Report on the Feasibility of Municipalizing New York American Water Company, Inc.'s Nassau County Service Territories

March 29, 2021

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Governor Andrew M. Cuomo charged the Department of Public Service (DPS or the Department) with studying the feasibility of municipalizing all or part of New York American Water Company, Inc.'s (NYAW) Long Island assets and operations.

The study determined that such municipalization is both feasible and, under a variety of scenarios, in the public interest, even with an upfront investment of nearly $800 million for the purchase of NYAW's assets (or a pro rata amount for parts of the system), ongoing and near-term infrastructure improvements, and transaction costs.

The study recommends that (1) the legislature act now to remove the onerous property tax burden which is uniquely borne by NYAW's ratepayers, and (2) a new public authority be established with the power to purchase or obtain through eminent domain all or parts of NYAW's assets in Nassau County (the Nassau County Water Authority), after which it can choose to operate the assets itself, contract out their operation to established public water providers, or merge all or parts of them into existing public water providers.

Under this plan, NYAW customers will see a significant reduction in their combined water rates and property taxes, while in the immediate term the tax burden is spread to other much larger utilities on Long Island, and ultimately more evenly distributed within the taxing jurisdictions currently served by NYAW.

Municipalization isn't an easy or quick process under any of the scenarios analyzed and determined to be feasible herein. There are complex legislative, legal and financing issues that need to work their way through the legislature, the Public Service Commission (Commission or PSC), local government bodies, and potentially the courts before any form of municipalization will take effect, and its benefits realized.

Time is of the essence: not only is there presently before the Commission an application to allow NYAW to be purchased by another investor-owned utility (IOU), Liberty Utilities (Eastern Water Holdings) Corp. (Liberty), but on May 1, 2021 NYAW's rates are scheduled to rise by as much as twenty-six percent (26%). Legislative changes to current property tax rates that would be similar under a municipalization can be accomplished soon enough to avoid the rate increase. It is therefore recommended that steps be taken immediately to obtain the biggest consumer benefit of municipalization, which is a reduction in NYAW's property tax expenses.

Analysis

Ninety-six percent (96%) of New Yorkers receive water service from privately owned wells or by some type of government entity, whether that be a city, town, village, water authority or water district. Only four percent (4%) of New Yorkers receive their water service from an IOU regulated by the Commission. Public water systems run by municipalities or authorities have significant cost advantages over IOUs, particularly with regards to being exempt from federal, state, and local taxes. This differential is particularly acute in Nassau County, where water property taxes are two-to-three times more than the water utility property taxes in upstate New York.[1]

NYAW is a regulated IOU that provides service to approximately 124,000 customers in Nassau County. Property and income taxes combined account for thirty eight percent (38%) to sixty percent (60%) of the water bill for NYAW customers. For the Sea Cliff service territory, taxes make up more costs than the combined costs of actually running the company and delivering water to people's homes and businesses, including labor, administrative services, rents, and other necessary investments. This

[1] The average property tax as a percentage of total revenue is 14% for Suez Water New York (SWNY) Westchester and Owego-Nichols rate districts.

cost differential has led to a very large disparity in water bills between NYAW customers and the rest of Nassau County's residents who receive their water from a government entity. The discrepancy in rates was exacerbated in the 2017 Rate Order,[2] which approved significant necessary capital investments that would in turn increase the assessment values of NYAW's assets over time, thereby increasing the amount NYAW pays in property taxes – all of which, by law, is passed on to its customers.

Due to the financial impact the COVID-19 pandemic has had on the citizens in Nassau County, the Commission delayed the 2020 approved rate increases, which are now scheduled to go into effect on May 1, 2021. The rate increase will be approximately twenty-six percent (26%) on top of already high rates. This pending large rate increase creates an opportunity for the State and local governments to come together and devise an immediate plan to reduce property taxes and a longer-term plan to municipalize NYAW, in whole or in part, to solve the problem of high water rates for NYAW customers once and for all. With municipal bond interest rates near an all-time low, this would be a favorable time to municipalize the water company.

Property Tax Relief

The immediate first step would be to reduce or eliminate local property taxes on water companies in Nassau County. This tax relief could be phased-in over a period of three to five years in order to moderate the budget impacts of the lost tax revenues to local taxing jurisdictions — towns, villages, and school districts. Property tax relief, together with Commission action, could be structured in such a way as to mitigate the expected rate increase on May 1, 2021. The tax relief solution is not dependent upon, nor does it impact, the longer-term solution of municipalizing NYAW.

[2] Case 16-W-0259, New York American Water Company, Inc. – Rates, Order Establishing Rates for Water Service (issued May 18, 2017) (2017 Rate Order).

It gives customers immediate rate relief while details and organization of municipalization are worked out. Once municipalization occurs, all taxes in the water bill would be substantially reduced; the tax break just gets customers rate relief sooner.

Municipalization

The primary concern of the Commission, whenever a change in ownership is contemplated, is whether the acquiring entity has the technical, managerial, and financial expertise to operate a water company. It is important to note that under any scenario where NYAW's assets are being acquired by an authority or municipality, a purchase price will either be negotiated with NYAW or determined by a court in an eminent domain proceeding. The fair market value is the valuation method to determine the acquisition price, whether it is negotiated or condemned. It is important to understand that the Commission does not control the sale price.

The Village of Sea Cliff and the Massapequa Water District (MWD) have each performed a valuation study[3] and have expressed interest in municipalizing their local service territories. These studies showed, and this analysis concurs, that significant rate savings could be achieved through municipalization. Any examination into the best way to municipalize NYAW should include an analysis of allowing these entities to take over their respective parts of the territory. These two territories are located in the Town of Oyster Bay (Oyster Bay) and represent approximately ten percent (10%) of NYAW's customers in Nassau County.

The other ninety percent (90%) of NYAW customers in Nassau County are located in the Town of Hempstead (Town). The Town operates six water districts within

[3] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Acquisition, Sea Cliff Feasibility Study (filed December 31, 2020) and Massapequa Study (filed July 23, 2020).

its borders and it also had a valuation study performed on the feasibility of municipalization. The Town, however, did not submit the study in the Commission's Liberty acquisition proceeding. Although the Town's study showed that significant rate savings could be achieved through municipalization, the Town's Department of Water had significant reservations about being the entity that municipalizes that section of NYAW's service territory. Notably, it has particular concerns with the amount of debt it would have to issue to finance an acquisition.

We analyzed five different scenarios related to tax reductions including exempting NYAW from special franchise (SF) property taxes and changing SF property taxes from Class 3 to Class 4, the proposed acquisition by Liberty with Department staff's proposed public benefit adjustment (PBA), and municipalization; compared to the base case scenario of American Water Works Company, Inc. (AWW) retaining ownership of NYAW. The table below shows the estimated savings on average, per customer, compared to the base case scenario.

Table 1. Revenue Requirement Scenarios and Average Customer Savings

Revenue Requirement Scenarios	Projected Revenues ($)	Average Revenue per Customer ($)	Savings per Customer from Baseline ($)	Savings per Customer from Baseline w/o Property Tax Savings ($)
Base Scenario - Forecasted NYAW Scenario*	146,296,200	1,167	N/A	N/A
Liberty Takeover with Staff Proposed PBA	140,424,780	1,120	(47)	N/A
Property Tax Reduction -Exempt Taxation of SF Property	115,422,203	921	(246)	**
Property Tax Reduction - Class 3 to Class 4	134,491,437	1,073	(94)	***
Liberty Takeover with PBA and Exempt Taxation of SF Property	109,500,236	874	(294)	N/A
Municipalization Scenario*	90,457,015	734	(433)	(67)

* The municipalization scenario assumes a $608 million base purchase price in the model. This is a conservative estimate for modeling purposes and not an endorsement of what the actual price should be.

** The savings from exempting taxation of SF property will be made up with higher taxes on all four classes of taxpayers

*** The savings from shifting from Class 3 to Class 4 will be made up with higher taxes on all four classes of taxpayers.

As seen from the table above, significant rate savings can be achieved almost immediately with a property tax law change exempting water company special franchise assets from property taxes in counties with a four-class tax system. This is

referred to as Path T in the report. The estimated savings from this tax law change is approximately $246 per customer, per year, once it is fully phased-in. Under the current state law, the lost revenue related to these tax savings would be made up by all four classes of taxpayers. However, the proposed tax law change could limit the allocation of the lost NYAW SF property tax revenue within Class 3. This tax law change would begin to put NYAW customers on an equal tax footing as their neighbors with public water.

Beyond the tax law change, we estimate that an additional $187 per customer per year, on average, could be achieved through municipalization.

Paths to Reform

The report outlines different potential paths that the State, together with the local governments, can take to reduce water rates for NYAW's Nassau County ratepayers, both through property tax reform and municipalization, either alone or in combination:

Path A (Countywide Water Authority): Path A would create one water authority whose immediate mission would be to acquire NYAW's Nassau County service territory, and either operate it directly or contract with an existing public water services provider to operate in all or part of the service territory . Longer term, where it is efficient and makes economic sense to do so, the authority would have the ability to expand if other water authorities or water districts were interested in merging their operations.

The new water authority may also secure, through a contract, an existing water provider to run the system, such as the Suffolk County Water Authority or the Hempstead Department of Water. The contract could be a long term operating contract, which is a common structure used by the Suffolk County

Water Authority, or the operating contract could be for just a few years in order to give the newly created authority time to develop the needed expertise.

The advantage of this approach is that a large water authority could obtain synergy savings due to the size of its operations. It also offers a future long-term solution that could evolve to a truly countywide system that could reduce costs for all participating systems through synergy savings. This approach has the possibility of being the least cost option for all Nassau County residents beyond the NYAW service territory.

Path B (Adjacent Water District Takeover): Path B would be for the different parts of NYAW to be acquired by existing water districts that are adjacent to the service territory – essentially merging districts. In order to not harm their existing customer base, the territory that is taken over may need to be a separate rate district, at least for a period of time until the underlying cost of service between the two territories eventually converge, which could take an extended amount of time.

Rates would be set by the acquiring entity and they would be fully compensated in rates for all costs to operate the system, including the capital costs associated with purchasing NYAW. In the end, this should not incrementally cost the acquiring entity anything that is not recoverable in rates. We estimate that those rates would be significantly less than NYAW's rates today, primarily due to the tax savings.

The advantages of Path B include built-in expertise at the adjacent water districts and potential for significant synergy savings due to the larger operations (e.g., spreading fixed costs over a larger customer base), benefitting both the newly acquired customers and the original customer base. This solution also offers local control below the county level.

Path C (Hybrid Approach): Path C allows for the possibility that there may be adjacent water systems that have the interest and capabilities to acquire parts of NYAW's service territory, and there may not be a viable solution in other parts of the service territory. In this situation, the adjacent water districts could acquire their neighboring service territory, and a new water authority could be created for the parts of the service territory with no other viable alternative. This path has the most flexibility to allow for different viable solutions for different parts of the service territory.

This form of municipalization can be accomplished while property tax reform is enacted to provide immediate relief.

Path D (Property Tax Reform Only): Path D assumes that Liberty is approved to acquire parts of the service territory where there is not an entity willing and able to acquire and operate a water system in parts of NYAW's existing territory. This scenario also assumes that a law is passed exempting water utilities in Nassau County from special franchise property taxes. A reduction in property tax expense will provide customers with significant rate relief, on top of anything that is negotiated in the current acquisition proceeding. This option also relieves the State from forming a new large water authority and issuing a significant amount of debt in order to acquire and operate the water system.

BACKGROUND

Water District History

NYAW provides residential and non-residential metered and other water services, as well as public and private fire protection services, to approximately 125,350 customers in parts of Nassau, Putnam, Sullivan, Ulster, Washington and Westchester counties, including approximately 124,000 customers in three distinct areas of Nassau County: the Sea Cliff area (4,464 customers, including 99 in Mill Neck Estates); the East Massapequa area (5,359 customers); and the Southern Nassau area (113,345 customers).

The rest of Nassau County is served by dozens of different public water service systems, including municipalities, water districts, and authorities. (See map Appendix C.) The old New York Water Service Company (currently the Merrick district of NYAW) was founded in 1888, and the original village water works in Sea Cliff was built in 1873.

NYAW came to operate its Nassau County system in 1999, when its parent company, AWW, acquired National Enterprises Inc. (NEI), the parent company of Continental Water Company, which in turn owned Long Island Water Corporation (LIWC), (d/b/a Long Island American Water or LIAW), a regulated New York utility, serving approximately 74,000 customers in the southwest portion of Nassau County.

Thirteen years later, in 2012, AWW gained almost all of the remainder of the Nassau County customers it serves today by acquiring Aqua New York Inc. (Aqua NY)[4] which through its two wholly owned subsidiaries served approximately 45,000 customers in the East Massapequa area and in Central/Southern Nassau County (New

[4] Aqua New York, Inc. was later acquired by NYAW. See Case 11-W-0472, Aqua New York, Inc. et al. – Transfer, Order Approving Stock Acquisition (issued April 20, 2012).

York Water Service Corporation or NYWS), and approximately 4,300 customers in the Sea Cliff area (Aquarion Water Company of Sea Cliff, Inc.).

Prior to NYAW's current rate plan, which commenced on April 1, 2017, each of the LIAW, NYWS, and Sea Cliff service territories had its own rate plan covering different terms. For rate purposes, NYAW's service territory is currently divided into two districts, (1) Service Area 1, or SA1, which covers its upstate customers, Mill Neck Estates in Northeast Nassau County, and Southwest Nassau County, including all or parts of the Town of Hempstead and villages of Atlantic Beach, Cedarhurst, East Rockaway, Hewlett Bay Park, Hewlett Harbor, Hewlett Neck, Island Park, Lawrence, Lynbrook, Malverne, Valley Stream, and Woodsburgh, and (2) Service Area 2, or SA2, which covers Sea Cliff in Northern Nassau County, and Southeastern Nassau County, including all or parts of the villages of Bellmore, Levittown, Massapequa, Merrick, North Bellmore, North Merrick, Seaford, and Wantagh. NYAW refers to the south shore portion of SA1 as Lynbrook Rate District, and the south shore portion of SA2 as the Merrick Rate District.

Rate History

Prior to the current rate plan, the rates for the Lynbrook Rate District were authorized by the Commission in 2012.[5] The previous rates for the Merrick district were set in 2010[6] and for the Sea Cliff district in 2003,[7] while under the ownership of Aqua New York, Inc. In the 2017 Rate Order, the Commission approved a four year rate plan

[5] Case 11-W-0200, Long Island Water Corporation d/b/a Long Island American Water – Rates, Order Determining Revenue Requirement and Rate Design (issued March 20, 2012).

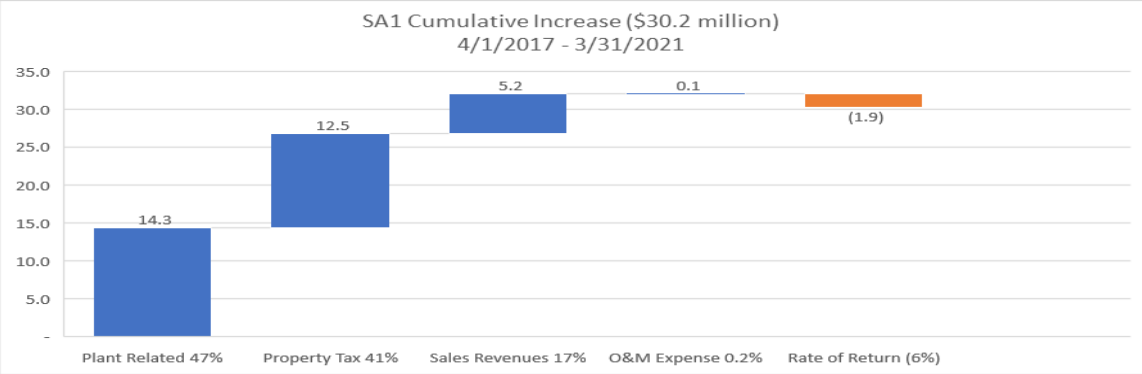
[6] Case 09-W-0237, New York Water Service Corporation – Rates, Order Establishing Three-Year Rate Plan (Issued January 29, 2010).

[7] Case 02-W-1564, Sea Cliff Water Company – Rates, Order Establishing Rates and Authorizing Surcharge Mechanism, Name Change, and Other Tariff Revisions (issued October 22, 2003).

from April 1, 2017 through March 31, 2021, which increased the SA1 base revenues by a cumulative total of $29.3 million, or 58%, and increased the SA2 base revenues by a cumulative total of $11.8 million, or 39%[8], over the term of the rate plan.[9]

The major drivers of the 2017 rate increase for both SA1 and SA2 are related to plant additions, property taxes and declining sales due to the conservation rates. The increase in property taxes is also related to the plant additions because the assessment values of the plant assets directly affect the property tax levy. The tables below show the major drivers of the base rate increases in NYAW's current rate plan. The net plant and property taxes combined contribute to eighty eight percent (88%) of the base rate increase for SA1. The combined net plant and property taxes contributed to one hundred percent (100%) of the base rate increase for SA2.

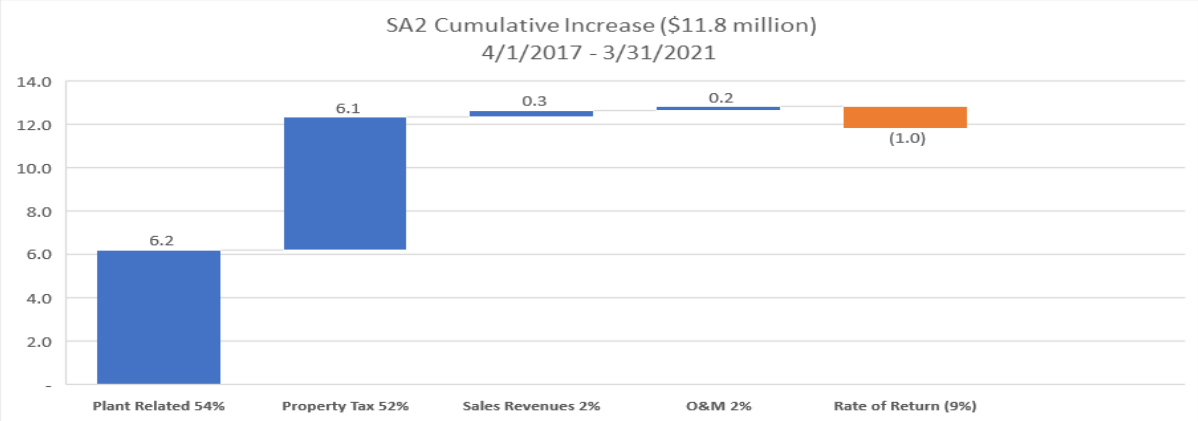
Chart 1. NYAW SA1 Base Rate Increase Drivers (Case 16-W-0259)



[8] The base rate increases reflect the previous System Improvement Charge (SIC) surcharge and property tax reconciliation being rolled into base rates. The actual customer bill impact is about 20% for SA1 and 23% for SA2 over the term of the four-year rate plan.

[9] A one-year stay-out provision was added to NYAW four-year rate plan to restrict NYAW from filing a new base rate increase to go into effect before April 1, 2022. See Case 16-W-0259, New York American Water Company, Inc. – Rates, Order Postponing the Levelization Surcharge and Authorizing Amended System Improvement Charge Projects (issued February 6, 2020) (February 2020 Order).

Chart 2. NYAW SA2 Base Rate Increase Drivers (16-W-0259)



Capital Investments

As a utility company, NYAW makes capital investments to maintain or improve utility service to its customers. NYAW's capital investments can be categorized broadly into major investment projects and ongoing/recurring projects. Major investment projects are infrequent projects that require significant investments such as a new iron removal facility, caustic conversion, water main replacement caused by a municipal project, storage tank rehabilitation, and Advanced Metering Infrastructure (AMI). Ongoing/recurring projects are consistent investments made to maintain the system, such as purchasing Supervisory Control and Data Acquisition (SCADA) equipment and systems, pump system upgrades, new main and service pipe installations, purchasing new tools and equipment, and hydrant replacement.

