments for two water systems and one wastewater system. I&E also recommended including negative acquisition adjustments for three water systems and one wastewater system. After the submission of additional testimony, I&E withdrew its recommendations regarding negative acquisition adjustment treatment for two water systems but maintained its positions regarding the remaining systems. I&E asserted that the issue of acquisition

adjustments was extensively addressed by I&E in testimony and thoroughly addressed by the parties in settlement discussions and the terms reflect a compromise among all interested parties.

Catch-up Deduction (Joint Petition ¶ 32)

York indicates that under the settlement it will amortize the benefit of the catch-up deduction permitted under the Internal Revenue Service's ("IRS") tangible property regulations over a fifteen-year period commencing with the effective date of rates in this proceeding. In 2014, York adopted a change to tax accounting that allowed it to deduct the costs of certain assets that were previously capitalized and depreciated for tax purposes. The additional catch-up deduction produced retroactive tax savings for the years 2007-2013. The resulting tax benefit totals \$1,302,030 in Pennsylvania income taxes and \$2,585,217 in federal income taxes. This amortization results in an annual reduction of \$259,150 to York's claimed income tax expense. It asserted that these settlement provisions were consistent with York's calculation of the catch-up deduction that was presented in its direct testimony and were unopposed by any party. (York Water Statement No. 103, p. 160, line 3 through p. 161, line 17; York Water Statement No. 103-R, p. 18, lines 8-9).

I&E indicated its support for the terms of the settlement relating to the catch-up deduction. While it did not submit any direct testimony regarding the benefit of the catch-up deduction it was involved in the discussion of the issue during settlement negotiations. I&E supports these settlement terms as they were necessary to facilitate a collective resolution of this case.

Pension Contribution (Joint Petition ¶ 33)

York pointed out that the parties have agreed to provisions that commit York to make a specified level of pension contributions, subject to IRS and Employee Retirement Income Security Act ("ERISA") restrictions. In addition, in York's last rate case in 2013, it agreed to contribute \$2,300,000 annually to its defined benefit plan pension trusts. (*See, Pa. Pub. Util.*

Comm'n v. York Water Co., Docket No. R-2012-2336379, p. 11 (Recommended Decision (RD) dated Dec. 6, 2013; Final Order adopting RD without modification entered Jan. 9, 2014).

Since then, York asserted that its unfunded pension obligation has decreased, but still exceeds \$3 million. This settlement maintains this funding commitment of \$2,300,000. York further asserted that this pension contribution amount is important because it ensures that sufficient funds would be contributed to its pension plans to fund the current unfunded obligation and future pension liabilities - benefitting both its employees and customers.

STAS and DSIC Charges (Joint Petition ¶¶ 34-37)

York indicated that the State Tax Adjustment Surcharge ("STAS") would be established at 0% with the effective date of settlement rates in this proceeding. This was in accordance with the provisions of 52 Pa. Code § 69.55 and is therefore reasonable and in the public interest.

It was further indicated that the water Distribution System Improvement Charge ("DSIC") for York would be established at 0% of billed revenues effective with the effective date of settlement rates. The DSIC would remain at 0% of billed revenues until the later of: (i) the end of the FPFTY; or (ii) the quarter following the point in time at which York's total eligible account balances, net of plant funded with customer advances and customer contributions, exceed the levels projected by York as of February 29, 2020, per Exhibit Nos. FV-12-4, FV-16-3 and FV-16-4.

Further, for purposes of calculating its DSIC, York will use the equity return rate for water utilities contained in the Commission's most recent Quarterly Earnings Report on the earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for water utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa. C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa. C.S. § 1358(b)(1). These provisions helped resolve any ambiguity as to the base rate case's impact on the calculation of the DSIC.

The OCA also indicated support for these settlement provisions. York had agreed not to charge a DSIC until the later of February 29, 2020 or when York's total eligible account balances, net of plant funded with customer advances and customer contributions, exceed the levels projected by York as of February 29, 2020. The settlement also specifies the rate of return on equity to be used for the purpose of calculating the DSIC. OCA asserted that these provisions would help to ensure that DSIC rates are calculated properly.

