

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 21, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.

CASE 06-W-0069- Petition of Long Island Water Corporation
Pursuant to Public Service Law Section 113(2)
Providing Notification of Receipt of Property Tax
Refunds of \$7,386,087.89 from the County.

ORDER REQUIRING CUSTOMER REFUNDS
AND ADOPTING THE TERMS OF A JOINT PROPOSAL

(Issued and Effective March 21, 2007)

BY THE COMMISSION:

INTRODUCTION

In January 2006, in accordance with Public Service Law §113(2) and 16 NYCRR §89.3, the Long Island Water Corporation (Long Island Water or the Company) provided notice of the property tax refunds it received from Nassau County. In November 2005, Long Island Water obtained three refunds totaling \$7,386,087.89.

Upon receiving notice, Department of Public Service (DPS) Staff began to audit the tax refund amounts and to review the Company's proposal to retain a portion of the refund; to use a portion of the refund to benefit ratepayers; and, to return the remainder to customers. The case schedule was set for this matter; however, it was postponed to consider an additional tax refund that Long Island Water expected to receive from the County.¹ Subsequently, it became clear that the additional tax

¹ Case 06-W-0069, Ruling Setting Case Schedule (issued January 31, 2006); Ruling Holding Schedule in Abeyance (issued April 6, 2006).

refund will have to be considered in another proceeding for this case to remain timely.

In accordance with the requirements of 16 NYCRR §3.9, Long Island Water provided notice of the settlement negotiations it conducted with DPS Staff. The parties' efforts produced a Joint Proposal that was submitted on December 29, 2006. In support of the Joint Proposal, DPS Staff provided a statement on January 17, 2007; Long Island Water provided a letter dated January 31, 2007. The Joint Proposal was presented and considered at a hearing held on February 5, 2007.

THE JOINT PROPOSAL

The parties propose that Long Island Water be allowed to retain \$939,526.87 of the refund to cover legal and appraisal costs. They also propose that the Company keep for shareholders \$966,984.15 (15% of the net refund) to serve as an incentive for management's efforts to obtain lower tax payments for ratepayers.

Pursuant to the Joint Proposal, 85% of the net proceeds (\$5,479,576.87) and accumulated interest (\$381,055.37) are available for ratepayers.² The parties recognize that the Commission can use these funds to cover costs properly charged to water customers and to provide refunds. According to the parties, the best time to provide any refunds would be in the water bills that follow our decision in this case.

Staff's Statement

DPS Staff points out that Long Island Water initially proposed to provide water customers \$4.7 million of the refund.³ Staff notes that its negotiations with the Company increased the customer portion of the refund to approximately \$5.5 million.

Addressing the standard of review for any proposed settlement, Staff asserts that the Joint Proposal properly

² The accumulated interest is calculated to March 31, 2007.

³ Case 06-W-0069, DPS Staff Statement in Support of Joint Proposal, (dated January 17, 2007) p.2.

balances ratepayer and investor interests and it sustains the long-term soundness of the public utility company.⁴ Staff also states that the Joint Proposal is consistent with the regulatory, economic, social and environmental policies the Commission administers and it abides by all applicable legal requirements. In sum, Staff asserts that the Joint Proposal results compare favorably with the range of potential outcomes were this case litigated.

According to DPS Staff, Long Island Water's shareholders should receive 15% of the net refund as an incentive payment properly earned by management in obtaining a proper level of property taxes for water customers. DPS Staff also favors the Company's efforts that limited the amount of legal costs the Company incurred. Rather than use a contingency fee arrangement, Long Island Water negotiated a maximum fee with its attorneys that preserves a large portion of the tax refund for water customers.

As to the proper use and application of the \$5,479,576.87 and the accumulated interest that is available for water customers, Staff proposes that \$3,064,191 be used to pay a revenue adjustment clause (RAC) amount that Long Island Water is entitled to receive. Pursuant to the Company's current, multi-year rate plan, it is entitled to recover various amounts for the fiscal years ended March 31, 2005 and 2006.⁵ Rather than collect this amount by applying a surcharge to customers' bills, Staff proposes that it be recovered using a portion of the tax refund. According to Staff, the remainder of the refund and the accumulated interest should be returned to customers by applying a one-time credit to their water bills.