Over a five-year period from 2011 to 2015, capital investments, on average, have been $27.59 million annually. For the five year period from 2016 to 2020, NYAW estimated it would make, on average, $43.90 million annually in capital investments with investment levels increasing, on average, by approximately sixty percent (60%) over the recent five year period, and from 2021 to 2023, NYAW estimates

to make, on average, $52.1 million annually in capital investments, many driven by the need to meet drinking water standards, support conservation efforts, and replacement or installation of new water system facilities to allow the Company to serve its customers. Below are descriptions of some of NYAW's major capital investments and the reasons for such projects.

- **Iron Removal Facility** - Located in South Hempstead, Plant 18 recorded iron levels in water near or above the 1.5 mg/L maximum contaminant levels (MCL) set by the Department of Health (DOH). To be in compliance with DOH regulations, NYAW designed and constructed a 4-million-gallon-per-day iron removal facility. The project included removal of existing facilities and construction of a new treatment facilities with a 160,000-gallon bolted steel backwash tank and natural gas generator.

- **Caustic Conversion** - Involves converting facilities that utilize lime to adjust pH levels in the raw water to the use of sodium hydroxide. The raw water drawn from the stations in the Lynbrook district service area is considered highly aggressive and corrosive with low pH, low alkalinity, and low hardness. Historically, NYAW adjusted pH level by adding lime to reduce the corrosivity of the water. The lime systems are very labor intensive to operate, involves the use of about 1,000 pounds of lime per day for a typical treatment plant with two, 2 million gallon per day wells, and the lime systems are reaching the end of their useful lives and need extensive repairs and replacement. Utilizing sodium hydroxide increases labor efficiency and is a less injury-prone working process for NYAW's employees. Construction includes the demolition, removal, cleaning, replacement, and retrofitting of the various facilities involved in the treatment process.
- **Water Main Replacement -** with Municipal Paving Projects - A large number of mains in Lynbrook, Merrick and Sea Cliff systems are unlined cast iron or galvanized mains. Much of the pre-1940s unlined cast iron and galvanized pipes are no longer delivering the necessary level of service in terms of water quality and hydraulic performance because they have reached the end of their useful life. Coordination of main replacement with municipality road work presents significant cost savings and efficiencies, often with savings upwards of thirty percent (30%).
- **Storage Tank Rehabilitation** - Involved replacing the interior tank liners on both storage tanks at Plant 13, resurfacing the outside walls to prevent leakage,

replacing more than half of the existing brick retainer wall that encloses both tanks, and upgrading the electrical and pumping equipment.

- **Advanced Metering Infrastructure** - Includes installing over 125,500 AMI meters with third-party cellular communication infrastructure. AMI system will deliver access to high-use water alerts, continuous flow alerts, near real-time access to account information, comparative analysis, conservation and bill reducing tips and accurate meter consumption data.

Appendix A lists capital projects NYAW plans to complete during the years of 2021 through 2023.

Guiding Principles

In order to evaluate and analyze the different possible scenarios, all of the proposed solutions had to meet five (5) guiding principles:

1) Maintaining the Safety of the Water Supply;
2) Lowering Rates Without Diminishing Service;
3) Confronting the Property Tax Problem;
4) Maximizing Efficiencies Where Possible; and
5) Addressing Accountability, Transparency and Local Leadership.

1. Maintaining the Safety of the Water Supply

Safe water supply is vital to the health and overall well-being of our lives. As a result, Congress passed the original Safe Drinking Water Act (SDWA) in 1974. The current SDWA authorizes the United States Environmental Protection Agency (EPA) to set national standards that restrict contaminants in drinking water and its sources, addresses the training needs of water system operators, provides funding for water system improvements, and supports the sharing of water quality information publicly.[10] The EPA established two groups of national standards: the National Primary Drinking

[10] https://www.epa.gov/sdwa

The SDWA does not regulate private wells that serve fewer than 25 individuals.

Water Regulations (primary standards) and the National Secondary Drinking Water Regulations (secondary standards).[11] The primary standards are mandated and include maximum contaminant levels (MCL) for drinking water contaminants that present a risk to human health. The secondary standards are not mandated and include MCL guidelines for certain contaminants in drinking water to manage water aesthetics such as the water's taste, color, and odor. In New York, the State and county level Department of Health help to regulate drinking water by making sure water systems are tested for contaminants, reviewing plans for water system improvements, conducting on-site inspections and sanitary surveys, providing training and technical assistance and taking action against water systems not meeting, at minimum, EPA's primary standards. The Department and Commission support the State and County DOH in their effort to make sure that Commission regulated water utilities provide safe drinking water through the review and authorization of rate recovery to support the operation of the water system and capital investments, the authorization of a temporary operator if the water system is in very bad condition, and other general oversight of the utilities.

2. Lowering Rates Without Diminishing Service

Under Public Service Law (PSL) §89-b, the Commission is charged with ensuring safe and adequate service at just and reasonable rates. Established rates are based on 1) revenue requirement determined to be needed by a utility over the rate period to cover the cost of providing service and accounts for costs such as operating expenses, taxes, and return on investments. Revenue requirements are set based on

[11] https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations

https://www.epa.gov/sdwa/secondary-drinking-water-standards-guidance-nuisance-chemicals

the cost of providing service; 2) revenue allocation that determines the amount of revenue requirement that will be recovered from each of the various customer types such as residential, commercial, and industrial; and, 3) rate design that specifies how revenue requirement will be collected from customers such as volumetric rates and fixed charges. When considering rates, the Commission considers the costs of providing service estimated by the utilities, supporting information for such costs, and the overall impact changes in rates would have on customers. While customers have a strong desire to minimize their utility rates due to valid concerns of affordability, rates that are set too low over an extended period could result in significant degradation of service to customers and the operation of the utility system to the point of risking the health and safety of customers, utility employees, and the general public. The Commission examines what changes can be made to the costs of service, revenue allocation, and rate design to balance the needs of providing safe and adequate service with appropriate rates. The ability to reduce the costs of providing services is a major way to lower rates. However, this effort is hampered when there are high costs to be recovered through rates that are outside the control of the utility and the Commission, such as property taxes, as illustrated above in Charts 1 and 2. These costs put upward pressure on rates charged to customers and limits the ability to allocate funding to system operation and improvements needed for quality service and to meet State and County DOH standards.

3. Confronting the Property Tax Problem

Regulated utilities are entitled to a reasonable opportunity to recover their prudently incurred costs for providing utility services. This principle was established in the landmark U.S. Supreme Court case, Federal Power Commission et al. v. Hope

Natural Gas Co.[12] Property taxes are a legitimate cost of doing business, and it would be a violation of the Supreme Court ruling if utility companies were deprived recovery of this prudently incurred cost. Therefore, a utility's prudently incurred property taxes are passed on entirely to its ratepayers.

The current rate plan incents NYAW to control property tax expenses by disallowing ten percent (10%) to fifteen percent (15%) of the cost recovery for actual property taxes over the amount forecasted in rates. NYAW is also allowed to retain ten percent (10%) to fifteen percent (15%) of property taxes below the forecast amount, if it can show the reduction in property taxes were due to its efforts.[13] There is also a Commission general policy to allow a utility company to retain a portion of property tax refunds resulting from the utility's efforts as an incentive to challenge unjust property tax levies.

NYAW's ratepayers in Nassau County have been frustrated over their high water bills, compared with the residents receiving water services from the public water systems. The major drivers of the higher water bills are property taxes, which constitute more than thirty percent (30%) of the water bills for customers in the Lynbrook service area (Southwest Nassau County) and more than fifty percent (50%) for customers in the Sea Cliff service area (Northern Nassau County). The charts, shown below, depict the components of the SA1 and SA2 Base Rates.

---

[12] Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944).

[13] The Commission adopted the Joint Proposal with modifications in the 2017 Rate Order. The Joint Proposal establishing the current rate plan is the result of a negotiated settlement in which NYAW agreed to less than full compensation for property taxes, if actual property taxes exceed the target levels set in rates.

Chart 3. Components of NYAW Customer Bills – SA1

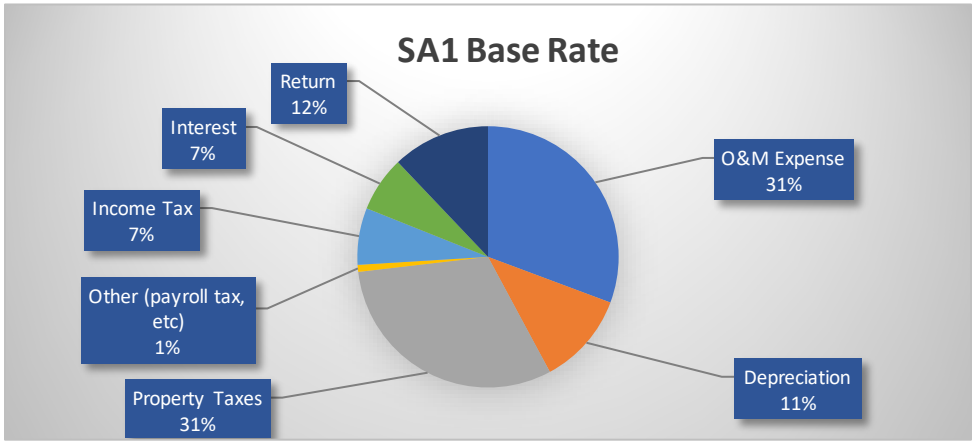


Chart 4. Components of NYAW Customer Bills – SA2 Merrick

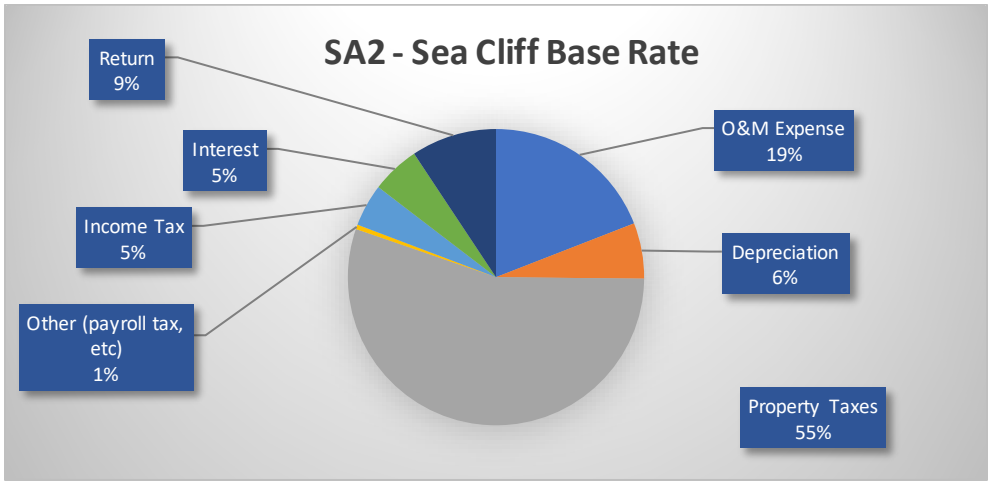
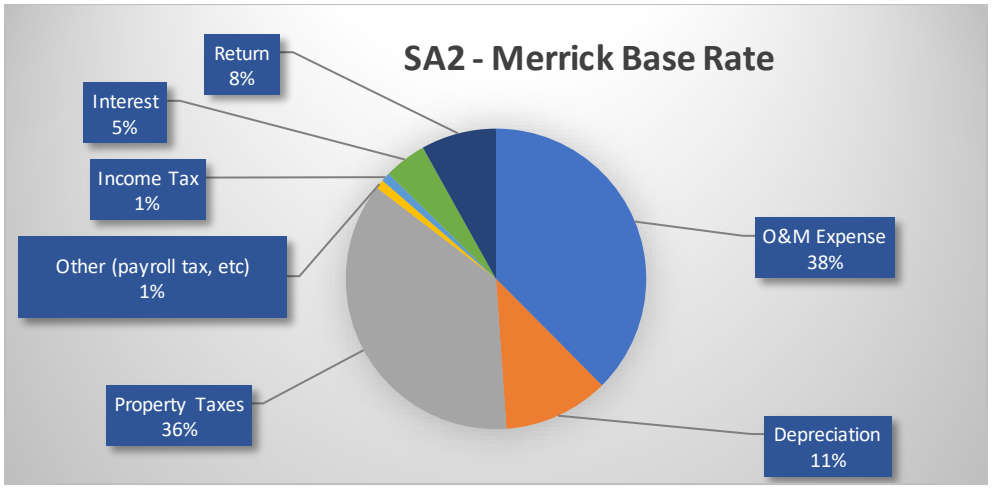


Chart 5. Components of NYAW Customer Bills – SA2 Sea Cliff



The percentage of NYAW's bills related to property tax is approximately two-to-three times the average of other upstate water utilities, when we compare the thirty-one percent (31%) in SA1 and over fifty percent (50%) in the Sea Cliff district within SA2 with the fourteen percent (14%) average of SWNY Westchester and Owego-Nichols rate districts. Ninety-six percent (96%) of New Yorkers receive their water service from a government entity that is exempt from paying property taxes. It is inequitable to tax this small minority of the State through their water bills while exempting the rest of the State. In the immediate term, the problem of NYAW's high rates can't be solved without solving the property tax problem.

For those jurisdictions severely impacted by municipalization or a reduction in property tax revenue due to a change in law, it is recommended that a temporary Tax Equivalent Payment (TEP) could be made and phased out over a three year period in order to smooth the transition. TEP is similar to a Payment in Lieu of Taxes (PILOT), but PILOTs are more formal and are often included as part of an Industrial Development Agency agreement. A TEP is a contractual arrangement between two parties. Any TEP arrangement should be temporary, otherwise the high rates caused by the high property tax system would not get resolved.

4. Maximizing Efficiencies Where Possible

The most critical concern when approving the sale of the utility is to ensure that the acquiring entity has the technical, managerial, and financial expertise to operate a water system. Once those basic operating capabilities can be met, the proposed solution should maximize efficiencies.

Currently there are over 30 different water districts and water authorities operating in Nassau County, with separate billing systems, call-centers, management

and supervision, design and construction teams, operations and maintenance personnel, and office and administrative support employees. There are potential synergy savings and efficiencies that could be achieved through consolidation of water services in the county. Savings related to consolidation could be achieved by avoiding duplicative functions and spreading fixed costs over a larger customer base.

Any potential solution should take into consideration potential synergy savings that could be achieved. This might be achieved by NYAW being acquired by existing water districts in the county, or by existing water districts operating the NYAW system assets acquired by a newly established public authority.

5. Accountability, Transparency and Local Leadership

If a new water authority is established by the Legislature to take over and operate all or part of NYAW's service territory, members of its Board of Directors would be appointed according to the establishing statute, which allows for giving local elected officials or governing bodies a role in selecting Board members. It is likely that any newly created authority will have similar provisions to ensure that control of the authority remains local. If a town or village forms a water district, the process requires public notice and meetings, and the records of the municipal system would be subject to public disclosure.

Legal Framework for Alternative Ownership Options

Forming an Authority

If it is determined that a public authority should acquire and operate all or part of NYAW's system, the legislature would have to pass a law, that is then signed by the Governor, establishing a new authority detailing its territory and the actions it is

authorized to take to carry out its mission. An authority could be established to assume ownership and operation of all or parts of NYAW's assets in Nassau County, or an existing authority could be expanded to do so.

For example, the Water Authority of Western Nassau Country was established by an act of the legislature in 1990, adding Title 8-C to the Public Authorities Law, to assume ownership and operation of the old NYWS system in Southeast Nassau County, and provided for a nine-member board of directors appointed by the Towns of Hempstead and North Hempstead, and the villages of Bellerose, Floral Park, Garden City, New Hyde Park, South Floral Park and Stewart Manor.

Expanding an existing authority's jurisdiction to include NYAW's service territory would require legislation detailing the expansion of the authority's jurisdiction.

Assuming authorizing legislation is enacted, there are multiple steps that must be taken before acquisition of NYAW's system could be considered. Board members would have to be appointed and staff hired to ensure that the authority has the ability to operate the water system. In addition, financing would have to be arranged before acquisition talks could begin. The newly created public water authority would need additional cash on hand to hire employees and secure necessary supplies to operate the acquired water system.

Forming a Water District

Under New York Town Law §209-q, a municipality wishing to form a water district must first adopt a resolution to allocate funds for a general plan, report and map, which must detail the boundaries of the planned district, as well as a general design of the systems and the proposed method of operation. Next, the municipality must hold a hearing at which it adopts an order detailing the boundaries of the proposed district, the maximum amount to be spent on establishing the district, the

methods of apportioning costs and financing, and the previously created report and plan. A public hearing must be held, after notice is published in a local newspaper, after the adoption to allow for comments from the public before the district is established.

Merging NYAW's Assets into an Existing Water District

The Massapequa Water District exists in the Town of Oyster Bay. For the MWD to acquire NYAW's Massapequa assets, The Town Board would have to adopt a resolution allocating funds to develop a general plan, report and map for the acquisition of NYAW's system, which is filed with the town clerk when complete. The Town of Oyster Bay would then adopt an order reciting the description on boundaries of the acquisition, any improvements proposed, the amount proposed for the acquisition, and estimated costs of service. A hearing would then be held on the proposed acquisition. After the hearing, the Town may pass a resolution in favor of the plan. Following that a permissive referendum may be held if five percent (5%) of the owners of taxable properties in the service area to be acquired petition for the referendum. The acquisition will be approved if it receives the votes of a majority of the property owners. If the referendum passes a certificate stating that result is filed with the County Clerk. If the acquisition is to be financed by debt, the State Comptroller's approval will be also be required before the acquisition can occur.

Commission Approval and Public Interest Standard

Public Service Law requires that before transferring ownership stock of a waterworks corporation the Commission must first determine that the transaction is in the public interest. Pursuant to PSL § 89-h, "[n]o consent shall be given by the commission to the acquisition of any stock in accordance with this section unless it shall

have been shown that such acquisition is in the public interest."[14] Any proposed acquisition by a municipality would also need to be approved by the Commission and meet the public interest standard required by law.

Summary of the Acquisition Proposal and Municipal Studies

Proposed Liberty Acquisition of NYAW (Case 20-W-0102)[15]

On February 28, 2020, NYAW together with its parent company AWW, and Liberty filed a petition seeking Commission approval to transfer all NYAW's outstanding stock to Liberty for $608 million. The petition states that once the acquisition is complete, Liberty would commit to a base rate freeze through March 31, 2023, refinance NYAW long-term debt at a lower interest rate, commit to enhanced local management, provide enhanced customer service, and retain all current employees.[16]

Staff filed testimony in this proceeding on October 25, 2020, Staff argued its position that the sales transaction (Transaction) as proposed in the filed petition did not meet the public interest standard required by PSL §89-h. In order to be able to meet the public interest standard, Staff proposed that the Transaction should be modified to include a $23.5 million public benefit adjustment (PBA) for ratepayers in addition to the proposed base rate freeze, which Staff valued at roughly $6 million. Staff's filed testimony also recommended a number of other modifications to protect ratepayer interests discussed in Appendix E.

---

[14] PSL § 89-h(5).

[15] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer (commenced February 28, 2020).

[16] Id.

Municipal Studies

There have been three recent studies completed in 2020: the East Massapequa Water System Valuation Study-Final (Massapequa Study); the Sea Cliff Water System Valuation and Feasibility Study (Sea Cliff Study); and the Hempstead Water Systems Owned by NYAWC Water System Valuation and Feasibility Study (Hempstead Study), analyzing municipalization for NYAW's systems in the Village of Massapequa, the service territory in and around the Village of Sea Cliff and the Town of Hempstead. Each study was performed by Walden Environmental Engineering (Walden). There is also a 2014 municipalization study performed by George E. Sansoucy, PE, LLC, on behalf of the Water Authority of Southeast Nassau County (WASENC).