I&E further added that issues regarding the impact of 66 Pa. C.S. § 1301.1 on the treatment of federal and state income tax deductions in calculating DSIC charges are currently on appeal before the Commonwealth Court in McCloskey v. Pa. Pub. Util. Comm'n, No. 697 C.D. 2018 (Pa.Cmwlth. filed May 21, 2018) (McCloskey). It was agreed that York would not contest the right of a party to raise issues regarding the impact of 66 Pa. C.S. § 1301.1 on the treatment of federal and state income tax deductions in calculating DSIC charges by filing a complaint against York's first quarterly DSIC charge filed after the resolution of McCloskey or by filing a pleading to initiate a generic proceeding. I&E did not submit testimony regarding the DSIC issues however it fully supported the negotiated settlement terms.

Capital Projections (Joint Petition ¶ 38)

York indicated that the parties had addressed issues relating to additional reporting requirements regarding York's capital expenditures, plant additions, and retirements during the Future Test Year ("FTY") ended December 31, 2018, and the FPFTY ended February 29, 2020. On or before June 1, 2019, York will provide the Commission's Bureau of Technical Utility Services ("TUS"), I&E, OCA and OSBA an update to York's Exhibit Nos. FV-12-1 and FV-12-1W, which will include actual capital expenditures, plant additions and retirements for the twelve months ended December 31, 2018. On or before June 1, 2020, York will update Exhibit Nos. FV-12-4 and FV-12-4W, which will include actual capital expenditures, plant additions and retirements through February 29, 2020.

In addition, I&E added that such information was important to verify projections regardless of how the revenue requirement was calculated (e.g., end-of-year rate base or average

rate base methodology). Further, such data allows the Commission to gauge the accuracy of projected investments in future proceedings. York had agreed to report this information and I&E supports the provisions.

Low Income Customer Assistance Program (Joint Petition ¶ 39)

York indicated that the settlement was in the public interest as the parties had reached an agreement on its proposed \$20,000 budget for the York Water Cares Low Income Customer Assistance Program. The program was approved on a pilot basis until York's next base rate case under several conditions outlined in the settlement. York asserted that the settlement provisions reflect a reasonable compromise of the Joint Petitioners' positions and would allow York to implement the program on a pilot basis with additional restrictions and guidance while the other parties would be provided sufficient information to evaluate the pilot's success.

I&E added that the customer assistance program was discussed at length in settlement negotiations and York had agreed to a number of guidelines to ensure ratepayer funds were prudently spent for this program. I&E felt that the settlement terms satisfied its concerns regarding lack of detail and adequate program guidelines for the program.

Contributions in Aid of Construction (Joint Petition ¶ 40)

York indicated that one issue which had arisen in this proceeding was the method of calculating contributions in aid of construction ("CIAC") and customer advances for construction ("CAC"). I&E had recommended that York use a "gross-up" method, under which it would charge all taxes associated with the contributions to the contributors. After extensive discussion, York noted that the issue of whether a tax gross-up should be imposed on customer contributions and advances is currently pending before the Commission. The parties have agreed that within 30 days of a final disposition of the tariff supplement filing of Pennsylvania-American Water Company at Docket Nos. R-2018-3002502 and R-2018-3002504, York will file a tariff supplement consistent with the Commission's resolution in that proceeding of the issue of

prospective cost responsibility for, and prospective ratemaking treatment of, income taxation of CIAC. (Settlement § 40). York asserted that this settlement provision ensures that there will be more consistent treatment of income taxes associated with CIAC across the water utilities, while enabling the Joint Petitioners to reach an agreement in this proceeding.

Wastewater Allocated Cost of Service Study (Joint Petition ¶ 41)

York indicated that it had not prepared a separate allocated cost of service study for its wastewater operations, because its level of revenues is comparatively small. The parties however agreed that in future base rate proceedings, York will present a wastewater allocated cost of service study. Such a study will enable the Commission to better determine the cost of service for wastewater and better evaluate any allocation of wastewater costs to be recovered in water rates.

I&E indicated similar support for this settlement provision and indicated that it had recommended that York allocate a reasonable portion of rate case expense, common plant and other rate base items to the wastewater operations in the next base rate case. This recommendation was made because I&E felt a proper allocation would enable the Commission to determine the true cost of York's wastewater operations and would result in a more accurate disclosure of the rate subsidy provided by the water operations. I&E indicated that York's agreement to present a wastewater allocated cost of service study adequately addressed I&E's concerns.

