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16-W-0130 - October 5, 2016 - Suez Water

STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE

16-W-0130 PROCEEDING ON MOTION OF THE COMMISSION  
AS TO THE RATES, CHARGES, RULES AND  
REGULATIONS OF SUEZ WATER NEW YORK INC. FOR  
WATER SERVICE

EVIDENTIARY HEARING

Wednesday, October 5, 2016  
10:05 a.m.  
19th Floor  
Albany, New York 12223-1350

A.L.J. MICHELLE L. PHILLIPS  
Administrative Law Judge  
Albany, New York 12223-1350

APPEARANCES:

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24 \*\*\*

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2 A.L.J. PHILLIPS: I call Case 16-W-  
3 0130 proceeding on motion of the Commission as to the  
4 rates charges, rules and regulations of Suez Water New  
5 York, Incorporated, for water service.

6 At this time, I'd like to take  
7 appearances of counsel please.

8 MR. FITZGERALD: your Honor --

9 MR. RIGBERG: Saul Rigberg,  
10 representing Public Utility Law Project of New York.

11 MS. JORGENSEN: Lisa Beth Jorgensen,  
12 also representing the Public Utility Law Project of  
13 New York.

14 MR. DICHTER: Joel Dichter, on behalf  
15 of Municipal Interveners.

16 MR. DUTHIE: Dan Duthie, on behalf --  
17 behalf of the Municipal Consortium.

18 MR. DOWLING: Joseph Dowling, on  
19 behalf of Department of -- of Public Service.

20 MR. FITZGERALD: On behalf of New York  
21 -- I'm sorry -- Suez Water New York, Inc. the law  
22 firm of Cullen and Dykman by Brian T. FitzGerald.

23 MR. ALESSI: Robert Alessi, Law firm  
24 of DLA Piper on behalf of Suez Water New York.

25 MR. DILLON: John Dillon, Suez.

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2 A.L.J. PHILLIPS: Thank you. Is that  
3 everyone who's making an appearance today? Thank  
4 you.

5 So we are here pursuant to a notice  
6 issued September 8th, establishing this as the date  
7 and time for this evidentiary hearing. I'd like to  
8 begin with addressing -- I hope -- can everyone hear  
9 me?

10 Okay. I'd like to begin first by  
11 addressing, there are, I believe three motions and  
12 then we'll go off the record again to discuss the  
13 order of the witnesses and order of cross-examiners.

14 So I would like to start first with  
15 the two motions for party status that were filed on  
16 September 20th, by a Mr. Al Samuels seeking party  
17 status for the Rockland Business Association,  
18 Incorporated, and Jan Degen -- and I apologize.

19 MR. DICHTER: Degenshein.

20 A.L.J. PHILLIPS: Degenshein. I don't  
21 know why I always have trouble with his name, seeking  
22 party status as an individual. Mr. Samuels  
23 indicated, in relevant part, that he is the --  
24 representing the business -- Rockland Business  
25 Association and that a significant number of their

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2 member organizations are customers of Suez and that  
3 their headquarters are located in a building that is  
4 served by Suez. And finally that the rates, service,  
5 and infrastructure investments that would result from  
6 this rate proceeding would directly impact the  
7 Rockland Business Association's membership and the  
8 ability -- it's ability to meet its mission.

9           The second request indicated  
10 that the rates, service, in relevant part, and there  
11 were additional information provided in those  
12 requests that were emailed to the parties to this  
13 case and then filed in DMM, but it indicated, in  
14 relevant part, that the rates, service, and  
15 infrastructure investments that would result from  
16 this rate proceeding will directly impact my firm and  
17 its clients as well as the many member organizations  
18 of the Rockland and Business Association where Mr.  
19 Degenshein serves as a member of its board of  
20 directors.

21           There were several  
22 objections raised to these requests. Those  
23 objections, and I'll summarize them, felt that the  
24 requests were perhaps too late. That they had not  
25 worked on these particular cases and I think they

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2 felt it would be unfair to allow these individuals to  
3 inter -- intervene at this point in the record. I  
4 will note, however, that none of the objections cited  
5 to the relevant provisions that need to be considered  
6 when determining whether or not to grant a party,  
7 party status.

8                           And the -- that provision  
9 has been cited by me at least three times. I think  
10 quite a few more than that, when I have previously  
11 ruled on whether or not to grant an individual or an  
12 entity party status. And I'll just reiterate that  
13 permission to intervene as a party will be granted  
14 if, among other things, the intervention is likely to  
15 contribute to the development of a complete record or  
16 is otherwise fair and in the public interest.

17                           That's 16 NYCRR Section  
18 4.3(c). So these individuals, and I think in  
19 particular with respect to the relevant portions of  
20 the request, I think indicated that they could meet  
21 both those standards. Those who felt like their --  
22 you know, I'll -- I think one of the quotes was, all  
23 of the work has been done. Anyone who has been  
24 participating, even for the last two weeks, I think  
25 knows that there's been a lot more work that was done

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2 after the JP was filed and there will be a lot more  
3 work done here at these hearings. And there's still  
4 more work to be done after the hearings. So that's  
5 not really a valid basis for objecting. It's also  
6 not one that's mentioned in the regulation.

7                   It is my finding that, based  
8 on the information provided in those requests, their  
9 requests comport with the standards that are  
10 articulated in the regulation and therefore, I'm  
11 granting their requests for party status.

12                   Okay. Motion Number Two was  
13 received on September 29th, 2016, filed by Mr.  
14 FitzGerald on behalf of Suez Water New York,  
15 requesting that I direct the parties that had  
16 indicated a desire to instead appear on either  
17 October 27th, and 28th, indicate or be directed to  
18 show up, I believe, on either today, tomorrow or  
19 Friday. Have I accurately summarized your --

20                   MR. FITZGERALD: Yes, your Honor.

21                   A.L.J. PHILLIPS: Okay. Thank you.

22                   In response to this motion, I did give  
23 the parties an opportunity on a conference call, to  
24 basically, kind of explain why it was that several of  
25 the witnesses had only indicated availability on

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2           dates that, in my ruling, had been designated as  
3           dates that we would use only if needed.    And by  
4           that, I think, those of you who have been involved in  
5           this case for a -- a long time remember that when we  
6           were scheduled to go to hearings in August I had  
7           assumed four days and got cross-examination schedules  
8           that probably should have extended out seven days,  
9           but we did six days because that's the time that we  
10          had available to us.

11                        So I think it was reasonable, and I  
12          think the language was fairly clear that the initial  
13          three dates were to be used and we would only go to  
14          those other two dates if it were needed to  
15          accommodate the time estimates that were provided.

16                        And the time estimates that were  
17          provided to me by late last week, indicated that we  
18          really probably could have finished if not this week,  
19          at least only using part of one of those overflow  
20          days. I think at that point it might have been a  
21          little over two hours on one of those days that maybe  
22          we would have had to extend and use those overflow  
23          dates for the reason that they were intended.

24                        I will note that since that time we  
25          have revised certain estimates in light of

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2 information that was communicated to me on the  
3 telephone. With regard to at least one of the  
4 witnesses it was indicated that he was out of town  
5 this week. There were, I think there was another  
6 letter that was received very late and I won't really  
7 -- I think because I have granted the request for Mr.  
8 Berkley and Mr. Kleinman to appear on the 27th, the  
9 only thing that I will say about one of those letters  
10 is that I think coming up with a statement that  
11 cannot be supported and is in fact, somewhat  
12 offensive and completely disregards anything that I  
13 have previously said in my rulings or my actions, was  
14 not only unnecessary, but offensive.

15                       So, with that I do want to clarify  
16 that the schedule that is sent out yesterday does  
17 indicate the dates on which certain witnesses and  
18 certain cross-examiners were expected to go forward.  
19 And I will clarify again, for those who may have  
20 missed it, and I -- in my haste I noticed I did not  
21 put in the October 27th date. But the October 27th  
22 date will be made available for Mr. Berkley and Mr.  
23 Kleinman with cross-examination to be conducted by  
24 --of Mr. Berkley by Suez. Cross-examination of Mr.  
25 Kleinman to be conducted by Suez, Municipal

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2 Interveners and Mr. Levine on the 27th.

3           The rest of the schedule and I just  
4 want to confirm is that Municipal Interveners,  
5 Municipal Consortium and Suez Water New York, will be  
6 all available today. That we'll get to, as I  
7 indicated, as many of those people as we can  
8 reasonably accommodate within I -- I want to say like  
9 a six-hour timeframe, allowing for lunch and -- and  
10 reasonable breaks. Tomorrow I expect to continue  
11 with the Suez panel, have the staff panel, Mr. Levine  
12 and Mr. Tompkins and that was to accommodate their  
13 requests and indications, particularly with respect  
14 to Mr. Levine and Mr. Tompkins that they could be  
15 available on those dates.

16           And then finally, on October 7th,  
17 cross-examination of Witness Cornell, the Rockland  
18 County witness Amawalk, those would be addressed.  
19 And obviously we may have to make some modifications  
20 if we're not able to get to people and in -- also to  
21 accommodate Mr. Peterson, who is Municipal  
22 Interveners' witness, who indicated that he would be  
23 available after 2:00 p.m., so I -- I hope that people  
24 will bear with me and respect the -- the fact that we  
25 will need some flexibility and we'll just have to be

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2 nimble on these next three days, and able to kind of  
3 go with the flow.

4           I also do want to say, in that regard,  
5 on the telephone conference I want to thank Witness  
6 Cornell and the Rockland County Witness for  
7 indicating that they would be available on the 7th  
8 and for indicating or -- committing to that. I also  
9 want to thank Mr. Berkley for being honest about when  
10 his actual availability dates were. And I will only  
11 note in that regard that I -- I do appreciate that.

12           Now, there are, I think -- is one more  
13 motion. On yesterday I received a motion that was  
14 filed by Mr. Alessi on behalf of Suez Water New York,  
15 Incorporated to strike certain portions of pre-filed  
16 testimony in this case. I -- I just want to hear  
17 back from the parties who are impacted by this  
18 motion. It's my -- I'm willing to address this  
19 motion today to the extent that we can and that the  
20 people impacted by it are here.

21           So that means we would not deal with  
22 the portion addressed to Witness Cornell's testimony  
23 or Witness Tompkins' testimony. I want to know if  
24 there's any reason why parties -- the other parties  
25 who are impacted, that would include Mr. Berkley, Mr.

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2 Duthie, and I believe that's it. Is that correct?  
3 Why we could not go forward and address those at the  
4 time you're -- either now or when you get ready to  
5 provide your testimony.

6           MR. DUTHIE: Your -- your Honor, I  
7 received the testimony yesterday when I got back into  
8 my office, after another hearing --.

9           A.L.J. PHILLIPS: You mean the Motion?

10          MR. DUTHIE: Yes, the -- the Motion.  
11 Sorry. I haven't even read it yet. I managed to  
12 print it out. I have it with me. Perhaps we can  
13 address it later this afternoon after I've had time  
14 maybe to read it at lunchtime?

15          A.L.J. PHILLIPS: Okay. Is that  
16 amenable to the company?

17          MR. ALESSI: your Honor, we'll do  
18 whatever your Honor -- we -- it is, if that works,  
19 works with your Honor's view, but if we could be  
20 heard after with regard to whatever the opposition is  
21 because we -- we think the motion could be decided  
22 this morning. We think for the most orderly  
23 procession of the hearing it's best to decide it now,  
24 but we will go with whatever your Honor decides to  
25 do. We will be nimble and go with the flow.

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2 A.L.J. PHILLIPS: Counsel for PULP, do  
3 you want to be heard?

4 MR. RIGBERG: I -- I was able to find  
5 the Motion last night, your Honor. As I told you in  
6 my letter I was observing Rosh Hashanah and did not  
7 open my emails until last evening. So we can talk  
8 about it now, but I think being able to file a  
9 written motion response makes sense.

10 A.L.J. PHILLIPS: I am not interested  
11 in receiving any written motions. This is your  
12 opportunity to respond. We can do so later in the  
13 hearing, but I think I -- it's normal practice -- I  
14 asked for any motions objecting to testimony to be  
15 filed yesterday and it is, at least my normal  
16 practice, and I think that of many other judges to  
17 have parties ready to respond. Your witness I know  
18 is planning to testify now on the 27th, so I will  
19 give you up until Friday to be prepared to orally  
20 respond if you need that additional time.

21 MR. RIGBERG: We -- we can do some now,  
22 if you want. I can respond on part of the Motion.  
23 We can talk about that and I would point out that in  
24 other cases motions to strike are -- come in much  
25 earlier than a day or two before the hearing. And I

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2 think this is an example of -- of the disparity of  
3 legal resources. You have two large law firms who  
4 can paper file unlimited amounts of paper compared to  
5 the intervenors who are under-resourced, so just  
6 another example. But we can talk about part of the  
7 Motion, which I am happy to talk about now.

8           A.L.J. PHILLIPS: Are you talking  
9 about all of the parts that apply to Mr. Berkley, or  
10 just some?

11           MR. RIGBERG: The part relating to,  
12 let's see, I was just skimming here. Okay. The  
13 part relating to the -- on Page Seventeen of the  
14 Motion.

15           A.L.J. PHILLIPS: So let me -- before  
16 we do that. I take it then that you're not prepared  
17 to respond to all of the parts of this Motion that  
18 address Mr. Berkley's testimony?

19           MR. RIGBERG: No. I'm just -- I just  
20 scanned it.

21           A.L.J. PHILLIPS: Then, let's wait  
22 until Friday and we'll --

23           MR. RIGBERG: I'm not -- I don't want  
24 to wait until Friday, your Honor.

25           A.L.J. PHILLIPS: I don't really care.

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2 MR. RIGBERG: I -- I want to do it  
3 now. This hear --.

4 A.L.J. PHILLIPS: It -- we're not  
5 going to do it piecemeal. If we do it today, we're  
6 going to do all of the pieces that apply to Mr.  
7 Berkley and if we do it on Friday we can also do all  
8 of the pieces that apply to Mr. Berkley's testimony.  
9 And I want to remind you I have been very even-handed  
10 in dealing with people's legitimate conflicts and  
11 other obligations. However, anyone who chooses to  
12 wait until a point where they have to choose between  
13 observing a religious holiday for which I have very,  
14 I think, diligently and consistently tried to avoid  
15 creating such conflicts.

16 If you wait until a point where you  
17 have to make that choice that's on you. That has  
18 nothing to do with the proceeding. All of us -- let  
19 me finish. All of us are very, very busy and you  
20 keep talking about resources. How many people do you  
21 see up here from the Office of Hearings? One. So we  
22 all have choices. We all have busy schedules. We  
23 all have other things that we have to do or want to  
24 do. And so you will have to plan accordingly.

25 MR. RIGBERG: Well, your Honor that --

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2 I think that's an unfair statement.

3 A.L.J. PHILLIPS: I don't think it is  
4 and I'm willing to stand on my record. I'm willing  
5 to stand --.

6 MR. RIGBERG: You're not deciding --

7 A.L.J. PHILLIPS: I'm not finished.

8 MR. RIGBERG: -- over two cases.

9 A.L.J. PHILLIPS: And -- I'm not  
10 finished. And we have a court reporter. So you will  
11 wait until I'm done speaking to speak and I will show  
12 you the exact same courtesy. But, I'm willing to  
13 stand on my actual rulings and what they said and my  
14 communications with the other parties. If you look  
15 at anything that I've done here, I -- I defy you to  
16 show that it's been unfair. And I will continue to  
17 be fair, despite the fact that I don't think you've  
18 shown courtesy to, not only myself, but others in  
19 this proceeding.

20 MR. RIGBERG: Well, if you could give  
21 me examples of that. But before you do, let me say  
22 that as you know, PULP, we have the whole litigation  
23 team here and we have NFG proceedings starting in --  
24 at 2:00 that go -- so it's not just the observance of  
25 a Jewish holiday, it's the obligations to another

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2 full-blown rate case that interfered with my ability  
3 to have prepared a response to this motion overnight.  
4 So I think that's unfair for you to say that we  
5 haven't shown respect for the process.

6           A.L.J. PHILLIPS: So you asked me for  
7 an example. I noticed in your letter you said that  
8 you immediately advised Judge Lecakes of the conflict  
9 between the conflict between the cases. I don't  
10 recall receiving that same courtesy. You indicated  
11 yes, that there was a conflict, I guess, between  
12 these two cases, but I actually reached out to Judge  
13 Lecakes and got a copy of his schedule and not only  
14 do you not have a conflict with that case this  
15 morning, the schedule that I was provided does not  
16 indicate that you have cross or that you're providing  
17 a witness at any point during the day today. So  
18 those are my examples.

19           I don't want to belabor this. We need  
20 to get started because we do have a lot of witnesses  
21 and a lot of cross indicated for today. You've been  
22 granted an extension until Friday to respond to the  
23 motion, so I'd like to do that.

24           MR. RIGBERG: And -- and what time  
25 Friday would we be doing that?

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2 A.L.J. PHILLIPS: We haven't  
3 determined the start for Friday, but at some point  
4 during the day on Friday and if you'd like to  
5 indicate your preference for morning or afternoon or  
6 evening.

7 MR. RIGBERG: My preference is 8:00 --

8 A.L.J. PHILLIPS: I'd appreciate --

9 MR. RIGBERG: -- is 8:00 a.m. on  
10 Friday morning.

11 A.L.J. PHILLIPS: So if we all agree  
12 to start at 8:00 a.m. then that's fine, but you'll  
13 have -- if you want to start as soon as we start then  
14 when we determine what that start time will be you  
15 can do that. But it won't be 8:00 a.m. because, as  
16 you know, the official hours of the Agency -- the  
17 earliest are 8:45 and again, you're not the only  
18 litigant so we will discuss what the appropriate  
19 start time for both tomorrow and Friday will be. And  
20 you'll be able to be heard on that issue and your  
21 wishes will be taken into consideration as long as  
22 they don't ask for something that really doesn't seem  
23 to be warranted when you know full well, what the  
24 official hours of this Agency are.

25 MR. RIGBERG: Well, actually --

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2 A.L.J. PHILLIPS: Are you done now?

3 MR. RIGBERG: -- in -- in many rate  
4 cases we start at 8:00 and we go until 6:00 or 7:00.

5 A.L.J. PHILLIPS: Which ones? When  
6 you come on for --?

7 MR. RIGBERG: I've been in many over  
8 the years.

9 A.L.J. PHILLIPS: When you come  
10 tomorrow you can provide me the case numbers where  
11 you've started at 8:00 a.m. Not that it really helps  
12 because, as you know, that's not precedent, and I'm  
13 going to listen to the parties in this case and take  
14 their expressions as to preference for what time we  
15 want to start. I will consider those expressions of  
16 preference along with what we have to accomplish on  
17 that day and we'll make a decision together.

18 Are there any other motions that were  
19 filed that we need to address with this -- this time  
20 before we deal with -- Mr. Duthie you wanted to  
21 respond when you take the stand or right before you  
22 take the stand? That's my understanding.

23 MR. DUTHIE: Yes. Yes, your Honor.

24 A.L.J. PHILLIPS: Okay. So are there  
25 any other motions that we should deal with on the

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2 record?

3                   MR. ALESSI: Your Honor, just if I  
4 could please, a clarification on the Motion to  
5 Strike.

6                   A.L.J. PHILLIPS: Yes.

7                   MR. ALESSI: Mr. Rigberg is going to  
8 have until Friday, time to be determined. Mr. Duthie  
9 is going to be responding orally today, just before  
10 his cross-examination gets underway. Am I  
11 understanding that correctly?

12                   A.L.J. PHILLIPS: Is that --?

13                   MR. DUTHIE: Yes. Yes, your Honor,  
14 provided that I get on the witness stand after lunch  
15 so I have a chance at lunchtime to read -- actually  
16 read the Motion to Strike.

17                   MR. ALESSI: We -- we have no issue  
18 with Mr. Duthie being provided a reasonable time to  
19 read the Motion so he can respond.

20                   A.L.J. PHILLIPS: Okay. Are there any  
21 other procedural matters that we should address at  
22 this time?

23                   Okay. Hearing nothing, did the  
24 parties have an opportunity to talk about witness  
25 order or the order of the panels and individual

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2 witnesses today?

3                   MR. FITZGERALD: Your Honor, we didn't  
4 have a -- a large opportunity to discuss that,  
5 although looking at it briefly it seems it makes  
6 sense we would start with the company as the most --  
7 and then, particularly given what we heard from Mr.  
8 Duthie, after lunch and I believe Mr. Peterson coming  
9 in late in the day.

10                  A.L.J. PHILLIPS: Okay.

11                  MR. FITZGERALD: That seems to make  
12 sense, that that's the way we'd proceed.

13                  A.L.J. PHILLIPS: Okay. I -- I tend  
14 to agree. We only have three panels and given what  
15 we've heard this morning I think that puts the  
16 Company panel up first. So if you could please  
17 gather your witnesses and this -- we're going to be  
18 using this table here for the witnesses.

19                  MR. FITZGERALD: Okay. Thank you,  
20 your Honor. If we could go off the record for one  
21 moment?

22                  A.L.J. PHILLIPS: Yes. We're off the  
23 record.

24                  (Off the record)

25                  A.L.J. PHILLIPS: Before we left the

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2 record I asked, or we -- it was indicated that the  
3 Company's panel would be offered. I am going to  
4 swear them in. I -- I -- well, this is probably a  
5 little bit cumbersome, but I'm going to do it  
6 individually, even though they're a panel. So I'd  
7 like to ask each of you to stand and you can -- I'll  
8 just go in order and you may have to remind me. I  
9 remember some people's names, but not everyone. So  
10 I'll just ask you to state your name. And you'll  
11 need to use the microphone on the table. Make sure  
12 the green light is on please.

13                       So I'll just start with the witness  
14 closest to me. If you could just state your name for  
15 the record.

16                       THE WITNESS: Tim Michaelson.

17                       A.L.J. PHILLIPS: Okay. Mr.  
18 Michaelson, do you swear or affirm that your  
19 testimony will be the truth, and -- the whole truth,  
20 and nothing but the truth?

21                       THE WITNESS: I do.

22                       TIM MICHAELSON; WITNESS; Sworn

23                       A.L.J. PHILLIPS: The next witness is?

24                       THE WITNESS: I'm James Cagle.

25                       A.L.J. PHILLIPS: Mr. Cagle, do you

1           16-W-0130 - October 5, 2016 - Suez Water  
2 swear or affirm that the testimony you'll give will  
3 be the truth, the whole truth, and nothing but the  
4 truth?

5  
6           THE WITNESS: Yes, ma'am. I do.

7           JAMES CAGLE; WITNESS; Sworn

8           THE WITNESS: Chris Graziano.

9           A.L.J. PHILLIPS: Mr. Graziano, do you  
10 swear or affirm that your testimony will be the  
11 truth, the whole truth and nothing but the truth?

12          THE WITNESS: Yes, I do, your Honor.

13          CHRIS GRAZIANO; WITNESS; Sworn

14          THE WITNESS: Donald Distantte.

15          A.L.J. PHILLIPS: Mr. Distantte, do you  
16 swear or affirm that your testimony will be the  
17 truth, the whole truth and nothing but the truth?

18          THE WITNESS: Yes, I do, your Honor.

19          DONALD DISTANTE; WITNESS; Sworn

20          THE WITNESS: Pauline Ahern.

21          A.L.J. PHILLIPS: Ms. Ahern, do you  
22 swear or affirm that your testimony will be the  
23 truth, the whole truth and nothing but the truth?

24          THE WITNESS: Yes, I do.

25          PAULINE AHERN; WITNESS; Sworn

1 16-W-0130 - October 5, 2016 - Suez Water

2 THE WITNESS: Paula McEvoy.

3 A.L.J. PHILLIPS: Ms. McEvoy, do you  
4 swear or affirm that your testimony will be the  
5 truth, the whole truth and nothing but the truth?

6 THE WITNESS: Yes, I do.

7 PAULA MCEVOY; WITNESS; Sworn

8 A.L.J. PHILLIPS: Thank you the  
9 witnesses are ready. Counsel, if you could please  
10 indicate the cross -- or the testimony that they will  
11 be adopting and how we have determined to handle the  
12 exhibits.

13 MR. FITZGERALD: Thank you, your  
14 Honor. I'd like to first start before I turn back to  
15 the panel with an exhibit that we'd like to mark,  
16 which is the pre-filed testimony of this panel and of  
17 all the other witnesses of the Company that is  
18 related to their litigation position. And we'd like  
19 to have that marked for identification as Exhibit 1  
20 for the pre-filed direct testimony.

21 A.L.J. PHILLIPS: I -- I'm sorry. So  
22 the JP panel initial exhibit that you've indicated?  
23 Or -- I'm sorry.

24 MR. FITZGERALD: Yes, your Honor. The  
25 Exhibit 1 would be -- so this would be the pre-filed

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 direct testimony --

3                   A.L.J. PHILLIPS: Oh.

4                   MR. FITZGERALD: -- that was filed in  
5 the litigation phase of the proceeding which we'll be  
6 marking for identification.

7                   A.L.J. PHILLIPS: And I'm -- I was  
8 looking at your exhibit list so I -- I think I  
9 confused myself.

10                  MR. FITZGERALD: Okay. I -- I -- .

11                  A.L.J. PHILLIPS: Just --.

12                  MR. FITZGERALD: Yeah, your Honor, I  
13 did try and short form -- what we're trying to do is  
14 to move in all the pre-filed direct testimony of the  
15 Company, not just from this panel, but just to mark  
16 for identification all of our pre-filed direct  
17 testimony. And we can break that out if you'd like,  
18 your Honor. But I -- I thought since we're marking  
19 it for identification we could start there.

20                  A.L.J. PHILLIPS: Okay. So the pre-  
21 filed direct testimony that is the information that  
22 was filed on, I believe, February 26. All of it for  
23 all of the witnesses?

24                  MR. FITZGERALD: That is correct.

25                  A.L.J. PHILLIPS: It's marked for

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 identification as Hearing Exhibit 1.

3                   (Hearing Exhibit 1 is marked for  
4 identification.)

5                   MR. FITZGERALD: And your Honor, we'd  
6 like to mark for identification as Hearing Exhibit 2  
7 the pre-filed direct testimony of the Company, of  
8 exhibits.

9                   A.L.J. PHILLIPS: The exhibits will be  
10 so marked.

11                  (Hearing Exhibit 2 is marked for  
12 identification.)

13                  MR. FITZGERALD: The Company would  
14 also like to mark for identification Exhibit 3 which  
15 is the pre-filed rebuttal testimony of the Company in  
16 the litigation phase of the case which was shown also  
17 on the filing on July 15.

18                  A.L.J. PHILLIPS: It will be marked  
19 for identification.

20                  (Hearing Exhibit 3 is marked for  
21 identification.)

22                  MR. FITZGERALD: And your Honor, we  
23 also would like to mark for Hearing Exhibit Number 4  
24 the pre-filed rebuttal testimony exhibits which were  
25 filed on July 15, 2016 on DMM.

1 16-W-0130 - October 5, 2016 - Suez Water

2  
3 A.L.J. PHILLIPS: Okay. The rebuttal  
4 exhibits of the Company witnesses will be marked for  
5 identification as Number 4.

6 (Hearing Exhibit 4 is marked for  
7 identification.)

8 MR. FITZGERALD: Thank you, your  
9 Honor. I'd like turn my attention now back to the  
10 panel.

11 DIRECT EXAMINATION

12 BY MR. FITZGERALD:

13 Q. Good morning, panel.

14 A. (Mr. Michelson) Good morning.

15 A. (Ms. Ahern) Morning.

16 Q. Panel, do you have in front of you a  
17 document entitled The Initial Testimony of Suez Water New  
18 York, Inc. Joint Proposal panel, consisting of a cover  
19 page a table of contents and 38 pages of questions and  
20 answers which was filed with the Commission on September  
21 14, 2016?

22 A. (Ms. Ahern) Yes.

23 A. (Mr. Michelson) Yes.

24 Q. And was that document prepared by you  
25 or under your supervision?

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A. (Ms. Ahern) Yes.

A. (Mr. Cagle) Yes.

A. (Ms. McEvoy) Yes.

Q. Do you have any changes or corrections to that testimony today?

A. (Ms. Ahern) No.

Q. And if I were to ask you the same questions today would your responses be the same?

A. (Mr. Michaelson) Yes.

A. (Mr. Cagle) Yes.

Q. Panel, do you adopt this as your sworn testimony in this proceeding?

A. (Mr. Michaelson) Yes.

A. (Ms. Ahern) Yes.

MR. FITZGERALD: your Honor, I would ask that the initial testimony in Suez Water New York, Inc. Joint Proposal panel as indicated be copied into record as if given orally today.

BEFORE THE  
NEW YORK STATE  
PUBLIC SERVICE COMMISSION

-----X

In the Matter of a Proceeding on Motion of the Commission  
as to the Rates, Charges, Rules and Regulations of  
SUEZ Water New York Inc. for Water Service

Case 16-W-0130

-----X

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
JOINT PROPOSAL PANEL**

Pauline M. Ahern, ScottMadden Inc.  
James C. Cagle  
Donald F. Distanto  
Christopher J. Graziano  
Paul R. Herbert, Gannett Fleming Valuation  
and Rate Consultants, LLC  
Paula L. McEvoy  
Timothy J. Michaelson

September 14, 2016

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
JOINT PROPOSAL PANEL**

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**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
JOINT PROPOSAL PANEL**

**I. INTRODUCTION**

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- Q. Please state the members of this Joint Proposal Panel (“Panel”).
- A. We are Pauline M. Ahern, James C. Cagle, Donald F. Distanto, Christopher J. Graziano, Paul R. Herbert, Paula L. McEvoy and Timothy J. Michaelson.
- Q. With the exception of Mr. Cagle, did the members of the Panel previously submit pre-filed testimony in this proceeding?
- A. Yes. We each submitted pre-filed direct and rebuttal testimony and accompanying exhibits, either individually or as part of a panel.
- Q. Mr. Cagle, please state your full name and business address.
- A. My name is James C. Cagle and my business address is 461 From Road, Paramus, New Jersey.
- Q. By whom are you employed and in what capacity?
- A. I am employed by SUEZ Water Management and Services Inc. (“SUEZ M&S”) and my title is Vice President, Rates and Regulatory Affairs for SUEZ M&S. In that capacity, I am responsible for the development of rate and regulatory filings for the various SUEZ affiliates.
- Q. Please briefly summarize your educational background and work experience.
- A. I received a Bachelor of Accountancy degree from the University of Oklahoma in 1987 and am a Certified Public Accountant licensed in the State of Texas. I have been employed by SUEZ M&S (and its predecessor United Water Management and Services Company) since October of 2007. Previous to that, I was employed by Atmos Energy Corporation (“Atmos”), a natural gas utility operating in 12

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1 states, as Manager, Rates and Revenue Requirements. My tenure at Atmos began  
2 in 1989 and continued until coming to SUEZ M&S, except for the period from  
3 September 1997 through February 1998 when I was employed by GTE (now  
4 Verizon) in its Costing department.

5 Q. Have you previously testified before the New York State Public Service  
6 Commission (“NYPSC” or the “Commission”)?

7 A. Yes. As related to SUEZ Water New York Inc.’s (“SWNY” or the “Company”),  
8 I provided testimony in the two most recent rate cases (i.e., Cases 13-W-0295 and  
9 09-W-0731).

10 Q. What is the Panel’s understanding of the status of the Company’s pre-filed direct  
11 and rebuttal testimony and the accompanying exhibits?

12 A. We understand that these materials are being marked as a hearing exhibit for  
13 reference purposes only to demonstrate the initial litigation position of the  
14 Company. These materials by their nature do not reflect the outcome of the  
15 extensive settlement negotiations that resulted in the terms of the Joint Proposal  
16 (the “Joint Proposal” or “Rate Plan”).

17 Q. Does SWNY’s pre-filed testimony assert positions that are in part different from  
18 or contrary to the terms of the Joint Proposal entered into by the Company and the  
19 New York State Department of Public Service Staff (“Staff” and together with the  
20 Company, the “Signatory Parties”)?

21 A. To a certain extent, yes. As we noted, the pre-filed testimony reflected the  
22 Company’s litigation positions. Based on negotiations among the parties during

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1 the extensive settlement negotiations, the Company and Staff have moved away  
2 from their respective litigation positions to reach agreement on the terms and  
3 conditions of the Joint Proposal. In brief, the pre-filed testimony has been  
4 superseded by the express terms of the Joint Proposal.

5 Q. Why is SWNY filing testimony at this stage of the proceeding?

6 A. The August 17, 2016 Ruling Establishing Process and Schedule in this proceeding  
7 directed the Company to file testimony supporting the Joint Proposal.

8 Q. What is the purpose of the Panel's testimony?

9 A. The purpose of our testimony is to support adoption of the Joint Proposal by the  
10 Commission as in the public interest and otherwise consistent with the  
11 Commission's standard for adoption of settlement agreements among parties.

12 Q. Is the Panel sponsoring any exhibits in support of its testimony?

13 A. Yes. Exhibit JPP-1 describes at a high level the various material movements from  
14 the Company's litigation positions to the Joint Proposal terms.

**II. STANDARD OF REVIEW OF JOINT PROPOSAL**

16 Q. Is the Panel generally familiar with the criteria applied by the Commission for  
17 adoption of a settlement?

18 A. Yes, we are. Although we are not lawyers, it is our understanding that the  
19 Commission has consistently applied the following public interest standard for  
20 approval as set forth in the Commission's Settlement Guidelines:<sup>1</sup>

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<sup>1</sup> 32 NYPSC 71; Case 90-M-0255 et al. - Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in C11175, Opinion, Order and

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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- 1       • A desirable settlement should strive for a balance among: (1) protection of  
2       the customers; (2) fairness to investors; and (3) the long-term viability of the  
3       utility. Additionally, a settlement should be consistent with sound  
4       environmental, social and economic policies of the Agency and the State of  
5       New York and should produce results that are within the range of reasonable  
6       results that would likely have arisen from a Commission decision in a litigated  
7       proceeding.
- 8       • In judging the settlement, the Commission shall give weight to the fact that a  
9       settlement reflects agreement by normally adversarial parties.<sup>2</sup>

10               The Opinion and Order adopting the Settlement Guidelines enumerates the  
11       following factors to be considered in the “substantive review” of a proposed  
12       agreement:<sup>3</sup>

- 13       • The settlement’s consistency with law and the regulatory, economic, social  
14       and environmental policies of the Commission and the State;
- 15       • Whether the agreement compares favorably with the likely result of full  
16       litigation and is within the range of reasonable outcomes;
- 17       • Whether the settlement strikes a fair balance among interests of ratepayers,  
18       investors and the long-term soundness of the utility;
- 19       • Whether the settlement reflects the agreement of normally adverse parties;

---

Resolution Adopting Settlement Procedures and Guidelines, Opinion 92-2 (Mar. 24, 1992) (“Settlement Guidelines”).

<sup>2</sup> Settlement Guidelines, Appendix B at 8.

<sup>3</sup> Settlement Guidelines at 30.

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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- 1           • The existence of a rational basis for decision;
- 2           • The completeness of the record; and
- 3           • Whether the settlement is contested.

4                     The first four of the foregoing factors, according to the Commission, are  
5 elements of the public interest standard, while the last two “simply guide [the  
6 Commission] in [its] assessment.”<sup>4</sup>

7 Q.     Based on your understanding of the Joint Proposal’s terms, does it meet the  
8 Commission’s standard for adoption of settlements?

9 A.     Yes. The terms of the Joint Proposal are consistent with the New York State  
10 Public Service Law (“PSL”) and the Commission’s Settlement Guidelines. In  
11 addition, the Joint Proposal is supported by the record in this case, achieves a  
12 rational result and is within the range of reasonable outcomes had this case been  
13 fully litigated. Certain aspects of the Joint Proposal reflect positions advocated by  
14 the Company, Staff and other parties in pre-filed testimony, while other aspects  
15 represent a compromise between the Company and Staff’s litigation positions.

16 Q.     Is the Joint Proposal the result of extensive noticed settlement negotiations and  
17 information sharing?

18 A.     Yes. The Joint Proposal was arrived at after five settlement meetings and  
19 numerous all-party settlement calls. Its provisions reflect significant and  
20 interrelated compromises among the Signatory Parties that fairly balance the  
21 interests of the Company, Staff and customers.

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<sup>4</sup> Settlement Guidelines, Appendix B at 8.

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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**III. SCOPE OF JOINT PROPOSAL**

Q. Does the scope of the Joint Proposal address and settle all contested issues in the proceeding?

A. Yes. The Joint Proposal addresses all contested issues between the Signatory Parties.

Q. Is the Company’s prior rate plan intended to be terminated and a new rate plan for the Company to be initiated?

A. Yes. If adopted by the Commission, the terms of the Joint Proposal will supersede the rate plan set forth in the Commission’s Order Establishing Rates in Case 13-W-0295.<sup>5</sup>

**IV. RATE PLAN**

Q. Please describe the term of the Joint Proposal.

A. The proposed term of the Joint Proposal is the three-year period from February 1, 2017 through January 31, 2020 with the following Rate Years: (1) Rate Year One – 12 months ending January 31, 2018; (2) Rate Year Two – 12 months ending January 31, 2019; and (3) Rate Year Three – 12 months ending January 31, 2020. The multi-year term provides for a relatively even increase in rates over a medium time period and avoids dramatic shifts in rates from year to year.

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<sup>5</sup> Case 13-W-0295 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of SUEZ Water New York Inc., Order Establishing Rates (June 26, 2014).

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 Q. Please identify the agreed-upon base rate increases for the Rate Plan.

2 A. The base rate increases in Total Operating Revenues for the Rate Plan are  
3 provided in the table below:

	Percentage Increase	Base Rate Increase
<b>Rate Year One</b>	9.07%	\$7,691,533
<b>Rate Year Two</b>	2.12%	\$1,966,434
<b>Rate Year Three</b>	3.47%	\$3,300,393

4  
5 Q. Would the Panel discuss the customer bill impact analysis included in the Joint  
6 Proposal?

7 A. Appendix 1 to the Joint Proposal contains a detailed bill impact analysis  
8 comparing current summer and winter rates to proposed rates at various usage  
9 levels. The bill impacts reflect changes to the Company's current summer/winter,  
10 inclining-block rate structure to a year-round, conservation-oriented  
11 inclining-block rate structure. The rate design changes for each customer class  
12 are presented in Appendix 7 to the Joint Proposal. The bill impacts also reflect no  
13 change to the fixed portion (or facility charge) from current levels. The increases  
14 each year are included in the volumetric rates, consistent with furthering  
15 conservation.

16 Q. Does the Joint Proposal reflect a levelization of the proposed rate increases?

17 A. Yes, it does. The chart below shows the levelized increases:

	Levelized Percentage Increase	Levelized Rate Increase
<b>Rate Year One</b>	5.9%	\$5,033,706
<b>Rate Year Two</b>	5.6%	\$5,033,706
<b>Rate Year Three</b>	5.3%	\$5,033,706

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 Q. Please explain the goal of the levelization proposed in the Joint Proposal.

2 A. The goal is to spread out necessary revenue requirement increases over the full  
3 term of a multi-year agreement, which reduces the rate increases that would  
4 otherwise be required in Rate Year One. It is worth noting that levelization is a  
5 benefit that would not be available in a single-year litigated case.

6 Q. Why is the proposed levelization in the public interest?

7 A. Levelization provides protection to customers from higher increases in Rate Year  
8 One and allows for known gradual increases in rates over the term of the Rate  
9 Plan.

10 V. **RETURN ON EQUITY, EARNINGS SHARING AND OVERALL**  
11 **RATE OF RETURN**

12 Q. Would the Panel please briefly discuss the return on equity and overall rate of  
13 return positions advocated by Staff and the Company in the litigation phase of this  
14 proceeding?

15 A. In its direct case, the Company had included a hypothetical Capital Structure  
16 comprised of 50.00% Long-Term Debt at 5.18% and 50.00% Equity at a 9.30%,  
17 for an overall rate of return of 7.24%. The Company's proposal represented a  
18 conservative approach: first, the capital structure of the Company's parent was  
19 comprised of 46.66% Long-Term Debt and 53.34% Equity; and second, the  
20 Company's Cost of Capital witness had recommended a return on equity of  
21 10.35%, which would have resulted in a higher overall rate of return of 7.94%. In  
22 its direct testimony, Staff recommended a Capital Structure including 52.95%

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 Long-Term Debt at 5.15%, 0.05% of Customer Deposits at 0.85% and 47.00%  
2 Equity at 8.50%, for an overall rate of return of 6.72%.

3 Q. Please identify the return on equity and the overall rate of return reflected in the  
4 Joint Proposal.

5 A. Section V of the Joint Proposal reflects 54.00% Long-Term Debt at 5.15% and  
6 46.00% Equity at 9.00%, for an overall rate of return of 6.92%.

7 Q. Please explain how the return on equity and overall rate of return agreed to in the  
8 Joint Proposal represent a reasonable outcome and a compromise of the litigation  
9 positions taken by the Company and Staff.

10 A. As with all terms of a negotiated settlement, the movements of both Signatory  
11 Parties from their litigation positions necessarily reflect an interrelated balancing  
12 of outcomes on all of the settlement issues. On this issue, both Staff and the  
13 Company moved significantly from their original overall rate of return litigation  
14 positions. Specifically, Staff and the Company moved 20 basis points and 32  
15 basis points, respectively, in the interest of settlement. This movement  
16 demonstrates that the Joint Proposal terms represent a reasonable outcome and a  
17 compromise of litigation positions.

18 Q. Is the Joint Proposal's agreed-upon return on equity and overall rate of return a  
19 fair balance among the interests of ratepayers, investors and the long-term  
20 soundness of the Company?

21 A. Yes. The agreed-upon compromises on the return on equity and overall rate of  
22 return are consistent with the balancing of these same interests in recent

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1 Commission-approved Joint Proposals. The agreed-upon return on equity and  
2 overall rate of return are set at a level that balances the Company's need for a  
3 return on equity that is sufficiently high to attract necessary capital and protect the  
4 soundness of the Company while still low enough to protect ratepayer interests.

5 Q. Would the Panel please explain the earnings sharing mechanism ("ESM")  
6 contained in the Joint Proposal?

7 A. Section V, Paragraph 2 of the Joint Proposal addresses the disposition of earnings  
8 in excess of the allowed return on equity of 9.00%. The Company is permitted to  
9 retain 100% of earnings up to and including 9.65%. All earnings over 9.65% and  
10 up to and including 10.65% will be shared 50%/50% between customers and  
11 shareholders. All earnings above 10.65% will be shared 90%/10% between  
12 customers and shareholders.

13 Q. Please discuss the benefits that customers can realize under the ESM contained in  
14 the Joint Proposal.

15 A. The ESM provides an incentive for the Company to operate in as efficient a  
16 manner as possible. If the Company is able to reach the specific earnings targets  
17 identified above, customers would be entitled to share that benefit and ultimately  
18 see a reduction in their bills.

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**VI. RATE BASE CONTRUCTION PROJECTS**

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Q. Will the Panel please identify the rate base construction projects to be undertaken during the term of the Joint Proposal?

A. Appendix 5 of the Joint Proposal includes a detailed listing of specific capital additions as well as blanket projects. The list includes the items provided by the Company in its direct case, except that the Sterling tank project has been moved from Rate Base and the costs associated with the project will be recovered through the System Improvement Charge (“SIC”).

Q. Do the terms of the Joint Proposal reflect an acceleration of the Company’s replacement of transmission and distribution main?

A. Yes. The Company’s initial capital plan included a replacement rate of 0.7% by 2021. The Joint Proposal reflects an accelerated replacement rate of 1% by 2020. To protect customers, the Joint Proposal includes a cap on total costs should main replacement unit costs increase to unexpected levels.

Q. Would the Panel please explain the customer benefits associated with the accelerated replacement of main in the Joint Proposal?

A. The accelerated main replacement program is intended to assist with lowering non-revenue water (“NRW”) and to increase the amount of existing main that is replaced each year. As the underground infrastructure ages, the system will likely experience an increase in bursts and leaks, an increase in lost water, and higher costs to replace the system. An accelerated main replacement program helps to

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1           proactively address these issues and to improve service to customers at a  
2           manageable cost.

**VII. HAVERSTRAW WATER SUPPLY PROJECT COSTS**

4 Q.     Please provide a brief overview of the current status of the Haverstraw Water  
5           Supply Project (“HWSP”) cost recovery.

6 A.     Section VIII of the Joint Proposal recognizes that the Commission has determined  
7           that the Company acted prudently in developing the HWSP in its orders issued in  
8           Case 13-W-0246 and Case 13-W-0202.<sup>6</sup> In the December 2015 Order, the  
9           Commission ordered the Company to abandon the HWSP, submit details of its  
10          alternate conservation and water supply plans, and file a deferral petition  
11          requesting to transfer HWSP costs to a regulatory asset.

12 Q.     What steps has the Company taken to comply with the Commission’s directive?

13 A.     The Joint Proposal acknowledges in Section VIII, Paragraph 3 that the Company  
14          provided the requisite information under the December 2015 Order. SWNY also  
15          requested authorization to transfer HWSP-related expenses to a regulatory asset as  
16          part of its initial filing in the instant rate case proceeding.

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<sup>6</sup> Case 13-W-0246 - Verified Petition of United Water New York Inc. for Implementation of a Long-Term Water Supply Surcharge, and Related Tariff Amendment, Order Denying Surcharge and Making Determinations Regarding the Treatment of Certain Long-Term Water Supply Development Costs at 2 (Nov. 14, 2014) (“In light of the explicit directions provided to the Company in the earlier 2006 Rate Order and in the more recent 2010 Rate Order to proceed with development of a new long-term water supply project as promptly as possible, the 2014 Need Order concludes that the Company’s actions to continue to develop the project, through the date of that order, cannot be characterized as imprudent.” (internal footnotes and citations omitted)); see also Case 13-W-0246, Order on Rehearing at 19 (Feb. 25, 2016); Case 13-W-0303 - Proceeding on Motion of the Commission to Examine United Water New York, Inc.’s Development of a New Long-Term Water Supply Source, Order Adopting Alternate Demand/Supply Strategies and Abandoning Haverstraw Project at 23-24 (Dec. 18, 2015) (the “December 2015 Order”); Case 13-W-0303, Order Addressing Status of Need and Directing Further Study at 60-65 (Nov. 17, 2014).

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1 Q. How does the Joint Proposal reflect the treatment of these costs?

2 A. Section VIII, Paragraph 4 of the Joint Proposal provides that the Signatory Parties  
3 agree that the Company is entitled to transfer HWSP-related costs to a regulated  
4 asset and recover such costs in rates, in the amounts contained in Appendix 2 of  
5 the Joint Proposal, over a 15-year amortization period.

6 Q. Please summarize the Joint Proposal provisions addressing the impact of the  
7 pending Article 78/declaratory judgment court action challenging the Company's  
8 ability to recover HWSP-related costs.