Walden Environmental Engineering Studies

Each of the three Walden studies was based on a review of available information provided by the respective municipality, regulatory agencies, historical review, site visits, review of the facilities and discussions with the municipalities and other contracted resources.

Each study included a determination of the value of the portion of NYAW's water system for which the respective study was performed by using three different, industry standard methods: 1) the Market (Comparative Sales) Method; 2) the Income Method; and 3) the Asset (Cost) Method. The Market Method produces a valuation estimate based on a comparative assessment of arm's length, locally relevant system purchases and other key performance comparisons which can be adjusted to reflect system attributes and deficiencies to account for differences in the transactions.

The Income Method valuation is based on the estimated earnings potential for the respective water systems and assumes that the municipality is willing

to pay a price commensurate with the present value of the future benefits. A discounted cash-flow analysis was used as the basis for the Income Method using NYAW's billing and operation and maintenance expenses for 2019 allocated to the respective water systems based on flow and number of customers.

For the Asset Method, which involves estimating the current cost to design and build new facilities similar to the existing systems, Walden investigated the total replacement values for the water system assets less accumulated depreciation. The methods did not include components of severance damages nor the differentiation in values due to Contributions in Aid of Construction or Advances in Aid of Construction for any of the three studies, due to a lack of relevant information from NYAW. A weighting was then assigned to each of the three methods to determine a Weighted Average Value, with the Market Method being assigned a heavier weighting to recognize that there is a current, publicly disclosed offer proposed for the sale of the water system to Liberty Utilities.

Finally, the Sea Cliff and Hempstead Studies both included a section regarding the feasibility of each municipality's purchase of their respective portions of the water system which was evaluated using a public interest standard (similar to what is applied by the staff at the Commission when reviewing proposed mergers or acquisitions of utilities within their jurisdiction), and sought to identify tangible and intangible positive benefits to customers of the respective water systems. The studies stated that the primary tool to determine feasibility is a comparison of costs related to the existing ownership and operations of the water systems and certain assumptions, adjustments and elimination of those same costs if owned and operated by the municipalities. Both studies noted that a key factor in the comparison was property taxes. NYAW pays property taxes which are passed on to their customers, while the municipality would not be assessed property taxes due to its public/non-profit

ownership status. Since the amount of tax that would no longer be collected from the water systems would remain in the overall tax levy and be assigned to the tax rolls, the municipalities could agree to a TEP to pay the same, similar, lower or other amounts to the same taxing jurisdictions through an agreement rather than an assessment.

Both the Sea Cliff and Hempstead studies found there to be tangible benefits to customers in the form of rate relief, which is discussed in more detail below. Additionally, both studies noted several intangible benefits that could be realized with municipal ownership of the water systems, including: the approach to ownership would not be structured with "Goodwill;" municipal ownership and rates would continue to be subject to oversight, elected officials with appointing authority, public officers and open meetings law, auditing regarding co-mingling of funds. Further, municipal ownership and operations are expected to result in synergy savings for the customers of the respective water systems; and, the ownership will establish an electable framework of leadership and control of the respective water systems that is entirely local and accountable to the customers.

Massapequa Study

The MWD retained Walden in early 2020 to perform a study of acquiring NYAW's East Massapequa water system located within the hamlet of Massapequa, in the Southern part of the Town of Oyster Bay in Southeastern Nassau County which is currently owned by NYAW. The East Massapequa water system is comprised of the Massapequa and the Massapequa Park areas of NYAW's Service Area 2 and had an average of 5,359 customers in 2019. The East Massapequa Study determined the value of the East Massapequa water system to be $21,600,000. A discussion of the feasibility of the purchase of the East Massapequa Water System by the MWD was not included in the Massapequa Study.

Included with the Massapequa Study was a letter from the Superintendent of the MWD, which provided more information regarding the feasibility of acquiring the East Massapequa Water System. The MWD letter stated that it is a Commissioner elected special district accountable to the public it serves and that its jurisdictional boundaries physically separate the East Massapequa Water System from the main portion of NYAW's service territory. The MWD proposed to provide service to the East Massapequa area, in part through its existing system, augmented by the acquisition of NYAW's water supply assets in the East Massapequa Water System. Additionally, there are already several distribution connections between NYAW and MWD that would only need to be flushed and opened for a seamless transition.

The MWD stated that adding the East Massapequa Water System customers to its billing and mapping system would not be difficult. The MWD is a New York State (NYS) Special Water District and, therefore, does not pay taxes, does not add profit to its system improvement expenses, and qualifies to apply for grant money through NYS. Although it does not pay taxes, the MWD did consider the potential loss of tax revenue paid by NYAW in its feasibility evaluation and added those costs to its cost comparison for MWD versus NYAW rates.

The MWD provided a report on the savings for select NYAW customers who voluntarily provided their bills and determined that, although the savings will vary based on water usage and taxable home valuation, a clear savings by the vast majority of consumers could be realized by the municipalization of the East Massapequa Water System. The savings report shows a number of assumptions including the cost to acquire the East Massapequa Water System in addition to the estimated purchase price (transaction costs, infrastructure improvements and a 5% contingency) for a total amount to be borrowed of $26 million and a bond repayment calculated based on a 30 year term with a 3.5% interest rate. Based on these assumptions, and the data

voluntarily provided by twenty three (23) NYAW customers, the savings report showed an average annual savings of $375.29 per customer. As such, the MWD stated that it was prepared to negotiate with NYAW immediately, close on a sale, and begin operation by January 1, 2021.

Sea Cliff Study

The Village of Sea Cliff retained Walden in August 2020 to perform a feasibility study of acquiring NYAW's Sea Cliff Water System that is located within the Village of Sea Cliff in the Town of Oyster Bay, Nassau County. The Sea Cliff Water System is referred to as the "Sea Cliff District" area of NYAW's Service Area 2 and had an average of 4,365 customers in 2019.

In determining feasibility, the Sea Cliff Study excluded both property taxes and TEP payments under municipal ownership in its analysis. The analysis was also performed for two scenarios: Scenario A reflected an interest rate for debt equal to the four percent (4%) weighted average cost of capital, and Scenario B was calculated using a two percent (2%) interest rate to represent rates on municipal borrowing at the time of the study. The Study found that under municipal ownership customers would see savings from a low of $430, or forty four percent (44%), per year to a high of $492, or fifty percent (50%), per year compared to the average NYAW customer bill, based on total operating revenue divided by total customers. Additionally, according to the Sea Cliff Study, the Village of Sea Cliff's approach to the operations and ownership would not rely on regionalized customer service and billing operations, but instead, local offices, in-person billing and payment options, public comment opportunities at local meetings would provide for more and direct routes for customers to address questions, comments, or concerns.

In addition to the Sea Cliff Study, the Village of Sea Cliff provided additional comments. In their comments, the Village of Sea Cliff envisioned that the

acquiring entity would be a new public water authority named the North Shore Sea Cliff Water District and that it would provide service utilizing the existing NYAW infrastructure and would be augmented by an increased emphasis on interconnection and/or partnerships. The Village of Sea Cliff also stated that rate savings were shown even when the full amount of current Real Estate Taxes allocated to the Sea Cliff District paid by NYAW in 2019 were included as continuing to be paid by the New Public Water Authority customers. The Village of Sea Cliff stated that it was prepared to immediately begin discussions with NYAW and would expect the timing of such transition to be comparable in duration to the currently proposed Transaction to Liberty or past transactions in ownership.

Hempstead Study

The Town of Hempstead retained Walden in 2020 to perform a study of acquiring NYAW's water systems located within the Town of Hempstead in Nassau County (Hempstead Water Systems). The Hempstead Water Systems are split among the Lynbrook district which is part of SA1 and the Merrick district which is part of SA2. In total, the Hempstead Water Systems served an average of 113,877 customers in 2019, representing approximately ninety one percent (91%) of the customers of NYAW.

In determining feasibility, the Hempstead Study included four scenarios which considered potential TEP payments for the Hempstead Water Systems under municipal ownership: 1) a TEP equal to $35.6 million representing the full, allocated amount of NYAW's real estate taxes to the Town; 2) a TEP equal to $23.8 million representing two-thirds of NYAW's real estate taxes estimated to represent a full payment of school district taxes and no local taxes; 3) a TEP equal to $11.9 million representing one-third of NYAW's real estate taxes estimated to represent half of the school district taxes and no local taxes; and 4) no TEP. The Study found that under municipal ownership customers would see savings from a low of $70, or eight percent (8%), per year under the full TEP scenario to a high of $383, or forty three percent

(43%), per year under the no TEP scenario compared to the average NYAW customer bill, based on total operating revenue divided by total customers.

The Town of Hempstead submitted comments on December 31, 2020, stating that the acquisition of the water system would represent a massive financial undertaking for the municipal government and that the monthly savings for the average customer is diminutive compared to the financial implications of issuing such massive debt required to acquire the Hempstead Water Systems. The Town of Hempstead stated that while a takeover without a TEP would reduce water bills, it would not result in a net cost reduction to customers as they would absorb the costs in their own property tax bills.

WASENC Study – 2014

On June 6, 2014, George E. Sansoucy, PE, LLC submitted a study to the Chairman of WASENC, Richard T. Ronan, analyzing the feasibility of the municipal or not-for-profit purchase of NYAW's property located in the Southeastern section of Nassau County and is comprised of water systems within the Towns of Hempstead and Oyster Bay. The results of the study were intended to address the costs and potential benefits of WASENC acquiring the system. The WASENC Study's analysis began with determining the fair market value of the system by utilizing the Cost Method, Comparative Sales Method, and Income Method which resulted in an estimated Fair Market Value of approximately $80 million.

The WASENC Study then compared the expected rates under NYAW ownership to the expected rates assumed with ownership by WASENC or a similar not-for-profit owner for a 30-year period, 2015 through 2044. The rates expected under municipal ownership were derived under two different scenarios: 1) the Base Case Scenario which assumed municipal ownership with operating costs including property taxes at levels similar to those of NYAW and 2) the Municipal Benefits Scenario which

assumed the same as the Base Case Scenario except for Operations and Maintenance (O&M) expenses which were increased by ten percent (10%) to reflect the additional overhead and benefit costs typically available to municipal/authority employees. The rate forecasts under municipal ownership were based on an $80 million purchase price with an additional $20 million operating reserve to provide working capital to the system and assure sufficient cash flows and debt coverage, O&M expenses similar to those incurred by NYAW, property tax payments in the form of TEP payments at least equal to those incurred by NYAW, capital replacements similar to those anticipated by NYAW, and a 30-year bond with bi-annual payments equal to the purchase price and operating reserve at an interest rate of 4.75% consistent with tax-free revenue bonds of similar term and risk at the time. Since the analysis did not consider property taxes as a savings, the analysis indicated that in the first year of operation the municipal ownership scenario resulted in higher rates than those being charged by NYAW with rates coming closer by 2030 with the municipal base case scenario comparable to the rates charged by NYAW. Further the analysis indicated that by 2044, there would be savings associated with the municipal base case scenario relative to NYAW, but the same was not the case under the municipal benefits scenario which recognized no savings over the 30 year forecast period.

Summary of Studies

The 2014 WASENC Study found that the municipal purchase of NYAW's property in Southeastern Nassau County would be unfeasible, as it would result in higher rates than the then current rates under NYAW. The Walden studies and additional comments provided by the municipalities, however, determined that each of the potential acquisitions of the water systems by the respective municipalities was feasible. While all three acquisitions were determined to be feasible based on the information in the studies performed by Walden, the Town of Hempstead stated that it had no intention to acquire NYAW's assets within the Town, as the estimated half

million purchase price would pose serious risk to the municipality's credit rating. A negative credit rating adjustment would result in increased borrowing costs for all municipal projects. The increased costs would be borne by all taxpayers in the municipality.

Mill Neck Estates

Mill Neck Estates is a small 100-customer system in Nassau County that is geographically disconnected from the other systems. It is located in the Northeast corner of the Town of Oyster Bay. For the purposes of this analysis, we have included Mill Neck Estates with the potential municipal acquisition of the other NYAW systems located in Nassau County. Once the acquisition closes, the new water authority could either continue to operate the system or explore options to see if there would be any synergies by selling it to another water system that is geographically adjacent to the Mill Neck system.

Upstate Water Companies

NYAW's upstate water systems consist of sixteen (16) service territories with approximately 2,200 customers, including the three water systems where NYAW has been appointed as temporary operator. The water systems are Cambridge, Mount Ebo, Kingsvale, Wild Oaks, Beaverdam Lake, Dykeer, New Vernon, Waccabuc, West Branch Acres, Spring Glen Lake, Lucas Estates, Whitlock Farms and Hoey DeGraw. The three (3) water systems where NYAW has been appointed temporary operator are Battisti, Arbor Hills, and Painted Apron.

These systems are relatively small, geographically removed from Nassau County, and do not have the same issues with high property taxes. For the purposes of this analysis we have assumed that these upstate water systems would not be part of the potential acquisition and be retained by NYAW. NYAW could continue to operate these systems, or it is always free to sell them to another investor-owned utility. We note that the costs of operating these remaining small water systems may potentially

increase because of loss of synergy and economy of scale that currently exists under NYAW's larger utility operations.

Collecting Property Taxes Through the Water Bill

Since the vast majority of the savings that is achieved through municipalization comes from the exemption from paying property taxes, the threshold question is whether the exemption from paying property taxes is truly a benefit of municipalization or just a shift in tax collection from a customers' water bill to their tax bill, since the taxing jurisdictions will either need to collect the lost tax revenue elsewhere, or possibly curtail services.

The 2014 WASENC Study, as discussed above, concluded that the savings related to property taxes was not an advantage of municipalization. That WASENC Study ultimately concluded that the net-savings were not great enough to justify municipalization. In our view, collecting property taxes through water rates is regressive, inefficient, and not transparent to customers. Therefore, the analysis concludes not collecting property tax savings through water rates as a legitimate benefit of municipalization. The analysis also evaluated municipalization without counting property tax savings and showed net-savings.

As previously stated, property taxes account for approximately one-third of the water bill for the Lynbrook and Merrick service territories and over fifty percent (50%) of the bill in the Sea Cliff service territory. This is a significantly higher percentage of the utility bill compared to the fourteen percent (14%) average of other upstate New York water utilities.[17] The primary reason that property taxes are such a large

[17] The average property tax as a percentage of total revenue is 14% for Suez Water New York (SWNY) Westchester and Owego-Nichols rate districts.

proportion of the water bill is due to the four-class property tax system in Nassau County, which is the only county in New York State, with the exception of New York City, that has the four-class system. The four-class system divides property into four classes:

1. Class 1 – Residential Property
2. Class 2 – Multi-family Units and Condominiums
3. Class 3 – Utility Special Franchise and Other Property
4. Class 4 – Commercial Property

The four-class system allows taxing jurisdictions to charge a different tax rate to each class, with Class 3 typically having higher rates, and the Special Franchise property being the largest share. This system has resulted in a much larger portion of property taxes being collected through utility bills compared to communities without the four-class system.

Ninety-six percent (96%) of New Yorkers have municipal water service and therefore do not pay any property taxes through their water bills. With other types of utility services, such as electric or gas service, the vast majority of customers receive service from a regulated investor owned utility, so it is far more equitable for customers to pay for property taxes in those utility bills, since the vast majority of citizens are being treated similarly. Taxing water utilities in this manner results in an unfair system that singles out the four percent (4%) who do not receive water service from a municipality. Water service territories do not necessarily align with tax jurisdictions. This can result in certain citizens who receive water from NYAW paying property taxes both through their water bill and on the property they own, whereas other citizens who reside in the same town, but have municipal water, are only paying taxes on the property they own.

For example, the Town of Hempstead has a population of approximately 770,000 people, approximately 280,000 of whom receive water service from NYAW while the remaining 490,000 receive water from a public water entity that is exempt from property taxes. The Town of Hempstead collects approximately $16.3 million for Town and county property taxes from NYAW customers through the water bill and $0 in property taxes via water bills from the rest of its citizens. On a per customer basis, NYAW customers pay approximately $141 per year more to the Town of Hempstead, than their neighbors with municipal water. The Town of Oyster Bay collects approximately $150 per customer, per year more from NYAW customers than municipal water customers. This double taxation of NYAW customers would also apply in any village or school district where the water service territory does not exactly match the taxing jurisdiction's boundaries. Collecting taxes through a water bill is a hidden tax that most customers are unaware they are paying. It is preferable to have a transparent tax system that treats similarly situated citizens equitably.

It is also inefficient to collect property taxes through water bills. If those taxes were collected through property tax bills instead of through water bills, many citizens would be able to deduct that expense on their federal tax return, thereby reducing the federal taxes they are required to pay. This will be especially true when the limit on the state and local tax (SALT) deduction expires in 2025, or even possibly before 2025, if the current efforts to eliminate the SALT cap are successful. For example, if a NYAW customer was paying $400 in property taxes in their water bill and it was changed to being charged directly on the property tax bill, and if the customer could fully deduct local taxes and had a thirty percent (30%) marginal federal/State tax rate, they would pay $120 less in taxes, net ($400 vs. $280). Ideally, we do not want a tax system that forces New Yorkers to pay more federal income taxes than they absolutely must.

Water is a basic necessity of life and access to water should be a human right. As a public policy matter, we should not be taxing this very necessary commodity. Not taxing water is public policy in New York, which currently applies to the ninety six percent (96%) of the state that receive municipal water. Utility bills are a much larger burden for low-income households compared to higher income households. So, burying taxes within water bills is a regressive form of taxation and most customers are unaware that a third, or more, of the water bill consists of taxes.

We recognize that municipalizing NYAW would reduce property tax revenue for the towns, school districts and villages in NYAW's service territory, but it would be a much more equitable and fairer to remove taxes from the water bill and tax all citizens consistently. We recommend that for any taxing jurisdiction that is severely impacted by the lost tax revenue, the new municipal water system could voluntarily make tax equivalency payments (TEP) payments and phase those payments out over a three year period to ease the sudden impact of the lost tax revenue. Appendix D shows the amount of property taxes New York American Water paid in 2020-2021 by taxing jurisdiction.

Impacts on Taxing Jurisdictions

Our analysis concludes that under municipalization, NYAW customers would see a significant reduction in their combined water rates and property taxes, and that others in those taxing jurisdictions would see a modest increase in their property taxes, because the property tax roll would be evenly distributed within the taxing jurisdiction and the lost revenues would fall to all four classes of property owners in Nassau County.

As shown in the table below, about forty one percent (41%), or $18 million, of the taxes NYAW currently pays goes to Hempstead, Oyster Bay and Nassau

County. Approximately fifty five percent (55%), or $23.5 million, goes to the thirty four (34) school districts, and approximately four percent (4%), or $1.6 million goes to eighteen (18) villages.

Table 2. NYAW Property Taxes in 2020-2021

Summary of Property Tax Paid by NYAW 2020-2021
($ Millions)

	Special Franchise	Other Class 3	Class 4	Total	% of Total
Hempstead / County	11.3	2.8	2.3	16.4	38%
Oyster Bay / County	1.2	0.1	0.2	1.5	3%
School Districts (34)	15.8	4.3	3.4	23.5	55%
Villages (18)	1.2		0.4	1.6	4%
Total Taxes Paid by NYAW	29.5	7.2	6.3	43.0	

New York State could immediately achieve a portion of the benefits that could come from municipalization by first passing a law exempting special franchise property from taxation for water companies in Nassau County or otherwise reducing NYAW's property tax burden. Exempting special franchise property from taxation would reduce NYAW property taxes by roughly $29.5 million (based on 2020-2021 actual property taxes paid), compared to what they otherwise would have been. The $29.5 million in lost tax revenues would be made up by all four classes of taxpayers, under current state tax law. However, we propose the tax law change also to limit the recovery of the lost NYAW SF property tax within Class 3, which would result in a moderate impact to utility customers, as shown in Table 3 below.