Accumulated Deferred Income Taxes (Joint Petition ¶ 42)

York indicated that the parties had reached an agreement on the issue of reporting deferred income taxes. In future base rate proceedings, York will present separate amounts related to deferred taxes associated with accelerated depreciation and deferred taxes associated with excess accumulated deferred income tax and continue to reflect each category as a reduction to rate base in future base rate filings. York asserted that this provision will better enable parties

to verify that York is properly reducing rate base until the EDIT balance is returned to ratepayers.

I&E added that it had expressed concern that York did not show a breakdown between accumulated deferred income tax (“ADIT”) and excess ADIT. Accordingly, it was recommended that York be required to show the excess ADIT as a separate component from ADIT in future rate filings. This fully addressed I&E’s concerns regarding this issue.

Quarterly Earnings Reports (Joint Petition ¶ 43)

York indicated that the Joint Petitioners acknowledged the issue raised by I&E regarding the manner in which utilities should present financial results of operations adjusted on a ratemaking basis for future plant additions in their Quarterly Earnings Reports (the “QER Issue”) but did agree on the substantive issue or its relevance to this proceeding. It was agreed that in the event the Commission issues a final order that adopts the I&E position on the QER Issue in any proceeding in which the Commission states that the I&E position will be applied to all regulated utilities or via a secretarial letter, after notice to York and an opportunity to be heard, York will comply with the Commission’s final directives with respect to the QER Issue. York asserted that these settlement provisions acknowledged I&E’s concern about the QERs, particularly I&E’s issue with the lack of uniformity among the public utilities, and established a process for adopting a uniform change to QERs in the future while enabling the parties to reach a settlement.

I&E acknowledged that this particular issue was important to address as it was recently litigated in the UGI Utilities, Inc. — Electric Division base rate case at Docket R-2017-2640058. While not specifically taking a position on whether it is or is not appropriate to include FTY or FPFTY plant in a utility's QER, the settlement provides that York will comply with a Commission final order or secretarial letter applicable to all utilities related to the determination of the QER issue.

Base Rate Filing Stay-Out (Joint Petition ¶ 44)

York indicated that it has agreed not to file another base rate case before May 1, 2020, unless in response to a Commission order or in response to fundamental changes in regulatory policies or federal tax policies affecting York's rates. York asserted that this provision would provide customers with considerable rate stability over the next several years and York flexibility in the event it experiences specific cost increases.

OCA asserted that this provision will provide a measure of rate stability for consumers and will prevent rate increases in quick succession.

Revenue Allocation and Rate Design (Joint Petition ¶ 45)

York acknowledged that the respective parties had varied positions on revenue allocation. However, the revenue allocation for the water revenue requirement under the settlement reflects a compromise of those positions. York indicated that industrial customers will receive a higher percentage increase (9.7%) than residential customers (7.3%) and commercial customers (7.3%). (Settlement ¶ 45; Settlement, Appx. C). This represented a compromise between OCA's and York's proposed allocation and reasonably reflects cost of service and is a reasonable compromise by the parties. York further indicated that customer charges reflect a compromise that the 5/8-inch meter residential customer charge (the principal meter size for residential customers) will increase to \$16.25 per month, with equivalent percentage increases to other customer charges. The 5/8-inch meter customer charge, \$16.25, is lower than the charge originally proposed by York however it was willing to agree to this lower customer charge for settlement purposes. All other charges were scaled back from York's as-filed proposed rates, consistent with the settlement revenue increases by customer class. It was further indicated that the wastewater rates will increase by 25%.

York emphasized that the settlement revenue allocation and rate design proposals represented a compromise of the Joint Petitioners and as the Commission has recognized many times, cost allocation is not a precise science. Application of Metropolitan Edison Co., Docket

No. R-00974008 (June 30, 2008); Pa. Pub. Util. Comm'n v. Pa. Power & Light Co., 55 PUR 4th 185 (1983). York asserted that the resulting class allocation was reasonable in light of its prior rate design, issues raised in other Joint Petitioners' testimony, and the fact that the resulting class allocations were a result of compromise and agreed to by all of the Joint Petitioners.

