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16-W-0130 - October 27, 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

Thursday, October 27, 2016
9:04 a.m.
19th Floor
Albany, New York 12223-1350

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

1 16-W-0130 - October 27, 2016 - Suez Water

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16-W-0130 - October 27, 2016 - Suez Water

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JONATHAN KLEINMAN; Sworn

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2 (The hearing resumed at 9:04 a.m.)

3 A.L.J. PHILLIPS: Good morning. I
4 call Case 16-W-0130, Proceeding on Motion of the
5 Commission as to the Rates, Charges, Rules, and
6 Regulations of Suez Water New York, Incorporated, for
7 Water Service.

8 This is a continuation of evidentiary
9 hearings that were noticed on September 21st. We've had
10 three days already, on October 5, 6, and 7. This will be
11 the fourth and final day of the evidentiary hearings on
12 this proceeding.

13 I'd like to take appearances at this
14 time.

15 MR. ALESSI: Robert Alessi, DLA Piper,
16 on behalf of the Company. And good morning, your Honor.

17 A.L.J. PHILLIPS: Good morning.

18 MR. FITZGERALD: Morning, your Honor.
19 Brian FitzGerald from Cullen and Dykman, on behalf of Suez
20 Water New York, Inc.

21 A.L.J. PHILLIPS: Morning.

22 MR. DUTHIE: Your Honor, Daniel Duthie
23 on behalf of the Municipal Consortium. Good morning.

24 A.L.J. PHILLIPS: Good morning.

25 MR. LEVINE: Bruce Levine, pro se.

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2 A.L.J. PHILLIPS: Morning.

3 MR. LEVINE: Bruce Levine, pro se.

4 A.L.J. PHILLIPS: Good morning.

5 MR. DOWLING: Joseph Dowling on behalf
6 of Department of Public Service Staff.

7 A.L.J. PHILLIPS: Good morning.

8 MR. DICHTER: Good morning, your
9 Honor. Joel Dichter from Municipal Intervenors.

10 A.L.J. PHILLIPS: Good morning.

11 MR. RIGBERG: Saul Rigberg with the
12 Public Utility Law Project of New York.

13 A.L.J. PHILLIPS: Good morning.

14 MR. RIGBERG: Good morning.

15 A.L.J. PHILLIPS: Are there any other
16 party representatives who wish to make an appearance on
17 the record? You need to come to the microphone. And if
18 you haven't provided your name and spelling of your name
19 for the court reporter, if you could do so when you
20 introduce yourself that would be helpful.

21 MS. PISHA: Gale -- Gale Pisha, G-A-L-
22 E P-I-S-H-A, Sierra Club Lower Hudson Group.

23 MS. KURTZ: Peggy Kurtz for Sierra
24 Club, Atlantic Chapter. And my last name is K-U-R-T-Z.

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

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2 MS. HUDSON: Good morning, your Honor.

3 Kate Hudson from Riverkeeper.

4 A.L.J. PHILLIPS: Good morning.

5 MS. FRIEDRICHSEN: Good morning,

6 Judge. Audrey Friedrichsen, Scenic Hudson.

7 A.L.J. PHILLIPS: Good morning.

8 Is there anyone else who wishes to
9 make an appearance on the record?

10 Okay. So when we left off on Friday,
11 October 7th, we had two witnesses that still needed to be
12 presented and for which there was cross examination.
13 That's Mr. Kleinman, who I'm guessing is sitting at the
14 witness table.

15 MR. KLEINMAN: Yes, your Honor. Good
16 morning.

17 A.L.J. PHILLIPS: Good morning.

18
19 Are there any preliminary matters that
20 we need to address before Mr. Kleinman is offered?

21 MR. ALESSI: Yes, your Honor, we have
22 one matter, if we could please?

23 A.L.J. PHILLIPS: Yes.

24 MR. ALESSI: Mr. Duthie sent around
25 amended testimony, revised testimony of Mr. Kleinman late

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2 in the afternoon. The Company has not had a chance, as
3 you can imagine, preparing for cross examination, to take
4 a look at it.

5 Rather than objecting at this point
6 and causing a delay in what is already a full delay, with
7 your Honor's permission, what the Company would appreciate
8 doing is to allow the testimony to come in subject to us
9 objecting and briefing on -- on the matter.

10 But it -- it is substantive. It is
11 new information as best we can -- can tell. And the other
12 item is I don't think we have an issue on the testimony
13 numbering and page number and line for what we need to
14 cross. But your Honor has been very clear in her
15 admonition that we're to cite to the page and the line
16 number. We prepared, as you know, there's a -- over four
17 hours of cross of Mr. Kleinman.

18 We -- no way we could go back and --
19 and adjust. So what we're going to try to do is to work
20 with it, but that would be the Company's suggestion as to
21 how we keep moving this forward, but in fairness to us,
22 have an opportunity to take a look at it and deal with it
23 in briefing.

24 MR. FITZGERALD: Okay.

25 A.L.J. PHILLIPS: Right. And

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2 actually, I think it probably would be most appropriate if
3 we just stick with the original testimony. If you want to
4 note that there was this correction, maybe that's a better
5 way to deal with it. But I think having a new set of
6 testimony that was that provided yesterday, I mean, I -- I
7 didn't print it out and I don't think anyone can
8 reasonably be expected to operate off of that kind of
9 substantive change, given that I've asked people to
10 indicate where in the testimony they were conducting
11 cross.

12 I understand -- I think that you were
13 trying to reflect a correction. Is that the case?

14 MR. DUTHIE: Yes, your Honor, and I
15 have no problems with giving the Company additional time
16 to review. It was only in -- the substantive changes were
17 only in the area of the incentive compensation, if you
18 will. So, yeah, I have no problems with, you know, doing
19 this later or leaving it to the briefing.

20 MR. ALESSI: Company consents to what
21 you suggest, your Honor. It actually would be better.

22 A.L.J. PHILLIPS: Okay. We're going
23 to work off of the testimony that was timely filed. If
24 you need to make note that there is a correction in
25 preparing your witness, you may do so.

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2 But the timeframe for providing
3 corrections to testimony has long since passed. And I
4 think this does create a certain difficulty for myself and
5 for others in terms of knowing what we're dealing with at
6 this point and knowing which version of the testimony to
7 refer to.

8 So I'm going to have you call your
9 witness and go through the preparation of that witness and
10 we'll deal with it in that way. But I believe we have to
11 stick with the testimony that was timely filed and you'll
12 deal with the correction as may be appropriate in
13 preparing your witness.

14 MR. DUTHIE: Thank you, your Honor.
15 Mr. Kleinman --.

16 MR. ALESSI: I'm -- I'm sorry, your
17 Honor. We had -- we had one more preliminary matter, if
18 we could?

19 A.L.J. PHILLIPS: Yes, go ahead.

20 MR. ALESSI: I notice Mr. Kleinman has
21 a computer and I would like to know if he has online
22 capability for that. Because if there is -- I mean, if he
23 has his testimony and that's what he's going to use, but
24 if he has online capability on that, we would not be able
25 to consent to him, throughout their cross examination,

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2 accessing the Internet.

3 MR. KLEINMAN: All right. I can
4 disconnect the Wi-Fi right now.

5 A.L.J. PHILLIPS: Is that acceptable?

6 MR. ALESSI: That is acceptable with
7 Mr. -- once Mr. Kleinman's under oath to state that he --
8 he's off the Internet. The only thing he has access to is
9 his -- his testimony, his initial and his rebuttal, and
10 then his, of course, his report that's attached to his
11 initial. With that, we would consent.

12 A.L.J. PHILLIPS: Okay. Mr. Kleinman,
13 could you please stand and raise your right hand?

14 Do you swear or affirm that your
15 testimony will be the truth, the whole truth, and nothing
16 but the truth?

17 MR. KLEINMAN: I so swear.

18 JONATHAN KLEINMAN; Sworn

19 A.L.J. PHILLIPS: And as just stated,
20 the testimony you're referring to is on a laptop. Is that
21 correct?

22 THE WITNESS: Yes, it is.

23 A.L.J. PHILLIPS: And you have disable
24 -- disconnected your access to Wi-Fi; correct?

25 THE WITNESS: Yes, I have.

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2 A.L.J. PHILLIPS: And so you are only
3 referring to the testimony that you timely filed in this
4 proceeding and including the attachment thereto? I
5 believe it was a report that was attached to it?

6 THE WITNESS: May I ask a question in
7 response?

8 A.L.J. PHILLIPS: Yes.

9 THE WITNESS: Okay. So there are
10 numerous documents that are a part of the case exhibits,
11 et cetera. I had loaded some of those up to be able to
12 reference them.

13 A.L.J. PHILLIPS: You -- can you --?

14 THE WITNESS: Okay. Fine.

15 A.L.J. PHILLIPS: Sorry.

16 THE WITNESS: Thank you.

17 So I had referenced a number of
18 exhibits. The parties have referenced a number of
19 exhibits. Is it okay for that to be on the laptop, as
20 well?

21 A.L.J. PHILLIPS: Is there any
22 objection to referencing other parties' exhibits?

23 MR. ALESSI: I don't have any
24 objection to referencing other parties' exhibits on the
25 computer. Again, I just want to make sure that whatever

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2 your Honor goes over, that's all that he is accessing.

3 A.L.J. PHILLIPS: Okay.

4 MR. ALESSI: Whatever he describes and
5 we consent to, that's all that he can access. Because he
6 disconnected from the Wi-Fi, but he obviously has a hard
7 drive. I just want to make sure that's all he's
8 accessing.

9 A.L.J. PHILLIPS: Okay. So you -- you
10 may be seated. I'm sorry.

11 THE WITNESS: Thank you, ma'am.

12 A.L.J. PHILLIPS: The witness is sworn
13 in and I'm just doing additional preliminary.

14 So I think in order to try to make
15 this as -- as fair and as transparent as possible, if and
16 when you do refer to something that is not either your
17 testimony or your report, if you can so indicate that and
18 allow everyone to be on the same page, I think --

19 THE WITNESS: Of course, ma'am.

20 A.L.J. PHILLIPS: -- that would be
21 helpful.

22 THE WITNESS: Okay.

23 A.L.J. PHILLIPS: So the witness is
24 sworn in. Does --?

25 THE WITNESS: Do I need the microphone

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2 on for people to be able to hear me? I'm sorry.

3 MR. ALESSI: For the reporter.

4 A.L.J. PHILLIPS: Yes, if you could
5 please use your microphone. The court reporter needs to
6 capture everything that you say and that facilitates her
7 in doing that.

8 Mr. Duthie, if you could prepare your
9 witness?

10 DIRECT EXAMINATION

11 BY MR. DUTHIE:

12 Q. Okay. Good morning, Mr. Kleinman.
13 Did you prepare direct and rebuttal testimony for this
14 proceeding?

15 A. Yes, I did.

16 Q. And your initial rebuttal testimony,
17 not the corrected version that I filed yesterday, was how
18 many pages?

19 A. 27 pages.

20 Q. And the corrected testimony was 28
21 pages?

22 A. Yes, that's correct.

23 Q. And could you just describe the sole
24 area in which you made corrections to your testimony?

25 A. Sure. In their referral -- or their

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2 reply testimony, Staff identified 2 executive orders in
3 the Energy Efficiency Portfolio Standards that created
4 shareholder incentives for the electric and gas utilities.
5 They correctly identified that I had referenced the
6 incorrect order. So I went into those 2 and pulled out
7 the information on the shareholder incentives that Staff
8 referenced and then put that into the corrected testimony.

9 There's also 1 more correction on the
10 Texas Energy Efficiency Programs. There's a rate cap. So
11 I adjusted my testimony to take into account those
12 corrections.

13 Q. Do those 2 corrections have any impact
14 on your recommendations?

15 A. No.

16 Q. Did you prepare rebuttal testimony of
17 approximately 14 pages?

18 A. Yes, I did.

19 Q. If I were to ask you today the
20 questions contained in those documents, would your answers
21 be as contained therein?

22 A. Yes.

23 MR. DUTHIE: Your Honor, I would ask
24 that the direct and rebuttal testimony -- the original
25 direct testimony be copied into the record as if read

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2 orally?

3 A.L.J. PHILLIPS: The original direct
4 testimony will be copied into the record as though granted
5 orally. And that is also subject to you providing that
6 document in Word format for the court reporter so that she
7 can insert it into the transcript.

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**BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION**

In the Matter of Suez Water New York, Inc.

Case 16-W-0130

**DIRECT TESTIMONY ON THE
JOINT PROPOSAL OF
JONATHAN I. KLEINMAN
ON BEHALF OF
SIERRA CLUB ATLANTIC CHAPTER AND
MUNICIPAL CONSORTIUM
September 14, 2016**

President, AIQUEOUS

8920 Business Park Drive | Suite 250 | Austin | TX 78759

(512) 745-3606

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I. INTRODUCTION

1 **Q. Would you please state your name, occupation, and business address?**

2 A. My name is Jonathan I. Kleinman. I am the President of AIQUEOUS, LLC
3 (“AIQUEOUS”), 8920 Business Park Drive, Suite 250, Austin, TX 78759.

4 **Q. On whose behalf is AIQUEOUS submitting testimony in this proceeding?**

5 A. I am submitting testimony on behalf of Sierra Club Atlantic Chapter and the Municipal
6 Consortium,

7 **Q. Please describe your professional education and experience.**

8 A. I earned my B.S. in Mechanical Engineering and B.A. in Environmental Policy from
9 Cornell University in 1991. After two years of professional experience, I attended the
10 Massachusetts Institute of Technology and earned my M.S. in Environmental
11 Engineering and M.S. in Technology and Policy. From 1996-1997, I worked as a Planner
12 at a Land Use and Transportation Planning firm where I developed environmental impact
13 assessments. From 1998-1999, I worked as a contractor and then as staff to the U.S.
14 Environmental Protection Agency’s Office of Water, supporting national water quality
15 regulations including the National Permit Discharge Elimination System (NPDES), Total
16 Maximum Daily Load (TMDL), and Water Quality Standard (WQS) programs. From
17 1999-2001, I worked as an Engineer on various watershed planning projects in
18 Southeastern Michigan, including the Rouge River Wet Weather Demonstration Project.

19 In October 2001, I was hired by Efficiency Vermont as a Project Manager. In that
20 position, I was responsible for working with businesses and institutions throughout the
21 state to identify, evaluate, and help them complete energy efficiency projects. My clients

1 ranged from Smugglers' Notch ski resort to mom & pop convenience stores on the U.S.-
2 Canadian border. I became a Certified Energy Manager in 2003 to increase my
3 effectiveness at working with businesses on their energy efficiency needs.

4 In November 2004, I joined Optimal Energy, Inc. as an Associate and then Senior
5 Associate. In that position, I completed cost-effectiveness analysis, energy efficiency
6 potential studies, energy efficiency planning, and energy efficiency program design
7 projects. Clients included Efficiency Vermont, Vermont Electric Company (VELCO),
8 Efficiency Maine, Efficiency New Brunswick, Long Island Power Authority (LIPA),
9 New York Power Authority (NYPA), New York State Energy Research and
10 Development Authority (NYSERDA), and American Municipal Power of Ohio. In 2007,
11 I developed and submitted testimony to the Vermont Public Service Board on behalf of
12 VELCO' Southern Loop Project to present summarize my reports entitled: "Assessment
13 of Energy Efficiency and Customer-Sited Generation Investments in the Southern Loop,"
14 and "Assessment of Achievable Potential for Energy Efficiency in the Central and
15 Northwest Vermont Load Zones."

