

Filed Session of May 16, 2013
Approved as Recommended
and So Ordered
By the Commission

JEFFREY C. COHEN
Acting Secretary

Issued and Effective May 17, 2013

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

May 1, 2013

TO: THE COMMISSION

FROM: OFFICE OF ELECTRIC, GAS AND WATER
- Major Utility Rates Section

OFFICE OF ACCOUNTING AND FINANCE

SUBJECT: CASE 07-W-0508 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules, and Regulations of Long Island Water Corporation for Water Service.

CASE 11-W-0200 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Long Island Water Corporation d/b/a Long Island American Water for Water Service.

CASE 11-W-0484 – Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds between Long Island Water Corporation d/b/a Long Island American Water and Ratepayers.

CASE 12-W-0051 – Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds between Long Island Water Corporation d/b/a Long Island American Water and Ratepayers.

SUMMARY OF

RECOMMENDATION: Staff recommends that the Company be directed to refund net credits of \$1,326,036, which includes applicable interest, due to metered customers via a one-time credit of \$18.18 per customer beginning June 1, 2013.

SUMMARY

Long Island Water Corporation d/b/a Long Island American Water (LIAW or the Company) submitted its proposed treatment of the Company's Revenue and Property Tax (RPT) reconciliation per the terms of the Rate Plan adopted by the Commission in Case 07-W-0508.¹ The Company requested that the resulting surcharge from the RPT be netted with reconciliations from its Distribution System Improvement Charge (DSIC) and System Improvement Charge (SIC) mechanisms as well as refunds due to customers as a result of property tax refunds addressed in Cases 11-W-0484 and 12-W-0051.^{2 3} The Company's original filing, dated April 20, 2012, proposed a single net refund of \$7.96 per customer. Staff is recommending that the Company's request to net the balances from the RPT reconciliation with the DSIC and SIC reconciliations and the property tax refunds be approved by the Commission. Staff has made corrections and reflected updated balances which results in a one-time credit to metered customers of \$18.18 per customer, as discussed further in this memorandum and shown in Appendix A.

COMPANY'S PETITION

Case 07-W-0508

LIAW provides metered water service to approximately 74,000 customers in the Town of Hempstead, Nassau County. Public and Private Fire protection service is also provided. The Commission adopted the terms of a three-year rate plan in Case 07-W-0508, and directed the Company to reconcile allowances given in the rate case for metered

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³ Case 12-W-0051, Long Island Water Corporation d/b/a Long Island American Water – Tax Refund, Order Allocating Property Tax Refund (issued February 15, 2013). (Garbage Tax Refund)

revenues, production costs, and property taxes on an annual basis for the rate years ending (RYE) March 31, 2009, 2010, and 2011. At the end of each rate year, actual billed metered revenues, production costs, and property taxes are reviewed and compared to target amounts in base rates. The Company is then permitted to credit or surcharge its metered customers' bills to offset any net over- or under-collections. The RPT reconciliation was permitted to extend beyond the term of the three-year rate plan, using the monthly targets for the RYE March 31, 2011, until new targets were set in the Company's next general rate case.

On April 20, 2012, the Company submitted its annual filing for the twelve month period ending March 31, 2012, which stated an under-collection of \$2,692,252 in revenue and production costs; an over-collection of \$938,684 in property taxes; under-collections of \$130,838 and \$40,921 in DSIC and SIC surcharges respectively; a Village Tax Refund of \$1,513,807; and a Garbage Tax Refund of \$1,170,143. The Company calculated a net principal amount of \$758,633, and after taking its proposed 18%, or \$168,963, of the over-collection of property taxes and calculating interest owed to the Company of \$8,070, determined that the remaining \$581,589, or \$7.96 per customer, was due to customers as of March 31, 2012.

LIAW requests that the Commission also include the Company's proposal to combine the net surcharge resulting from its filed RPT reconciliation with the final balances for the Company's DSIC and SIC reconciliations as well as proposed Property Tax refunds due to its customers in Case 11-W-0484 and Case 12-W-0051. The Company is proposing a single net refund as a result of combining the reconciliations and property tax refunds to be returned to metered customers as a one-time bill credit of \$7.96 per customer.