9 A. Section VIII, Paragraph 6 of the Joint Proposal states that the Signatory Parties  
10 recognize that there is now pending an Article 78/declaratory judgment action  
11 brought by the County of Rockland challenging the Company's ability to recover  
12 HWSP-related costs. In anticipation of future court action, including the need to  
13 complete all final appeals and remands, the Joint Proposal provides that any  
14 resulting mandated or required changes to the Company's recovery of these costs  
15 will be reflected in new revised rates to become effective only after the Rate Plan  
16 term and on a prospective basis only. In the event that court action does not result  
17 in any mandated changes, then the cost recovery provisions of the Joint Proposal  
18 will remain in place and the Company will continue to recover these costs.

19 Q. How does the treatment of HWSP-related costs in the Joint Proposal differ from  
20 the litigation positions originally sponsored by the Signatory Parties?

21 A. The amount the Company included in Rate Base in its direct filing has been  
22 reduced by \$0.8 million. The reduction results mainly from changing the

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1           amortization period from the Company's term of 20 years to Staff's term of 15  
2           years and through several Staff adjustments to costs excluded from the HWSP and  
3           the associated overheads and Allowance for Funds Used During Construction  
4           ("AFUDC").

5   Q.       Please explain how the HWSP treatment in the Joint Proposal represents a  
6           reasonable resolution of a disputed issue and is, therefore, in the public interest.

7   A.       The treatment in the Joint Proposal recognizes that the Company pursued the  
8           HWSP to further comply with Commission orders and that it has acted prudently  
9           in that pursuit and was ordered to abandon the project. The treatment included in  
10          the Joint Proposal also avoids substantial financial harm to the Company,  
11          allowing it to focus on more efficiently operating its system, improving customer  
12          service and enhancing its Conservation and Efficiency Program, all of which are  
13          in the public interest. Furthermore, the use of a shorter amortization period of 15  
14          years, instead of 20 years, results in customer savings.

15           **VIII. REVENUE, PRODUCTION COST AND PROPERTY TAX COST**  
16           **RECONCILIATION**

17   Q.       What provision does the Joint Proposal make for the reconciliation of revenue,  
18           production costs and property taxes?

19   A.       The Joint Proposal provides for the continuation of the Revenue, Production Cost  
20           and Property Tax Cost Reconciliation Adjustment Clause ("RAC"). Section IX of  
21           the Joint Proposal discusses the Revenue and Production Cost Reconciliation and  
22           Section XI discusses the reconciliation of Property Taxes. Appendix 6 of the

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1 Joint Proposal contains the Revenue, Production Cost and Property Tax

2 Reconciliation Adjustment tariff statement.

3 Q. Please further explain the RAC.

4 A. Under the RAC, the rates applicable to all metered customer accounts are subject  
5 to automatic adjustment by way of a surcharge or a credit. The surcharge or  
6 credit is based on the difference between the actual net revenues (operating  
7 revenues less production costs) for the preceding Rate Year and the net revenue  
8 target as determined in the most recent rate case. The then-current Rate Year's  
9 net revenue variance plus any prior net revenue variances will be recovered or  
10 refunded annually through a percentage surcharge or surcredit to be applied to all  
11 metered customers' bills. This surcharge or surcredit will be based on the  
12 projected revenues from metered water sales for the next succeeding Rate Year  
13 and will be recovered or refunded during the succeeding Rate Year. The  
14 accumulated net revenue variance will accrue interest net of income tax from the  
15 end of each Rate Year at the Other Customer Capital Rate then in effect and will  
16 be subject to any applicable local taxes.

17 Q. What is included in Production costs?

18 A. Production costs will include the cost of sludge removal, power, chemicals, and  
19 purchased water. If actual costs are less than the target for each year, 100% of the  
20 difference will be deferred and refunded through the mechanism.

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1 Q. What happens if actual costs exceed the target levels established in the Joint  
2 Proposal?

3 A. If actual costs exceed the target levels established in the Joint Proposal, 95% of  
4 the difference for power and chemicals and 100% of the difference for purchased  
5 water and sludge removal will be deferred and recovered through the  
6 reconciliation. The RAC will continue beyond the end of the Rate Plan.

7 Q. Are there any reporting requirements associated with the RAC?

8 A. Yes. The reconciliation will be submitted to the Director of the Office of Electric,  
9 Gas and Water within 60 days after the end of the term of each Rate Year.

10 **IX. NON-REVENUE WATER**

11 Q. Please summarize the various litigation positions of the parties concerning the  
12 proper annual target level for NRW.

13 A. The Company and Staff proposed that the target level be set at 18% of annual  
14 production. That level is consistent with Title 16 of the New York Codes, Rules  
15 and Regulations (“NYCRR”), Section 503.8 (Lost and Unaccounted for Water).  
16 Under this regulation, a utility is required to notify the New York State  
17 Department of Public Service “when annual nonrevenue producing water use,  
18 which would include lost and unaccounted-for water as well as other nonmetered  
19 uses of water, exceeds 18% of annual production.” The Municipal Consortium  
20 sought adoption of a lower NRW target level.

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1 Q. Does the Joint Proposal establish an annual target level for NRW?

2 A. Yes. Section X, Paragraph 2 of the Joint Proposal provides that the Signatory  
3 Parties agree to a goal of reducing total NRW to 18% by the end of the Rate Plan.  
4 The Joint Proposal further provides that the Signatory Parties agree that the 18%  
5 threshold is not the ultimate goal and they acknowledge that the Company will  
6 continue to take action to further reduce NRW.

7 Q. What is the basis for the conclusion that the target NRW established in the Joint  
8 Proposal is a reasonable outcome in the public interest?

9 A. As noted above, the 18% target level is consistent with applicable NRW  
10 regulations currently in place.

11 Q. Please explain the reporting requirements applicable to NRW amounts that will be  
12 in place during the Rate Plan.

13 A. The Company will provide a report to the Commission any time that total NRW is  
14 greater than 18% over a given calendar year in accordance with the requirements  
15 of 16 NYCRR § 503.8(b). This report will include any significant events that  
16 impact NRW, as well as specific measures being taken by the Company to reduce  
17 NRW. The Company's report will break down NRW into unbilled authorized  
18 use, apparent losses, and unauthorized real losses. The report will also  
19 specifically identify: (1) the major drivers of NRW; and (2) which type of NRW  
20 is being addressed by the various Company measures. A copy of the Company's  
21 annual water audit will be included with this report.

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1 Q. Please describe the provisions of the Joint Proposal concerning the Company’s  
2 installation of Advanced Meter Infrastructure (“AMI”).

3 A. As described in Section X, Paragraph 4 of the Joint Proposal, the Company will  
4 install AMI over a four-year period as part of its NRW reduction efforts. SWNY  
5 will install a network of both fixed and mobile customer meter data collectors to  
6 provide high-resolution consumption and usage information. All service  
7 connections are being equipped with RF (endpoint) transmitters capable of  
8 providing frequent usage data to the collector system which will be collected  
9 through receivers and then processed and analyzed through Company computer  
10 systems.

11 Q. What are some of the benefits of AMI?

12 A. AMI will enable the Company to identify customer consumption patterns which  
13 deviate from typical conditions. By installing AMI, the Company will be able to  
14 obtain consumption data that is on a consistent timeframe with production data.  
15 Additionally, by having this type of consumption data, the Company will be able  
16 to accurately determine daily water losses, potentially enhancing the Company’s  
17 ability to find and repair leaks more quickly and to detect and reduce water theft.

18 Q. Please explain the Company’s implementation of AMI.

19 A. Section X, Paragraph 5 of the Joint Proposal provides that the Company will work  
20 with Staff to develop a demonstration project once AMI is operational. The goal  
21 of the project will be to measure water savings. In connection with the project,  
22 the Company agreed to submit a report to Staff by the end of Rate Year One

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1           concerning data collection. Specifically, the report will describe the feasibility of  
2           obtaining data to demonstrate the impact of water savings from AMI installation  
3           and the impact of projects undertaken to reduce NRW. The report will also  
4           include the method that will be used to obtain the data and a schedule for when  
5           the information will become available.

6   Q.     What provisions of the Joint Proposal concern the Company's implementation of  
7           District Meter Areas ("DMAs") as part of the Company's ongoing NRW  
8           reduction efforts?

9   A.     Section X, Paragraph 4(b) includes a description of the Company's  
10          implementation of DMAs. DMAs are a method to break the system into smaller  
11          metered districts (between 1,500 and 5,000 connections per DMA) in order to  
12          perform mass balancing. With mass balancing, the Company can determine how  
13          much water went into an area, how much water was registered at individual  
14          meters and NRW amounts. This will allow the Company to better identify and  
15          focus resources on problem areas.

16   Q.     Does the Joint Proposal identify the number of DMAs that will be implemented?

17   A.     Yes. The Joint Proposal identifies the breakdown of required DMAs per pressure  
18          district. The Rate Plan reflects a projected completion date of year end 2019 for  
19          the installation of the DMAs. Additionally, the Joint Proposal recognizes that it  
20          may be necessary to install additional DMAs in the future to further enhance  
21          available data.

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1 Q. Were the Company and Staff in agreement concerning the Company’s AMI and  
2 DMA proposals in the litigation phase of this proceeding?

3 A. Yes. Staff and the Company took similar positions supporting the implementation  
4 of AMI and the introduction of DMAs.

5 Q. Please explain why the Commission should find that the AMI provisions of the  
6 Joint Proposal meet the public interest standard used to assess the reasonableness  
7 of a rate case agreement.

8 A. The AMI program will improve the frequency, resolution, and accuracy of  
9 customer consumption information. AMI also will reduce the level of effort  
10 needed to accomplish routine meter-reading and billing activities. As explained  
11 above, the system will utilize a network of fixed-collectors (located throughout  
12 the service territory) to continuously collect data transmissions from customer  
13 billing meters, and compute the associated consumption in near-real time. This  
14 near real-time consumption information can be aligned with corresponding  
15 production information within each DMA zone to reveal the precise magnitude  
16 and nature of any water losses occurring within each zone. The system will also  
17 enable the Company to monitor usage patterns and metering accuracy for large  
18 consumers. Importantly, AMI will help SWNY better identify and prevent theft  
19 of service and illegal meter tampering.

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1 Q. Please explain why the Commission should find that the DMA provisions of the  
2 Joint Proposal meet the public interest standard used to assess the reasonableness  
3 of a rate case agreement.

4 A. Sub-district metering is a proven and effective way to reduce the awareness time  
5 (time to discover/find a leak) of non-surfacing leakage and minimize potentially  
6 recoverable real losses (burst leakage). The DMA system will also reduce the  
7 leak detection coverage area associated with a pipe burst and will enable the  
8 operations team to quickly and efficiently identify, locate, and resolve water loss  
9 events and other operational anomalies which occur throughout the system. It  
10 also will enable the Company to continuously monitor system performance and  
11 efficiency and deploy field crews in the most efficient manner based on the  
12 specific needs of each DMA zone. The DMA solution will also improve the  
13 accuracy of water loss audits within the zones, assist with planning functions, and  
14 better match production information to customer usage with higher resolution and  
15 accuracy.

**X. PROPERTY TAXES**

17 Q. Would the Panel please explain the details of the RAC which will be used to  
18 reconcile property taxes in each Rate Year?

19 A. Section XI, Paragraph 1 of the Joint Proposal authorizes the Company to  
20 reconcile property taxes on all utility assets through the RAC during the term of  
21 the Rate Plan. The actual property tax expense within the Rate Year is reconciled  
22 against the property tax targets allowed in the case. The Company will absorb

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1           15% of all actual property tax expense above targets and will retain 15% of any  
2           reduction in property taxes when such reduction is the direct result of the  
3           Company's intervention and action. As with the revenue and production cost part  
4           of the RAC, the amounts deferred will accrue interest at the Customer Capital rate  
5           then in effect and the reconciliation will continue beyond the end of the Rate Plan.

6   Q.    How will property tax refunds received by the Company be treated under the  
7           terms of the Rate Plan?

8   A.    Section XI, Paragraph 5 of the Joint Proposal addresses the treatment of property  
9           tax refunds. Pursuant to PSL § 113 and 16 NYCRR § 89.3, the Company will  
10          notify the Commission of such refunds and will accrue interest at the effective  
11          other Customer Capital rate from the date the Company receives the refund until  
12          the commencement of such refund. All reasonable expenses associated with the  
13          Company's effort to reduce its property taxes, including tax challenges (e.g., legal  
14          fees, expert fees, expert costs, court costs, etc.), will be fully recovered by the  
15          Company. Tax savings to be shared between the Company and customers will be  
16          calculated following the Company's recovery of these expenses.

17   Q.    Please identify the property tax-related filings the Company will make during the  
18          Rate Plan.

19   A.    During the Rate Plan, property taxes on all utility assets will be reconciled  
20          through the RAC and reconciliation amounts will be filed within 60 days after the  
21          end of each Rate Year. Additionally, the Company will make economic  
22          obsolescence filings annually when necessary with the New York State Office of

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1 Real Property Tax Services. SWNY will also file an annual report detailing the  
2 actions it has taken to control property taxes.

**XI. PENSIONS AND OPEBS**

3  
4 Q. Please discuss the accounting and ratemaking treatment of pensions and  
5 Postretirement Benefits Other Than Pensions (“OPEBs”) during the Rate Plan.

6 A. Section XII of the Joint Proposal contains the provisions of the Joint Proposal  
7 applicable to pensions and OPEBs. For ratemaking treatment, SWNY is subject  
8 to the Commission’s “Statement of Policy and Order Concerning the Accounting  
9 and Ratemaking Treatment for Pensions and Post-Retirement Benefits Other than  
10 Pensions” issued in Case 91-M-0890 (“Statement”). The Statement requires the  
11 Company to defer the difference between the authorized rate allowance and actual  
12 expense (income) for pensions and OPEBs. Any differences between actual and  
13 authorized amounts will be included in the Company’s next rate to be recovered  
14 by the Company or passed back to customers.

15 Q. Does the Statement provide a mechanism for Staff review of the Company’s  
16 calculations?

17 A. Yes. At the end of each Rate Year, the Company is required to file a report with  
18 Staff providing calculation of SWNY’s Pension and OPEB differences. This  
19 filing allows Staff to monitor costs, safeguards customers from inaccurate  
20 actuarial and health care cost assumptions and helps mitigate the volatility in rate  
21 and actual expense differences during the Rate Years. Staff review provides

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1 customers the benefit of ensuring Company compliance with the Statement and  
2 accurate accounting of costs.

**XII. QUALIFIED NEW YORK MANUFACTURER CREDIT**

3  
4 Q. Please describe the provision applicable to the regulatory liability created as a  
5 result of the Company's designation as a qualified New York Manufacturer  
6 ("QNYM").

7 A. Section XIV of the Joint Proposal governs the disposition of this regulatory  
8 liability. This section of the Joint Proposal provides that the target amount of the  
9 regulatory liability for ratemaking purposes will be \$8,500,000. The Company  
10 will amortize the target amount over three years (\$236,111 per month), beginning  
11 with the first month that new rates are in effect. This provides customers the  
12 benefit of this regulatory liability over a reasonable period which further reduces  
13 necessary rate increases during that time period.

14 Q. Does the Joint Proposal provide additional details concerning the treatment of the  
15 QNYM regulatory liability?

16 A. Yes, it does. The Joint Proposal provides that if the Company's next rate case  
17 filing does not coincide with the end of the Rate Plan, the Company will defer any  
18 over/under amortization whereby the differential between the actual balance of  
19 the QNYM regulatory liability and the cumulative amount of the monthly  
20 amortization identified above will be deferred for treatment in the Company's  
21 next rate case. Additionally, in the event the Company is no longer deemed a  
22 QNYM during this Rate Plan or beyond, due to a change in law or otherwise, the

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1           Company will defer the revenue requirement impact of all tax expense associated  
2           with such a change for future recovery from ratepayers.

3                           **XIII. SYSTEM IMPROVEMENT CHARGE**

4   Q.     Would the Panel provide additional details concerning the operation of the SIC  
5           mechanism?

6   A.     The SIC mechanism allows the Company to recover carrying costs (return and  
7           depreciation expense) for specific capital improvement projects that have been  
8           fully reviewed and approved by Staff when those projects are put in service  
9           during the Rate Plan.

10 Q.     Please describe how the SIC mechanism reflected in the Joint Proposal differs  
11           from the proposals sponsored by the Company and Staff in their direct and  
12           rebuttal presentations in this proceeding.

13 A.     The Company had proposed to update the SIC surcharge whenever a new project  
14           was placed into service. Staff's litigation position was that, after an initial SIC  
15           compliance filing, the Company should update the SIC surcharge annually 90  
16           days prior to the end of each Rate Year. Staff's proposal is reflected in the Joint  
17           Proposal.

18 Q.     Would the Panel please discuss how the SIC mechanism fairly balances the  
19           interests of the ratepayers and the Company?

20 A.     The SIC approach provides the Company financial flexibility to undertake  
21           significant new construction projects by allowing the Company to recover  
22           carrying costs (i.e., return and depreciation expense) on specific capital

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1 improvement projects placed in service during, and beyond, the Rate Plan. At the  
2 same time, the mechanism protects ratepayers against the possibility of slippage  
3 in scheduled construction because rates do not include carrying charges on the  
4 designated projects and the SIC surcharge cannot be imposed until all work is  
5 completed on a project and Staff has had the opportunity to fully review and  
6 approve the project expenditures.

**XIV. REVENUE ALLOCATION AND RATE DESIGN**

7  
8 Q. Please summarize the revenue allocation provisions of the Joint Proposal.

9 A. The provisions of the Rate Plan governing revenue allocation and rate design are  
10 included in Section XVII of the Joint Proposal. The revenue allocation term  
11 moves revenues in three steps (Rate Year One, Rate Year Two and Rate Year  
12 Three) to the indicated cost of service indicators from the cost of service study as  
13 generally recommended by Staff in its direct case.

14 Q. Please summarize the rate design provisions of the Joint Proposal.

15 A. The proposed rate design reflects no increase to facility charges. The volumetric  
16 rates incorporate the blocking originally proposed by the Company for each class  
17 as follows: a three-tier inclining block structure for Single Family (first 5 ccf,  
18 next 7 ccf and over 12 ccf) and for Multi-Family (first 20 ccf, next 380 ccf and  
19 over 400 ccf). The Non-Residential class has a two-tier inclining block structure  
20 (first 900 ccf and over 900 ccf). For the three-tier structures, the variance  
21 between the second and third blocks is twice the variance between the first and  
22 second blocks as recommended by Staff in the litigation phase of the proceeding.

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1 For Non-Residential, the variance between the first and second blocks is  
2 approximately 19-20%.

3 Q. How are fire rates addressed in the Joint Proposal?

4 A. Private fire line rates were left unchanged except for the private fire hydrant rate  
5 which is the same as the public fire hydrant rate. Public fire hydrant rates were  
6 increased to recover the indicated cost of public fire service.

7 Q. Would the Panel please explain how the replacement of the Company's seasonal  
8 rate structure with an inclining block rate structure with rates constant throughout  
9 a single year represents a reasonable outcome in the public interest?

10 A. The inclining block rate structure effective year-round will provide sufficient  
11 incentive for customers to conserve without charging customers more for summer  
12 usage than the customer would be charged for the same level of usage in the  
13 winter. There also will be an incentive to conserve year-round by staying within  
14 the first two blocks.

15 Q. Please discuss how the proposed three-tiered residential rate structure in the Joint  
16 Proposal sends a strong price signal to customers to encourage conservation.

17 A. The first block is set for the basic needs of a household and priced at the lowest  
18 rate. The second block, which would include moderate discretionary usage, is  
19 priced at about 24% higher than the first block. The third block, which would  
20 include higher levels of discretionary usage, is priced at about 38% higher than  
21 the second block and over 70% higher than the first block. The price signals sent  
22 through these pricing structures provides an incentive for customers to conserve.

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1 Q. Would the Panel explain the service classification study and reorganization term  
2 of the Joint Proposal?

3 A. Pursuant to Section XVII, Paragraph 2 of the Joint Proposal, the Signatory Parties  
4 agree that the Company will provide a comprehensive service classification study  
5 and proposed service classification reorganization as necessary. This term of the  
6 Joint Proposal identifies the items that the Company will include in the  
7 comprehensive service classification study. SWNY will be permitted to include  
8 the cost of the study in rate case expense.

9 Q. Does the Joint Proposal address the possibility of future implementation of a  
10 water use restriction or “drought rate” by the Company?

11 A. Yes. The Joint Proposal reflects the Signatory Parties’ agreement to include in  
12 the Company’s tariff a provision that would provide for the potential future  
13 implementation of such a rate, but only after the occurrence of certain express  
14 pre-conditions and actions by duly authorized governmental entities.

15 Q. Please discuss further the applicable pre-conditions.

16 A. The Joint Proposal provides that if the County of Rockland Health Department or  
17 other duly authorized government entity enacts county-wide water use restrictions  
18 due to a drought, the Company’s tariff provisions will implement a water use  
19 restriction rate for that county. The Joint Proposal identifies the parameters  
20 underlying the magnitude of such a water use restriction rate.

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1 Q. How do the revenue allocation and rate design terms of the Joint Proposal differ  
2 from the recommendations originally made by Staff and the Company?

3 A. The revenue allocation and rate design provisions of the Joint Proposal follow  
4 Staff's recommendations in its direct case. In its direct case, the Company  
5 proposed moving to cost of service levels in Rate Year One for the Single Family  
6 class rather than Rate Year Three and proposed lower public fire rates. The  
7 Company also recommended a 29.6% increase to customer charges, with a much  
8 lower first block rate and a larger variance between the first and second blocks  
9 (94%). The Company's proposed variance between the second and third blocks  
10 was smaller (20%), but the variance between the first and third blocks was larger  
11 (132%).

12 Q. Would the Panel please explain how the compromise reflected in the Joint  
13 Proposal will establish just and reasonable rates and, therefore, satisfy the public  
14 interest standard for settlement agreements?

15 A. The Joint Proposal revenue allocation and rate design produces revenues  
16 commensurate with the allocated cost of service. The cost of service analysis  
17 follows industry standard criteria and generally-accepted cost of service  
18 methodologies and principles. Additionally, no party opposed the results of the  
19 cost of service study. Therefore, it is reasonable to conclude that the Joint  
20 Proposal rate design establishes just and reasonable rates and provides incentives  
21 for conservation.

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1       **XV.    CONSERVATION PROGRAM AND INCENTIVE MECHANISM**

2       Q.     Please provide an overview of the Conservation and Efficiency Program that  
3             SWNY will implement under the Rate Plan.

4       A.     The Conservation and Efficiency Program included in Section XIX of the Joint  
5             Proposal provides that the Company will implement a Conservation and  
6             Efficiency Program that includes rebates and incentives. The Program also will  
7             include outreach and education components, including a series of workshops and  
8             enhancements to the Company's existing conservation education program. In  
9             addition, the Joint Proposal reflects the Company's continued movement towards  
10            implementation and deployment of AMI with an anticipated four-year roll-out.  
11            SWNY will move to a three-tiered residential rate structure as we explain in this  
12            testimony.

13      Q.     Does the Joint Proposal include cost estimates for the Conservation and  
14             Efficiency Program?

15      A.     Yes. The Rate Plan provides that the estimated cost of the Conservation and  
16             Efficiency Program over five years is \$5.2 million with the first three years  
17             included in this Rate Plan. The Joint Proposal recognizes that the final cost will  
18             depend on final program parameters and that all the associated costs will be  
19             recovered in rates either through the Company's first SIC filing or deferred for  
20             recovery in the Company's next rate proceeding.

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 Q. Would the Panel discuss SWNY's general approach to developing conservation  
2 and efficiency goals and programs?

3 A. Yes. Importantly, in Section XIX of the Joint Proposal, the Signatory Parties  
4 recognize that the Company supports conservation and efficiency. To ensure  
5 development of a comprehensive and successful program, the Company worked  
6 with stakeholders and retained Black & Veatch, a world-renowned expert in  
7 conservation, to assist in the design of the Company's program. Black & Veatch  
8 has local, national and international experience and has developed water  
9 conservation programs for state agencies and utilities in numerous states including  
10 California and Texas. In addition to relying upon Black & Veatch's expert  
11 assistance, stakeholder input was obtained.

12 Q. Is the program design consistent with prior Commission orders?

13 A. Yes. Consistent with the findings in the December 2015 Order, the conservation  
14 program is appropriately scaled to provide a reasonable expectation of savings. In  
15 particular, the program design does not over-rely on estimates that could  
16 jeopardize available supply capacity to support current needs as well as growth.  
17 Specifically, the program design takes into account the following Commission  
18 statement in the December 2015 Order: "Until conservation efforts are  
19 implemented in the service area, and projections can be shown to be reliable  
20 through data analysis, we do not believe reliance on possible conservation savings  
21 fulfills our statutory obligation to ensure safe and adequate water supply."<sup>7</sup>

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<sup>7</sup> December 2015 Order at 18.

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 Q. Did Staff support the Company's Conservation and Efficiency Program proposal  
2 during the litigation phase of this proceeding?

3 A. Staff generally supported the Company's proposed program in its direct testimony  
4 and also provided several key recommendations that were ultimately adopted in  
5 the Joint Proposal. The Joint Proposal includes positive and negative incentives, a  
6 drought rate, criteria to adjust rebate levels and re-allocate program budgets,  
7 various workshops, a process to develop a Low Income Rebate Program and  
8 enhanced communication and education program components.

9 Q. Please identify the incentives available under the Conservation and Efficiency  
10 Program.

11 A. Section XX of the Joint Proposal includes positive and negative incentives. Any  
12 negative or positive revenue adjustments will be made through the SIC  
13 mechanism. The actual water savings from the Company's rebate program will  
14 be evaluated after five years with a target of 1.0 MGD of actual water savings. If  
15 the actual water savings from the rebate program are less than 1.0 MGD at the end  
16 of the five-year period, then the Company will incur a negative revenue  
17 adjustment of 5 basis points for each 0.1 MGD below the 1.0 MGD target,  
18 beginning at 0.8 MGD in actual water savings. The positive revenue adjustment  
19 starts at 1.5 MGD in actual water savings. The Joint Proposal includes a table  
20 identifying the water savings and associated positive incentive. Positive revenue  
21 adjustments are capped at 63 basis points.

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 Q. Please explain how the inclusion of these incentives will support conservation.

2 A. The Company will have an opportunity to share in the benefits that accrue to  
3 customers if the Company is able to deliver additional conservation benefits for  
4 customers.

5 Q. Please summarize the outreach and education and water audit components of the  
6 Conservation and Efficiency Program.

7 A. The Company will develop several outreach programs to communicate to  
8 customers about the conservation program and the rebate offers. These will be  
9 made via the Company's website, social media, bill inserts, normal media, and in  
10 Company advertising on its fleet of trucks. Audits are a key part of the  
11 conservation program which will focus mostly on Commercial, Institutional and  
12 Multi-Family customers. These customers will be made aware of the free audits  
13 that the Company will offer. A team of qualified audit personnel will visit  
14 interested customers to review how they use water and to make suggestions of  
15 how cost-effective water savings could be realized through use of rebates or by  
16 other means. Audits may also be used for some industrial customers.

17 Q. What are some of the conservation education components of the Conservation and  
18 Efficiency Program, including the potential customer benefits of the program?

19 A. The components and associated benefits of the Company's educational program  
20 include education of the general customer base on the rebate program to fully  
21 understand the dollar savings that it could achieve and the importance of  
22 conservation to the community at large. This will be done through the

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 Company's website, bill inserts, social media, normal media, and through the Do-  
2 It-Yourself audit program. Case studies will also be developed as a means to  
3 further educate customers on the benefits of conservation. Customer surveys will  
4 be performed that will be designed to show the potential benefits of savings along  
5 with the collection of useful data for the Company.

6 School education programs are planned for children to learn about water  
7 usage and conservation, with an emphasis on using age-appropriate math  
8 problems to explain how much water can be saved at home or in school through  
9 conservation actions and efficiency measures. A lawn watering best practices  
10 guide will be developed and provided to customers to educate them on current  
11 and effective methods of irrigating without wasting water.

12 Q. Please explain the potential benefits of AMI for conservation purposes.

13 A. The proposed change in rate structure from summer/winter to a three-tiered  
14 conservation-oriented (inclining) block structure should further stimulate savings,  
15 particularly for those customers in the highest tier. For these customers, a  
16 reasonably strong pricing signal will be sent which should result in some change  
17 of behavior to reduce discretionary water usage. When AMI is fully activated,  
18 customers will be able to assess whether they are approaching higher billing tiers  
19 and then take appropriate action. Use of this type of rate design, coupled with the  
20 availability of AMI, will have a beneficial impact on conservation by sending the  
21 appropriate price signal to customers and providing them with timely information  
22 so that they can make informed decisions regarding their water use.

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1 Q. What process will be implemented to monitor and make necessary adjustments to  
2 the Conservation and Efficiency Program during the term of the Rate Plan?

3 A. The Company will develop threshold criteria to help monitor the effectiveness of  
4 each of the rebate programs. Should such thresholds not be met, the Company  
5 will shift resources to other more productive programs.

6 Q. Please identify the reporting requirements applicable to the Conservation and  
7 Efficiency Program.

8 A. The Company will report on the number and type of rebates adopted by customers  
9 (by class) and will calculate the associated water savings. The reporting will also  
10 indicate whether a change in the program priorities must be made.

11 Q. How does the Conservation and Efficiency Program included in the Joint  
12 Proposal represent a reasonable outcome in the public interest?

13 A. The Joint Proposal's Conservation and Efficiency Program provides for enhanced  
14 conservation efforts while ensuring that customers will continue to receive  
15 reliable water service.

16 **XVI. CUSTOMER SERVICE PERFORMANCE INCENTIVE MECHANISM**

17 Q. Please explain the Customer Service Performance Incentive ("CSPI") mechanism  
18 in the Joint Proposal.

19 A. Section XXI of the Joint Proposal sets forth a CSPI mechanism composed of a  
20 Customer Satisfaction Survey Target mechanism. The mechanism will  
21 commence in Rate Year One and will remain in place until modified by the  
22 Commission. Under the Rate Plan, SWNY will submit a report to Staff providing

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1           the results of each annual Customer Satisfaction Survey and whether the  
2           Company has met the customer satisfaction targets.

3   Q.    Is the Company subject to negative revenue adjustments if the Company does not  
4           achieve agreed-upon customer satisfaction scores?

5   A.    Yes. Section XXI, Paragraph 4 of the Joint Proposal identified the annual  
6           performance thresholds and associated potential negative revenue adjustments.  
7           The maximum negative adjustment is \$300,000.

8   Q.    Why should the Commission find that the compromise reflected in the Joint  
9           Proposal is reasonable and in the public interest?

10   A.    The Joint Proposal provides for a negative revenue adjustment should the  
11           Company not meet the stated performance thresholds, while at the same time  
12           incentivizing the Company to continue to improve. As a result, the compromise  
13           position is in the public interest.

14                                   **XVII. LOW INCOME REBATE PROGRAM**

15   Q.    Please describe the proposed Low Income Rebate Program that the Company will  
16           develop.

17   A.    The Company will solicit input from interested parties and, within six months  
18           after a final Commission Order adopting the Joint Proposal, will deliver a report  
19           on the feasibility of a Low Income Rebate Program to Staff. The report will be  
20           posted on the Commission's DMM and interested stakeholders may provide  
21           comments.

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 Q. Does the Joint Proposal identify the components that are to be evaluated for  
2 feasibility?

3 A. Yes. The Signatory Parties agree that the following components will be  
4 evaluated: (1) a method to identify low income customers; (2) the proposed  
5 number of rebates and dollar amounts per rebate, demonstrating that the dollar  
6 value of the rebate and associated water savings is cost-effective on a dollar per  
7 MGD saved basis; (3) a timeline for the roll-out of the program; and (4) the  
8 proposed total budget

9 Q. How will customers potentially benefit from the implementation of a Low Income  
10 Rebate Program?

11 A. Low income customers could potentially benefit by reducing their monthly water  
12 bills as a result of receiving a rebate.

13 **XVIII. REPORTING REQUIREMENTS AND COMPLIANCE FILINGS**

14 Q. Would the Panel please identify the numerous reports or compliance filings that  
15 the Company must file pursuant to the terms of the Joint Proposal?

16 A. Appendix 9 to the Joint Proposal includes a table detailing the reporting  
17 requirements contained in the Rate Plan.

18 **XIX. TARIFF AND REGULATORY FILINGS**

19 Q. Would the Panel please address the tariff revisions the Company would  
20 implement?

21 A. SWNY will file the revisions to its PSC No. 1 Water tariff contained in Appendix  
22 3 of the Joint Proposal.

**INITIAL TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 **XX. FILING OF NEXT RATE CASE**

2 Q. What is the Company's commitment with respect to the filing of its next major  
3 rate case?

4 A. Pursuant to Section XXVI of the Joint Proposal, SWNY agreed to refrain from  
5 filing a base rate case in which new base rates would go into effect before  
6 February 1, 2020. This section also recognizes that the Company retains its right  
7 under the PSL to seek temporary rate relief if necessary to preserve the financial  
8 integrity of the Company.

9 **XXI. CONCLUSION**

10 Q. Is the Joint Proposal in the public interest and should it be adopted by the  
11 Commission.

12 A. Yes. The Joint Proposal is supported by the record in this case, achieves a  
13 rational result and is within the range of reasonable outcomes had this case been  
14 fully litigated. Certain aspects of the Joint Proposal reflect positions initially  
15 sought in pre-filed litigation testimony, while other aspects represent an integrated  
16 compromise between the Company and Staff's litigation positions. The Joint  
17 Proposal also provides many customer benefits, including faster replacement of  
18 main; an ESM that allows customers to share in the Company's earnings above  
19 specified levels; the Conservation and Efficiency program; a CSPI mechanism  
20 and a process to develop a Low Income Rebate Program.

21 Q. Does this conclude the Panel's initial testimony at this time?

22 A. Yes, it does.

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2  
3 A.L.J. PHILLIPS: The request is  
4 granted, but it does remind me. Did you provide that  
5 testimony on a disk to the court reporter?

6 MR. FITZGERALD: Your Honor, I was  
7 going to do that when we finished the -- the full  
8 marking but we can --.

9 A.L.J. PHILLIPS: No. That's fine.  
10 Thank you.

11 (The Initial Testimony of Suez Water  
12 New York, Inc. Joint Proposal panel received into  
13 evidence.)

14 BY MR. FITZGERALD: (Cont'g)

15 Q. Panel, do you also have in front of  
16 you a document entitled The Responsive Testimony of Suez  
17 Water New York, Inc. Joint Proposal panel consisting of a  
18 cover page, a table of contents and 45 pages of questions  
19 and answers that was filed with the Commission on  
20 September 23rd, 2016, and was subsequently corrected on  
21 September 30th, 2016?

22 A. (Mr. Michaelson) Yes.

23 A. (Mr. Graziano) Yes.

24 Q. And was this document prepared by you  
25 or under your supervision?

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2 A. (Mr. Michaelson) Yes.

3 A. (Ms. Ahern) Yes.

4 Q. Now, as noted in our email which was  
5 circulated to the parties on September 30th, on Page 32 of  
6 the Responsive Testimony, Line 21, 15 CCF should be  
7 changed to Twelve CCF to correct a typographical error.  
8 Do you agree with this change?

9 A. (Mr. Graziano) Yes.

10 A. (Mr. Michaelson) Yes.

11 Q. Does the panel have other changes?

12 A. (Mr. Cagle) No.

13 Q. If I were to ask you the same  
14 questions today, would your responses be the same?

15 A. (Mr. Michaelson) Yes.

16 A. (Mr. Cagle) Yes.

17 Q. And do you adopt this material as your  
18 sworn testimony in this proceeding?

19 A. (Mr. Michaelson) Yes.

20 A. (Ms. Ahern) Yes.

21 MR. FITZGERALD: your Honor, I would  
22 ask that the Responsive Testimony of the Suez Water  
23 New York, Inc. Joint Proposal panel be copied into  
24 the record as if given orally today.  
25

BEFORE THE  
NEW YORK STATE  
PUBLIC SERVICE COMMISSION

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In the Matter of a Proceeding on Motion of the Commission  
as to the Rates, Charges, Rules and Regulations of  
SUEZ Water New York Inc. for Water Service

Case 16-W-0130

-----X

**RESPONSIVE TESTIMONY OF  
SUEZ WATER NEW YORK INC.  
JOINT PROPOSAL PANEL**

Pauline M. Ahern, ScottMadden Inc.  
Donald F. Distanto  
James C. Cagle  
Christopher J. Graziano  
Paul R. Herbert, Gannett Fleming Valuation  
and Rate Consultants, LLC  
Paula L. McEvoy  
Timothy J. Michaelson

September 23, 2016

**RESPONSIVE TESTIMONY OF SUEZ WATER NEW YORK INC.  
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**I. INTRODUCTION**

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Q. Please state the members of this Joint Proposal Panel (“Panel”).

A. We are Pauline M. Ahern, Donald F. Distanto, James C. Cagle, Christopher J. Graziano, Paul R. Herbert, Paula L. McEvoy and Timothy J. Michaelson.

Q. Are you the same Pauline M. Ahern, Donald F. Distanto, James C. Cagle, Christopher J. Graziano, Paul R. Herbert, Paula L. McEvoy and Timothy J. Michaelson who previously submitted testimony on behalf of SUEZ Water New York Inc. (“SWNY” or “Company”) in this case on September 14, 2016 as part of the SWNY Joint Proposal Panel?

A. Yes.

Q. What is the purpose of your Responsive Testimony?

A. We respond to various arguments contained in the September 14, 2016 testimony of the following intervenor parties: 1) Richard Berkley on behalf of the Public Utility Law Project of New York, Inc. (“PULP”); 2) Harriet D. Cornell on behalf of the Rockland County Water Task Force (“Water Task Force”); 3) Jonathon I. Kleinman on behalf of the Municipal Consortium and the Sierra Club, Atlantic Chapter; 4) Daniel Duthie on behalf of the Municipal Consortium; 5) Amawalk Consulting Group on behalf of the County of Rockland (“Amawalk”); and 6) Robert Tompkins (collectively, the “Intervenors”).

Q. Are you sponsoring any responsive exhibits?

A. Yes. We are sponsoring Exhibit JPP-R1 which contains certain Company responses to interrogatories.

**RESPONSIVE TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 Q. How is this Responsive Testimony organized?

2 A. Given that the Intervenor's individual testimonies contain considerable issue  
3 overlap, our testimony is organized by general topic with a focus on the  
4 Intervenor's main positions. In particular, this Responsive Testimony addresses  
5 the following topics: Haverstraw Water Supply Project ("HWSP" or the  
6 "Project") costs (including Allowance for Funds Used During Construction  
7 ("AFUDC") issues); non-revenue water ("NRW"); the Joint Proposal's  
8 conservation program and incentive mechanism; return on equity ("ROE"); rate  
9 design issues; the Joint Proposal's low income rebate program, and rate case  
10 expense.<sup>1</sup>

11 Q. Before turning to the Intervenor's testimony, please comment briefly on the New  
12 York State Department of Public Service Staff's ("Staff") extensive testimony in  
13 support of the Joint Proposal.

14 A. We fully support and agree with the Staff's initial testimony in support of the  
15 Joint Proposal. Taken together, the Company's and Staff's initial testimony  
16 establish that the Joint Proposal is in the public interest and should be adopted by  
17 the Commission.

18 Q. Have the Intervenor's established that the Joint Proposal is not in the public  
19 interest?

20 A. Absolutely not. As shown by the text of the Joint Proposal itself and by the  
21 Company's and Staff's initial testimony in support of the Joint Proposal, the terms

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<sup>1</sup> The Company does not waive and expressly reserves its objection to lower priority arguments asserted by the Intervenor's that for brevity are not addressed in this Responsive Testimony.

**RESPONSIVE TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 of the Joint Proposal are supported by the record in this case, achieve a rational  
2 result and are within the range of reasonable outcomes had this case been fully  
3 litigated. The Joint Proposal, presented for adoption as an integrated whole,  
4 reflects a careful balance of competing interests in a single comprehensive  
5 agreement.

6 Q. What common failure do you see across all of the Intervenors' testimony?

7 A. The Intervenors almost uniformly seek to advance narrow areas of interest. In  
8 doing so, they fail to acknowledge that a Joint Proposal is an integrated whole that  
9 necessarily balances multiple stakeholder interests. As we will describe later in  
10 our testimony, the Intervenors also frequently ignore relevant New York State  
11 Public Service Commission ("Commission" or "PSC") precedent particularly as it  
12 relates to the HWSP. The Commission noted on page 61 of its November 17,  
13 2014 "Order Addressing Status of Need and Directing Further Study," issued in  
14 Case 13-W-0303, the parties' failure to acknowledge that the Company was  
15 complying with Commission mandates.<sup>2</sup> For example, the New York State  
16 Department of State Utility Intervention Unit ("UIU") asserted that the Company  
17 was imprudent in making its selection of a long-term water supply project in one  
18 month. Other parties argued that the Company was imprudent for continuing to  
19 pursue the Project after the release of a 2010 U.S. Geological Survey ("USGS

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<sup>2</sup> Case 13-W-0303 - Proceeding on Motion of the Commission to Examine United Water New York, Inc.'s Development of a New Long-Term Water Supply Source, Order Addressing Status of Need and Directing Further Study at 61 (Nov. 17, 2014) ("Need Order").

**RESPONSIVE TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 Study”), as opposition grew, as demand decreased, as costs grew, or because the  
2 Project was not yet approved by the State.

3 However, the Need Order concluded that all of these arguments ignored  
4 the simple fact that the Company was ordered by the Commission to identify and  
5 pursue a long-term water supply source and that it faced financial penalties for  
6 failing to do so up until the issuance of the Company’s 2010 Rate Order which  
7 removed such penalties.<sup>3</sup> The Need Order further noted that, pursuant to a joint  
8 proposal that UIU was a signatory to, the Company was ordered to submit its  
9 choice of project within 30 days of the 2006 Rate Order.<sup>4</sup> Moreover, the  
10 Company was directed to develop a major long-term supply with construction to  
11 commence May 2013.

12 In short, the Intervenors are simply repeating failed arguments that have  
13 already been dismissed by the Commission. As such, these arguments should be  
14 summarily rejected.

15 Q. Should the PSC modify various parts and pieces of the Joint Proposal as  
16 suggested by the Intervenors?

17 A. No. The carefully crafted consensus between Staff, the Company, and other  
18 signatory parties to the Joint Proposal represents the outcome of many interrelated  
19 and linked compromises among the Joint Proposal signatory parties that would be

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<sup>3</sup> Case 09-W-0731 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations for United Water New York Inc., Order Adopting Joint Proposal as Modified and Establishing a Three-Year Rate Plan (July 20, 2010).

<sup>4</sup> Cases 06-W-0130 et al. - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of United Water New York Inc. and United Water South County Inc. for Water Service, Order Approving Merger and Adopting Three-Year Rate Plan (Dec. 14, 2006).

**RESPONSIVE TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1           undermined by a selective modification of individual parts or pieces of the Joint  
2           Proposal.

3   Q.    Why else would a partial modification of the Joint Proposal not be in the public  
4           interest?

5   A.    Not only would any Commission modification jeopardize all of the negotiations  
6           and effort that led to the Joint Proposal and its many benefits, but it would also be  
7           detrimental to the settlement process and settlement negotiations in future rate  
8           cases involving all New York utilities. As the Commission previously recognized  
9           in its Order Establishing Rate Plan in Case 09-E-0588, modification of a joint  
10          proposal's terms "tends to impede future negotiations by making agreements  
11          more risky, and therefore less attractive, for parties" and "[the Commission]  
12          should not lightly set aside major elements of a negotiated rate plan in  
13          circumstances where such action could discourage parties from pursuing other  
14          multi-year plans in the future."<sup>5</sup>

15   Q.    Since the filing of the Initial Testimony on September 14, 2016, have any other  
16          parties signed on to the Joint Proposal?

17   A.    Yes. The Company is pleased that the Rockland Business Association, Inc.  
18          ("RBA") and Mr. Jan Degenshein, a Rockland County resident and a prominent  
19          community leader, have intervened in this proceeding and have signed on to the  
20          Joint Proposal. As noted in Mr. Degenshein's letter to the Commission Secretary

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<sup>5</sup> Cases 09-E-0588 et al. - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service, Order Establishing Rate Plan at 31 (June 18, 2010).

**RESPONSIVE TESTIMONY OF SUEZ WATER NEW YORK INC.  
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1 filed on September 20, 2016, “the Joint Proposal is clearly well considered and  
2 strikes the appropriate balance on important issues...” and is a “great opportunity  
3 for progress.” The addition of the RBA and Mr. Degenshein (collectively with  
4 Staff and the Company, the “Signatory Parties”) further demonstrates that the  
5 Joint Proposal is in the public interest and should be adopted by the Commission  
6 without modification. As we have consistently indicated, the Company welcomes  
7 any other parties that wish to sign on to the Joint Proposal.

**II. HAVERSTRAW WATER SUPPLY PROJECT COSTS**

9 Q. Has the recovery of various costs related to the HWSP been addressed by the  
10 Commission in other proceedings?

11 A. Yes. The HWSP has been addressed extensively in Case 13-W-0246 - Verified  
12 Petition of United Water New York Inc. for Implementation of a Long-Term  
13 Water Supply Surcharge, and Related Tariff Amendment, Order Denying  
14 Surcharge and Making Determinations Regarding the Treatment of Certain Long-  
15 Term Water Supply Development Costs at 2 (Nov. 14, 2014). (“In light of the  
16 explicit directions provided to the Company in the earlier 2006 Rate Order and in  
17 the more recent 2010 Rate Order to proceed with development of a new long-term  
18 water supply project as promptly as possible, the 2014 Need Order concludes that  
19 the Company’s actions to continue to develop the project, through the date of that  
20 order, cannot be characterized as imprudent”) (internal footnotes and citations  
21 omitted)) (“Order Denying Surcharge”); see also Case 13-W-0246, Order on  
22 Rehearing at 19 (Feb. 25, 2016); Case 13-W-0303 - Proceeding on Motion of the

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1 Commission to Examine United Water New York, Inc.’s Development of a New  
2 Long-Term Water Supply Source, Order Adopting Alternate Demand/Supply  
3 Strategies and Abandoning Haverstraw Project at 23-24 (Dec. 18, 2015) (“...[the  
4 Company] was pursuing the additional long-term supply in furtherance of  
5 Commission Orders; while changing circumstances (recession induced reduction  
6 in need and the formation of the Task Force) led us to explore alternatives, they  
7 do not justify a prudence proceeding,”); and Case 13-W-0303, Order Addressing  
8 Status of Need and Directing Further Study at 60-65 (Nov. 17, 2014) (“Several  
9 arguments made in support of the initiation of a prudence investigation fail to  
10 acknowledge that [the Company] was complying with Commission mandates [in  
11 developing the HWSP.]”).