Table 3. Estimated Impact to Class 3 Utilities

Estimated Impact on Other Class 3 Utilities			
	Incremental Taxes ($ million)	Total Customers (million)	Average Annual Increase per Customer ($)
KeySpan Gas	15.5	0.6	$25.80
Verizon, CATV, all Other	14.0	N/A	*
Total	29.5		

* LIPA pays PILOT and the increase is capped at 2%. Verizon and CATV companies have competitive rates and are not rate regulated by the Commission. They will make determinations based on market forces and decide what (if any) portion of the increase would need to be passed on to customers

If New York State took the second step of full municipalization, NYAW's remaining tax liability would be reduced to approximately $13.5 million (compared to $43 million) related to "Other Class - 3" and "Class - 4 Commercial Property", based on 2020-2021 NYAW tax payments. This tax burden would be shifted to all four classes of property owners.

Nassau County, the Town of Hempstead and the Town of Oyster Bay are quite large relative to the footprint of NYAW's service territory within those jurisdictions. The lost tax revenues in those jurisdictions would be spread to the entire tax base in the town, not just the old NYAW customers. The villages and the school district boundaries are much smaller than the County and two towns. For these taxing jurisdictions, to the extent the tax boundaries fall one hundred percent (100%) within NYAW's service territory, in general, the taxes that were previously collected through the water bill would now be taxed in the property tax bills. For those villages and school districts that are not one hundred percent (100%) within NYAW's service territory, the lost tax revenue would be collected from the entire tax base, not only former NYAW customers.

Whether it is a one or two step approach to eliminate NYAW's property taxes, the lost tax revenues for any town, village or school district would be collected from all four classes of taxpayers in Nassau County , unless any proposed legislation

directed otherwise. As stated previously, for taxing jurisdictions severely impacted by the lost tax revenues, a TEP contract that would phase out over a number of years could be arranged to help moderate the impact of the lost tax revenues. (NYAW's 2020-2021 tax liability per town, village and school district can be seen in Appendix D.)

Summary of Comments

Liberty Proceeding

Following the proposed sale of New York American Water to Liberty Utilities, parties and members of the public were invited to submit written comments to be considered by the Department, the Administrative Law Judges in the proceeding, and the Commission in rendering a decision, and this invitation was renewed after Governor Cuomo directed the Special Counsel for Ratepayer Protection to oversee this study on the feasibility and merits of municipalizing all or part of New York American Water's service territory on Long Island.[18] Additionally, several virtual public forums regarding municipalization were held in February 2021 by the Special Counsel.[19]

Nearly 700 public comments were received in response, including by numerous elected public officials, advocacy and civic organizations and residents from the communities currently being serviced by NYAW through public testimony. These comments overwhelming favored a public takeover and cited several factors supporting the benefits of municipalization, including reducing exorbitant water bills, redressing poor service, and improving water quality. Commentors also expressed the opinion that

[18] Case 20-W-0102, supra, Notice of Public Forums and Requesting Comments (issued February 21, 2021).

[19] Id., On February 23rd a public forum was held regarding the Sea Cliff Area, on February 24th regarding the Massapequa area, and February 25th regarding all other areas of NYAW's Long Island service territory.

the proposed sale price of $608 million dollars is inflated. The public comments consistently cited the importance of safe, clean and affordable water services, and the conviction that municipalization is the best option to support that endeavor.

For example, Senator Todd Kaminsky (9th District) reiterated the importance of the feasibility study in light of his constituents' frustration over their high NYAW bills and quality complaints regarding their water. The Senator maintained that he is open to different options as long the result would be lower costs to ratepayers. Senator Kaminsky further proposed that automated metering needed to be taken into consideration with respect to conservation pricing efforts, irrespective of whether or not a public takeover was feasible.

State Senator Jim Gaughran (5th District), who represents 4,500 residents in Sea Cliff, Glen Head and Glenwood Landing, expressed strong support for municipalization. He has introduced legislation creating a North Shore Water Authority, modeled after other water authorities such as the Suffolk County Water Authority and Great Neck Water Authority. Senator Gaughran expressed that municipalization is not only important for current costs but for additional, unforeseen costs such emerging contaminants and wells running dry. Senator Gaughran noted that it would be unjust for his constituents to fund these costs under a private utility model, whereas a public entity may have access to state funding or grants that could supplement or cover these costs.

Senator John Brooks (8th District), expressed strong support for municipalization, specifically for the Massapequa Water District's desire to take over the East Massapequa area of NYAW. Senator Brooks referenced legislation he has also put forth supporting his position. Senator Brooks expressed concern with respect to NYAW's sale price, its current infrastructure, and the high cost of services.

Assemblyman Charles D. Lavine (13th District), a representative of the North Shore area of Nassau County, referenced a meeting held at North Shore Middle School on August 9, 2017, where hundreds of concerned residents voiced their frustration over mistreatment by NYAW, notably in regards to their inflated water bills. Assemblyman Lavine noted that he immediately brought this issue to the attention of DPS and the PSC. The Assemblyman is also in favor of Senator Gaughran's legislation establishing a public entity, namely the North Shore Water Authority to takeover for New York American Water.

Assemblyman Edward Ra (19th District), who represents ratepayers in the Town of Hempstead, North Hempstead and Oyster Bay, also expressed his support for a public water entity. Assemblyman Ra referenced Senator Gaughran's argument with respect to infrastructure costs that may be forthcoming. Assemblyman Ra, like the other public officials summarized above, strongly favors municipalization.

In consideration of the of the feasibility study, Assemblywoman Michaelle Solages, (22nd District), which encompasses the Town of Hempstead, submitted a written letter commenting that her constituents are strongly in favor of municipal control of the district water supply in the interest of long-term cost savings and public accountability. Assemblywoman Solages contends that New York American Water has a long history of negligence to the local water infrastructure, which has resulted in reduced water quality, a lack of consistency in the rates and poorer water quality. The Assemblywoman maintains that some form of municipal control where the service provider is directly accountable to the public is warranted.

Town of Oyster Bay Supervisor Joseph Saladino also expressed support for municipalization but cautioned that there may be unforeseen or other hidden costs in certain communities (e.g., Sea Cliff) due to the age of infrastructure located underground. Supervisor Saladino further cautioned that municipalization would result

in other municipalities losing tax revenue, which would in turn result in an increase in property taxes. Supervisor Saladino commented that support from the Legislature would be needed to help offset these costs.

Nassau County Legislator Delia DeRiggi-Whitton (11th District) expressed that public water is the right option for her district's area. Legislator Delia-DeRiggi-Whitton commented that she has reviewed other feasibility studies regarding NYAW and met with the Jericho Water District. She is of the opinion that if her community were to receive state funding through the budget or bonding, ratepayers' costs would be reduced.

Sea Cliff Mayor Ed Lieberman, who has been a strong proponent for municipalization represented that Jericho Water District taking over the Sea Cliff district would be the best approach for the Village of Sea Cliff. Mayor Lieberman joins in with other public officials' application for a public takeover option.

Dina Epstein, a Village of Sea Cliff Trustee, also supported and recommended a municipal takeover of the Sea Cliff water system, on the grounds that NYAW has withheld and provided misleading information to the PSC and thus cannot be trusted to provide safe, clean water.

Stan Carey, Superintendent of the Massapequa Water District, commented that a public takeover would reduce costs to consumers contrary to NYAW's assertions and would not create a disruption in service. Superintendent Carey commented that the Massapequa Water District's water quality is excellent and that the district has qualified and certified personnel to support the acquisition of the East Massapequa area.

John Reinhardt, Commissioner for the Town of Hempstead Water Department, submitted written commentary and questioned whether a public takeover

would result in genuine and measurable savings to ratepayers. Commissioner Reinhardt argued that a preliminary valuation of $500 million (determined by a consultant the Town retained) represents a massive financial undertaking for municipal government and that the monthly savings for the average customer is diminutive compared to the financial implications of issuing such a massive debt to acquire the water system. The Commissioner stated that the consequences of a local municipality issuing a half a billion dollars of debt to finance the takeover is serious, as such increased borrowing costs would result in a negative credit rating. He concluded that the massive acquisition costs for the NYAW takeover in the Town of Hempstead would require state involvement to finance any NYAW asset acquisition and public takeover of water services.

Other civic and advocacy group members also participated in the virtual forums and provided the following public commentary:

Bruce Kennedy, President of North Shore Concerned Citizens, testified that he strongly supports municipalization, as NYAW represents the interests of its shareholders and not ratepayers. Mr. Kennedy proposed that a local entity, such as a North Shore Water Authority, should be established to facilitate a takeover. In the alternative, Mr. Kennedy recommended that the Jericho Water District expand to encompass the Sea Cliff area which would also be sufficient. In either scenario, Mr. Kennedy argued that the residents of the Sea Cliff area want immediate relief through a public water option.

Davon Lomax, from District Council 9 Painters and Allied Trades, commented that in addition to high prices and substandard services, NYAW has compromised the health and safety of Long Islanders by using unskilled workers to maintain the coatings of the interior and exterior of the water tanks and that these unskilled workers are working under dangerous conditions. Mr. Lomax commented that

District Council 9 believes any public takeover should be accompanied with labor standards that guarantee safe drinking water and a workforce that is trained and understands all aspects when it comes to coatings the interior and exterior of water tanks. He concluded that contract work associated with the water tanks or similar infrastructure should require certified/trained workers from the NYS Apprenticeship Program.

In addition to the summary above, numerous members of the public voiced their dissatisfaction and concerns with NYAW through oral comments given at the virtual public forums and through written comments submitted to DPS. Members of the public strongly favor municipalization, echoing the comments of various elected public officials that affordable and clean water is a basic necessity that should be available to all. For example, Agatha Nadel referenced other feasibility study findings regarding NYAW which illustrate the considerable savings ratepayers would receive under municipalization. Dr. Ira Stern, a former executive director of a legislative commission and a senior research scientist for New York City's water supply, voiced concerns regarding NYAW's quality of water and the impact the poor water quality may have on the residents' health.

Finally, in a letter dated March 12, 2021, Liberty and NYAW jointly submitted comment on the municipalization feasibility study. The companies contend that municipalization is the riskiest approach to all parties involved. First, they argue that municipalization would take many years so it would not address the immediate issue of high water bills. NYAW customers would continue to be burdened by the special franchise property tax in their water bills. Second, municipalization will likely require costly condemnation litigation, and raise the fundamental question of valuation of the subject NYAW assets. As a result, NYAW customers would face tremendous risk that the ultimate valuation through the condemnation proceeding is significantly higher

than those municipal studies suggested, to a point that municipalization is no longer feasible. Liberty and NYAW conclude that municipalization will not serve public interest or benefit customers. The best alternative, the companies propose, is for the Commission to approve the acquisition of NYAW by Liberty with potential public benefit adjustment and for the state legislature to pass tax relief legislation removing the Special Franchise Tax, to benefit customers. Liberty notes in the comment that it is amenable to negotiating in good faith with appropriate representatives of the Village of Sea Cliff and the Massapequa Water District regarding the purchase of certain assets from NYAW used to serve those portions of NYAW's service territory, after the Commission approval of the acquisition, closing of the acquisition by Liberty and American Water, and removal of the Special Franchise Tax applicable to Nassau County water providers.

WATER UTILITY OPERATION

Operational Capacity

The Safe Drinking Water Act requires that technical, managerial, and financial capacity be present to operate a water utility system that meets EPA and DOH drinking water standards. Technical capacity refers to the ability to apply the requisite technical knowledge to operate and maintain the water system infrastructure and source water adequately.[20] Managerial capacity refers to the expertise to administer the system's overall operation.[21] Financial capacity refers to the financial resources and

[20] https://www.health.ny.gov/environmental/water/drinking/capacity/docs/2016_capacity_development_report.pdf

[21] Id.

fiscal management that support the cost of operating the water system.[22] All three areas need to be adequately addressed for the successful operation of the water system.

On August 6, 2000, the New York State DOH issued a Capacity Development Strategy Report with the assistance of stakeholder groups of state agencies, public water owners, technician assistance providers, local government representatives, and environmental groups.[23] In the Capacity Development Strategy Report, DOH identified a set of criteria, found in Appendix C of DOH's report, to be used to evaluate the technical, managerial, and financial capacity of public water systems in New York, which are summarized below.

Technical Capacity

Technical capacity includes possession of or plans to obtain technical knowledge, system infrastructure knowledge and plans, and source water knowledge and plans. Technical knowledge is based on the ability to meet, test compliance with, and report testing results regarding drinking water regulations; evaluate and record system conditions; record water production or treatment for each water source; be compliant with DOH inspection reports; and have an appropriately certified water operator(s). For system infrastructure, the water entity should have or aim to obtain plans, drawings, or maps of the water system facilities; know the location and measurement of all mains, valves, and service shut offs; know if system facilities meet water demands and pressures; and have a water conservation plan. For source water, it is important to conduct a source water assessment, know the source-pumping capacity,

22 Id.

23 https://www.health.ny.gov/environmental/water/drinking/capacity/report.htm

know the system's raw and finished water storage capacity, and have a wellhead protection program for the ground system.

A municipality or authority that already has the experience of operating a water system would need to determine if current resources are sufficient to meet the technical capacity requirements of the additional NYAW service territory, especially with regard to the number and qualifications of the water system operator. An entity that does not currently meet the technical capacity requirements may do so by retaining the employees used to currently operate the NYAW systems or hire other qualified employees and contractors to meet this requirement. Time would be needed to become fully acquainted with the current operation, design, and nuances of NYAW's water system. This time would be needed regardless of the experience of the entity in operating other water systems; therefore, a transitional plan to allow for the exchange of knowledge while continuing with the operation of the water system should be considered.

According to its response to the Secretary's Notice,[24] MWD has been actively involved in source water participation through meetings with New York State Department of Environmental Conservation (NYSDEC), EPA, and New York State DOH.[25] MWD has several certified grade 1B water treatment operators, certified distribution system operators, and plans to increase its technical capacity by hiring additional staff with a preference to retain NYAW employees to handle the increased system requirements and workload. MWD plans to use its existing facilities to operate the

[24] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer, Notice Soliciting Comments (issued June 22, 2020).

[25] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer, Massapequa Water District letter (filed July 29, 2020).

system along with acquiring the NYAW facilities within the service area of interest. This illustrates that MWD already has some technical capacity, understands its limitations, and has begun to identify solutions to address their limitations. The MWD East Massapequa Water System Valuation Study discusses the make-up of the water system in the service territory it wishes to operate and lists the water system assets in Appendix D of the study.[26] The study discusses wells, treatment facilities, storage tanks, interconnection points, water mains, main valves, hydrants, and real property. While some system information was estimated, the study shows that the MWD has taken the time to understand the facilities used to operate the water system and the water source.

The Village of Sea Cliff proposal to acquire technical capacity for taking over a new water entity, North Shore Sea Cliff Water District, is to augment its resources needed to provide service through interconnection and/partnership with one or more adjacent water authorities, such as the Jericho Water District. The Village of Sea Cliff also plans to maintain source water, pollution controls, system pressure, interconnections to other systems at the same level provided by NYAW or better.[27] The Village of Sea Cliff Water System Valuation and Feasibility Study also discusses the make-up of the water system in the service territory it wishes to operate and list the water system assets in Appendix D of the study.[28] The study discusses wells, treatment

[26] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer, East Massapequa Water System Valuation Study (filed July 23, 2020).

[27] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer, Response to PSC Notice Soliciting Comments Regarding Municipalization (filed January 5, 2021).

[28] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer, Sea Cliff Water System Valuation and Feasibility Study (filed January 5, 2021).

facilities, storage tanks, interconnection points, water mains, main valves, hydrants, and real property. While some system information was estimated, the study shows that the Village of Sea Cliff has taken the time to understand the facilities used to operate the water system and the water source.

The Suffolk County Water Authority (SCWA) commented in its response to the Secretary's February 21 notice that it could enter into a management/operating agreement with the acquiring entity similar to the agreements it has entered into in Suffolk County and assist the new entity in achieving the technical capacity required for taking over a new water entity. SCWA also discussed that it has approximately 70 years of experience operating water systems consisting of wells, pump stations, water mains, fire hydrants, emergency generators, and water storage facilities.[29] It has installed SCADA for its pump stations, storage facilities, and distribution to monitor and operate its system at all times; along with having its own drinking water testing laboratory. In addition, it has on staff professional engineers, licensed water supply operators, hydrogeologists, and laboratory professionals. It is interpreted that SCWA would use its experience and knowledge to operate the NYAW water system in Nassau County as it does with six public water systems it currently operates that is separate from SCWA water system.

Managerial Capacity

Managerial capacity can be achieved through ownership identity, having adequate staffing and organization, consolidation, and restructuring, and having an emergency response plan, effective water system policies, and proper record-keeping. Ownership identity includes having an identified owner and a plan for continuous

[29] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer, Response to PSC Notice Soliciting Comments Regarding Municipalization (filed March 5, 2021).

operation. Adequate staffing and organization include continual education of system personnel, having someone responsible for policy, expenditure, and operation decisions, and having an appropriately state-certified water operator(s) or plans to achieve such requirement. Consolidation and restructuring include examining the feasibility of connecting with exiting water systems and contracting for system management and operation. A water system should have an emergency response plan with determined responsibilities of personnel, and emergency notification and communication capabilities, written water operation policy or manual, and maintain records of the utility on the management and operation of the system, records, and correspondences with the DOH and the Commission, where appropriate.

A municipality or authority that already has the experience of operating a water system will need to determine if current personnel, policies, and procedures are sufficient to meet the additional NYAW service territory, especially concerning organization and regulatory requirements. An entity that does not currently meet the managerial capacity requirements may retain NYAW personnel or contract for system management and operation with other water entities permanently or until the entity is able to gain the necessary managerial capacity itself.

MWD is currently a commissioner elected district, operates under Article 13 of New York State's Town Law, and has an elected board. MWD plans to increase its managerial capacity through adequate staffing by hiring operators with preference given to NYAW employees and drawing on the leadership of its system personnel with years of experience handling public water systems. The East Massapequa Water System Valuation Study stated that the additional NYAW consumer base would not be a challenging undertaking.

The Village of Sea Cliff suggested creating a new public water authority for its service area, which would be subjected to the New York State Procurement Guideline

under Article 11 of the New York State Finance Law. According to the Village of Sea Cliff response to the Secretary's Notice, management and employee expertise, billing systems and current customer service plans would be administered and provided by and through the new public water authority. Information regarding how the water authority would achieve this is limited.

The Suffolk County Water Authority is a public New York corporation pursuant to New York Public Authorities Law Article, Title 4. SCWA proposes that a new water entity be created such as the Nassau County Water Authority under the Public Authorities Law to serve the acquiring entity. According to the SCWA response to the Secretary's notice, SCWA would enter into a management/operating agreement with the acquiring entity. An overview of what such a management/operating agreement would entail was not provided; however, SCWA states that it has approximately 360 union employees and 225 non-union employees consisting of professional engineers, water operators, hydrogeologists, laboratory professionals, planners, accountants, and lawyers used to manage and operate its system.

The feasibility study performed by Walden on behalf of the Town of Hempstead noted that if the Town took ownership of the water system, it would establish an electable framework of leadership and control of the acquired water system that is entirely local and accountable to the water system customers. [30]

Financial Capacity

[30] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer, Hempstead Walden Report (filed March 4, 2021).