⁴ Cases 90-M-0225 and 92-M-0138, Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992).

⁵ Case 04-W-0577, Long Island Water Corporation - Rates, Order Establishing Rate Plan (issued March 21, 2005).

Long Island Water's Support

By letter dated January 31, 2007, Long Island Water supports the Joint Proposal. The Company points out that the tax payments addressed here are but a portion of the total tax refund it expects to receive from Nassau County. It notes that about \$5.6 million remains outstanding for the "mass property" category of its utility plant.

Like DPS Staff, Long Island Water urges us to use about \$3 million of the refund to cover the outstanding RAC balance. The Company also notes that few additional expenses should be incurred to obtain the "mass property" tax refund from Nassau County. Overall, Long Island Water believes that the Joint Proposal provides a fair and reasonable resolution of the tax refund.

DISCUSSION

We recognize that the \$7.386 million addressed here is a portion of the total tax refund Long Island Water expects to obtain from Nassau County. The additional amount related to the Company's mass property assets remains pending and it will be addressed in a subsequent proceeding when we receive the Company's notice of its receipt.

With respect to the \$7.386 million at issue here, we find that the Joint Proposal is acceptable and adoption of its terms is in the public interest. The Joint Proposal accounts for the costs that the Company incurred to obtain the tax refunds and allows proper compensation to cover the expenses incurred.

The Joint Proposal also provides the Company a proper incentive amount for shareholders in keeping with management's diligent efforts to obtain a proper level of tax payments for water customers. We recognize that Long Island Water and DPS Staff have not determined at this time whether or not the Company should receive an incentive payment for the tax refund that is expected for the mass property assets. This matter

should be fully addressed in the upcoming proceeding that will consider the additional refund.

As to the remainder of the net refund we are considering here, we agree with the parties that a portion of the refund can properly be used to cover the RAC balance that is due the Company for the 2005 and 2006 fiscal years. By applying \$3,064,191 to the RAC, \$2,415,386, and accumulated interest, remains available to be returned to customers in their next water bills. These results are consistent with the multi-year rate plan that is currently in place for this utility company and they are in keeping with the public policies that we administer.

The Commission orders:

1. The terms and provisions of the December 29, 2006 Joint Proposal attached to this order are adopted. Long Island Water Corporation is authorized to use \$3,064,191 of the tax refund to offset Revenue Adjustment Clause liabilities related to the twelve month periods ended March 31, 2005 and 2006. Long Island Water Corporation is directed to refund the remainder of the tax refund, and accumulated interest, to water customers as a one-time credit applied to water bills in the upcoming billing cycle.

2. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**PETITION OF LONG ISLAND WATER CORPORATION
PURSUANT TO PUBLIC SERVICE LAW SECTION 113(2),
PROVIDING NOTIFICATION OF PROPERTY TAX REFUNDS
OF \$7,386,087.89 FROM THE COUNTY**

CASE O6-W-0069

JOINT PROPOSAL

I. INTRODUCTION

This Joint Proposal ("Joint Proposal"), which resolves property tax refund issues in this case, is made as of the 29th day of December, 2006, by and between Long Island Water Company ("LIWC" or the "Company") and the Staff of the Department of Public Service ("Staff") (collectively referred to as the "Parties"). The Parties agree to the terms of this Joint Proposal, and further agree that this Joint Proposal should be presented to the New York Public Service Commission (the "Commission"). In addition, the Parties concur that the treatment of the past property tax refunds at issue is just and reasonable.

II. PROCEDURAL HISTORY

In 1998, LIWC filed a tax certiorari proceeding against Nassau County challenging the level of assessments by the County on LIWC's real property, including land, structures, equipment and the office building. During 2005, LIWC reached an agreement with the County of Nassau Assessment Review Commission ("ARC") under the terms of which ARC issued offers of settlement on all of LIWC's 24 plant sites and the office building. The County has not yet provided offer sheets to LIWC for the mass property category, for which the Company expects substantial further tax refunds. Consequently, this Joint Proposal is limited to the real property tax refund and issues relating to the mass property will be addressed in a separate proceeding to be filed by LIWC after settlement with the County of Nassau. Pursuant to the offer sheets received regarding the real property, the County issued LIWC a property tax refund

for approximately \$7.4 million (Attachment A to the Company's original filing, which is attached hereto in full as Appendix A. Accordingly, the Company received partial distributions of the proceeds on November 4, 2005 (in the amount of \$5,602,641.62); November 9, 2005 (in the amount of \$1,476,194.21); and November 23, 2005 (in the amount of \$307,252.06). After deducting the legal fees and reasonable expenses the Company incurred during the course of pursuing the tax refund, the net tax refund equaled approximately \$6.4 million.