16 In April 2008, I joined CLEAResult as its Director of Texas Programs. In that
17 capacity, I managed the teams that designed and delivered energy efficiency programs for
18 Oncor, American Electric Power – Texas North Company, American Electric Power –
19 Texas Central Company, Texas-New Mexico Power, Southwestern Electric Power
20 Company, CenterPoint Energy, Entergy Texas, and El Paso Electric, Inc. In 2010, I
21 created CLEAResult's Planning & Evaluation group, supporting cost-effectiveness
22 analysis, energy efficiency planning, and third-party evaluation participation across all of
23 CLEAResult's client programs in Arkansas, Oklahoma, Texas, New Mexico, Louisiana,
24 Michigan, and Ohio.

1 I became the Vice President of Policy, Design & Evaluation at CLEARResult in
2 2012. This position added regulatory affairs to my areas of responsibility, across more
3 than 30 states and two Canadian provinces.

4 In April 2015, I started my current company, AIQUEOUS. AIQUEOUS'
5 WaterWays® technology platform reduces the cost of running utility water conservation
6 and water quality programs. We also provide professional services, which includes cost-
7 effectiveness analysis, program design, and program planning. Projects over the past year
8 include a water conservation potential study for the Texas commercial and industrial
9 sectors; an analysis of regional variations in water conservation approaches in the 2017
10 Texas State Water Plan; an energy efficiency potential study for real water loss reduction
11 in the Pacific Northwest; and a pilot program evaluating the effectiveness of “smart”
12 irrigation controllers in Columbus, Ohio. AIQUEOUS' software-as-a-service clients
13 currently include municipal and cooperative water systems in Arizona, Texas, and Ohio.

14 **Q. Are you a member of any professional organizations?**

15 A. Yes. I am a member of the Association of Energy Engineers (AEE) and the American
16 Water Works Association (AWWA).

17 **Q. Have you testified before in regulatory or legislative proceedings?**

18 A. Yes. I have filed or given testimony before the Vermont Public Service Board, Texas
19 Sunset Commission, and Arkansas Public Service Commission. I have also presented to
20 quasi-regulatory collaboratives including the Energy Efficiency Implementation Project
21 (EEIP) in Texas and Parties Working Collaboratively in Arkansas.

22

II. PURPOSE

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to demonstrate that the Joint Proposal's ("JP's")
3 strategies for decreasing non-revenue water (NRW) (Section X), increasing water
4 conservation (Section XIX), and providing a shareholder incentive for the water
5 conservation program (Section XX) do not optimize program savings, cost-effectiveness,
6 or ratepayer benefits. My testimony also provides an alternate plan for each component,
7 drawing from my report, "Evaluation of Real Water Loss Control and Water
8 Conservation Options for Suez Water New York – Rockland County," which was filed
9 by Riverkeeper and Scenic Hudson on July 1, 2016 in this docket (DMM File No. 48)

10 **Q. Did you review all of SWNY's proposed NRW and water conservation programs, as**
11 **proposed in SWNY filed testimony, the Black & Veatch Water Conservation Plan**
12 **(April 2016), and in the JP?**

13 A. Yes.

14 **Q. How is your testimony organized?**

15 A. My testimony is divided into three major sections:

- 16 • A review of the proposed NRW program, and recommended changes.
- 17 • A review of the proposed water conservation programs, and recommended changes;
- 18 and
- 19 • A review of the proposed shareholder incentive for water conservation program
- 20 performance, with recommended changes.

21 **Q. Are you sponsoring any exhibits?**

22 A. Yes. Exhibit ___ (JK-1) is the report entitled, "Evaluation of Real Water Loss Control
23 and Water Conservation Options for Suez Water New York Rockland County," which

1 my colleague, Meghan Bock, and I prepared in June 2016 and which was filed by
2 Riverkeeper and Scenic Hudson on July 1, 2016 in this docket (DMM File No. 48).

III. NON-REVENUE WATER PROGRAM

3 **Q. What is SWNY's current level of non-revenue water?**

4 A. As stated by Chris Graziano in his response to Pre-Filed IR STAFF-78, SWNY's current
5 level of non-revenue water (NRW) was 24.55% for its most recent test year (i.e., the 12-
6 month period ending August 31, 2015). This represented a jump from NRW levels of
7 19.65% in the 2014 calendar year, which was the last full year of quarterly billing.
8 Assuming average water production of 29 MGD (according to submitted testimony by
9 Christopher J. Graziano in Case 13-W-0130) and real water loss equal to 60% of NRW
10 (see Exhibit ____ (JK-1), page 16), SWNY experienced about 4.3 MGD of real water
11 loss during that test year.

12 **Q. Could eliminating SWNY's real water losses have significant economic value to**
13 **ratepayers?**

14 A. Yes. Paula McEvoy's response to Interrogatory / Document Request No. STAFF-129
15 AMT-7 estimated capital costs of \$12 million per MGD for new supply wells, and
16 \$240,000 per year of operating costs for new supply wells. (New supply wells are the
17 lowest-cost option for new supply; direct reuse would cost \$32 million per MGD, and
18 indirect reuse would cost \$85 million per MGD, see Exhibit ____ (JK-1), Table 3, page
19 19.)

20 Just focusing on the capital costs for new supply wells means that real water loss
21 of 4.3 MGD is equal to \$51.6 million in new supply well capital costs, and just over \$1
22 million in annual operating costs.

1 While not all NRW is “recoverable,” NRW management efforts have been shown
2 to reduce NRW by up to 50%. The range of reported NRW reduction from Table 4 of
3 Exhibit ____ (JK-1) is 23.5% (from the Bordeaux, France case study) to 48% (both
4 Dryanovo, Bulgaria and Scottish Water, Scotland). Applying these ranges suggests that
5 the Company could reduce real water loss by 1.0 MGD to 2.0 MGD. That level of
6 reduction could save ratepayers \$12 million to \$24 million in new supply well capital
7 costs, plus \$240,000 to \$480,000 annually in groundwater well operating costs.

8 **Q. Please summarize SWNY’s proposed approach to non-revenue water management**
9 **as set forth in SWNY testimony.**

10 A. SWNY proposed to reduce NRW and control real water losses through the deployment of
11 advanced meter infrastructure (AMI), district meter areas (DMA), and pressure reduction
12 management (PRM); the hiring of a Non-Revenue Water Manager; and increasing their
13 transmission and distribution (T&D) main rate replacement from 0.24% per year to 0.7%
14 per year. The total cost for these investments was not clear – SWNY stated that AMI and
15 DMA would cost \$24 million over a 4 to 5-year timeframe, PRM would cost \$770,000
16 from February 2017 to January 2018, and main rate replacement would cost \$11.8
17 million annually. At the end of five years, SWNY proposed to achieve 1 MGD of real
18 water loss savings through this management approach. SWNY did not specify a cost for
19 the NRW Manager, nor did they estimate labor costs associated with pipe repairs where
20 AMI and DMA would help to pinpoint leaks.

21 **Q. What changes must be made to the NRW program originally proposed by the**
22 **Company?**

23 A. The key modifications necessary to create an effective NRW reduction program as set
24 forth in my report, Exhibit _____ (JK-1), included:

- 1 • The immediate hiring of a real water loss reduction contractor for \$1.5 million
- 2 over a 2-year time horizon to identify leaks for repair, to reduce real water loss
- 3 by 1.0 MGD in the short term. The benefit-cost ratio for this effort would equal
- 4 \$12 million in avoided capital costs divided by \$1.5 million in investment, or 8.0.
- 5 • Increasing the main replacement rate to 1% per year with an accelerated rate of
- 6 1.5% per year for the next five years to “catch up”;
- 7 • Quarterly NRW reporting with a performance incentive and penalty for NRW
- 8 performance (specifically related to the real water loss component of NRW), and
- 9 • Complete cost data to assess the cost-effectiveness of NRW management as a
- 10 supply side alternative.

11 **Q. Does the approach to NRW in the JP resolve the shortcomings of the Company’s**
12 **original proposal?**

13 A. Not completely. The Joint Proposal specifies the need for a detailed report to the
14 Commission any time that NRW exceeds 18%, as consistent with 16 NYCRR § 503.8(b),
15 and establishes a goal of reducing NRW to levels at or below 18%. The JP also
16 establishes more detail for the reports, calling for a breakdown of NRW into “unbilled
17 authorized use, apparent losses, and unauthorized real losses.” The JP also states that “a
18 copy of the Company’s annual water audit should also be attached to or included in this
19 report.”

20 The JP commits the Company and Staff to develop a demonstration project once
21 AMI is operational (after the four-year implementation timeframe, or in 2021) to measure
22 the water savings from the installation and usage feedback provided by AMI and the
23 reduction in NRW.

1 Finally, The Joint Proposal increases the T&D main replacement rate to 1%
2 annually, with a cap of \$17.0 million. Given that the company specified that its annual
3 main replacement costs are \$1.6 million per mile, this \$17.0 million cap seems to be an
4 annual expenditure cap. It is important to note that T&D main replacement, which is the
5 most expensive part of the listed NRW program in the JP, is an ongoing capital expense
6 for providing water, and should not be viewed as integral to a discretionary NRW
7 management program.

8 **Q. Is the NRW Program in the JP sufficient?**

9 A. No. The JP does not incent the Company for exceptional NRW management nor provides
10 a consequence to the Company for failing to achieve less than 18% NRW, and does not
11 commit to collect adequate data to evaluate real water loss reduction as a viable
12 alternative to supply-side strategies.

13 **Q. Why is it important to incent a utility to drive NRW below 18%?**

14 A. As noted earlier, managing NRW levels stands to provide ratepayers with significant
15 avoided cost benefits. Because this has the effect of slowing the growth of the utility's
16 capital assets, it would be effective to create both a carrot and stick for non-revenue water
17 management, as the JP has set forth for water conservation (though with significant
18 modifications, as discussed later in my testimony). Exhibit ____ (JK-1), proposed adding
19 the real water loss savings from NRW management to water conservation program
20 savings, establishing a combined goal with penalties for under-performance and
21 incentives for over-performance. My testimony on Section XX of the JP, below,
22 proposes a specific penalty and incentive structure.

23 **Q. What does it mean to treat real water loss reduction as the equivalent to supply side**
24 **expansion?**

1 A. If real water loss reduction can be achieved at a cost less than \$12 million per MGD and
2 \$240,000 per year, then real water loss reduction is an economically-preferred approach
3 to addressing long-term water supply. The estimated cost of SWNY's NRW management
4 approach is roughly \$26.3 million over five years (i.e., \$24 million for AMI/DMA and
5 \$2.3 million for PRM for 5 years). On the benefits side, AMI should provide SWNY with
6 both increased revenue (due to reductions in apparent losses) and decreased billing costs.
7 Exhibit ___ (JK-1) estimated these savings at \$8.4 million annually, resulting in savings
8 of \$42 million over 5 years, or net savings of \$15.7 million. Based upon these data,
9 SWNY can expect to provide real water loss reduction while reducing overall operating
10 costs to ratepayers.

11 **Q. What changes to the JP's NRW Program are necessary to create a program that**
12 **will benefit ratepayers?**

13 A. The specific modifications that must be made to the Joint Proposal are set out in Exhibit
14 ___ (JK-1). Specifically, the JP should require the implementation of a focused, two-year
15 effort to identify and repair leaks, provide an incentive and penalty for NRW program
16 performance (see my comments on Section XX, below), and require quarterly reporting
17 on NRW until NRW falls below 18%, and thereafter at a frequency appropriate to verify
18 the level of incentive or penalty earned by the Company.

IV. WATER CONSERVATION

19 **Q. What is the advantage to SWNY ratepayers from the implementation of water**
20 **conservation programs?**

21 A. As noted in the prior section on NRW Management, water conservation can provide
22 \$12.0 million in avoided capital cost economic benefits plus \$240,000 per year in

1 avoided operating cost economic benefits. Thus, SWNY's proposed expenditure in the JP
2 of \$5.2 million to provide 0.68 MGD of "active" savings (per the Black & Veatch Water
3 Conservation Plan) would yield \$3.0 million in net economic benefits (i.e., 0.68 MGD
4 multiplied by \$12.0 million per MGD minus \$5.2 million in program costs) plus an
5 additional \$163,000 in annual operating cost benefits. Increasing water conservation
6 savings for the same budget amount can provide even greater benefits to ratepayers.

7 **Q. Please summarize SWNY's proposed approach to water conservation in its filed**
8 **testimony.**

9 A. SWNY testimony, based upon the Water Conservation Plan developed by Black &
10 Veatch in April 2016, proposed a full water conservation portfolio. The Water
11 Conservation Plan included \$1.4 million for administration, education and evaluation;
12 \$1.8 million for single-family residential rebates; \$0.6 million for multifamily residential
13 rebates; and \$1 million for commercial, institutional, and industrial (CII) audits and
14 rebates. The proposed five-year program would achieve 0.68 MGD of "active" savings
15 and 0.37 MGD of baseline savings at a cost of \$4.8 million.

16 **Q. In what ways does the water conservation plan in the JP differ from the plan**
17 **originally proposed by the Company?**

18 A. The differences in the JP's water conservation program includes the addition of rebates
19 for Irrigation Rain Sensors and Smart Controllers, irrigation contractor workshops, CII
20 trade workshops, do-it-yourself audit materials, \$25,000 per year for marketing, targeting
21 low income customers for rebate programs and DIY audits, and explicitly proposing to
22 use its AMI to drive conservation savings (with details to be provided upon completion of
23 the AMI rollout, presumably in 2021). These changes added roughly \$400,000 to the total
24 water conservation program, raising the proposed five-year cost from \$4.8 million to \$5.2

1 million. In the absence of savings values for the smart irrigation controllers in Appendix
2 8 of the JP, these changes appear to maintain the 0.68 MGD of savings as originally
3 proposed by the Company in filed testimony.

4 **Q. What changes to the Company's originally-proposed water conservation program**
5 **are necessary to optimize water conservation savings?**

6 A. In my report annexed as Exhibit ____ (JK-1), I outlined several modifications and
7 additions necessary to create an effective conservation program: four additional programs
8 (CII Incentive and Technical Assistance, Residential Direct Install, Residential Irrigation
9 Consultancy, and Smart Meter Savings); third-party evaluation, measurement and
10 verification (EM&V) of results; and hiring of a Water Conservation Manager. I also
11 recommended reducing the single- and multi-family residential toilet rebates, transferring
12 all funds from the CII Audit Program to the CII Incentive and Technical Assistance
13 Program, and removing the Water Conservation Coordinator position (to be filled instead
14 by the Manager position). Based upon analysis of program data from other jurisdictions
15 across the country, I estimated that these changes would yield 1.9 MGD of "active
16 savings" with no change to "baseline" savings (which occur in the absence of a program),
17 at a total cost of \$5.8 million. Assuming \$12.0 million per MGD of capital cost benefits
18 and \$240,000 per year of operating cost benefits, this program would yield \$17 million in
19 net capital cost benefits (i.e., \$1.9 MGD multiplied by \$12.0 million per MGD, minus
20 \$5.8 million for program costs) and provide an additional \$456,000 in annual operating
21 cost benefits. This increases the yield over the JP's water conservation plan by \$14.0
22 million in capital cost benefits and \$293,000 per year in annual operating cost benefits.