12 Q. What critical fact do the Intervenor testimonies regarding the HWSP almost  
13 universally ignore?

14 A. They each ignore the fact that the Company was ordered by the Commission not  
15 once, *but twice*, to undertake a large capital intensive water supply project, which  
16 became the HWSP.<sup>6</sup> They also ignore the fact that the Company was ordered to  
17 abandon the HWSP.<sup>7</sup>

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<sup>6</sup> See Cases 06-W-0130 and 06-W-0244 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of United Water New York Inc. and United Water South County for Water Service, “Order Approving Merger and Adopting Three-Year Plan” (Dec. 14, 2006); Case 09-W-0731 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of United Water New York Inc., “Order Adopting Joint Proposal as Modified and Establishing a Three-Year Rate Plan” (Jul. 20, 2010).

<sup>7</sup> See Case 13-W-0303, “Order Adopting Alternate Demand/Supply Strategies and Abandoning Haverstraw Project” at 25.

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1 Q. Have you reviewed the Intervenors’ testimony regarding the HWSP?

2 A. Yes.

3 Q. Mr. Berkley states that the Company failed to provide support for its request to  
4 include HWSP costs in Rate Base. Does the Panel agree with this assertion?

5 A. No. The Company properly requested and fully supported treatment of the  
6 HWSP costs as a regulatory asset to be included in Rate Base consistent with the  
7 Commission’s Order in Case 13-W-0303.

8 Q. Mr. Tompkins claims on pages 4-6 of his testimony that Staff failed to adequately  
9 audit Haverstraw-related invoices. Did Staff perform a thorough review of the  
10 HWSP costs incurred after the issuance of Order Denying Surcharge which  
11 approved approximately \$39.7 million of HWSP costs through March 2013?

12 A. Yes. According to Staff Witness Simon’s testimony, he reviewed every expense  
13 item associated with the HWSP and the supporting physical invoices. In  
14 reviewing each invoice he made sure that invoice costs were properly associated  
15 with the HWSP.<sup>8</sup>

16 Staff performed a similar review and analysis of the legal costs charge to  
17 the Project. Staff Witness Simon indicated in his Direct Testimony that he  
18 performed a line-item by line-item review of each legal invoice and verified that it  
19 was related to the HWSP and allowable as a Component of Construction defined

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<sup>8</sup> See also Case 13-W-0246 - Verified Petition of United Water New York Inc. for Implementation of a Long-Term Water Supply Surcharge, And Related Tariff Amendment, Order on Rehearing at 10 (Feb. 25, 2016) (“In the Surcharge Order, the Commission determined what SUEZ expenditures were sufficiently supported to be allowed recovery and found that the audit of these costs performed by Staff was adequate....The Surcharge Order states that the scope of the audit was adequate, consistent with standard rate case practice, and sufficient for the Commission’s evaluation.”).

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1 in the Water Uniform System of Accounts (“USOA”). His review included legal  
2 costs incurred by the Company after 2013, which had not been previously  
3 reviewed, as well as costs that had been disallowed temporarily in Case 13-W-  
4 0246 pending further investigation.

5 Q. Was the Staff audit of costs charged to HWSP after March 2013 a robust review?

6 A. Yes. The audit performed by Staff exceeds normal audit procedures, which  
7 typically include a review of a sample of transactions and an expansion beyond  
8 the initial sample only if that sample’s results warrant it. In fact, the Commission  
9 even explicitly stated that Staff had conducted a “robust review” in the Order  
10 Denying Surcharge.<sup>9</sup>

11 Q. Does the Panel agree with the contention of Mr. Duthie and other Intervenors that  
12 HWSP costs should not be recovered as part of the Joint Proposal while an Article  
13 78 proceeding by the County of Rockland is pending?

14 A. No. Our lawyers have advised us that there is no legal impediment to  
15 Commission action and we believe it is time to move forward and resolve the  
16 HWSP issue. In addition, we note that the Joint Proposal allows expressly for the  
17 possibility of changes to the Company’s recovery of HWSP costs, and such  
18 changes will be reflected in the Company’s rates after the term of the rate plan  
19 established by the Joint Proposal.

20 Q. On page 5 of his testimony, Mr. Duthie argues that if recovery of HWSP  
21 expenditures is allowed, the Commission should order recovery using its

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<sup>9</sup> Order Denying Surcharge at 41.

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1 temporary rate authority so it can provide prompt refunds if Rockland County is  
2 successful in the Article 78 proceeding. How do you respond?

3 A. Temporary rates are not necessary. Section VIII, Paragraph 6 of the Joint  
4 Proposal provides ratepayers with sufficient protection against the chance,  
5 however remote, that the County of Rockland's lawsuit ultimately produces any  
6 change in the HWSP recovery amounts. Specifically, it states:

7 The Signatory Parties acknowledge that there is a pending Article 78/  
8 declaratory judgment court action challenging the Company's ability  
9 to recover HWSP-related costs. After all final appeals and remands,  
10 if any, have been finally decided and/or the time for all appeals has  
11 expired, mandated changes to the Company's recovery of HWSP-related  
12 expenses will be reflected in the Company's revised rates after the Rate  
13 Plan term on a prospective basis only. If such court action or remand does  
14 not result in any changes to the Company's recovery of HWSP-related  
15 expenses, then the Company will continue to recover such expenses in  
16 accordance with the terms of this JP.

17  
18 As such, Mr. Duthie's request for temporary rates should be rejected by  
19 the Commission.

20 Q. Is Mr. Duthie's claim that the Joint Proposal incorrectly allows amortization of  
21 the "gross" deferred asset correct?

22 A. No. As a matter of basic accounting principles, the calculation of amortization  
23 expense applicable to deferred assets (e.g., tank painting and deferred rate case  
24 expense for example) is performed on the gross amount, not the net of tax  
25 amount. If the amortization expense was calculated using the net of tax amount,  
26 at the end of the amortization period there would still be a balance in the deferred  
27 asset account. Furthermore, the Commission's USOA states in § 560.1 (4) that:  
28 "Amortization means the gradual extinguishment of an *amount in an account* by

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1           distributing such amount over a fixed period, over the life of the asset...”  
2           (emphasis added). In this case, the amount booked to the account (186 –  
3           miscellaneous deferred debits) totals \$53.678 million. That is the amount to be  
4           extinguished. There is no mention of the net of tax amount being a component of  
5           the amortization calculation.

6   Q.     Please address Mr. Duthie’s and Mr. Berkley’s assertion that the Commission’s  
7           prior ruling that a portion of the AFUDC related to the HWSP was financed with  
8           short-term debt means that the rate of return used to calculate the return on the  
9           HWSP regulatory asset should be limited to a short-term debt rate.

10   A.    The Intervenors’ assertion is incorrect. The regulatory asset created under the  
11           Commission’s Order in case 13-W-0303 is a long-term asset (greater than one  
12           year) included in rate base and, therefore, the return on rate base reflected by  
13           capital structure (equity and long-term debt) and related costs rates contained in  
14           the Joint Proposal must be utilized.

15   Q.    Are there any other logic flaws in Mr. Duthie’s reasoning?

16   A.    Yes. Mr. Duthie’s assertion suggests a policy which requires utilities to fund  
17           specific long-term assets with short-term debt over the long-term. This action  
18           imposes additional risk of fluctuating short-term interest rates to the Company  
19           and its ratepayers and significant uncertainty as to the recoverability of costs both  
20           of which are contrary to accepted ratemaking tenets and Commission precedent.

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1 Q. Does the Panel have any comments related to Mr. Berkley's challenge of the  
2 HWSP's 15-year amortization period?

3 A. Yes. The Company originally proposed a 20-year amortization term as  
4 representative of a medium-term recovery period. During discovery, concerns  
5 were raised over the total cost of the Project to customers over that timeframe.  
6 Staff Witness Simon proposed in his Initial Testimony a 15-year term which  
7 would lower the overall cost of the Project by approximately \$7.7 million and  
8 have the added benefit of furthering conservation through mechanically higher  
9 rates because of the shortened period. The Joint Proposal reflects a careful  
10 balance of these concerns and benefits.

11 Q. Were there other proposals by various Intervenors addressing settled aspects of  
12 the HWSP project?

13 A. Yes. As we testified previously, Mr. Berkley and other Intervenors ignore the fact  
14 that the Company's initiation of the Project was in response to two separate  
15 Commission Orders mandating a long-term water project and a third Commission  
16 order on abandonment of the Project based on a revised need determination. Mr.  
17 Berkley also makes numerous other unsupported and argumentative statements  
18 involving the history of the Project, including his view of the Company's  
19 management of the Project and on the Commission's prior treatment of the  
20 Project in its Orders, including the initiation and development of the Project,  
21 abandonment of the Project and cost recovery for the Project. The time for  
22 rehearing and argument on these Commission's Orders has long since passed. As

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1 Mr. Berkley's statements on these topics either irrelevant to the Joint Proposal or  
2 have been settled by prior Commission Orders, we will not address them  
3 generally in this Responsive Testimony.

4 Q. On page 12 of his testimony, Mr. Berkley specifically alleges that allowing a  
5 return of and on the unamortized balanced of a failed project creates both perverse  
6 precedent and perverse incentive for public utilities to not adhere to a due  
7 standard of care when planning major capital projects. Do you agree with this  
8 statement?

9 A. No. Mr. Berkley as well as other Intervenors who expressed similar views (such  
10 as Mr. Duthie) have it completely backwards. If a utility is unable to recover both  
11 a return on and of its capital expended for major capital projects, particularly  
12 when such projects are ordered by the Commission, it will become far more  
13 difficult and expensive to finance or build necessary capital projects in the future.  
14 Such a result would not be in the public interest.

15 Q. Do you disagree with any other statements made by Mr. Berkley in his Initial  
16 Testimony regarding the HWSP?

17 A. Yes. We disagree with his erroneous assertion that the Commission should adopt  
18 the "used and useful" test with respect to HWSP, a notion also implied by Mr.  
19 Duthie.

20 Q. Why do you disagree with this assertion?

21 A. As an initial matter, the HWSP is not a plant-in-service asset per the Need Order.  
22 Rather, it is a deferred regulatory asset to which "used and useful" accounting

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1 treatment does not apply. Furthermore, the fundamental ratemaking standard in  
2 New York State is “just and reasonable.” In situations like this, where a utility’s  
3 expenditures on an asset were prudently incurred, the Commission may provide  
4 for a reasonable return upon capital expended on that asset even if the asset is not  
5 in service.

6 Q. Mr. Berkley also argues at page 11 of his testimony that the Company should  
7 have undertaken a complete review of the need for the Project based on the USGS  
8 study. Please comment.

9 A. Once again, this precise argument regarding the impact of the USGS study on the  
10 Company’s continued development of the HWSP was considered and rejected by  
11 the Commission and referenced in the section of the Need Order where the  
12 Commission held that the Company’s decisions to pursue the project “were  
13 reasonable and therefore prudent.”<sup>10</sup>

**III. NON-REVENUE WATER**

14  
15 Q. Did the Intervenors address NRW in their Initial Testimony?

16 A. Yes. Mr. Kleinman, Mr. Berkley and Ms. Cornell made various inaccurate and  
17 incorrect statements regarding NRW and the Company’s NRW program which  
18 we will rebut in this section.

19 Q. Mr. Kleinman states on page 8 of his testimony that the Company could reduce  
20 real water loss by 1.0 MGD to 2.0 MGD and that level of reduction could save  
21 ratepayers \$12-24 million in new supply well capital costs, plus \$240,000 to

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<sup>10</sup> See Need Order at 61-62.

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1           \$480,000 annually in groundwater well operating costs. Do you agree with this  
2           assessment?

3   A.    No. Mr. Kleinman’s testimony is not based on a review of the Company’s system  
4           data and therefore is, at best, purely theoretical and without any basis in actual  
5           system realities.

6   Q.    Please comment on the recommendation made on page 8 of Mr. Kleinman’s  
7           testimony and page 12 of Ms. Cornell’s testimony that SWNY hire a NRW  
8           manager.

9   A.    These recommendations are moot and outdated. As discussed in the Direct  
10           Testimony of Company Witness Graziano, the Company has had a NRW  
11           Manager since 2013. The costs for this position are already captured in current  
12           rates with no additional costs proposed in the Joint Proposal.

13   Q.    Do you agree with Mr. Kleinman’s recommendation that SWNY hire a water loss  
14           reduction contractor?

15   A.    No. It is not necessary to hire a water loss reduction contractor. Such a hire  
16           would not be in the customers’ best interests and Mr. Kleinman fails to  
17           demonstrate why such a contractor would provide greater benefits to customers  
18           when compared to the cost of the Company’s existing NRW Manager. In  
19           addition, the Company’s labor costs already include a component to identify and  
20           fix leaks, both by outside contractors and in-house personnel.

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1 Q. Please discuss the Company's comprehensive plan already in place for addressing  
2 water loss.

3 A. The Company's comprehensive leak identification and repair plan is described in  
4 detail in the Company's annual report submitted to the Commission. As noted  
5 therein:

- 6 • Leak and main-break Find-to-Fix times, or the time between when the  
7 Company becomes aware of a leak and when it is repaired, are minimized  
8 by repair policies prioritized by leak magnitude and resulting system  
9 impacts. The Company repairs most leaks within hours of discovery and  
10 will continue this practice. Dedicated leak correlation personnel have  
11 been assigned and trained on the various equipment and methods used  
12 under best-practice techniques.
- 13 • A strategic production data/trend monitoring policy has been implemented  
14 to minimize leak and main-break awareness times, or the time between  
15 when a leak develops and when the Company becomes aware of the leak.  
16 Some leaks that develop remain as non-surfacing leaks for a period of time  
17 before they are discovered by conventional means. This desktop analysis  
18 will improve efficiency by narrowing down the area where new leakage  
19 has likely developed.
- 20 • The Company's leak detection program is comprehensively managed and  
21 includes targeted leak surveys, interconnection and cross-connection

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1 monitoring, hydrant and valve leak sounding, and deployment of acoustic  
2 loggers.

3 • The Company coordinates, prioritizes, and manages leaks and water main-  
4 break repairs, and ensures proper recording and documentation of all  
5 repairs.

6 • The Company utilizes the Hydraulic Model and the software's genetic  
7 algorithm to perform "hot-spot" leakage detection, whereby the system  
8 areas which demonstrate the greatest divergence from measured  
9 conditions are identified.

10 Q. Mr. Kleinman also recommends an accelerated main replacement rate of 1.5% per  
11 year for the next five years to "catch up." Do you agree with his proposal?

12 A. No. An accelerated 1.5% rate for the next five years is not a cost effective way to  
13 decrease NRW. In fact, it would result in a substantial increase in revenue  
14 requirement. The Joint Proposal's adjustment of the main replacement rate to 1%  
15 takes a significant step toward replacing existing infrastructure at a more balanced  
16 cost to customers. Mr. Kleinman's recommendation of 1.5% is also at odds with  
17 the fact that SWNY's below-ground infrastructure is considered young by  
18 industry standards, with a current average asset age of only 50 years. Generally,  
19 underground infrastructure demonstrates a useful life of 75 to 100 years or longer  
20 under typical operating conditions.

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1 Q. Ms. Cornell suggests removal of the Joint Proposal's cap of \$17.0 million on  
2 main replacement. Why do you disagree with this suggestion?

3 A. The cap is an important customer protection that safeguards customers from  
4 unexpected increases in the unit costs for main replacements. These escalations  
5 are likely to be out of the Company's control and, absent the cap, could result in  
6 additional increases to revenue requirement.

7 Q. Mr. Kleinman notes that the Company's current level of NRW was 24.55% for its  
8 most recent test year (i.e., the 12-month period ending August 31, 2015),  
9 representing a jump from NRW levels of 19.65% in the 2014 calendar year. He  
10 then asserts that assuming average water production of 29 MGD and real water  
11 loss equal to 60% of NRW, SWNY experienced about 4.3 MGD of real water loss  
12 during the test year. Is he correct regarding NRW levels?

13 A. Not entirely. The annual AWWA Water Audit for SWNY indicates an NRW  
14 increase of 4.6% in 2015 to 24.55%. This increase is moderated by the fact that it  
15 is partially the result of the impacts on billed consumption associated with the  
16 September 2014 transition to monthly billing cycles, which accounts for  
17 approximately 3.43% of the increase. In addition, consecutive severe winters  
18 (2013-2014 and 2014-2015) have increased main breaks across these time periods  
19 which have produced a corresponding impact on real losses that must be  
20 normalized. Although the losses associated with these severe weather periods  
21 have already been resolved, these additional losses are reflected within the annual  
22 NRW calculation and will not be completely factored out of the rolling-average

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1 NRW calculation for a full 12-month period. Therefore, the full impact of water  
2 loss recovery efforts across 2015 will not be fully realized within the standard  
3 water audit calculations until well into the 2016 reporting year.

4 Q. Is the Company implementing projects to allow for shorter-period water loss and  
5 mass-balance calculations?

6 A. Yes. Our planned implementation of a system-wide Advanced Metering  
7 Infrastructure (“AMI”) project will improve the resolution of consumption data  
8 and allow for shorter-period water loss and mass-balance calculations to be  
9 performed. This is a best practice implementation and in the public interest as  
10 outlined in the Joint Proposal. Going forward, the overall strategy of the NRW  
11 reduction program for SWNY is to develop a process for characterizing the nature  
12 of water loss occurring in the system within geographical or district-based  
13 regions. This information will be used to develop water-loss profiles and audit  
14 reports for various sectors of the distribution system, allowing for efficient and  
15 effective actions to be targeted according to the specific needs of each sector.  
16 Once the individual components of NRW have been established and profiled for  
17 the SWNY systems, the optimal efficiency point of the systems will become  
18 better understood.

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1 Q. Do you agree with Ms. Cornell’s recommendation that the Company break down  
2 NRW information into sub-categories and that it utilize AWWA water audit  
3 methodology?

4 A. The Company already follows the AWWA water audit methodology and NRW  
5 data is already broken down into sub-categories when it is submitted as part of the  
6 Company’s annual NRW report to the Commission.

7 Q. Mr. Kleinman contends that the Joint Proposal’s NRW program is insufficient  
8 because it does not have an incentive mechanism. Do you agree?

9 A. No. Both an incentive and/or a penalty mechanism are not practical or reasonable  
10 for NRW. It is difficult, if not impossible, to separately and accurately measure  
11 actual real water losses as a component of the total NRW figures gathered and  
12 reported by the Company without AMI and DMA which have yet to be  
13 completed. Furthermore, the Company is already investing significant capital and  
14 resources to reduce NRW, making incentives and penalties unnecessary.

15 Q. Mr. Kleinman asserts on page 11 of his testimony that the Company can expect to  
16 provide real water loss reduction while reducing overall operating costs to  
17 ratepayers given estimated costs of the NRW management approach and  
18 estimated AMI benefits including increased revenue and decreased billing costs.  
19 Do you agree with this assertion?

20 A. No. It appears that Mr. Kleinman is basing his savings numbers on purely  
21 hypothetical estimates that have no factual basis in actual Company data. While

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1           there may be some water savings from AMI, such savings cannot be reasonably  
2           estimated until AMI is fully implemented in the future.

3           **IV. CONSERVATION PROGRAM AND INCENTIVE MECHANISM**

4           Q.     Does the Joint Proposal contain a conservation program?

5           A.     Yes. We believe that the Joint Proposal’s negotiated conservation program  
6           elements represent an important part of the overall Joint Proposal.

7           Q.     Have the Intervenors proposed their own versions of conservation programs in  
8           their testimonies?

9           A.     Yes, many of which in our view are overly optimistic.

10          Q.     In its testimony, on page 5, lines 8-10, Amawalk indicates that accounts with zero  
11          consumption on a year-round basis should be reviewed to identify those with  
12          broken or tampered meters and those that serve active customers, but are  
13          inoperable so they may be replaced in a timely manner. Is this anything new?

14          A.     No. The Company already addresses this issue in its billing system which  
15          generates a monthly zero consumption report. Accounts with zero consumption  
16          are reviewed monthly. Accounts for fire lines, properties with wells, and vacant  
17          properties are filtered from the data set. Field investigations are scheduled for the  
18          remainder of the accounts to verify meter status. Meters found to be broken or  
19          tampered with are replaced. For those we cannot access, notification is sent to the  
20          customer requesting the need for access.

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1 Q. Do you agree with Amawalk that the conservation incentive mechanism should be  
2 expanded to include all actions included in the conservation program?

3 A. No. For practical reasons the incentive mechanism is tied to the number of  
4 rebates taken and the calculated savings in water that could result. Tying  
5 incentives to other elements of the program (e.g., rate impact, education, audits,  
6 etc.) is not possible or desirable because the savings will not be quantifiable  
7 relative to other typical variations in usage due to items such as weather,  
8 economic changes, and demographic shifts. The current method is practical,  
9 reasonable, verifiable, and based on empirical data.

10 Q. Do you agree with Amawalk's recommendation on page 5, lines 6-7 of its  
11 testimony that the Company flag non-residential ("NR") customers with  
12 significant seasonal water usage variations?

13 A. No. There are 4,100 NR customers. Seasonal variations in NR customers are  
14 likely due to a combination of increased activity in the summer as well as outdoor  
15 usage (i.e., non-discretionary and discretionary usage). In the Rockland service  
16 area, customers are not required to install separate irrigation meters and therefore  
17 determining the amount of water usage due to outdoor irrigation is not  
18 straightforward. It is premature to attempt to design a rate structure that will  
19 provide a price signal to discourage excessive commercial irrigation until such  
20 information is gathered and analyzed.

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1 Q. Please comment on Mr. Kleinman’s statement on page 13 of his testimony that  
2 estimates 1.9 MGD of active savings if his proposed program is implemented.

3 A. Table ES-6 in the “Evaluation of Real Water Loss Control and Water  
4 Conservation Options for SUEZ Water New York – Rockland County” report (the  
5 “AIQUEOUS Report”), set forth as an exhibit to Mr. Kleinman’s testimony,  
6 summarizes the water savings from his recommended plan. The table shows  
7 potential total savings of 2.2281 MGD. However, of this amount, 0.85 MGD is  
8 attributable to a smart metering program to which SWNY has already committed  
9 itself. The Company has not estimated the savings that would accrue (e.g., from  
10 use of customer portals and leak detection) because it does not yet have service-  
11 area specific data upon which to reliably base such estimates. If the Company  
12 used AIQUEOUS’ estimate of these savings, then the total savings by the  
13 Company would be similar to that of AIQUEOUS, particularly if we include  
14 estimates from other non-rebate programs. This theoretical exercise simply  
15 demonstrates that the AIQUEOUS recommended savings are in reality not very  
16 different from the Company’s total potential savings (i.e., beyond just the rebate  
17 program).

18 Q. On page 14, lines 15-24 and page 15, lines 1-5 of his testimony, Mr. Kleinman  
19 argues that a conservation surcharge will provide the Company with increased  
20 flexibility to manage and implement the conservation program. Do you agree?

21 A. No. The budget for the program will be established by the Commission and the  
22 Joint Proposal already provides flexibility by allowing the Company to collect the

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1 incremental costs of rebates should the program be more successful than planned  
2 via a surcharge mechanism or by deferral to the next rate case.

3 Q. Do you agree with Mr. Kleinman's recommendation for an accelerated  
4 conservation program of three years to provide for flexibility to change the  
5 program as needed?

6 A. No. The Joint Proposal already provides such flexibility by allowing costs to be  
7 shifted between programs.

8 Q. Both Mr. Kleinman and Ms. Cornell recommend a direct install program to  
9 increase the effectiveness of the conservation program, citing concerns over free-  
10 ridership associated with rebates. Please respond.

11 A. As an initial matter, free ridership cannot be measured with confidence; it can  
12 only be estimated and even the best methods are subject to significant limitations.  
13 The Company's conservation plan acknowledges the free rider issue and in doing  
14 so goes beyond many water conservation programs that stay silent on the issue. It  
15 is an inherent reality of a rebate program that it may be used by customers who  
16 were willing to take an action anyway. The direct install program does not, in and  
17 of itself, solve the free ridership concern. Mr. Kleinman claims a direct install  
18 program "can target customers based upon the age of the home, income level, or  
19 other factors." The Company's approach will utilize data to strategically identify  
20 the best opportunities for water conservation and communicate such opportunities  
21 to customers.

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1 Q. Does the Company support a direct install program?

2 A. No. While the Company acknowledges that certain types of direct install  
3 programs in other fields can be effective, we do not support this approach for  
4 water due to concerns over cost-effectiveness and liability. As a private company,  
5 defective installations, further work to complete installations (e.g., repair of rotten  
6 subflooring) and damage caused during work will subject the Company to  
7 lawsuits, which could potentially result in higher cost to customers. For these  
8 reasons, rebates alone are the preferred approach and the one reasonably included  
9 in the Joint Proposal.

10 Q. Mr. Kleinman also recommends commercial, institutional, and industrial  
11 incentive and technical assistance programs. Do you agree with his  
12 recommendation?

13 A. No; because the Company is already planning to provide incentives via rebates  
14 and will be providing free technical assistance in the form of audits.

15 Q. On page 17, lines 10-23 and page 18, lines 1-2 of his testimony, Mr. Kleinman  
16 questions the inclusion of smart irrigation controllers in the conservation program  
17 and suggests the implementation of a Residential Irrigation Consultancy Program.  
18 Please comment on his proposal.

19 A. The Company is aware that smart irrigation devices can have the opposite  
20 intended impact on consumption. The Company performed its own study on this  
21 subject, and the report was provided in this case. Please refer to the Company's  
22 response to IR MC-4, Attachment B. For this reason, the Company's program

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1 includes both rain sensors and smart irrigation devices. For the smart irrigation  
2 device, the Company's Do-It-Yourself ("DIY") program will help guide our  
3 recommendations on whether a customer could benefit from such a device.  
4 Generally, customers with very high usage may benefit from these devices, as  
5 documented in Water Research Foundation report 4227 (see the Company's  
6 response to IR MC-21). Furthermore, as shown in the Company's survey results,  
7 many customers who irrigate depend on irrigation contractors to establish the  
8 settings of their controller devices. As indicated in the Joint Proposal, the  
9 Company will be conducting workshops for irrigation contractors to ensure that  
10 they are using the best conservation settings for automatic irrigation devices as  
11 well as recommending/using other outdoor conservation techniques. The timing  
12 of these workshops will be planned to reach the largest audience in the most  
13 efficient manner.

14 Q. On page 18, lines 15-23 and page 19, lines 1-7, Mr. Kleinman makes the  
15 assumption that the Company's audit program will focus only on indoor usage. Is  
16 that correct?

17 A. No. The auditors will work with customers to address total water usage and then  
18 make appropriate recommendations, which may include measures to address  
19 irrigation.

20 Q. On page 21, lines 3-24 and page 22, lines 1-2 of his testimony, Mr. Kleinman  
21 recommends that an independent evaluation, measurement and verification

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1 vendor be retained to verify savings. Please discuss the Joint Proposal's approach  
2 on this issue.

3 A. The Joint Proposal provides a specific and reasonable methodology to calculate  
4 water savings and the Company plans to use an appropriately qualified consultant  
5 to assist us with these calculations.

6 Q. Mr. Kleinman argues on page 22 of his testimony that the Company's positive  
7 incentive around the rebate program is unprecedented. Do you agree with this  
8 statement?

9 A. No. Mr. Kleinman indicates that the upper bound of the incentive is \$1.6 million.  
10 However, in his Texas example, Mr. Kleinman shows that a positive incentive of  
11 \$2 million would be calculated using this alternative method. This seems to  
12 contradict his statement that the incentive in the Joint Proposal is unprecedented.

13 Q. Do you agree with Ms. Cornell's characterization of the SWNY conservation plan  
14 on page 13, lines 13 and 14 of her testimony, as "aimed at satisfaction of the most  
15 minimal suggested regulatory requirements" and on page 14, lines 16-18 that  
16 "[d]uring the meetings with the Task Force members, SWNY never articulated  
17 the 1 MGD minimal target as the limiting scope of the analysis employed in  
18 preparation of the initial Conservation Plan"?

19 A. No; we must rebut Ms. Cornell's testimony on this point for the following  
20 reasons. First, to put 1 MGD of planned savings into context, it is sufficient to  
21 supply water to 15,000 SFF residents using the current per capita consumption  
22 estimate of 66 GPCD. At the recent population growth rate in SWNY's service

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1 area for Rockland County for the last decade, this would be sufficient to meet the  
2 growth needs of the county for approximately six years. This is one reason why it  
3 is incorrect to characterize these planned savings as minimal.

4 Second, the 1 MGD target was articulated on several occasions at the  
5 public meetings held in this proceeding. At the two meetings held in February  
6 2016, the Company showed that the potential savings range was consistent with  
7 the final adopted target. Also, at the June 15-16, 2016 public meetings, the  
8 Company showed a table of savings including those that could be achieved  
9 beyond rebates. Because the Company has the regulatory obligation of supply  
10 sufficiency, our conservative operations perspective is to not over-promise on a  
11 program whose success hinges on the behavior of our customers, something that  
12 is difficult at best to quantify. The Intervenors, on the other hand, do not have  
13 such an obligation and it is not surprising therefore that they tend to be optimistic  
14 about the potential for conservation savings. In the end, what really matters is  
15 how well the conservation program actually works over the next five years for the  
16 benefit of customers.

17 Q. Ms. Cornell also argues that the Joint Proposal's conservation program does not  
18 comply with the Need Order. Is her argument correct?

19 A. No. The conservation program outlined in the Joint Proposal clearly satisfies that  
20 order and is in the public interest. We also note that the Company's conservation  
21 goals were clearly supported by the Commission in its December 18, 2015 "Order

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1 Adopting Alternate Demand/Supply Strategies and Abandoning Haverstraw

2 Project” in Case 13-W-0303. That order states in relevant part:

3 The discussion of conservation successes in other localities that the  
4 Vickers Report presents does not support definitive statements  
5 about the volumes of water that can be conserved in Rockland. As  
6 we stated in the November Order, our approach to planning does  
7 not permit us to rest on the potential for water savings. Until  
8 conservation efforts are implemented in the service area, and  
9 projections can be shown to be reliable through data analysis, we  
10 do not believe reliance on possible conservation savings fulfills our  
11 statutory obligation to ensure safe and adequate water supply. For  
12 planning purposes, we accept the Company’s assessment of the  
13 potential for conservation, which is based on the Company’s  
14 experience with the measures it proposes and which comports with  
15 a cautious approach to planning.<sup>11</sup>

16  
17 The same order goes on to state:

18 In conclusion, we find that the Company’s proposal is a reasonable  
19 approach to managing Rockland’s water supply for the next ten  
20 years. If implemented with diligence, which we expect the  
21 Company to employ, the combination of measures should keep  
22 supply in balance with demand.<sup>12</sup>

23  
24 Q. Please comment on the “Vickers Report” referenced in Ms. Cornell’s testimony.

25 A. On July 22, 2015, a report entitled “Water Losses and Customer Use in the United  
26 Water New York Water System,” that was prepared by Amy Vickers &  
27 Associates, Inc., was submitted under Case 13-W-0303 by Ms. Cornell. The filed  
28 version of the Vickers Report is substantially similar to a draft version of the  
29 report provided to SWNY on June 25, 2015, after which the Company promptly  
30 contacted Ms. Vickers, alerted her to the fact that the Company had identified

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<sup>11</sup> Case 13-W-0303, Order Adopting Alternative Demand/Supply Strategies and Abandoning Haverstraw Project at 18-19 (Dec. 18, 2015).

<sup>12</sup> Id. at 20.

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1 multiple material errors that led to flawed conclusions, and urged for a technical  
2 discussion to provide clarity on facts and data before her conclusions and report  
3 were finalized. Ms. Vickers declined the opportunity to have a technical  
4 discussion with the Company, or even have her report peer reviewed, before her  
5 conclusions and report were presented to the public and were finalized.

6 Q. Do you believe the Vickers Report is seriously flawed?

7 A. Yes. The Company believes that the conclusions of the Vickers Report are  
8 flawed, unsubstantiated, and should not be relied upon. The Commission has  
9 already ruled on the veracity of the Vickers Report in its December 17, 2015  
10 “Order Adopting Alternate Demand/Supply Strategies and Abandoning  
11 Haverstraw Project” in Case 13-W-0302.

12 Q. Would it be in the public interest to adopt the conservation recommendations  
13 from the Vickers Report?

14 A. No. As detailed in the Report by Ove Arup & Partners P.C. submitted by the  
15 Company on August 4, 2015, in Case 13-W-0303, the Vickers Report makes large  
16 conservation claims with no real data or benchmarking support. Also, the Vickers  
17 Report makes claims that purport to be supported by what appear to be generic  
18 boilerplate inserts for reports of this type. Virtually no attention was paid to  
19 SWNY’s actual demand profile, projected growth, or socio-economic  
20 circumstances particular to Rockland County.

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1 Q. Does the Panel support Ms. Cornell's description of the Water Task Force and the  
2 Company's role?

3 A. No. The roles of the Company and the Task Force are *appropriately* different.  
4 The Task Force engages in dialogue regarding issues such as land use, economic  
5 development, and government-mandated water conservation tools, and it is not  
6 SWNY's proper role to take positions on these types of issues which are best  
7 decided by the residents of Rockland County and their elected government  
8 officials. Additionally, the Task Force often issues letters, press releases, and  
9 reports that the Company may not agree with, forcing the Company to dissent and  
10 potentially be viewed in a negative light as obstructionist or argumentative. For  
11 those reasons, SWNY is not a member of the Task Force, but will be glad to  
12 consider any request it receives to provide technical support on a particular issue,  
13 necessarily taking into consideration the benefit that will be realized by our  
14 customers, budgetary constraints, and the extent to which the effort is being  
15 supported by other stakeholders.

16 Q. Do you agree with Mr. Berkeley's observation regarding other languages being  
17 used in Outreach and Education?

18 A. The Company has agreed in the Joint Proposal to provide certain Outreach and  
19 Education materials in other languages. It is not practical to provide unlimited  
20 translation services for all potential languages as the costs associated with such  
21 translation are borne by all ratepayers.

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1 Q. Do you agree with Mr. Berkeley's comments about design of the Conservation  
2 Program Incentive Mechanism on page 28, lines 18-23 and page 29, lines 1-4 of  
3 his testimony?

4 A. No. Mr. Berkeley argues that the incentive plan will not motivate the Company  
5 and that all the Company needs to do is increase the number of rebates to reach  
6 targets. This is untrue for a number of reasons. First, the Company has dedicated  
7 significant resources to the development of the conservation program and we are  
8 already motivated to work diligently to make it a success. Second, the negative  
9 incentive will further encourage the Company to actively market the program to  
10 ensure that rebates are taken by customers. Third, it is not an assumed fact that  
11 such rebates will be adopted by customers and the Company will need to make  
12 numerous efforts to market and promote the uptake. Finally, the positive financial  
13 incentive will encourage the Company to develop innovative ways to implement  
14 and expand the program.

15 Q. On page 11, lines 2-5 of Mr. Duthie's testimony, he alleges that "many customers  
16 will see their rates decline in the high use summer season – and that will  
17 encourage consumption." Is this factually correct?

18 A. No. The purpose of the tiered rates is to provide a strong price signal to those  
19 customers who have substantial discretionary water usage. A price signal is not  
20 intended for those customers who already conserve and primarily use water for  
21 indoor usage. With the new rates, customers using 12 CCF or more will see their  
22 water bill increase which will send a price signal. Furthermore, the drought rate

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1 specified in Joint Proposal will provide a further price signal during official  
2 government recognized drought periods.

3 Q. Both Amawalk and Ms. Cornell raise questions about the five-year reporting  
4 period for the rebate program. Please comment.

5 A. During that five-year reporting period, the Company will provide semi-annual  
6 reports posted on the DMM that will indicate progress on the rebate program, as  
7 well as adjustments in approach. The Company has also committed to providing  
8 specific criteria to adjust rebate levels and re-allocate program budgets within six  
9 months of implementation. Such program control supports a longer final  
10 reporting period. As this program is a first of its kind for the Company, the  
11 uptake of rebates on an annual basis cannot be well-predicted and the longer five-  
12 year timeframe is necessary to gather sufficient data.

13 Q. Do you agree with Ms. Cornell's assertion on page 14 of her testimony that the  
14 Company's June 2015 Feasibility Report did not study the potential for  
15 conservation?

16 A. No. The Feasibility Report provided a high-level conservation goal that was  
17 consistent with the Commission's directive. After the issuance of this report, the  
18 Company undertook a comprehensive study of conservation that provided the  
19 basis for a 1 MGD of consumption reduction via rebate programs, as well as other  
20 potential savings from a combination of programs, including conservation-  
21 oriented rates, audits, AMI, and Outreach and Education. The full feasibility for

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1 further conservation will become clearer as specific data on the program are  
2 evaluated.

3 Q. Ms. Cornell calls for the Company to pursue solutions that include free outdoor  
4 residential and NR audits, technical consultations, and association. What is your  
5 reaction to this statement?

6 A. Because outdoor residential irrigation systems are all essentially the same, the  
7 Company's approach to addressing conservation is to provide customers with  
8 DIY tools to assess their needs. Customers who are interested in saving water  
9 will be asked questions about their irrigation system and will be provided a report  
10 indicating steps that they might take, including the use of the DIY tools to better  
11 manage their irrigation systems.

12 Q. Mr. Kleinman recommends a CII Incentive and Technical Assistance Program to  
13 combine appropriate technical assistance with financial incentives. His proposal  
14 would transfer the Company's roughly \$550,000 audit budget to this program,  
15 offering technical assistance and incentives on roughly 24 projects that would  
16 yield 0.13 MGD of savings. Please discuss this recommendation.

17 A. It is unclear what specific local data, if any, Mr. Kleinman uses to arrive at the  
18 number of projects and the estimated savings. Moreover, some of the items he  
19 refers to, such as high-efficiency fixtures, commercial laundries, and outdoor  
20 irrigation improvements are already under consideration. Other items he  
21 mentions such as water reuse can be quite expensive and face significant  
22 regulatory hurdles. Consequently, we cannot support Mr. Kleinman's position.

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**V. RETURN ON EQUITY**

1  
2 Q. Do you agree that it was arbitrary and capricious for the Signatory Parties to  
3 depart from the Commission's long-standing Generic Financing Methodology  
4 ("GFM") by 50 basis points as Mr. Berkley asserts on page 25 of his Direct  
5 Testimony and that the resulting revenue requirement is by definition unjust and  
6 unreasonable because it is not grounded on a defensible process?

7 A. No, we do not. It is common for authorized returns on equity for New York  
8 utilities to diverge from a return initially calculated utilizing the GFM. As shown  
9 in the table below, for the last three rate cases involving SWNY, the authorized  
10 ROE has been at least 40 basis points higher than the results of the GFM.

11 Table 1: Authorized Returns and GFM Results in the Last Three Rate Cases

12 Involving SUEZ Water New York Inc.

Docket Number	Staff Recommended ROE / Equity Ratio	PSC Authorized ROE / Equity Ratio
13-W-0295	8.75% ROE / 44.00% Equity Ratio	9.20% ROE / 44.00% Equity Ratio
09-W-0731	9.80% ROE / 39.00% Equity Ratio	10.20% ROE / 45.00% Equity Ratio
06-W-0131 and 06-W-0244	9.20%% ROE / 45.68% Equity Ratio	9.60% ROE / 45.68% Equity Ratio

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1           The Joint Proposal therefore does not depart from any past standard set by the  
2           Commission. In fact, past settlements and fully-litigated cases show a clear  
3           pattern for authorized ROEs to be *above* GFM results.

4   Q.     Does the authorized ROE and capital structure for a given utility typically  
5           conform to one individual party's analysis in a Joint Proposal context?

6   A.     No. Typically, in a utility rate case, experts on behalf of different stakeholders  
7           (e.g., Company, Staff, UIU, etc.) will present testimony offering their opinion on  
8           the appropriate ROE and representative capital structure of the subject utility.  
9           Regulators attempt to balance the interests of these parties and consider all  
10          information on the record to determine the appropriate ROE and representative  
11          capital structure to authorize for that utility in the absence of a settlement  
12          agreement. Regulators may use aspects of one expert's testimony with aspects of  
13          another expert to derive **both** their judgment of both authorized ROE and capital  
14          structure for the subject utility. In this case, the two parties that put forward  
15          experts in the subject of rate of return came to an agreement as presented in the  
16          Joint Proposal on a reasonable ROE and capital structure for SWNY. As such,  
17          the Joint Proposal's rate of return and capital structure should be approved by the  
18          Commission with no adjustment.

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1 Q. Mr. Duthie asserts on page 10 of his Direct Testimony that “the return on equity  
2 should be in the low 8% range at most” due to its “very little business and  
3 financial risk.” Do you agree with this assertion?

4 A. No, we do not. First, neither Mr. Duthie nor the Municipal Consortium he  
5 represents presented any cost of capital testimony or any form of relative business  
6 or financial risk analysis whatsoever in this proceeding. Because of this, his  
7 statements on this topic should be afforded absolutely no weight in this case.  
8 Second, authorized ROEs at “the low 8% range” simply do not exist anywhere in  
9 the country. In fact, the agreed upon 9.00% ROE in the Joint Proposal is already  
10 among the lowest authorized ROEs for a water company in recent history. Third,  
11 while we do agree that utilities in general have lower business and financial risk  
12 compared with the broader market, we do not agree that the operations of SWNY  
13 are significantly dissimilar from Ms. Ahern’s or the Staff Panel proxy groups’  
14 business and financial risks. Fourth and finally, as stated in Ms. Ahern’s and  
15 Staff’s Direct Testimonies, business and financial risks were evaluated in the  
16 derivation of both ROE recommendations. Therefore, the agreed upon 9.00%  
17 ROE in the Joint Proposal would also include consideration of the Company’s  
18 business and financial risks.

19 Q. Do you agree with Mr. Duthie that SWNY should be awarded a lower ROE than  
20 Consolidated Edison?

21 A. No, we do not. As stated previously, even though specific operating risks  
22 between utility companies may be different, the level of those risks is similar.

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1 This is proven by Ms. Ahern and Staff when selecting their proxy group  
2 companies, which included water, gas, and electric companies. Again, the  
3 Municipal Consortium did not present a cost of capital expert to refute these  
4 claims in Direct Testimony, nor provide any analysis contrary to the Company's  
5 testimony. Hence, the Municipal Consortium's claims on ROE should be  
6 dismissed summarily by the Commission.

**VI. REVENUE ALLOCATION AND RATE DESIGN**

7  
8 Q. Please summarize Amawalk's issues concerning rate design under the Joint  
9 Proposal.

10 A. Amawalk has identified two issues concerning rate design and has made  
11 recommendations to the PSC to address those issues. The issues and  
12 recommendations include: 1) the classification of customers, and 2) alternative  
13 conservation rate designs for the multi-family residential ("MFR") and NR rate  
14 classes.

15 Q. Please address the first issue regarding the classification of customers.

16 A. Amawalk is concerned that certain customers are not classified correctly. The  
17 Joint Proposal addresses the issue regarding the classification of customers.  
18 Specifically, Paragraph 2 of Section XVII (Revenue Allocation and Rate Design)  
19 of the Joint Proposal, provides for the Company to address this issue as follows:

20 In its next rate filing, the Company will provide a comprehensive service  
21 Classification study and proposed service classification reorganization as  
22 necessary. The cost of the study will be included in rate case expense. The  
23 comprehensive service classification study will address, among other  
24 things, the following:  
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- a. Whether the classification of multi-family customers into subclasses is necessary to ensure that the inclining block rates structure does not have any negative effects based on building type/size; and
- b. The seasonality of industrial customers, including the specific identification of a methodology to classify those customers as seasonal or non-seasonal users, and a determination as to whether a seasonal subclass of the commercial/industrial customer classification is necessary.

The Company’s comprehensive service classification study will address Amawalk’s concerns regarding the classification of customers and will reclassify customers into the correct class, if necessary.

Q. On page 4, lines 23-24, of its testimony, Amawalk requests that the Commission order the Company to “validate the classification of each customer within one hundred twenty (120) days of the date of the JP.” Do you agree with this recommendation?

A. No. The total potential misclassifications identified are 125 customers or approximately 0.2% of customers. The number of misclassifications is not at all alarming and is quite typical for a utility of this size. The Intervenors have tried to escalate this issue without any real factual basis. Regardless, the Company has agreed in the Joint Proposal to perform a service classification study with the next rate filing, as discussed above. An accelerated study is simply not warranted.

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1 Q. Amawalk testifies on page 5, lines 3-5 that “Customers that could be included  
2 within multiple categories are flagged as such for further review and action  
3 including, but not limited to, submetering or the creation of different rate classes.”  
4 Please comment.

5 A. The Company requires separate meters for mixed use buildings. Submetering is  
6 not a preferred method as it requires a manual calculation to address the  
7 difference between a master meter and submeter.

8 Q. Do you agree with Amawalk’s recommendation on page 5, lines 11-13 of its  
9 testimony that the results of the service classification study be posted to the  
10 Commission’s Document and Matter Management System (“DMM”)?

11 A. Yes; the study will be posted to the DMM.

12 Q. Please explain Amawalk’s second issue concerning the MFR rate design.

13 A. Amawalk recommends that the existing MFR rate structure remain in place until  
14 the Company submits a realistic assessment of MFR rate structures and  
15 recommends a specific conservation rate structure.

16 Q. Please respond to Amawalk’s MFR rate design recommendation.

17 A. First, it is important to place the issue of the MFR class rates in perspective. The  
18 MFR class’ total consumption represents only about 12% of the total consumption  
19 of all classes on the system. So any reduction in usage due to conservation of the  
20 MFR class will have little impact on the total usage on the system. Second, the  
21 evidence shows the MFR class does not exhibit peak summer demands so the  
22 opportunity to curb significant discretionary use simply is not apparent. Third,

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1           the people who use the water in the MFR class are not the people who pay the  
2           water bill. Typically, the landlord pays the water bill for the multi-unit building,  
3           not the tenants who use the water. The cost of water is included in the rent. So,  
4           the people who use the water do not receive the price signal unless the landlord  
5           raises the rent to pay for increases in the water bill, which could happen over  
6           time. More likely, the landlord would invest in more efficient fixtures and  
7           appliances to reduce usage which is addressed in the Conservation and Efficiency  
8           Program portion of the Joint Proposal.

9   Q.    Does the Joint Proposal propose a specific MFR conservation rate design?

10   A.   Yes, it does. There is no need to maintain the existing structure. The proposed  
11       MFR rate design set forth in the Joint Proposal is specific to the MFR class and  
12       provides an inclining block rate design to promote conservation. The  
13       comprehensive service classification study will assess the proposed rate structure  
14       with regard to how the rate design is applicable to different types and sizes of  
15       MFR customers.