OCA acknowledged that revenue allocation was a contentious issue between the parties. It indicated that the settlement provides that York can increase base distribution revenues by amounts designed to produce a net revenue increase of \$3 million in annual operating revenues, including the roll-in of the DSIC. Under the revenue allocation agreed to by the Joint Petitioners, the residential customer class will receive an increase of \$2,204,243 per year, or 7.3% which OCA indicated is the system average increase. (Settlement App. C). OCA indicated that it views the settlement to be within the range of reasonable outcomes that would result from the full litigation of this case and was consistent with the objective of moving rate classes toward their cost of service. The settlement was therefore reasonable, and when accompanied by other important conditions contained in the settlement, yielded a result that was just, reasonable and in the public interest.

With respect to rate design, OCA notes that the agreed upon \$16.25 customer charge is significantly lower than York's proposed customer charge of \$18.50 and was within the range of likely outcomes in the event of full litigation of the case. It submitted that the \$16.25 customer charge was reasonable and consistent with sound ratemaking principles and combined with the lower revenue requirement increase which was sought, the rate design resulted in rates that were significantly below the rates originally proposed by York.

I&E indicated that both issues were extensively addressed by it in testimony and thoroughly vetted in settlement negotiations. York's proposed distribution of revenue among the customer classes and rate design was generally a matter of interest to all parties and the discussions were extensive. I&E feels that the settlement terms reflect compromise among all interested parties.

Public Interest Analysis

As previously discussed, in order 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 October 4, 2004); Pa. Pub. Util. Comm'n v. C S Water and Sewer Assoc., 74 Pa. PUC 767 (1991). The parties are to be commended on their willingness to communicate and compromise on the issues presented in this matter. It is clear from the record and the thoroughness of the arguments made by each party regarding the terms of the negotiated settlement that a great deal of time and energy was expended in crafting a resolution in this matter. The parties have made credible and convincing arguments that the various terms of the settlement, as well as the settlement as a whole, are in the public interest.

As outlined in the respective statements in support of the joint petition, it appears that all issues raised in testimony have been resolved through party discussions and the joint petition represents a compromise on the part of all parties. It is evident that the parties have carefully discussed and negotiated all issues raised in this proceeding and specifically those addressed and resolved through the proposed settlement.

I agree with the parties' assertions that the settlement maintains the proper balance of the interests of all parties. The settlement will allow York to continue to provide safe and reliable service to its customers and provide an opportunity to earn a reasonable return. York's water customers will see savings in the amount of \$1,976,057 due to the terms of the settlement and the provisions of the Tax Cuts and Jobs Act of 2017. The settlement is within the range of reasonable outcomes that would result from the full litigation of this case and was consistent with the objective of moving rate classes toward their cost of service. The settlement protects the interests of the combined C&I customers because C&I customers will see an increase under the settlement of \$1.048 million, which is approximately \$343,000 less than the OCA's recommended C&I increase of \$1.392 million. The settlement provides a meaningful benefit to C&I customers and eliminates the litigation risk associated with the OCA's proposed increase.

In addition, the settlement is in the public interest because it addresses other issues that pertain to York's operations. This includes, among other things, agreements for amortizing particular assets, recovery of a \$2,300,000 contribution to pensions, issues related to the DSIC and a proposed budget for the York Water Cares Low Income Customer Assistance Program that will assist York's customers in affording water service. Finally, the settlement is also in the public interest because it prohibits York from filing another base rate case before May 1, 2020. This provision will provide York's customers with some level of rate stability.

Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense. This settlement has negated the need for evidentiary hearings, which would have compelled the extensive devotion of time and expense for the preparation, presentation, and cross-examination of multiple witnesses. It has also avoided the need for the preparation of briefs, exceptions and potential appeals - all of which yield substantial savings for the parties and ultimately all customers.

CONCLUSION

For the reasons set forth above, I find that the proposed settlement is in the public interest and consistent with the requirements of 66 Pa. C.S. § 1308. Accordingly, I recommend that the Commission approve the terms and conditions of the proposed settlement without modification and enter an order consistent with this settlement authorizing York Water Company to file the tariff supplements attached to the joint petition for settlement as Appendices "A" and "B" to become effective on or after March 1, 2019.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 1308.