Pursuant to Public Service Law Section 113(2) and Title 16, Section 89.3 of the New York Codes, Rules and Regulations ("Section 89.3"), on January 3, 2006, LIWC notified the Commission of these refunds. (As Noted above, copy of the January 3 notice is attached as Appendix A.) Section 89.3 requires, as part of its notice of refund, that a company "propose a method of distributing to its customers the entire amount refunded, or show why it should not make such a distribution." Accordingly, LIWC proposed that the tax refund be offset with certain other expenses as well as the balance of the amount due to the Company under its Revenue Adjustment Clause calculation for the period of April 1, 2004 through March 31, 2005 and April 1, 2005 through March 31, 2006.

The Company proposed to negotiate with Staff to determine the appropriate amount to return to customers. LIWC explained that its proposal would: (i) recognize the Company's efforts over the past several years to reduce its property taxes by securing legal reassessments of its property value and (ii) reflect the significant amount of time, effort and expense, as well as risk to shareholders, incurred by the Company during the tax certiorari case.

Upon receipt of the January 3, 2006 notice, the Commission instituted this proceeding. On January 31, 2006, Administrative Law Judge (ALJ) William Bouteiller issued a Ruling Setting Case Schedule, which included the scheduling of a hearing on this matter for April 26, 2006. On February 24 and May 2, 2006, LIWC requested adjournments to the procedural schedule in the hope and expectation that the remaining portion of refunds due the Company would be paid by the County. The parties agreed that a single proceeding was preferable to multiple

proceedings on the same essential issues and set of facts.¹ Staff conducted discovery with respect to this proceeding, and LIWC furnished the documents and information requested. The Company and Staff engaged in exploratory discussions, including a status conference on all of LIWC's open dockets on August 10, 2006, and determined that it was possible that the Parties could reach a mutually acceptable settlement. In accordance with Section 3.9 of the Commission's rules, Company counsel notified all parties to this proceeding of the pendency of settlement negotiations, prior to the commencement of such negotiations, by e-mail and letter dated October 12, 2006. A Notice of Proposed Rule Making was published on November 8, 2006 in the State Register. On November 16, 2006, pursuant to a directive from ALJ Bouteiller, LIWC filed a second notice of impending settlement negotiations, confirming that there were no other parties from the two prior LIWC rate cases.

The Parties engaged in several settlement meetings by teleconference during November and December, 2006. No other person participated in any manner in the settlement negotiations, and the Parties anticipate that no one will oppose this Joint Proposal. On December 7, 2006, the Parties reached an agreement in principle, the results of which are memorialized in this Joint Proposal. On December 8, 2006, Staff notified ALJ Bouteiller that the Parties' negotiations in this proceeding had reached an agreement in principle which formed the basis for this draft Joint Proposal of Settlement. The Parties, therefore, jointly requested that the date of the evidentiary hearing be postponed from December 18, 2006 to February 5, 2007.

III. TERMS OF THE JOINT PROPOSAL

A. This Joint Proposal resolves all issues in LIWC's property tax refund proceeding, Case 06-W-0069.

B. LIWC received a refund of \$7,386,087.89, including interest of approximately \$910,999.

¹ As noted, refunds relating to LIWC's mass property have not been finalized with the County of Nassau and will be addressed in a separate proceeding.

C. The Company incurred legal costs, including fees and expenses, of \$804,095.55, and appraisal expenses of \$135,431.32 to achieve the refund, which it is entitled to recover.

D. The net property tax refund, *i.e.*, total refund plus interest less costs to achieve the refund, to be distributed is \$6,446,561.02.