16   Q.    For NR Amawalk claims the proposed NR rate design does not promote  
17       conservation and that the Company should identify the NR customers with  
18       significant seasonal variations. Please comment.

19   A.    The Company addressed these issues in its earlier testimony. The reasons for  
20       summer use for NR customers may go beyond outdoor (i.e., discretionary) water  
21       usage such as greater commercial productivity in the summer and water usage for

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1           cooling. These are not discretionary uses and would therefore not be significantly  
2           impacted by conservation-oriented rates.

3   Q.    What is SWNY's strategy with the NR sector?

4   A.    Our strategy is to offer water audits to better understand profiles and to establish  
5           conservation actions that provide a reasonable cost/benefit. If, through an audit, a  
6           NR customer is found to have opportunities to save discretionary outdoor water  
7           usage, then options will be recommended and discussed with the customer. The  
8           Company believes that the NR water audits will address conservation goals more  
9           efficiently than a more robust conservation rate design which could adversely  
10          affect certain large customers unfairly. Furthermore, as indicated in the Joint  
11          Proposal, the comprehensive service classification study will identify the seasonal  
12          industrial customers and address potential conservation strategies that would  
13          target any discretionary usage.

14   Q.    Do you agree that the Company should consider alternative rate structures such as  
15          water budget allocations as recommended in Amawalk's testimony on page 6,  
16          lines 1-9?

17   A.    No. The Company does not currently support of alternative rate structures such as  
18          water budgets. This would require a tremendous amount of bookkeeping to  
19          record the number of inhabitants per household unit. Since the Company does not  
20          have the authority to compel customers to provide such information, it would be  
21          very difficult to verify accuracy.

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1 Q. Does the Panel agree with Mr. Berkeley's calculation of the increase to an  
2 average customer on page 6 of his testimony?

3 A. No. Mr. Berkley is using the Company's original filing and overlooking the bill  
4 impacts that would result utilizing the Joint Proposal. He states that the average  
5 customer bill would increase 13.2% to \$69.94, when in fact the average customer  
6 would still be below that figure through Rate Year Two at \$67.12.

**VII. LOW INCOME REBATE PROGRAM**

7  
8 Q. Please comment on Amawalk's recommendation set forth on page 6, lines 10-23  
9 of its testimony that the PSC should order the Company to create an affordability  
10 assistance program for low income customers.

11 A. The Joint Proposal already provides benefits for low income customers. The  
12 costs of these benefits are borne by all other customers. The Company has also  
13 agreed in the Joint Proposal to perform a study on a potential rebate program for  
14 low income customers and to seek stakeholder input to the process. This will be  
15 done within six months of the order adopting the Joint Proposal. Furthermore,  
16 low income customers already have access to the Company's SUEZ Cares  
17 program, as well as budget billing.

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1 Q. Do you agree with Mr. Berkley's recommendation on page 10 of his testimony  
2 that SUEZ should implement a low-income rate reduction program equivalent to  
3 the program that American Water has propose in its current rate proceeding?

4 A. No. Such an action would be premature at this time. The Joint Proposal does  
5 initiate the process of identifying how to determine eligibility and identify low  
6 income customers.

**VIII. OTHER ISSUES**

7  
8 Q. Does the Panel agree with the level of rate case expense Mr. Berkley proposes on  
9 page 20 of his testimony?

10 A. No. The Company based its original estimate of rate case expense largely on  
11 actual costs from its last case taking into consideration the level of intervenor  
12 activity expected to materialize in the instant case. The Joint Proposal rate case  
13 allowance represents a compromise between the amount the Company had  
14 proposed and Staff's position. Mr. Berkley provides no basis for his figure and  
15 consequently his proposed amount should be rejected.

16 Q. Does Mr. Tompkins incorrectly characterize levelizing in his testimony?

17 A. Yes, he states that ratepayers pay more by approximately \$2.1 million or 16.5% to  
18 lower their payments, but that is incorrect. The levelization amounts in Rate Year  
19 2 and Rate Year 3 are used to make up for the shortfall created in Rate Year 1 due  
20 to the levelized rates billed to customers being lower than the un-levelized  
21 increase. The levelization surcharges will drop off at the end of Rate Year 3 and  
22 do not result in permanent increases as Mr. Tompkins' testimony implies.

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**IX. CONCLUSION**

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Q. In summary, is the Joint Proposal in the public interest and should it be adopted by the Commission without modification?

A. Yes. The Joint Proposal is supported by the record in this case, achieves a rational result, and is within the range of reasonable outcomes had this case been fully litigated. Certain aspects of the Joint Proposal reflect positions initially sought in pre-filed litigation testimony, while other aspects represent an integrated compromise between the Company and Staff’s litigation positions. The Joint Proposal also provides many customer benefits, including faster replacement of main; an ESM that allows customers to share in the Company’s earnings above specified levels; the Conservation and Efficiency program; a CSPI mechanism; and a process to develop a Low Income Rebate Program.

Q. Does this conclude the Panel’s Responsive Testimony at this time?

A. Yes, it does.

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2 A.L.J. PHILLIPS: The request is  
3 granted.

4 (Testimony of the Suez Water New York,  
5 Inc. Joint Proposal panel accepted into evidence.)

6 MR. FITZGERALD: And your Honor, as  
7 indicated we have provided a CD the court reporter.

8 A.L.J. PHILLIPS: Thank you.

9 MR. FITZGERALD: your Honor, we also  
10 have a CD for the Bench. Your Honor, may we  
11 approach?

12 A.L.J. PHILLIPS: Yes. Didn't want  
13 you to throw it at me.

14 BY MR. FITZGERALD: (Cont'g)

15 Q. Panel, are you sponsoring any exhibits  
16 today?

17 A. (Mr. Cagle) Yes. Sorry. Yes.

18 Q. Okay. Panel, is the first exhibit  
19 Joint Proposal with appendices which was filed by the  
20 Commission on September 2nd, 2016?

21 A. (Mr. Michaelson) Yes.

22 A. (Mr. Cagle) Yes.

23 Q. Did the members of this panel assist  
24 with the preparation of that JP and its appendices?

25 A. (Mr. Michaelson) Yes.

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2 A. (Mr. Cagle) Yes.

3 Q. Are you aware of any changes or  
4 corrections to the Joint Proposal after it was filed on  
5 September 2nd, 2016?

6 A. (Mr. Cagle) No.

7 MR. DUTHIE: Your -- your Honor, just  
8 for clarification, I believe staff submitted Appendix  
9 4 I think it was, subsequent.

10 MR. FITZGERALD: That's correct, your  
11 Honor.

12 BY MR. FITZGERALD: (Cont'g)

13 Q. Turning back to the panel, it's our  
14 understanding that Appendix 4 was filed by Staff. In  
15 addition, two additional signatories were added, Mr. Jan  
16 Degenshein and the Rockland Business Association. And  
17 we've updated the Joint Proposal to reflect those changes.  
18 With those changes, Panel, do you support the inclusion of  
19 the Joint Proposal as corrected into the record of this  
20 proceeding?

21 A. (Mr. Michaelson) Yes.

22 A. (Mr. Cagle) Yes.

23 MR. FITZGERALD: your Honor, I would  
24 ask that the updated Joint Proposal with its  
25 appendices be marked for identification as Hearing

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2 Exhibit, I believe we're up to 5?

3           A.L.J. PHILLIPS: Correct. It will be  
4 marked for identification as Number 5.

5           (Hearing Exhibit Five is marked for  
6 identification.)

7           MR. FITZGERALD: your Honor, I would  
8 ask at this time I would request that -- excuse me  
9 one moment. Your Honor, we have a copy of the JP  
10 with the appendices on CD for both the Bench and the  
11 court reporter.

12          A.L.J. PHILLIPS: No. Anything that  
13 was already pre-filed I think it's sufficient to just  
14 provide the DMM number, and I already have that. So  
15 it does not need to be provided again.

16          MR. FITZGERALD: Thank you, your  
17 Honor. We -- the reason we had offered it was  
18 because it has Appendix 4 included in it.

19          A.L.J. PHILLIPS: I'm sorry, for a  
20 second. Mr. Rigberg, could you make sure your mic is  
21 off, if you're going to talk.

22          MR. RIGBERG: It is off, your Honor.

23          A.L.J. PHILLIPS: Thank you. I'm  
24 sorry. Please proceed.

25          MR. FITZGERALD: your Honor, I just

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2                   need one moment, please.

3                   A.L.J. PHILLIPS: Okay.

4                   (Off the record)

5 BY MR. FITZGERALD: (Cont'g)

6                   Q. Thank you, Panel. I'd like to turn  
7 your attention to your initial testimony of the Suez Water  
8 New York, Inc. Joint Proposal Panel. Did you have an  
9 exhibit to that panel testimony?

10                  A. (Mr. Michaelson) Yes.

11                  Q. Thank you, Panel. Was that exhibit  
12 prepared by you or under your direction?

13                  A. Yes.

14                  MR. FITZGERALD: your Honor, we would  
15 ask that that exhibit be marked for identification as  
16 Exhibit -- Hearing Exhibit 6.

17                  A.L.J. PHILLIPS: So just to clarify.  
18 Hearing Exhibit 6 is the JP Panel Initial Exhibit JPP  
19 1?

20                  MR. FITZGERALD: That is correct, your  
21 Honor.

22                  A.L.J. PHILLIPS: Okay. It will be  
23 marked for identification as Number 6.

24                  (Hearing Exhibit 6 is marked for  
25 identification.)

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2 BY MR. FITZGERALD: (Cont'g)

3 Q. And Panel did you also prepare an  
4 exhibit to your responsive testimony to the JP?

5 A. (Mr. Cagle) Yes.

6 Q. And -- and that exhibit JPP-R1 was  
7 prepared by your or under your direction. Is that  
8 correct?

9 A. Yes.

10 MR. FITZGERALD: your Honor, we would  
11 ask that that exhibit be marked for hearing  
12 identification purposes as Exhibit -- Hearing Exhibit  
13 Number 7.

14 A.L.J. PHILLIPS: The Exhibit JPP-R1  
15 will be marked for identification as Hearing Exhibit  
16 Number 7.

17 (Hearing Exhibit 7 is marked for  
18 identification.)

19 MR. FITZGERALD: your Honor, at this  
20 time I would respectfully request that Hearing  
21 Exhibits 1 through 7 -- actually, excuse me. That  
22 Hearing Exhibits 5 through 7 be entered into the  
23 record.

24 A.L.J. PHILLIPS: Okay. I'd like to  
25 wait until the cross-examination has been fully



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2 Q. Good morning, ladies and gentlemen, on  
3 the Panel. I'd -- do you have in front of you your  
4 initial testimony supporting the joint proposal?

5 A. (Mr. Michaelson) Yes.

6 Q. I -- I would like you to refer to Page  
7 7 of that testimony. And specifically I want you to focus  
8 on the two charts that you have there, the two boxes.  
9 Would you agree with me that the levelized rate increase,  
10 over a three-year period, provides \$2.1 million more in  
11 revenue requirement than the non-levelized rate increase?

12 A. No.

13 Q. Would you accept, subject to check,  
14 that the sum of the base rate increases that appear below  
15 Line 3 is \$12,958,360? And the sum of the rate increases  
16 that appear below Line 17 is 15,101,118?

17 A. Subject to check, yes.

18 Q. And that difference is \$2.1 million,  
19 approximately?

20 A. Yes.

21 Q. Is the levelized rate increase more  
22 beneficial to the Company in terms of its earnings versus  
23 the non-levelized increase?

24 A. It's even.

25 Q. I'm sorry?

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2 A. It's even.

3 Q. Could you explain how it's even?

4 A. Okay. So when you look at the  
5 levelization you need to look at the cumulative impacts,  
6 not just the impacts that we have in Rate Year 1, 2, and  
7 3. So if you go to Appendix 2 of the JP, Page 31 of 31.  
8 Should I proceed?

9 Q. Yeah. I'm -- I'm sorry.

10 A. I'm - I'm sorry. I wasn't sure if you  
11 were there.

12 Q. Sure.

13 A. So the top portion of that table shows  
14 the cumulative rate increases under the un-levelized  
15 situation. So in Rate Year 1, you have approximately \$7.6  
16 million of additional revenue.

17 In Rate Year 2 you have that same \$7.6  
18 million, plus you have an additional 1.9 for the increase  
19 attributable to Rate Year 2.

20 And then in Rate Year 3 you still have  
21 the 7.1 -- I'm sorry, \$7.6 million increase from Rate Year  
22 1. You have the \$1.9 million increase from Rate Year 2  
23 and you have the -- a new \$3.3 million increase in Rate  
24 Year 3. On a cumulative basis the new revenues equal  
25 \$29.9 million, and that's all from the far right column

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2 under cumulative total.

3                   So then the way we start to calculate  
4 the levelized increases is we start with that \$29.9  
5 million. We divide that number by six because there's  
6 going to be six specific impacts over the three rate  
7 years. Rate Year 1 is going to be in Rate Year 1, 2, and  
8 3. Rate Year 2 is going to be in Rate Year 2 and 3, and  
9 Rate Year 3 is going to be in Rate Year 3.

10                   So the way that, if you go down to the  
11 second section of the table, you see there's \$4.9 million  
12 in each of Rate Year 1, 2, and 3. That's accomplished by  
13 dividing the 29.9 cumulative total un-levelized that we  
14 talked about earlier by six. And when you add that all up  
15 the cumulative -- the cumulative totals of \$29.9 million  
16 are equal.

17                   And I should have clarified this  
18 earlier, when I answered that the -- the two methodologies  
19 are even. There was a slight allowance for interest,  
20 which is on -- there's a interest line about half-way down  
21 the table. So that's to compensate the company because  
22 what the JP indicates is that in Rate Year 1, the Company  
23 really should be collecting 7.6 million, but it's only  
24 going to collect 4.9 million. So there's an allowance for  
25 interest representing the difference there.

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2 Q. Okay.

3 A. So that would be -- that would be a  
4 slight difference. So then, if you just allow me to --

5 Q. Sure.

6 A. -- go all the way down. So when you  
7 add in the interest of \$284,712 you add that to the 29.9  
8 million and then divide by six again. That's where you  
9 get the 5.0 million for Rate Year 1, 2, and 3. So again,  
10 you need to look at the cumulative impacts not just what  
11 happens in Rate Year 1, 2, and 3. And that's why I said  
12 that the two methodologies are even, which the exception  
13 of the interest.

14 Q. And -- and that -- that interest is  
15 the comp -- the JP return?

16 A. That's at 9.05, correct.

17 Q. Okay. All right.

18 A. And I believe this is a common  
19 practice with the Commission.

20 Q. Would you turn to Page 10 of your  
21 initial testimony. And I would like you to focus on the  
22 very last sentence that starts on Page -- on -- on Line  
23 16, on Page 10. And you're talking here about the  
24 earnings sharing mechanism and the last phrase says, "and  
25 ultimately see a reduction in their bills." Wouldn't that

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2 be true only if there are no SIC projects?

3 A. Since we don't know what the earnings  
4 sharing piece would be or what any potential SIC surcharge  
5 amounts would be it's -- it's impossible to answer that  
6 question.

7 Q. The SIC surcharge would increase  
8 rates, correct?

9 A. Subject to the conditions outlined in  
10 the JP and -- and as long as all those are satisfied the  
11 SIC surcharge would impose a percentage increase on  
12 customer bills.

13 Q. Do you have an estimate of the  
14 potential impact if all of the SIC projects are  
15 implemented in roughly the timeframe that you envision?

16 A. Not with me, no.

17 Q. Would you agree with me that it --  
18 cumulatively it would be greater than the rate increase  
19 called for in the joint proposal?

20 A. I can't agree or disagree without  
21 looking at the numbers, which I don't have.

22 Q. In terms of the capital budget for the  
23 SIC projects would you agree with me that they come in at  
24 roughly \$67 million?

25 A. Sorry. Just give me a minute please.

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2 Q. You could accept it subject to check  
3 and -- .

4 A.L.J. PHILLIPS: No. If -- if he can  
5 take a minute and find the answer --

6 MR. DUTHIE: Sure.

7 A.L.J. PHILLIPS: -- I'd prefer to do  
8 that.

9 MR. DUTHIE: Yes, your Honor.

10 A. Sorry for the delay. No, I  
11 would not agree with that \$69 million -- .

12 BY MR. DUTHIE: (Cont'g)

13 Q. What -- what would you agree to as the  
14 cumulative cost of the SIC projects?

15 A. They're listed on Page 19 of the JP  
16 and just scanning down them quickly I can tell that the  
17 cumulative cost is nowhere near 69 million. I don't have  
18 a calculator to make the calculation, but --.

19 Q. Okay. Could you -- could you turn to  
20 Page 12 of your testimony. And do you see on Lines 6 and  
21 7 a statement that the Commission has determined that the  
22 Company acted prudently in developing the HWSP in its  
23 orders? Do you see that language?

24 A. Yes.

25 Q. Okay. Is that consistent in your mind

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2 with the actual language of the Commission's order, which  
3 is you -- you cite in your footnote on Footnote 6, about  
4 halfway down. "It cannot be characterized as imprudent."  
5 Is acting prudently and cannot be characterized as  
6 imprudent, equivalent in your mind?

7                   A.    If it's not imprudent we would, in my  
8 mind, say that it's -- it's prudent, yes.

9                   Q.    Would you turn to Page 14 of your  
10 initial testimony. And I'm looking at Lines starting on  
11 17, under the category Revenue Production Cost and  
12 Property Tax Cost Reconciliation. Now, would you agree  
13 with me 100 percent of metered sales are reconciled on an  
14 annual basis?

15                  A.    Yes.

16                  Q.    What percentage of the Company's total  
17 revenues comes from metered sales? Roughly.

18                  A.    If you give me a minute I can find the  
19 answer.

20                  Q.    Sure.

21                  A.    Just refresh my memory and ask that  
22 question again. I'm sorry.

23                  Q.    Sure. What percentage of the  
24 Company's total revenues are derived from metered sales?

25                  A.    Approximately 84 percent.

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2 Q. So 16 percent comes from hydrant  
3 rental revenue?

4 A. And there's other -- there's other  
5 revenue items as well, Lake to DeForest for example.

6 Q. Okay. Now, on the expense side what  
7 percentage of the Company's expenses are subject to the  
8 reconciliation mechanism?

9 A. That number I don't have.

10 Q. Would you agree that property taxes  
11 consist of approximately 25 percent of the Company's  
12 expenses?

13 A. I believe we mentioned it was 20 --  
14 approximately 24 percent, but that's approximately 25  
15 percent, so sure.

16 Q. And that is subject to reconciliation?

17 A. Up to 85 percent, so fifteen percent  
18 is not subject to reconciliation. Yes.

19 Q. And production costs are subject to  
20 reconciliation? And by production costs I'm looking at  
21 your testimony on Page 15, Lines 18 to 20, sludge removal,  
22 power, chemicals and purchased water.

23 A. That's correct.

24 Q. And would you know approximately what  
25 percentage of the total expenses are covered by that

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2 category, production costs?

3                   A.    As I mentioned earlier, no I don't  
4 have -- I don't have that number.

5                   Q.    I'd ask you to turn to Page 16 where  
6 you begin a discussion of non-revenue water.  What does  
7 the joint proposal provide, in addition to that which is  
8 required by the Commission's regulations, on non-revenue  
9 water, which I believe is found at 16 NYR -- NYCRR Section  
10 503.

11                  A.    I -- I apologize but I really don't  
12 understand the question.  Can you rephrase that please?

13                  Q.    Sure.  You agree that there are  
14 Commission regulations that deal with non-revenue water,  
15 correct?

16                  A.    Correct.

17                  Q.    And that when non-revenue water hits  
18 18 percent, or more, the Company has an obligation to file  
19 a report with the Commission, correct?

20                  A.    Correct.

21                  Q.    Okay.  And now -- and you would also  
22 have to tell the Commission what you were going to do to  
23 bring the non-revenue water below -- at least equal to or  
24 below 18 percent.  Is that correct?

25                  A.    You would have to formulate a plan.

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2 Q. Okay. And the Company's done that?

3 A. Correct.

4 Q. And is that attached to the staff  
5 rebuttal testimony supporting the Joint Proposal?

6 MR. ALESSI: your Honor, to expedite  
7 matters the Company has no objection if Mr. Duthie  
8 wants to -- knows the answer and wants to direct him  
9 to that.

10 BY MR. DUTHIE: (Cont'g)

11 Q. Okay. Do you have -- do you have the  
12 rebuttal exhibits of the staff? And I would cite you to  
13 Exhibit Staff JP-4, Page -- it's a February 29th cover  
14 letter to Secretary Burgess. The letter is signed by Mr.  
15 Graziano and it transmits the Suez 2015 year end Non-  
16 Revenue Water Report and Non-Revenue Water Reduction Plan.

17 A. Okay. I have it.

18 Q. Okay.

19 A.L.J. PHILLIPS: Wait one minute.

20 I'm still getting there. Okay. Thank you.

21 BY MR. DUTHIE: (Cont'g)

22 Q. Is this the first such report like  
23 this that the Company has filed with the Commission?

24 A. (Mr. Graziano) No, it is not.

25 Q. When was the first report filed?

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2 A. I don't recall.

3 Q. Since we're on non-revenue water, does  
4 this report contain the benefit cost analysis for the AMI  
5 installation?

6 A. The report you just referred me to?

7 Q. Yes.

8 A. No, it does not.

9 Q. Has the Company performed a benefit  
10 cost analysis for the AMI Project?

11 A. Not in that report. Okay. Yes.

12 Q. Yes, the benefit cost analysis is in  
13 the report that we just mentioned?

14 A. No. I said that was no already.

15 Q. Okay. And where is that benefit cost  
16 analysis found?

17 A. In Staff IR Staff 129, AMT 7, which is  
18 Exhibit Staff JP 3, Page 2 of 9. Well, it starts Page  
19 109. Sorry.

20 Q. Okay. And just so the record is clear  
21 for somebody who may pick up this transcript and -- and  
22 not be familiar with the abbreviations. AMI stands for?

23 A. Advanced metering infrastructure.

24 Q. Now, do you have a similar benefit  
25 cost analysis for the DMA project?

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2 A. Yeah. The -- it was a combined study.  
3 It was a combined analysis.

4 Q. Okay. So both the AMI which is the  
5 individual meters and the district meters were looked at  
6 as a combined project?

7 A. Correct.

8 Q. And will they be rolled out at  
9 approximately the same time?

10 A. The -- the -- approximately, yes.

11 Q. Okay. And that will occur over the  
12 next four years, if my memory serves?

13 A. It will be three to four years.

14 Q. How many meters are involved for the  
15 Company that'll -- that they'll be you know, changing out?  
16 Approximately how many meters?

17 A. (Ms. McEvoy) We'll be changing out  
18 the endpoints about 70 -- 75,000.

19 Q. And will that be done on a more or  
20 less divide by four basis every year?

21 A. More or less.

22 Q. Okay. And how many DM -- how many DMI  
23 meters are you planning on installing?

24 A. DMA district meters?

25 Q. I'm sorry. DMA.

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2 A. District meter areas. I believe,  
3 subject to check, that it's 53.

4 Q. And -- and that too will be installed  
5 over a roughly four-year period?

6 A. Roughly three years is the current  
7 plan, Mr. Duthie.

8 A.L.J. PHILLIPS: Just to clarify.  
9 When you said that too, you were referring to the  
10 rollout of the DMA meters?

11 MR. DUTHIE: Yes, your Honor.

12 A.L.J. PHILLIPS: Okay. And -- and  
13 when you answered that's how you understood it,  
14 correct?

15 MS. MCEVOY: Yes, your Honor.

16 A.L.J. PHILLIPS: Thank you.

17 BY MR. DUTHIE: (Cont'g)

18 Q. Okay. So just to make sure we're  
19 clear. AMI rollout is going to take four years. DMA is  
20 going to take three years and we're starting in Rate Year  
21 1 for both projects?

22 MR. ALESSI: Objection to the form of  
23 the questions. It's not what the witness said.

24 MR. DUTHIE: I'm just trying to --.

25 A.L.J. PHILLIPS: Can -- can you maybe

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2           rephrase?

3                               MR. DUTHIE: Sure.

4 BY MR. DUTHIE: (Cont'g)

5                               Q.    When will the AMI rollout start?

6                               A.    (Ms. McEvoy) AMI rollout is underway.

7                               Q.    And when will the DMA rollout start?

8                               A.    DMA rollout is underway.

9                               Q.    Please refer to Page 24 of your  
10 initial testimony. And I'm referring now to the Qualified  
11 New York Manufacturer Credit, which is approximately \$8.5  
12 million. Now, once that amortization is finished, what  
13 happens to the rates?

14                              A.    (Mr. Cagle) Once the -- once the  
15 amortization of this credit is -- is resolved, if you  
16 will, or is -- is given back plus or minus any  
17 differential in the actuals, the -- there would be no more  
18 credit available, if you will, for -- to -- to give back  
19 to the customers.

20                              Q.    So does that mean the rates will go  
21 up?

22                              A.    As -- as a single item, looking at it  
23 as a single item, yes.

24                              Q.    But that will not happen automatically  
25 if the Company doesn't file for another rate increase at

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2 the end of the three-year rate plan, correct?

3                   A.     That is, that is correct.  There's --  
4 there's no automatic provision.

5                   Q.     So if there's no more credit and  
6 there's no rate filing how will the Company handle this  
7 additional element of expense?

8                   A.     That is --.

9                   Q.     Or shall I say the loss of the  
10 revenues associated with the credit?

11                  A.     If I could refer --.

12                  Q.     Sure.

13                  A.     They're on, also on Page 24 it gives a  
14 -- gives a description if the Company's next rate case  
15 doesn't coincide, any over or under amortization would be  
16 deferred for treatment in the next case.

17                  Q.     But doesn't that apply to the initial  
18 amortization of the 8.5 million?  And I'm looking at your  
19 testimony on Page 24 starting on Line 16.  I got the  
20 impression that it was discussing if there was any over or  
21 under collection with respect -- or amortization of the  
22 credit with respect to the initial 8.5 million.

23                  A.     So if there is a difference between  
24 the actual amount as of the end of the -- end of the  
25 bridge period in this case and the 8.5 million projection,

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2 that difference would be deferred and then any difference  
3 which would be caused from a non-coincident, if you will,  
4 rate case or rate plan series, that would also be in the  
5 deferral.

6                   Q.     So for example if the Company, for  
7 some reason, doesn't file a rate case for three years  
8 after this rate plan is concluded there would be an  
9 approximate \$8.5 million that the Company would be seeking  
10 to recover from the customers? All things being equal.

11                  A.     Um -- .

12                  MR. FITZGERALD: Mr. Duthie, -- excuse  
13 me -- I'm going to object to the "all things being  
14 equal." Could you explain what you mean by that?

15                  MR. DUTHIE: Sure. Nothing else  
16 changes. Revenues stay the same, expenses stay the  
17 same, the only change is that the amortization of the  
18 manufacturer credit has been completed, and we now go  
19 for another three years beyond that period. So the  
20 Company is now short by \$8.5 roughly.

21 BY MR. DUTHIE: (Cont'g)

22                  A.     (Mr. Cagle) So in that -- in that  
23 event and in your -- in your analysis, I mean I would have  
24 to go back and you know, make sure everything is -- is --  
25 is theoretically correct, because I believe there would be

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2 some differences there, I couldn't really speculate today  
3 as to whether or not the Company would file -- you know,  
4 when -- when the Company might be filing its next rate  
5 case.

6                   Q.     Well, let me -- let me try it this  
7 way. Mr. Cagle, you would agree that the longer the  
8 Company stays out of a rate case filing the larger this  
9 deferral will get?

10                  A.     So if, in -- in your scenario, if I  
11 can, if the Company were to be delayed in rates for any  
12 period of time, the customer for that period would  
13 continue to have the benefit of that -- that reduction,  
14 which would be -- which would be deferred until -- until  
15 later.

16                  Q.     With respect to the SIC charge is that  
17 going to be done as soon as the project is placed into  
18 service, or will it be done on an annual basis?

19                  A.             (Mr. Michaelson) It's done  
20 on an annual basis.

21                  Q.             And when do you expect the  
22 first SIC surcharge to be implemented, approximately?

23                  A.             One of the reasons for the  
24 SIC surcharge is because the projects identified have  
25 timing difficulty with permitting and -- and other items.

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2 So one of the main reasons for the SIC program is because  
3 of the unknown timing of these projects. So again, it's  
4 difficult to say when the first one would -- would go in  
5 service. And that's the, like I said, one of the main  
6 reasons we have this program.

7 Q. Is it possible that there  
8 could be an SIC surcharge or surcharges within the rate  
9 plan period?

10 A. Yes.

11 Q. Does the SIC charge include the  
12 associated operating costs for the project?

13 A. Sorry, just give me a minute please.

14 Q. Sure.

15 A. (Mr. Michaelson) So Page 20 of the JP  
16 describes the pieces and the elements included in the SIC  
17 surcharge, so there's a formula that indicates what's  
18 included. There's no operating expenses included.

19 BY MR. DUTHIE: (Cont'g)

20 Q. Does the JP envision that you have to  
21 come back to the Commission to get approval of the SIC  
22 surcharge?

23 A. Absolutely.

24 Q. So annually a filing will be made with  
25 the Commission requesting approval to implement the

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2 surcharge?

3                   A.     Sorry, can you ask that question  
4 again?

5                   Q.     Sure. Your prior testimony, and I  
6 believe the joint proposal, specifies that the surcharges  
7 will be implemented annually. We can start with that. Is  
8 that correct?

9                   A.     If the Company chooses to file for a  
10 surcharge, it can do so annually.

11                  Q.     Okay. And will the Commission approve  
12 the surcharge before it gets implemented?

13                  A.     After staff has reviewed and done  
14 their analysis and recommended it, my understanding is  
15 that yeah, the Commission will -- will -- will approve the  
16 surcharge.

17                  Q.     Turning now to Revenue Allocation and  
18 Rate Design, on Page 26 of your initial testimony. And  
19 the JP proposes to remove what currently is a summer rate  
20 differential, correct?

21                  A.     So our -- our witness who dealt with  
22 these issues is not here. We'll -- we'll answer as many  
23 questions as we can.

24                  Q.     Okay.

25                  A.     I believe he's scheduled to be here on

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2 Friday.

3                   A.L.J. PHILLIPS: I don't want to  
4 interrupt the flow, but I -- I thought that was the  
5 understanding. Let me just clarify. The Company had  
6 indicated that they were going to put the panel back  
7 on with Mr. Herbert who is, am I saying his name  
8 right?

9                   MR. FITZGERALD: Correct. You are.

10                  A.L.J. PHILLIPS: The rate design  
11 person. So I --.

12                  MR. DUTHIE: I can defer the questions  
13 until Mr. Herbert is here.

14                  A.L.J. PHILLIPS: Okay.

15                  MR. DUTHIE: Okay. Thank you, your  
16 Honor.

17                  A.L.J. PHILLIPS: Thank you.

18 BY MR. DUTHIE: (Cont'g)

19                  Q. But just to wrap this section up. The  
20 Company does have, currently, a summer rate differential  
21 which is higher than the winter rates?

22                  A. (Mr. Michaelson) That's correct.

23                  MR. DUTHIE: And should I also defer,  
24 your Honor, any questions I have on the service  
25 classification issue until Mr. Herbert arrives? I

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2                   guess that's a question to the panel as well.

3                   A.     Yes, if you wouldn't mind deferring.

4                   Thank you.

5 BY MR. DUTHIE: (Cont'g)

6                   Q.     Yes. We will do that. Okay.

7                   A.L.J. PHILLIPS: Okay. And just to  
8                   clarify, too, it's this panel plus Mr. Herbert that  
9                   will be available on Friday, correct?

10                  MR. DUTHIE: Yes, your Honor.

11                  A.L.J. PHILLIPS: No, I just wanted to  
12                  make sure. Thank you.

13 BY MR. DUTHIE: (Cont'g)

14                  Q.     All right. Could you refer to Page  
15                  30, basically Lines Fifteen to Twenty.

16                  A.     (Mr. Michaelson) In the initial  
17                  testimony?

18                  Q.     Yes. So is it -- is it -- I'm looking  
19                  specifically at Line 16 and the conservation efficiency  
20                  program cost over five years of 5.2 million. Is that  
21                  spread equally out over the five-year period, more or  
22                  less?

23                  A.     No. No.

24                  Q.     Okay. How is it, how is it allocated  
25                  over that five-year period?

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2 A. We provided an answer in an -- JP IR I  
3 don't remember the number or which entity asked the  
4 question. And the -- the annual budget was laid out  
5 there. We've also maintained that the program is going to  
6 be -- it's going to be flexible so that if the uptake is  
7 higher we -- we have the ability to kind of shift around,  
8 depending on customer uptake.

9 Q. And this conservation program is --  
10 has a goal of one, of -- of saving approximately 1 million  
11 gallons a day?

12 A. (Mr. Distant) Yes, it does.

13 Q. Okay. And how is that determined?  
14 How -- how did you arrive at, you know, this goal of 1  
15 million gallons a day?

16 A. Well, we -- we took a -- a data-driven  
17 approach. You know from the surveys and, you know, looked  
18 at a -- a conservative approach of coming up with a number  
19 of programs whereby, you know, we thought we could reach 1  
20 MGD of savings in -- in consumption over -- over that  
21 period of time through -- through programs that we knew we  
22 could depend on, like -- like rebates for example.

23 Q. And how are you going to measure the  
24 savings?

25 A. The -- the savings -- the way the

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2 savings were going to be measured is laid out in the JP  
3 But it -- it takes the savings that we've already  
4 calculated as -- as part of our program per device, and  
5 just uses that information to calculate the savings.

6                   Q.     So let's use toilets as an example.  
7 If a customer comes in and gets a rebate for \$75 and  
8 switches out their toilet you would count that as savings,  
9 not that you measured it, or that the customer actually  
10 did it, but based upon the number of rebates that have  
11 been redeemed.

12                  A.     That's -- that's correct. It's a  
13 reasonable calculation based -- based on -- on the  
14 information that's available.

15                  Q.     Now, will there be rebates for outside  
16 watering? Or irrigation controllers?

17                  A.     Yes. Yes. We've included some  
18 rebates for irrigation devices.

19                  Q.     And -- and -- and how do you quantify  
20 the water reduction with the installation of a irrigation  
21 controller?

22                  A.     It's much harder to quantify because  
23 it's -- it's based on weather. So you know, if you have  
24 five years of rainy weather it would be very difficult to  
25 say and -- and that's why we -- we have not quantified it.

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2 Q. So the incentive program that's been  
3 made part of the JP is only for a reduction of indoor  
4 water consumption?

5 A. Yes, that's -- that's correct. It's  
6 only -- it's only for those rebate items that apply for  
7 indoor.

8 Q. You commissioned Black & Veatch to do  
9 a-- a study for you in this area on conservation. Is  
10 that correct?

11 A. That is correct.

12 Q. And is that -- is the cost of that  
13 study included in this rate increase?

14 A. Yes.

15 Q. Do you remember how much that study  
16 cost?

17 A. I don't.

18 Q. Did Black & Veatch make an assumption  
19 as to how many toilets would be changed out, over the  
20 five-year plan period?

21 A. Black & Veatch looked at previous  
22 information that the Company had collected and determined  
23 how many older toilets were in the system and then based  
24 -- based the number of rebates around that.

25 Q. Does -- does ten thousand sound like a

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2 -- that number that Black & Veatch came up with, over  
3 the five-year period?

4 A. No. I don't -- I don't think that's -  
5 - that's correct. But I -- I would just double check it.

6 Q. Okay.

7 A. What's -- what's -- your question is?

8 Q. The -- the question is if the customer  
9 is going to change out the toilet anyway why would they  
10 get a rebate?

11 A. You're -- you're asking about free-  
12 ridership is that correct?

13 Q. Yes. Precisely.

14 A. Well, it's a -- it's a difficult issue  
15 in the -- in -- in the industry at large. The problem is,  
16 is that you can never tell upon implementing a rebate  
17 program who really was a free-rider and who wasn't. So  
18 it's just -- it's quite difficult to -- to determine that.

19 A. (Mr. Michaelson) If I may. You were  
20 talking about the number of units. Appendix Eight details  
21 all that information. Appendix Eight to the JP.

22 Q. Okay. Thank you. Am I correct that  
23 the rebate is seventy-five dollars for a toilet?

24 A. (Mr. Distant) Yes, you are.

25 Q. Does changing out your toilet require

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2 the services of a plumber?

3 A. Sometimes yes, and sometimes no.

4 Q. Have you ever changed out a toilet?

5 A. I have actually.

6 Q. Okay. Seems like a daunting project.

7 And would you hazard a guess as to how much it would cost  
8 a plumber to come in and change out the toilet?

9 A. I would not hazard a guess at -- at  
10 this point because I -- I really don't have a specific  
11 number in front of me.

12 Q. Would it be more than seventy-five  
13 dollars or less?

14 A. Oh, yes. It would be more than  
15 seventy-five dollars.

16 Q. Now the Company is resistant to the  
17 concept of a direct install, and by that I mean the  
18 Company would sponsor, for example, in a low income  
19 situation a direct install and I was just wondering if you  
20 could elaborate beyond the potential legal issues of  
21 damage, what other reasons does the Company not want to  
22 get involved in a direct install program?

23 A. (Mr. Graziano) May I just have a  
24 second please.

25 A. (Mr. Distante) Mr. Duthie, could you

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2 repeat the question?

3 Q. Other than legal liability for damage  
4 to a homeowner, for example, are there any other reasons  
5 that the company does not want to get involved with a  
6 direct install program?

7 A. Well, I can perhaps answer that by --  
8 by saying that we did a fairly extensive review of  
9 programs throughout the industry and the country and  
10 determined that it was quite common for water utilities to  
11 have these types of rebate programs. So we're moving  
12 forward on that good basis of information.

13 Q. So you're saying because you did not  
14 find any other companies with direct install programs you  
15 decided that you weren't going to -- going to have one as  
16 well?

17 A. I -- I didn't --.

18 A. (Mr. Graziano) We proposed a --.

19 A. (Mr. Distante) -- say that.

20 A. (Mr. Graziano) No. I don't -- we  
21 proposed a rebate program that was done as an extensive  
22 research program from Black & Veatch. This is the  
23 program that was presented in the -- as the plan and in  
24 the joint proposal and agreed upon.

25 Q. Would you agree that a targeted direct

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2 install program would reduce the free ridership issue?

3                   A.     (Mr. Distante) No. We -- we -- we  
4 would not -- we would not agree with that. We don't -- we  
5 don't understand why that would be the case.

6                   Q.     So your testimony is that Black &  
7 Veatch did a comprehensive review of conservation  
8 programs in the United States?

9                   A.     Well, I wouldn't characterize that as  
10 my testimony, but that statement is -- is in fact true.  
11 They -- that was one of the things that they did.

12                  Q.     Did -- did the Company do an  
13 independent review of conservation plans, or did you rely  
14 solely on Black & Veatch.

15                  MR. ALESSI: your Honor, if Mr. Duthie  
16 could clarify conservation plans. Is he talking  
17 about water utilities, is he talking about --

18                  MR. DUTHIE: Of course. Yes.

19                  MR. ALESSI: -- all --.

20                  MR. DUTHIE: Yes. Mr. Alessi --

21                  MR. ALESSI: Okay.

22                  MR. DUTHIE: -- I'm talking about  
23 water utilities.

24                  MR. ALESSI: Thank you.

25 BY MR. DUTHIE: (Cont'g)

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2 A. (Mr. Distante) So Mr. Duthie you're -  
3 - you're asking if the Company did its own independent  
4 review in addition to what Black & Veatch did?

5 Q. Yes.

6 A. I mean, you know we worked together  
7 with Black & Veatch to -- to that extent I can say that it  
8 was a collaborative effort, but we relied primarily on the  
9 information that Black & Veatch provided, if that helps.

10 Q. Now, if you refer to your initial  
11 testimony at Page Thirty-two, and here would -- and here  
12 starting on Line Eleven to Twenty-one you're discussing  
13 the incentive aspect of the conservation plan. And on  
14 Line Eighteen you indicate that the goal is one million  
15 gallons a day, but the penalty only starts if you don't  
16 achieve point eight million gallons a day. Am I  
17 understanding that correctly?

18 A. (Mr. Michaelson) That's correct. And  
19 the -- the benefit that the Company would receive does not  
20 start until one point five MGD.

21 Q. Okay. And could you provide the  
22 reasoning behind this asymmetric penalty benefit  
23 mechanism?

24 A. I know there was an IR response that  
25 explained that. If I can find it I can point you to it.

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2 Q. Okay, that's fine. I'm not going to  
3 take the time up. I will go dig it out myself.

4 A. Thank you.

5 Q. Okay.

6 A.L.J. PHILLIPS: Just while you're  
7 looking, I don't want to interrupt too much, but it's  
8 been a little bit over your estimate now. I think  
9 you started about ten-fifty. So about how much --?

10 MR. DUTHIE: Okay. I'm -- I'm almost.  
11 I'm coming down the home stretch, your Honor.

12 A.L.J. PHILLIPS: Okay.

13 MR. DUTHIE: A couple more questions.

14 BY MR. DUTHIE: (Cont'g)

15 Q. The incentive penalty mechanism will  
16 not be applied until after year five of the plan. Is that  
17 correct?

18 A. (Mr. Michaelson) Correct.

19 Q. But you will be keeping track of your  
20 progress every year, in terms of how much water is being  
21 saved, isn't that correct?

22 A. (Mr. Distant) Yes.

23 Q. Wouldn't management's attention be  
24 focused on an annual incentive award, or penalty?

25 A. Would you repeat the question please?

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2 Q. Wouldn't management's attention be  
3 better focused if the benefit cost for meeting  
4 conservation goals were done on an annual basis?

5 A. Management attention is focused on all  
6 aspects of the Company and its business.

7 Q. Is anyone on the panel eligible to  
8 retire within the next five years?

9 A. No, sir.

10 MR. DUTHIE: I withdraw the question,  
11 your Honor. I just have --.

12 MR. ALESSI: Thank you.

13 BY MR. DUTHIE: (Cont'g)

14 Q. I just have a couple of -- I have one  
15 here. I'm now referring to your responsive -- you call it  
16 your responsive testimony. And this is on Page 8. And  
17 I'm referring specifically to Lines 12 to 15. And would  
18 you agree with me that there are some invoices for the  
19 Haverstraw Water Supply Project that did not contain a  
20 descriptive material on the services that were provided in  
21 any given month?

22 MR. ALESSI: your Honor, if I may be  
23 heard on that. That's the subject of the motion to  
24 strike, and I don't believe Mr. Duthie is doing this  
25 purposefully, but I don't believe he can say he needs

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2 time to respond to the motion to strike and then goes  
3 and answers questions that relate to the relevance of  
4 that particular issue in this proceeding. We have no  
5 objection if Mr. Duthie wants to hold that question  
6 pending your Honor's determination on that particular  
7 issue. But we need to be heard on that, lest someone  
8 think we've waived our -- our position on that.

9           MR. DUTHIE: I have no problem with Mr.  
10 Alessi's suggestion --

11           A.L.J. PHILLIPS: Okay. Wait, wait,  
12 wait.

13           MR. DUTHIE: -- to defer.

14           A.L.J. PHILLIPS: I actually have a  
15 clarification though, because I was wondering about  
16 that when I read your motion. There are some  
17 instances in responsive testimony, I think, where you  
18 are -- you are talking about this issue. So it makes  
19 it a little bit tricky because if I grant their  
20 request, or grant your motion to strike his testimony  
21 on that subject, are you then withdrawing your  
22 response to that testimony. So something to think  
23 about and I will, because this panel has to come back  
24 anyways can you please save that question maybe?

25           MR. DUTHIE: Absolutely, your Honor.

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2 A.L.J. PHILLIPS: Can you give some  
3 consideration to that and how it relates to your  
4 motion?

5 MR. ALESSI: Absolutely, your Honor.  
6 I have a response to that, but I think that might be  
7 best handled at another time, so not to impede Mr.  
8 Duthie's cross-examination.

9 A.L.J. PHILLIPS: Thank you.

10 MR. ALESSI: Thank you, your Honor.

11 BY MR. DUTHIE: (Cont'g)

12 Q. How did the company determine that one  
13 MGD savings was an appropriate goal for the reduction in  
14 non-revenue water?

15 A. (Mr. Distant) Well, Mr. Duthie we --  
16 we used a -- a combination of a plan that was determined,  
17 you know, by us and our -- our consultants to be  
18 practical, achievable and measurable and predictable,  
19 along with the guidance from the Commission on the -- the  
20 amount of water that they were -- guiding us to save.

21 Q. What is the Company's current system  
22 capacity in terms of average day demand?

23 A. You mean what our current -- at what  
24 our current average production or demand is for the entire  
25 system?

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2 Q. Yes.

3 A. It's about 20 million gallons per day.

4 Q. And what is the system capable of  
5 producing?

6 A. Well, I'd have to -- I'd have to  
7 double check on -- on those numbers. I just don't have  
8 them in front of me.

9 Q. Does 34.5 MGD sound approximately  
10 correct?

11 A. That does sound approximately correct,  
12 on the average, as an average number.

13 Q. Is -- is your service territory  
14 growing in terms of water demand? Or has the water demand  
15 basically been flat for the last five years?

16 A. Well, there's several factors with  
17 that. It's not -- it's not an easy answer. As you know -  
18 - well, I shouldn't say it that way. But per capita  
19 consumption has been going down. Population is going up,  
20 so there's -- and weather is always a factor I -- I  
21 couldn't say with any certainty at this point in time  
22 exactly whether it's trending up or trending down.

23 Q. The -- the -- the construction of the  
24 Tappan Zee Bridge, was that one of your customers, or is  
25 one of your customers?

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2 A. (Mr. Graziano) I -- I -- we refrain  
3 from discussing any individual customer and their data,  
4 for their privacy.

5 Q. Would you agree with me that -- that  
6 bridge construction involves a lot of concrete which  
7 requires a lot of water?

8 A. I work in water, not the bridge  
9 construction industry, sir.

10 Q. When the bridge is completed will it  
11 use the same amount of water as, as it does during  
12 construction?

13 A. I wouldn't know.

14 Q. So your testimony is that you do not  
15 know whether or not there will be a reduction in water  
16 demand associated with the construction of the Tappan Zee  
17 Bridge once it's completed?

18 A. I -- my testimony is, I don't know  
19 what their anticipated future needs are, nor do I work for  
20 the Tappan Zee Bridge Authority so I wouldn't have the  
21 answer to what they consider what their needs would be in  
22 the future, present, or past.

23 Q. Can you at least testify as to whether  
24 or not you are -- whether you supply water to the  
25 construction site?

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2 A. We supply water to anyone that is  
3 tapped into our franchise territory.