To achieve the financial capacity needed to deliver safe and adequate water service to the people of Long Island, a new municipal utility would need to earn revenues sufficient to cover all cash operating expenses, service debt obligations, and fund reserves for capital projects, emergency repairs, and collection shortfalls. In addition, the utility will need to secure access to external capital at favorable terms in order to finance all prudent capital plant investments and working capital requirements.

It is important to note that municipal utilities have access to capital that is unavailable to investor-owned utilities. Namely, municipal utilities are backed by the taxing authority of their parent governments, which have the ability to legislatively appropriate money to the utility. Furthermore, municipal utilities are often eligible for grants from the Federal and State governments, while investor-owned utilities usually are not. However, municipal utilities are, by definition, barred from raising capital in the equity markets. That is to say that municipal utilities are not permitted to issue stock, blocking this as a source of funding.

Regardless of whether a utility is owned by a government or by private investors, financial capacity is ultimately determined by internally generated funds. In other words, a utility must collect revenues sufficient to pay all the costs associated with keeping the utility in good working order. Accessing external funds at favorable terms will simply not be possible without credible evidence that the utility will earn and collect enough revenues. This means that solid financial capacity is underwritten quality governance, a rigorous budgeting process, judicious capital planning, and careful treasury management. These are necessary in order to keep customer water rates set at appropriate levels and to establish credit. Accordingly, the utility should periodically review approved rates, charges, and billing frequency for its appropriateness, adjusting them as necessary.

A municipality or authority that already has the experience of operating a water system will need to determine if its current financial condition is sufficient to

meet the needs of additional service territory. An entity that does not currently meet the financial capacity requirements of the additional service area (after accounting for the additional resources and obligations thereof) must consider how it will achieve that financial capacity.

A potential method of improving financial capacity is through the DWSRF. Water systems eligible to receive Drinking Water State Revolving Fund (DWSRF) assistance are community water systems, municipal and privately owned water systems, non-community, and non-profit water systems.[31] The funds obtained can be used for systems upgrade or infrastructure replacement necessary to achieve or maintain compliance with federal state drinking water standards, improving delivery pressure, replacing contaminated supplies, treatment and performance criteria, upgrades to prevent contamination, and other projects needed to provide the public with safe drinking water. Section 145(a)(3) of the Safe Drinking Water Act applies to the public water system and requires DWSRF applicants to demonstrate that the water system has adequate technical, managerial, and financial capacity before receiving DWSRF assistance from New York State. However, the State is allowed to provide DWSRF aid to the public water system if it agrees to implement effective measures to achieve the technical, managerial, and financial capacity of the water system long-term.[32]

MWD, being a municipality, plans to achieve the financial capacity for the new system requirements through its ability to qualify and apply for grants through NYS. As noted earlier, this type of funding is not available to an investor-owned company. Meanwhile, the Village of Sea Cliff plans to achieve the financial capacity for the new system requirements by becoming a member of the Long Island Water Conference (to participate in group purchasing), applying for grants through EPA and NYS, operating

---

[32] Id.

customer service and call center through local offices, and using the NYS Office of General Services Centralized Contract Procurement process for vehicle and equipment purchases.[33]

SWCA, stated that it has excellent financial standing with bonds rated AAA by both Fitch and Standard and Poor's rating agencies, making SWCA the highest-rated public utility authority in New York State. SWCA noted that the created entity might not have low borrowing rates like SWCA but can obtain comparable states through the Environmental Facilities Corporation or the Dormitory Authority. It is understood that through the management/operating agreement, SCWA will assist the new entity achieve independent financial capacity without any financial impact to its Suffolk County customers.

In the Town of Hempstead's Water System Valuation and Feasibility Study performed by Walden, the report stated that it would not be assessed property taxes but could agree to a payment in Lieu of Taxes (PILOT) to pay the same, lower, or other amounts of funds to the same taxing agencies as NYAW through an agreement instead of an assessment. Also, the report stated that the resulting cash flow from the PILOT would be assigned to debt services, and the funds could be utilized for additional investment such as the opportunity to make improvements in the water system to address water quality issues and main replacement with the assumption that the concerns are not caused by treatment process or by the water source.[34]

Aquifers Utilized

[33] Id.

[34] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer, Hempstead Walden Report (filed March 4, 2021).

An aquifer is an underground geological formation that contains, transmits, and yields water that can be used. Nassau County obtains its drinking water from four aquifers underlying Long Island: The Upper Glacial, the Magothy, the Lloyd, the Jameco.[35] The Magothy is the largest aquifer in Long Island and supplies more than 90% of the water used in Nassau County.[36]

NYAW's Merrick district draws groundwater from sixteen (16) wells connected to the Magothy aquifer, which are Merrick's source of drinking water. The drinking water is not sourced from all sixteen (16) wells simultaneously.[37] The Sea Cliff district draws groundwater from two wells connected to the Magothy and Lloyd aquifer, which are Sea Cliff's source of drinking water.[38] The Lynbrook district draws groundwater from over one hundred and sixty wells connected to the Magothy, the Lloyd, and the Jameco and upper Glacial aquifers. Lynbrook's drinking water is derived from thirty-six (36) large wells.[39]

With assistance from the Nassau County DOH, local CDM consulting firm, the New York State DOH completed a 2019 Annual Water Quality Report for NYAW service territories, which include but is not limited to the Merrick, Sea Cliff, and Lynbrook Operation Centers.[40] The Annual Quality Report includes a source water assessment susceptibility rating, based on the risk posed by each potential source of contamination and how rapidly contaminations can move through the subsurface of the wells. The susceptibility rating is an estimate of the potential for contamination of the

---

35 http://www.nswcawater.org/water_facts/our-long-island-aquifers-the-basics/

36 Id.

37 https://www.amwater.com/ccr/merrick.pdf

38 https://www.amwater.com/ccr/seacliff.pdf

39 https://www.amwater.com/ccr/lynbrook.pdf

40 https://www.health.ny.gov/environmental/water/drinking/water_quality_report_links.htm

source water and does not mean that the water delivered to customers will become contaminated.[41]

The 2019 source water assessment has rated one of the wells in the Sea Cliff area and most of the wells in the Merrick and Lynbrook areas as having a very high susceptibility to industrial solvents and a high susceptibility to nitrates. The reported high susceptibility to industrial solvents is due primary to point contamination related to transportation, and commercial/industrial facilities, and other related activities in the assessment area. The high susceptibility to nitrate contamination is attributed to residential land use practices in the assessment area, such as fertilizing lawns.[42] The source water assessment results are environmental factors that are unrelated to the operation of the private water company. Therefore, any owner of the wells, both private and public entities, will have to deal with these issues and need to have O&M programs and/or capital projects to address these contaminates.

The Long Island Commission on Aquifer Protection (LICAP) launched a joint initiative to assess Nassau and Suffolk County's aquifers threats and recommend measures to ensure the aquifers' sustainability.[43] The LICAP 2019 State of the Aquifer Report, stated emerging contaminants such as 1,4-Dioxane, perfluorooctanoic acid (PFOA), and perfluorooctane sulfonate (PFOS) are threats to the groundwater supplies.[44] These contaminants are man-made chemicals detected in water due to industrial pollution and can have adverse health effects. The maximum concentration

---

41 Id.

42 Id.

43 https://licaponline.com/about/

LICAP consists of Nassau and Suffolk DOH representatives, the New York State Department of Environmental Conservation, Nassau and Suffolk water supplier, and the United States of Geologic Survey

44 https://licaponline.com/wp-content/uploads/2020/08/SOTA_2019-1.pdf

levels adopted by the New York State DOH is 1.0 part per billion (ppb) for 1,4-Dioxane and 10 parts per trillion (ppt) for PFOA and PFOS. Both private and public entities will have to meet New York State drinking water standard for 1,4-Dioxane, PFOA, and PFOS. The LICAP 2019 State of the Aquifer Report indicated that Nassau County had one hundred and thirty four (134) wells with about 0.5 ppb of 1,4-Dioxane detected, while eighty one (81) wells had concentrations level of about 1.0 ppb.[45]

NYAW proactively began testing all their water systems for the presence of 1,4-Dioxane, PFOA, and PFOS in 2018 prior to New York adoption of MCL standards and continues to conduct tests for these chemicals. NYAW has a current plan and budget estimates to invest in assets such as the Advanced Oxidation Process to treat 1,4-Dioxane and Granular Activated Carbon (GAC) to treat PFOA and PFOS at sites where these chemicals are to be removed. Since these contaminants result from factors unrelated to the ownership structure of the water system, the public entity will have to invest in similar assets to detect and treat these contaminants to not exceed the state approved MCLs.

Overconsumption of water from the aquifers has the potential risk of causing a lowering of pressure in aquifers. Lower water pressure in the aquifer can cause saltwater intrusion, which reduces freshwater in the aquifer and can lead to contamination of the wells. Saltwater intrusion reduces the long-term sustainability of the aquifer. NYAW reported that the NYSDEC had requested Long Island water suppliers to reduce their demand by fifteen percent (15%) by 2021 to ensure the sustainability of the Long Island aquifers.[46] To help achieve the NYSDEC goal, the Commission approved the implementation of a few initiatives by NYAW, including conservation pricing, AMI project, and a conservation program.

---

[45] Id., p. 8.

[46] http://nebula.wsimg.com/f9a9fec71a2380ab22dc12c93abb6ebe?AccessKeyId=90A5B0B33C8B068CAFB5&disposition=0&alloworigin=1 (p. 18)

NYAW implemented conservation pricing in 2017 (inclining block rate). Inclining block rates are a rate structure where customers are charged higher prices with higher water consumption to attempt to promote lower usage. The use of inclining block rates is also common to other water systems on Long Island and should be considered by a municipality and authority that operates NYAW Nassau County service territories.[47]

In addition to the inclining block rate, NYAW embarked on a conservation study to determine customers' water habits and preferences. The conservation study revealed that customers preferred to have access to their consumption data. Therefore, NYAW requested and received Commission approval to complete the installation of AMI by 2025, to coordinate with the timing of when NYAW's current automatic meter reading system is expected to approach its end of life. AMI provides customers with real-time water usage data, allows customers greater understanding usage patterns and sources of consumption of water, allows NYAW to identify non-revenue water that may be due to leaks within their system, improves accuracy and timeliness of water bills, allows customers to receive high-water usage alerts, and improves NYAW overall operation and management of the water system to better serve its customers. NYAW currently uses the MeterOps application to gather and review monthly water usage data to notify customers using over fifteen thousand (15,000) gallons of water (Tier 4) in their previous billing cycle about tools and tips to conserve water. As more customers receive AMI meters, NYAW can consider using MeterOps data and NYAW's usage alert feature to notify customers when they are approaching a usage level that would move customers into another billing tier throughout a billing cycle along with tips on how to conserve. This measure can help to ensure all customers receive the same

47 https://static1.squarespace.com/static/5b72eb5b8ab7222baffc8dbb/t/5d52bd9788d42a0001983acd/1565703580238/What+Does+Your+Water+Cost_+2019+CCE+8_9final+%28002%29.pdf

timely tips on how to conserve water, reduce their bills, and protect the aquifer. These high -water usage alerts can be a great way to help customers be more aware of usage.

Lastly, NYAW implemented the H_2O Control conservation program that consists of tips, technologies, and tools to assist NYAW's Long Island customers in conserving water and reducing their water bills. H_2O Control includes but is not limited to: offerings for the Rachio 3 Smart Irrigation system that allows customers to control their water irrigation systems from their smartphone; an indoor water savings retrofit kit consisting of efficient showerheads, aerator, leak detection tanks, and leak detection guide tips; an improved customer portal (MyWater) that allows customers to see their last three (3) years monthly usage, see a comparison of current usage to their neighbors, and be informed about and sign up for the mid-cycle water alert notification for when water usage is trending high to allow customers the ability to take action prior to receiving a bill.[48]

Although most of the public water entities have an inclining block structure like NYAW, which will assist in meeting NYSDEC established water conservation goals, the public entity will need to be proactive and implement additional measures like NYAW H_2O Control program and AMI project continually in the future to assist customers in taking control over their water usage, reduce their water bill, and to support the sustainability of the Long Island aquifer for the long term. Therefore, the ability to protect the aquifer is not governed by having a water system publicly or privately owned but has more to do with reduced aquifer exposure to contaminates and reduced water usage, which respective regulators, water users, and residents of Long Island should work towards achieving.

[48] Id.

Safety and Quality of Water

NYAW publishes water quality reports annually that comply with Part 5-1.72, New York State Sanitary Code (10 NYCRR) and Federal regulations on Consumer Confidence Report (40 CFR Part 141, Subpart 0) for all its service territories. The water quality reports contain detail information on water source, contaminants detected and educational information.

The water source contaminants and their treatment vary with each location within NYAW's service territory. For example, in the Company's SA1: Lynbrook Operations District (Lynbrook system), drinking water is drawn from approximately one hundred sixty two (162) wells located in the Upper Glacial, Magothy, Jameco and Lloyd aquifers. The water treatment consists of: chlorination for bacteriological disinfection, lime to raise pH and minimize corrosivity at six (6) out of twenty (20) locations, caustic soda to raise pH and minimize corrosivity at fourteen (14) out of twenty (20) locations, filtration to remove naturally occurring iron, sodium silicate to stabilize iron not removed by filtration and to reduce the potential for lead to leach from service pipes, and air strippers to remove volatile organics at one location. In the Company's SA2: North Shore Sea Cliff Operations District (Sea Cliff system), groundwater is the source of drinking water and is drawn from two (2) wells located in the Magothy and Lloyd aquifers. The water treatment consists of: chlorination for bacteriological disinfection; caustic soda to raise pH and minimize corrosivity to water mains and household plumbing; and calciquest (phosphate compound) to maintain optimum treatment and inhibit corrosion of plumbing materials, to stabilize naturally-occurring iron and manganese. In NYAW's Merrick's Operations Center (Merrick system), the groundwater is the source of drinking water and it is drawn from sixteen (16) wells located in the Magothy aquifer. The water treatment consists of: chlorination for bacteriological disinfection, caustic soda to raise pH and minimize corrosivity to water mains and

household plumbing, filtration to remove iron at three well locations, calciquest (phosphate compound) to stabilize or sequester iron not removed by filtration and also to act as corrosion inhibitor, and GAC to remove organics at one well location. The 2019 Water Quality Report is the most recent report available. For the NYAW's Lynbrook, Merrick and Sea Cliff district water systems, the Company had no violations.

One of the requirements under SDWA is to conduct a sanitary survey. A sanitary survey is an onsite review of a water system including the water source, facilities, equipment, operations maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water. The survey must include evaluation of the following components: source; treatment; distribution system; finished water storage; pumps, pump facilities, and controls; monitoring, reporting, and data verification; system management and operation; and operator compliance with State requirements. Review of each of these categories of system operation need not be completed in a single visit.[49] A report is created on the findings of the sanitary survey. Based on the recent sanitary survey report from 2017, the Lynbrook, Sea Cliff, and the Merrick systems are all in compliance with federal, state and local health department regulations.

New York State currently has MCLs for 1,4-Dioxane at 1.0 ppb, for PFOA at 10.0 ppt, and for PFOS at 10.0 ppt, as discussed above in the 'Aquifers Utilized' section of this report. NYAW has tested its source water and found four sites out of 55 total sites that exceeded the MCL for these contaminants. Three (3) sites out of four (4) are found in the Long Island service area. Within the Lynbrook Operations District in Roosevelt, New York, the water sample testing detected 1.2 ppb of 1,4-Dioxane in Well

[49] https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=200022MT.txt

16-1. NYAW has stopped using Well 16-1 to draw drinking water until treatment is installed. In the Sea Cliff system, water sample testing detected 17.6 ppt of PFOS in 1 out of 2 wells in Glen Head, New York and GAC treatment is planned. In the Merrick Operations District, water testing samples detected 1.6 ppb of 1,4-Dioxane in two wells (3A and 4) in Levittown, New York. NYAW has begun design and permitting of an Advanced Oxidation Process treatment system for its Merrick System.

Service Quality

The Commission approved a four (4) year rate plan, which included an inclining block rate structure to further encourage conservation of water effective for year two (2) of the rate plan on April 1, 2018. Under NYAW's inclining block rate structure, customers are charged higher volumetric charges based on the tier in which their usage falls. NYAW tariff includes four (4) usage tiers, or blocks, with Tier 4 for customers who use greater than or equal to 15,000 gallons of water per month. In the summer of 2018, shortly after the start of the second rate year, nearly 2,000 complaints were filed with NYAW with most of the complaints related to the inclining block rate structure. Department Staff determined that the Company's outreach and education before the inclining block rate went into effect was lacking. On August 28, 2018, further action was taken against NYAW by the Commission in Albany County Supreme Court, and on September 11, 2018, the court ordered NYAW to hire an Independent Monitor at NYAW's shareholders' expense to review the causes for the increased complaints. On October 18, 2018, the Commission approved PA Consulting Group (PA Consulting) as the Independent Monitor.

PA Consulting submitted its findings to Staff on June 26, 2019. PA Consulting reached a similar conclusion as Department Staff that NYAW's failure to effectively communicate the inclining block rate structure and the need for conservation

efforts was the primary cause of the complaints. In addition, NYAW's use of a longer than normal twenty four (24) to thirty five (35) day billing cycle also contributed to the increase in complaints. PA Consulting, in its report, recommended that the Company improve its communications with customers about its inclining block rate structure and the need for conservation. The final report also called for the Company to have a tighter billing cycle period and to improve the ability to track and analyze customer complaints. Since the report, NYAW, in consultation with Department Staff, instituted a twenty eight (28) to thirty two (32) day billing cycle, which is the tightest billing cycle of any New York State regulated utility.

The Commission, in its Order approving the Final Report,[50] directed NYAW to meet with Department Staff to review the Company's performance during the summer of 2019 on educating customers on the inclining block rate structure in order to reduce complaints. On October 31, 2019, NYAW met with Department Staff to discuss its efforts. Department Staff confirmed that NYAW communicated the inclining block rate structure through mailers, social media, and outreach events. With these efforts NYAW was able to reduce complaints by forty six percent (46%) compared to May to October 2018. In addition, Tier 4 customers decreased by fifteen percent (15%) in 2019.

COST DIFFERENCES BETWEEN INVESTOR-OWNED UTILITIES AND MUNICIPAL WATER

In calculating the potential savings of municipalization, our analysis does not differ significantly from the analysis performed by Walden Environmental Engineering and George E. Sansoucy, PE, LLC, as to where the majority of savings will occur. There are four (4) significant costs of providing service that investor-owned

[50] Case 16-W-0259, New York American Water Company, Inc - Rates, Order Approving Independent Monitor Report and Seeking Comments on an Interim Implementation Plan (issued July 11, 2019) (Interim Order).

utilities are required to pay and municipal utilities either do not have to pay or pay at a reduced rate. For NYAW they are:

a. Property Taxes (~31% to 50% of the water bill)
b. Federal Income Taxes (~5% to 7% of the water bill)
c. NYS Income Taxes (~2% of the water bill)
d. Cost of Capital – Equity vs. Debt Return (~7% to 8% of the water bill - net)

Another area for potential savings is that municipal systems are more likely to receive state or federal assistance or grants related to lead service lines, pollution containment and disaster relief. These potential savings are unquantifiable at this time, but nevertheless should be considered one of the benefits of municipalization.

There is one area where customers of regulated investor-owned utilities have a cost advantage over municipal utilities, and that relates to the treatment of the amount the acquiring utility pays over the book value for the assets. Rates for regulated utilities are generally set on the original cost of the assets less deprecation, otherwise known as the net book value of the assets. If a utility is acquired at market value, which is above the underlying net book value, the shareholders, not the customers, pay for that premium which is also known as goodwill. Municipalities do not have shareholders to pass these costs along to, so the premium above net book value (i.e., the difference between market value and net book value) needs to be collected from customers in rates.