23 **Q. Is the conservation program in the Joint Proposal sufficient and reasonable?**

24 A. No. My primary concerns are:

- 1 • Program cost recovery in rates rather than a conservation surcharge;
- 2 • the continued reliance upon a five-year time horizon without annual targets or plans;
- 3 • no changes to program design to manage free-ridership risks in the toilet rebates;
- 4 • the use of smart controllers without clear eligibility rules, since smart controllers can
- 5 actually drive up water consumption in many situations;
- 6 • reliance upon one annual in-person workshop rather than online tools that could reach
- 7 a broader audience;
- 8 • a continued focus on multifamily or ICI audits that only target specific indoor
- 9 plumbing fixtures, without taking into account what might actually use the most
- 10 water at individual facilities;
- 11 • development of AMI-based customer portals in-house instead of seeking outside
- 12 vendor solutions; and
- 13 • the lack of third-party review of savings claims, given the magnitude of the proposed
- 14 shareholder incentive and penalty mechanism.

15 **Q. Why should the conservation program be funded through a water conservation**
16 **surcharge in lieu of recovery in rates?**

17 A. Customer- and contractor-facing programs are very dynamic and are more subject to
18 market changes than are capital infrastructure investments. Rate cases typically involve
19 much higher costs than are required for conservation program budgets, and the rate case
20 process can significantly bog down the needed nimbleness of conservation program
21 planning and implementation. Rate cases are also very quantitative in nature, focusing on
22 proposed investments, capitalization, construction timelines, interest and discount rates,
23 and projected sales. While conservation plans estimate budgets and savings, the focus
24 needs to be on tracking results in the field, not via estimates in the planning process.

1 This lends water conservation to implementation through a water conservation
2 surcharge, separate from rates, as is done in New York State via its Energy Efficiency
3 Portfolio Standard. A surcharge funding mechanism will provide the company more
4 flexibility in making adjustments to its water conservation funding mechanism in
5 response to market conditions.

6 **Q. Why should there be a three-year time horizon instead of five for the water**
7 **conservation plan?**

8 A. While five years may be appropriate for established capital infrastructure programs,
9 initiatives such as water conservation programs (especially new ones) are very dynamic
10 and frequently require course corrections. This is one of the reasons that New York's
11 energy efficiency programs use a three-year implementation plan. For example, the
12 current Con Edison "Energy Efficiency Transition Implementation Plan" filed under Case
13 15-M-0252 covers the 2016-2018 time horizon. Given New York's experience in energy
14 efficiency, it makes no sense not to choose a parallel approach for water conservation.

15 The water conservation plan should also include an annual set of targets to help
16 SWNY and the Commission assess the effectiveness of the proposed program designs.
17 This would assist the parties in measuring the progress of the water conservation
18 programs, as is envisioned in Sections XIX.A.3 and F of the JP.

19 Assuming a goal of 4.0 MGD of savings at the end of five years, which combines
20 water conservation program savings and real water loss reduction, I propose the
21 following ramp up schedule for annual water conservation savings targets:

- 22 • 2017: 0.4 MGD
- 23 • 2018: 0.6 MGD
- 24 • 2019: 0.8 MGD

- 1 • 2020: 1.0 MGD
- 2 • 2021: 1.2 MGD

3 The incentive mechanism, discussed below, should also feature annual targets and
4 milestones.

5 **Q. What is the concern with the Joint Proposal’s water conservation program**
6 **continuing with market-based toilet rebates?**

7 A. Free ridership levels in the proposed approach are very high, as compared to other
8 industry standards, especially for a “high impact measure” (i.e., one that will drive the
9 majority of the savings). This can be addressed through a Direct Install program, which
10 can target customers based upon age of the home, income level, or other factors that
11 suggest a low likelihood of toilet replacement in the absence of a program.

12 A good point of comparison is a product-oriented energy efficiency program,
13 Retail Lighting, which historically has had among the highest free ridership rates to
14 manage. For example, in Massachusetts, DNV GL recently found that free ridership for
15 the installation of light-emitting diode (LED) programs was approximately 21.4% (Final
16 Report of Massachusetts LED Spillover Analysis, Massachusetts Program Administrators
17 and Energy Efficiency Advisory Council, September 24, 2015). In Maine, NMR found
18 that standard CFL free ridership was 20.6%, specialty CFLs were 65.3%, and LEDs were
19 23.2% (Efficiency Maine Retail Lighting Program Overall Evaluation Report, FINAL,
20 April 16, 2015). The bulk of the program savings derived from standard CFLs, and the
21 overall free ridership rate was 23.6%.

22 The proposed free ridership rate for SWNY’s single-family residential rebate
23 program is 58% (i.e., “baseline” savings of 0.194 MGD with total savings of 0.335 MGD,
24 see Table 9-1 of the Black & Veatch report). In the energy efficiency sector, this would

1 be flagged as a risk of increasing the cost of service for ratepayers and would drive
2 changes to the proposed program design.

3 As a consequence, I recommend a direct install program that would replace toilets
4 and showerheads at 3,150 households over the 5-year program period. This would require
5 \$1.21 million and save an estimated 0.17 MGD. I recommend keeping but significantly
6 lowering the proposed toilet rebate program, keeping only \$322,000 toward rebates over
7 the five-year period. This rebate budget could most effectively be managed in partnership
8 with Orange & Rockland County's energy efficiency online platform, as proposed by the
9 Company.

10 **Q. What is the potential consequence of the smart irrigation controller program?**

11 A. It is possible that the use of smart irrigation controllers could result in an overall increase
12 in water consumption on the system. The Water Research Foundation recently completed
13 its Residential End Uses of Water – Version 2 study (2016), which found that over half of
14 all residents “under-water” their landscape (i.e., their application rate is less than the
15 evapotranspiration needs of their landscape). Our experience with smart irrigation
16 controllers – which includes a pilot program in Columbus, Ohio, where we are actively
17 monitoring the installation of 30 smart controllers – is that these controllers increase
18 water consumption at homes that “under-water.” Given the risks of driving demand
19 higher, this measure should not be accepted in the program, unless the JP includes
20 documented savings estimates in Appendix 8 for the controllers, and program eligibility
21 rules limit use to high water users.

22 I instead recommend the implementation of a Residential Irrigation Consultancy
23 Program. The program would provide a one-hour review of irrigation settings and the

1 recommendation of new settings, an on-site discussion of how much water the irrigation
2 system uses, and the offer of a smart controller. This is detailed in Exhibit ____ (JK-1).

3 **Q. What is the alternative to the irrigation workshops?**

4 A. While workshops are an effective tool to reach contractors (if held early in the morning),
5 online tools provide a better and more scalable platform for reaching residents. For
6 example, the City of Plano developed its “Water, Water, Everywhere” online learning
7 module (<http://learn2livegreen.com/Irrigation/base.html>) at a relatively low cost (around
8 \$15,000 according to Abby Owens, Sustainability and Environmental Education
9 Supervisor, who presented the module at the 2015 Water Smart Innovations conference).
10 In May 2016 alone, the site had over 400 visitors (Abby Owens), and the City of Plano
11 has expressed willingness to extend its use outside of its jurisdiction. Creating or
12 purchasing and promoting such an online tool, combined with education-oriented
13 materials (e.g., <https://www.plano.gov/318/Saving-Water-Outdoors>) could be a more
14 effective and less expensive alternative to a once-yearly workshop.

15 **Q. What should the C&I trade workshop focus on?**

16 A. The proposed C&I workshops will focus on indoor plumbing fixtures. However,
17 according to the U.S. EPA’s WaterSense program, “domestic / restroom” water
18 consumption only accounts for 30-45% of water use in a range of facility types (see
19 <https://www3.epa.gov/watersense/commercial/types.html>). Other end uses that have
20 significant water use impacts include kitchen / dishwashing (50% of restaurant water
21 use), landscaping (20-30% of school and office use), and cooling towers (20-30% of use
22 in hospitals and offices). For industrial customers, WaterSense focuses on process
23 optimization and water reuse.

1 While the proposed C&I workshops can provide value for many multifamily,
2 commercial, and institutional facilities, they leave significant water conservation savings
3 “off the table.” Depending upon the targeted audience, the workshop curriculum should
4 take advantage of available training materials and local trade allies to promote water
5 conservation across all end uses. Failing to address these other end uses can result in the
6 workshops being viewed as not credible, which can impact the effectiveness of SWNY’s
7 conservation programs overall.

8 **Q. What will limit the effectiveness of the proposed C&I audits?**

9 A. Audits alone can be ineffective unless supplemented with benchmarking, customized
10 rebates, and planning at a minimum to yield savings. Additionally, these audits seem
11 focused on indoor plumbing fixtures. As noted above, domestic use accounts for only a
12 portion of water use. Achieving conservation savings across all facility types requires
13 auditing elements such as kitchen equipment, landscape irrigation and controller settings,
14 and cooling towers. For any industrial customers, the audits should focus exclusively on
15 industrial process opportunities, which could be done in conjunction with local or
16 regional university programs. Audits should be accompanied by benchmarking with other
17 facilities, customized rebates and evaluations of financing strategies to help pay for these
18 projects (including lease purchases).

19 **Q. Why is a pay-for-performance incentive program necessary?**

20 A. Identifying water conservation opportunities at a C&I facility, and even planning for their
21 implementation, does not guarantee follow-through. C&I organizations always encounter
22 fiscal challenges in their budget planning processes, and discretionary capital investments
23 are always the first items to be cut. Financial incentives help to move these projects to
24 implementation and focus on the rate of return.

1 This is why I have recommended a CII Incentive and Technical Assistance
2 Program, to combine appropriate technical assistance with financial incentives. My
3 proposal would transfer the Company's roughly \$550,000 audit budget to this program,
4 offering technical assistance and incentives on roughly 24 projects that would yield 0.13
5 MGD of savings. This is detailed in Exhibit ____ (JK-1).

6 **Q. Why is the Joint Proposal's approach to AMI concerning?**

7 A. The JP looks at the in-house development of software to provide customers with
8 comparison of their water use. However, direct experience in New York points to the
9 preferred use of third-party providers of this service as standard practice. For example,
10 OPower (now Oracle) provides "behavioral energy efficiency programs" for National
11 Grid and Con Edison. Measurement Verification reports of OPower's programs, such as
12 Seattle City Light's Home Electricity Report Program, 2013 Impact Evaluation by DNV
13 GL, show program savings of around 3-4% of total consumption.

14 Rather than having SWNY develop its own comparisons, the JP should call for a
15 third party "behavioral water conservation program," such as those now offered by
16 WaterSmart or DropCountr. As an alternative, SWNY could take advantage of meter data
17 management programs and associated software portals, such as those offered by
18 FATHOM or Badger. Beyond simple comparisons, these software packages can provide
19 "leak alerts" to end use customers if off-hour consumption levels are abnormally high,
20 and also provide digital communications in the event of system issues (e.g., low pressure,
21 boil water notices, hydrant flushing).

22 I recommended a Smart Meter Savings Program that would use a third-party
23 provider to implement a behavior-based program for the Company's single-family,
24 multifamily, institutional, and commercial customer segments. Based upon industry

1 benchmarks, this program should reduce total consumption in all segments by about 4%,
2 or about 0.85 MGD.

3 **Q. What changes must be made to the Monitoring, Reporting, and Adjustments to**
4 **Program section of the Joint Proposal?**

5 A. In my experience, I have not seen an energy efficiency portfolio awarding a shareholder
6 incentive (or imposing a penalty) in the absence of structured, third-party review.
7 Whether the EM&V results factor into the shareholder calculation does vary from state to
8 state. For example, in Minnesota, shareholder incentives are a function of net benefits
9 (i.e., after evaluation), while in Colorado's earlier demand-side management portfolio
10 (2009-10), shareholder incentives were purely a function of program costs. See "The
11 Carrot and the Evaluator" by Laura Schauer, September 23, 2013, presented at the
12 ACEEE National Conference on Energy Efficiency as a Resource.

13 The concern is purely a practical one. Putting SWNY in the position of evaluating
14 its own program performance to determine whether it merits a shareholder incentive or
15 deserves a shareholder penalty puts management in an unfair and subjective position, and
16 will raise doubts on any program results presented. In my own experience, it is possible
17 to set up varying levels of independent review, focusing on "reliable results at reasonable
18 cost." In the early years of a program, establishing a "desk review" process that double-
19 checks data entry and savings calculations is a low-cost approach to independent review.
20 Given the potential risk of free-ridership in the toilet rebate programs, however, it seems
21 to make sense to hire an evaluator to determine the effectiveness of the toilet rebates in
22 driving water conservation savings.

23 I also believe that quarterly program reports, combined with an annual report and
24 revised plan for the following year, is appropriate (especially with regard to the

1 recalculation of water conservation funding). Reporting formats should follow the
2 process in New York’s Energy Efficiency Portfolio Standard.

V. PROPOSED SHAREHOLDER INCENTIVE

3 **Q. Please summarize the Joint Proposal’s proposed incentive mechanism.**

4 A. The JP provides an incentive mechanism for the Water Conservation Program to
5 encourage SWNY to pursue water conservation, which otherwise could slow the growth
6 of its capital assets (and therefore slow or prevent growth of profit). The JP sets 1 MGD
7 as the effective savings target (without specifying whether this target consists solely of
8 “active” savings or the combination of “active” and “baseline” savings).

9 If savings at the end of 5 years are less than 1.0 MGD, the JP imposes a penalty of
10 5 basis points for every 0.1 MGD below the 1.0 MGD target, starting at 0.8 MGD. The
11 proposal also offers a shareholder incentive for achieving water savings greater than 1.0
12 MGD, providing an additional 5 basis points starting at 1.5 MGD, with a table that
13 increases the reward to 63 basis points if savings exceed 2.0 MGD. The JP notes that 10
14 basis points are equivalent to approximately \$255,800 in revenue requirement. This
15 places the upper bound of the shareholder incentive at \$1.6 million, which is an
16 unprecedented 31% of the program budget. The JP does not specify whether this is a one-
17 time penalty or reward.

18 Finally, the Joint Proposal specifies that savings against this target will equal the
19 number of rebates issued multiplied by the savings per measure specified in Appendix 8,
20 without review of the accuracy of those savings on the SWNY system. Ideally, positive
21 incentives should encourage innovative thinking and “going the extra mile” to verify
22 savings in the field and informing whether proposed measures should be dropped from

1 the program or pursued more aggressively. In contrast, the JP's approach is simply to
2 reward the Company for spending ratepayers' money on rebates.

3 **Q. Is the JP's approach similar to how other shareholder incentives are crafted in the**
4 **energy efficiency sector?**

5 A. No. The majority of states focus on "net benefits" – or the avoided cost benefits minus
6 program costs – with a program cap. For example, in Ohio, utilities earn a 10% incentive
7 on program costs if at least 65% of targeted savings are achieved (see ACEEE state
8 policy database). Texas awards 1% of net benefits for every 2% of the demand reduction
9 goal that has been achieved, with a cap of 10% of net benefits (see Laura Schauer's
10 presentation, referenced earlier). In addition, the State of Arkansas allows utilities to earn
11 an incentive of 10% of net benefits, capped at 4% to 8% of program budgets, scaled at
12 80% to 120% of program performance (ACEEE). Based upon these models, and
13 assuming \$16.8 million in benefits per MGD and performance of 1.5 MGD, SWNY
14 would earn an incentive of \$520,000 in Ohio, \$2 million in Texas, and \$416,000 in
15 Arkansas.