4 Q. Is the Tappan Zee construction a  
5 customer?

6 MR. FITZGERALD: your Honor, that's  
7 been asked and answered, I believe, by the witness.

8 MR. DUTHIE: I don't think so, your  
9 Honor. They've been pretty resistant on the subject.  
10 I just want to know, if in fact, Suez is supplying  
11 water to support the construction of the new Tappan  
12 Zee Bridge.

13 A.L.J. PHILLIPS: And can you point me  
14 to where in your testimony the basis for that  
15 question is -- in their testimony rather?

16 MR. DUTHIE: Well it's -- it's  
17 basically -- it's basically a follow up to the  
18 conservation plan and what we're trying to achieve  
19 there.

20 A.L.J. PHILLIPS: Can you elaborate,  
21 because I'm not sure I'm following.

22 MR. DUTHIE: You know what, your  
23 Honor, I'm going to move on. I'll withdraw the  
24 question. And I'm done.

25 A.L.J. PHILLIPS: Okay. Thank you.

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2 Is there a party that is prepared to  
3 go next with their cross of this panel?

4 MR. SIMETI: Judge, if I may. Thomas  
5 Simeti, County of Rockland. The areas of interest --  
6 the areas of interest were covered in prior  
7 questions. The County of Rockland would waive its  
8 opportunity to question the Company panel, and defers  
9 their time to the other parties subject to the  
10 Court's approval.

11 A.L.J. PHILLIPS: I think Mr. Duthie  
12 might have used your time already. I'm sorry. I --

13 MR. SIMETI: But, we of course reserve  
14 our right to --

15 A.L.J. PHILLIPS: I -- I --.

16 MR. SIMETI: -- file --.

17 A.L.J. PHILLIPS: I do want to ask  
18 clarification, and welcome to the proceedings. I  
19 want to give you an opportunity to note your  
20 appearance, but then I also have a clarification. So  
21 Mr. Simeti, can you just note for the record?

22 MR. SIMETI: Thomas Simeti, Principal  
23 Assistant County Attorney for the County of Rockland,  
24 representing the County of Rockland.

25 A.L.J. PHILLIPS: Okay. And for



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2 Q. Right. Page 6, Line -- Line 2 and 3  
3 is the question, which is, "Does the scope of the joint  
4 proposal address and settle all contested issues in the  
5 proceeding?" And do you see your response?

6 A.L.J. PHILLIPS: I -- I'm sorry. Of  
7 the initial -- .

8 (Phone interruption.)

9 A.L.J. PHILLIPS: Okay. I'm sorry.  
10 Mr. Rigberg, were you referring to the initial  
11 testimony?

12 MR. RIGBERG: Yes, the initial  
13 testimony.

14 A.L.J. PHILLIPS: Thank you. That's -  
15 - it was just my fault, I forgot to switch back to  
16 the --

17 MR. RIGBERG: Page -- Page 6 --

18 A.L.J. PHILLIPS: -- initial.

19 MR. RIGBERG: Line -- Lines 2.

20 BY MR. RIGBERG: (Cont'g)

21 Q. Is -- is your response saying that  
22 this -- the joint proposal resolves all contested issues  
23 among all the parties in the case?

24 MR. ALESSI: I'm going to object to  
25 the form of the question. That's not what the

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2 question asks. Mr. Rigberg said among all the  
3 parties in the case, and if I'm reading it correctly,  
4 on Page 6 the -- the answer to the question, "The  
5 joint proposal addresses all contested issues between  
6 the signatory parties." I don't see it among all the  
7 parties. Am I -- am I on the right page and line  
8 number?

9                   A.L.J. PHILLIPS: Yes. I'm there now.

10                  MR. ALESSI: Thank you.

11                  A.L.J. PHILLIPS: The -- yes, the  
12 question is "Does the scope of the joint proposal  
13 address and settle all contested issues in the  
14 proceeding." The answer is, "Yes. The joint  
15 proposal addresses all contested issues between the  
16 signatory parties." Well, what -- what was your  
17 question again? It was --?

18                  MR. RIGBERG: My question is, by this  
19 response is the panel saying that the joint proposal  
20 resolves all the contested issues among all the  
21 parties in the case.

22                  A.L.J. PHILLIPS: No. No. Well the -  
23 - the answer's there.

24                  MR. ALESSI: I was going to object,  
25 your Honor. The -- the answer speaks for itself as

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2           to what the answer is. If Mr. Rigberg wants to  
3           delve into the basis of the question, we of course,  
4           have no objection. But I -- I believe the answer  
5           speaks for itself. And if he's unclear about the  
6           answer, again we have no -- no issues with that. But  
7           to characterize something -- thank you, your Honor.

8                   A.L.J. PHILLIPS: Okay. So based on  
9           the format of your question, I'm sustaining the  
10          objection but you are free to rephrase.

11                   MR. RIGBERG: Okay.

12 BY MR. RIGBERG: (Cont'g)

13                   Q. So I -- I guess you've -- you've  
14          agreed that that -- the answer does not actually respond  
15          to the question.

16                   A. (Mr. Cagle) No.

17                   MR. ALESSI: Same objection, your  
18          Honor.

19                   A.L.J. PHILLIPS: And objection is  
20          sustained.

21 BY MR. RIGBERG: (Cont'g)

22                   Q. Okay. So in what ways does the  
23          positions of Mr. Degenshein, how are they reflected in the  
24          joint proposal?

25                   MR. ALESSI: Your -- your Honor. I

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2           don't understand the basis of the question. If  
3           that's a question apart from this testimony, it would  
4           be good to know because we all know the timing of Mr.  
5           Degenshein's intervention was after the joint  
6           proposal was prepared and sent. So the question  
7           doesn't have a logic or a rationale based upon the  
8           facts.

9                           A.L.J. PHILLIPS: Mr. Rigberg?

10                          MR. RIGBERG: Okay.

11 BY MR. RIGBERG: (Cont'g)

12                          Q. Well, turning to page -- let's turn to  
13 Page 10, Lines 15 through 18. Has -- has the Company  
14 ever, to your knowledge operated without an earnings  
15 sharing mechanism?

16                          A. (Mr. Cagle) I can't -- I can't speak  
17 to ever on that -- on that issue. I know there is one in  
18 existence in -- with the current rates. Going all the way  
19 back, I -- I cannot -- I don't know.

20                          Q. So you're saying in the current rate  
21 plan there's not an earnings sharing mechanism?

22                          A. In -- by the current rate plan you  
23 mean, if I may ask that -- just -- just you to clarify?

24                          Q. The -- the plan that's operating right  
25 now.

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2 A. There is a -- there is an earnings  
3 sharing mechanism.

4 Q. There is?

5 A. Yes.

6 Q. Okay. And it's -- it's that earnings  
7 sharing mechanism that induces the Company to operate as  
8 efficiently as possible?

9 A. (Mr. Michaelson) Yes.

10 Q. Okay. And so you're saying -- would  
11 you be saying that without an earnings sharing mechanism  
12 the Company would not be operating efficiently?

13 A. No.

14 Q. All right. Turning to Page 11, Lines  
15 11 through 14, in -- in the panel's opinion, why is a 1  
16 percent replacement rate by 2020 better for ratepayers  
17 than a 0.7 percent replacement rate by 2021?

18 A. I'm sorry. Can you repeat that  
19 question? I'm sorry.

20 Q. Why is a 1 percent replacement rate by  
21 2020 better for ratepayers than a 0.7 percent replacement  
22 rate by 2021?

23 A. (Mr. Graziano) The 1 percent was as a  
24 result of the overall settlement package of the joint  
25 proposal and the difference from our original testimony,

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2 as you see on that page, of 0.7.

3                   Q.     Right.  Yes.  I -- I -- I'm aware of  
4 the -- of that.  But I'm asking why does a Company think  
5 that 1 percent is better than 0.7 percent?

6                   A.     I still don't understand the question.  
7 Why do we think one is better than the other?

8                   Q.     Well, why did the Company agree to the  
9 1 percent replacement rate?

10                  A.     As -- as I just previously stated it's  
11 a consideration of the overall joint proposal.

12                  Q.     Well, I think the panel said that the  
13 JP is in the public interest.  So why is this provision in  
14 the public interest?

15                  A.     It's a -- the overall JP is in the  
16 public interest.  This is just one component of an overall  
17 joint proposal.

18                  Q.     Well, but if I were to ask you a  
19 question about each component of the JP and you were to  
20 say that's a result of negotiations, how would that add up  
21 that -- to the conclusion that in sum the JP is in the  
22 public interest?

23                  A.     Then, as stated in our testimony, the  
24 sum of the JP is in the public interest.

25                  Q.     Okay.  So you -- you have no idea why

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 one -- a 1 percent replacement rate is better for  
3 ratepayers than a 0.7 percent replacement rate?

4                   A.    Is that what I said?

5                   Q.    Well, why -- what is the reason?

6                   A.    I -- I said the 1 percent is part of  
7 the overall negotiated joint proposal as a package.

8                   Q.    Okay.  And why wouldn't a 1.1 percent  
9 rate be even better for ratepayers?

10                  A.    I still don't understand the question.  
11 I mean, are we going to go through this -- it's part of an  
12 overall package.

13                  Q.    Okay.

14                  A.L.J. PHILLIPS:  Maybe it could help  
15 if you give him a little bit more guidance about what  
16 you mean when you say, better, or just make it a  
17 little -- the question a little more defined.

18                  MR. RIGBERG:  Well -- .

19                  A.L.J. PHILLIPS:  It's just a  
20 suggestion.

21                  MR. RIGBERG:  It's a good suggestion.  
22 It would -- if I had the foundation to understand why  
23 the Company agreed to a 0.7 percent or going from  
24 seven -- 0.7 to 1 percent --

25                  A.L.J. PHILLIPS:  I'm sorry.

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2 MR. RIGBERG: -- then I could develop  
3 the -- but since the Company doesn't seem to know  
4 -- .

5 A.L.J. PHILLIPS: No. It's -- .

6 MR. RIGBERG: Other than it was  
7 negotiated.

8 A.L.J. PHILLIPS: Sorry. Can we go  
9 off the record?

10 MR. RIGBERG: Yeah.

11 (Off the record)

12 BY MR. RIGBERG: (Cont'g)

13 Q. Okay. At the -- at the rate of 0.7  
14 percent replacement how long will it take for the Company  
15 to replace all of its -- all of the pipes in its system?

16 A. (Ms. McEvoy) We really can't answer  
17 that question definitively, because you're assuming that  
18 0.7 percent goes on for infinity and that really isn't the  
19 intent. The intent is that it's -- it's a -- was a fairly  
20 young system, so when we evaluated the system the Company  
21 felt that the 0.7 percent was sufficient. We did agree as  
22 part of the joint proposal to increase that to 1 percent.

23 Q. Okay. So what were the reasons the  
24 company determined that 0.7 percent was adequate?

25 A. I'm -- I'm not really understanding

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 your question?

3                   Q.    Well, you -- I -- I thought you just  
4 said that after an analysis the Company determined that  
5 0.7 percent was adequate.  Is that what you said?

6                   A.    I believe that's what I said.

7                   Q.    Okay.  So on what basis did you make  
8 that judgment?

9                   A.    Based on the age of the system at this  
10 point and the turnover rate that we were looking to  
11 achieve within the next couple of years.

12                  Q.    Okay.

13                  A.    It is not intended to be a long-term  
14 main replacement at 0.7 percent.

15                  Q.    Okay.  So based on the age of the  
16 system, why does the company now believe that 1.0 percent  
17 is acceptable?

18                  A.    (Mr. Graziano)  Can you repeat that  
19 one more time?

20                  Q.    Based on those same factors, like the  
21 age of the system that led the Company to -- to conclude  
22 that it was best -- it was in ratepayers' interest to only  
23 replace 0.7 percent a year, why does the Company now  
24 believe that it's in ratepayers interest to replace 1 --  
25 1.0 percent a year?

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2 A. Okay. I guess maybe you and I are not  
3 -- I'm getting confused with your question, but I go back  
4 to the same answer is that the 1 percent, the 0.7 percent  
5 was the initial case made by the Company in our litigated  
6 position. The 1.0 was a negotiated settlement point based  
7 on the discussions with the party during the JP settlement  
8 process.

9 Q. Okay. Now, there's also a provision  
10 in the JP, is there not, that the replacement of pipes  
11 would be capped at \$17 million.

12 A. Correct.

13 Q. Now is that an annual number or an  
14 overall number?

15 A. (Mr. Michaelson) It's an annual  
16 number.

17 Q. Okay. And you say that's to protect  
18 ratepayers?

19 A. (Mr. Graziano) Correct.

20 Q. Okay. So if you felt that 0.7 percent  
21 protected ratepayers, how can you say that 1.0 percent  
22 equally -- would you say that they equally protect  
23 ratepayers?

24 A. You're -- there are two different  
25 things you just referenced. The 0.7 percent was an

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 initial thing. The \$17 million was the cap based on the  
3 1percent. They're two different things.

4                   Q.    Okay. Let's turn to Pages 16 and 17  
5 on your initial testimony. Lines 13 on Page 16 to Line  
6 21 on Page 17. Would you agree the 18 percent target  
7 level is consistent with applicable PSC non-revenue water  
8 regulations currently in place?

9                   A.    Correct.

10                  Q.    Now, in the JP the Company commits to  
11 complying with the -- with the Commission regulation,  
12 right? That's -- that's stated on Page 17, Lines 13  
13 through 21. Is that correct?

14                  A.    You said from Line 13?

15                  Q.    I think so. Yeah, Line -- on Page 17,  
16 Lines 13 through 20.

17                  A.    And your question regarding those  
18 lines was?

19                  Q.    Is that -- is the J -- in the JP is  
20 the Company agreeing to comply with a Commission  
21 regulation?

22                  A.    Lines 13 through 21 say the Company  
23 agrees to provide the report based on non-revenue water if  
24 it's over 18 percent as per Commission regulation.

25                  Q.    Okay. So does that -- does that

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 represent a concession on the Company's part, compared to  
3 its litigation position?

4                   A.    I don't understand that question.

5                   A.L.J. PHILLIPS:  When you say "that,"  
6 are you referring to the report?

7                   MR. RIGBERG:  Yes.  Is --

8                   A.L.J. PHILLIPS:  The -- provide --.

9                   MR. RIGBERG:  -- is the Company's  
10 agreement to comply with the Commission regulation a  
11 concession on -- on the Company's part compared to  
12 its litigation position?

13                   MR. ALESSI:  your Honor, I don't  
14 understand the logic of that question.  I do  
15 understand your question, but I don't understand the  
16 logic of that -- that question and I then object to  
17 the form.

18                   A.L.J. PHILLIPS:  Sustained.

19                   MR. RIGBERG:  The -- the obligation of  
20 the proponents of the joint proposal is to show that  
21 each element of the joint proposal represents a  
22 reasonable outcome of litigation.

23                   A.L.J. PHILLIPS:  And you're relying  
24 on which part of the settlement guidelines, because  
25 I'm -- to show that each part.

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2 MR. RIGBERG: Yes.

3 A.L.J. PHILLIPS: Is that what you  
4 said?

5 MR. RIGBERG: Yeah. They -- they --.

6 A.L.J. PHILLIPS: Okay.

7 MR. RIGBERG: You can't --

8 A.L.J. PHILLIPS: Okay. So let's --.

9 MR. RIGBERG: -- you can't argue that  
10 the JP represents a reasonable outcome of litigation  
11 in the -- generally you have to look at each piece of  
12 it. I'm wondering if the Company's concession to  
13 comply with the Commission regulations considered,  
14 you know, how they would evaluate that.

15 A.L.J. PHILLIPS: Right. But the  
16 problem is the way you're wording it. They never  
17 said that it was -- or just now they didn't say that  
18 it was a concession that they were agreeing to comply  
19 with the regulation. They said that they would be  
20 providing a report and so you have to be careful not  
21 to mix the requirement with the reporting. They're  
22 two different things, and I think that's what's  
23 causing the confusion. Just -- just a suggestion.

24 BY MR. RIGBERG: (Cont'g)

25 Q. The panel stated on Page 4, Lines 15

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 and 16, that one of the aspects of -- of -- of the review  
3 of the -- of the settlement is whether the agreement  
4 compares favorably with the likely result of full  
5 litigation and is within the range of reasonable outcome.  
6 So that's -- that's what I was referring to.

7                   Okay. So moving on, Page 17, Line 3, you  
8 see the reference to -- to the goal of reducing non-  
9 revenue water to 18 percent? My question is why is  
10 reducing total non-revenue water a goal rather than a  
11 commitment?

12                   A. (Graziano) I honestly don't see the  
13 difference between the two.

14                   Q. Okay. Well, are there associated  
15 positive and negative incentives at -- you know, attached  
16 to that -- that -- that expectation?

17                   A. No.

18                   Q. Okay. And why is that not the case?

19                   A. The goal of reaching -- the goal of  
20 non-revenue water is -- is a goal to get to a certain  
21 percentage. And the goal has always been 18 percent as  
22 the immediate goal.

23                   Q. But why -- why are -- why are there  
24 not negative and positive incentives attached to that  
25 goal?

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2 A. Because there aren't.

3 Q. And wouldn't the company be more  
4 focused having the opportunity to earn a positive  
5 incentive as -- as we talked about earlier with the  
6 earning/sharing mechanism if their -- if that is attached  
7 to the 18 percent goal?

8 A. As I stated earlier, the company's  
9 focused on all its business aspects, regardless.

10 Q. Regardless of?

11 A. Of incentive or not.

12 Q. Okay. Is the panel aware of any water  
13 companies that had incentives either positive or negative  
14 or both associated with non-revenue water reduction?

15 A. It depends on what you mean by a  
16 positive or negative incentive. You have to rephrase the  
17 question.

18 Q. Okay. Are you familiar with the  
19 positive and negative incentives associated with the  
20 company's -- the JP's proposed conservation plan?

21 A. Yes.

22 Q. Okay. If we use that as a model of  
23 positive and negative incentives, and based on a -- a, you  
24 know, identifiable goal --

25 A. Okay.

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2 Q. -- is the -- is the panel aware of any  
3 water company in New York that has had positive and  
4 negative ascent -- incentives associated with a reduction  
5 of non-revenue water.

6 MR. FITZGERALD: your Honor, I'm going  
7 to object to the question. It's too vague. He's  
8 left open what -- what they mean by various  
9 incentives. That the -- the incentive program that  
10 was set out in -- in the JP speaks for itself as to  
11 that. He's also asking them for knowledge or  
12 reference about things beyond the company.

13 And so, from that perspective, I think  
14 there are too many open times in that question for  
15 the panel to meaningfully respond.

16 A.L.J. PHILLIPS: I'm going to sustain  
17 the objection, but you're free to rephrase.

18 BY MR. RIGBERG: (Cont'g)

19 Q. Are -- are you aware of a company that  
20 serves the service territory in Westchester?

21 A. Yes, I am.

22 Q. Okay. And why is that -- are you  
23 aware of it?

24 A. Why am I aware of that? It's the  
25 company I -- it's under my division of companies.

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2 Q. Okay. Were you -- do you have any  
3 knowledge whether --.

4 A. The Suez Company you're referring to  
5 me?

6 Q. Yes.

7 A. Okay.

8 Q. Whether the Suez Westchester Company  
9 has positive and negative incentives associated or -- or  
10 did have at one time, if not now, with -- with non-revenue  
11 water reduction?

12 A. Now, again, you have to clarify what  
13 you mean by a positive and negative incentive. If you're  
14 talking about -- no, no. I can actually -- I'll just ask  
15 you. What do you mean by a positive or negative  
16 incentive, exactly?

17 Q. Exactly. If -- if a goal was set in  
18 the -- in the rate plan to -- to reduce non-revenue water  
19 -- let's say it was to 18 percent -- then the company did  
20 not achieve that goal at a certain time set forth in that  
21 rate plan, the company would have a --.

22 A. So you're asking me if there's a  
23 positive or negative incentive mechanism for revenue, for  
24 non-revenue water. Revenue adjustment, that's what you're  
25 asking.

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2 Q. I'm asking if there's any financial  
3 impact to the company in -- in Westchester of not  
4 achieving the 18 percent goal.

5 A. Well, that's a separate question.  
6 Yes, there is.

7 Q. Okay. Thank you.

8 Now -- now, you -- you're -- you're  
9 aware that the JP includes positive and negative  
10 incentives for the conservation plan, correct?

11 A. Yes, I'm aware.

12 Q. Okay. Now, how do the characteristics  
13 of the conservation plan, you know, which sets a goal of a  
14 specific amount of savings, differ from the non-revenue  
15 water reduction plan, which also has a goal?

16 A. The non -- the conservation program  
17 has a -- a performance incentive mechanism program that's  
18 outlined as outlined in the joint proposal. And the non-  
19 revenue water does not.

20 Q. Okay. And what -- what are the  
21 characteristics of the two programs that warrant one to  
22 have a -- an incentive plan and one to not have an  
23 incentive plan?

24 A. By characteristics, you mean?

25 Q. I mean, what's different about these

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 two programs that -- that the company would believe it's  
3 appropriate to have an incentive plan for one but not for  
4 the other?

5                   A.    One's a conservation plan, and one's a  
6 non-revenue water plan. I mean, those are the two  
7 characteristics of them.

8                   Q.    Uh-huh. Okay.

9                   A.    That's all.

10                  Q.    So you're not aware of an conceptual  
11 differences in terms of what the company needs to do -- to  
12 do to achieve savings?

13                  MR. FITZGERALD: your Honor, I have to  
14 object to the form of the question. By -- you know,  
15 by conceptual, that's far too broad a -- a term for  
16 the panel to respond to that.

17                  A.L.J. PHILLIPS: Sustained. Could  
18 you please rephrase?

19 BY MR. RIGBERG: (Cont'g)

20                  Q.    Are there any differences in what the  
21 company would need to do to implement the conservation  
22 plan versus the reduction of non-revenue water that  
23 warrant an incentive plan for one and not for the other?

24                  A.    I'm still kind of confused as to the  
25 question. One's a conservation plan, which is its own

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 entity. One's a non-revenue water plan, which is its own  
3 entity.

4                   Q.    Uh-huh.

5                   A.    They're two different things, so I  
6 don't understand. What do you mean by characteristic  
7 differences other than they're two completely and totally  
8 separate things?

9                   Q.    Okay. They're totally separate in  
10 terms -- how are they separate?

11                  A.    One's conservation; one's non-revenue  
12 water.

13                  Q.    Okay. So and both plans will be  
14 implemented by company personnel?

15                  A.    Generally. Some -- there's some  
16 outside contractors involved in conservation.

17                  Q.    Okay. And the company -- but the  
18 company will be supervising the implementation of both  
19 plans. Is that correct?

20                  A.    Correct.

21                  Q.    Yes. Yes. Okay.

22                               MR. RIGBERG: Okay. Now, I -- I -- I  
23 understand the questions on rate design we're holding  
24 for Friday. Is that correct?

25                               A.L.J. PHILLIPS: Yes.

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2 BY MR. RIGBERG: (Cont'g)

3 Q. Okay. Please turn to Page 33 of your  
4 direct testimony, Lines 2 through 4. How -- how -- what  
5 steps would the company take to deliver additional  
6 conservation benefits for customers?

7 A. All right. So we're looking at --  
8 okay. Are you ready? Lines 2 through 4?

9 Q. Yes.

10 A. And what was the question again?

11 Q. What -- what steps would the company  
12 take to deliver additional conservation -- conservation  
13 benefits for customers.

14 A. That -- it's kind of -- your -- the  
15 Q&A you're reading is in result of the follows -- the  
16 follow -- the previous page Q&A and which is discussing  
17 the incentive program. It's not outlining additional  
18 steps. It's -- it's part of the incentive program  
19 section.

20 Q. Yes. I -- I know. I'm asking what --  
21 what -- what are the company's plans for delivering those  
22 additional benefits.

23 A. It's not plans. It's benefits. And  
24 like -- and as I said, it refers to the previous page of  
25 the -- the positive and negative revenue incentive program



1                   16-W-0130 - October 5, 2016 - Suez Water  
2 effect on the rebate program you're saying.

3                   A.    I don't understand the question.

4                   Q.    Well, you -- I thought you said it's -  
5 - it's up to the customer to take the rebate.

6                   A.    The customer -- we would want to  
7 change a toilet and they wanted to participate in a toilet  
8 rebate or a washing machine rebate or a shower head  
9 rebate, they would have to want to apply for that and take  
10 advantage of that.

11                  Q.    Well, does the company have any role  
12 in the rebate program?

13                  A.    Besides -- as -- role as what, beside  
14 -- funding role? What -- what -- what role do you -- are  
15 you anticipating?

16                  Q.    Okay. Well, maybe you can describe  
17 for me the rebate program and how -- how will the  
18 customers learn of the rebate program?

19                  A.    (Distant) Well, the company -- the  
20 company will try to stimulate the rebate program through  
21 various efforts, including -- including marketing, working  
22 on the same platform that Orange Rockland is on,  
23 communications in order to stimulate interest in the  
24 rebate program.

25                  Q.    Okay. So what will the company do

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 differently from what type of stimulation you're talking  
3 about for the -- to achieve the 1.0 MGD to achieve 1.5  
4 MGD?

5                   A.     This -- this question is -- is  
6 something that, you know -- in this situation, you know,  
7 we can have a back and forth discussion on something like  
8 this with generalities. But the company didn't testify on  
9 -- on this topic, and although I can give, you know, some  
10 general responses, you know, it's not something that we  
11 have specifically done.

12                                 We have laid out a very careful and  
13 methodical plan to reach -- to reach our goal and, you  
14 know, we have incentives to go beyond that. But the  
15 company has not, at this point in time, put together  
16 concrete plans how to get there. Our focus is primarily  
17 on -- on the one.

18                   Q.     Okay.

19                                 A.L.J. PHILLIPS: Mr. Rigberg, is this  
20 a good point to take a break or?

21                                 MR. RIGBERG: I'm almost done, your  
22 Honor.

23                                 A.L.J. PHILLIPS: Like, almost as in  
24 15 minutes, because I've already made people go well  
25 beyond the -- the ordinary limits of -- I don't want

1           16-W-0130 - October 5, 2016 - Suez Water  
2 to say it, but one of our judges said we really  
3 shouldn't go beyond, like, one and a half and two  
4 hours and I've -- I've violated that.

5           MR. RIGBERG: Well, your Honor, the --  
6 the NFG --.

7           A.L.J. PHILLIPS: But I don't want to  
8 cut you off if you feel like you need to continue.

9           MR. RIGBERG: Yeah, I'd like to  
10 continue because at 2:00 we have to go to the NFG  
11 hearing.

12           A.L.J. PHILLIPS: Okay. About how  
13 much more time do you have?

14           MR. RIGBERG: About 15.

15           A.L.J. PHILLIPS: Okay. I'm -- I'm  
16 going to hold you to that.

17           MR. RIGBERG: Okay. And then we'll  
18 take a break, if we need to.

19           A.L.J. PHILLIPS: I have 12:26.

20 BY MR. RIGBERG: (Cont'g)

21           Q. All right. Turning to Page 33, Lines  
22 7 through 12, there's a reference to -- let's see --  
23 there's a reference there to how the company will promote  
24 the conservation program. Do you see that?

25           A. Uh-huh.

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2 Q. And although it's not mentioned right  
3 here, I think in the joint proposal there's a discussion  
4 of -- of translating the conservation outreach materials  
5 into Spanish, Yiddish and Creole. Is that correct?

6 A. Yes, that's correct.

7 Q. Okay. So is the company -- does the -  
8 - just putting aside the conservation program for the --  
9 for other outreach and education materials that the  
10 company has, are they also translated into other languages  
11 than English?

12 A. The articles to be translated are the  
13 conservation outreach that are outlined in the joint  
14 proposal.

15 Q. Okay. And no other outreach  
16 materials, general education and outreach materials the  
17 company uses are translated into any other languages?

18 A. The -- or -- I can -- the same answer  
19 I just gave a minute ago. They are -- the ones that are  
20 incorporated are in the joint proposal. That's -- those  
21 are the only ones.

22 Q. Those are the only ones.

23 A. Yes.

24 Q. Okay. Okay. Now, Appendix 3, Page 5  
25 of the patch of the joint proposal has a proposed new

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 tariff language regarding willful waste of water. Do you  
3 remember that?

4                   (Exhibit 2 is marked for identification.)

5                   A.    Okay. Go ahead.

6                   Q.    Okay. So -- .

7                   A.L.J. PHILLIPS: Wait one second,  
8 please. Appendix 3?

9                   MR. RIGBERG: Appendix 3, Page 5.

10                  A.L.J. PHILLIPS: Thank you.

11                  Oh, please proceed.

12 BY MR. RIGBERG: (Cont'g)

13                  Q.    Okay. So I assume that -- is it  
14 correct that the company will -- will send an affected  
15 customer a letter advising them that -- of some problem  
16 that the company views as a willful waste of water?

17                  A.    Correct.

18                  Q.    Okay. And -- and what languages will  
19 those letters be written?

20                  A.    The same language as the rest of our  
21 customer communications are written in.

22                  Q.    So that would be just English?

23                  A.    At this time, yes.

24                  Q.    Okay. Now, how will you handle a  
25 situation where the dwelling is inhabited by renters who

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 have no control over the -- the -- the property and cannot  
3 fix the -- the -- the leak?

4                   A.    As -- do you mean -- by -- well,  
5 renters, what kind of dwelling do you mean? A house or an  
6 apartment building?

7                   Q.    Oh, like someone -- say there's a --  
8 either a single or multifamily dwelling that the people  
9 living there do not own the property and there is a -- a  
10 leak on the property and the land -- the landlord refuses  
11 to fix it. So -- so would the company then -- how will  
12 the company respond to that situation?

13                  A.    No. A multifamily would have to be  
14 responded to in the same way that any multifamily shutoff  
15 would have to be under the public service law.

16                  Q.    Okay. So how does this tariff  
17 language comport with the public service law in that  
18 situation?

19                  A.    Because it's -- it gives us the -- the  
20 shutoff for willful waste of water is -- would have to be  
21 -- would have to be under -- we assume the provisions of  
22 the shutoff.

23                  Q.    Okay. So how does it -- how does --  
24 what is that regulation that you would follow when -- if -  
25 - if renters have no control over the -- the leaking

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2 equipment?

3                   A.     Just assume that as renters have no  
4 control over a landlord with a single meter not paying  
5 their bill, they can enjoin together to pay for that bill,  
6 and we cannot shut them off. I would assume this would  
7 work the same way.

8                   Q.     I couldn't understand your question.

9                   A.L.J. PHILLIPS: I'm sorry. I'm just  
10 looking at this, and it says "whenever leakage occurs  
11 on pipes and facilities owned by the customer."

12                  THE WITNESS: Uh-huh.

13                  MR. RIGBERG: Uh-huh.

14                  A.L.J. PHILLIPS: Right? You're  
15 talking about when it's not owned by the customer.  
16 Is that correct?

17                  MR. RIGBERG: Right. I'm just --.

18                  A.L.J. PHILLIPS: Okay. Just wanted  
19 to clarify.

20                  MR. RIGBERG: Yep.

21                  A.L.J. PHILLIPS: Thank you.

22                  MR. RIGBERG: Yep.

23                  A.     Generally for a multifamily building,  
24 the service line is owned by the landlord, not the -- not  
25 the tenants who are generally, in our service territory,

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2 individually metered.

3 BY MR. RIGBERG: (Cont'g)

4                   Q.    Okay

5                   A.    Not the landlord.

6                   Q.    But let's suppose, for instance, you  
7 have an individual -- you have a single meter.

8                   A.    Uh-huh.

9                   Q.    And it's a multifamily dwelling.

10                  A.    That would be the landlord's  
11 responsibility for the meter, as well.

12                  Q.    And the landlord lives in one of --  
13 one of the units in that building but refuses to fix the  
14 leak.  Would you then turn off the water to the entire  
15 building?

16                  A.    I think we're getting into  
17 hypotheticals here.

18                  Q.    That's correct.

19                  A.    That would have to be taken up on a  
20 case-by-case basis.

21                  Q.    Okay.  All right.  Turning to your  
22 rebuttal testimony --.

23                               A.L.J. PHILLIPS:  Can I just please  
24                               plead again?  If you're going to switch to rebuttal,  
25                               this might be a good time to break.  And I will allow

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2 -- I will allow you --

3 MR. RIGBERG: All right. That's fine.

4 A.L.J. PHILLIPS: -- to continue to  
5 cross. But I need a break as well.

6 MR. RIGBERG: Okay.

7 A.L.J. PHILLIPS: So an hour break for  
8 lunch. Thank you very much for your accommodation,  
9 Mr. Rigberg.

10 (Off the record)

11 A.L.J. PHILLIPS: We're back on the  
12 record. But just before you start, I wanted to  
13 provide clarification. I realized over the break  
14 that I may have referred to the notice for this  
15 hearing as being issued on September 8th. It was  
16 actually issued on September 21st, so I just want to  
17 clarify that. I think I was looking at a different  
18 notice. So with that, please proceed.

19 MR. RIGBERG: Thank you, your Honor.

20 Good afternoon, panel.

21 THE WITNESS: (Michaelson) Good  
22 afternoon.

23 BY MR. RIGBERG: (Cont'g)

24 Q. Please turn to your rebuttal  
25 testimony. If you could look at Page 3, Lines 3 through

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2 5, do you -- do you see where you state that the joint  
3 proposal reflects a careful balancing of competing  
4 interests?

5                   A.     (Michaelson) Yes.

6                   Q.     Could you give an example of -- of  
7 some of the competing interests that were carefully  
8 balanced in the joint proposal?

9                   A.     ROE, capital structure, certain  
10 expense allowances.

11                  Q.     Okay. And anything else? Those are  
12 the only examples you have?

13                  A.     You asked for some examples.

14                  Q.     Okay. Are there any examples related  
15 to programs or policies?

16                  A.     So with the SIC program, we had  
17 originally proposed more projects, and they were scaled  
18 back after staff's review.

19                  Q.     Okay. So when -- in writing this  
20 sentence, were you thinking of -- of -- of the interest of  
21 the company and staff or all of the parties in the case?

22                  A.     I'm sorry. Can you say that again?

23                  Q.     Yeah. In -- in -- in writing this  
24 sentence, were you thinking of the interests of all of the  
25 parties in the case or was -- or only the interest of

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2 staff and the company?

3                   A.     It was company, staff, and any  
4 potential parties that would sign the JP.

5                   Q.     Okay.  Then in -- in Line 7, you state  
6 "the interveners almost uniformly seek to advance narrow  
7 areas of interest."  Do you see that?

8                   A.     Yes.

9                   Q.     Okay.  Using PULP as an example, how  
10 would you -- would you say that we have a narrow interest?

11                  A.     It's not what the sentence says.

12                  Q.     Please repeat your answer.  I didn't  
13 hear it.

14                  A.     That's not what the answer states.

15                  Q.     Okay.  Okay.  What -- well -- sorry.  
16 (Cell phone ringing.)

17                             In writing this -- in -- well, so you  
18 were not referring to PULP in writing this sentence?

19                  A.     I believe this sentence and answer  
20 stands for itself.

21                  Q.     Well, I'm asking what -- what you mean  
22 by "the interveners almost uniformly seek to advance  
23 narrow areas of interest."  In terms of PULP, what -- what  
24 are our narrow areas of interest?

25                  A.     I still think you're interpreting that

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2 sentence incorrectly.

3                   Q.    Okay.  So please explain how -- what -  
4 - what is the correct interpretation of that sentence?

5                   A.    That sentence states that there are  
6 areas, narrow areas of the case that all of the  
7 intervening parties focused on.

8                   Q.    Okay.  So please apply that correct  
9 interpretation to PULP as a party.

10                  A.    All right.  So the -- some of the  
11 topics that PULP identified was low income, conservation,  
12 Haverstraw (phonetic).  This is on the responsive -- oh,  
13 I'm sorry.  Give me one second.

14                  Okay.  Sorry.  So as I said, PULP had  
15 identified several areas.  Among them were low income,  
16 non-revenue water, conservation program, for example.

17                  (Exhibit 3 is marked for identification.)

18                  Q.    Okay.  Did PULP also discuss ROE and  
19 SIC and NRW as well?

20                  A.    I don't remember offhand.

21                  Q.    Now, turning to Page 4, Line 17,  
22 starting with -- and then going on to Page 6, Line 6, you  
23 see your discussion about the support for the joint  
24 proposal.  Do you see that section?

25                  A.    Uh-huh.

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2 Q. Now, focusing first on Lines --  
3 starting at Line 17 on Page 4, you say "The carefully  
4 crafted consensus between staff, the company, and other  
5 signatory parties that the joint proposal represents, the  
6 outcome of many inner relatedly compromises among the  
7 joint proposal's signatory parties." Do you see that?

8 A. Yes.

9 Q. All right. So -- so did the Rockland  
10 Business Association or Mr. Degenshein participate in  
11 settlement negotiations?

12 A. No.

13 Q. Okay. So -- so were they part of the  
14 carefully crafted compromise that you're relating to --  
15 referring to here?

16 A. No.

17 Q. Okay. Is -- is -- do you know if --  
18 if Suez is a member of the Rockland Business Association?

19 A. Yes.

20 Q. Okay. And do you know what level of  
21 membership Suez is with -- with the Rockland Business  
22 Association?

23 A. Not off the top of my head. I would  
24 have to look.

25 Q. Okay. Would you take it subject to

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2 check that the company is -- is at the -- the Diamond  
3 level partner category, which appears to be the highest  
4 level category of support for the Rockland Business  
5 Association?

6                   MR. ALESSI: Your Honor, I -- I --  
7 I've allowed -- I'm going to object to this now  
8 continued line of questioning, and here's the reason.  
9 The -- the -- it's on relevancy grounds.

10                   The -- your Honor has already ruled on  
11 their ability to intervene in this matter. That's  
12 number one. Also, Mr. Rigberg was asking questions  
13 with regard to initial testimony that was prepared  
14 before they intervened in this proceeding. So I  
15 wanted to, you know, give a little leeway to see  
16 where this is going, but I don't understand the  
17 relevance of this question once your Honor has  
18 granted their intervention.

19                   MR. RIGBERG: May I respond, your  
20 Honor?

21                   A.L.J. PHILLIPS: Yes.

22                   MR. RIGBERG: Well, first, I'm talking  
23 about rebuttal testimony, which I'm -- I'm reading  
24 from what you guys wrote, which you -- the statement  
25 says that the Rockland Business Association and the

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2           support of the Rockland Business Association and Mr.  
3           Degenshein indicate rates of greater support for the  
4           joint proposal. And so I'm not challenging the  
5           ruling that these new -- new folks are parties. I'm  
6           just questioning, you know, whether the -- you know,  
7           one of the elements of -- of looking at a joint  
8           proposal is whether the compromise is among normally  
9           adversarial parties. So I am attempting to -- to  
10          probe whether the Rockland Business Association or  
11          Mr. Degenshein are normally adversarial parties.

12                   MR. ALESSI: your Honor, with that  
13           explanation and that he's not challenging your  
14           ruling, I withdraw my objection.

15                   A.L.J. PHILLIPS: Thank you.

16                   Please proceed.

17 BY MR. RIGBERG: (Cont'g)

18                   Q.    Would you agree subject to check that  
19           Suez is -- is a member -- is a member or supporter or a  
20           partner of the Rockland Business Association at the  
21           highest level of -- of membership?

22                   A.    (Graziano) I -- as far as the level,  
23           I don't know off the top of my head, but yes, we are a  
24           member.

25                   Q.    Okay.

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2 A. I can't -- I don't recall right now.  
3 I'm sorry.

4 Q. Is the panel -- does the panel have  
5 any knowledge whether the company has ever engaged Mr.  
6 Degenshein for his art -- architectural services?

7 A. Yes.

8 Q. Okay. Thank you.

9 All right. If you turn way -- Let's  
10 see. I think turn to Page 31, Lines 16 through 21, could  
11 you explain in -- in further detail why it's not practical  
12 to translate any regular outreach and education materials  
13 into Spanish, Yiddish, or Creole?

14 A. You have to excuse me, sorry. It  
15 would -- it's -- as stated on Line 20 and 21, there --  
16 there's a potential cost implications for the ratepayer.  
17 It's in the answer.

18 Q. Right. But the company would recover  
19 those costs, correct, on ratepayers?

20 A. It's -- I -- it's up to -- subject to  
21 a ruling, yes or no.

22 Q. In general, in general. But if -- so  
23 if the representatives or -- or advocates of residential  
24 consumers asked that the company do what other utilities  
25 do in the state and provide some documents in other than

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2 English, why would the company be resistant to that?

3                   MR. ALESSI: Objection to form of the  
4 question, your Honor. It's introduction --  
5 attempting introduction of evidence in the -- in his  
6 question as to what other utilities do.

7                   A.L.J. PHILLIPS: Sustained.

8 BY MR. RIGBERG: (Cont'g)

9                   Q. Why -- why would the company object to  
10 translating any customer information into languages other  
11 than, you know, other than English, such as Spanish,  
12 Creole, and Yiddish?

13                  A. We've agreed to translate certain  
14 materials upon request, as outlined in the joint proposal,  
15 into four different languages.

16                  Q. Right. That -- that's the  
17 conservation material. Correct?

18                  A. That's what's contained in the joint  
19 proposal, yes.

20                  Q. Why -- I'm asking why the company  
21 would not translate other material, like shutoff and  
22 termination notices, in languages that non -- non-English  
23 speakers could understand?

24                  A. I don't take it as -- as an objection.  
25 I take it as, again, practicality, as you don't -- I just

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2 think -- don't think it's practical.

3                   Q.     And you don't think it's practical  
4 even though it's common among -- around the state?

5                   MR. ALESSI: I'm going to object again  
6 to the form of the question, attempting to introduce  
7 evidence in the question about what is common in the  
8 state.

9                   A.L.J. PHILLIPS: Sustained.

10                  MR. RIGBERG: your Honor, it's -- it's  
11 a matter of public record that you can look on DMM  
12 all the utilities in the state translate some of  
13 their material into languages other than English.  
14 It's not -- not a -- it's not evidence that's not  
15 known to the world.

16                  A.L.J. PHILLIPS: Right. I think the  
17 problem, though, in your own statement of response is  
18 you said some of them translate some materials, I  
19 believe. So I think what the concern is, is there's  
20 not clarification as to the scope of how many of them  
21 do and what documents, how expansive that translation  
22 is for those other companies. It is very vague.

23                  I think perhaps, too, it might be  
24 something, since you say it's all public record and  
25 public knowledge, that perhaps you could brief.

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2 MR. RIGBERG: No. I'm trying to -- .

3 A.L.J. PHILLIPS: But you can -- you -  
4 - you're free to --.

5 MR. RIGBERG: -- object to doing any  
6 translation of even one document.

7 A.L.J. PHILLIPS: I don't think that  
8 they said that. I believe he said that he didn't  
9 actually have an objection but that there were  
10 practicality concerns. But you're free to revise  
11 your question to avoid the objection that was stated  
12 because the objection is -- is sustained.

13 BY MR. RIGBERG: (Cont'g)

14 Q. If all the parties in the case agreed  
15 that the company should recover the cost of translation,  
16 would the company agree to translate outreach and  
17 education materials selected by staff into languages other  
18 than English?

19 A. There's already a provision in the  
20 joint proposal that says certain materials for the  
21 conservation and outreach and education, as requested by  
22 staff, will be translated into other languages upon  
23 request.

24 Q. That's not my question. I'm asking  
25 about the general outreach and education materials.

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2 A. That's -- doesn't -- that's not  
3 contained in the joint proposal.

4 Q. Would the company agree to do that?

5 A. We have an agreed-upon joint proposal  
6 already that we're discussing.

7 Q. So is your answer no?

8 A. Didn't answer either way.

9 Q. Well, okay. All right. Turning to  
10 Page 43, Lines 15 through 17.

11 (Exhibit 4 is marked for identification.)

12 You see where the panel says  
13 "furthermore, low-income customers already have access to  
14 company Suez Cares budget, a program as well as budget  
15 billing"?

16 A. Uh-huh.

17 Q. Do you see that? So does the panel  
18 believe that its Suez Cares program is adequate to address  
19 the needs of its low-income customers?

20 A. Yeah. Suez Cares program is the  
21 program that we have to help low-income customers,  
22 correct.

23 Q. Do you believe that -- that's an  
24 adequate amount of help?

25 A. Yes, we do.

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2 Q. You do. Okay. And how many people  
3 did the company -- did Suez Cares serve in 2015?

4 A. I don't have that in front of me.

5 Q. Okay. Would you agree that it was 64  
6 people?

7 A. No. I wouldn't -- don't have the  
8 number in front of me.

9 Q. Okay. Could I ask your attorneys or  
10 various attorneys to provide a response to Staff 101?

11 A.L.J. PHILLIPS: Are you -- are you  
12 referring to a Staff IR?

13 MR. RIGBERG: Staff IR 101.

14 A.L.J. PHILLIPS: Does anyone know  
15 this -- when that was served and the status of it?

16 MR. RIGBERG: I can read the other  
17 response, if that would help, if I just read a  
18 response in the record.

19 A.L.J. PHILLIPS: So it was already  
20 provided then?

21 MR. RIGBERG: Yes.

22 A.L.J. PHILLIPS: Oh. I thought you  
23 just asked --.

24 MR. ALESSI: He wants to prove, your  
25 Honor, just --.

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A.L.J. PHILLIPS: Sorry. Go ahead.

MR. RIGBERG: I'm asking if they would  
take subject to check --.

MR. ALESSI: Oh, that was a different  
-- you know, you asked if we would provide you with,  
and that's what confused me, so.

MR. RIGBERG: Okay. Sorry for the  
confusion.

A.L.J. PHILLIPS: Right. So you  
already have the answer?

MR. RIGBERG: I do.

A.L.J. PHILLIPS: Correct?

MR. RIGBERG: Okay.

A.L.J. PHILLIPS: Okay.

MR. RIGBERG: I'm surprised they don't  
have the answer.

A.L.J. PHILLIPS: You can --.

MR. ALESSI: your Honor, I'm going to  
object to --.

A.L.J. PHILLIPS: Wait, wait, wait.

MR. RIGBERG: I'm asking if they would  
take subject --

A.L.J. PHILLIPS: I know.

MR. RIGBERG: -- to check --.

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2 A.L.J. PHILLIPS: Did you bring  
3 sufficient -- why -- why would they take subject to  
4 check, though, if you have the answer and you can  
5 provide it for them, have it marked for  
6 identification and have them just answer it?

7 MR. RIGBERG: That's inefficient, your  
8 Honor.

9 A.L.J. PHILLIPS: It is?

10 MR. RIGBERG: Yes.

11 A.L.J. PHILLIPS: We -- we would have  
12 the answer today, though.

13 MR. RIGBERG: We have the answer right  
14 here.

15 A.L.J. PHILLIPS: Right. But --

16 MR. RIGBERG: And they can --.

17 A.L.J. PHILLIPS: -- but did you --.

18 MR. RIGBERG: They have it. They can  
19 read it to them. I'll just read the answer into the  
20 record.

21 A.L.J. PHILLIPS: I don't -- I don't  
22 think they do have it, though. That's the problem.

23 MR. RIGBERG: Okay. I will -- .

24 MR. ALESSI: You're correct, your  
25 Honor. I do not have it.

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2 A.L.J. PHILLIPS: Okay. Did you bring  
3 sufficient copies for everyone?