DISCUSSION

Staff reviewed each component of the Company's April 20, 2012 submission. Staff determined that: (1) the revenue and production costs were appropriate as filed; (2) the property tax balance owed to customers should be increased due to an reduction in the shareholder's portion; (3) the DSIC and SIC reconciliation balances needed to be updated; and (4) the Village and Garbage Tax Refund Cases needed to be updated for recent

Commission Orders. Staff's adjustments increased the total over-collection by \$744,447 to \$1,326,036, increasing the one time customer credit from \$7.96 to \$18.18. Staff believes that combining all of the reconciliations is in the best interest of customers, as it will save ratepayers interest on the balance owed to the Company and be offset by other credits currently owed to them. Allowing the Company to credit this net balance to ratepayers now will also mitigate bill impacts. Consolidating the outstanding balances owed to the Company with the credits due to customers avoids giving a larger credit to customers now, only to follow up with a surcharge to customers later, thus promoting bill stability. The one-time bill credit should also reduce customer confusion and the number of phone calls to the Company's customer service department.

Revenue and Production Costs

The rate year targets for metered revenues and production costs were \$44,591,311 and \$3,868,130, respectively. The Company billed \$41,808,606 in metered revenues with actual production costs equal to \$3,777,676 for the twelve months ended March 31, 2012. The net under-collection is, therefore, \$2,692,252, plus applicable interest, due to the Company. Staff recommends that this amount be used in the calculation of the overall net refund to metered customers.

Property Tax Reconciliation

The rate year target forecast for property taxes was \$12,531,716. The Company's actual property taxes were \$11,593,032 for the twelve months ending March 31, 2012, which results in an over-collection of \$938,684. The Company's filing proposed to retain 18% of the savings below the target forecast, or \$168,963. The terms of the Joint Proposal adopted in Case 07-W-0508 states:

“...LIWC will defer and return to customers through the property tax reconciliation mechanism 100% of any decreases in property taxes below the target level subject to a potentially different percentage agreed to by the Parties **based on the company's efforts in aggressively pursuing tax challenges** (emphasis added).”⁴

⁴ Case 07-W-0508 et al., supra, Order Determining Revenue Requirement and Rate Design (issued March 5, 2008), JP page 15.

The Company could only demonstrate that \$386,025 of the tax savings were due to reduced assessed values directly related to its aggressive pursuit of tax challenges. Moreover, in the Village Tax Refund case associated with those reduced assessed values (Case 11-W-0484), the Commission approved a 14% sharing arrangement, which Staff believes should also be applied in this case. The amount to be distributed to customers before calculating interest is \$884,641, as detailed in the table below.

Breakdown of Property Tax Sharing		
Target Tax Amount – per Rate Order	\$12,531,716	
Actual Property Taxes Incurred (year ending 3/31/12)	11,593,032	
Over Collection in Rates of Property Taxes		\$938,684
Savings Directly Due to Aggressive Efforts	\$386,025	
Percent Sharing Agreed to by the parties	14%	
Amount of Savings to be Retained by LIWC		54,044
Returned to Customers (before Interest)		\$884,641

DSIC and SIC Reconciliations

In Case 11-W-0200,⁵ the Commission required that the DSIC mechanism be discontinued and that a final reconciliation of the DSIC surcharge balance be implemented. The Company included its final DSIC reconciliation in the current RPT reconciliation filing. Staff agrees with this approach, however, Staff is updating the final DSIC reconciliation balance to \$74,454 plus applicable interest because revenues from the DSIC surcharge mechanism were billed and collected in the months that followed the original April 20, 2012 submission, thus reducing the DSIC reconciliation balance owed to the Company that was shown in the Company’s April 20, 2012 submission.

The SIC surcharge mechanism allows for a reconciliation of allowed revenues and actual revenues collected to pay carrying charges (i.e., depreciation expense and return

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on the net plant additions) for specific system improvements that were not included in base rates. The reconciliation is typically included with the subsequent SIC surcharge filing, however in this instance, the Company is requesting to collect the balance at this point in time and included it in the current RPT reconciliation filing. Staff agrees with including the SIC reconciliation balance in the current RPT reconciliation filing versus deferring the balance until the Company makes its next SIC surcharge filing, as it will save customers interest on the balance owed to the Company and be offset by other outstanding credits. Revenues from the SIC surcharge mechanism were billed and collected following the original April 20, 2012 submission, therefore, Staff recommends updating the SIC reconciliation balance to \$22,633, plus applicable interest.