16 **Q. How has the Commission structured shareholder incentives for energy efficiency**
17 **programs in New York?**

18 A. While basis points are awarded for energy efficiency programs in New York, the current
19 shareholder incentives are a pool of 5 basis points (see Appendix 4 of Order Authorizing
20 Energy Efficiency Programs, Revising Incentive Mechanism, and Establishing a
21 Surcharge Schedule (Case 07-M-0548 and Case 07-G-0141), October 25, 2011). The
22 amount of incentive earned scales from 80% of the savings target to 100%. Penalties are
23 imposed with a full negative adjustment imposed at 50% achievement and decreasing
24 linearly to zero percent at the 70% achievement (ACEEE). What is notable is that the

1 New York energy efficiency programs, with greater maturity and scrutiny, can only earn
2 5 basis points for their shareholders, as opposed to the 63 basis points proposed for new
3 water conservation programs.

4 **Q. Are the proposed savings thresholds for the shareholder incentive mechanism**
5 **reasonable?**

6 A. No. In Exhibit ____ (JK-1), I showed that “active savings” (i.e., net of free riders) of
7 nearly 2 MGD are achievable. Providing a shareholder incentive at 1.5 MGD does not
8 incent exceptional program performance. Further, I have recommended that a real water
9 loss reduction target of 2.0 MGD be added to a water conservation savings target of 2.0
10 MGD, yielding an aggregate target of 4.0 MGD. This goal is inclusive of savings to be
11 achieved by a behavior-based program that takes advantage of the proposed AMI
12 deployment.

13 **Q. What changes must be made to the proposed shareholder incentive?**

14 A. Given the success achieved in other states by focusing on program net benefits and caps
15 based upon a percent of program budget, I propose the following incentive mechanism
16 for the Company:

- 17 • Annual savings targets, combining real water loss reduction with water
18 conservation program savings, will be set as follows:
 - 19 ○ 2017: 0.4 MGD
 - 20 ○ 2018: 0.6 MGD
 - 21 ○ 2019: 0.8 MGD
 - 22 ○ 2020: 1.0 MGD
 - 23 ○ 2021: 1.2 MGD

- 1 • Ratepayer benefits will be calculated using the present value of avoided
2 capital cost benefits, which SWNY has estimated at \$12 million per MGD;
- 3 • The shareholder incentive will be calculated at the end of each year as
4 follows:
- 5 ○ Achieving 80-89% of the annual savings target, 8% of program net
6 benefits;
- 7 ○ Achieving 90-99% of the annual savings target, 9% of program net
8 benefits;
- 9 ○ Achieving 100-109% of the annual savings target, 10% of program
10 net benefits;
- 11 ○ Achieving 110-119% of the annual savings target, 11% of program
12 net benefits; and
- 13 ○ Achieving 120% and over of the annual savings target, 12% of
14 program net benefits;
- 15 • The incentive mechanism will be capped at 10% of program costs for that
16 year; and
- 17 • Failure to attain 60% of any year’s proposed program savings will result in
18 a penalty of 2% of SWNY’s proposed program costs (i.e., 2% of \$5.2
19 million, or \$104,000).

20 Finally, there should be some form of independent review of SWNY’s savings
21 calculations, and utility bill analysis to verify the appropriateness of the deemed savings
22 values.

VI. SUMMARY AND RECOMMENDATION

1 **Q. Would you please summarize your testimony?**

2 A. While the JP makes incremental improvements over the Company's NRW and water
3 conservation programs as presented in submitted testimony, more changes are necessary
4 to optimize benefits for SWNY ratepayers. These include:

5 • NRW Management

- 6 ○ Implementation of a focused, two-year effort to identify and repair leaks;
7 ○ Provide an incentive and penalty for NRW program performance below
8 and above the 18% reporting threshold; and
9 ○ Require quarterly reporting on NRW until NRW falls below 18%, and
10 thereafter at a frequency appropriate to verify the level of incentive or
11 penalty earned by the Company.

12 • Water Conservation

- 13 ○ Collect water conservation program funds as a surcharge, rather than in
14 rates;
15 ○ Reduce the planning horizon for water conservation from five to three
16 years;
17 ○ Create an online training tool for residential customers to help them
18 identify and repair in-ground irrigation system failures;
19 ○ Implement a Residential Irrigation Consultancy Program to both capture
20 landscape irrigation system savings and ensure that smart controllers are
21 only rebated to customers who "over-water" their landscapes;
22 ○ Implement a Residential Direct Install program and reduce budgets for the
23 single-family and multifamily toilet rebate programs;

- 1 ○ Use the funds from the CII audit program to instead implement a CII
- 2 Incentive and Technical Assistance Program;
- 3 ○ Deploy a third-party, behavior-based water conservation program using an
- 4 existing provider of such software-as-a-service; and
- 5 ○ Require an independent review of reported program savings at reasonable
- 6 cost and level of effort.
- 7 • Incentive Mechanism
- 8 ○ Combine real water loss reductions to verified water conservation program
- 9 savings;
- 10 ○ Establish annual savings targets;
- 11 ○ Provide an incentive as a percentage of program net benefits, capped at a
- 12 percent of program budgets; and
- 13 ○ Provide a penalty for underperformance, at a percent of the proposed
- 14 budget.

15 **Q. Do you reserve the right to file rebuttal testimony to address responses to the IRs**
16 **recently submitted to the Signatory Parties?**

17 A. Yes.

18 **Q. Does this conclude your testimony at this time?**

19 A. Yes.

**BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION**

In the Matter of Suez Water New York, Inc.

Case 16-W-0130

**REBUTTAL TESTIMONY ON THE
JOINT PROPOSAL
BY
JONATHAN I. KLEINMAN
ON BEHALF OF
SIERRA CLUB ATLANTIC CHAPTER AND
MUNICIPAL CONSORTIUM September 23,
2016**

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1 **Q. Mr. Kleinman, did you submit direct testimony in this proceeding?**

2 A. Yes, I submitted direct testimony that addressed the Joint Proposal (“JP”) by the Company
3 and Staff. Specifically, my direct testimony addressed the sections on the JP’s strategies
4 for decreasing non-revenue water (NRW) (Section X), increasing water conservation
5 (Section XIX), and providing a shareholder incentive for the water conservation program
6 (Section XX).

I. SCOPE OF REBUTTAL TESTIMONY

7 **Q. What is the scope of your rebuttal testimony?**

8 A. My rebuttal testimony addresses arguments and issues that arose in Company and Staff
9 testimony related to the JP’s approach to non-revenue water (“NRW”) management and
10 program design and reporting elements of the JP’s water conservation programs. Because
11 Staff and Company testimony did not (1) address the operating costs of the NRW
12 management strategies, (2) substantiate the appropriateness of the water conservation
13 program designs given national experience in water conservation and New York State
14 experience in energy efficiency, and (3) defend the appropriateness of the incentive
15 mechanism given New York’s own shareholder incentive for the Energy Efficiency
16 Portfolio Standard, this rebuttal testimony does not repeat discussions in my direct
17 testimony that compel the conclusion that the conservation plan and NRW efforts set forth
18 in the JP are contrary to the public interest. These elements of the JP, as currently designed,
19 do not reasonably maximize water savings while reasonably minimizing costs to
20 ratepayers.

21 **Q. Are you sponsoring any exhibits?**

1 A. Yes, Exhibit ____ (JK-2) is the response of the Signatory Parties to PULP IR No. 35. A
2 *New York Times* article I refer to is attached as Exhibit ____ (JK-3). Exhibit ____ (JK-4)
3 is the response of Staff Witnesses to Scenic Hudson, Inc.’s IR SH-1. Exhibit ____ (JK-5)
4 is an analysis of the Utility Annual Reports submitted to the Commission by Suez
5 Westchester in 2015 and United Water Westchester in 2011-2014. Exhibit ____ (JK-6) is
6 Appendix A of the Suez Water New York – NRW 2015 Update. Exhibit ____ (JK-7) is the
7 Joint Signatory Parties’ response to IR MC-21, and Exhibit ____ (JK-8) is the Joint
8 Signatory Parties’ response to IR MI-7.

II. NON-REVENUE WATER

9 **Q. What is your reaction to Company and Staff testimony on the JP’s provisions for**
10 **NRW?**

11 A. Company testimony reiterates its commitment to provide a report to the Commission
12 detailing many aspects of its NRW management efforts, and also explains how AMI and
13 DMA deployment will help it to “find and repair leaks more quickly and to detect and
14 reduce water theft.” Staff testimony summarizes the JP’s NRW provisions and points to a
15 similar effort by Suez Westchester, Inc. in Case 14-W-0006 in which NRW levels dropped
16 below 18%.

17 However, neither Company nor Staff testimony provides assurance that NRW
18 reductions will be cost-effectively maximized. Reporting on NRW is not required below
19 the 18% threshold, even though ratepayer economic benefits can still be cost-effectively
20 captured by the Company. And it is not clear to what extent the allowance cap on United
21 Water Westchester, established in Case 09-W-0828, has played a role in the rapid NRW

1 reduction achieved on that system. The absence of a similar NRW allowance cap for
2 SWNY may not yield similar results as have been achieved by Suez Westchester.

3 **Q. What are your concerns regarding the Company's testimony on the JP's provisions**
4 **for NRW, and Staff response to IR SH-1?**

5 A. The JP states "the Signatory Parties agree that the 18% threshold is not the ultimate goal
6 and acknowledge that the Company is continuing its efforts to further reduce NRW."
7 However, Company testimony points out a significant flaw in the JP: there is not a
8 requirement for the Company to report on progress below the 18% threshold and to
9 distinguish between real water losses and apparent losses. And while Staff testimony states
10 that a current effort using AMI and DMA in Suez Westchester has reduced NRW below
11 18%, Staff has not indicated (nor would they know, given the reporting threshold) how far
12 below 18% NRW has been reduced. As presented in Exhibit ____ JK-5, it appears that
13 44% of the reduction in Westchester has been in apparent losses, not real losses.

14 In the response to IR SH-1 (see Exhibit ____ (JK-4)), Staff points to the availability
15 of the utility annual report for information on NRW reduction. I analyzed the Water
16 Production and Consumption pages from the utility annual reports for Suez Westchester
17 (District 2) in 2015 and United Water Westchester in 2011, 2012, 2013 and 2014 (see
18 Exhibit ____ (JK-5)). These data are at a very high level, and do not provide a detailed
19 picture of how both real and apparent losses are changing on the utility systems. The format
20 of Appendix A of the Suez Water New York – NRW 2015 Update would be far more
21 robust, consisting of the output of the AWWA M36 software used to complete a water
22 audit (see Exhibit ____ (JK-6)). That level of information is critical for the Company's
23 NRW management efforts and oversight by the Commission.

24 **Q. Why should the Company continue to report NRW savings below 18%?**

1 A. While 16 NYCRR § 503.8(b) sets a reporting requirement when annual NRW levels exceed
2 18%, the JP states that the ultimate goal is for NRW levels to fall below that level.
3 Company and Staff testimony reiterate this.

4 As I stated in my direct testimony, NRW reductions below 18% provide significant
5 economic potential for ratepayers. Donald Distanté's testimony, prior to the development
6 of the JP, estimates that real water loss makes up 60% of NRW. Assuming average water
7 production of 29 MGD, every 1% reduction in NRW translates into 0.17 MGD of real
8 water savings (i.e., 29 MGD * 1% * 60%). Since Paula McEvoy's response to IR STAFF-
9 129 AMT-7 states that new supply wells would cost \$12 million per MGD, every 1%
10 reduction in NRW avoids the investment of roughly \$2 million of capital (i.e., 0.17 MGD
11 * \$12 million per MGD). Based upon that value to ratepayers, I believe it is important for
12 the Commission to require the reporting of NRW levels below the 18% threshold, to
13 document progress toward the "ultimate goal" of the JP.

14 **Q. On what frequency should the Company provide reports on NRW?**

15 A. 16 NYCRR § 503.8(b) does not set a specific frequency for NRW reporting. It only
16 states that "each water corporation shall notify this department when annual nonrevenue
17 producing water use ... exceeds 18 percent of annual production." Thus, the regulation
18 implies an annual reporting cycle. The JP simply says that the Company will provide a
19 report "any time that total NRW is greater than 18%," though the JP does not state how
20 frequently the Company will monitor NRW levels. Company testimony repeats this
21 provision, and Staff testimony is totally silent on the frequency, level of detail, and
22 format of required reporting.

23 I believe that the Commission should require Suez to conduct an NRW analysis
24 and report the results to the Commission on a quarterly basis until the first report shows

1 NRW levels falling below 18%, and then on a semi-annual (i.e., every six month)
2 frequency thereafter. Additionally, as stated earlier, I believe that the format of this report
3 should follow the structure (if not the full detail) of the Suez Water New York – NRW
4 2015 report, including the AWWA M36 software summary.

5 **Q. Should Staff (as stated on page 30 of its testimony) rely upon the Suez Westchester**
6 **example from Case 14-W-0006 for the JP?**

7 A. No. While the JP and the Suez Westchester approach share the implementation of AMI
8 and DMA, the Commission had imposed on United Water Westchester an allowance cap
9 for failure to achieve NRW of 18% or less. (See Order Adopting Terms of Joint Proposal
10 as Revised and Establishing a Multi-Year Rate Plan in Case 09-W-0828., at page 14.)
11 That Joint Proposal capped the allowance for Lost and Unaccounted for (LAUF) water at
12 18%, and required United Water Westchester to absorb LAUF costs above the cap.
13 Specifically, the Joint Order stated that “these provisions will provide further incentive to
14 the Company to reduce LAUF water to the 18% goal identified by the terms and
15 conditions of the Joint Proposal.” I could not find a discussion on the continuation of this
16 cap in the Joint Proposal in Case 14-W-0006, so it is unclear whether this cap continues
17 to provide an incentive for Suez Westchester.

18 Nonetheless, because that financial penalty may have driven the speed with which
19 Suez Westchester has dropped its NRW levels below 18%, I urge the Commission to
20 adopt a similar penalty for NRW above 18% (and an incentive below 18%, as I proposed
21 in my direct testimony). Purchased water makes up a much smaller percentage of Suez
22 Water NY’s supply in Rockland so an equivalent penalty would need to be developed.

23

III. WATER CONSERVATION

1 **Q. What is your reaction to Company and Staff testimony on the JP’s provisions for**
2 **water conservation?**

3 A. Company and Staff testimony highlight “add-ons” to the original water conservation
4 program as proposed by Black & Veatch (Suez Water New York Inc. Water Conservation
5 Plan). Company and Staff testimony point to the addition in the JP of enhanced outreach
6 and education components, workshops, training, audits (both field-based and “do-it-
7 yourself”), and a dedicated low-income program.