4 MR. RIGBERG: No, because that's a --  
5 that's a waste of paper. It's a waste of paper and  
6 it's -- if somebody wants to make copies, they can.  
7 The answer's simple. In 2015, they served 64 people  
8 --.

9 MR. ALESSI: I'm going to object, your  
10 Honor, again. And I would also say that with regard  
11 to copies, that's your Honor's ruling, whether Mr.  
12 Rigberg finds it a waste or not. That is your  
13 Honor's ruling. We have followed the ruling, and we  
14 brought copies of documents we intend to provide  
15 around.

16 MR. RIGBERG: your Honor, there is no  
17 -- it's a one-line answer. Why would I -- I had no  
18 intent to introduce this response. I assumed the --  
19 I assume the panel --

20 A.L.J. PHILLIPS: But you're -- you're  
21 --.

22 MR. RIGBERG: -- would know about --

23 A.L.J. PHILLIPS: You're --.

24 MR. RIGBERG: -- its company's  
25 operations.

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2 A.L.J. PHILLIPS: Mr. Rigberg, how  
3 many --.

4 MR. RIGBERG: If the panel decided not  
5 to have everybody it needed there to answer  
6 questions, that's their decision, but they should  
7 know that Suez Cares only provided support to 64  
8 people last year in 2015.

9 A.L.J. PHILLIPS: Okay. You're  
10 testifying now, number one. Number two, it is  
11 correct that I did indicate that if you wanted to  
12 have something introduced and provided as an exhibit  
13 -- you're telling me you don't want to. But if you  
14 don't want to, then you can't ask questions about it.

15 I don't think it is reasonable to ask  
16 someone to know which of the hundreds of IRs that  
17 you're going to ask questions about, which is  
18 precisely why, if you want to do that, I did ask that  
19 you bring copies, you provide them to everyone so  
20 we're all on the same page.

21 I'm not trying to make this difficult.  
22 This is something that we've done in proceedings back  
23 when I was in Counsel's office. So it's been  
24 standard practice for a very long time. And, again,  
25 I --.

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2 MR. RIGBERG: But it's also standard  
3 practice to ask a witness to take something subject  
4 to check, and you allowed that earlier. So I was  
5 asking --.

6 A.L.J. PHILLIPS: I did. But that was  
7 a question of math. It was a question of adding up  
8 some numbers. It wasn't a quest -- I don't think it  
9 was a question of taking the answer to an IR subject  
10 to check. And if you have that answer, I -- I guess  
11 --.

12 MR. RIGBERG: I can make copies, if  
13 that's really the problem.

14 A.L.J. PHILLIPS: I -- I think that it  
15 is, and I actually would like you to maybe reserve  
16 your line of questioning on that IR until you are  
17 able to make questions. And I'll -- I'll allow you  
18 to ask them tomorrow. But I -- I think in fairness,  
19 you should provide them what you're looking at and  
20 asking them about. I would offer the same  
21 accommodation to your witness.

22 MR. RIGBERG: Okay. Well --

23 A.L.J. PHILLIPS: I think that's fair.

24 MR. RIGBERG: -- I -- I don't have any  
25 more questions. I just wanted to have him take

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2 subject to check the 64 people. But I'm happy to --  
3 why don't we just reserve an exhibit number for this  
4 IR and we'll just, you know, do it that way. I'll  
5 make -- I'll bring copies tomorrow.

6           A.L.J. PHILLIPS: The panel will be  
7 available again tomorrow. Please be -- do bring the  
8 copies. I'll give you an opportunity to ask your  
9 question about it provided that you've brought  
10 sufficient copies for everybody here, and we'll mark  
11 it at that point. You can ask your questions and  
12 then at the end of the day tomorrow, we'll determine  
13 what to do with it.

14           MR. RIGBERG: How -- how many copies  
15 would you recommend I bring?

16           A.L.J. PHILLIPS: Everyone who would  
17 like a copy raise your hand, please? What -- what's  
18 your count? Keep your hands up?

19           MR. RIGBERG: I'll make 30 copies, 40.  
20 How about it -- should I make 30 or 40?

21           A.L.J. PHILLIPS: One, two, three,  
22 four, five, six, seven, eight, nine, ten. Okay.  
23 Bring -- bring at least 12 copies, that way we'll  
24 observe the desire not to harm the environment and  
25 we'll -- we should have sufficient copies and people

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2 can share if necessary. So 12 copies, please.

3           MR. RIGBERG: Okay.

4           A.L.J. PHILLIPS: Thank you.

5           (Exhibit 5 is marked for the  
6 identification.)

7           A.L.J. PHILLIPS: And did you say your  
8 cross-examination was concluded?

9           MR. RIGBERG: Well, now -- I'll --  
10 I'll have more now that we're going to -- tomorrow  
11 we'll -- well, I'll ask questions about this  
12 response. That's all for today, your Honor.

13           MR. ALESSI: your Honor, I understood  
14 what Mr. Rigberg had just said was he had one  
15 question with regard, and he just wanted to get  
16 confirmation of the number. I mean, if he has more  
17 questions, so be it, but that -- that's not what I  
18 heard. And I'd appreciate for my own scheduling  
19 knowing, with your Honor's indulgence, how much time  
20 he expects for further cross of -- of the panel.

21           MR. RIGBERG: Well, I -- I can't  
22 anticipate if the -- what the panel will say when I  
23 provide this exhibit to them.

24           A.L.J. PHILLIPS: Let's go off the

25           -- .

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2 MR. RIGBERG: So that's why there  
3 might be follow-up questions.

4 A.L.J. PHILLIPS: Sorry.

5 MR. RIGBERG: I don't know if they'll  
6 object to the -- to the response. I have no idea  
7 what they're -- what they'll be saying.

8 A.L.J. PHILLIPS: So give -- oh, are  
9 you --?

10 MR. RIGBERG: I don't have any more  
11 questions now.

12 A.L.J. PHILLIPS: Okay. So give me  
13 one minute. We're going to go off the record.

14 (Off the record)

15 MR. ALESSI: Your Honor, in the  
16 interest of efficiency and as your Honor alluded to,  
17 in the interest of saving trees and of being nimble  
18 and going with the flow, if it meets with your  
19 Honor's acceptance, if Mr. Rigberg wants to give the  
20 panel the I.R. and the response and they pass it  
21 around and they look at it, and if they do that, and  
22 then Mr. Rigberg, if he doesn't have an extra copy,  
23 you know, takes -- takes back however he wants to do  
24 it, we're amenable to that, as well, so that we can  
25 move it along tomorrow. But whatever your Honor will

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2 like. We can do it either way.

3                   A.L.J. PHILLIPS: Mr. Rigberg, does  
4 that work for you?

5                   MR. RIGBERG: Exactly, your Honor.

6                   A.L.J. PHILLIPS: Okay. Mr. Rigberg  
7 is handing his copy to the panel, and they are going  
8 to look at it and let me know when they're ready.

9                   So could you please repeat the  
10 question?

11                  BY MR. RIGBERG: (Cont'g)

12                  Q. Panel, would you agree that in 2015  
13 Suez Cares provided grants to 64 participants?

14                  A. (Graziano) Correct.

15                  Q. Okay. Thank you.

16                  MR. RIGBERG: That's all the question  
17 I have, your Honor.

18                  A.L.J. PHILLIPS: Thank you.

19                  I believe -- okay. I believe at this  
20 point the parties wanted to take a break and allow  
21 Mr. Peterson to go? Is that correct or not?

22                  MR. PETERSON: Yes, your Honor.

23                  A.L.J. PHILLIPS: Okay. And he's  
24 here?

25                  MR. ALESSI: And an off-the-record

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2 discussion. Mr. Peterson is here.

3                   A.L.J. PHILLIPS: Okay. Great.

4                   MR. ALESSI: And the -- the company  
5 has kindly consented to his taking the stand now, as  
6 are the other parties. Thank you all.

7                   A.L.J. PHILLIPS: Okay. So what we  
8 will do is the staff panel is excused for now, but  
9 not excused for purposes of the hearing. And we'll  
10 take a little while to make this change, and then  
11 we'll proceed with your witness.

12                   (Off the record)

13                   MR. RIGBERG: Your Honor, like to call  
14 their witness, Dave Peterson to testify.

15                   A.L.J. PHILLIPS: Okay. Mr. Peterson,  
16 could you please rise and raise your right hand?

17                   Do you swear or affirm that the  
18 testimony you will give will be the truth, the whole  
19 truth, and nothing but the truth?

20                   MR. PETERSON: Yes, I do.

21                   DAVID PETERSON; Sworn

22                   A.L.J. PHILLIPS: And could you please  
23 state your name for the record?

24                   THE WITNESS: My name is David E.  
25 Peterson, P-E-T-E-R-S-O-N.

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2 A.L.J. PHILLIPS: Okay. Counsel?

3 MR. DICHTER: Thank you, your Honor.

4 DIRECT EXAMINATION

5 BY MR. DICHTER:

6 Q. Good afternoon, Mr. Peterson.

7 A. Good afternoon.

8 Q. Are you the same Dave Peterson that  
9 prepared and filed 14 pages of pre-filed testimony in this  
10 case?

11 A. Yes, I am.

12 Q. Was that testimony prepared by you or  
13 under your direction or supervision?

14 A. Yes, it was.

15 Q. Do you have any changes to your pre-  
16 filed testimony?

17 A. No.

18 Q. If I were to ask you the questions set  
19 forth in your pre-filed testimony today, would your  
20 answers be the same?

21 A. Yes, they would.

22 Q. And you adopt this testimony as your  
23 sworn testimony in this case?

24 A. Yes, I do.

25 MR. DICHTER: Your Honor, I would ask

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that this testimony be copied into the record as if  
given orally.

**I. INTRODUCTION**

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**Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

A. My name is David E. Peterson. I am a Senior Consultant employed by Chesapeake Regulatory Consultants, Inc. ("CRC"). Our business address is 1698 Saefern Way, Annapolis, Maryland 21401-6529. I maintain an office in Dunkirk, Maryland.

**Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE IN THE PUBLIC UTILITY FIELD?**

A. I graduated with a Bachelor of Science degree in Economics from South Dakota State University in May of 1977. In 1983, I received a Master's degree in Business Administration from the University of South Dakota. My graduate program included accounting and public utility courses at the University of Maryland.

In September 1977, I joined the Staff of the Fixed Utilities Division of the South Dakota Public Utilities Commission as a rate analyst. My responsibilities at the South Dakota Commission included analyzing and testifying on ratemaking matters arising in rate proceedings involving electric, gas and telephone utilities.

Since leaving the South Dakota Commission in 1980, I have continued performing cost of service and revenue requirement analyses as a consultant. In December 1980, I joined the public utility consulting firm of Hess & Lim, Inc. I remained with that firm until August 1991, when I joined CRC. Over the years, I have analyzed filings by electric, natural gas, propane, telephone, water,

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1 wastewater, and steam utilities in connection with utility rate and certificate  
2 proceedings before federal and state regulatory commissions.

3  
4 **Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY IN PUBLIC**  
5 **UTILITY RATE PROCEEDINGS?**

6 A. Yes. I have presented testimony in 154 other proceedings before the state  
7 regulatory commissions in Alabama, Arkansas, California, Colorado,  
8 Connecticut, Delaware, Indiana, Kansas, Maine, Maryland, Montana, Nevada,  
9 New Jersey, New Mexico, New York, Pennsylvania, South Dakota, West  
10 Virginia, and Wyoming, and before the Federal Energy Regulatory Commission.

11  
12 Collectively, my testimonies have addressed the following topics: the appropriate  
13 test year, rate base, revenues, expenses, depreciation, taxes, capital structure,  
14 capital costs, rate of return, cost allocation, rate design, life-cycle analyses,  
15 affiliate transactions, mergers, acquisitions, and cost-tracking procedures.

16  
17 In addition, I have twice testified before the Energy Subcommittee of the  
18 Delaware House of Representatives on the issues of consolidated tax savings and  
19 tax normalization. Also, I have presented seminars on public utility regulation,  
20 revenue requirements, cost allocation, rate design, consolidated tax savings,  
21 income tax normalization and other ratemaking issues to the Delaware Public  
22 Service Commission, to the Commissioners and Staff of the Washington Utilities  
23 and Transportation Commission, and to the Colorado Office of Consumer  
24 Counsel.

1 **II. PURPOSE OF TESTIMONY**

2  
3 **Q. HAVE YOU TESTIFIED IN OTHER PROCEEDINGS BEFORE THE**  
4 **NEW YORK PUBLIC SERVICE COMMISSION (“COMMISSION”)?**

5 A. Yes, I have. I submitted testimony in a base rate proceeding initiated by United  
6 Water Westchester Inc. in Case 13-W-0539 et al. on behalf of certain municipal  
7 intervenors.

8  
9 **Q. ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

10 A. My appearance in this proceeding is on behalf of the Municipal Intervenors. This  
11 group consists of the Towns of Clarkstown, Haverstraw and Stony Point and the  
12 Rockland County Solid Waste Management Authority, both for their own  
13 accounts and for those of its residential and commercial constituents residing in  
14 their communities.

15  
16 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
17 **PROCEEDING?**

18 A. I was asked to review and to comment on the Joint Proposal, which is essentially  
19 a settlement agreement between the Company and the New York Department of  
20 Public Service Staff (“Staff”), as it relates to the ratemaking treatment for  
21 Haverstraw Water Supply Project (“HWSP” or simply “the Project”) costs. I am  
22 also recommending an alternative ratemaking treatment for the Company’s  
23 HWSP costs that more equitably balances the interests of the Company and its  
24 ratepayers and better supports the public interest in this matter.

25  
26 **Q. WHAT HAVE YOU REVIEWED IN PREPARATION FOR YOUR**  
27 **TESTIMONY?**

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1 A. I reviewed the Company's Direct and Rebuttal Testimonies filed earlier in this  
2 proceeding as it relates to the HWSP issue and the Staff's Answer Testimony on  
3 the same issue. I also carefully reviewed the September 2, 2016 Joint Proposal  
4 and the testimonies of the Company, the Staff, Mr. Daniel P. Duthie representing  
5 the Municipal Consortium, Mr. Robert Tompkins representing himself, and Mr.  
6 Richard Berkley of the Public Utility Law Project of New York, all relating to the  
7 ratemaking treatment of HWSP costs reflected in the Joint Proposal.

8

9

10 **III. HAVERSTRAW WATER SUPPLY PROJECT COSTS**

11

12 **Q. WHAT RATEMAKING TREATMENT FOR THE HWSP COSTS DID**  
13 **SUEZ INITIALLY PROPOSE IN THIS PROCEEDING?**

14 A. Suez initially proposed to transfer \$54.5 million to a regulatory asset account and  
15 to begin recovering that amount through a 20-year amortization, with the net-of-  
16 tax unrecovered balance included in rate base. Suez claimed that its actual costs  
17 associated with the HWSP were \$54.1 million through December 31, 2015, and  
18 estimated an additional \$400,000 would be spent post-2015 on abandonment-  
19 related activities. Suez also proposed to defer for subsequent rate recovery any  
20 amounts spent exceeding the \$400,000 estimate.

21

22 **Q. WHAT WAS THE STAFF'S RESPONSE TO SUEZ'S REQUESTS**  
23 **RELATING TO THE HWSP?**

24 A. Staff witness Mr. Christopher Simon recommended reducing the \$54.1 million  
25 Project cost allowance requested by Suez by \$1,047,903 and shortening the  
26 amortization period to 15 years rather than 20 years.

27

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1 **Q. DID SUEZ FILE REBUTTAL TESTIMONY TO MR. SIMON'S**  
2 **RECOMMENDATIONS?**

3 A. Yes. Suez witnesses claimed that Mr. Simon had double-counted some of the  
4 amounts in Staff's proposed disallowance. Suez revised its requested recovery  
5 amount to \$54,034,836. Suez accepted Mr. Simon's recommendation to shorten  
6 the amortization period to 15 years.

7  
8 **Q. WHAT REGULATORY TREATMENT OF THE HWSP COSTS WAS**  
9 **ULTIMATELY REFLECTED IN THE JOINT PROPOSAL?**

10 A. The Joint Proposal includes rate allowances for an amortization of the HWSP  
11 costs based on a total recoverable balance of \$53,677,964, a 15-year amortization  
12 period, and rate base inclusion of the unamortized balance, net of tax.

13  
14 **Q. WHAT SUPPORT DID SUEZ AND THE STAFF PROVIDE FOR THE**  
15 **TREATMENT OF HWSP COSTS IN THE JOINT PROPOSAL?**

16 A. Both Suez and the Staff filed testimonies in support of the Joint Proposal. Suez's  
17 Joint Proposal Panel stated the following in support of the HWSP recovery plan  
18 reflected in the Joint Proposal:

19 "The treatment in the Joint Proposal recognizes that the  
20 Commission pursued the HWSP to further comply with  
21 Commission orders and that it has acted prudently in that pursuit  
22 and was ordered to abandon the project. The treatment included in  
23 the Joint Proposal also avoids substantial financial harm to the  
24 Company, allowing it to focus on more efficiently operating its  
25 system, improving customer service and enhancing its  
26 Conservation and Efficiency Program, all of which are in the  
27 public interest. Furthermore, the use of a shorter amortization  
28 period of 15 years, instead of 20 years, results in customer  
29 savings."<sup>1</sup>

30  

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<sup>1</sup> Initial Testimony of Suez Water New York Inc. Joint Proposal Panel, NY PSC Case 16-W-0130, filed September 14, 2015, page 14.

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1 The Staff also filed testimony on the HWSP issue. For the most part, Staff’s  
 2 testimony discussed the audit procedures it relied on to verify the invoices it  
 3 reviewed relating to Suez’s HWSP expenditures. The Staff Panel also provided  
 4 the following statement in support of the ratemaking treatment for the HWSP  
 5 costs that is reflected in the Joint Proposal:

6 “The Company proposed to amortize the costs over 20 years. The  
 7 JP reflects Staff’s proposed 15-year amortization. Staff believes  
 8 that the 15-year amortization period is ideal, because it strikes a  
 9 balance between interest cost savings and mitigating the customer  
 10 bill impact.”<sup>2</sup>

11  
 12 **Q. WHAT IS YOUR UNDERSTANDING OF THE COMMISSION’S**  
 13 **SETTLEMENT GUIDELINES?**

14 A. The Staff’s JP Panel Testimony explains the Commission’s Guidelines.<sup>3</sup>  
 15 Basically, Staff’s testimony is that the Joint Proposal must be just and reasonable  
 16 and in the public interest. Further, Staff explained that judging whether a  
 17 settlement agreement is in the public interest involves substantive consideration of  
 18 the following:

- 19 a. consistency with the law and regulatory economic, social and  
 20 environmental State and Commission policies;
- 21  
 22 b. whether the terms of the joint proposal compare favorably with the  
 23 likely result of a fully litigated case and produce a result within the  
 24 range of reasonable outcomes;
- 25  
 26 c. whether the joint proposal fairly balances the interests of ratepayers,  
 27 investors and long-term soundness of the utility; and
- 28  
 29 d. whether the joint proposal provides a rational basis for the  
 30 Commission’s decision.

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31  
<sup>2</sup> Prepared Testimony of Staff JP Panel, NY PSC Case 16-W-0130, filed September 14, 2016, page 29.

<sup>3</sup> Ibid., pages 14-15.

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1    **Q.    DO YOU BELIEVE SUEZ AND THE STAFF HAVE ADEQUATELY**  
2    **DEMONSTRATED THE TERMS OF THE JOINT PROPOSAL, AS IT**  
3    **RELATES THE HWSP, ARE JUST AND REASONABLE AND IN THE**  
4    **PUBLIC INTEREST?**

5    A.    No, I do not. My belief that both Suez and the Staff have failed to present a  
6    convincing case that their rate proposal for the HWSP costs is just and reasonable  
7    and in the public interest is centered on the third substantive consideration listed  
8    above, i.e., whether the joint proposal fairly balances the interests of ratepayers,  
9    investors and long-term soundness of the utility. It is my contention that Suez’s  
10   and the Staff’s proposed ratemaking treatment for the HWSP costs is completely  
11   devoid any sort of balancing of the competing interests between the Company and  
12   its ratepayers.

13  
14        Recall that in support of the Joint Proposal, the Suez Panel testified that the  
15        proposed treatment of the HWSP costs “...avoids substantial harm to the  
16        utility...”<sup>4</sup> No one can dispute this claim since the proposed treatment avoids *all*  
17        harm to the utility, not just substantial harm. In fact, the Company and its  
18        investors are better protected with the proposed treatment than they would have  
19        been if the plant has been completed and placed into service. As it now stands, if  
20        the Joint Proposal is approved, recovery for approved HWSP costs will be treated  
21        as akin to an expense allowance in the ratemaking formula with a virtual  
22        guarantee of full cost recovery, including the return on the unamortized balance.  
23        On the other hand, if the plant had been completed and placed into service, Suez  
24        would have to actually earn its cost of capital in each year over the life of the  
25        Project to receive full cost recovery. Thus, Suez and its investors are in a better  
26        position under the Joint Proposal than each would have been had the plant been

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<sup>4</sup> Initial Testimony of Suez Water New York Inc. Joint Proposal Panel, filed September 14, 2016, page 14.

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1 placed into service. But where is the counter balancing of ratepayer interest in  
2 this equation?

3  
4 Suez argues that the Joint Proposal treatment “allow[s] it to focus on more  
5 efficiently operating its system, improving customer service and enhancing its  
6 Conservation and Efficiency Program, all of which are in the public interest.”<sup>5</sup>

7 While I do not take issue that these alleged benefits are in the public interest, I  
8 disagree with the notion that these benefits result from the Joint Proposal  
9 treatment. In fact, each of the items mentioned in Suez’s testimony is part of the  
10 Company’s public service obligation and each must be advanced whether or not  
11 there is any recovery authorized for HWSP costs. Thus, Suez has not identified  
12 any *quid pro quo* or benefits to ratepayers in exchange for virtually guaranteeing  
13 full cost recovery to the Company and its investors.

14  
15 The only ratepayer benefit claimed by the Staff is the reduction in carrying costs  
16 on the unamortized balance resulting from shortening the amortization period  
17 from 20 years to 15 years. I cannot argue that cumulative interest costs will be  
18 less with a shorter amortization period, but reduced interest costs are not the only  
19 relevant ratepayer consideration. If it were, then the Staff should be arguing for a  
20 one-year amortization rather than 15 years. The Staff mentioned the tradeoff  
21 between lower carrying costs and ratepayer impact, so that would rule out a one-  
22 year amortization. But, the Staff’s analysis fails to consider the inter-generational  
23 equity concern. A carrying charge savings is not the only difference between a  
24 15-year and a 20-year amortization. The Staff fails to consider that customers  
25 over what would have been the useful life of the plant had it gone in to service  
26 will be different than customers over the 15 or 20-year period. The Company  
27 stated in its response MI-3 that the useful life would be up to 67 years. Some

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1 customers will be added to the system during that time period and other customers  
2 will be lost. That is true whether the amortization period is set at 15 or even 20  
3 years. So, it is not just a matter of interest costs, the identity of the paying  
4 customers will also change during the amortization periods. Thus, it is not certain  
5 that reducing the amortization period to 15 years will be an actual benefit to all  
6 ratepayers.

7  
8 Therefore, we are left with a Joint Proposal that essentially guarantees the  
9 Company and its investors full cost recovery for a failed project and includes only  
10 uncertain benefits for ratepayers. Moreover, the proposed ratemaking treatment  
11 for HWSP costs fails to provide the Company any incentive to control pre-  
12 construction costs in the future and, therefore, establishes a dangerous regulatory  
13 policy that can be abused by this and other utilities in the future. The Joint  
14 Proposal, on this issue, does not strike a reasonable balance of interests between  
15 the Company and ratepayers as required by the Commission's guidelines for  
16 settlement. The ratemaking treatment for HWSP costs reflected in the Joint  
17 Proposal is not just and reasonable and is not in the public interest.

18  
19 **Q. ARE THERE WAYS IN WHICH THE HWSP RATEMAKING**  
20 **TREATMENT CAN BE MODIFIED TO BETTER REFLECT THE PUBLIC**  
21 **INTEREST?**

22 **A.** Yes, there are. The proposed treatment for HWSP cost relies almost exclusively  
23 on the "prudent investment" regulatory concept. Essentially, under the prudent  
24 investment concept, costs that are deemed to have been prudently incurred are  
25 recoverable in rates. But, there are at least two other guiding regulatory principles  
26 that are being ignored in this instance.

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27  
<sup>5</sup> Ibid.

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1 First, the Joint Proposal completely ignores the “used and useful” regulatory  
2 concept. Under the used and useful regulatory concept there is a clear distinction  
3 between the roles of investors and ratepayers and that ratepayers are responsible  
4 only for the cost of completed facilities that are both used and useful to public  
5 service. Under the used and useful regulatory concept, investors are responsible  
6 for costs incurred in developing and constructing facilities designed for public  
7 service. The burden then shifts to ratepayers once the facility is placed into  
8 service. Ratepayers become responsible for returning the capital contributions of  
9 investors through rates over the useful life of the facility. If the facility is never  
10 placed into service, however, ratepayers are not responsible for reimbursing  
11 investors for failed projects, under the used and useful concept.

12  
13 The other regulatory concept that that is completely ignored in the Joint  
14 Proposal’s treatment of HWSP costs is that equity investors in a public utility are  
15 compensated for the risks they assume in undertaking the investment, including  
16 the risk of under-recover or even no recovery of certain investment, especially  
17 those investments in non-productive assets. Under rate base/rate of return  
18 regulation followed by the New York Commission and other state regulatory  
19 commissions across the country, common equity investors receive a premium  
20 above the risk-free cost of capital in the rate setting process to reflect the level of  
21 risks assumed by equity investors. Yet, by virtually guaranteeing full cost  
22 recovery of all HWSP costs, including a full return on the unamortized balance,  
23 the Joint Proposal eliminates all investment risks even though a 9.0 percent equity  
24 return allowance is included in the proposed rate allowances for HWSP costs.  
25 The 9.0 percent equity return allowance is well above the risk-free cost of capital.  
26 If all investment risks are eliminated in the ratemaking process, as they are  
27 concerning the HWSP in the Joint Proposal, the Company’s common equity  
28 investors should not be entitled to a 9.0 percent rate of return.

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1  
2 By melding together all three ratemaking concepts, i.e., prudent investment, used  
3 and useful, and investor risk, we can modify the rate treatment proposed for the  
4 HWSP costs in a way that better balances the interests of the Company and  
5 ratepayers and, thereby, further the public interest.  
6

7 **Q. PLEASE DESCRIBE THE MODIFICATIONS THAT YOU ARE**  
8 **RECOMMENDING.**

9 A. My recommended modifications are based on the notion that both the Company  
10 and ratepayers, each to some extent, must share in the recovery or loss associated  
11 with the failed HWSP. This is where a melding of the used and useful, investor  
12 risk, and prudent investment concepts come into play. The appropriate sharing  
13 mechanism for costs under the present circumstances is to provide for a  
14 systematic recovery in rates of the agreed-upon costs, except for the AFUDC-  
15 equity component, but not a full return on the unamortized balance. Rather, under  
16 my recommendation, Suez would be entitled to recover all of its costs, except for  
17 common equity return-related costs. This would necessarily exclude recovery of  
18 the previously accumulated AFUDC-equity component included in the \$53.677  
19 million beginning regulatory asset balance reflected in the Joint Proposal and no  
20 common equity return on the rate base allowance for the unrecovered balance.  
21 These two common equity return exclusions will still provide for Suez's full  
22 recovery for all of its "out of pocket" costs associated with the HWSP, including  
23 its contractual interest payment obligations to long-term debt holders. It would,  
24 however, relieve ratepayers of paying for Suez shareholder "profits" on a failed  
25 project and an unproductive regulatory asset. That is, it appropriately recognizes  
26 the inherent risks of being an equity investor, which the Commission routinely  
27 acknowledges in granting utilities an equity return allowance on utilities'  
28 productive assets. Moreover, denying recovery of the common equity return

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1 provides Suez, and other New York utilities, an essential incentive to minimize  
2 pre-construction costs, which is an important regulatory tool for the Commission.  
3 It is consistent with the prior Commission orders as to the costs of the HWSP  
4 project. The Commission directive to place such costs in a misc. debit account  
5 and finding that they were prudently incurred does not mandate the ratemaking  
6 treatment set forth in the Joint Proposal. In contrast, my proposal properly  
7 balances the interests of the Company and ratepayer.

8  
9 **Q. IS THERE ANOTHER ELEMENT TO YOUR RECOMMENDATION?**

10 A. Yes, there is. I recommend that the amortization period be set as 20 years, as  
11 Suez initially proposed in its application.

12  
13 As I stated earlier in my testimony, the “benefit” of significant interest cost  
14 savings arising from shortening the amortization period to 15 years may be  
15 illusory if there is a significant turnover in the customer base over the next 20  
16 years, let alone 67 years. More important, there is a legitimate cost basis for a  
17 much longer amortization period. Both the decision to construct the HWSP and  
18 later the decision to abandon the Project were made for the benefit of Suez’s  
19 customers over the expected useful life of that facility. Had the Project been  
20 completed, its expected useful life would have been up to 67 years, according to  
21 the Company.<sup>6</sup> In ratemaking we attempt to match costs and rates with service  
22 benefits. In this instance, if rate recovery is set to match the intended  
23 beneficiaries the amortization period would be set equal the expected useful life  
24 of the HWSP had it been built; up to 67 years. While I acknowledge that a 67-  
25 year amortization period may be too long for the HWSP costs, a 20-year  
26 amortization period better matches costs with service beneficiaries than does a 15-  
27 year amortization. Thus, the 20-year amortization period that I recommend

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1 “provides a rational basis for the Commission’s decision,” as required in the  
 2 Commission’s Settlement Guidelines. Moreover, since Suez itself originally  
 3 proposed a 20-year amortization period, a 20-year amortization period has to be  
 4 considered “within the range of reasonable outcomes,” also as required in the  
 5 Commission’s Settlement Guidelines.  
 6

7 **Q. HAVE YOU PREPARED AN EXHIBIT THAT QUANTIFIES THE**  
 8 **IMPACT OF YOUR RECOMMENDED MODIFICATIONS TO THE**  
 9 **RATE ALLOWANCES FOR HWSP COSTS PROVIDED FOR IN THE**  
 10 **JOINT PROPOSAL?**

11 A. Yes, I have. Exhibit\_\_\_(DEP-1) illustrates my determination of the rate  
 12 allowances for Rate Years 1, 2 and 3 for HWSP costs. My calculations assume a  
 13 \$49,289,110 beginning balance, after excluding a \$4,388,854 of previously  
 14 accumulated AFUDC-equity, a 20-year amortization period, and no common  
 15 equity return allowance on the unamortized balance. The following table  
 16 compares my estimated rate allowances for the HWSP with those reflected in the  
 17 Joint Proposal.  
 18

**TABLE 1**  
**SUEZ WATER NEW YORK INC.**  
**Comparison of HWSP Rate Allowances**

<b>Rate Year</b>	<b>Municipal Intervenors</b>	<b>Joint Proposal</b>
RY 1	\$3,346,000	\$6,679,000
RY 2	\$3,301,000	\$6,465,000
RY 3	\$3,256,000	\$6,251,000

22  
 23  


---

 6 See Suez Response to MI-3.

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1           The modifications that I am recommending are all well supported by legitimate,  
2           established regulatory policies and produce a result that more equitably balances  
3           the interests of the Company and its ratepayers when compared to the treatment  
4           proposed in the Joint Proposal. For these reasons, I recommend that the rate  
5           allowances for the HWSP that are reflected in the Joint Proposal be rejected and  
6           be replaced by the rate allowances shown in my Exhibit \_\_\_(DEP-1).

7

8   **Q.       DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

9   A.       Yes, it does.

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2 A.L.J. PHILLIPS: Your request is  
3 granted.

4 BY MR. DICHTER: (Cont'g)

5 Q. Mr. Peterson, do you have an exhibit  
6 to your testimony?

7 A. Yes, I do.

8 Q. And is that identified as DEP 1, I  
9 believe?

10 A. It is, yes.

11 Q. It's a one-page document?

12 A. That's correct.

13 MR. DICHTER: Your Honor, I would ask  
14 that his Exhibit B identified with the next exhibit  
15 number, which is --

16 A.L.J. PHILLIPS: It's 8.

17 MR. DICHTER: -- eight.

18 A.L.J. PHILLIPS: Yes.

19 MR. DICHTER: Thank you.

20 A.L.J. PHILLIPS: Exhibit DEP 1 will  
21 be marked for identification as Hearing Exhibit  
22 number 8.

23 (Hearing Exhibit 8 is marked for  
24 identification.)

25 MR. DICHTER: Okay. Your Honor, Mr.

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2 Peterson is available for cross-examination.

3                   A.L.J. PHILLIPS: Okay. And if I  
4 remember correct, is it only the company that has  
5 cross-examination for this witness? Or no? I'm  
6 sorry.

7                   UNIDENTIFIED MALE: That was my  
8 understanding from the schedule, your Honor.

9                   A.L.J. PHILLIPS: Okay. Thank you.  
10 Oh.

11                   UNIDENTIFIED MALE: Oh, actually, the  
12 county -- the county -- .

13                   A.L.J. PHILLIPS: Oh. So sorry. Have  
14 you discussed who will go first?

15                   UNIDENTIFIED MALE: The company is --  
16 can -- can ask questions first.

17                   A.L.J. PHILLIPS: Okay.

18                   UNIDENTIFIED MALE: That's amenable,  
19 your Honor.

20                   A.L.J. PHILLIPS: Please proceed.

21                   CROSS-EXAMINATION

22 BY MR. FITZGERALD:

23                   Q. Good afternoon, Mr. Peterson. My name  
24 is Brian Fitzgerald. I'm with the law firm of Cullen and  
25 Dykman, and I represent the Company here today. How are

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 you this afternoon?

3                   A.    Very good.  Thank you.

4                   Q.    Mr. Peterson, you only filed  
5 responsive testimony in this proceeding.  Is that correct?

6                   A.    Yes.

7                   Q.    Okay.  And that -- that was filed  
8 subsequent to the filing of the joint proposal in this  
9 case.  Is that right?

10                  A.    Yes.

11                  Q.    Now, turning to Page 4 of your  
12 testimony, Lines 1 to 8, in that paragraph, you indicate  
13 various documents that you reviewed in preparing your  
14 testimony.  Is that right?

15                  A.    Yes.

16                  Q.    Are these the only document that you  
17 reviewed in preparing your testimony?

18                  A.    I probably reviewed some responses to  
19 discovery requests as well.

20                  Q.    Okay.  But you don't recall which  
21 particular responses at this time?

22                  A.    I can't give you the numbers of them.  
23 I can tell you that I -- I probably attempted to review  
24 most of the ones that addressed the Haverstraw issue.

25                  Q.    Okay.  And in preparing your

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2 testimony, did you review the Commission's need order in  
3 Case 13-W-0303?

4                   A.    I didn't review the order itself in --  
5 in full. I think I looked at parts of that order. And of  
6 course, I looked and verified the quotations from that  
7 order that were in others' testimonies.

8                   Q.    Okay. Did you also look at the  
9 abandonment order in Case 13-W-0303 that was issued on  
10 December 18th, 2015?

11                  A.    Yeah, the -- the same response.

12                  Q.    Now, on Page 7 of your testimony, at  
13 Lines 10 through -- actually, Page 7, Lines 20 through 22,  
14 you discussed a treatment for -- actually, it's -- I'm  
15 sorry, let me -- let me find the right page myself. I'm  
16 off a page.

17                               Lines 20 to 22 of your responsive  
18 testimony, you discussed treatment of the HWSP cost as  
19 "akin to an expense allowance in the rate making formula  
20 with a virtual guarantee of full cost recovery." Do you  
21 see that statement?

22                  A.    Yes.

23                  Q.    Do you have in front of you the actual  
24 JP, in particular, the Appendix 2?

25                  A.    Yeah. I do have it, yes.

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2 Q. Okay. In particular, I'm looking in  
3 Appendix 2 on Page 6 of 31, if you could let me know if  
4 you're there.

5 A. Again, I'm there.

6 Q. Would you agree with me -- with me  
7 that that -- that page is a rate-based summary for this  
8 case?

9 A. It is.

10 Q. And some of the example items there  
11 are water, plant in service and non-interest bearing  
12 construction work in progress. Do you see those?

13 A. Yes.

14 Q. And -- and also included in that would  
15 be some deferred Haverstraw costs, or Haverstraw project  
16 costs. Is that right?

17 A. It -- it's -- it's not identified as  
18 such, no.

19 Q. Okay.

20 A. It -- it -- it was all -- as far as I  
21 know, the -- the -- the cost -- the Haverstraw costs have  
22 been transferred to Account 186. It wouldn't show up in  
23 the plant in service accounts. It's -- it's a deferred  
24 regulatory asset.

25 Q. So -- .

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2 A. Later down -- down the list there on  
3 that same page is the deferred Haverstraw cost, no tax.

4 Q. Yeah, okay. That's what I was  
5 referring to. Thank you.

6 Now, for water, plant, and service,  
7 does the joint proposal contain any direct reconciliation  
8 mechanism that would ensure the company full recovery on  
9 the water, plant in service rate base item?

10 A. The water, plant in service, I -- I  
11 don't know.

12 Q. Are you -- do you know that for any of  
13 the other items that are listed on the rate base list that  
14 we just went over?

15 A. No. I do not.

16 Q. Now, turning back to that same page, 6  
17 of 31, of Appendix 2 of the joint proposal, isn't it true  
18 that each of the rate based items listed there all earn  
19 the same return percentage?

20 MR. DICHTER: By percentage, do you  
21 mean rate of return or what? I don't know what you  
22 mean by percentage?

23 MR. FITZGERALD: Yes. That's a  
24 helpful clarification.

25 A. Yeah. This doesn't show the earned

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2 return. This shows the rate base on which an allowance  
3 for return is granted. All of the items would be granted  
4 the same rate of return.

5 BY MR. FITZGERALD: (Cont'g)

6                   Q. So you'd agree with me that under  
7 normal ratemaking treatment, all assets included in rate  
8 base would earn at the company's overall cost of capital?

9                   A. Not necessarily, no. As I say, this  
10 is not a statement of earnings. This is the rate base on  
11 which an allowance for earnings was granted. What they  
12 earn is what they earn. It depends on the levels of sales  
13 and, you know, expenses in -- in the post-test year, rate  
14 effective year.

15                  Q. Now, turning to a slightly different  
16 topic, is it your general understanding that a regulated  
17 utility in New York is obligated to comply with orders of  
18 the New York State Public Service Commission that have  
19 been duly issued and are effective?

20                  MR. DICHTER: Calls for a legal  
21 question, your Honor -- legal answer.

22                  A.L.J. PHILLIPS: Sustained.

23 BY MR. FITZGERALD: (Cont'g)

24                  Q. Mr. Peterson, are you aware that the  
25 company was -- whether or not the company was ordered by

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 the Commission to expend funds on a long-term water supply  
3 project?

4                   A.    Yes.

5                   Q.    And by "yes," you mean that you're  
6 aware that the company was ordered to do so.  Is that  
7 correct?

8                   A.    That's correct, yes.

9                   Q.    Let's turn to Page 9, Lines 10 to 12  
10 of your testimony.  Let me know when you're there, please.

11                  A.    I'm there.

12                  Q.    Okay.  You assert there that "The  
13 joint proposal fails to provide the company any incentive  
14 to control pre-construction costs in the future and  
15 establishes a dangerous regulatory policy that can be  
16 abused by this and other utilities in the future."  By  
17 "regulatory policy," do you mean a binding Commission  
18 order or precedent?

19                  A.    Well, it -- it could be that, yes.  If  
20 -- if they -- if the other utilities or this utility in a  
21 future proceeding cites Commission's acceptance of the  
22 joint proposal and the full cost recovery for the  
23 Haverstraw water supplies project, yeah, it is a dangerous  
24 regulatory passing.

25                  Q.    Let's turn to -- I'd like you to turn

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2 to Page 36 of the joint proposal in Section C. Can you  
3 read me the title of that section?

4                   MR. DICHTER: Can I get that reference  
5 again?

6                   MR. FITZGERALD: Certainly, Page 36 of  
7 the joint proposal, Section C.

8 BY MR. FITZGERALD: (Cont'g)

9                   A. The title of that section is  
10 Provisions Not Precedent.

11                  Q. And could you read me the first  
12 sentence of that section of the JP, please?

13                  A. "The terms and provisions of this  
14 proposal applies solely to and are binding only in the  
15 context of the purposes and results of this proposal."

16                  Q. Thank you. And -- and could you con -  
17 - just continue with one more sentence, if you would?

18                  A. Okay. "None of the terms or  
19 provisions of this proposal nor any methodology or  
20 principle utilized herein and none of the positions taken  
21 herein by any signatory party may be referred to, cited,  
22 or relied on by any other signatory party in any fashion  
23 as binding precedent in any other proceeding before the  
24 Commission or any other regulatory agency or before any  
25 court of law for any purpose other than furtherance of the

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2 purposes, results, and disposition of matters governed by  
3 this proposal and except as may be necessary in explaining  
4 derivation of a specific cost or accounting treatments as  
5 relevant to future rate making proceedings."

6                   MR. FITZGERALD: Thank -- thank you,  
7 your Honor. Although that was a -- thank you. That  
8 was a very long sentence, I -- I will concede.

9 BY MR. FITZGERALD: (Cont'g)

10                   Q. I'd like to ask you a question now  
11 about your general awareness. You're -- you're talking  
12 about certain types of possibilities in the future. Are  
13 you aware of any other New York utility in the last 10  
14 years that has been twice ordered by the Commission to  
15 undertake a large capital project and has been ordered to  
16 abandon that project?

17                   A. No.

18                   Q. Then turn to Page 11 of your  
19 testimony. You make a reference there to the concept of  
20 used and useful. And by used and useful, do you use that  
21 term to mean the same thing as plant in service?

22                   A. The used and useful concept is a  
23 little more -- it's -- it's slightly different than a  
24 plant in service. Plant -- plant in service is an  
25 accounting concept. And, in fact, plant has to be used



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2 101. It's used and useful.

3 Q. So your referencing to Account 101.

4 Let's talk about that for a moment, then. And so I  
5 understand Account 101, that is the plant in service  
6 account. Is that correct?

7 A. Yes.

8 Q. And you just indicated that New York's  
9 use of the used and useful term was limited to the plant  
10 in service. Is that right?

11 A. No. I don't think I said that.

12 MR. DICHTER: That's not his  
13 testimony, your Honor.

14 MR. FITZGERALD: I'll -- I'll -- I'll  
15 rephrase the question, your Honor.

16 BY MR. FITZGERALD: (Cont'g)

17 Q. In looking at the various concepts  
18 that you've talked about as a melding, what I'm asking you  
19 about today is the used and useful. When we look at that  
20 in New York, has New York applied a used and useful  
21 standard, to your knowledge, dealing with the recovery of  
22 stranded assets?

23 A. I -- I don't know.

24 Q. I'd like to turn to your exhibit for a  
25 moment, if I might. And let me know when you're there.

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2 A. I'm there.

3 Q. Now, the document titled Exhibit/DEP  
4 1, just to be clear, it -- its title also is Revenue  
5 Impact of HWSP Amortization. Is that correct?

6 A. Yes.

7 Q. And this exhibit shows the company's  
8 revenue requirement under your proposed treatment of the  
9 HWSP cost. Is that correct?

10 A. That's correct, for the first three  
11 years.

12 Q. Now, just as a -- as a question, to  
13 calculate the amortization expense on Line 2 of your  
14 exhibit -- do you see that?

15 A. Yes.

16 Q. Are you dividing the gross amount of  
17 the deferred asset of 49.2 -- or approximately 49.2  
18 million by your proposed amortization period of 20 years.

19 A. Yes.

20 Q. Do you agree, then, that the  
21 amortization expense is calculated on the gross asset  
22 amount and not on the tax asset amount?

23 A. Yes.

24 Q. I appreciate that you -- you work in  
25 many states. Are you aware of the New York Public Service

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2 Commission's Technical Release Number 4 addressing the  
3 rate at which to capitalize interest during construction?

4                   MR. DICHTER: Would you like to show  
5 him a copy of it?

6                   MR. FITZGERALD: No. I -- I certainly  
7 just need to know if he's aware of it.

8                   A. I'm aware of it. I -- I don't know  
9 that I've ever read it. I certainly read the rebuttal  
10 testimony that describe the two methods of calculating  
11 AFUDC on the Haverstraw both pre-March 2013 and post-March  
12 2013. I'm aware of both methods, yes.

13                   A.L.J. PHILLIPS: And can I just  
14 interject? When you said you read the rebuttal  
15 testimony, which testimony were you referring to that  
16 you read, if you remember? If you don't, that's  
17 okay.

18                   MR. DICHTER: Isn't that the Suez  
19 panel?

20                   THE WITNESS: I believe it was in the  
21 Suez panel rebuttal testimony.

22                   A.L.J. PHILLIPS: Okay. Thank you.

23                   THE WITNESS: And -- and I -- I think  
24 it may also have been in staff's direct testimony of  
25 the joint proposal where the staff witness described

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2 the -- the two ways of calculating AFUDC.

3           A.L.J. PHILLIPS: Right. I -- I -- .  
4           Sorry. I just wanted to clarify  
5 because there is more than one rebuttal testimony.  
6 Thank you.

7           THE WITNESS: I -- I think it was the  
8 staff direct testimony, and the Suez panel rebuttal  
9 testimony that discussed AFUDC in relation to the  
10 Haverstraw --

11          A.L.J. PHILLIPS: Thank you. And I  
12 apologize for the interruption.

13          MR. FITZGERALD: That's all -- not a  
14 problem, your Honor.

15          We have no further questions at this  
16 time for the witness.

17          A.L.J. PHILLIPS: Mr. -- Mr. Simeti,  
18 correct? Did you have questions?

19          MR. SIMETI: Yes, if I may. Thank  
20 you, your Honor.

21                           CROSS EXAMINATION

22 BY MR. SIMETI:

23                   Q. Good afternoon, Mr. Peterson.

24                   A. Good afternoon.

25                   A.L.J. PHILLIPS: Oh, I'm sorry.

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2                   Actually, can we just take a quick break for  
3                   convenience of -- .