2. The York Water Company has satisfied the requirements of Section 1308 of the Public Utility Code and Section 53.52 of the Commission's regulations. 66 Pa.C.S. § 1308, 52 Pa.Code § 53.52.

3. The York Water Company has met its burden of proof that it is entitled to an increase in annual revenues of \$3.65 million in additional annual base rate operating revenue, which consists of \$3,361,375 in additional water revenue and \$288,625 in additional wastewater revenue. 66 Pa.C.S. §§ 315 and 332.

4. The customer complainant did not present evidence with respect to the claims set forth in his formal complaint; therefore, he failed to satisfy the burden of proof with respect to those claims. 66 Pa.C.S. §§ 315 and 332.

5. The settlement filed on November 20, 2018 by York Water Company, OCA, OSBA and I&E is in the public interest and should be approved by the Commission. Pa. Pub. Util. Comm'n v. York Water Co., Docket No. R-00049165 (Order entered October 4, 2004).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the York Water Company shall not place into effect the rates contained in Supplement No. 130 to its Tariff Water – Pa. P.U.C. No. 14 and Supplement No. 6 to Tariff Wastewater – Pa. P.U.C. No. 1 which were submitted on May 30, 2018 at Docket No. R-2018-3000019.

2. That the joint petition for settlement filed at Docket No. R-2018-3000019. and dated November 20, 2018 is approved in its entirety and without modification.

3. That the York Water Company shall be permitted to file the tariff supplements attached as Appendices “A” and “B” to the joint petition for settlement, on at least one (1) days’ notice to the Commission, to become effective on or after March 1, 2019.

4. That the stipulation for admission of evidence filed on November 20, 2018 by York Water Company, the Office of Consumer Advocate, the Bureau of Investigation and Enforcement and the Office of Small Business Advocate in the above-captioned case be approved and adopted.

5. That the following documents are admitted into the record as set forth in the stipulation for admission of evidence filed November 20, 2018:

A. York Water Company

- York Water Statement No. 1 – Direct Testimony of Jeffrey R. Hines.
- York Water Statement No. 2 – Direct Testimony of Joseph T. Hand.
- York Water Statement No. 3 – Direct Testimony of Matthew E. Poff.
- York Water Statement No. 3W – Direct Testimony of Matthew E. Poff.
- York Water Statement No. 4 – Direct Testimony of Daniel E. Coppersmith.
- York Water Statement No. 4W – Direct Testimony of Daniel E. Coppersmith.
- York Water Statement No. 103 – Direct Testimony of Matthew E. Poff.
- York Water Statement No. 103W – Direct Testimony of Matthew E. Poff.

- York Water Statement No. 104 – Direct Testimony of Daniel E. Coppersmith.
- York Water Statement No. 104W – Direct Testimony of Daniel E. Coppersmith.
- York Water Statement No. 105 – Direct Testimony of John J. Spanos, including Exhibit Nos. HVI, HVI-W, FVI-A, FVI-B, FVI-WA, and FVI-WB.
- York Water Statement No. 106 – Direct Testimony of Paul R. Moul, including Exhibit No. FVII.
- York Water Statement No. 107 – Direct Testimony of Paul R. Herbert, including Exhibit No. FVIII.
- The Exhibits accompanying the direct testimony of Jeffrey R. Hines, Joseph T. Hand, Matthew E. Poff, Daniel E. Coppersmith, and John J. Spanos, as identified in the list attached to the joint petition for settlement as Attachment A.
- York Water Statement No. 103-S – Supplemental Direct Testimony of Matthew E. Poff, including Exhibit No. MEP-1S.
- York Water Statement No. 103W-S – Supplemental Direct Testimony of Matthew E. Poff, including Exhibit No. MEP-1SW.
- The corrected Exhibit No. FIV-17-10, which was filed on July 16, 2018.
- York Water Statement No. 1-R – Rebuttal Testimony of Jeffrey R. Hines, including Exhibit Nos. JRH-1R through JRH-8R.
- York Water Statement No. 2-R – Rebuttal Testimony of Joseph T. Hand, including Exhibit No. JTH-1R.
- York Water Statement No. 103-R – Rebuttal Testimony of Matthew E. Poff, including Exhibit Nos. MEP-1R through MEP-13R.
- York Water Statement No. 105-R – Rebuttal Testimony of John J. Spanos, including Exhibit Nos. JJS-1R through JJS-2R.