Staff recommends that the Company be allowed to collect \$74,454 and \$22,633, plus applicable interest, for the final DSIC and SIC reconciliations, respectively.

Garbage and Village Tax Refunds

In 2005, after about six years of litigation, LIAW was awarded a refund of property taxes the Town of Hempstead had assessed against the company's "mass property," (i.e., mains, services, hydrants, and related fixtures) for trash collection services from 1999 through 2002. The courts found that LIAW was not liable for trash collection taxes because its infrastructure did not, and could not, benefit from trash collection service. The Town of Hempstead appealed the initial court decision, and the Court of Appeals denied motion for leave to appeal in May 2011.

LIAW filed a petition on February 13, 2012, in which the Company proposed to retain 18% of the net proceeds remaining after deduction of legal and incidental expenses. In the Garbage Tax Refund Order, the Commission determined that \$1,350,220 would be returned to customers. The refund is comprised of \$1,235,390 (86% of the \$1,436,500 net refund) plus \$94,404 in post-judgment interest, and accrued interest at the other customer capital rate on the settlement through May 2013.

In 2011, the Company and five villages came to agreements settling the Company's tax certiorari protests for tax years 1999/00 - 2010/11. Disposition of these refunds was decided by the Commission in March, 2013 when it approved the Joint Proposal

between Staff and the Company in Case 11-W-0484. Consistent with the Commission's Order in that case, the Company will pass back \$1,875,842 plus accrued interest through May 2013 in this RPT reconciliation. There is a final refund installment the Company expects to receive from the Village of Valley Stream in August 2013, which will be passed back to customers at a later date, consistent with the Commission's Order in Case 11-W-0484.

Subsequent to the Commission determinations in Cases 11-W-0484 and 12-W-0051, Staff requested that the Company update its April 20, 2012 proposed treatment of the RPT reconciliation with the Commission-approved property tax refunds as well as updated interest calculations. The Garbage and Village Tax refunds to be passed back to metered customers in this RPT reconciliation, including applicable interest updated through May 31, 2013, are \$1,364,083 and \$1,936,337, respectively.

RECOMMENDATION

It is recommended that

1. Long Island American Water Corporation d/b/a Long Island American Water be directed to refund its metered customers the net credit of \$1,326,036, which includes interest through May 30, 2013, via a one-time bill credit of \$18.18 per customer beginning on June 1, 2013.
2. The Secretary, at his sole discretion, may extend any deadlines set forth in this order.
3. This proceeding is continued.

Respectfully submitted,

KEVIN A. MANZ
Utility Engineer 3
Office of Electric, Gas and Water

ALBERT ROSENBLATT
Senior Auditor
Office of Accounting and Finance

CASE 07-W-0508 et al.

Reviewed by:

JOSEPH DOWLING
Assistant Counsel
Office of General Counsel

BRUCE E. ALCH
Chief, Major Utility Rates Section
Office of Electric, Gas and Water

JOSEPH LOCHNER
Chief
Office of Accounting and Finance

Approved by:

RAJ ADDEPALLI
Deputy Director
Office of Electric, Gas and Water

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RECOMMENDATION

It is recommended that

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Approved by:

RAJ ADDEPALLI
Deputy Director
Office of Electric, Gas and Water

Appendix A

LONG ISLAND AMERICAN WATER SUMMARY OF REVENUE and PROPERTY TAX RECONCILIATION (RPT), DSIC and SIC RECONCILIATIONS, and PROPERTY TAX REFUNDS RECONCILIATION FOR THE PERIOD 4/1/2011 - 3/31/2012

	Principal Amount	Co. Portion	Interest	Total Amount	Refund Per Customer
Revenue and Production Costs	\$2,692,252		\$94,763	\$2,787,015	\$38.18
Property Tax Reconciliation Clause	(938,684)	54,043	(30,455)	(915,096)	(12.54)
DSIC Reconciliation	74,454		5,126	79,580	1.09
SIC Reconciliation	22,633		251	22,884	0.31
Village Tax Refund	(1,875,842)		(60,495)	(1,936,337)	(26.53)
Garbage Tax Refund	(1,329,794)		(34,289)	(1,364,083)	(18.69)
Total at 5/31/2013	<u>(\$1,354,980)</u>	<u>\$54,043</u>	<u>(\$25,099)</u>	<u>(\$1,326,036)</u>	<u>(\$18.18)</u>

Number of customers (at December 31, 2012)

72,990