4                   MR. SIMETI: Yes, absolutely.

5                   A.L.J. PHILLIPS: Just 15 minutes, is  
6                   -- Sorry about that.

7                   (Off the record)

8                   A.L.J. PHILLIPS: We will continue  
9                   with Mr. Simeti's cross of Mr. Peterson.

10 BY MR. SIMETI: (Cont'g)

11                   Q. Good afternoon, Mr. Peterson.

12                   A. Good afternoon.

13                   Q. Now, you submitted testimony in the --  
14 regarding the Haverstraw Winter Supply project cost in  
15 this proceeding. And in that testimony, proposed an  
16 alternate -- alternate -- alternative rate making  
17 treatment. Is that correct?

18                   A. Yes.

19                   MR. ALESSI: I'm sorry to interrupt.  
20 But do you have your microphone on?

21                   MR. SIMETI: Okay. I did. It's  
22 green.

23 BY MR. SIMETI: (Cont'g)

24                   Q. And you submit in your testimony that  
25 your proposal more equitably balances the interests of the

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2 company, its ratepayers -- I'm sorry, company, its  
3 investors, and its ratepayers, and better supports the  
4 public interest. Is that correct?

5                   A. Yes.

6                   Q. Now, was it your opinion that the JP  
7 as it relates to the recovery of these -- Haverstraw Water  
8 Supply Cross is not just unreasonable and not in the  
9 public interest?

10                  A. Yes.

11                  A.L.J. PHILLIPS: I want to interject.  
12 I -- I may not have reiterated this this morning, but  
13 I believe when we were on one of our conference calls  
14 I did indicate there would be no friendly cross. So  
15 you're not doing friendly cross, are you?

16                  MR. SIMETI: No.

17                  A.L.J. PHILLIPS: Okay.

18                  MR. ALESSI: Your -- your Honor, that  
19 was the same -- I was going to say, and I just want  
20 to confirm that -- that you did state very clearly  
21 that there would be no friendly cross in this  
22 proceeding.

23                  A.L.J. PHILLIPS: I thought I did.

24 But in case there was any confusion, that is the  
25 rule. No friendly cross, no buttressing.

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2 MR. SIMETI: I -- I suppose I'll --  
3 I'll simplify it.

4 BY MR. SIMETI: (Cont'g)

5 Q. Mr. Peterson, your alternative rate  
6 making proposal proposes that the company recover all of  
7 its out of pocket expenses. Is that correct?

8 A. Yes.

9 Q. How is that fair to the ratepayer and  
10 in the public interest?

11 MR. ALESSI: Your -- your Honor, I - I  
12 -- .

13 UNIDENTIFIED MALE: Mr. Simeti, I  
14 apologize. I don't recall if you were here this  
15 morning.

16 MR. SIMETI: No, I wasn't.

17 UNIDENTIFIED MALE: You were not. And  
18 in fairness to Mr. Simeti, your Honor --

19 MR. ALESSI: I wasn't. But this is  
20 starting to get into -- and I don't know where we  
21 draw the line about the -- the strike because this is  
22 a unique situation that we couldn't cover not  
23 anticipating what the cross would be. But this is  
24 now getting into questions about what we consider.  
25 And I won't state the motion to strike, shorthand it,



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2 the count -- for the company to recovery all of its  
3 out-of-pocket costs fair to the ratepayers and in the  
4 public interest, which is the consideration, I  
5 presume, in this hearing.

6           A.L.J. PHILLIPS: It is. But it's one  
7 that possibly could be addressed in brief. It sounds  
8 like where you're going maybe more argument than  
9 clarifying of the factual portions of his testimony.  
10 And I -- I do not want to cut anyone off prematurely,  
11 but I did indicate that there would not be friendly  
12 cross. And I'm -- I'm just a little bit concerned.  
13 Are you unclear as to what his proposal is and that's  
14 what you're --

15           MR. SIMETI: I -- I -- I -- I  
16 understand his proposal. I'm -- I'm trying to look  
17 beyond the basis for his proposal that relates to the  
18 company recovering all of its out-of-pocket costs.  
19 If the Court wishes, I can address this in a brief.

20           MR. DICHTER: Your Honor, it's our  
21 witness, and we don't have an objection. I will  
22 state for the record, I have not talked to the county  
23 -- Rockland County before this. I have no idea what  
24 his questions are going to be. I don't even see the  
25 question as a particularly friendly questions, quite

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2 honestly. But still, I'm happy to have our witness  
3 give full -- full answers and explain his testimony  
4 to the parties.

5           MR. RIGBERG: Your Honor, this is Saul  
6 Rigberg with PULP. This is not a friendly question  
7 because what Mr. Peterson is advocating is divergent  
8 from the what the County is advocating.

9           MR. SIMETI: The County does -- the  
10 County is asserting the company shouldn't recover any  
11 of its out-of-pocket costs.

12           A.L.J. PHILLIPS: I understand that.  
13 But there's still the -- there's a pending motion,  
14 and I don't know if you were here when we discussed  
15 that this morning. We're holding the discussion of  
16 that motion until we get to those witnesses who have  
17 raised the issues that are seeking -- which the  
18 Company is seeking to strike testimony on them. So  
19 I'm just -- I'm trying to understand -- I guess I'm  
20 just trying to understand the -- the purpose of your  
21 cross-examination. If your --.

22           MR. SIMETI: Is Mr. Peterson's  
23 testimony subject to -- made a part of the motion?

24           A.L.J. PHILLIPS: It was not.

25           MR. SIMETI: So then what's the issue

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2 --

3 A.L.J. PHILLIPS: Well --

4 MR. SIMETI: -- as it relates to the  
5 motion?

6 A.L.J. PHILLIPS: -- you're saying

7 -- .

8 MR. SIMETI: If the motion doesn't  
9 relate to Mr. Peterson's testimony, how --.

10 A.L.J. PHILLIPS: All right. Tell me  
11 exactly what -- when you ask your next question, tell  
12 me exactly what page and line number it relates to,  
13 and maybe that will help.

14 MR. SIMETI: Okay.

15 A.L.J. PHILLIPS: So please proceed.

16 BY MR. SIMETI: (Cont'g)

17 Q. Well, I believe I -- there's an open  
18 question. I asked how in -- I'll rephrase it.

19 Mr. Peterson, on Page 11 at Line 16 to  
20 17, your proposal allows for the Company to recover all of  
21 its out-of-pocket costs associated with the Haverstraw  
22 Water Supply project. Is that correct?

23 A. It's except for the common equity  
24 return --

25 Q. Yes.

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2 A. -- related costs.

3 Q. Yes. But as it relates to the costs  
4 expended by the Company, it proposes that they recover all  
5 of those costs. Is that correct? Not with an equity  
6 component, just those out of pocket.

7 A. It -- it -- it also excludes the --  
8 the amounts that were capitalized as AFUDC equity. That's  
9 also not recoverable under my plan.

10 Q. As it relates to the cost that they  
11 expended on how they tariff -- .

12 A. The AFUDC is a cost that they  
13 expended, period.

14 Q. Okay. And that's --.

15 A. All other costs would be recovered.

16 Q. All other costs.

17 A. Yes.

18 Q. And what costs -- and in -- in general  
19 terms, what are the -- what was the amount of those costs  
20 that are subject to the full recovery by the Company, as  
21 you propose them?

22 A. Yes. It's on my Exhibit 8. It would  
23 be the roughly \$49.3 million.

24 Q. So I ask you, how is it then fair --  
25 fair to the ratepayer and in the public interest for the

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2 Company to recovery all of those costs?

3                   A.    Okay.  Yeah, sure.

4                   MR. ALESSI:  your Honor, I'm sorry,  
5 just I'm going to insert my objection about the  
6 motion to strike, et cetera.  But I'll -- I'll just  
7 assert the objection in that regard.  However, again,  
8 we can come back to this -- take this subject to my  
9 objection and come back to it after we've argued the  
10 motion to strike.  Either way works for the Company.

11                  A.L.J. PHILLIPS:  Okay.

12                  MR. ALESSI:  I just want to note the  
13 objection.

14                  A.L.J. PHILLIPS:  So your -- your  
15 objection is noted.  I think maybe what might be  
16 causing the confusion is his proposal is not part of  
17 the joint proposal, I don't think.  Right?  It's his  
18 own individual proposal.  So I think he would be --  
19 maybe the better way to ask the question is why would  
20 it result in just and reasonable rates because  
21 there's -- you know, the -- the language that you're  
22 using is used to sort of describe why -- what the  
23 standard is for reviewing a joint proposal.  And the  
24 objective -- even though it applies whether it's a  
25 joint proposal or not, is just and reasonable rates.

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2 So if -- if I may, was your question  
3 more directed at determining why it is he believes  
4 this is a proposal that would result in just and  
5 reasonable rates?

6 MR. SIMETI: I'll accept that  
7 question.

8 A.L.J. PHILLIPS: Would that -- is  
9 that -- I don't -- I'm not forcing you to. You can  
10 disagree.

11 MR. SIMETI: I'll accept.

12 A.L.J. PHILLIPS: You can rephrase it.

13 BY MR. SIMETI: (Cont'g)

14 Q. Mr. Peterson, if you can answer the  
15 question that's proposed by the Judge.

16 A. I'll try -- try to answer it. My  
17 proposal, my recommendation, was -- was made without  
18 regard to the -- the pending court case, Article 78 court  
19 case, which I'm not a party to. It is -- my  
20 recommendation was premised on the -- the Commission's  
21 findings that the -- all of the costs in -- that I have  
22 included were incurred prudently. So I -- I fashioned a  
23 recovery vehicle that allowed for the systematic recovery  
24 of those prudently incurred costs, but excluded any return  
25 or profit to the Company's stockholders. So -- so there's

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2 a sharing of cost responsibility that doesn't exist in the  
3 joint proposal.

4                   I also proposed that the amortization  
5 period be extended from 15 to 20 years to more closely  
6 match the service life of the facility that -- that --  
7 that was designed for this purpose. In other words, if  
8 Haverstraw hadn't been constructed as planned, it would  
9 have had a service life somewhere between 20 and 60 years.  
10 And -- and it was for the benefit of the customers over  
11 that period of time that the -- the project was initially  
12 planned for and later abandoned. So the cost recovery  
13 should reflect that same time period.

14                   So that -- that's how the -- the cost  
15 and, if you want to term it as benefits, are shared  
16 between customers and -- and ratepayers and investors and  
17 the Company under my proposal.

18                   MR. SIMETI: Thank you, Judge. I  
19 think -- .

20                   A.L.J. PHILLIPS: Are you done?

21                   MR. SIMETI: That -- that's correct.

22                   A.L.J. PHILLIPS: Oh. Yes?

23                   MR. DUTHIE: Actually, I have one  
24 question that is about the rate making mechanics,  
25 okay. And it has a bearing on my position and on my

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2 testimony. I would like to ask that question of Mr.  
3 Peterson, if I may.

4           MR. SIMETI: I'll defer any additional  
5 time that the County has.

6           A.L.J. PHILLIPS: Okay. I'm -- I'm  
7 going to allow it. But again, point us -- are we  
8 still on the same page and line number?

9           MR. DUTHIE: No. This has to do with  
10 the mechanics of the Haverstraw recovery that Mr.  
11 Peterson has proposed.

12 BY MR. DUTHIE:

13           Q. And as I understand it, you are  
14 proposing to amortize the gross amount, but the rate based  
15 treatment is net of tax. Is that correct?

16           A. The -- the rate base allowance for the  
17 deferred Haverstraw cost reflects the deferred taxes.

18           Q. So mechanically, conceptually, it's  
19 the same mechanism with different inputs as contained in  
20 the joint proposal. They use a gross amount --

21           A. Yes.

22           Q. -- for the amortization and that --.

23           A. The two different -- there are only  
24 two differences. One, a 20-year instead of a 15-year  
25 amortization, and two, they -- they include an equity

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2 return, plus income taxes on the equity return.

3                   Q.    Okay.  So -- so --.

4                   A.    I don't have any equity return or any  
5 income taxes.

6                   Q.    So the question is, for you, please  
7 explain why the gross amount should be amortized as  
8 contrasted with the net amount, which is used for the rate  
9 based treatment.

10                  A.    Yeah.  The -- the -- the accounting  
11 for this is a little complicated.  But under the New York  
12 system, the accounting for it -- federal and state income  
13 taxes, they -- they normalize the differences between tax  
14 and book depreciation essentially.  And here -- here you  
15 have a deduction, the -- the loss from the Haverstraw  
16 project.  That will be full -- fully deductible in -- in  
17 the year that it's claimed.

18                                 But for rate making purposes, the  
19 Commission requires that that deduction be normalized over  
20 the life of the plant -- in other words, spread out.  So  
21 what -- what you're seeing in the rate base is the  
22 accumulated deferred income taxes in the first year on  
23 that loss.  But in the income statement, you -- you're  
24 reflecting the book depreciation for that tax loss amount  
25 rather than the tax depreciation.

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2 Over time, the difference between the  
3 tax and the book's depreciation will -- will be eliminated  
4 by the end of the life of this amortization period,  
5 whether it's 15 years or 20 years. Those differed taxes  
6 will be fully exhausted.

7 Q. Thank you, Mr. Peterson.

8 MR. DUTHIE: I have nothing else, your  
9 Honor.

10 A.L.J. PHILLIPS: Thank you.

11 MR. DICHTER: your Honor, redirect?

12 A.L.J. PHILLIPS: Oh, I'm sorry. Yes.

13 REDIRECT EXAMINATION

14 BY MR. DICHTER:

15 Q. Mr. Peterson, Mr. Fitzgerald asked you  
16 a number of questions about the useful -- used and useful  
17 policy.

18 A. Yes.

19 Q. That is widely -- widely accepted by  
20 jurisdictions throughout the country that you've appeared  
21 and testified on and based on your experience?

22 A. It is a common rate making concept,  
23 yes.

24 Q. Okay. And if the used and useful  
25 criteria was applied in this case, would the Company be

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2 allowed any recovery for the Haverstraw project cost?

3                   A.    No.

4                   Q.    So your recommendation --.

5                   A.L.J. PHILLIPS:  One moment.  I'm  
6                   sorry.

7                   MR. ALESSI:  He's going a little fast.  
8                   your Honor, I'm going to object to that question  
9                   about if it was applied.  That is the subject of the  
10                  motion to strike because, again, we're dividing the  
11                  line here, the whole principle in going forward  
12                  versus be -- the before in time.  What I'm trying to  
13                  understand -- and Mr. Dichter went fast and I may  
14                  have missed -- missed his question -- I thought you  
15                  were going at the amount that the Commission had  
16                  determined was prudent.  It could be put into a  
17                  regulatory asset.  But if I misheard your question,  
18                  I'd appreciate repeating it.

19                  MR. DICHTER:  Yeah.  My question had  
20                  nothing to do with prudence.  It asked basically in  
21                  the absence of the prudence consideration.  If you  
22                  were just applying the use and useful criteria, would  
23                  there be a recovery for Haverstraw costs, and the  
24                  answer was no --

25                  MR. FITZGERALD:  your Honor, I would

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2 object to the question as --.

3                   (Crosstalk)

4                   MR. DICHTER: -- because the Company  
5 opened the door by asking a series of questions about  
6 use -- used and useful. It's also in his testimony.

7                   A.L.J. PHILLIPS: Okay. So let me --  
8 let me try it again. It is in his testimony. My  
9 understanding of your question is that you were going  
10 after it from an accounting angle because you,  
11 yourself, objected when they asked about it from a  
12 legal angle.

13                   So that's -- that's the line we're  
14 trying to walk here. I don't think he crossed it in  
15 the way he asked his question. I -- I believe,  
16 because it's in the testimony, and I believe this  
17 witness said he was talking about it as an accounting  
18 principle -- if I'm wrong, point me -- point that  
19 out. But that's what I thought we were doing.

20                   And we are -- we are trying, I think  
21 to be very careful about sticking to this witness,  
22 talking about his knowledge of used and useful as  
23 it's used in his testimony and from a accounting  
24 perspective and staying away from it as it pertains  
25 to drawing a legal conclusion.

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2 MR. ALESSI: your Honor, with your  
3 clarification --

4 A.L.J. PHILLIPS: Is that -- ?

5 MR. ALESSI: -- that it's an  
6 accounting -- yes.

7 A.L.J. PHILLIPS: Okay. And that's  
8 what you were asking, correct, Mr. Dichter?

9 MR. DICHTER: Yes, from his -- from  
10 his expertise in that area.

11 A.L.J. PHILLIPS: Okay. Then I will  
12 overrule the objection. But keep in mind this line  
13 that we're trying to --.

14 MR. DICHTER: I'm done -- done with  
15 that line.

16 A.L.J. PHILLIPS: Okay.

17 MR. DICHTER: I -- I would like --  
18 I've been, you know, open about it, trying to keep  
19 things fairly informal, but there is a bit of a tag  
20 teaming going on by the Company between their two  
21 attorneys because Mr. Fitzgerald asked to cross on  
22 this question. Mr. Alessi keeps jumping in with  
23 objections. I -- I think they should do it one way  
24 or the other, you know, with each witness, rather  
25 than doing this ad infinitum.

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2 MR. ALESSI: your Honor, just -- just  
3 to be heard on that, Mr. Fitzgerald and I have had  
4 few objections through a lot of other questions we  
5 could have objected to. Of course, if your Honor  
6 finds it disruptive to the proceeding, et cetera, we  
7 will do whatever your Honor wishes. But we hope and  
8 it's certainly our intent to not be disruptive, to  
9 not like tag team.

10 We, for example, will be -- Mr.  
11 Fitzgerald and I will be, with your Honor's  
12 permission, be splitting crosses of certain  
13 witnesses, which has, in my experience, been allowed  
14 before. But whatever your Honor wishes in that  
15 regard, we -- we can -- we can be nimble with.

16 A.L.J. PHILLIPS: You're not -- you're  
17 not going to let me forget I said that this morning,  
18 are you?

19 MR. ALESSI: I think it's an excellent  
20 -- I think it's an excellent admonition.

21 A.L.J. PHILLIPS: Okay.

22 MR. DICHTER: It was more an  
23 observation. I'm not even asking you to rule on it,  
24 your Honor.

25 A.L.J. PHILLIPS: Okay. Let -- let me

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2                   consider it overnight or, yeah, maybe overnight. Or  
3                   we'll deal with it when the next witness comes up.  
4                   It -- it -- do you have more redirect?

5                   MR. DICHTER: One question.

6                   A.L.J. PHILLIPS: Okay. I'm not  
7                   rushing you. I was just asking.

8                   MR. DICHTER: No. I only have one  
9                   question, and it's not related to used and useful.

10 BY MR. DICHTER: (Cont'g)

11                   Q. With the accounting treatment of  
12 Haverstraw has included in the JP, are you recommending  
13 the Commission adopt or reject the joint proposal with the  
14 accounting treatment as proposed by Company and Staff?

15                   A. Yeah. I -- I -- I recommend the  
16 Commission reject at least that portion of its JP relating  
17 to the Haverstraw cost recovery.

18                   Q. Thank you.

19                   MR. DICHTER: I have no more  
20 questions.

21                   A.L.J. PHILLIPS: Okay. Does that  
22 conclude the questions? Does -- ?

23                   MR. FITZGERALD: Could I have one  
24 moment?

25                   A.L.J. PHILLIPS: Okay.

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2 RECROSS-EXAMINATION

3 BY MR. FITZGERALD:

4 Q. Mr. Peterson, are -- are you -- ?

5 A.L.J. PHILLIPS: Wait, wait. Just a  
6 reminder.

7 MR. FITZGERALD: Yes.

8 A.L.J. PHILLIPS: It's very limited,  
9 only what he raised on redirect.

10 MR. FITZGERALD: Okay.

11 BY MR. FITZGERALD: (Cont'g)

12 Q. Mr. Peterson, as related to sort of  
13 the regulatory assets that you were speaking of, can you  
14 explain for me how that would be applied to ASC 980?

15 A.L.J. PHILLIPS: What is ASC 980? I  
16 -- that was never mentioned, I don't think, unless a  
17 word was used to describe it.

18 MR. FITZGERALD: You know what, your  
19 Honor? I -- I will withdraw the question. We have -  
20 - we have no further questions.

21 A.L.J. PHILLIPS: Mr. Alessi?

22 MR. ALESSI: I just -- as apart from  
23 this issue, you indicated you were going to think  
24 over the issue over the evening. And I just wanted  
25 to clarify that with regard to this witness, the only

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2           reason I jumped in was because it got into the motion  
3           to strike, which I am handling. That's the reason  
4           why I didn't jump in on anything else. So when  
5           you're thinking about it, if I could just highlight  
6           that that was the purpose of --

7                   A.L.J. PHILLIPS: Okay.

8                   MR. ALESSI: -- the jumping in. Thank  
9           you.

10                  A.L.J. PHILLIPS: Thank you.

11                  So there are no further questions on  
12           recross for this witness, correct? And we're all  
13           done? No one else, right? Nothing further/

14                  MR. ALESSI: I believe we're all done,  
15           your Honor.

16                  A.L.J. PHILLIPS: Okay. Mr. Peterson,  
17           I want to thank you for your time, and you are  
18           excused as a witness.

19                  THE WITNESS: Thank you.

20                  MR. DICHTER: Thank you, your Honor.  
21           Are we moving exhibit -- his exhibit into the  
22           evidence at this point or?

23                  A.L.J. PHILLIPS: No. We're mark --  
24           well -- .

25                  MR. DICHTER: You marked it.

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A.L.J. PHILLIPS: He's leaving though, correct, and he's not coming back?

MR. DICHTER: That's correct.

A.L.J. PHILLIPS: I -- I still think we want to wait 'til the end of the day because I'm sure you're fully capable of handling the legal question of whether it should be moved into evidence.

MR. DICHTER: Thank you, your Honor.

A.L.J. PHILLIPS: Thank you. So again, thank you, Mr. Peterson.

THE WITNESS: Thank you. Thanks for accommodating me.

A.L.J. PHILLIPS: Okay. I believe we are going back to the -- wait a minute. What did we decide with respect to Mr. Duthie? Are we going back to Company and then going to Mr. Duthie? Is that the -- your -- Mr. Duthie, you're available tomorrow, right?

MR. DUTHIE: I'll -- I will be here tomorrow, God willing.

A.L.J. PHILLIPS: Okay. So why don't we put the Company panel back on so that maybe we can continue with them and finish the cross for those -- I believe it's only Mr. Dichter that had questions

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2 left. Maybe we can get through that. So if the  
3 Company panel will be please come back to the witness  
4 table.

5                   (Company panel called to witness  
6 table.)

7                   A.L.J. PHILLIPS: Mr. Dichter, are you  
8 ready? Or do you -- ?

9                   MR. DICHTER: Yes, Judge.

10                  A.L.J. PHILLIPS: Okay. And I just  
11 want to confirm again, we've already had cross by  
12 PULP. Rockland County did decline to conduct cross.  
13 Mr. Duthie concluded his cross, correct?

14                  MR. DUTHIE: Yes, your Honor.

15                  A.L.J. PHILLIPS: So we are now going  
16 to allow cross-examination of this panel by Mr.  
17 Dichter. Please proceed. Oh, and the panel is  
18 reminded you're still under oath.

19                                   CROSS-EXAMINATION

20                  MR. DICHTER: Thank you, your Honor.

21 BY MR. DICHTER:

22                               Q. Just following quickly on a subject  
23 raised by Mr. Rigby -- berg, sorry -- about the Rockland  
24 Business Association. It's correct that Suez is on -- a  
25 member of the board of directors of that association as

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2 well?

3 A. (Graziano) I --

4 Q According to their website, Bill  
5 Madden is -- is up on the board of directors.

6 A. I believe so.

7 Q. Okay. And Mr. Degenshein is also on  
8 that -- member of the board of directors. Is that  
9 correct? I can show you a page from the website, if you  
10 like.

11 A. (Michaelson) I'll take your word for  
12 that one.

13 Q. Okay. Thank you.

14 Now, is it correct that the recovery  
15 of the Haverstraw abandoned project costs is the driving  
16 force behind -- behind the revenue requirement needs in  
17 this case? It's the single biggest item?

18 A. I think the single biggest item in  
19 this case is property taxes.

20 Q. Well, let's break down the -- on the  
21 revenue requirement. You had said in a response to PULP-3  
22 under your original request that you were requesting an  
23 increase in base rates of 11.6 million or 13.7 percent.  
24 And of that, approximately 6.2 million was attributable to  
25 the Haverstraw recovery. And I'll -- I guess I'll mark

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2 this as -- .

3 A.L.J. PHILLIPS: Let me just ask. Do  
4 the witnesses have that IR available to them?

5 MR. DICHTER: I have copies here.

6 A.L.J. PHILLIPS: You have copies for  
7 everyone? Okay. Can you circulate those, please,  
8 and --

9 MR. DICHTER: I will.

10 A.L.J. PHILLIPS: -- give them an  
11 opportunity to look at it? Make sure you give them  
12 copies.

13 MR. DICHTER: Yes. I only have 10.

14 A.L.J. PHILLIPS: That's okay. Make  
15 sure you give me a copy, and do not trip over the  
16 wires.

17 MR. DICHTER: Court reporter get one?

18 THE REPORTER: No.

19 A.L.J. PHILLIPS: Thank you. And do  
20 you --?

21 MR. DICHTER: I have one left. Who  
22 would like it?

23 A.L.J. PHILLIPS: Be careful of the  
24 wires.

25 MR. DICHTER: your Honor, can I ask

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2                   that this be marked as the next exhibit number?

3                   A.L.J. PHILLIPS: Yes. The one-page  
4                   document entitled Interrogatory/Document Request,  
5                   Request Number PULP-3 will be marked for  
6                   identification as Hearing Exhibit 9.

7                   (Hearing Exhibit 9 is marked for  
8                   identification.)

9                   MR. DICHTER: Thank you.

10 BY MR. DICHTER: (Cont'g)

11                   Q. So is my representation of PULP-3  
12                   response correct?

13                   A. You were referring to the rate  
14                   increase or the overall revenue requirement in your  
15                   original question?

16                   Q. I'm asking about the rate increase.

17                   A. Rate increase. Then, yes, I would say  
18                   that the largest single item is the Haverstraw project of  
19                   Rate Year 1 increase.

20                   Q. And this includes amortized over 20  
21                   years. Is that correct?

22                   A. In the original filing, it was -- we --  
23                   -- we proposed a 20-year amortization period, yes.

24                   Q. It would increase the -- the revenue  
25                   impact. Is that correct, the rate impact, in the fir --

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2 in the rate years, Rate Year 1?

3                   A.     In the rate year, and I would also  
4 decrease the overall cost of the project to the customer  
5 over the time period.

6                   Q.     Yes, but within Rate Year 1, it would  
7 increase the revenue requirement, would it not?

8                   A.     Yes.

9                   Q.     Thank you.

10                   Now, in the joint proposal, the  
11 revenue requirement, I believe it's in your initial  
12 testimony on Page 7, shows a reduction of the Rate Year 1  
13 revenue increase to \$7.7 million rounded. Is that  
14 correct?

15                   A.     I'm sorry, what page is that, please?

16                   Q.     That's Page 7, Line 3.

17                   A.     Seven point six million, yes.

18                   Q.     Do you have a comparable figure for  
19 the Haverstraw impact for that -- for the JP?

20                   A.     I believe we were -- we provided an IR  
21 I don't remember the number or the amount.

22                   Q.     If you -- I don't think this is -- if  
23 you look at your exhibit to your initial testimony, JPP.-  
24 1, this is a -- shows the adjustments from the Company's  
25 litigation position. Is that correct?

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2 A. That's right.

3 Q. And it has a line item Haverstraw  
4 Authorization. Is that what it says? Yeah. Haverstraw  
5 Amortization period, and it shows an increase of \$800,000.  
6 Is that correct?

7 A. Yes.

8 Q. Is that from the shortening from 20  
9 years to 15 years?

10 A. It is.

11 Q. Does it include other items as well?

12 A. I'm sorry, can you ask that question  
13 again, please?

14 Q. Does the \$800,000 just demonstrate the  
15 effect of going from 20 years to 15 years, or are there  
16 other adjustments in there as well?

17 A. That would include other adjustments,  
18 but the majority of the \$800,000 is due to the shortening  
19 of the amortization period.

20 Q. Okay. So the JP as far as recovery of  
21 the Haverstraw costs, is actually higher amount than in  
22 your original pre-filed testimony of the Company. Is that  
23 correct?

24 A. It's correct that it's offset by other  
25 lower concessions by the Company.

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2 Q. But of the \$7.7 million base rate  
3 increase, then would it be \$6.2 plus another \$800,000, so \$7  
4 million of the \$7.7 million rate increase provided by the JP  
5 would be attributable to the Haverstraw plant?

6 A. As I mentioned, I'm pretty sure we had  
7 an IR that provided that information. Off the top of my  
8 head, I don't -- I don't remember.

9 Q. Okay. We'll -- we'll accept it for  
10 the moment that it's a -- a large percentage of the  
11 increase. Can I ask you if -- if the -- there was no  
12 recovery of Haverstraw in this case, it was not an issue,  
13 would the Company even be here for a million dollar or \$2  
14 million increase?

15 A. (Cagle) In and of itself, that's a  
16 very, very difficult question to answer. There is a --  
17 there's a lot of things that go into planning a rate case.  
18 I would point out, however, that we are talking about Rate  
19 Year 1. Rate Years 2 and Rate Year 3 also include  
20 increases for -- for the Company's rates for its continued  
21 operations.

22 Q. All right. I -- I won't push you on  
23 that. I think it almost speaks for itself, but I won't  
24 testify either because I'll get objected to.

25 Now, in fact, it's somewhat higher

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2 because the Company's original proposal for Haverstraw  
3 also included some costs for decommissioning or  
4 dismantling the plant. Is that correct?

5                   A.     (Michaelson) That's correct.

6                   Q.     And there -- I -- I think it was about  
7 \$400,000 if I'm correct.

8                   A.     That's right.

9                   Q.     And the Staff asked the -- and the  
10 Company agreed to defer that for a later date?

11                  A.     Correct.

12                  Q.     So this roughly \$800,000 increase is  
13 even after removing those \$400,000 in costs, correct?

14                  A.     That's right.

15                  Q.     So in this case are not all the costs  
16 attributable to Haverstraw. At some point down the road,  
17 we're going to have another filing from the Company  
18 seeking to recost the -- recover the cost of  
19 decommissioning the abandoned plant. Is that correct?

20                  A.     As a result of the abandonment of a  
21 project, there's additional work that has to be done. So  
22 yes.

23                  Q.     Okay. Now, in your testimony, one of  
24 the factors to be considered in reviewing a JP is the  
25 outcome versus a fully litigated case and if it's within



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2 includes a return on equity for the Company greater than  
3 that provided by the Staff in its proposed testimony.

4                   A.     (Michaelson). And less than the  
5 Company's original submission with a more debt-laden  
6 capital structure.

7                   Q.     Okay.

8                   A.     (Ahern) Right. As the -- as Staff  
9 put in their testimony, they -- when they agreed with --  
10 to the 9 percent because it also reflected the increased  
11 business and financial risks of the joint proposal.

12                  Q.     Okay.

13                  A.     The expectation of increase in cost to  
14 capital and it -- as far as financial risk is concerned,  
15 there is a lower equity ratio approve -- or not approved,  
16 agreed to in joint proposal than either of the Staff's  
17 proxy group or the proxy group that the Company requested.

18                  Q.     Now, the joint proposal includes a  
19 stay-out premium, does it not, in addition to the return  
20 on equity to compensate the Company for staying out three  
21 years?

22                  A.     There -- to -- there is not a specific  
23 stay-out premium, but that was one of the risks that was  
24 cited by the Staff was the three-year rate year.

25                  Q.     So what are the financial risks to the

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2 Company from the JP that you were just alluding to, other  
3 than the staying out three years?

4                   A.     Well, the -- the financial risk is --  
5 is kind of combined. But financial risk by definition is  
6 the amount of debt in the capital structure. Thank you.  
7 And the capital structure that has been agreed upon by the  
8 signatories contains greater financial risk at 54 percent  
9 than either requested by the Company or then reflected in  
10 the proxy groups that the Company's requested was based  
11 upon or the proxy group that the Staff's request was based  
12 upon. And I might add, it also includes greater financial  
13 risk relative to the recently agreed-upon joint proposal  
14 for Con Ed, which has a -- also has a 9 percent ROE with a  
15 48 percent equity ratio.

16                  Q.     Now, Suez is a financially sound  
17 Company, is it not?

18                  A.     For all intents and purposes, yes.  
19 Staff has put its credit metrics in to that effect.

20                  Q.     And it has a Standard and Poor's  
21 rating of A minus. Is that correct?

22                  A.     To the best of my knowledge, they do  
23 not have a Standard and Poor's rating.

24                  Q.     Well, maybe you can tell me what this  
25 is. This is the response to Staff IR 11 Attachment B.

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2 MR. DICHTER: your Honor, I'd ask that  
3 this be marked as the next exhibit number. Careful  
4 of that wire.

5 A.L.J. PHILLIPS: Thank you. I didn't  
6 say anything because I saw it -- I thought I had  
7 warned you.

8 Can I just ask you, who -- who  
9 prepared this? Did -- this is a -- .

10 MR. DICHTER: This is -- it's the  
11 Company's response to Staff Interrogatory 11.

12 A.L.J. PHILLIPS: So who prepared it?

13 MR. DICHTER: Standard and Poor's on  
14 the -- on the --

15 A.L.J. PHILLIPS: Oh.

16 MR. DICHTER: -- rating service.

17 THE WITNESS: (Michaelson) Do you --  
18 do you have the original question that comes with  
19 that, instead of just the attachment?

20 MR. DICHTER: I only have the  
21 attachment with me.

22 A.L.J. PHILLIPS: But this is like a  
23 partial attachment to a Company response to Staff IR?  
24 I'm just trying to understand what it is.

25 MR. DICHTER: Yes. This is a partial

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2           -- this is an attachment to a response of the Company  
3           to the Staff IR

4                   A.L.J. PHILLIPS: Of the Company. And  
5           who -- ?

6                   MR. DUTHIE: your Honor, it was part  
7           of the pre-filed IR. So these all come in with the  
8           -- .

9                   A.L.J. PHILLIPS: I -- I understand  
10          that. But I'm -- without having the cover page, I  
11          don't know who prepared this. Do you -- do you  
12          remember who prepared this or attached this?

13                   MR. DICHTER: A Company witness.

14                   A.L.J. PHILLIPS: Is -- all right.  
15          Will the Company stipulate that this was something  
16          that you prepared and provided to Staff? Do -- do  
17          you know?

18                   MR. FITZGERALD: your Honor, I -- .

19                   A.L.J. PHILLIPS: You don't have to.  
20          I'm asking if -- .

21                   MR. FITZGERALD: I -- I'm -- I'm not  
22          prepared to stipulate to that at this point. But I  
23          do think if he wants to use it, we would like to see  
24          the question and the full response to give it the  
25          context.

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2 A.L.J. PHILLIPS: Okay.

3 MR. FITZGERALD: So if he wants to  
4 mark it as an exhibit, that's fine. But we would  
5 like the whole response marked as an exhibit --

6 A.L.J. PHILLIPS: Yes.

7 MR. FITZGERALD: -- not just part.

8 A.L.J. PHILLIPS: So I will mark it  
9 for identification, but I have a little bit of  
10 concern with it being just a portion of a document.  
11 If you could maybe provide the rest of it, I think it  
12 might be helpful. Just -- it -- it doesn't -- this  
13 doesn't -- I -- okay. I'll just stop there.

14 We'll mark it for identification as  
15 Hearing Exhibit 10.

16 (Hearing Exhibit 10 is marked for  
17 identification.)

18 MR. DICHTER: your Honor, I can just  
19 read you the question and the answer.

20 A.L.J. PHILLIPS: Well, tell me who  
21 prepared it, the date of it.

22 MR. DICHTER: It was prepared by  
23 Company Witness Doherty.

24 A.L.J. PHILLIPS: Who?

25 MR. DICHTER: And it was pre-filed



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2 the exact question?

3 BY MR. DICHTER: (Cont'g)

4                   Q.     Well, the exact question is latest  
5 credit reports from all three agencies. And the response  
6 was "Please see pre-filing IR Staff 11-A for the most  
7 recent Standard and Poor's report from United Water New  
8 Jersey and Staff 11-B for the most recent Standard &  
9 Poor's report from United Water Works." This is the  
10 report from United Water Works.

11                  A.     Thank you.

12                  Q.     You're welcome. And United Water  
13 Works is the parent company of Suez New York. Is that  
14 correct?

15                  A.     (Ahern) It was at the time. But I  
16 think now that there's been over -- a change in corporate  
17 structure, so.

18                  Q.     Let me ask. Can anyone talk to this?  
19 If they can't, they can't.

20                  A.     (Cagle) There was a -- there was a --  
21 I -- I can speak to the organizational structure, yes.

22                  Q.     Okay.

23                  A.     There was a change in the Company's  
24 organizational structure in 2015 of which previously  
25 United Water Works was the parent company of the Company's

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2 operations in Rhode Island, Westchester, New York, the  
3 Nickels Company, Delaware, Tom's River, Pennsylvania, and  
4 Idaho. I believe I had all of them. United -- United  
5 Water New Jersey is the parent company of United Water New  
6 York. United Water Resources was the parent of United  
7 Water New Jersey.

8                                   There's a -- a -- and then it kind of  
9 goes up -- and -- and it goes up from there. So at that  
10 point, United Water Works became the -- the parent of all  
11 of the previous water works companies that I -- that I  
12 just mentioned in those operations, plus the United Water  
13 New Jersey operations. United Water New York is still a  
14 subsidiary of United Water New Jersey at this -- at this  
15 time. I hope that helped.

16                                   Q.    Okay.

17                                   A.    (Ahern) Straight.

18                                   Q.    Can anyone speak as to this report?

19 Is anyone here that can?

20                                   A.    I can speak to the report.

21                                   Q.    Okay. Okay.

22                                   A.    And the -- the -- .

23                                   Q.    Does this show now an A minus rating  
24 from Standard and Poor's for United Water Works, Inc, and  
25 in 2015, which was pre the rearrangement, July 2015, the

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2 restructuring?

3 A. Yes, it does.

4 Q. Okay.

5 A. But I think the question was -- I  
6 think I was asked whether United Water New York, the then  
7 United Water New York had a name on its bond rating by  
8 S&P. And I said, no, they are not assigned a bond rating.

9 Q. I see.

10 A. United Water New Jersey has one.  
11 United Water Pennsylvania has one, and United Water Works  
12 has one, all A minus.

13 Q. Okay.

14 A. And pardon me. I have a cold.

15 Q. It's going around the Company.

16 A. Mine was grandchildren, the gift that  
17 keeps on giving.

18 Q. All right. Thank you. That's all I  
19 have on that.

20 Now, in the Company's filing also,  
21 there was a New York Manufacturer's tax credit of \$8.5  
22 million that the Company proposed to return to the  
23 customers over a two-year period. Is that correct?

24 A. (Michaelson) The amortization period  
25 was two years, but I believe our number was not 8.5

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2 million. And I don't remember off the top of my head what  
3 it was.

4                   A.     (Cagle). I don't recall, either, the  
5 exact number.

6                   Q.     Okay. So whatever the number was, the  
7 proposal was to amortize it over two years. Is that  
8 correct?

9                   A.     (Michaelson) That's right.

10                  Q.     And under the joint proposal, it's  
11 amortized over three years. Is that correct?

12                  A.     That's correct.

13                  Q.     So in Rate Year 1, there's actually  
14 less of a benefit to -- to ratepayers than under the  
15 Company's proposal. However under Rate Year 3, there  
16 would be a -- an offsetting benefit. Is that correct?

17                  A.     That's correct. And remember the  
18 rates are levelized as well. So the real bill impacts are  
19 spread out over the three years.

20                  Q.     Okay. And if -- but if this was a --  
21 not part of a three-year rate plan but it was a one-year  
22 rate case, it was the Company's position that one half of  
23 the credit should be returned to ratepayers in the rate  
24 year. Is that correct?

25                  A.     (Cagle) That was the -- that was what

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2 the company had proposed in its -- in its original filing  
3 was a -- was a two-year amortization period.

4                   Q.     Okay.  And a two-year amortization  
5 period would decrease the revenue requirement in that rate  
6 year over use of a three-year amortization period.

7                   A.     So if -- well, certainly if you spread  
8 a credit over -- over three years, there is -- there is  
9 less of a credit in each of the years than if you spread  
10 it -- sorry.  If you spread it evenly over three years,  
11 there's less of a credit than if you spread it over --  
12 evenly over two years, yes.

13                  Q.     I'd like to follow-up on -- because  
14 I'm still not sure about this -- questions asked by Mr.  
15 Duthie this -- this morning about what happens after the  
16 three-year rate period and this tax -- this tax credit.

17                  A.     Uh-huh.

18                  Q.     Is -- does it stop then?  Is the  
19 Company then, if it doesn't file for five years, going to  
20 be asked for reimbursement for Years 4 and 5?  I'm -- I'm  
21 not clear on that.

22                  A.     So what is -- what is built into  
23 basically -- built into the -- to the formula at this  
24 point is a -- is a reduction in each of the rate years.  
25 There's -- there's two -- there's two facets of this.

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2 One, the 8.5 million is a -- is an estimate. We will know  
3 the -- the -- the actual number by the end of the bridge  
4 period in this case. So there is -- there is going to be  
5 some differential there I'm -- I'm sure.

6 In addition, the rates will -- until  
7 the Company's -- until the Company's rates are changed,  
8 that credit, if you will, will continue to accrue to  
9 customers. Once the -- once the entirety of the -- the  
10 regulatory liability is gone, the Company would -- would  
11 accrue that -- would -- would continue to accrue that  
12 difference. So if it's one month, if there's a one-month  
13 difference, it would be one month of -- of that negative  
14 amortization, negative expense amortization that would be  
15 deferred along with the differential between the actual  
16 and the -- and -- and the projected amount to be treated  
17 in the next rate case.

18 If there were two months, there would  
19 be two months of that impact but also plus the -- the --  
20 the differential between the actual and -- and the  
21 estimate in the JP.

22 Q. Okay. Everyone else may understand,  
23 but I'm still not quite clear. After Rate Year 3, we go  
24 into Rate Year 4. Company does not file a rate increase  
25 at that time. Rates have been decreased during this rate

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2 period by this amortization -- so whatever the amount is,  
3 3 million, \$2-something million. In Rate Year 4, Company  
4 doesn't file for a rate increase, but rates are still  
5 reduced by that \$2-something million. The Company is  
6 going to book that for the next rate case, or is it only  
7 doing a reconciliation of the 8.5 and what it actually is?

8                   A. It would be the difference between the  
9 8.5 million plus or minus the -- the differential, plus  
10 whatever -- whatever additional amortization would go past  
11 the rate -- the third year rate plan in this case.

12                                 So in -- to -- as -- to give you an  
13 example, the -- the -- the rate plan -- the -- the third  
14 year of the rate plan is a -- it is a particular date.  
15 The end of the third year is a particular -- on a  
16 particular date. The rates would not change going  
17 forward, but if the amount that is to be returned, the  
18 rate -- the amount of the regulatory liability is to be  
19 returned has already been returned, then the company would  
20 basically continue to defer that amount because it is --  
21 it is a reduction in rates.

22                   Q. Can you point me to the provision in  
23 the J. -- joint proposal that states what you just stated?  
24 It would be Page 18, I assume.

25                   A. So it's 18, Paragraph 3 beginning, "In

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2 the event the Company's rate case does not coincide with  
3 the end of the rate plan, the Company will defer," any --  
4 "any over or under amortization for treatment on the  
5 Company's next rate case."

6                   Q.     All right.  Going back to your initial  
7 testimony and its positions on what the factors or  
8 elements are for judging whether a joint proposal is in  
9 the public interest and is just and reasonable, Page 4,  
10 Line 17 -- Line 17 and 18, could you read that sentence  
11 for me, someone?

12                  A.     (Michaelson)  I'm sorry.  Can you  
13 point that out again?  Sorry about that.

14                  Q.     Line 17 and 18's a bullet point --

15                  A.     Okay.

16                  Q.     -- on Page 4.

17                  A.     Okay.  "Whether the settlement strikes  
18 a fair balance among interest of ratepayers, investors,  
19 and the long-term soundness of the utility."

20                  Q.     Okay.  Now, with respect to Haverstraw  
21 and the long-term soundness of the Company, the funds  
22 necessary to build that project have already been  
23 expended.  Isn't that correct?  Other than the cost of  
24 removal, the \$53 million provided by the thing, which --  
25 part of which is return, obviously.  But otherwise, all

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2 those expense items have already been paid out by the  
3 Company to its contractors and vendors, et cetera. Isn't  
4 that correct?

5                   A.    Yes, with the exception of the cost of  
6 removal.

7                   Q.    All right. And are -- have those  
8 expenses been reflected in the Company's financial  
9 statements?

10                  A.    Yes.

11                  Q.    Has the Company taken the tax  
12 deductions -- excuse me -- for the plan or is it planning  
13 to do that in this tax year?

14                  A.    (Cagle) With the -- with the order to  
15 abandon the project, per IRS regulations, the Company was  
16 actually required to take that as a deduction in that --  
17 in the -- that year of abandonment, which was 2015.

18                  Q.    Okay. So if the Commission disallowed  
19 recovery of the Haverstraw costs in this case, it wouldn't  
20 create any cash flow loss situation for the Company. It  
21 wouldn't cause any financial harm to the Company, would  
22 it, other than its revenue requirement and profit to its  
23 shareholders would be lower?

24                  A.    Yes. It would cause significant harm  
25 to the Company.

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2 Q. I'll give you a chance to explain how.

3 A. Okay. The investors have -- the  
4 investors in the Company in response to the orders of the  
5 Commission provided funding to -- through both -- both  
6 equity and -- and debt funding to build a project. That  
7 project at this point represents approximately 10 or 11  
8 percent of the Company's proposed rate base in this case.

9 So basically, the disallowance of this  
10 would do a -- a -- a couple of things actually. It would  
11 decrease the value of the company substantially as well as  
12 -- because -- because the -- because the project was  
13 ordered by the Commission. The -- I mean, the -- the  
14 shareholders anticipated recovery of it, which is why they  
15 -- which is why they made the investment to begin with.

16 Q. Isn't there --

17 A. (Ahern) May I -- may I say -- .

18 A. (Cagle) Go ahead.

19 Q. Yeah, sure.

20 A. (Ahern) (Speaking off-mic.) Oops.

21 Am I -- oops, not on. I'm sorry.

22 If -- if they were allowed limited  
23 recovery or no recovery -- limited recovery is recommended  
24 by Mr. Peterson or no recovery, total disallowance, it  
25 would actually harm more than the Company. It would harm

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2 the ratepayers in -- and the investors -- in that it would  
3 increase the risk to the investors in Suez.

4 It would increase risk to investors in  
5 all utilities in the state, and that would increase the  
6 investor-required return, and that would increase utility  
7 rates in the state, which would cause harm to the economy  
8 in the case. It would make the economy less attractive to  
9 business coming from the outside.