8 An explanation as to why Staff and the Company reject a key lesson learned from
9 New York’s energy efficiency program history, namely, recovery of program costs through
10 a surcharge rather than in base rates, is missing in testimony. As early as 1998, the New
11 York Public Service Commission (Order Approving System Benefits Charge Plan with
12 Modifications and Denying Petitions for Rehearing, Case 94-E-0952, July 2, 1998) has
13 been funding energy efficiency programs through a surcharge rather than through rates. As
14 I stated in my direct testimony, a surcharge mechanism provides greater flexibility than a
15 rate case mechanism, flexibility which will be crucial in rolling out new programs and
16 approaches in SWNY territory. It also provides more frequently truing-up and would allow
17 the Company to recover evolving costs (e.g., the Low Income program) more quickly.

18 **Q. Why do you believe that the lessons from the New York Energy Efficiency Portfolio**
19 **Standard are relevant to water conservation? Can’t market forces provide adequate**
20 **water conservation savings today?**

21 A. I believe that the past 18 years of energy efficiency program history in New York have
22 been critical to the growth of both the demand for and supply of energy efficiency products

1 and services in the state. The energy efficiency programs have promoted awareness of
2 energy efficiency through the ENERGY STAR® brand, to the point where that brand is
3 dominating market share across multiple appliances. The programs have secured the
4 participation and commitment of key retailers such as Home Depot, Lowe's, and Sears;
5 major manufacturers; legions of builders, contractors, and supply houses; and design
6 professionals such as architects and engineers. The programs have also grown key
7 professions that did not exist previously in the marketplace, such as Home Energy Raters.

8 Establishing water conservation as a legitimate and dependable supply-side
9 alternative will require time and investment. In many cases it will be possible to piggy-
10 back on the energy efficiency infrastructure; for example, SWNY has already proposed to
11 team with Orange & Rockland's online store, and key retailers will understand how to
12 engage with a program dedicated to water instead of energy savings. In other cases, the
13 energy efficiency programs have provided lessons for water conservation on how to engage
14 manufacturers, contractors (such as irrigation contractors and plumbers), and supply
15 houses. New York's energy efficiency experience should hopefully shorten the time
16 horizon necessary to build demand and supply for water conservation products and
17 services, after which point a "market-based" approach that relies upon supply and demand
18 may be able to take over. This process will need Commission support and oversight.

19 **Q. What are your other concerns regarding the Company's and Staff testimony on the**
20 **JP's provisions for water conservation?**

21 **A.** My primary concerns are:

- 22 x Company testimony highlighting audits as the cornerstone of their non-residential
- 23 program,

- 1 x Staff testimony stating that including a smart irrigation controller without eligibility
2 criteria or savings estimates “addresses” outdoor water use, and a lack of
3 understanding of the negative savings potential for these controllers as indicated in
4 the Joint Signatory Party response to IR MC-21,
- 5 x Company testimony focusing on time-of-use pricing as the primary conservation
6 strategy for AMI,
- 7 x A lack of understanding of New York State’s experience in evaluating freeridership
8 in energy efficiency programs, which would directly translate to estimating
9 freeridership in water conservation programs, and
- 10 x The lack of independent review of the Company’s reporting of water savings.

11 **Q. Please describe your concerns about the reliance on audits as expressed in Company**
12 **testimony.**

13 A. Company testimony states that “audits are a key part of the conservation program which
14 will focus mostly on Commercial, Institutional, and Multi-Family customers.” My personal
15 experience in the energy efficiency sector, implementing programs – such as Efficiency
16 Vermont’s Business Energy Services or CLEAResult’s SCORE (Schools Conserving
17 Resources), CitySmart, and Commercial & Industrial Solutions – is that audits provide a
18 great deal of technical information, but do not provide practical direction on what actions
19 are needed following the audit.

20 Instead of audits, successful energy efficiency programs for commercial,
21 institutional, and multi-family sectors provide **benchmarking** (i.e., comparing energy or
22 water use with similar buildings), “**energy opportunity assessments**” that focus on
23 soliciting vendor quotes for projects rather than detailed analysis, **technical assistance**
24 such as project specification development, **trade ally management** to build a supply chain

1 for products and services, and **financial incentives or rebates for “custom” measures**, or
2 those more complex technologies requiring sophisticated savings analysis yet providing
3 sufficient savings to justify that level of analysis.

4 **Q. What concern do you have about Staff testimony stating that the JP has “addressed”**
5 **outdoor irrigation, and the lack of information provided on potential savings**
6 **(negative or positive) for these devices in Joint Signatory Party response to IR MC-**
7 **21?**

8 A. The JP does not provide any savings estimates for the rain sensor and smart controller
9 package, and does not define “high efficiency water fixtures” in the outdoor water use
10 context. The JP fails to address how these rebates would result in water conservation
11 savings, and what the program eligibility requirements would be. Even the Joint Signatory
12 Party response to IR MC-21 (see Exhibit ____ (JK-7)) extends the absence of information
13 about these devices. While it may not be “practical” to estimate savings, neither is it
14 reasonable to avoid addressing whether these devices will add to, or subtract from, water
15 conservation program performance.

16 As I stated in my direct testimony, the use of rain sensors and smart irrigation
17 controllers could increase water consumption on the system. While I agree that these
18 devices can play a role in water conservation, their implementation should be limited to
19 “high-user” or “super-user” homes that also have an irrigation consult to identify potential
20 landscape changes, irrigation zone retirements, or sprinkler replacements. Stating in IR
21 MC-21 (see Exhibit ____ (JK-7)) that the Do-It-Yourself (“DIY”) audits would provide
22 sufficient detail to help a customer understand whether a smart controller would provide
23 water savings is a completely new addition to the DIY audit, which received little detail in
24 the Joint Proposal. Based upon my direct experience with a smart controller pilot program

1 in Columbus, OH, it would require the equivalent of an irrigation audit or consult for a
2 homeowner to conclude that a smart controller would be right for him or her. My concern
3 is that smart controllers can drive up outdoor water use if implemented indiscriminately,
4 rather than as a replacement for other automated systems.

5 **Q. What concerns do you have regarding Company testimony on the combined**
6 **effectiveness of AMI and tiered rate structures in driving water conservation savings?**

7 A. A *New York Times* article reported in 2014 that power savings from AMI in the electric
8 sector were not being realized as quickly as anticipated (see Exhibit ____ (JK-3)). As stated
9 in the article, while customers may be given AMI and pricing data via web portal, they
10 may not take the steps necessary to change their behavior to optimize their electricity use
11 and costs. The article states that support beyond pricing, such as text messaging to remind
12 customers that peak prices have been raised, may be necessary to help drive behavior. This
13 situation seems analogous to the expectation that AMI and tiered pricing will drive water
14 conserving behavior. Based upon the experience with electric AMI, this expectation may
15 be overly optimistic.

16 My direct testimony recommended the adoption of “behavior-based programs”
17 through existing, software-as-a-service providers such as WaterSmart or DropCountr to
18 drive water conserving behavior. These services not only present data, they also help
19 customers compare usage with similar households, establish a personal “water budget”
20 based upon a simple set of household questions, and connect customers to appropriate
21 rebate programs based upon their usage profiles.

22 **Q. Please describe the issues that you believe arose in Company and Staff testimony and**
23 **responses to IRs surrounding monitoring and reporting.**

1 A. Company testimony cites a December 2015 Commission Order that calls for data analysis
2 to demonstrate that conservation projections can be shown to be reliable. The JP calls for
3 the reporting of savings by multiplying the number of rebates paid by the savings values
4 listed in Appendix 8 of the JP. Based upon my 15 years of experience in energy efficiency,
5 this type of savings claim is not the same as data analysis to evaluate program impacts.

6 A concrete example is the estimated savings for high efficiency toilets. The Black
7 & Veatch study assumes 5.1 flushes per person per day, derived from a 1998 report,
8 *Residential End Uses of Water*, sponsored by the American Water Works Association. That
9 study used a representative sample of cities from across the United States, and was
10 conducted 18 years ago; while human biology has not changed since that time, it may or
11 may not be reflective of actual toilet use in SWNY territory (possibly due to a different
12 distribution of the age of residents). At a minimum, that value should be updated with the
13 revised Residential End Uses of Water study just completed by the Water Research
14 Foundation. Alternatively, the Company would hire an evaluation contractor, using a
15 portion of its evaluation budget, to update the key parameters that affect the SWNY savings
16 estimates for the SWNY territory specifically, such as the average number of flushes per
17 person per day, average shower time per person, and average loads of laundry. Such a study
18 would use metering rather than surveys.

19 Energy efficiency program impacts are frequently evaluated using utility bill
20 analysis, comparing the impact on program participants with a “control group” who do not
21 participate in the program. In answering why water savings would be calculated based upon
22 the company’s assumed values, the Company responded in IR PULP JP-35 (Exhibit ____
23 (JK-2)) that “Historical MGD data is subject to many influences such as weather, economic
24 changes, growth and elasticity. Therefore, it would not be possible to isolate the impact of

1 the rebate program using actual MGD data.” This statement simply isn’t true. The
2 International Performance Measurement and Verification Protocols (IPMVP) have been
3 used for decades to perform exactly this type of analysis to “true up” the savings claimed
4 by program administrators or implementers.

5 Lastly, Signatory Parties in their response to IR MI-7 state that “it is not possible
6 to estimate the number of freeriders after the program is implemented” and “there is no
7 way to determine whether a customer who takes advantage of a rebate would have done so
8 anyway or was motivated to do so by the outreach, education, and incentives of the
9 Company’s program” (see Exhibit _____ (JK-8)). These statements fly in the face of
10 years of energy efficiency program experience and evaluation in New York State. Based
11 upon my experience as an implementation contractor, working on behalf of utility clients
12 and being subject to evaluations, the evaluation process can certainly be cumbersome and
13 imprecise. However, assessing freeridership is an important part of confirming the
14 effectiveness of any program. As I discussed in my testimony, program costs that benefit
15 “true” freeriders – those who would take action regardless of any program activity –
16 provide no economic benefit.

17 Having an independent reviewer to verify the accuracy of savings values – and the
18 parameters underlying those savings calculations – used in the water conservation program
19 is a reasonable approach and is consistent with New York State history in energy efficiency
20 program implementation.

21 **Q. Does that conclude your rebuttal testimony?**

22 A. Yes.

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2 MR. DUTHIE: Yes, your Honor.

3 BY MR. DUTHIE: (Cont'g.)

4 Q. Now, Mr. Kleinman, did you also
5 prepare some exhibits?

6 A.L.J. PHILLIPS: Wait a minute. You
7 only asked to copy in his direct. Do -- you also want to
8 --?

9 MR. DUTHIE: His rebuttal, as well, of
10 course.

11 A.L.J. PHILLIPS: Okay. So
12 clarification. The request was intended to also include
13 copying in the rebuttal testimony of Mr. Jonathan
14 Kleinman. That request is also granted and it is also
15 subject to being provided with a Word version of that
16 testimony so that the court reporter may copy it into the
17 transcript.

18 MR. DUTHIE: Your -- your Honor,
19 approximately the same time that I filed the corrected
20 testimony, I did provide a Word version, later that
21 afternoon -- later that evening I should say, of the
22 rebuttal testimony to your Honor and to the rest of the
23 parties. And if you -- nobody's received that, I'll send
24 it again as soon as I get back in my office.

25 A.L.J. PHILLIPS: Okay. Let me go off

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2 the record.

3 (Off the record)

4 BY MR. DUTHIE: (Cont'g.)

5 Q. All right. Mr. Kleinman, with your
6 direct testimony, you attached Exhibit 1 to it and called
7 it Evaluation of Real Water Loss Control and Water
8 Conservation Options for Suez Water, New York, Rockland
9 County.

10 Was that report prepared by you or
11 under your direction?

12 A. Yes, it was.

13 Q. Do you have any changes that you would
14 like to make to this report?

15 A. I do not.

16 Q. Now you also had, attached to your
17 rebuttal testimony, 7 additional exhibits, J.K. 2 to J.K.
18 8. Were they prepared by you or under your direction?

19 A. Yes, they were.

20 Q. Do you have any changes to these
21 exhibits?

22 A. No, I do not.

23 MR. DUTHIE: Your Honor, I'd ask that
24 the 8 Jonathan Kleinman exhibits, J.K. 1 to J.K. 8 be
25 marked for identification. And I'm not sure what the next

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2 number is.

3 A.L.J. PHILLIPS: Okay. The next
4 number is 54. And do you want those marked individually
5 in sequence?

6 MR. DUTHIE: Yes, your Honor.

7 A.L.J. PHILLIPS: Okay. Exhibit J.K.
8 1 will be marked for identification as Hearing Exhibit 54;
9 J.K. 2 as Exhibit 55; J.K. 3, Exhibit 56; J.K. 4, Exhibit
10 57; J.K. 5, Exhibit 58; J.K. 6, Exhibit 59; J.K. 7 Hearing
11 Exhibit 60; and J.K. 8 is Hearing Exhibit 61.

12 They'll be marked -- so marked for
13 identification at this point.

14 MR. DUTHIE: Your Honor, Mr. Kleinman
15 is available for cross examination.

16 A.L.J. PHILLIPS: Thank you.
17 Has -- again, off the record.

18 (Off the record)

19 A.L.J. PHILLIPS: The Company will
20 begin with cross examination of this witness.

21 MR. ALESSI: Thank you, your Honor.

22 CROSS EXAMINATION

23 BY MR. ALESSI:

24 Q. Good morning, Mr. Kleinman.

25 A. Good morning.

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2 Q. My name is Robert Alessi. I'm an
3 attorney with the law firm of DLA Piper. I represent, as
4 you heard earlier, Suez Water New York in this proceeding.
5 I will be conducting the cross examination of your
6 testimony on behalf of the Company in this case.

7 My approach to cross examination, we
8 have a lot to cover here, is to ask questions that require
9 a yes or no answer. If you believe, for whatever reason,
10 that you need to elaborate, I would appreciate if you
11 would answer the question that's posed first, the yes or
12 no question.

13 Now what I'd like to do is to commence
14 the cross examination. Please turn to your direct
15 testimony, pages 3 through 5. And I'm not going to ask
16 you to read them.

17 And in order to keep this moving, if
18 you could agree with me on a process so I know you're
19 where I'm at, if maybe you can look up at me when you're -
20 - when I direct you to testimony, I will take that as your
21 indication that you're where I would like you to be in
22 terms of the cross. Is that agreeable?

23 A. Yeah, that's fine.

24 Q. Thank you.

25 Now in pages 3 to 5 -- and by the way

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2 when I refer to testimony, unless you hear otherwise, it's
3 always going to be your direct testimony.

4 A. Okay.

5 Q. There, you provide your credentials to
6 support the contention of your clients that you're an
7 expert with respect to the matters that are the subject of
8 your testimony; correct?

9 A. That is correct.

10 Q. Do you believe the role of a person
11 contending to be an expert in this evidentiary proceeding
12 is to provide objective information and analysis for the
13 administrative law judge and other decision makers to rely
14 on? Or do you believe your role here is to be an advocate
15 for your client?

16 A. I believe that it's both.

17 Q. So you believe part of your role here
18 is to be an advocate for your client, in part?

19 A. My primary role is to make sure that I
20 represent the matters at hand objectively and correctly.
21 And my role is to ensure that the analysis that is being
22 conducted is conducted to -- how do I respond to this --
23 is being conducted in such a way that their contentions
24 are being represented accurately by the facts.