It is important to understand that the Commission does not control the sale price of a utility. The sale price is based on the fair market value of the assets. The sale price can either be negotiated between the owner and an interested buyer, or a government entity has the ability to condemn the property in eminent domain proceedings in the courts under the provisions of New York Eminent Domain Procedure Law. In both situations the sale price is based on the fair market value of the company.

All of the recent studies on municipalization in Nassau County (discussed in more detail above) have focused on these cost differences to estimate the net savings that could be achieved through municipalization.

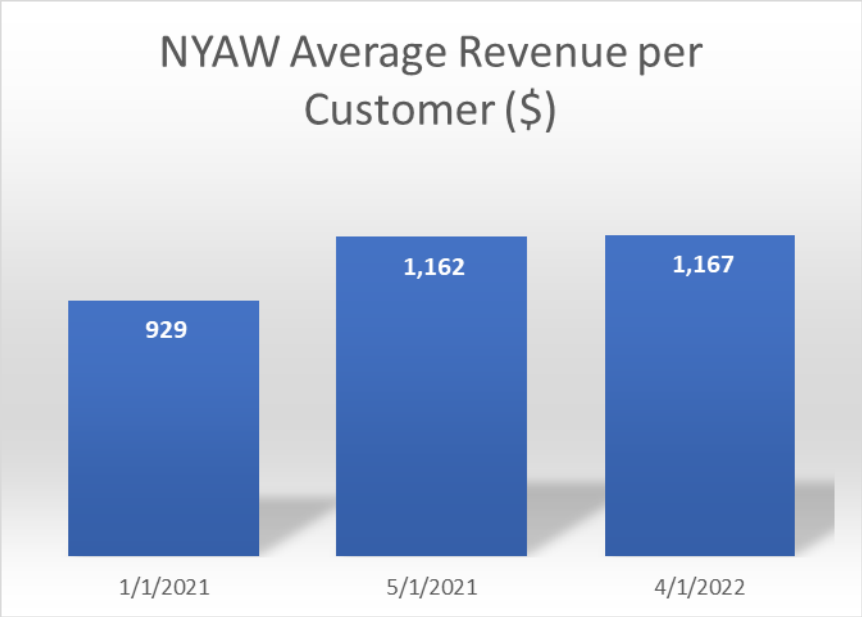
STEPS TO SETTING UP A NEW AUTHORITY

Establishing a new authority would require new legislation to establish the jurisdiction and powers of authority, its governance, and its operation. Since each authority is the result of unique legislation, the details of the proposed new authority are not yet known.

UPCOMING RATE INCREASES FACING NYAW CUSTOMERS

Since the start of the pandemic, the Commission has postponed, at NYAW's request, the effective date of approved rate increases two (2) times, most recently postponing the effective date of an approved 15% increase from January 1 to May 1, 2021. These delayed increases will result in a combined increase of up to approximately 26% in May 2021, unless action is taken to reduce the utility's costs and/or spread out the increases over time. The chart shown below displays the average customer bills currently in effect and shows the anticipated average increase scheduled to go into effect on May 1, 2021. The April 1, 2022, average revenue per customer is based on cost of service forecasts the Department used in the baseline revenue requirement, discussed in more detail below. This should not be interpreted as a Commission approved rate increase, which would have to go through the traditional Department review and approval by the Commission.

Chart 6. NYAW Average Revenue per Customer



COMPARING POTENTIAL SAVINGS – DIFFERENT SCENARIOS

We compared the cost of providing service for six (6) different scenarios in order to calculate the potential savings for each scenario:

1) **NYAW Remains as the Service Provider** – this analysis was done to use as a baseline case to compare the other scenarios.

2) **Liberty Acquisition with Imputed PBA** – reflects the same cost of service forecasts as the baseline scenario except for imputation of a public benefit adjustment, assuming that Staff testimonial positions are adopted by the Commission.

3) **Law Eliminating Taxation on Special Franchise Properties in Nassau County** – assumes NYAW remains as the service provider.

4) **Law Changing Special Franchise Taxes from Utility Class (Class 3) to Commercial Class (Class 4)** – assumes NYAW remains as the service provider.

5) **Liberty Acquisition with Imputed PBA and Exempting Taxation from Nassau County on Special Franchise Properties** - reflects the same cost of service forecasts as the baseline scenario except for imputation of a public benefit adjustment, assuming that Staff testimonial positions are adopted by the

Commission. In addition, the model reflects tax law change to exempt NYAW's special franchise property from taxation.

6) **Municipalization of NYAW** – the cost savings calculated in this scenario covers both municipalizing NYAW in Nassau County as a whole or broken up into three service territories.

Table 1 below summarizes our analysis of potential customer savings for the different scenarios:

Table 1. Revenue Requirement Scenarios and Average Customer Savings

Revenue Requirement Scenarios	Projected Revenues ($)	Average Revenue per Customer ($)	Savings per Customer from Baseline ($)	Savings per Customer from Baseline w/o Property Tax Savings ($)
Base Scenario - Forecasted NYAW Scenario*	146,296,200	1,167	N/A	N/A
Liberty Takeover with Staff Proposed PBA	140,424,780	1,120	(47)	N/A
Property Tax Reduction -Exempt Taxation of SF Property	115,422,203	921	(246)	**
Property Tax Reduction - Class 3 to Class 4	134,491,437	1,073	(94)	***
Liberty Takeover with PBA and Exempt Taxation of SF Property	109,500,236	874	(294)	N/A
Municipalization Scenario*	90,457,015	734	(433)	(67)

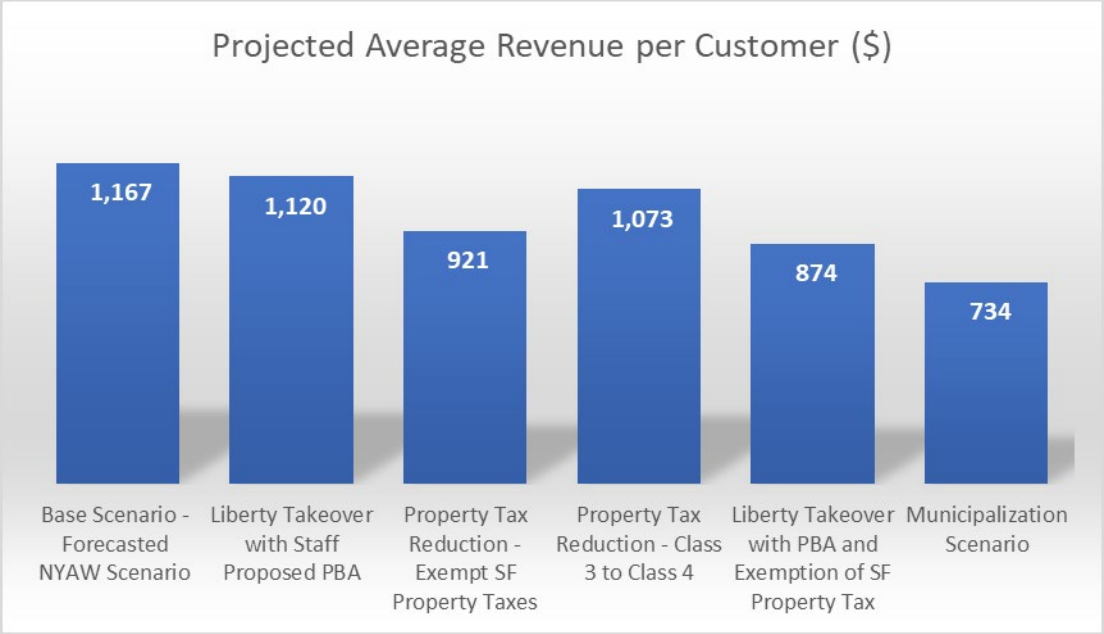
* The municipalization scenario assumes a $608 million base purchase price in the model. This is a conservative estimate for modeling purposes and not an endorsement of what the actual price should be.

** The savings from exempting taxation of SF property will be made up with higher taxes on all four classes of taxpayers

*** The savings from shifting from Class 3 to Class 4 will be made up with higher taxes on all four classes of taxpayers.

The forecasts are estimates of system-wide savings per customer (total revenues divided by number of customers). The actual per-customer savings may vary from system-wide savings depending on the average water usage and whether the customer is in the SA1 or SA2 service area. The analysis, in full detail, can be found in Appendix B. The chart below provides a comparison of the estimated revenue per customer for each of the different scenarios.

Chart 7. Projected Average Revenue per Customer



NYAW Remains as the Service Provider – Baseline Case

This scenario was modeled to use as a benchmark to evaluate all of the other potential options. The revenue requirement model assumes NYAW's projected net plant, revenues and property taxes, with Staff's updated testimonial position on cost of capital, operating and maintenance expense, and other rate base elements for the rate year ending March 31, 2023, as filed in the Liberty acquisition proceeding.[51] In addition, the revenue requirement also includes a $16.4 million levelization surcharge, approved to be deferred for future recovery per the Commission's February 2020 Order.[52]

---

[51] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer, Response to DPS Staff Interrogatory DPS-39.

[52] Case 16-W-0259, New York American Water Company, Inc. – Rates, Order Postponing the Levelization Surcharge and Authorizing Amended System Improvement Charge Projects (issued February 6, 2020) (February 2020 Order).

Based on these assumptions, the estimated total revenues would be approximately $146 million, resulting in $1,167 total revenues per customer.

Liberty Acquisition (without Property Tax Relief)

This scenario assumes all the same cost-of-service elements as the baseline scenario, except this model imputes a $23.5 million PBA as proposed in Staff testimony, amortized over a five (5) year period. The Liberty Utilities acquisition is an ongoing proceeding before the Commission and the Commission has yet to decide on this case. For modeling purposes only, the Department assumed that almost all of Staff's recommendations are adopted in order to compare proposals. There is more forecasting risk to this model since the Commission has yet to decide on the various issues in the proceeding.

The model assumes the same total revenues as in the baseline scenario, before any rate increase, with a minimum of one (1) year stay out,[53] which Staff values at approximately $6 million and a PBA of $23 million credit passed to customers over a five (5) year period. Liberty also proposed to negotiate a global solution to reduce the property tax problem, but any efforts toward a solution to the property tax problem could be achieved whether NYAW remains as the owner, or if Liberty acquires NYAW.

Based on these assumptions this scenario estimates total revenues to be approximately $140 million, resulting in an estimated $1,120 total revenues per customer, or $47 in annual savings per customer compared to the baseline case.

[53] Staff also proposed that NYAW's next rate filing should reflect a full test year under Liberty ownership, which could result in the effective date of the new rates falls beyond the one-year stay-out ending on March 31, 2023.

Law Exempting Special Franchise Property from Taxation on Water Utilities in Nassau County

New York State could amend the property tax laws on water service-related property taxes in Nassau County to make the tax system more equitable and provide significant rate relief to NYAW customers. These proposed tax law changes could be implemented independent of the municipalization efforts and would provide meaningful ratepayer relief even if municipalization efforts did not proceed or were to fail.

One proposal would eliminate taxes on special franchise property on water systems in Nassau County. In the 2019-2020 legislative session, Senator Todd Kaminsky sponsored Bill S4230A, which proposed phasing out taxes on special franchise property on water companies in Nassau County. The Bill was passed by the Senate unanimously. Special franchise property are utility assets located on the public right-of-way that span taxing jurisdictions. NYAW will pay approximately $29.5 million in taxes on special franchise property in 2020-2021 tax period, which represents almost 70% of its total property tax burden. If special franchise property were tax-exempt, NYAW customers could save, on average, approximately $246 annually compared to the baseline analysis.

Under Senator Kaminsky's legislation, the lost tax revenue would be collected from the remaining utilities in Class 3 including the KeySpan Long Island (KEDLI), Verizon, Cablevision, etc., which generally collect those costs over a much larger island-wide, or statewide, customer base, making the increases felt by any one ratepayer relatively small. According to estimates from the Nassau County Tax Department, exemption of NYAW from Class 3 special franchise property tax would shift $15.5 million to KEDLI, and $14 million to the remaining utilities with competitive rates.

The increase in property tax for KEDLI customers would be roughly $25.80 per customer, per year, on average.

Table 3. Estimated Impact If NYAW SF property Tax is Limited within Class 3

Estimated Impact on Other Class 3 Utilities			
	Incremental Taxes ($ million)	**Total Customers (million)**	**Average Annual Increase per Customer ($)**
KeySpan Gas	15.5	0.6	$25.80
Verizon, CATV, all Other	14.0	N/A	*
Total	29.5		

* LIPA pays PILOT and the increase is capped at 2%. Verizon and CATV companies have competitive rates and are not rate regulated by the Commission. They will make determinations based on market forces and decide what (if any) portion of the increase would need to be passed on to customers

Law changing Special Franchise Taxes from Utility Class (Class 3) to Commercial Class (Class 4)

Another possible property tax law change for investor-owned water companies in Nassau County would be to move all water property taxed at the Class 3 Utility rate to the Class 4 Commercial rate. The customer savings related to this tax shift would be approximately $12 million, or on average $94 per customer per year.

The reduction in NYAW's overall tax burden would be spread to Classes 1, 2, 3, and 4 taxpayers. See table below for estimated impact.

Table 4. Estimated Impact of Changing NYAW Property Tax from Class 3 to Class 4

Estimated Impact to All Classes (Change NYAW Property Tax from Class 3 to Class 4)		
	Class Share	Increase in PT ($ million)
Class 1	75%	$9.0
Class 2	6.5%	0.8
Class 3	3.5%	0.4
Class 4	15%	1.8
Total	100%	$12.0

Liberty Acquisition with Tax Exemption on Special Franchise Property

This scenario assumes all the same cost of service forecasts as in the baseline scenario, except it includes passing to customers $23.5 million PBA over five (5) years and also a tax exemption on NYAW special franchise property. The customer savings related to this scenario would be approximately $37 million annually, or on average $294 per customer per year. This scenario may result the most immediate potential savings since the acquisition of NYAW by Liberty could be effectuated more quickly than setting up a new water authority.

Municipalization of NYAW

This scenario assumes that NYAW is acquired by a municipal entity. It does not differentiate whether it is consolidated, as one service territory or broken up into various service territories. Since it will take some time to organize and acquire NYAW, the revenue requirement model is based on a July 1, 2022, acquisition date. We recognize that government entities have different accounting rules compared to private investor-owned utilities, particularly when it comes to accrual accounting and depreciation, but the model assumes investor-owned utility accounting in order to maintain a true apples-to-apples comparison to the baseline case.

The model assumes a conservative scenario, whereby the base cost of the acquisition is the same as the base sale price negotiated between Liberty and NYAW, or

$608 million. There are valuation methodologies that produce a lower market value, and there are government actions that could be taken which produce a higher value. Since the $608 million purchase price reflects the NYAW's plant assets and capital investments through December 2020, additional capital investments made in calendar year 2021 and portion of 2022 should be added to the $608 base purchase price to reflect the asset values at time of municipal acquisition. The model subtracts from the acquisition price, the value of the upstate companies that NYAW will retain. The model adds projected plant additions[54] through July 1, 2022, to determine an adjusted sales price, and then it adds projected cash flow needs for the municipality for the first few years of operations. The model projects a financing need of almost $790 million in order to acquire and run the water company. The table shown below details the financing needs for municipalization.

Table 5. Estimated Financing Need to Municipalizing NYAW's Operation

[54] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer, Response to DPS Staff Interrogatory DPS-39.

	Estimated Net Purchase Price and Cash Flow Needs Assumes Municipalization Completed by July 1, 2022 ($, million)	
A	Acquisition Price of NYAW by Liberty as of 1/1/21	$ 608.0
B	Value of Upstate Systems to be Retained by NYAW	(8.6)
C	Net Deferrals Owed to NYAW and Owed back to Customers	(14.7)
	Estimated Net Sales Price if Sold on 1/1/21	584.7
D	Plant Additions 1/1/21 to 7/1/22	84.5
	Estimated Purchase Price on July 1, 2022	669.2
E	Transaction Costs (assuming negotiated sales price)	4.6
F	Contingency Cash Flow Needs (5% of adjusted purchase price)	33
G	Bond Issuance Costs	6.7
H	Extra Cash for Two Years of Future Plant Investment	75.7
	Total Amount to Be Raised and Included in Rates	$ 789.7
I	Our estimated revenue requirement also assumes that initial rates would need to be set at a 3% premium over total costs for 10 years in order to build up a 25% surplus and maintain an investment grade credit rating. Once that is achieved, rates could be lowered.	

The model also assumes no property taxes, no state[55] and local income taxes, and financing at an A-rated municipal bond rate of 2.33% for a 30-year term. In addition, the model also assumes that over a 10 year period, the new municipal water service would collect an additional $11 million annually above what is needed to operate the company in order to build up equity balance in order to maintain a reasonable credit rating. The assumed equity balance goal is to have twenty five percent (25%) of the net plant balance be supported by the net surplus in ten (10) years.

Based on these assumptions the municipal annual revenue requirement is projected to be $90.5 million, which would save customers on average approximately $433 per year compared to the baseline case. If property tax savings are not counted in the estimate, the average savings per customer is approximately $67 compared to the baseline case. In this analysis, we assume that the municipality could operate the acquired system similarly to NYAW, not any more or less efficient. It should be noted

[55] NYAW currently pays approximately $2.3 million in NYS income taxes.

that many of NYAW's administrative functions are performed at the service company level that spreads certain costs over its entire national regulated operations, which may allow them to obtain certain synergies that smaller municipal systems may not be able to obtain.

We recognize that the local taxing jurisdictions (towns, villages and school districts) will see a decline in tax revenues as a result of municipalization. The new municipal water entity could enter into TEP agreements with the tax jurisdiction most heavily impacted that phases out a few years in order to minimize the disruption. As stated previously, the current property tax system is unfair and there is no meaningful ratepayer relief without property tax relief under any scenario. The 2020-2021 tax collection by taxing jurisdiction can be found in Appendix D.

OWNERSHIP AND TAX REDUCTION OPTIONS

Converting NYAW to a municipal system would require a municipal entity, or entities (authority or water districts), to acquire NYAW's infrastructure either through a negotiated purchase or condemnation proceeding. This could apply to all or part of the system. Since NYAW owns multiple water systems outside of Nassau County, an acquisition would have to ensure that these ratepayers' water service is maintained.

Infrastructure could be acquired in two ways: by negotiating purchase of the assets from NYAW or through an eminent domain proceeding in the courts. A purchase would require NYAW to be willing to sell and for the parties to agree on a price for the assets to be acquired. Eminent domain, or condemnation, would transfer the property without NYAW's consent at a price that would be determined by the judge, using any of a variety of methods to determine the fair market value of the property.

We have developed different paths that New York State, Nassau County and the local Towns and Village could take to reduce water bills for NYAW customers. The first path is "Path T" and that relates to property tax reduction scenarios and the other paths – "Paths A, B and C" relate to different municipalization scenarios, and the "Path D" scenario is the acquisition of all or part or part of NYAW by Liberty, together with the elimination of special franchise property taxes.

Path T – Tax Reduction Options

Path T reduces water property taxes and it is listed before Path A, B and C, which are municipalization scenarios (described below), because Path T can be pursued independent of municipalization. If property taxes are reduced it does not preclude municipalization. It also can be effectuated much quicker with a less complex legislative change and with much less financial and business risk than municipalization. If the State decides to pursue a municipalization of NYAW, the new entity would be exempt from paying taxes anyway. It makes sense to give customers more immediate and certain rate relief, while the municipalization scenarios described below play out.