10 The reason is the -- as we heard  
11 earlier this morning, the costs were -- I think it was a  
12 double negative -- characterized as not imprudent, which  
13 in my mind a double negative is -- isn't -- is a positive.  
14 They were deemed prudent twice by the Commission, and the  
15 investors, both the debt and the equity investors, had a  
16 reasonable expectation that they were going to earn a  
17 return on and of the expenses that have been expended so  
18 far and now abandoned as the cost to capital, which  
19 contrary to what someone had said, the 9 percent, doesn't  
20 recognize the cost of abandoned projects. It might in the  
21 competitive world, but it doesn't in the regulated world.

22 And the authorized return is simply --  
23 it's not a guarantee of a return. If it's in rate base,  
24 it's not a guarantee of -- of earnings on that rate --  
25 long-term regulatory asset, which should be allowed to

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2 earn at a long-term cost rate, not a short-term debt cost  
3 rate once it became a long-term regulatory asset.

4                   In the regulatory world where there's  
5 the expectation of a -- of a -- an opportunity to earn,  
6 not a guaranteed earn, that -- that risk is not -- the  
7 risk of the abandoned project is not reflected in the 9  
8 percent. So it would cause irreparable harm to a lot of  
9 folks in New York.

10                   Q. I feel like I'm at a presidential  
11 debate for that response. Oh, and I didn't interrupt, you  
12 might notice.

13                   A. Maybe I should run. No, no, no, no,  
14 no, no.

15                   Q. But I think the key part of what you  
16 just said was that there's no guarantee. But the -- but  
17 what's provided for by the joint proposal is an absolute  
18 guarantee of a return to the Company.

19                   A. No. What is provided by the joint  
20 proposal and what rate regulation provides is an  
21 opportunity to earn the return that is authorized or which  
22 would be the joint proposal if it's adopted by the  
23 Commission. It is not a guarantee.

24                   Q. It is a virtual guarantee of recovery  
25 of every dime spent.

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2 A.L.J. PHILLIPS: I think you need to  
3 move on. She's answered the question.

4 MR. DICHTER: Yes.

5 THE WITNESS: (Ahern) Thank you, your  
6 Honor.

7 A.L.J. PHILLIPS: Actually, I should  
8 say the panel. I'm sorry.

9 THE WITNESS: On their behalf.

10 BY MR. DICHTER: (Cont')

11 Q. Now, what you've just said --

12 MR. DICHTER: And I'm moving on, your  
13 Honor.

14 BY MR. DICHTER: (Cont'g)

15 Q. -- in essence is that the Company  
16 should be able to recover all costs because there is a  
17 risk involved. And that risk would be worse for customers  
18 if all the costs weren't recovered. I think that's what  
19 you just said.

20 A. No. In --.

21 Q. And --.

22 A. No. I'm sorry. I'll let you finish  
23 your question.

24 Q. And what -- what I'm having trouble  
25 with here is that I don't see a balancing of risk. There

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2 was a project -- I'm getting looks at -- there was a  
3 project --.

4                   MR. DICHTER: I know you want a  
5 question. I'm getting there. I need a foundation  
6 for it, though.

7 BY MR. DICHTER: (Cont'g)

8                   Q. There was a project that the  
9 Commission may have directed.

10                   A.L.J. PHILLIPS: Okay. I -- I do  
11 want to ask you a -- not so much a favor, but just  
12 remind you. It's good to set a foundation, but in  
13 doing so, please don't testify or outline your brief.  
14 If you could just ask the question --

15                   MR. DICHTER: That's fine, your Honor.

16                   A.L.J. PHILLIPS: -- that would be  
17 great.

18 BY MR. DICHTER: (Cont'g)

19                   Q. In the treatment provided by the JP,  
20 the Company and its investors are made whole. Is that  
21 correct?

22                   A. No. They are given the opportunity to  
23 be made whole consistent with traditional rate based rate  
24 of return regulation and development of revenue  
25 requirement and the opportunity to earn a return on and of

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2 the investment. Prudently incurred investment, which this  
3 was determined to be by the Commission, they -- once it  
4 was abandoned, the Commission turned it into a long-term  
5 regulatory asset to be included in rate base.

6                   Q.     The Commission did not turn it into a  
7 regulatory asset, did -- did they? They said the Company  
8 could file a petition to -- to book it as a regulatory  
9 asset. Isn't that correct?

10                   A.L.J. PHILLIPS: I'm going to step  
11 in. If we're talking about the previous orders in  
12 the surcharge and need case, they speak for  
13 themselves I think. Are you -- are you arguing with  
14 her over what the order said, or are you -- ?

15                   MR. DICHTER: I'm responding -- I'm  
16 responding -- the only reason I raised it, your  
17 Honor, is she said it -- Commission ordered it to be  
18 booked as a regulatory asset, and that's not what the  
19 order says. So I was responding to the witness'  
20 testimony. I can't -- if it's not correct, I'm not  
21 going to let it go unchecked. I'm going to follow  
22 into a follow-up question. I'm not trying to belabor  
23 the point. I'm not trying to --.

24                   A.L.J. PHILLIPS: And do you have the  
25 order with you?

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2 MR. DICHTER: I can find the reference  
3 to it, but it'll take a few minutes.

4 A.L.J. PHILLIPS: Do you -- do you  
5 know which order you're relying on, which of the  
6 orders?

7 MR. DICHTER: It's the surcharge --  
8 denial of the surcharge.

9 A.L.J. PHILLIPS: What date?

10 MR. DICHTER: It's actually in a  
11 footnote somewhere.

12 A.L.J. PHILLIPS: No, what date of the  
13 order because there's more than one.

14 MR. DICHTER: Sorry, your Honor. I  
15 can't always anticipate where the question -- the  
16 questions and the answers are going to go.

17 THE WITNESS: (Ahern) I can take that  
18 back, since I'm not 100 percent sure, since we're not  
19 -- go -- let him go. Oh. It was my understanding.  
20 Let's put it that way.

21 A.L.J. PHILLIPS: So can I -- can I  
22 attempt to maybe address this? The witness just  
23 indicated that she would take back her statement as  
24 to what the Commission said, and we will let everyone  
25 brief in their briefs. To the extent it's relevant,

1           16-W-0130 - October 5, 2016 - Suez Water  
2           what the Commission said in a previous case, I --  
3           this case, to the extent you can establish a nexus  
4           between what they said there and what the JP is  
5           providing here, perhaps you should address it in  
6           brief. I -- I don't think there's -- she's withdrawn  
7           what she said about what the Commission said.

8                     THE WITNESS: Only relative to --

9                     A.L.J. PHILLIPS: To -- I know.

10                    THE WITNESS: -- regulatory --.

11                    A.L.J. PHILLIPS: To that small  
12           portion where -- that you were taking issue with.

13                    MR. FITZGERALD: Okay. your Honor,  
14           that approach is acceptable to the Company, just to  
15           be clear.

16                    A.L.J. PHILLIPS: Is that acceptable  
17           to you, or do you want to continue to look for the  
18           language?

19                    MR. DICHTER: That's fine, your Honor.

20                    A.L.J. PHILLIPS: Thank you.

21                    I do want to take a break at 4:00,  
22           just so you know.

23                    MR. DICHTER: Okay.

24                    Mr. Peterson alluded to this and I'd  
25           like to have marked the response of the Company to MI

1           16-W-0130 - October 5, 2016 - Suez Water  
2           3, which relates to the -- I'll read the question.  
3           "If the Haverstraw project had been completed, what  
4           would have been its estimated in-service date and its  
5           expected useful of depreciable book life?"

6                   A.L.J. PHILLIPS: Okay. Thank you.

7                   MR. DICHTER: May I have this marked  
8           as the next exhibit number, your Honor?

9                   A.L.J. PHILLIPS: Yep. Don't -- okay.  
10          So the one-page exhibit entitled Municipal  
11          Intervenors for a Set of Requests. Request Number MI  
12          3 is marked for identification as Hearing Exhibit 11.

13                   (Hearing Exhibit 11 is marked for  
14          identification.)

15                   MR. DICHTER: Thank you, your Honor.

16          BY MR. DICHTER: (Cont'g)

17                   Q. And does this show that if the  
18          Haverstraw desalination plant had gone into service that  
19          it would have had a depreciable life of -- from 19 to 67  
20          years?

21                   A. (Cagle) A -- a depreciable asset such  
22          -- such as this has many different components which would  
23          be in different -- basically be placed into different plant  
24          and service accounts with varying depreciation rates. The  
25          -- the -- the range there assumes that the -- that the

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 depreciable life and the depreciation rate matches. And  
3 additionally, you know, because the project in total was  
4 not unitized under those different plan accounts, we  
5 couldn't really give a composite. We gave the range.

6                   Q.    Okay. You said you don't have a  
7 composite overall. Can you give me some sense of whether  
8 more of it falls into the 19-year range or the 67-year  
9 range?

10                  A.    Without -- I mean, with -- without  
11 actually going through and categorizing all the costs per  
12 the -- you know, according to the Company's accounting  
13 system into the various plan and service accounts, I -- I  
14 couldn't hazard an accurate guess.

15                  Q.    Has that been done? Has the Company  
16 gone through that exercise or is it just --

17                  A.    No.

18                  Q.    -- pump to sump cost together.

19                  A.    No. The -- the -- a -- a unitization  
20 takes place when -- or the unitization of the cost takes  
21 place when the asset is booked to Plant Account 101 for an  
22 account -- from -- from an accounting standpoint. That's  
23 actually when that action takes place with the full amount  
24 of costs.

25                  Q.    All right. And let's take, for

1           16-W-0130 - October 5, 2016 - Suez Waterexample,  
2     an item that has a -- that's booked in a plant -- in a  
3     plant account and it has a depreciable life of 30years.  
4     So that cost would be spread out among ratepayers over the  
5     course of that 30 years. Is that correct?

6           A. It would be depreciated over 30 years  
7     and the -- the -- the depreciation expense would be a part  
8     of the cost of the -- .

9           Q. And is that in recognition of the fact  
10    that customers will benefit from or receive service from  
11    that plan over that 30 year period?

12          A. Basically, yes. And --.

13          Q. And it's fair that customers who  
14    benefit from a plant in any particular year pay a  
15    portion of the cost of that facility. Is that correct?

16          A. Uh-huh.

17          Q. I can reword the question.

18          A. Yeah. I'm -- I'm -- I'm sorry. It  
19    was a little --.

20          Q. And for rate making purposes,  
21    depreciating a -- an asset of a period of time spreads the  
22    cost out among all customers who benefit from that plant.  
23    They should all share in the cost of that plant and a  
24    return on it. Is that correct?

25          A. Basically, yes. The -- the -- the

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 cost would be included in the Company's -- in -- in the  
3 Company's cost of -- cost of service, which should be  
4 designed to -- upon which the Company's rates would --  
5 would be designed.

6                   MR. DICHTER: I'm going to move on,  
7 your Honor, to something else. I don't know if you  
8 want to take a break right now.

9                   A.L.J. PHILLIPS: Yes. Let's say 10  
10 minutes -- well, let's just -- yeah, 10 minutes.  
11 Thank you.

12                   (Off the record)

13                   A.L.J. PHILLIPS: Mr. Dichter, please  
14 proceed.

15                   MR. DICHTER: Thank you.

16 BY MR. DICHTER: (Cont'g)

17                   Q. The joint proposal also includes what  
18 is called a RAC mechanism. Is that correct?

19                   A. Yes.

20                   A.L.J. PHILLIPS: Before you go any  
21 further, can someone say what that is for the court  
22 reporter? RAC stands for?

23                   MR. DICHTER: Revenue -- I think it's  
24 revenue adjustment -- no. I've forgotten actually.

25                   THE WITNESS: (Michaelson) I believe

1                   16-W-0130 - October 5, 2016 - Suez Water  
2                   it's revenue adjustment clause.

3                   A.L.J. PHILLIPS: Thank you.

4                   MR. DICHTER: Yeah.

5                   A.L.J. PHILLIPS: Okay. Please  
6                   proceed.

7                   THE WITNESS: I think.

8 BY MR. DICHTER: (Cont'g)

9                   Q. And what that provides is basically an  
10                  ongoing reconciliation of various expenses incurred by the  
11                  company from when -- one rate year to another?

12                  A. Can you say that again? I -- .

13                  Q. I'll rephrase the question. The --  
14                  the RAC basically is a mechanism to true-up the Company's  
15                  actual expenses for certain times with what was included  
16                  in the -- in the rate year?

17                  A. Not 100 percent of all items, but  
18                  generally speaking, that's -- that's correct.

19                  Q. Does it cover most of the Company's  
20                  major areas of expense?

21                  A. No.

22                  Q. Okay. Can we go through what items  
23                  are included?

24                  A. Sure. So the RAC will cover purchased  
25                  water, purchase power, chemicals, and waste disposal

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2 costs.

3 Q. Okay. So if the Company incurs higher  
4 expenses, then forecasts for those items, the Company  
5 would recover the additional costs through the RAC  
6 mechanism?

7 A. And if the Company's --.

8 Q. Is the answer yes? And then you can  
9 go.

10 A. Yes.

11 Q. Okay.

12 A. Partially, for some; 100 percent for  
13 others, and in the case where the actual expenses are  
14 lower, we would pass that back to customers.

15 Q. What's the treatment for property  
16 taxes?

17 A. Property tax is not part of the RAC.  
18 It's 85 percent, 15 percent reconciled.

19 Q. So -- all right. So the RAC provides  
20 some reduction of the Company's risk of doing business and  
21 agreeing to a three-year rate plan. Is that correct?  
22 Anybody?

23 A.L.J. PHILLIPS: Sorry. I don't know  
24 if you were here this morning, but I did indicate  
25 that when we have cross of a panel, they are allowed

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2 to consult before they answer.

3 MR. DICHTER: That's fine.

4 A. Not -- not necessarily.

5 BY MR. DICHTER: (Cont'g)

6  
7 Q. Can you explain how reconciliation  
8 allows you to -- recover increased cost in chemicals, for  
9 example, would not reduce the risk of the Company?

10 A. Because conversely, if the expense is  
11 lower, we don't get the benefit of that. We have to pass  
12 it back to customers.

13 Q. And that's fair, correct?

14 A. (Ahern) (Speaking off-mic.) You may  
15 possibly be referring to the investment risk of the  
16 company.

17 Q. I was not.

18 A. Okay.

19 Q. That was not my question, so.

20 A. Well, economic investment risk, but it  
21 -- it does not increase the perceived risk of the  
22 investors. There are so many things that go into any kind  
23 of risk, whether it's the economic risk of the Company or  
24 the investment risk of the Company.

25 Q. And there's an inherent regulatory

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2 risk in everything the Company does because it's regulated  
3 by the Public Service Commission.

4                   A.     Well, the -- the Company has  
5 regulatory risk based on the regulation of the -- what the  
6 Commission does. And that's the risk I was talking about  
7 before. The regulatory risk would increase if -- I know  
8 we're not talking about Haverstraw, but if that were  
9 disallowed or altered from the joint proposal.

10                                 But these revenue adjustment clauses,  
11 we can't -- it's like a joint proposal. You can't kind of  
12 pick apart one piece of it and say, oh, this increase or  
13 this decrease in particular inures to the benefit of the  
14 ratepayers. It -- it -- it's a package. Investment risk,  
15 economic risk is a package. And if there is any -- there  
16 may be reduction, volatility of revenues. It doesn't  
17 always translate into a reduction in risk as measured by  
18 volatility of earnings or volatility of cash flows.

19                                 It's balanced with, in this case,  
20 you've got three years going out in a three-year rate  
21 year. You've got forecast risk of the expenses changing.  
22 You've got forecast risk, the capital costs are going to  
23 change. So you -- you -- you can't talk about one little  
24 item of risk. Any individual item has almost a de minimis  
25 effect on -- on investment or economic risk.

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2 Q. Okay. And but it is one element of  
3 the package of the JP. Another element of the joint  
4 proposal is implementation of a SIC clause, which stands  
5 for -- someone want to help me -- system improvement  
6 clause?

7 A. (Michaelson) Charge.

8 Q. Charge?

9 A. System improvement charge.

10 Q. There you go. Okay. And the joint  
11 proposal provides that the Company, as Mr. Duthie was  
12 talking about this morning, provides the Company has new  
13 plant, comes into service during the three-year rate  
14 plan, can file with the Commission to start earning  
15 revenues or return on that plant that comes into service.

16 Is that correct?

17 A. For the list of identified projects  
18 contained in the JP, yes.

19 MR. DICHTER: I have three that I'm  
20 going to go through. I don't know if you want to  
21 -- .

22 A.L.J. PHILLIPS: Just, if you don't  
23 mind, you should probably just do them all at once.

24 MR. DICHTER: Okay. It just makes it  
25 harder. I've got to break it up.

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2 your Honor, I've handed out to the  
3 parties -- actually, I believe it's two responses to  
4 document request, one response to Ramapo Number 1 and  
5 also to Multiple Intervenors Number 5. I don't know  
6 if you want to mark them separately --

7 A.L.J. PHILLIPS: I was just about to  
8 ask you that question.

9 MR. DICHTER: -- or together. I -- I  
10 have no preference.

11 A.L.J. PHILLIPS: I think it'll be  
12 easier if we mark them separately. Do you mind what  
13 order they're in?

14 MR. DICHTER: The first one would be  
15 the Town of -- Town of Ramapo Interrogatory Document  
16 Request, Ramapo Number 1. And it also has an  
17 attachment of one page to it, so it would be a total  
18 of --

19 A.L.J. PHILLIPS: But -- but the  
20 attachment is --

21 MR. DICHTER: -- three pages.

22 A.L.J. PHILLIPS: -- separate, right,  
23 the way you handed it out?

24 MR. DICHTER: I handed it out  
25 separately is what I did.

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2 A.L.J. PHILLIPS: Oh, okay.

3 MR. DICHTER: In fact, they're part of  
4 the same --.

5 A.L.J. PHILLIPS: Okay. So the two-  
6 page interrogatory entitled Town of Ramapo  
7 Interrogatory/Document Request dated March 27, 2016,  
8 along with Attachment 1 -- this attachment goes with  
9 this request, right?

10 MR. DICHTER: That's correct.

11 A.L.J. PHILLIPS: Okay -- will be  
12 marked for identification as Hearing Exhibit 12.

13 (Hearing Exhibit 12 is marked for  
14 identification.)

15 A.L.J. PHILLIPS: And then the one-  
16 page document entitled -- it's Request Number MI 5  
17 dated September 12th, 2016, will be marked for  
18 identification as Hearing Exhibit 13.

19 (Hearing Exhibit 13 is marked for  
20 identification.)

21 A.L.J. PHILLIPS: Please proceed.

22 MR. DICHTER: Thank you.

23 BY MR. DICHTER: (Cont'g)

24 Q. Now, referring to what's been  
25 identified as Exhibit 12, Ramapo 1, it shows SIC project

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 costs of \$69.4 million rounded. And this was the  
3 Company's original pre-filed request. Is that correct?

4                   A. That's correct.

5                   Q. Okay. And the breakdown of that 69  
6 million is shown on the attachment to that request, the  
7 third page of Exhibit 12.

8                   A. Yes.

9                   Q. Now, there are a few projects that  
10 were removed as part of the JP agreement. Is that  
11 correct?

12                   A. Removed or scaled back.

13                   Q. Okay. Moved or scaled back. Okay.  
14 So you -- would you be able to go through the list and  
15 tell me which ones were removed or scaled back? I can  
16 help you, I think.

17                   A. So there were -- there was a Lake to  
18 DeForest Phase 1 and Lake to Forest Phase 2 in the original  
19 filing totaling approximately 13.5 million. The new  
20 amount is 309,000. And I'm looking at Page 19 of the JP  
21 which lists the actual projects that are in our SIC list. In  
22 Lake to Forest stability MPF inspection original amount of  
23 16.781 million is now 150,000. Spark Hill  
24 Radionuclide Treatment is unchanged. Haverstraw Tank,  
25 Monsey Tank is unchanged. Haverstraw Tank 3 MG is

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2 unchanged. Ramapo Augmentation first and second project  
3 are off. Indian Kill Dam was removed. Iron Manganese  
4 Treatment is unchanged. Sludge Handling is off. Stony  
5 Point Dam is slightly higher in the JP at 1.5 million  
6 versus 1.422. The production wells are unchanged and  
7 there was one additional project added to the list that  
8 you don't see, Sterling Tank for 1.369 million, which was  
9 moved out of the Company's rate base. I don't remember  
10 which rate year, but we removed it out of the rate base  
11 and put it in the SIC list.

12                   Q.     And on that same page, after the  
13 dollar amount, it shows the planned year-end service for  
14 these items. Is that still the Company's anticipated  
15 years in service for these projects?

16                   A.     (McEvoy) Oh, sorry. Yes, it is.

17                   Q.     Okay. So on the Lake -- Lake to  
18 DeForest part, it showed Phase 1 was within the  
19 three-year rate year, and 2021 I believe it outside the  
20 -- the rateplan. So where does it stand now?

21                   A.     We are in the process of doing a pilot  
22 plant at this point, which is one of the surcharge  
23 projects. So we haven't started or determined the scope  
24 of the project at this point. It is not included in one  
25 of the -- in the list. However, the pilot plant is

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 included in the list.

3                   Q.    So the 309,000 dollars is -- relates  
4 to the project plant?

5                   A.    Yes.  That -- that is correct.

6                   Q.    Okay.  Is the project plan -- has  
7 there been a definitive study done and contracts awarded,  
8 or what stage is -- is it in?

9                   A.    I'm sorry.  Could you repeat the  
10 question?

11                  Q.    I'm trying to get a handle on where  
12 the project stands at this point.  What -- what -- how is  
13 it along the timeline?

14                  A.    Which project are you referring to?

15                  Q.    The -- the -- the Lake to DeForest  
16 pilot project.

17                  A.    The -- the pilot plant?

18                  Q.    Yes.

19                  A.    The pilot plant is under construction  
20 at this time.

21                  Q.    And when is the Sterling Tank expected  
22 to go into service?

23                  A.    Sterling Tank is -- we are currently  
24 -- it's under -- well, the design is close to being  
25 complete, and we are currently negotiating with the

1                   16-W-0130 - October 5, 2016 - Suez Water  
2 homeowners association on a location. And we are looking  
3 to start construction in 2017.

4                   Q.    Okay. And how long would the  
5 construction period do you anticipate?

6                   A.    The construction period probably will  
7 take approximately six months.

8                   Q.    So you expect the project to be  
9 completed in 2017 or 2018?

10                  A.    Late 2017 or early 2018.

11                  Q.    Okay. Now, you say it's in the design  
12 plan stage. What information's been provided to staff to  
13 review to determine if they believe the project is  
14 warranted or not?

15                  A.    The Sterling Tank is reconstruction of  
16 an existing tank. Staff has been provided documentation  
17 in testimony. They've actually visited the site.

18                  Q.    Well, let's go to Exhibit 13.

19                  A.    Which is?

20                  Q.    Is MI 5. And the -- the first  
21 question there asked if the projects included in the SIC  
22 have been provided to be reviewed and approved by Staff in  
23 this or a prior proceeding. And the Company's response is  
24 that they've been reviewed and approved by Staff for  
25 future surcharge consideration. Can you explain what that

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2 means?

3                   A.     (Michaelson) They -- they've approved  
4 -- they've approved the list of SIC projects that will be  
5 considered for implementation of a surcharge in the future  
6 once all the conditions of the SIC mechanism have been  
7 met. Staff has reviewed it. We -- we've provided backup.  
8 We've provided invoices, et cetera.

9                   Q.     Was that done as part of this  
10 proceeding, or was it done outside the proceeding? I'm  
11 just -- how was that done?

12                  A.     It's done outside the proceeding. So  
13 within 60 days of any of these projects in the JP,  
14 assuming it's approved, going to service, we have to  
15 provide a compliance filing that Staff will review.

16                             Before the surcharge is implemented,  
17 which is done on an annual basis, we will provide  
18 additional information on all of the compliance filings we  
19 provided to Staff up through the time of the request to  
20 implement the surcharge.

21                             Staff will review all that, make sure  
22 they have the proper information, the proper backup, and  
23 then say yes or no or modify the surcharge. I believe the  
24 -- the steps are laid out in Page 19 and Page 20 and Page  
25 21 of the JP

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2 Q. Okay. Thank you.

3 Now, the Company has -- and the JP  
4 includes acceptance of a new way of handling M&S cost. I  
5 think that's management and services costs in this  
6 proceeding. Is that correct?

7 A. Correct.

8 Q. And as part of that process, costs  
9 that had been borne by Suez New York are now handled by  
10 its parent company. It's been -- some of the work has  
11 been offloaded, so to speak. Is that correct?

12 A. (Cagle) I -- I'm not sure I  
13 understand. Could you -- could you clarify or -- or  
14 rephrase?

15 Q. Can you describe the difference  
16 between, in short time frame, the difference between how  
17 M&S costs were recovered as part of the current rate plan  
18 and how they are being allocated and recovered as part of  
19 the joint proposal?

20 A. Okay. So there are -- there are a  
21 couple of differences. The -- the -- the most basic  
22 difference is the -- well, the most basic difference is  
23 the choice of allocation factor. In the -- in the prior  
24 -- under the prior methodology, costs were bucketed into  
25 several different categories and allocated based upon

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2 different methodologies for -- for each of those  
3 categories. For example, accounting costs were, I  
4 believe, allocated based upon a -- a factor which was  
5 developed off of total capitalization.

6                   There -- there are other examples of  
7 -- of that. I don't -- I'm -- I don't -- don't recall all  
8 of them right off the bat. There were -- there were  
9 several. Under the new methodology, the Company is  
10 utilizing a -- a single multifactor formula to -- to  
11 allocate -- to allocate costs by department. There are --  
12 as it relates to costs allocated to United Water -- sorry,  
13 Suez Water New York, there is -- there are corporate costs  
14 whose departments serve not just the regulated portion of  
15 the business, but all -- but the -- the other portions  
16 also.

17                   And there is a -- a -- a segment or --  
18 or -- or a group of departments which provide services  
19 only to the -- the regulated companies. So those are  
20 allocated based upon the same three factors. But the  
21 three factors would only be developed based upon the  
22 inputs of the units -- of -- of the operating units or --  
23 or business units, if you will, to which services are  
24 being provided.

25                   So for example, a department that

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2 provides services only to the -- the regulated companies,  
3 would -- would only be allocated to the regulated  
4 companies, and the factors developed would be based only  
5 upon the inputs of those factors from the regulated  
6 companies.

7                   Additionally, previously there were  
8 items which were allocated on similar bases but outside of  
9 the M&S agreement -- sorry, outside of the M&S allocation  
10 process within the Company's accounting system. Those  
11 have now been rolled in, if you will, to the -- to the  
12 process. So -- so they are done. So -- so those -- those  
13 allocations are actually performed by the system now.

14                   Q.     That's a pretty good answer.

15                   A.     That's -- that's -- that's the basics,  
16 so.

17                   MR. DICHTER: I just handed out the  
18 response of Suez New York to PULP Number 5,  
19 concerning M&S fees. I'd ask that that be marked the  
20 next exhibit number.

21                   A.L.J. PHILLIPS: PULP Number 5 will  
22 be marked for identification as Hearing Exhibit 14.

23                   (Hearing Exhibit 14 is marked for  
24 identification.)

25 BY MR. DICHTER: (Cont'g)

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2 Q. And this indicates on Page 2 that in  
3 the last rate case , M&S fees granted by the company were  
4 \$3 million. Is that correct?

5 THE REPORTER: Can you speak in the  
6 microphone?

7 MR. DICHTER: I'm sorry.

8 BY MR. DICHTER: (Cont'g)

9 Q. Looking at MI 5 on page -- excuse me,  
10 PULP 5 on Page 2, in the middle paragraph, it refers to  
11 the Commission in the last case of 3 -- granting a \$3  
12 million M&S allowance for the company. Is that correct?

13 A. (Cagle) I -- I believe that's  
14 correct. I -- I don't recall whether the -- the amount  
15 was exactly \$3 million. But it was close, certainly.

16 Q. And what is the amount to the Company  
17 that's included in the JP for M&S cost?

18 A. (Michaelson) Six point one nine four  
19 million.

20 Q. An increase of almost \$4 million.

21 A. (Cagle) That -- as I -- as I  
22 mentioned earlier, a good portion of that relates  
23 specifically to the change in the -- in the -- in the  
24 processing of what the Company refers to as corporate  
25 assumptions, which are -- are costs, allocable costs.

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2 Sorry, previously they were not allocated. Within the M&S  
3 process they were allocated separate from -- separate from  
4 the M&S process.

5 Q. And this -- I believe this response to  
6 this request identifies as the increase, taking that into  
7 account of the \$1.9 million. So I'm asking you, if you're  
8 comparing apples to apples, the \$3 million in the last  
9 case would be \$4.9 million in this case?

10 A. That's -- .

11 A. (Michaelson) So the \$4.9 million of  
12 traditional M&S fees included in the Company's original  
13 filing, not necessarily what's in the JP, versus what was  
14 allowed by the Commission in the last rate case of 3  
15 million, the difference is \$1.9 million. However, also on  
16 the response to this IR, it says, "Please note that the  
17 CAGR, or compounded annual growth rate, or the traditional  
18 M&S fees from 2013," -- "2013 actuals to the rate year is  
19 less than 3 percent."

20 Q. Let's move on to non-revenue water,  
21 since we're getting near the end. The company, I believe,  
22 stated that its current -- that its current non-revenue  
23 water percentage was somewhere in the neighborhood of 25  
24 percent. Is that correct?

25 A. (Graziano) For the test year, it was

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2 24.5.

3 Q. Okay. Now, the Company -- Commission  
4 only allows you to recover up to 18 percent, and the  
5 Company bears the cost above 18 percent. Is that correct?

6 A. The -- the -- there's a difference  
7 between -- there's a difference between New York and New  
8 Rochelle because one -- they're different companies. At  
9 -- at night, they part -- one is a purchase order company.  
10 One is not.

11 Q. Well, that's what I'm trying to get  
12 at. Is -- what cost above the 18 percent for New York --  
13 for Suez New York is not recovered from the rate payers?

14 A. (Michaelson) It depends on which  
15 expense item you're talking about.

16 Q. I don't -- any expense that's above --  
17 well, let's -- let's just look at it that way. If the  
18 Company's actual non-revenue water figure is 25 percent,  
19 and it's allowed 18 percent, then what are the elements  
20 that make up the cost that would not be allowable to be  
21 recovered by the Company?

22 MR. ALESSI: Just a objection as to  
23 form, but a request for clarification. Which company  
24 are you talking about?

25 MR. DICHTER: Suez New York.

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2 MR. ALESSI: Thank you.

3 BY MR. DICHTER: (Cont'g)

4 A. (Michaelson) So the production-  
5 related costs, which we spoke about earlier -- energy  
6 chemicals, purchase water, and waste residuals, or sludge  
7 -- the -- the reconciliation is between the actual cost  
8 incurred and the target cost in the JP. And for purchase  
9 water and sludge, it's at 100 percent. And for chemicals  
10 and energy, I believe it's 95 percent. It's in -- 95  
11 percent.

12 Q. So where is the disallowance then?

13 A. There's no disallowance other than the  
14 5 percent with the chemicals and energy.

15 Q. So you're saying the JP -- the amount  
16 shown in the JP for sludge -- and I forget the other items  
17 you mentioned, chemical costs -- are in there at 95  
18 percent of the Company's actual estimated costs?

19 A. No. Those are the targets established  
20 for the JP. The reconciliation is going to be between the  
21 actual cost and the target cost.

22 Q. So is there any disallowance in the JP  
23 related to the difference between the 18 percent and the  
24 24.5 percent?

25 A. No.

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2 Q. Now, on to the JP, if the Company is  
3 able to -- ?

4 A.L.J. PHILLIPS: Can I actually just  
5 ask a quick question?

6 MR. DICHTER: Yeah.

7 A.L.J. PHILLIPS: You said no in  
8 response to his question, but is that how it works  
9 currently as well?

10 THE WITNESS: That's how it works  
11 currently, your Honor, yes.

12 A.L.J. PHILLIPS: Oh, okay. I'm  
13 sorry. I just wanted clarification.

14 BY MR. DICHTER: (Cont'g)

15 Q. If, as a result of the Company's  
16 investment in its DMA and AMI, the non-revenue water falls  
17 below 18 percent during the rate plan period, does the JP  
18 provide for any deferral of the savings?

19 A. Regardless of the level of non-revenue  
20 water, the -- if the actual costs are below the target  
21 costs, they'll all go back to customers.

22 Q. And that would be done in a  
23 reconciliation as part of the RAC or how?

24 A. Part of the RAC.

25 Q. In the Company's implementation of the

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2 DMA, which we've heard will be rolled out over the next  
3 four years, I believe?

4                   A.     Three.

5                   Q.     Three. I got those backwards. That's  
6 three, and the AMI will be over the next four years?

7                   A.     Correct.

8                   Q.     In order to make it as successful as  
9 possible, is the Company targeting any fir -- any areas or  
10 districts to do first where it thinks there may be more  
11 lost water at this point in time?

12                  A.     (Graziano) Right. For the DMAs,  
13 we're target -- we're doing it as from the largest  
14 districts to the smallest districts because the largest  
15 districts would be -- the ones with the biggest amount of  
16 customers are the hardest ones to track because of the  
17 sheer size of them.

18                  Q.     Okay. And will that be completed  
19 within the next two years for the -- the largest district  
20 or less?

21                  A.     (McEvoy) Mostly.

22                  Q.     And is AMI being targeted in those  
23 same areas as well?

24                  A.     (Graziano) I don't believe so. No.  
25 AMI is not.

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2 Q. Okay.

3 A. They're two different -- they -- they  
4 work together, but they're -- they're in different tracks.

5 Q. Is there a reason they weren't  
6 coordinated in that fashion to try and pin this down as  
7 quickly as possible?

8 A. The DMAs are in-road meters. The --  
9 the AMIs are house meters. So there's a lot more of the  
10 AMI to do. You know, there's 75,000 customers as opposed  
11 to 53 meters for the -- for the streets. So there's --  
12 it's a -- there's a big difference in the amount of time  
13 it's going to take. And getting appointments, you know,  
14 you don't need an appointment with a street. You need an  
15 appointment with customers.

16 Q. That I'm sure of. With the roll out  
17 of AMI, what measures is the Company taking to ensure  
18 privacy of the customers and their information? Is there  
19 any concern about that?

20 A. No. There shouldn't be. We're using  
21 a traditional drive-by sort of smart metering technology  
22 now, which is RF technology. We're switching to just an  
23 automatic system with a -- a newer technology that will  
24 collect the information through antennas for us. So it's  
25 transmitting the same information as it always has. It's

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2 just a different way of collecting it.

3                   Q.    I have one last handout.

4                   A.L.J. PHILLIPS:  Were you done with  
5 that area of questioning?

6                   MR. DICHTER:  Yes.

7                   A.L.J. PHILLIPS:  I just have a quick  
8 question based on I think one of the comments at the  
9 most recent Public Statement Hearing.  When you roll  
10 out the individual AMI meters to houses, are -- is  
11 that something that people must accept, or can they  
12 reject it?  How does that work?

13                   THE WITNESS:  Well, you know, there's  
14 a little bit of a misnomer.  We're not changing the  
15 actual meters.  We're changing the RF device.  So --  
16 so we're taking out a -- a different -- like we have  
17 a Neptune RF device now, as a brand name.

18                   A.L.J. PHILLIPS:  Okay.

19                   THE WITNESS:  We're taking that off  
20 the -- the -- off the meter and putting in Senses  
21 (phonetic) RF device, which has a longer range.  And  
22 -- and -- and it's more conducive to the antenna  
23 system.  But we're not actually changing their  
24 physical meter unless it's up to be changed by age  
25 regulation.

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2 A.L.J. PHILLIPS: Okay.

3 THE WITNESS: But it's only swapping  
4 out one RF for another RF.

5 A.L.J. PHILLIPS: And if someone said  
6 they didn't want the new RF, do you know how that's  
7 handled? And this may be an unfair question. I'm  
8 just -- there was a person at the Public Statement  
9 Hearing I think who made a comment about that.

10 THE WITNESS: Yeah. That's why I was  
11 trying to think. I thought they meant they -- they  
12 thought they were getting a new meter. They're not  
13 getting a new meter.

14 A.L.J. PHILLIPS: Oh, okay.

15 THE WITNESS: There -- there's a  
16 misnomer. It's not an actual meter. It's just a --  
17 it's just a device that sends the signal. The meter  
18 is the same.

19 A.L.J. PHILLIPS: Okay.

20 THE WITNESS: We're using the same  
21 meters that are currently in the homes.

22 A.L.J. PHILLIPS: All right.

23 THE WITNESS: It's just the device  
24 that sends the signal has a longer range.

25 A.L.J. PHILLIPS: Thank you.

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2 BY MR. DICHTER: (Cont'g)

3 Q. Moving on to conservation.

4 I think it was stated earlier that --.

5 A.L.J. PHILLIPS: Did you want this  
6 marked?

7 MR. DICHTER: Oh, I'm sorry. Thank  
8 you. Thank you, your Honor. Yes. Could I have  
9 marked the -- as the next exhibit number Response to  
10 MI 7?

11 A.L.J. PHILLIPS: It'll be marked as  
12 Hearing Exhibit 15 as MI 7 dated September 12th,  
13 2016.

14 MR. DICHTER: Thank you.

15 BY MR. DICHTER: (Cont'g)

16 Q. Might as well start with MI -- with  
17 Exhibit 15. Does this show the breakdown of how the  
18 conservation funds that are included in the revenue  
19 requirement will be by rate year? That was not a very  
20 well-said question. But if you can answer it -- otherwise  
21 I'll restate it. It's a little late.

22 A.L.J. PHILLIPS: What did you say?

23 MR. FITZGERALD: We would object and  
24 ask for a restate --

25 A.L.J. PHILLIPS: I'm sorry.

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2 MR. FITZGERALD: -- restatement as to  
3 form.

4 MR. DICHTER: I -- I'm asking -- yes.

5 BY MR. DICHTER: (Cont'g)

6 Q. Does Exhibit 15 show the amounts  
7 included in Rate Years 1, 2, and 3 for conservation  
8 expenditures?

9 A. (Distant) Yes.

10 Q. And looking at Page 2, there is a  
11 chart there, a table. Is the response to Staff 16 what  
12 the Company had included in its pre-filed testimony?

13 A. That was the -- that was the original  
14 -- original conservation program, and the items to the  
15 right of Staff 16 are the additional items that were  
16 included subsequent to the Company's original position.

17 Q. Okay. Now, the Company has said, as  
18 far as the rebate program is concerned, it's still in its  
19 development stage. You've identified the amount for the  
20 program and you've identified how much the rebates will  
21 be. But are the details of how you're going to market and  
22 offer and manage the program in place yet?

23 A. They're not fully in place but -- but  
24 we're working on it.

25 Q. Are you planning to do this in-house

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2 or outsource the -- the program?

3                   A.     It's a mix.  It's partly in-house and  
4 partly -- partly with -- with the same vendor and Orange  
5 and Rockland is using.

6                   Q.     And what is the company doing as far  
7 as getting input from the community on how best to  
8 implement the rebate program or to monitor and review the  
9 rebate program as it goes forward?

10                  A.     Well, we've -- we've already obtained  
11 input from the community from several sources.  But as we  
12 move forward, we'll be discussing our rebate program with  
13 the customer advisory panels, getting -- getting continual  
14 feedback, so.

15                  A.     (Graziano)  We plan to do it on a  
16 survey.

17                  A.     (Distante)  Yes.  That's -- that's  
18 true.  And we'll -- we'll also be continuing with the  
19 survey process to get feedback from customers.

20                  Q.     Does the JP provide for submission of  
21 regular reports on the -- on the program and -- and having  
22 it available to all the parties in this proceeding?

23                  A.     Yes.  It does.

24                  Q.     And the Company is no longer a member  
25 of the Rockland County Water Task Force.  Is that correct?

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2 A. (Michaelson) That's correct.

3 Q. Is the Company going to meet with  
4 interested conservation groups and parties as to the  
5 conservation program after its -- this order in this case  
6 is entered, however it comes out?

7 A. (Distante) Well, can you be more  
8 specific? What -- what groups are you referring to?

9 Q. There have been a number of  
10 interveners in this case who have participated in the  
11 settlement discussions, who have submitted testimony, such  
12 as Scenic Hudson, River Keeper, the task force, et cetera,  
13 that have shown an interest and knowledge in this area.  
14 And I was wondering if the Company was planning on  
15 continuing to get their input, involvement in the  
16 conservation process as we go forward, or does the Company  
17 see that once the Commission's order is -- and this case  
18 is closed, that it goes on its own way to do what it  
19 thinks is best?

20 A. (Graziano) The Company, as always has  
21 continued to maintain a dialogue with all of our  
22 stakeholders and -- and get their input on -- on certain  
23 things as long as they -- you know, we're all in the  
24 common goal of -- of making things that are good for the  
25 community, good for the customers, good for the Company.

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2 So that ongoing dialogue is always welcome.

3 We also -- there's a piece of the, you  
4 know, for the working on the low-income rebate program,  
5 that's open to stakeholders as well, participation.

6 Q. And you agree that more community  
7 involvement and enthusiasm for a program, the better  
8 chances for its success?

9 A. It's the best chance of success is for  
10 customer involvement and participation.

11 Q. Okay. Now, with respect to rebates  
12 versus direct install, have you studied whether or not  
13 direct install would induce more customers to participate  
14 in the program?

15 A. (Distant) Not specific -- not  
16 specifically, no.

17 MR. DICHTER: your Honor, that's all  
18 the cross I have.

19 A.L.J. PHILLIPS: Okay. Thank you.

20 I -- I -- I want to ask the Company,  
21 do you believe that you will have redirect, and do  
22 you want to talk about that? Should we hold that for  
23 tomorrow?

24 MR. FITZGERALD: Yeah, your Honor, if  
25 we could just have a couple minutes for us to confer,

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2 actually. Yeah, that would --

3                   A.L.J. PHILLIPS: Okay.

4                   MR. FITZGERALD: -- Mr. Alessi and I  
5 would like to speak for a moment. And then we'll get  
6 back to you quickly with an answer on that.

7                   A.L.J. PHILLIPS: Okay.

8                   MR. FITZGERALD: Thanks.

9                   (Off the record)

10                  MR. FITZGERALD: Thank you, your  
11 Honor, for your patience for a moment while we  
12 consulted.

13                  At this time, the Company does not  
14 have any redirect for our panel.

15                  A.L.J. PHILLIPS: Oh. Okay. I don't  
16 know if you heard, but we decided that we will start  
17 at 9:00 a.m. tomorrow morning because I think we're  
18 going to have a lot of ground to cover. At that  
19 time, the panel will have to come back because we  
20 reserved I guess time and opportunity for Mr. Levine  
21 to conduct his cross-examination, and he was only  
22 available I think tomorrow. He was not available  
23 today.

24                  So the panel will have to return and  
25 have cross by one party. We'll go through the same

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2 thing again. So you're relieved for today but not  
3 excused for the hearing yet.

4           Are there -- I'm sorry, the other  
5 thing was exhibits. We currently have 1 through 15  
6 marked. However, we only have motions to enter into  
7 evidence Numbers 5 through 15. Are there any  
8 objections to any of those exhibits being moved into  
9 the record?

10           MR. DUTHIE: No objection, your Honor.

11           MR. FITZGERALD: No -- no objection,  
12 your Honor.

13           A.L.J. PHILLIPS: Okay. Hearing no  
14 objections, they are moved into evidence, Numbers 5  
15 through 15.

16           (Hearing Exhibits 5 through 15 are  
17 moved into evidence.)

18           A.L.J. PHILLIPS: Thank you all for  
19 your time. If there's nothing else -- oh, there is  
20 one more thing.

21           MR. ALESSI: Thank you, your Honor.  
22 When does your Honor envision the discussion that has  
23 --.

24           A.L.J. PHILLIPS: On the motion?

25           MR. ALESSI: Exactly.

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2 A.L.J. PHILLIPS: Yes. Tomorrow when  
3 Mr. Duthie gets ready to take the stand I think would  
4 probably be right before that.

5 MR. ALESSI: Right before that?

6 A.L.J. PHILLIPS: So we'll -- we'll go  
7 with the Company panel again first. We'll finish  
8 that, and then before we -- Mr. Duthie, you take the  
9 stand or whatever, I think we should address it at  
10 that point. And -- I'm sorry. Go ahead.

11 MR. RIGBERG: I would just -- this  
12 morning you said I would respond on Friday morning.  
13 You're now changing that to tomorrow?

14 A.L.J. PHILLIPS: Well, I -- I think I  
15 actually offered you a choice. I thought I said that  
16 we could either address the relevant portions for the  
17 relevant witness when they took the stand, or I would  
18 give you until Friday because you had indicated that  
19 you had these various conflicts and didn't have time  
20 to prepare.

21 We can hold the portion of the motion  
22 that deals with Mr. Berkley's until Friday, and I  
23 think that's a reasonable compromise because that way  
24 we'll know what we're dealing with with respect to  
25 his testimony prior to the 27th. And I -- I just

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2 think that would be better. But it would also  
3 address your concern about not having time to  
4 prepare, I think. So if you would like Friday, it's  
5 still on the table.

6           MR. RIGBERG: No, I'd rather do it --  
7 I think it makes sense to do it the same time we  
8 discuss that issue.

9           A.L.J. PHILLIPS: So you want to do it  
10 tomorrow?

11          MR. RIGBERG: Yeah. There -- it's --  
12 it's the same -- part of it is the same issue.

13          A.L.J. PHILLIPS: Okay. I think we  
14 can do that. My only hesitation is I don't know if  
15 Witness Cornell will be here, but if Mr. Simeti is  
16 --I -- I don't know. We'll have to see. She's the  
17 only person that I don't think will be here.

18          MR. RIGBERG: The issue -- the  
19 objection to her testimony is different from the  
20 objections to Mr. Berkley and Mr. Duthie's testimony,  
21 so.

22          A.L.J. PHILLIPS: Okay. Anything  
23 else? Okay. Thank you all for your time and  
24 patience, and I'll see you tomorrow at 9:00.

25          MR. ALESSI: Thank you, your Honor.

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A.L.J. PHILLIPS: We are off the  
record.

(Off the record)

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2 STATE OF NEW YORK

3 I, JANET AXTON, do hereby certify that the foregoing was  
4 reported by me, in the cause, at the time and place, as  
5 stated in the caption hereto, at Page 1 hereof; that the  
6 foregoing typewritten transcription consisting of pages 1  
7 through 339, is a true record of all proceedings had at  
8 the hearing.

9 IN WITNESS WHEREOF, I

10 have hereunto subscribed my name, this the 12th day  
11 of October, 2016.

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