25 Q. Is it important or unimportant for a

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2 person proffered as an expert in matters of science and
3 engineering to follow the scientific method in his or her
4 testimony?

5 A. It is important to do so.

6 Q. In following the scientific message --
7 method, is it important to identify data gaps and discuss
8 them?

9 A. Yes, it is.

10 Q. Do you believe that you should follow
11 generally accepted methodologies in your testimony and in
12 your report?

13 A. Could you clarify what you mean by
14 generally accepted methodologies?

15 Q. I'm -- I'm just speaking, assuming
16 that there's a generally accepted methodology applicable
17 to the subject matter of your testimony or your report, do
18 you feel that those generally accepted methodologies
19 should be followed?

20 A. Can I try to repeat the question?

21 Q. Oh, sure.

22 A. So then I can --?

23 Q. Sure.

24 A. Okay. So understanding that even
25 within an industry such as the energy efficiency industry

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2 that there are a range of approaches to analyze things
3 such as free ridership or other kinds of topics, that
4 there is still a generally accepted approach so that some
5 are discredited and others are not, then I believe it's
6 important to follow what is considered to be industry
7 practice.

8 Does that answer your question?

9 Q. So let me rephrase and -- and ask it a
10 different way based upon your answer. So if there is a
11 generally accepted methodology, as opposed to several to
12 choose from, would you agree that it is for a person who
13 is contending to be an expert in a proceeding to follow
14 that generally accepted methodology if there is one?

15 A. Yes.

16 Q. And if the person does not follow the
17 generally accepted methodology, is it appropriate and
18 necessary for that person to so state in his or her
19 testimony or report?

20 A. Yes.

21 Q. Is cost effectiveness analysis
22 important or unimportant in water supply management?

23 A. It is important.

24 Q. Is it beneficial to conduct a cost
25 effective analysis on all major components of a water

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2 supply system such as nonrevenue water reduction and water
3 conservation programs?

4 A. Yes.

5 Q. Please turn to your report which is
6 Hearing Exhibit 54. I am going to continue to refer to it
7 as your report, with your Honor's consent, as opposed to
8 just keeping Hearing Exhibit 54 going.

9 And if you could please turn to page
10 19, section 2.3?

11 A. Okay.

12 Q. The first sentence there, you state,
13 quote, prior to comparing the SWNY programs to industry
14 benchmarks, it is helpful to compare the cost
15 effectiveness of these programs with supply side options
16 in the SWNY System. Do you see that?

17 A. Yes, I do.

18 Q. So as a general matter, your testimony
19 relates to, in this case, water supply management,
20 including the reduction of nonrevenue water and the
21 conservation program, at least in part, to obviate the
22 need for additional water supply in the Suez Water New
23 York System; correct?

24 A. Yes.

25 Q. As a general matter, are ranges of

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2 data important or unimportant in water supply management?

3 A. Important.

4 Q. In discussing a study as part of the
5 testimony of a person proffered as an expert in science
6 and engineering, is it also important for the person to
7 discuss significant limitations on a study?

8 And keep in mind my question is
9 discuss significant limitations on a study.

10 A. Yes.

11 Q. Are you familiar with the Department
12 of Public Service regulations that require water
13 corporations employing surface sources to demonstrate
14 sufficient water supply to satisfy demand for at least a
15 10-year period into the future?

16 A. Yes, but only generally.

17 Q. Mr. Kleinman, what we will be doing
18 here is providing expert -- exhibits for your cross. So
19 when I pause, that will be the reason. What we'll do is
20 Ms. Clark from my office will hand them out. We're going
21 to hand it to you first, so you get the most amount of
22 time to look at it, and then we'll hand it around.

23 I'm going to ask you questions off of
24 these exhibits. Again, if you could please, look up when
25 you've think you've had a fair opportunity to look at the

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2 exhibit to know generally and I'll proceed with my
3 question. Is that acceptable to you?

4 A. Yes.

5 Q. Thank you.

6 A. Mr. Alessi, question?

7 Q. Yes.

8 A. Will I be able to maintain a copy of
9 this as we have our conversation or --?

10 Q. Oh, absolutely. All exhibits, you
11 keep and your attorney is the one who should give you
12 suggestions. But if I could be so officious, you might
13 want to put the number on them when the judge announces it
14 and keep them in that way. So this way, because we're
15 going to be going back and forth, that might assist you.

16 A. Thank you.

17 Q. You're welcome.

18 A.L.J. PHILLIPS: And can we just go
19 off the record?

20 (Off the record)

21 A.L.J. PHILLIPS: We just had a
22 conversation off of the record concerning the document
23 that was just circulated by the Company. It's my
24 inclination, because it purports to be a copy of the
25 Commission regulations, that it's not necessary that it be

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2 marked for identification or moved into evidence.

3 I did poll the parties offline and
4 asked them if they had any concerns with proceeding that
5 way. I will give them an opportunity to be heard now on
6 the record if they have concerns that we are not marking
7 this copy of the regulation with an -- a hearing exhibit
8 number.

9 So with that, are there any objections
10 to not marking this?

11 MR. DICHTER: Your Honor? I -- I
12 don't have an objection. My only concern is there's a
13 highlighted portion of this document. And if that is
14 clarified and -- so that we know when we're preparing --
15 preparing a brief what section he's referring to, that's
16 fine.

17 MR. ALESSI: That's a good suggestion
18 if I may respond, your Honor?

19 A.L.J. PHILLIPS: Yes.

20 MR. ALESSI: We're highlighting it for
21 ease of the witness because that's the only section we're
22 going to refer to.

23 A.L.J. PHILLIPS: Okay.

24 MR. ALESSI: And I was going to, after
25 your Honor finished, describe that there is highlighting

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2 in that exhibit, which I hope is obvious to everyone. But
3 I understand Mr. Dichter's concern when it comes to
4 briefing. So that's the purpose for it. And we'll work,
5 again, in whatever fashion works for everybody.

6 A.L.J. PHILLIPS: Okay. So let's just
7 note what has been handed out. Again, it's a 2-page copy,
8 indicating that it is a copy of 16 NYCRR 503.4, the
9 section titled Quantity of Supply -- Quantity of Supply.
10 Subsection B that begins surface sources, the very first
11 sentence of that has been highlighted. And at this point,
12 I will allow the counsel to take over with explaining what
13 this is and that it's been provided to the witness.

14 MR. ALESSI: Thank you, your Honor.

15 BY MR. ALESSI: (Cont'g.)

16 Q. Mr. Kleinman, before I explain, I just
17 want to make sure have you had a fair opportunity to read
18 the highlighted section?

19 A. Yes, I have.

20 Q. And this regulation is a Department of
21 Public Service regulation. It's -- at the top, as you can
22 see, is entitled Quantity of Supply, Section 503-4. The
23 section that's highlighted is 503-4(b) surface sources.

24 And the specific sentence I want to
25 draw your attention to is the highlighted one, Each water

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2 corporation that employs a surface source of supply shall
3 comply with the provisions of the 10 State Standards with
4 the additional requirement that the maximum projected
5 demand shall take into consideration forecasted growth or
6 decline in both the number of customers and in system
7 usage for at least a 10-year period into the future.

8 Do you see that?

9 A. Yes, I do.

10 Q. And, Mr. Kleinman, do you understand
11 the import of that sentence?

12 A. Yes, I do.

13 Q. Thank you.

14 Are you familiar with the application
15 of the concept of safe yield as used by the New York State
16 Department of Public Service or by the New York State
17 Public Service Commission? And I'm leaving that exhibit
18 by the way, so we're going to move on? But are you
19 familiar with the concept of safe yield?

20 A. Not in New York.

21 Q. Are you familiar with the concept,
22 generally?

23 A. Yes, I am.

24 MR. ALESSI: We have another exhibit.

25 And, your Honor, I will describe this exhibit because it -

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2 - it has more in it than we're -- we're going to need to
3 address, and I'll explain what it is.

4 A.L.J. PHILLIPS: Okay. And this one,
5 I'm thinking we may want to mark it.

6 MR. ALESSI: I agree, your Honor.

7 A.L.J. PHILLIPS: Okay. So I'm just
8 going to note, before you explain what it is, that we'll
9 mark it for identification as Hearing Exhibit 62.

10 MR. ALESSI: And, your Honor, please
11 indicate when you would like me to proceed.

12 A.L.J. PHILLIPS: Please proceed.

13 MR. ALESSI: Thank you.

14 BY MR. ALESSI: (Cont'g.)

15 Q. Hearing Exhibit 62 is a multipage
16 document. It starts with a cover page of the DEC. And
17 what this is is a notice in the Environmental Notice
18 Bulletin. This is an official record of a New York State
19 agency of which we'd ask your Honor to take administrative
20 notice of.

21 The ENB notice is noticing the
22 complete application and notice of acceptance of the draft
23 environmental impact statement for the Haverstraw Water
24 Supply Project, which was, as we know, a project that was
25 a separate proceeding in matter before the New York State

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2 Department of Environmental Conservation.

3 What I would like to also show is
4 that, once you get past the notice, which if you flip
5 through you'll see up at the top right-hand corner is page
6 5 of 7, you will then come to a title page, Haverstraw
7 Water Supply Project Draft Environmental Impact Statement,
8 dated January 13, 2012. That is the cover page for a
9 multi-volume, multi-page draft Environmental Impact
10 Statement.

11 The next page is a statement that
12 talks about -- a little bit more information about the
13 DEIS, who prepared it, it's accepted by the DE -- DEC as I
14 said. And then we get to the import of the questioning,
15 which would be on Section 1.3.1.1, which is page, at the
16 bottom, Roman I dash 12.

17 Mr. -- Mr. Kleinman, do you see where
18 I am now with the page?

19 A. You're on page 1 dash 12?

20 Q. Correct.

21 A. Yes, I see it.

22 Q. Can you please draw your attention to
23 the heading that says Safe Yield, in bold, under the first
24 bullet?

25 A. Yes.

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2 Q. There it is stated, The capacity of a
3 water source is measured first by its safe yield, also
4 sometimes referred to as dependable yield or reliable
5 yield. This is a measure of the maximum quantity of water
6 that can be sustained from a source without depleting the
7 source during a critically dry period, which is the
8 drought of record. The drought of record is the drought
9 that had the worst effect on availability of water from
10 the water source which could be a single year's drought or
11 a combination of several drought years.

12 Do you see that?

13 A. Yes, I do.

14 Q. Would you agree that that is a fair
15 definition of safe yield?

16 A. Yes, I would.

17 Q. And would you agree to use that
18 definition as part of the cross examination today?

19 A. Yes, I would.

20 Q. So you understand that in New York
21 State, a water supply company like Suez must demonstrate
22 to the Public Service Commission that it has plans for
23 safe, adequate, and reliable service for at least 10 years
24 into the future; correct?

25 A. Yes.

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2 Q. Now your report -- and I'm going to
3 refer to it H.E. 54 for just a few more times, Hearing
4 Exhibit 54, that is the basis of your prefiled testimony
5 in this case; correct?

6 A. Yes, it is.

7 Q. Is J.K. 1 -- does -- does J.K. 1
8 follow the scientific method, in your opinion?

9 A. Can I request a clarification?

10 Q. Absolutely.

11 A. Okay. So -- so there are planning
12 documents and there are engineering documents. Planning
13 documents try to inform a decision about whether or not a
14 particular project or particular program, for example, is
15 worth moving forward and -- and merits additional
16 analysis. An engineering document is something upon which
17 design is based.

18 Okay. The intent of this report, or
19 at least the way that this report is written, is
20 comparable to the types of planning documents that are
21 written for Energy Efficiency Portfolio Standards or -- or
22 other hearings that inform development of a -- of a
23 program or an approach.

24 So to the extent that planning
25 documents follow the scientific method and rely upon data,

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2 then yes, this report follows the scientific process.

3 Q. And for example, you have various
4 tables from which you derive calculations. Would those be
5 examples where you -- your opinion is you followed the
6 scientific method?

7 A. Yes. And can I provide an additional
8 clarification?

9 I made an effort to rely upon or to
10 use Company-provided information from responses to IRs or
11 reports that were sponsored by the Company so as to avoid
12 debates over whether these numbers are the right numbers
13 or not. So any -- any information hereon, for example,
14 cost per MGD was taken directly from Company testimony
15 instead of trying to be independently verified or
16 analyzed.

17 Q. Okay.

18 A. Okay.

19 Q. Is your report sufficiently complete
20 in the procurement of data, including data for the Suez
21 Water New York Water System, for you to arrive at the
22 conclusions you reach in your report?

23 A. Can I ask a clarification question?

24 Q. Yes.

25 A. So you are, in effect, asking whether

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2 there is enough data, based upon the specific
3 characteristics of the Suez Water New York System, to
4 justify the savings -- the -- the savings claimed and
5 reported by the report?

6 Q. No, actually, Mr. Kleinman --

7 A. Okay.

8 Q. -- I'm asking whether you believe you
9 have procured a sufficiently complete set of data for the
10 Suez Water New York water supply system to support the
11 conclusions you reach in your report.

12 A. So let me -- so I'll answer and then
13 clarify. So I believe the answer is yes. And the reason
14 I say that is because Black and Veatch conducted a fairly
15 extensive study of current patterns of water conservation
16 oriented behavior and water consumption that was the basis
17 for the joint proposal. The savings information is the
18 same. The cost data is the same.

19 And so that document was the basis for
20 the program performance that's been established in the
21 joint proposal. So since I've relied upon that report, as
22 well as benchmarks from other territories, then I would
23 answer that yes I think that if the Black and Veatch
24 report provided sufficient information to base a water
25 conservation program design, then I would argue that

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2 there's a comparable standard of data integrity that I
3 used for my plan.

4 Q. Mr. Kleinman, I -- I don't know if
5 you're understanding my question.

6 A. Okay.

7 Q. My question does not relate to you
8 commenting on or relating to specific reports. My
9 understanding of what you did is you selected what -- what
10 data you needed to have to make your report. I understand
11 that some of that includes data that you rely upon that
12 was provided by the Company and its consultants.

13 My question is a fairly simple one,
14 which is, considering all the data that you have in the
15 report for whatever reason, do you believe that your
16 procurement of data, including data for the Suez Water New
17 York System, is sufficient for you to arrive at the
18 conclusions you reached in your report?

19 A. Can you --?

20 MR. DUTHIE: Objection, your Honor.
21 Asked and answered.

22 MR. ALESSI: He didn't answer the
23 question of -- he -- he -- he is answering a different
24 question. He has data in his report. My question is
25 simple. Does he believe he's procured enough data to

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2 support the conclusions in his report?

3 MR. DUTHIE: And, your Honor, I
4 believe he's answered that already.

5 A.L.J. PHILLIPS: I'm going to sustain
6 the objection, but allow you to rephrase if necessary.

7 MR. ALESSI: Thank you.

8 BY MR. ALESSI: (Cont'g.)

9 Q. Mr. -- Mr. Kleinman, is there any
10 additional data you believe you need to sustain the
11 conclusions in your report?