- York Water Statement No. 106-R – Rebuttal Testimony of Paul R. Moul, including Exhibit No. PRM-2.
- York Water Statement No. 107-R – Rebuttal Testimony of Paul R. Herbert, including Exhibit Nos. 107-R-1 through 107-R-3.
- York Water Statement No. 106-RJ – Rejoinder Testimony of Paul R. Moul.

B. Bureau of Investigation and Enforcement

- I&E Statement No. 1 – Direct Testimony of Brenton Grab, including I&E Exhibit No. 1.
- I&E Statement No. 2 – Direct Testimony of Christopher M. Henkel, including I&E Exhibit No. 2.
- I&E Statement No. 3 – Direct Testimony of Joseph Kubas, including I&E Exhibit No. 3.
- An Errata Sheet correcting I&E Statement No. 3: the Direct Testimony of Joseph Kubas.
- An Errata reflecting full testimony correcting I&E Statement No. 3: the Direct Testimony of Joseph Kubas.
- I&E Statement No. 4 – Direct Testimony of Ethan H. Cline, including I&E Exhibit No. 4.
- An Errata Sheet correcting I&E Statement No. 4: the Direct Testimony of Ethan H. Cline.
- I&E Statement No. 1-SR – Surrebuttal Testimony of Brenton Grab, including I&E Exhibit No. 1-SR.
- An Errata Sheet correcting I&E Statement No. 1 –SR: the Surrebuttal Testimony of Brenton Grab.
- I&E Statement No. 2-SR – Surrebuttal Testimony of Christopher M. Henkel, including I&E Exhibit No. 2-SR.
- I&E Statement No. 3-SR – Surrebuttal Testimony of Joseph Kubas, including I&E Exhibit No. 3-SR.

- I&E Statement No. 4-SR – Surrebuttal Testimony of Ethan H. Cline, including I&E Exhibit No. 4-SR.

C. Office of Consumer Advocate

- OCA Statement No. 1 – Direct Testimony of Donna H. Mullinax, including Exhibit Nos. DHM-1 through DHM-31.
- OCA Statement No. 2 – Direct Testimony of Aaron L. Rothschild, including Schedules ALR-1 through ALR-8.
- OCA Statement No. 3 – Direct Testimony of Jerome D. Mierzwa, including Schedules JDM-1 through JDM-3.
- OCA Statement No. 3-R – Rebuttal Testimony of Jerome D. Mierzwa.
- OCA Statement No. 1-SR – Surrebuttal Testimony of Donna H. Mullinax, including Exhibit Nos. DHM-1-SR through DHM-4-SR.
- OCA Statement No. 2-SR – Surrebuttal Testimony of Aaron L. Rothschild.
- OCA Statement No. 3-SR – Surrebuttal Testimony of Jerome D. Mierzwa, including Schedules JDM-4S through JDM-7S
- OCA Statement No. 4-SR – Surrebuttal Testimony of Terry L. Fought, including Exhibit Nos. TLF-1 through TLF-8.

D. Office of Small Business Advocate

- OSBA Statement No. 1 – Direct Testimony and Exhibits of Brian Kalcic.
- OSBA Statement No. 1-R – Rebuttal Testimony of Brian Kalcic.
- OSBA Statement No. 1-S – Surrebuttal Testimony of Brian Kalcic.

6. That two copies of each filing statement and exhibit listed in the stipulation for admission of evidence be filed with the Secretary of the Pennsylvania Public Utility Commission, unless previously filed.

7. That any filings designated as “confidential” be placed in the non-public folders by the Secretary of the Pennsylvania Public Utility Commission.

8. That, upon the filing of the approved tariffs, the investigation at Docket No. R-2018-3000019 be marked closed.

9. That the complaint of the Office of Consumer Advocate at Docket No. C-2018-3002564 be deemed satisfied and marked closed.

10. That the complaint of the Office of Small Business Advocate at Docket No. C-2018-3002811 be deemed satisfied and marked closed.

11. That the complaint of Michael Eifert at Docket No. C-2018-3003908 be dismissed and marked closed.

Date: December 10, 2018

/s/
Benjamin J. Myers
Administrative Law Judge