Effectuating Paths A, B and C is a large undertaking politically, operationally, and financially. We estimate that the proposed Water Authority may have to issue almost $790 million in municipal bonds to acquire and properly operate the Water Authority. When you examine municipalization Paths A, B and C, the vast majority of the savings are attained because municipalities are exempt from paying property taxes. NYAW customers could see up to 90% of the estimated savings of municipalization if New York could pass a law that exempts or reduces property taxes on investor-owned water utilities in Nassau County. This would put the NYAW customers on an equal tax footing with all of the other residents in Nassau County who have municipal water. There are serious tax fairness issues created by the two different tax

systems that were discussed above in more detail. If it is not practical to completely exempt NYAW from paying property taxes, the amended state tax law could reduce the property tax burden on NYAW's customers by exempting Class 3 Special Franchise property or taxing all of the water assets in Nassau County at the Class 4 rate.

A prominent feature of Path T is that it can be effectuated relatively quickly with the passage of a new law. Path T can move forward, and it does not impact Path A or Path B, as those Paths could also still move forward. The net savings of a subsequent municipalization under Path A or Path B would be much less because much of the savings would be captured with the tax law change, but there would still be some additional savings.

When viewing Path T through the lens of our five guiding principles, this option keeps the water reliable and safe and lowers rates without diminishing service. It confronts, but does not fully resolve, the property tax problem. This path does not increase efficiency, nor does it address accountability, transparency, and local leadership situation.

Eliminate Taxes on Special Franchise Property

Taxes on special franchise property represents roughly sixty eight percent (68%) of NYAW's overall property tax burden. For the 2020-2021 tax period, NYAW's property tax bills total approximately $44 million, of which about $30 million is tax on special franchise property. If legislative changes eliminate taxes on the special franchise properties for the Nassau County service territories, customers would see a bill reduction of about twenty five percent (25%) on average, all else equal.

Change from Class 3 to Class 4

Under State law, Nassau County has the four-class property tax system. Classes 1 and 2 include properties that are used primarily for residential purposes and vacant land zoned for residential or mixed use. Class 3 consists of utility

company equipment located either on utility property or in the public right of way. Class 4 contains all other property, including commercial, industrial and institutional buildings, and vacant land. The tax rates are typically much lower for Class 1 than for the other three classes. The Class 3 tax rate is generally the highest among all classes. For NYAW, eighty four percent (84%) of its total property tax bills were billed under Class 3 rates and the remaining fourteen percent (14%) were billed under Class 4 rates in calendar year 2020. If legislation changes allow NYAW to pay property taxes under Class 4 rates, its overall property tax burden would be reduced by approximately $12 million, or an eight percent (8%) reduction to customer bills, assuming tax rates remain at 2020 levels.

Path A - Municipalization – Countywide Water Authority

New York State would create one water authority whose immediate mission would be to acquire NYAW's Nassau County service territory, and either operate it directly or contract with existing public water service providers to operate all or part of its service territory. Longer term, where it is efficient and makes economic sense to do so, the authority would have the ability to expand if other water authorities or water districts were interested in merging their operations. Any expansion would be on a strictly voluntary basis.

The newly created Nassau County Water Authority would need to obtain immediate technical, managerial, and financial expertise in order to be able to effectively operate a new water system. Some of the expertise can be obtained by hiring existing NYAW employees to operate the water authority. The new water authority may also contract with an existing water provider to run the system, such as the Suffolk County Water Authority, the Hempstead Department of Water, or the Jericho Water District. The contract could be a long term operating contract, which is familiar to the Suffolk County Water Authority, or the operating contract could be for a

limited number of years to give the newly created authority time to develop the needed expertise.

When viewing Path A through the lens of our five guiding principles, this option lowers rates and could theoretically be implemented without diminishing service, confronts the property tax problem and addresses accountability, transparency and local leadership situation. Once the authority is created and organized, it will need to address how it will obtain the necessary technical, operation and financial expertise in order to maintain safe and reliable service. This path represents an opportunity to increase efficiency throughout the county, through consolidation, eliminating duplicative services and spreading fixed costs over a larger customer base.

Path B - Municipalization – Takeover by Adjacent Water Districts

A takeover by existing water districts adjacent to the three (3) NYAW service territories would bring the technical, managerial, and financial expertise required to properly run a water company. It also has the advantage of local control and local accountability.

Two of the three service territories, East Massapequa and the Village of Sea Cliff, are in the Town of Oyster Bay. They represent approximately eight percent (8%) of NYAW's customer base located in Nassau County. The Village of Sea Cliff and MWD hired the same consultant, Walden Engineering, to analyze the feasibility of municipalizing the east Massapequa and Sea Cliff districts. Based on the results of the studies, MWD is interested in acquiring NYAW's east Massapequa service territory under the right circumstances -- a relatively seamless transition. The Village of Sea Cliff does not currently operate a water company, so it may make more sense for a neighboring water district to take over the Sea Cliff service territory. The water district

could operate the newly acquired customers, as a separate rate district in order to protect its existing customer base from any costs related to the transaction. Or, a separate authority could be established, which in turn, could hire an adjacent water district as the long-term operator of the system.

Approximately ninety two percent (92%) of NYAW's Nassau County customers live in the Town of Hempstead. The Town of Hempstead Water Department consists of six (6) separate districts: Bowling Green Estates, East Meadow, Levittown, Uniondale, Roosevelt Field, Lido Point Lookout. All other communities in the Town of Hempstead are serviced by either NYAW, water authorities or villages.

The Town of Hempstead also hired Walden Engineering to analyze the feasibility of municipalizing NYAW's service territory located within the Town. The study concluded that municipalization would provide rate relief of $383 per customer per year, or $70 per year if property taxes were replaced with full TEP payments. Nonetheless, in comments submitted to the Commission in Case 20-W-0102, the Town of Hempstead expressed reservations about municipalizing:

> "*The monthly savings for the average customer is diminutive compared to the financial implications of issuing such massive debt required to acquire the water system. The consequences of a local municipality issuing a half a billion dollars of debt to finance the takeover of NYAW are serious*." [56]

When viewing Path B through the lens of our five guiding principles, this option could potentially lower rates without diminishing service, confronts the property tax problem and addresses accountability, transparency and local leadership situation.

---

[56] Case 20-W-0102, New York American Water Company, Inc. and Liberty Utilities (Eastern Water Holdings) Corp. – Transfer, Hempstead Department of Water letter (filed December 31, 2020).

Since the adjacent water utilities already operate an existing water system, they have the built-in expertise to maintain safe and reliable service. This path represents an opportunity to create efficiencies not only for the acquired customer base, but also for its existing customer base as well. The efficiencies may be obtained through consolidation, eliminating duplicative services and spreading fixed costs over a larger customer base, however the potential synergies are not as great as the full water authority.

Path C – Hybrid Approach – Mix of Adjacent Water Districts Taking Over and New Water Authorities

Path C assumes that for certain parts of the service territory there would be local entities willing and able to take over that part of the service territory (e.g. MWD), but there would be a remaining part of the service territory where there was no local entity willing and able to take over and a water authority would need to be formed to operate that remaining piece. This Path would take coordination between the different acquiring entities to strategize negotiating positions and coordinate condemnation efforts, if needed. The entities would also need to agree to a formula to split the costs incurred to acquire NYAW and the relative value of each of the service territories once that transaction is consummated. This hybrid approach allows for flexibility between Path A and Path B. Path C meets the five guiding principles in similar ways as Paths A and B above.

Path A, B, or C – There Should Be One Entity Negotiating

Whether Path A, B or C is pursued, it makes the most sense for a newly created Water Authority to negotiate with NYAW to buy all of the Company's assets in Nassau County. One entity could better negotiate the most advantageous price, as

opposed to three (3) separate entities negotiating for parts of the Company. This is especially true if direct negotiations fail and the takeover is done through condemnation, which could be heard in one proceeding. Once the sale is complete, the Water Authority would be free to sell off parts of the service territory if there are willing and able buyers.

Path D – Liberty Acquisition is Approved for Parts of the Service Territory with Special Franchise Tax Relief

Path D assumes that for certain parts of the service territory local entities would be willing and able to take over that part of the service territory (e.g. MWD, a new authority for the Village of Sea Cliff), but there would be a remaining part(s) of the service territory where there was no local entity willing and able to take over. This scenario also assumes that New York passes a law exempting water companies in Nassau County from special franchise property taxes. Under this scenario customers would realize significant rate relief due to the property tax relief and potentially the Public Benefit Adjustment proposed by Staff. This scenario relieves the State from having to create a new Authority and issue a significant amount of debt to purchase and operate the water system.

When viewing Path D through the lens of our five guiding principles, this option lowers rates without diminishing service, confronts the property tax problem and maintains safe and reliable service. With new ownership, this path provides an opportunity to create efficiencies. Path D does not address the local leadership situation, but Liberty does plan to have its entire water operation located in Nassau County.

CONCLUSION AND RECOMMENDATION

Governor Cuomo charged the Department with studying the feasibility of municipalizing all or part of New York American Water's Long Island assets and operations, and we did so by employing five guiding principles:

1) Maintaining the Safety of the Water Supply
2) Lowering Rates Without Diminishing Service
3) Confronting the Property Tax Problem
4) Maximizing Efficiencies Where Possible
5) Addressing Accountability, Transparency and Local Leadership

Municipalization is both feasible and, under a variety of scenarios, in the public interest, even with an upfront investment of nearly $800 million for the purchase of NYAW's assets (or a pro rata amount for parts of the system), ongoing and near-term infrastructure improvements, and transaction costs.

The study's primary recommendation is that (1) the legislature act now to remove the onerous property tax burden which is uniquely borne by NYAW's ratepayers, and (2) a new public authority be established with the power to purchase or obtain through eminent domain all or parts of NYAW's assets in Nassau County (the Nassau County Water Authority), after which it can choose to operate the assets itself, contract out their operation to established public water providers, or merge all or parts of them into existing public water providers.

Under this plan, NYAW customers will see a significant reduction in their combined water rates and property taxes, while in the immediate term the tax burden is spread to other much larger utilities on Long Island, and ultimately more evenly distributed within the taxing jurisdictions currently served by NYAW.

Municipalization isn't an easy or quick process under any of the scenarios analyzed and determined to be feasible herein. There are complex legislative, legal and financing issues that need to work their way through the legislature, the Commission, local government bodies, and potentially the courts before any form of municipalization will take effect, and its benefits realized.

Time is of the essence: not only is there presently before the Commission an application to allow NYAW to be purchased by another investor-owned utility (IOU), but on May 1,, 2021 NYAW's rates are scheduled to rise by as much as twenty-six percent (26%). While it is infeasible that an acquisition of the NYAW system can be accomplished in that time, changes to current property tax rates that would be similar under a municipalization can be accomplished soon enough to avoid the rate increase. It is therefore recommended that steps be taken immediately to obtain the biggest consumer benefit of municipalization, which is a reduction in NYAW's property tax expenses.

APPENDICES

Appendix A - NYAW 2021 – 2023 Capital Investment Plan

Project Number	Project Name	Service Area	2021	2022	2023
R38-01K3	Corporate ITS	CORP	$ 3,501,000	$ 3,695,500	$ 3,501,000
D38-0301	Developer	SA1	$ 200,000	$ 200,000	$ 200,000
SIC PROJECTS					
I38-030064	Plant 22 Portable IRF	SA1	$ 2,365,192	$ 500,000	$ -
I38-030062	Plant 5 Filter House Covers(SIC2)	SA1	$ 604,739	$ -	$ -
I38-030073	Plant 5 Caustic-2017 (SIC2)	SA1	$ 490,000	$ -	$ -
I38-040003	Jefferson St. Well Redrill	SA2	$ 26,003	$ -	$ -
I38-040008	Newbridge Rd Filter Plant expansion	SA2	$ 970,000	$ -	$ -
R38-03B3	Mains - Replaced/Restored/Fire flow	SA1	$ 4,800,000	$ -	$ -
METER REPLACEMENT - NON SIC					
R38-03J1	Meters - Replaced	SA1	$ 4,747,000	$ 5,428,500	$ 2,350,000
R38-04J1/05J1	Meters - Replaced	SA2	$ 1,069,250	$ 387,750	$ 2,538,000
LYNBROOK IP					
I38-030087	Plant 5 High Service	SA1	$ 100,000	$ 2,999,997	$ 5,800,003
Future SA1 Proj 7	Lynbrook Pump/well Replacement	SA1	$ -	$ 2,500,000	$ 1,250,000
I38-030034	Plant #3 IRF (or other IRF)	SA1	$ 200,000	$ 3,299,618	$ 400,000
Future SA1 Proj 1	Plant 5 Convert South Well Field to p	SA1	$ -	$ 1,500,000	$ 1,500,000
I38-030086	Plant 6 Backwash waste handling im	SA1	$ 2,950,000	$ -	$ -
I38-030090	Phosphate Conversion	SA1	$ 625,000	$ -	$ -
I38-030092	Plant 5 Diesel Engine and cooling (C	SA1	$ 500,000	$ -	$ -
I38-030091	Caustic Automation plts 7,8,10,15,20	SA1	$ 550,000	$ -	$ -
Future SA1 Proj 10	Plant 2 IRF Enclosure	SA1	$ -	$ -	$ 850,000
Future SA1 Proj 8	Plant 17 Phase I Upgrades / Caustic	SA1	$ -	$ -	$ 200,000
UPSTATE IP					
Future SA1 Proj - Upstate 15	Cambridge - Decommission Reservo	SA1	$ -	$ -	$ 250,000
Future SA1 Proj - Upstate 14	Wild Oaks Chem Building and Elec U	SA1	$ -	$ -	$ 750,000
Future SA1 Proj - Upstate 12	Wild Oaks New Well	SA1	$ -	$ 400,000	$ -
I38-120002	Mill Neck Estates-Move Chemical Bu	SA1	$ 1,573,846	$ -	$ -
Future SA1 Proj - Upstate 11	Kingsvale - Kukuck Main Replaceme	SA1	$ -	$ 475,000	$ -
Future SA1 Proj - Upstate 3	Lucas Estates New Well	SA1	$ 500,000	$ -	$ -
Future SA1 Proj - Upstate 5	Waccabuck Tank and watermain	SA1	$ 500,000	$ -	$ -
I38-150008	Barrett Hills - Ebo	SA1	$ 500,000	$ -	$ -
UPSTATE POST AQ IP					
I38-160003	Pump System Upgrades New Vernon	PstAq	$ 700,000	$ -	$ -
MERRICK IP					
I38-040047	Seaman's Neck 1,4 Treatment - Pilot	SA2	$ 2,000,000	$ -	$ -
Future SA2 Proj 4	Merrick Pump/well Replacement	SA2	$ 2,500,000	$ 1,000,000	$ 500,000
I38-040039	Jerusalem	SA2	$ -	$ 1,000,000	$ 3,000,000
Future SA2 Proj 13	Charles St. Plant Rebuild	SA2	$ -	$ -	$ 300,000
I38-040048	DeMott Redrill Well 4 and Chemical	SA2	$ 75,043	$ 2,500,021	$ 425,021
Future SA2 Proj 2	Jefferson St. Chemical and Plant Imp	SA2	$ -	$ -	$ 400,000
SEA CLIFF IP					
I38-050006	New Well SeaCliff	SA2	$ -	$ -	$ 1,000,000
I38-050008	PFOA Treatment - Glen Head Station	SA2	$ 1,500,000	$ -	$ -
DISC PROJECTS					
R38-03B1	Mains - Replaced/Restored	SA1	$ 8,613,754	$ 10,119,254	$ 10,707,717
R38-03F1	Hydrants, Valves, and Manholes - Re	SA1	$ 526,271	$ 526,271	$ 552,585
R38-03H1	Services and Laterals - Repl	SA1	$ 1,695,763	$ 1,695,763	$ 1,780,551
R38-04B1	Mains - Replaced/Restored	SA2	$ 3,558,475	$ 3,758,475	$ 3,946,399
R38-04B2	Mains - Replaced/Restored	SA2	$ 200,000	$ 200,000	$ 200,000
R38-04F1	Hydrants, Valves, and Manholes - Re	SA2	$ 233,898	$ 233,898	$ 245,593
R38-04H1	Services and Laterals - Replaced	SA2	$ 526,271	$ 526,271	$ 552,585
R38-05B1	Mains - Replaced/Restored	SA2	$ 935,593	$ 935,593	$ 982,373
R38-05F1	Hydrants, Valves, and Manholes - Re	SA2	$ 87,712	$ 87,712	$ 92,098
R38-05H1	Services and Laterals - Replaced	SA2	$ 116,949	$ 116,949	$ 122,796
R38-10B1/11B1/12B1/13B1/14B1	Mains - Replaced/Restored	SA1	$ 224,542	$ 224,542	$ 235,770

Project Number	Project Name	Service Area	2021	2022	2023
LYNBROOK RP					
R38-03A1	Mains - New	SA1	$ 179,894	$ 179,894	$ 188,889
R38-03C1	Mains - Unscheduled	SA1	$ 900,000	$ 900,000	$ 900,000
R38-03E1	Hydrants/Valves/Manholes-New	SA1	$ 67,884	$ 67,884	$ 71,279
R38-03G1	Services and Laterals - New	SA1	$ 800,000	$ 800,000	$ 800,000
R38-03I1	Meters - New	SA1	$ 62,227	$ 62,227	$ 65,339
R38-03K1	ITS Equipment and Systems	SA1	$ 98,906	$ 13,251	$ 69,749
R38-03L1	SCADA Equipment and Systems	SA1	$ 84,856	$ 84,856	$ 89,098
R38-03M1	Security Equipment and Systems	SA1	$ 73,542	$ 73,542	$ 77,219
R38-03N1	Offices and Operations Centers	SA1	$ 96,170	$ 96,170	$ 100,978
R38-03O1	Vehicles	SA1	$ 509,134	$ 509,134	$ 534,590
R38-03P1	Tools and Equipment	SA1	$ 186,682	$ 186,682	$ 196,016
R38-03Q1	Plant Facilities and Equipment	SA1	$ 1,050,625	$ 1,050,625	$ 1,128,156
R38-03Q2	Plant Facilities and Equipment/Corro	SA1	$ 800,000	$ -	$ -
R38-03S1	Engineering Studies/GIS Mapping / C	SA1	$ 258,631	$ 258,632	$ 271,563
MERRICK RP					
R38-04C1	Mains - Unscheduled	SA2	$ 300,000	$ 300,000	$ 317,500
R38-04G1	Services and Laterals - New	SA2	$ 150,000	$ 150,000	$ 150,000
R38-04K1	ITS Equipment and Systems	SA2	$ 310,587	$ 22,066	$ 71,913
R38-04L1	SCADA Equipment and Systems	SA2	$ -	$ 100,000	$ 100,000
R38-04M1	Security Equipment and Systems, SC	SA2	$ 84,856	$ 84,856	$ 89,098
R38-04N1	Offices and Operations Centers	SA2	$ 33,942	$ 33,942	$ 35,639
R38-04O1	Vehicles	SA2	$ 169,711	$ 169,711	$ 178,197
R38-04P1	Tools and Equipment	SA2	$ 22,628	$ 22,628	$ 23,760
R38-04Q1	Process Plant Facilities and Equipme	SA2	$ 676,912	$ 676,912	$ 710,757
R38-04S1	GIS Mapping / GPS Data Collecton a	SA2	$ 160,000	$ 160,000	$ 168,000
SEA CLIFF RP					
R38-05C1	Mains - Unscheduled	SA2	$ 200,000	$ 200,000	$ 200,000
R38-05K1	ITS Equipment and Systems	SA2	$ 39,388	$ 9,818	$ 9,298
R38-05L1	SCADA Equipment and Systems	SA2	$ 5,657	$ 5,657	$ 5,940
R38-05M1	Security Equipment and Systems	SA2	$ 16,971	$ 16,971	$ 17,820
R38-05P1	Tools and Equipment	SA2	$ 5,657	$ 5,657	$ 5,940
R38-05Q1	Process Plant Facilities and Equipme	SA2	$ 100,000	$ 100,000	$ 100,000
UPSTATE RP					
R38-10Q1/11Q1/12Q1/13Q1/14Q1	Process Plant Facilities and Equipme	SA2	$ 64,490	$ 64,490	$ 67,715
UPSTATE POST AQ RP / WW					
R38-16B1	Mains - Replaced/Restored	PstAq	$ -	$ -	$ -
R38-16Q1	Process Plant Facilities and Equipme	PstAq	$ 1,000,000	$ 300,000	$ 300,000
R38-17Q1	Waste Water Process Plant	WW	$ 200,000	$ 50,000	$ 50,000
Total			**$58,975,650**	**$51,066,719**	**$51,726,943**

Appendix B - Details of the Scenario Analysis -Assumptions and Schedules

NYAW Remains as the Service Provider

This is the baseline scenario and assumes that NYAW continues to operate as an investor owned utility without any change to property structure. The forecasts for sales revenues, property taxes, and net plant reflect NYAW and Liberty's forecasts in the Liberty acquisition proceeding while the cost of capital and other cost of service elements reflect staff position in the acquisition proceeding. In addition, Staff added roughly $16.5 deferred rate increase per Commission February 2020 Order, to be recovered over a three-year period.