12 A. No, I don't.

13 Q. Is your report objective in its
14 selection and analysis of data?

15 A. Can I answer that question with a bit
16 of a longer explanation?

17 Q. Can you answer it yes or no, and then
18 you can go on to your explanation?

19 A. The answer is yes. So the explanation
20 is as follows. We conducted a survey of all of the
21 publicly available water conservation program performance
22 information and all of the nonrevenue water, real water
23 loss reduction information that -- that could be found
24 that included contacting other water conservation experts
25 and real water loss experts.

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2 We used and analyzed all information
3 that we were able to find. That is not the same thing as
4 a random -- randomized control trial or -- or something
5 that would be a truly independent study, right. But we
6 did not throw out any results that we felt were not
7 supportive of whatever argument we were trying to make.

8 So it was as comprehensive a census as
9 we could make.

10 Q. All right. Mr. Kleinman, I -- I
11 understand your -- your answer. And you, and again, you
12 can elaborate as necessary. My question was simply
13 regarding whether your report is objective in its
14 selection and analysis of data. I understand, you know,
15 how you went going about it. You've answered that
16 question.

17 The -- the essence of your report then
18 is that you proposed that Suez Water New York obtained
19 4.228 milligrams per day of water savings in its system
20 from a combination of 2 items, further reductions in level
21 of nonrevenue water and the implementation of the conserve
22 -- conservation program that you put forth; correct?

23 A. That is correct.

24 MR. DUTHIE: Your Honor, I believe Mr.
25 Alessi meant to say million gallons a day, instead of

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2 milligrams.

3 MR. ALESSI: I'm sorry. If I said
4 milligrams, I misspoke. I'm going to keep calling it MGD

5 Thank you, Mr. Duthie.

6 BY MR. ALESSI: (Cont'g.)

7 Q. I'M going to keep referring to it as
8 MGD so, yes, million -- million gallons per day. Please
9 turn to your report page 16, the last sentence.

10 A. One moment, please.

11 Q. And again, if you could look up when
12 you're -- you're there.

13 A. Sure. So page 16, the last sentence?

14 Q. Correct.

15 A. Yes.

16 Q. There, it says cost effectiveness
17 should also take into account overall real water loss
18 reductions for which 2 MGD seems reasonable given SWNY's
19 current NRW levels, New Rochelle territory study, and
20 review of case studies later in the report; correct?

21 A. That is what it -- yes.

22 Q. And that's the 2 MGD you referred to
23 in your last answer; correct? Your last answer that you
24 contend there can be 2 MGD in savings from the nonrevenue
25 water program that you propose?

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2 A. Yes, that's correct.

3 Q. But in your direct testimony, you did
4 not have a section where you describe the additions of the
5 2 numbers, 2 MGD plus 2.228 MGD to get to 4.228; do you?

6 A. That's correct.

7 Q. In fact, the 2 MGD in purported
8 savings from the nonrevenue water program you propose is
9 not identified in your direct testimony, other than as
10 being part of a range of 1 to 2 MGD, on page 8 line 5 of
11 your direct testimony; correct?

12 A. Page 8 line 5, is that correct?

13 Q. Correct.

14 A. Okay.

15 Q. And let me know if you need the
16 question repeated.

17 A. Correct.

18 Q. Let's first turn to the nonrevenue
19 water prong of your proposed program, as opposed to the
20 water conservation prong of your program, and take a close
21 look at how you arrived at your numbers for nonrevenue
22 water.

23 So please turn to your report, page
24 16, table 1. Are you there?

25 A. One moment, please. Yes, I'm there.

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2 Q. How would you define nonrevenue water
3 in prose? Let's not go to the number first, but is it the
4 amount of water supplied minus the amount of water billed
5 to customers, or the amount of water supplied minus
6 consumed? What is your definition?

7 A. So the -- the definition of nonrevenue
8 water is any water supplied by the Company that does not
9 provide revenue back to the Company. So that can include
10 apparent losses. That can include authorized unmetered
11 and unbilled. It can include authorized and unbilled. It
12 can also include real water loss reduction.

13 Q. All right.

14 A. I believe I've gotten all of the
15 components.

16 Q. So for the test year on table 1,
17 nonrevenue water is 10,862 under the water supply .501
18 minus 8,196.245, and that gives you reading over the
19 2,666.256 number; correct?

20 A. Well --.

21 Q. And this is a chart that you've taken
22 from --

23 A. Yes.

24 Q. -- the Company; correct?

25 A. Just -- just a point of clarification.

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2 So the numbers here are million gallons and not million
3 gallons per day; correct?

4 Q. Correct.

5 A. Okay. So, yes.

6 Q. And then that total, the 2,666.256,
7 that's the total nonrevenue water for the test year;
8 correct?

9 A. Yes.

10 Q. And to calculate the percentage of
11 nonrevenue water for the test year for the Suez System,
12 it's fairly straightforward; right? You -- you take the
13 water supplied, the 10,862.501 subtract the water
14 consumed, the 8,196, which gives us our total NRW we just
15 calculated. And that's what's appearing 2,666.256 as the
16 numerator and then you divide it by the denominator of
17 total water supplied, the 10,862.501, multiplied by 100,
18 and that's how the table gets to 24.55%; correct?

19 A. Yes, that's correct.

20 Q. Now we're going to mark another
21 exhibit.

22 MR. DUTHIE: Your Honor, may I ask Mr.
23 Alessi a question just so we keep the record clear here?

24 Mr. Alessi, I assume the test year is
25 the 12 months ended September 30th, 2015?

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2 MR. ALESSI: Yes.

3 MR. DUTHIE: Thank you.

4 A.L.J. PHILLIPS: Can -- can you, when
5 you're ready, just describe this?

6 MR. ALESSI: Yes, your Honor.

7 BY MR. ALESSI: (Cont'g.)

8 Q. Mr. Kleinman, this exhibit marked as -
9 -.

10 A.L.J. PHILLIPS: Well, we didn't mark
11 it --.

12 MR. ALESSI: I'm -- I'm sorry.

13 BY MR. ALESSI: (Cont'g.)

14 Q. Not yet marked, this exhibit is a
15 depiction prepared by the Company that describes the
16 parlance that you referred to you in your -- most of which
17 you referred to in your last answer. And it goes through,
18 as you can see, after total system production, we've got
19 nonrevenue water, and that's the one we're going to focus
20 on, breaking down into real losses and apparent water
21 losses you discussed in your answer.

22 And then you can see it's further
23 broken down to unavoidable real losses. And then I
24 believe you used the phrase recoverable, we put that in,
25 in avoidable real losses. So that is the -- the

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2 description of the exhibit.

3 A.L.J. PHILLIPS: Okay. So I will
4 mark it for identification only as Hearing Exhibit 63.

5 BY MR. ALESSI: (Cont'g.)

6 Q. Mr. Kleinman, does Exhibit -- Hearing
7 Exhibit 63 marked for identification fairly and accurately
8 describe the parlance of nonrevenue water?

9 A. One moment, please. So I'm also going
10 to reference -- well, can I direct your attention to
11 another exhibit or --

12 Q. No.

13 A. -- you need to keep me going here?

14 Q. Yes.

15 A. Okay. All right. For purpose of
16 discussion, yes.

17 Q. Thank you.

18 A. Okay.

19 Q. Now as a matter of parlance,
20 nonrevenue water consists of 2 components, real water
21 losses and apparent water losses, as depicted on H.E. 63;
22 correct?

23 A. Yes.

24 Q. Is it fair to state that apparent
25 losses include unauthorized uses such as theft or other

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2 illegal uses, meters that are worn, improperly sized, or
3 the wrong type? I believe you had described similar
4 items, before, in your testimony?

5 A. Yes.

6 Q. Another component of nonrevenue water,
7 as you can see here, is real losses; correct? I've got it
8 real water losses here.

9 A. Yes.

10 Q. Is it fair to state that real losses
11 and -- water losses include physical losses of water such
12 as leaks from water mains, services, and storage tanks up
13 to the point of customer consumption?

14 A. Yes.

15 Q. Please turn to your direct testimony,
16 page -- pages 7 to 8. And I'm just going to ask a
17 question generally about, at this point, 7 or 8. Not
18 anything specific.

19 A. Okay. Okay.

20 Q. Real losses are the focus of your
21 direct testimony; correct?

22 A. Yes.

23 Q. Please turn to page 8, lines 4 to 5.
24 And that's your --.

25 A. Okay. Yes.

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2 Q. You conclude, quote, The Company could
3 reduce real water loss by 1 MGD to 2 MGD, end quote. And
4 that is to get you to your 4.228 MGD total water savings
5 number that we discussed previously; correct?

6 A. Yes.

7 Q. This is where the 2 MGD, this range,
8 for nonrevenue water comes from that you added to your
9 2.228 MGD number for your proposed water conservation
10 program; right?

11 A. Yes.

12 Q. And there on page 8, line 5, it's a
13 range of 1 to 2 MGD; correct?

14 A. Yes.

15 Q. Please turn to your report, page 16.
16 And we're going to go to that last sentence that we were
17 speaking about earlier at the bottom, last paragraph, page
18 16.

19 A. Yeah, yeah, yeah. I'm trying to find
20 the reference to the 2 MGD Okay.

21 Q. It's at the last sentence.

22 A. Yes. I see it. Yes.

23 Q. There you discuss the reduction of
24 real water loss that we just referenced in the testimony
25 that you believe the Company can achieve, 2 MGD; correct?

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2 A. That is correct.

3 Q. Now what I'd like you to do is to keep
4 that page 16 last sentence reference. I know this may be
5 difficult. I wasn't anticipating you not having hard
6 copies, but it -- it -- your report at page 16, you
7 neither discuss nor show a range of 1 to 2 MGD; correct?

8 A. Correct.

9 Q. You just used the higher 2 MGD from
10 your range from your testimony; correct?

11 A. Correct.

12 Q. And after your direct testimony, if
13 you can go back page 8, lines 4 to 5 --

14 A. Yes.

15 Q. -- you never apply the range you
16 identified of 1 to 2 MGD again; correct?

17 A. Correct.

18 Q. And there's 100% difference between 1
19 MGD and 2 MGD; correct?

20 A. Yes.

21 Q. And by selecting the high end of the 1
22 to 2 MGD range, without explanation, that you calculated,
23 it gets you a 24% increase in your overall program that
24 you propose for NRW and water conservation; correct?

25 A. Correct.

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2 Q. So by use of a keyboard stroke, you
3 command a 24% increase in your total water savings program
4 in your report; correct?

5 A. Correct.

6 Q. You never explain in J.K. 1, you never
7 explain in your direct testimony and you never explain in
8 your responsive testimony why you dropped the range of 1
9 to 2 MGD and just picked the highest number; do you?

10 MR. DUTHIE: Objection, your Honor.
11 Argumentative.

12 MR. ALESSI: This is cross.

13 MR. DUTHIE: It sounds like he's
14 writing his brief already, your Honor.

15 MR. ALESSI: I can rephrase if your
16 Honor would like.

17 A.L.J. PHILLIPS: I -- I think maybe
18 you should.

19 MR. ALESSI: Okay.

20 BY MR. ALESSI: (Cont'g.)

21 Q. Do you ever explain, in J.K. 1, your
22 direct testimony, your responsive testimony, why you
23 dropped the range of 1 to 2 MGD and just picked the
24 highest number?

25 A. No, I don't explain it.

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2 Q. Let's look at what you did with some
3 of the other numbers pertaining to the nonrevenue water
4 prong of your proposed program.

5 A. Okay.

6 Q. Let's go back to your direct
7 testimony.

8 A. Okay.

9 Q. Page 7, line 10.

10 A. Okay.

11 Q. You state that -- and I'm going to
12 refer to sometimes, Mr. Kleinman, if it's acceptable to
13 you, SWNY as a synonym for Suez Water New York so I don't
14 have to say it out every time. Is that acceptable?

15 A. Sure.

16 Q. You state that SWNY, quote,
17 experienced about 4.3 MGD of real water loss during that
18 test year; correct?

19 A. Yes, I do.

20 Q. Now that 4.3 MGD number is important
21 to you because you use it in your math that we will get to
22 on page 8, lines 1 through 7; correct?

23 A. Yes.

24 Q. So let's go to page 8, lines 2 to 4
25 first. You identify a range of reported nonrevenue water

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2 reduction percentages from table 4 in your report of 23.5%
3 to 48%; correct?

4 A. Yes.

5 Q. On lines 4 to 5, that same page, you
6 state, quote, Applying these ranges suggests that the
7 Company could reduce real water loss by 1 MGD to 2 MGD
8 And I'm going to end the quote there.

9 And that's the part of your 4.228 MGD
10 overall water savings program that you propose for the
11 Company; correct?

12 A. Have we -- so, again, yes.

13 Q. Okay. You don't mathematically show
14 how you applied the 25 -- 23.5% range and the 48% range in
15 your direct testimony; do you?

16 A. No, I don't show how the math -- the -
17 - just simple multiplication is done.

18 Q. Okay.

19 A. That's correct.

20 Q. I'm going to mark another exhibit.

21 A.L.J. PHILLIPS: So we'll mark for
22 identification a 1-page document as Hearing Exhibit 64.
23 And Counsel will explain what it is.

24 BY MR. ALESSI: (Cont'g.)

25 Q. Mr. Kleinman, now this document, would

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2 you agree, represents the simple multiplication that you
3 just referenced in your last answer; correct?

4 A. Yes, that's correct.

5 Q. And does that fairly and accurately
6 represent the simple multiplication you just referenced in
7 your last example?

8 A. It is, thank you.

9 Q. You -- as this exhibit shows,
10 therefore, you arrived at your 1 to 2 MGD range by
11 multiplying your 4.3 MGD real loss test year calculation
12 number from page 7, by each of the low 23.5 and the high
13 end 48% ranges from page 8, line 3; correct?

14 A. Yes, I did.

15 Q. Now let's turn to your selection of
16 the 23.5% and 48% ranges --

17 A. Okay.

18 Q. -- in your calculations on Hearing
19 Exhibit 64.

20 A. All right. What -- what page are you
21 going to in the report? Or are you not at the report?

22 Q. That's exactly where I'm going.

23 A. Okay.

24 Q. If you go to page 21, table 4.

25 A. Thank you. Okay.

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2 Q. All right. Under the column table 4
3 case study.

4 A. One moment, please.

5 MR. ALESSI: Could we go off the
6 record for a moment, your Honor?

7 (Off the record)

8 MR. ALESSI: Thank you, your Honor.

9 BY MR. ALESSI: (Cont'g.)

10 Q. Mr. Kleinman, I understand you have
11 now identified on your computer, table 4?

12 A. Yes, I have.

13 Q. Under the column case study, going 2/3
14 of the page down to Bordeaux, France.

15 A. Yes.

16 Q. And then proceeding horizontally to
17 the last column of percent reduction. That's a column at
18 the top that you have?

19 A. Yes.

20 Q. You had to perform a mathematical
21 calculation of those numbers in that box to get to your
22 percent reduction that you put in your testimony of 23.5;
23 correct?

24 A. Yes, that is correct.

25 Q. So you obtain the 23.5% number from

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2 the case study column for Bordeaux, France by performing a
3 series of mathematical calculations. And what I am going
4 to do now is mark an exhibit so I can get you to agree or
5 disagree with the calculation you -- you performed to get
6 to 23.5.