E. The Company will be permitted to retain 15%, or \$966,984.15, of the property tax refund. This amount reflects LIWC's consistent and vigilant efforts to reduce property taxes and recognizes that shareholders have, in effect, paid property taxes substantially in excess of property taxes allowed in rates.

F. The customers' share of the property tax refund will be 85%, which is equal to \$5,479,576.87. In addition, customers will receive interest of \$381,055.37 representing interest earned on the customers' share of the net property tax refund from the time the Company received the funds to March 31, 2007. Any distributions not made by March 31, 2007 will continue to accrue interest at a rate of 5.40% to the date of final distribution. Therefore, the customers' combined total distribution will be \$5,860,632.24 at March 31, 2007.

G. A schedule setting forth the calculation of the refund, interest, costs to achieve and sharing of the net refund is attached to this Joint Proposal as Appendix B.

H. A schedule setting forth the methodology and calculation of the one-time customer property tax refund is attached to the Joint Proposal as Appendix C. The full amount of the refunds shown on Appendix C will be used to the benefit of customers, either through a one-time credit, a reduction in an amount due to the Company from the customers approved by the Commission in another proceeding, or some combination thereof as may be determined by the Commission. Distribution of the full amount of the customers' share of the net property tax refund plus interest would be effected as shown on the proposed Property Tax Refund Statement attached to the Joint Proposal as Appendix D. Should the Commission determine that the customers shall receive a one-time credit such credit will be implemented by applying

that credit to each customer's regularly scheduled water bill following the effective date of the proposed statement.

I. The amounts retained and reimbursed to the Company will be first utilized to offset the deferred legal and appraisal expenses incurred by the Company in achieving the total distribution of \$7,386,087.89 from Nassau County. The Company agrees that it will not seek recovery of legal expenses incurred in seeking refunds of the assessments of real property and mass property that were the subject of the appeals referenced in this filing in any subsequent filing seeking to distribute the remaining refunds, associated with the assessments of the Company's mass property, that may be outstanding as of the filing date of this Joint Proposal.

IV. ADDITIONAL PROVISIONS

A. This Joint Proposal is intended to resolve all issues in Case 06-W-0069 upon the terms set forth herein. Except as set forth in this Joint Proposal, neither the Company nor Staff will be deemed to have approved, agreed to, or consented to any principle, methodology or interpretation of law underlying or supposed to underlie any provision of this Joint Proposal.

B. The Parties to this Joint Proposal have expressly conditioned their support upon the approval and adoption of this Joint Proposal in its entirety by the Commission. If the Commission does not approve this Joint Proposal in its entirety, or with accepted modifications, or if the Joint Proposal, or the Commission order approving same, or any provision of either is materially modified by a court order that has become final and non-appealable, then each of the Parties reserves the right to withdraw its acceptance of this Joint Proposal. Such withdrawal will be made by serving written notice on the Commission and the other Party. Furthermore, each of the Parties reserves the right to renegotiate and, if necessary, to litigate without prejudice, any or all issues as to which such Party agreed in this Joint Proposal. A Party that so withdraws its acceptance of this Joint Proposal will not be bound by its provisions and the Joint Proposal will be null and void as to such Party.

C. It is the intent of the Parties that the provisions of this Joint Proposal will apply and be binding only with respect to the matters that are the subject of this proceeding. No provision of the Joint Proposal may be cited or relied upon as precedent or otherwise for any purpose other than the disposition of matters expressly governed by the Joint Proposal.

D. The Parties believe that the provisions hereof and the record in this proceeding fully justify approval of the terms of this Joint Proposal as being in the public interest. The Parties agree and request that the Commission find, upon approving this Joint Proposal, that the provisions therein are just and reasonable.

E. All titles, subject headings, and similar items herein are provided for the purpose of reference and convenience only and are not intended to affect the meaning, the content or the scope of this Joint Proposal.

F. This Joint Proposal may be executed in counterpart originals and will be binding upon each signatory Party when all such counterparts have been executed.

Executed this 29th day of December, 2006.

LONG ISLAND WATER COMPANY

By: _____
Robert J. Brabston
Associate Corporate Counsel

STATE OF NEW YORK DEPARTMENT
OF PUBLIC SERVICE

By: _____
Carol E. Coyne, Assistant Counsel