NYAW Municipalization Study
Operating Income ($)
Baseline Scenario - Full forecasts
For the Rate Year Ending March 31, 2023

	Rate Year Ending March 31, 2023	Revenue Requirement Adjustment	As Adjusted Rate Year Ending March 31, 2023
Operating Revenue	$ 119,191,938	$ 27,104,262	$ 146,296,200
Operating & Maintenance Expenses	47,771,057	219,134	47,990,191
Depreciation and Amortization	18,499,591	-	18,499,591
Taxes Other Than Income Taxes	45,754,809	-	45,754,809
Total Operating Expenses	112,025,457	219,134	112,244,591
Operating Income Before Income Taxes	7,166,481	26,885,128	34,051,609
State Income Taxes	(108,784)	2,261,039	2,152,255
Federal Income Taxes	(10,674)	5,171,059	5,160,385
Net Income Available for Return	7,285,939	19,453,030	26,738,970
Rate Base	$ 459,432,467	$ -	$ 459,432,467
Rate of Return	1.59%		5.82%

Liberty Acquisition with Staff Proposed PBA

This scenario assumes the same cost of service forecasts as the baseline, except for a public benefit adjustment of $23.5 million, as Staff proposed in its testimony in the Liberty acquisition proceeding. The customer bill calculation reflects passing the credit to ratepayers over a five-year period.

NYAW Municipalization Study
Operating Income ($)
Liberty Acquisition with Staff Proposed PBA
For the Rate Year Ending March 31, 2023

	Rate Year Ending March 31, 2023	Revenue Requirement Adjustment	As Adjusted Rate Year Ending March 31, 2023
Operating Revenue	$ 119,191,938	$ 21,232,842	$ 140,424,780
Operating & Maintenance Expenses	43,071,057	171,664	43,242,721
Depreciation and Amortization	18,499,591	-	18,499,591
Taxes Other Than Income Taxes	45,754,809	-	45,754,809
Total Operating Expenses	107,325,457	171,664	107,497,121
Operating Income Before Income Taxes	11,866,481	21,061,178	32,927,659
State Income Taxes	310,199	1,771,245	2,081,444
Federal Income Taxes	947,552	4,050,886	4,998,438
Net Income Available for Return	10,608,730	15,239,047	25,847,777
Rate Base	$ 444,119,867	$ -	$ 444,119,867
Rate of Return	2.39%		5.82%

Municipalization – Nassau County Water Authority

This scenario assumes the same base purchase price of $608 million as the proposed Liberty acquisition of NYAW, adjusted for small water systems outside Nassau County, deferral's on NYAW's books, plant additions planned for calendar year 2021 and part of 2022. The model also assumes additional cash needs for the operations and capital improvement of the acquired water system. The table below is the calculation of estimate of the net purchase price and cash flow needs for the new public water entity[57].

	Estimated Net Purchase Price and Cash Flow Needs Assumes Municipalization Completed by July 1, 2022 ($, Million)	
A	Acquisition Price of NYAW by Liberty as of 1/1/21	$ 608
B	Value of Upstate Systems to be retained by NYAW	(9)
C	Net Deferrals owed to NYAW and owed back to Custor	(15)
	Estimated Net Sales Price if Sold on 1/1/21	585
D	Plant Additions 1/1/21 to 7/1/22	85
	Estimated Purchase Price on July 1, 2022	669
E	Transaction Costs (assuming negotiated sales price)	5
F	Contingency Cash Flow Needs (4% of purchase price)	27
G	Bond Issuance Costs	7
H	Extra Cash for 3 Years of Future Plant Investment	76
	Total amount to be raised and included in rates	$ 783

I Our estimated revenue requirement also assumes that initial rates would need to be set at a 3% premium over total costs for 10 years in order to build up a 25% surplus and maintain an investment grade credit rating. Once that is achieved, rates could be lowered.

[57] The figures represent conservative estimates. Actual purchase price determined through negotiation or a condemnation proceeding could be lower.

Assumptions on the Net Purchase Price and Cash Flow Needs

Assumption A – Purchase Price - The $608 million purchase price is based on the 2019 arms-length purchase agreement between Liberty and American Water and Staff believes it represents a good conservative estimate of the fair market value of the company, which would be standard whether it be negotiated or decided in a condemnation case decided by the Courts.

Assumption B – NYAW Retaining The Upstate System - The upstate water systems have approximately 2,200 customers and in our assumptions we assume NYAW either retains those systems or sells them to another investor owned utility. Our $9 million estimate is based on the total book value of NYAW's water assets, prorated for the number of upstate customers and multiplied by 1.2 times book value, which is the premium recently paid for an asset sale of another small upstate water system.

Assumption C – Net Deferrals - Deferrals are the technical term for amounts owed to the company by the customers or amounts owed to customers by the company. The company is owed approximately $16.4 million from customers for delayed rate increases and customers are owed $31 million related to the change in the corporate income tax rates. These net to roughly $15 million owed to customers.

Assumption D – Plant Additions 1/1/21 through 7/1/22 - According to the purchase agreement between Liberty and AWW, the $608 million purchase price includes the capital investment through December 31, 2020, assuming the sales transaction would close by January 1, 2021. Our forecast assumes municipalization will not be finalized until July2022. The $84 million represents the estimated net plant additions between January 1, 2021 and July 1, 2022, based on NYAW's capital budgets provided in the Liberty acquisition proceeding.

Assumption E – Transaction and Startup Costs - The newly created Water Authority will incur initial costs forming the Board, developing business plans, integrating computer systems, development of a transition plan and negotiating a purchase price before it can close on the transaction and begin collecting rates from customers.

Assumption F – Cash Contingency - Actual future costs will always deviate above or below the budgeted estimates. It is prudent to build in a contingency to make sure enough cash is in hand to pay all bills. Creditors will also want to be sure there is contingency cash budgeted. We estimated the contingency cash at 5% of estimated purchase price, based on the MWD comments.

Assumption G – Bond Issuance Costs - Estimated bond issuance cost is roughly 1% of adjusted purchase price.

Assumption H – Future Plant Additions – 2 Years - Since the proposed Water Authority is a self-sustaining entity and does not want to go back out to the bond market too quickly after its initial offering we include additional cash need for two years of short-term capital expenditures.

Assumption I – Building up of a Surplus - This assumption does not go into our estimate for cash needed for the Water Authority needs to raise initially, but it does go into our revenue requirement assumptions. We believe that for a ten-year period it will need to collect approximately 3% more than its all in costs in order to build up a 25% surplus (equity). The 25% surplus goal is based on the surplus maintained at Suffolk County Water Authority.

Assumptions in our Revenue Requirement Model

Net Investment Assumption – as detailed above we estimate that approximately $800 million will need to be invested initially to form the Water Authority.

Cost of Capital (bond rate) – we estimate a 2.3% borrowing rate based on financing at a A-rated municipal bond rate for a 30-year term.

Federal and State Income Taxes – unlike an investor owned utility the Water Authority will not be required to pay federal and state income taxes.

Property Taxes – unlike an investor owned utility the Water Authority will not be required to pay property taxes. The Water Authority may negotiate to initially pay a TEP that is phased out over a number of years, but our forecast assumes no property taxes.

Operating Expenses – our estimates assume that the proposed Water Authority will be able to operate as efficiently as NYAW.

NYAW Municipalization Study
Operating Income ($)
Municipalization Scenario
For the Rate Year Ending March 31, 2023

	Rate Year Ending March 31, 2023	Revenue Requirement Adjustment	As Adjusted Rate Year Ending March 31, 2023
Operating Revenue	$ 119,191,938	$ (28,227,001)	$ 90,964,937
Operating & Maintenance Expenses	53,677,397	(165,558)	53,511,839
Depreciation and Amortization	18,499,591	-	18,499,591
Taxes Other Than Income Taxes	718,948	-	718,948
Total Operating Expenses	72,895,936	(165,558)	72,730,378
Operating Income Before Income Taxes	46,296,002	(28,061,443)	18,234,559
State Income Taxes	-	-	-
Federal Income Taxes	-	-	-
Net Income Available for Return	46,296,002	(28,061,443)	18,234,559
Rate Base	$ 782,599,120	$ -	$ 782,599,120
Rate of Return	5.92%		2.33%

Law Eliminating Taxation of Special Franchise Properties in Nassau County

This scenario assumes the same cost of service forecasts as the baseline scenario, except for property tax. The property tax forecast reflects elimination of taxation of special franchise properties, which is about 68% of the total property tax, based on NYAW's actual property tax payment in the 2020-2021 tax period.

NYAW Municipalization Study
Operating Income ($)
Exempting Taxation of Special Franchise Property
For the Rate Year Ending March 31, 2023

	Rate Year Ending March 31, 2023	Revenue Requirement Adjustment	As Adjusted Rate Year Ending March 31, 2023
Operating Revenue	$ 119,191,938	$ (3,769,735)	$ 115,422,203
Operating & Maintenance Expenses	47,771,057	(30,477)	47,740,580
Depreciation and Amortization	18,499,591	-	18,499,591
Taxes Other Than Income Taxes	15,130,424	-	15,130,424
Total Operating Expenses	81,401,072	(30,477)	81,370,595
Operating Income Before Income Taxes	37,790,866	(3,739,258)	34,051,609
State Income Taxes	2,466,727	(314,472)	2,152,255
Federal Income Taxes	5,879,590	(719,205)	5,160,384
Net Income Available for Return	29,444,550	(2,705,581)	26,738,969
Rate Base	$ 459,432,467	$ -	$ 459,432,467
Rate of Return	6.41%		5.82%

Law changing Special Franchise Taxes from Utility Class (Class 3) to Commercial Class (Class 4)

This scenario assumes the same cost of service forecasts as the baseline scenario except for property tax. The property tax forecast reflects change of NYAW's Class 3 property tax to Class 4, which would reduce the property tax burden by roughly 26%.

NYAW Municipalization Study
Operating Income ($)
Changing Property Taxes from Class 3 to Class 4
For the Rate Year Ending March 31, 2023

	Rate Year Ending March 31, 2023	Revenue Requirement Adjustment	As Adjusted Rate Year Ending March 31, 2023
Operating Revenue	$ 119,191,938	$ 15,299,499	$ 134,491,437
Operating & Maintenance Expenses	47,771,057	123,694	47,894,751
Depreciation and Amortization	18,499,591	-	18,499,591
Taxes Other Than Income Taxes	34,045,485	-	34,045,485
Total Operating Expenses	100,316,133	123,694	100,439,827
Operating Income Before Income Taxes	18,875,805	15,175,805	34,051,610
State Income Taxes	875,970	1,276,285	2,152,255
Federal Income Taxes	2,241,486	2,918,899	5,160,385
Net Income Available for Return	15,758,349	10,980,620	26,738,970
Rate Base	$ 459,432,467	$ -	$ 459,432,467
Rate of Return	3.43%		5.82%

Liberty Acquisition with Staff Proposed PBA and Exemption of Special Franchise Property Taxes

This scenario assumes the same cost of service forecasts as the baseline, except for a public benefit adjustment of $23.5 million, as Staff proposed in its testimony in the Liberty acquisition proceeding. The customer bill calculation reflects passing the credit to ratepayers over a five-year period. In addition, the property tax forecast reflects elimination of special franchise property tax, which is about 68% of the

total property tax, based on NYAW's actual property tax payment in the 2020-2021 tax period.

NYAW Municipalization Study
Operating Income ($)
Liberty Acquisition with PBA and Exemption of SF Property Taxes
For the Rate Year Ending March 31, 2023

	Rate Year Ending March 31, 2023	Revenue Requirement Adjustment	As Adjusted Rate Year Ending March 31, 2023
Operating Revenue	$ 119,191,938	$ (9,691,702)	$ 109,500,236
Operating & Maintenance Expenses	43,071,057	(78,356)	42,992,701
Depreciation and Amortization	18,499,591	-	18,499,591
Taxes Other Than Income Taxes	15,130,424	-	15,130,424
Total Operating Expenses	76,701,072	(78,356)	76,622,716
Operating Income Before Income Taxes	42,490,866	(9,613,346)	32,877,520
State Income Taxes	2,886,768	(808,482)	2,078,286
Federal Income Taxes	6,840,235	(1,849,021)	4,991,214
Net Income Available for Return	32,763,863	(6,955,842)	25,808,021
Rate Base	$ 443,436,783	$ -	$ 443,436,783
Rate of Return	7.39%		5.82%

Appendix C – Map of Nassau County Water Districts

Appendix D - NYAW Property Tax Payments to Towns, Villages and School Districts

Summary of 2020-2021 Property Tax Payments by NYAW - By Town

	Special Franchise Class 3	Other Class 3	Class 4	Total
Town of Hempstead	11,295,716	2,771,053	2,264,143	16,330,912
Town of Oyster Bay	1,224,904	60,436	201,897	1,487,237
Total	**12,520,620**	**2,831,488**	**2,466,040**	**17,818,149**
As a Percent of Total	**70%**	**16%**	**14%**	

Summary of 2020-2021 Property Tax Payments by NYAW - By Village

	Special Franchise Class 3	Other Class 3	Class 4	Total
Villages in the Town of Hempstead				
Atlantic Beach	109,720		48,426	158,146
Cedarhurst	15,439		1,045	16,484
East Rockaway	57,325		5,045	62,369
Hewlett bay Park	2,904		226	3,131
Hewlett Harbor	16,502		2,832	19,334
Hewlett Neck	124		17	141
Island Park	43,650		2,321	45,971
Lawrence	6,704		761	7,465
Lynbrook	138,504		93,114	231,617
Malverne Village	310,042		83,129	393,171
Valley Stream	443,602		95,830	539,433
Woodsburgh	652		37	689
Villages in the Town of Oyster Bay				
NYWS - Village of Massapequa	103			103
Sea Cliff - City and County	17,915			17,915
Sea Cliff - Village of Old Brookville	7,369			7,369
Sea Cliff - Village of Sea Cliff	54,470			54,470
Sea Cliff - Village of Sea Cliff			93,922	93,922
Sea Cliff - Village of Roslyn Harbor	98			98
Total	**1,225,124**		**426,706**	**1,651,829**
As a Percent of Total	**74%**		**26%**	

Summary of 2020-2021 Property Tax Payments by NYAW - School Districts

	Special Franchise Class 3	Other Class 3	Class 4	Total
School Districts in the Town of Hempstead				
Baldwin Union Free School District	845,597	322,471	76,452	1,244,520
Bellmore Union Free School District	252,392	27,508	0	279,900
East Rockaway Union Free School District	1,897	0	225	2,122
Hempstead Union Free School District	2,002,753	800,656	623,984	3,427,393
Hewlett-Woodmere Union Free School District	690,008	79,356	14,532	783,896
Island Park Union Free School District	933,723	159,687	49,226	1,142,636
Island Trees Union Free School District	45,417	67,033	0	112,450
Lawrence Union Free School District	996,605	439,045	126,813	1,562,464
Levittown Union Free School District	790,482	346,243	62,584	1,199,309
Long Beach City School District	898,097	203,733	42,413	1,144,243
Lynbrook Union Free School District	61,936	118,926	82,574	263,436
Malverne Union Free School District	78,116	142,787	39,079	259,983
Merrick Union Free School District	45,313	0	5,138	50,450
North Bellmore Union Free School District	359,390	192,960	59,579	611,929
North Merrick Union Free School District	342,185	58,436	17,710	418,332
Oceanside Union Free School District	379,497	392,766	141,654	913,918
Rockville Centre Union Free School District	246,883	101,082	5,632	353,598
Roosevelt Union Free School District	503,380	0	131,763	635,143
Seaford Union Free School District	222,720	0	57,293	280,014
Uniondale Union Free School District	774,076	292,406	436,518	1,503,000
Valley Stream Union Free School District - 13	689,550	83,226	388,709	1,161,485
Valley Stream Union Free School District - 24	472,500	176,749	202,820	852,069
Valley Stream Union Free School District - 30	329,836	16	99,004	428,856
Wantagh Union Free School District	343,519	0	89,984	433,503
West Hempstead Union Free School District	556,242	85,582	276,423	918,247
School Districts in the Town of Oyster Bay				
Amityville Union Free School District	56,195	0	0	56,195
Farmingdale Union Free School District	1,783	0	0	1,783
Massapequa Union Free School District	689,781	0	231,332	921,113
Brookville	1,528	0	0	1,528
Glen Cove	34,794	0	0	34,794
Glen Head	547,299	0	0	547,299
Glenwood Landing	374,961	0	0	374,961
Roslyn	535	0	0	535
Sea Cliff	1,192,797	209,435	118,683	1,520,915
Total	**15,761,789**	**4,300,104**	**3,380,122**	**23,442,015**
As a Percent of Total	**67%**	**18%**	**14%**	

Appendix E - Summary of Staff's Litigated Position in the Liberty Acquisition Proceeding

- The transaction as proposed does not meet the public interest standard.

- In order to meet the public interest standard the transaction should be modified, and certain conditions implemented as basis for the Commission to approve the transaction, including:

- Impute a $23.5 million public benefit adjustment (PBA) for ratepayers in addition to the proposed base rate freeze, which Staff valued at roughly $6 million. (The baseline revenue requirement scenario below reflects Staff's testimonial position, updated for corrections and inclusion of the recovery of the deferred levelization surcharge per Commission February 2020 Order.)

- Prohibit NYAW post-acquisition from filing a petition for a base rate proceeding for at least one full year following the closing date of the Transaction. Otherwise, the filing might not reflect a historic test year under full ownership of Liberty Eastern. Depending on the date of the transaction close, the base rate freeze could be extended beyond March 31, 2023, in order to meet this requirement.

- Goodwill and transaction costs must be excluded from rate base, expenses, and capitalization in the determination of NYAW's rates and earned returns for York State regulatory reporting purposes

- If at any time after the closing of this acquisition any analysis determines that Goodwill on Liberty's books, either due to the Transaction or acquired prior to the Transaction, is impaired to any extent, the Petitioners should be required to submit that analysis to the Commission within five business days after the determination has been made.

- NYAW and Liberty should be required to abide by the financial integrity measures outlined by the Staff Finance Panel. Specifically, a) NYAW should be required to maintain a common equity ratio of no less than 300 basis points below the common equity ratio used to set rates; b) Liberty should be required to maintain a credit rating of "BBB" or better from Standard & Poor's Global Ratings for at least three years following the close of the Transaction; and c) NYAW should be barred from participating in a money pool unless all other participants are regulated utilities, with the caveat that Liberty may participate, but only as a lender.

- Liberty should be required to provide the net book value of assets, consumption and sales data, and other related information for any portion of NYAW's system which a municipality or public water authority proposes to acquire, post the Transaction.

- Staff made additional recommendations, including modification to Customer Service Performance Incentive Mechanism, identification of low-income customers, hiring a local board of director, reporting requirement for NYAW's capital investments.