7 You would agree that that calculation
8 is nowhere stated in your report or in your testimony?

9 A. Yes, I do. Thank you.

10 A.L.J. PHILLIPS: So we're going to
11 mark this for identification as Hearing Exhibit 65. But I
12 want to take a pause until everyone has the document
13 before we proceed with any questions or explanation of
14 what it is.

15 So it's marked for identification as
16 Hearing Exhibit 65.

17 MR. ALESSI: May I proceed, your
18 Honor, or -- or are you waiting for others to -- okay. I
19 didn't see that.

20 A.L.J. PHILLIPS: Okay. Please
21 proceed.

22 MR. ALESSI: And -- and, your Honor,
23 if I may, we have extra copies of this report. So if
24 there's anybody else that is in this room that wants
25 another extra copy we don't want to unduly proceed through

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2 this, but we do have extra copies. I don't know who's
3 parties and who's not, but sitting in the back.

4 BY MR. ALESSI: (Cont'g.)

5 Q. Okay. Mr. Kleinman, does Hearing
6 Exhibit 65 fairly and accurately depict the mathematical
7 computations you had to make to get to 23.5% in your
8 column for Bordeaux, France?

9 A. Yes, it does.

10 Q. So you took, in your direct testimony
11 -- going back to page 7 and -- and 8, you took the 4.3 MGD
12 real loss number and multiplied it by 23.5% to get the
13 lower end of your 1 to 2 MGD range; correct?

14 A. Yes, that's correct.

15 Q. And that's -- that's the 1 MGD
16 Let's now look at your methodology for
17 the nonrevenue water prong of your program and your
18 suggestion, that's what you call it on page 8, for
19 applying these ranges suggests as to how the Company could
20 reduce -- how much the Company could reduce real water
21 loss by. Please turn to page 2 of your report.

22 A. Okay.

23 Q. And at the top, ES, Executive Summary,
24 the second sentence -- well, you see where it starts, the
25 goal?

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2 A. Yes.

3 Q. And I'm going to quote, The goal of
4 the evaluation is to assess projected costs and
5 performance within the context of national trends and
6 program performance. Based upon those national trends,
7 AIQUEOUS has recommended modifications to SWNY's proposed
8 program that would more than double water savings and
9 cost-effectiveness with only minor increases to the
10 overall program cost.

11 Do you see that?

12 A. I do.

13 Q. Please turn to page 14 of your report,
14 section 1, study objectives.

15 A. Okay.

16 Q. Likewise, there you state, up at the
17 top, Scenic Hudson, Riverkeeper, and the Rockland Water
18 Coalition commissioned this report to evaluate Suez Water
19 New York's water loss control and water conservation
20 program proposed as part of its 2016 rate filing with the
21 PSC within the context of national trends and program
22 performance; correct?

23 A. Correct.

24 Q. Please turn now back to page 21, table
25 4, of your report.

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2 A. Okay.

3 Q. Now you represented on page 2 of your
4 report, which we just covered, and in the study objectives
5 in your report that you would assess the projected
6 performance based upon national program performance based
7 upon national trends.

8 In fact, on table 4, none of those
9 item -- companies under case study are even in North
10 America; correct? Can you answer that question yes or no?

11 A. With clarification.

12 Q. Well --

13 A. If that's acceptable.

14 Q. -- can you -- can you answer whether -
15 -?

16 A.L.J. PHILLIPS: So let me -- let me
17 stop you. You have a question. So if you can start with
18 yes or no --

19 THE WITNESS: Okay.

20 A.L.J. PHILLIPS: -- you -- he's
21 allowed to clarify after that.

22 THE WITNESS: All right. Thank you,
23 ma'am.

24 A. Okay. So the answer is yes. And so
25 to --.

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2 BY MR. ALESSI: (Cont'g.)

3 Q. I'm sorry. The -- you might not have
4 understood the question.

5 A. But your -- your question -- sorry,
6 your question was are any of these North America or -- or
7 was it the opposite? Could you repeat the question?

8 Q. That's why because I think you --

9 A. Thank you.

10 Q. -- misunderstood the question.

11 A. Okay.

12 Q. Let me ask it this way.

13 A. All right.

14 Q. None of those entries on table 4 are
15 in the United States; correct?

16 A. That is correct.

17 Q. None of them are in North America;
18 correct?

19 A. That is correct.

20 Q. They're all in Europe; correct?

21 A. That is correct.

22 Okay. So with clarification, so in
23 conducting our census of nonrevenue water data within the
24 confines of the scope, in order to assess trends we
25 gathered as much public information as we could. We also

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2 in your last answer anywhere in your report or in your
3 direct testimony?

4 A. No, I do not.

5 Q. And would you agree there's no way for
6 anyone to evaluate the accuracy of your answer when you
7 say you had conversations with other people with -- and
8 with regard to what they said?

9 A. No. So the individuals are noted in
10 the references section. And they're also footnoted in
11 terms of personal communications. But the report does not
12 explicitly connect the dots between those conversations
13 and the conclusions reached.

14 Q. Right. So your table here doesn't
15 reference any of those conversations; correct?

16 A. The -- the table references the
17 report. And -- and that is correct; the report does not
18 reference that I got the information from Allan Lambert or
19 that the other data were not available to be able to
20 produce a table similar to this one.

21 Q. And the only item listed at the bottom
22 of table 4 as a source is European Union 2015. So you
23 identified a source --

24 A. Well --.

25 Q. -- correct?

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2 A. Well, the report -- so if you go to
3 the references section of the report, you'll see -- so
4 this is on page 44. This is the -- let's see -- 1, 2, 3,
5 4 -- 5th document from the bottom.

6 Q. I'm there.

7 A. Okay. So that's the -- so that's the
8 shorthand for the document. And then the conversation
9 with Allan Lambert is not referenced. Okay.

10 Q. Thank you.

11 A. Thank you.

12 Q. Let's go back to table 4 of your
13 report.

14 A. Sorry? Table 4?

15 Q. Table 4.

16 A. Okay.

17 Q. Page 21.

18 A. Thank you.

19 Q. You're welcome.

20 A. Okay.

21 Q. So your title up at the top of the
22 column is Case Study. And there's 15 European locations
23 for what you call a case study; correct?

24 A. That's correct.

25 Q. And the crux of the main part of table

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2 4 is the last column, percent reduction; correct?

3 A. No. The other crux is to identify the
4 strategies that were implemented. So you can see that
5 only 1 actually required the use of AMI, DMAs, and also --
6 so all strategies are AMI, DMA, something called
7 continuous acoustic monitoring, or CAM, pressure reduction
8 managements, and nonrevenue water teams, the majority of
9 which are being used by Suez Water New York in its
10 proposed real water loss plan.

11 Q. My -- my question was -- and -- and
12 actually, I'll change it a little bit because I may have
13 not been clear.

14 A. Okay.

15 Q. Is percent reduction, that column, an
16 important part of table 4?

17 A. So that is the -- that column is what
18 is used to do the calculation of the range of 1 to 2 MGD
19 if that's what you're getting at.

20 Q. Actually, if -- if I can have you hear
21 my question --

22 A. Okay.

23 Q. -- and, again, if it's unclear because
24 I can sometimes be, just tell me.

25 A. Okay.

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2 Q. My question is, is percent reduction,
3 that column --

4 A. Yes.

5 Q. -- an important or unimportant part of
6 table 4?

7 A. It is an important part.

8 Q. But out of 15 entries on table 5 -- or
9 excuse me. Let me rephrase.

10 Out of 15 entries in table 4, you list
11 no data for 9 of them on the percent reduction column;
12 correct? It's blank.

13 A. Yes. The data weren't available in
14 the case study summaries.

15 Q. Now for the 2 locations you selected
16 for your range on table 4 --

17 A. Yes.

18 Q. -- the column under percent nonrevenue
19 water reduction is, in fact, nonrevenue water reduction;
20 correct? The information in there?

21 A. I'm sorry; are you looking at the
22 fourth column of the table?

23 Q. I am looking at the far right.

24 A. Oh, you're still looking at the far
25 right. Okay.

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2 Q. Percent reduction, you selected

3 Bordeaux, France --

4 A. Yes.

5 Q. -- and you selected Scottish Water;

6 right?

7 A. Yes.

8 Q. And so I didn't go through it, but for

9 Scottish Water, just like we had to do a calculation for

10 Bordeaux, France, to get to 23.5 you have to do a

11 calculation with a percent reduction column for Scottish

12 Water and that's how you got to your 48; right?

13 A. Yes, that's correct.

14 Q. All right. So my question here is the

15 -- those 2 locations reading -- and percent reduction, the

16 information in the box for each of those under percent

17 reduction is percent nonrevenue water reduction; correct?

18 A. Yes, it is.

19 Q. Now the title of table 4 is Strategies

20 and Performance from Select Water Loss Control Programs;

21 correct?

22 A. Yes, it is.

23 Q. You used the term select, not

24 representative programs; correct?

25 A. Yes, that's correct.

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2 Q. Please turn to your direct testimony,
3 page 8, lines 2 to 7.

4 A. Okay.

5 Q. Now that we've gone over table 4, on
6 page 8 lines 2 to 7, that's where you applied the range of
7 reported percent nonrevenue water reductions from table 4
8 from the 2 European water systems directly to the Suez
9 Water New York System in Rockland County; correct?

10 A. Yes.

11 Q. And as we discussed previously, you
12 did this by multiplying the European Water System percent
13 nonrevenue water ranges by the 4.3 MGD real water loss
14 number that comes directly from the Suez Water New York
15 water supply system; correct?

16 A. That is correct.

17 Q. Experts in water supply management
18 caution against doing exactly what you did, namely
19 applying program results from table 4 from other water
20 systems, here European systems, to a specific system such
21 as Suez Water New York. Is that correct or incorrect?

22 A. Yes, that is correct.

23 Q. Please turn to page 20 of your report.
24 Go to the second paragraph, please.

25 A. Okay.

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2 Q. Second sentence beginning with
3 additionally, Additionally water system characteristics --
4 .

5 A. I'm sorry; I thought I was there and I
6 lost you.

7 Q. Okay. Sure.

8 A. So page 20, second paragraph?

9 Q. I'm sorry; yes, page 20, second
10 paragraph.

11 A. Okay.

12 Q. Second sentence beginning with
13 additionally.

14 A. Got it. Okay.

15 Q. Okay. Additionally, water system
16 characteristics are highly site specific. Consequently,
17 many of the benchmarks come from service territories that
18 do not exactly share SWNY's characteristics. All experts
19 contacted by AIQUEOUS cautioned the application of program
20 results to other service territories.

21 Do you see that?

22 A. I do. So for clarification --.

23 Q. You need to clarify that sentence?

24 A. I don't need to clarify the -- I'm
25 sorry. Continue.

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2 Q. In terms of your direct testimony or
3 your responsive testimony, did you disclose to the reader
4 of that testimony the significant limitation or, quote,
5 caution that is used in the report, all experts you
6 contacted gave you against doing what you did on page 8,
7 lines 1 through 7 of your direct testimony, by applying
8 European water system performance to the Suez Water New
9 York System?

10 A. No, I did not.

11 Q. Let's turn back to your report page
12 20, second paragraph, second sentence that we just read
13 moments ago.

14 A. Okay.

15 Q. Please turn to table 4, after you
16 having read that -- that sentence we covered, and go to
17 the first column that you have labeled as this is a case
18 study.

19 A. Okay.

20 Q. There are water characteristics that
21 affect non -- I'm sorry -- there are water system
22 characteristics that affect nonrevenue water, including
23 real water losses that are site specific; correct?

24 A. Yes.

25 Q. Can you name any of those

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2 characteristics for any of those systems in table 4?

3 A. Not off the top of my head.

4 Q. Does the material of the pipe affect
5 nonrevenue water?

6 A. That combined with its age.

7 Q. Do installation practices such as
8 geology, soil conditions, ground water levels,
9 manufacturer of the pipe affect nonrevenue water?

10 A. Yes, it does.

11 Q. And as you indicated in your answer a
12 few questions ago, the average age of the pipe is a factor
13 in nonrevenue water; correct?

14 A. Yes. That is correct.

15 Q. None of the site-specific
16 characteristics we just discussed are listed in the so-
17 called case study on table 4 of your report; are they?

18 A. So-called case study? I'm sorry.

19 Q. You're calling it a case study.

20 That's why I'm not denigrating it. I'm just --

21 A. Okay.

22 Q. -- I don't want the record --

23 A. Yes, the -- so --.

24 Q. -- to read that I'm agreeing or

25 disagreeing with case study. That's why I say so-called

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2 case study.

3 A. So, yeah, that is correct. The -- the
4 site-specific locations are -- sorry, the site-specific
5 characteristics are not listed on the table.

6 Q. Do you know any of the site-specific
7 characteristics we just discussed for the Bordeaux, France
8 water system you chose for the lower end of your range on
9 page 8 line 5 of your direct testimony?

10 A. Again, not off the top of my head.

11 Q. Do you know any of the site-specific
12 characteristics we just discussed for Dryanovo, Bulgaria
13 or Scottish Water, Scotland, systems that you chose for
14 the higher end of your range on page 8 line 5?

15 A. Same answer.

16 Q. Do you know any of those site-specific
17 characteristics for the Suez Water New York System?

18 A. So some of the characteristics because
19 the information was provided in testimony supplied by
20 Company as part of the case.

21 Q. And what -- what is it that you know
22 of the site-specific characteristics of Suez Water New
23 York? Do you know the age of the pipe?

24 A. I know the age of the pipe, the
25 material of the pipe.

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2 Q. What do you know as the average age of
3 the pipe?

4 A. Company testimony, in responding to
5 nonrevenue water information, suggested, I want to say, 50
6 years or slightly longer -- or slightly younger.

7 Q. If you could turn back to Hearing
8 Exhibit 63, that's the depiction -- I'm holding it up, Mr.
9 Kleinman, if it -- yes, exactly.

10 A. Yeah, I got it.

11 Q. What I would like you to do on this
12 exhibit is to look at real water loss column there. So
13 we're going nonrevenue water, real water loss --.

14 A.L.J. PHILLIPS: May I just ask a
15 clarification? You said column, but we're looking at this
16 now; right?

17 MR. ALESSI: I'm -- I'm sorry. I --.

18 A.L.J. PHILLIPS: So you mean the box,
19 real water losses?

20 MR. ALESSI: Thank you, your Honor.
21 The -- the column I referred to isn't an appropriate
22 description.

23 A.L.J. PHILLIPS: No; that's okay. I
24 just want it to be clear.

25 MR. ALESSI: I --.

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2 A.L.J. PHILLIPS: You mean the box?

3 MR. ALESSI: Right. I -- I -- in the
4 box. And sort of what I'm talking about is the
5 progression on just going from nonrevenue water that
6 splits real water loss, apparent loss, and then real water
7 loss splits further. That's the -- the progression.

8 BY MR. ALESSI: (Cont'g.)

9 Q. You -- you see that the real water
10 losses are broken, in that box, real water loss into
11 unavoidable real water losses and avoidable slash
12 recoverable, because you used recoverable parlance, real
13 water losses; correct?

14 A. Yes.

15 Q. When real water losses are
16 unavoidable, that means they can't be avoided or recovered
17 no matter the efforts of a water utility; correct?

18 A. I don't think that's correct.

19 Q. So you -- you --.

20 A. So -- so one moment, please. So my
21 understand -- and, again, this is my understanding, right,
22 that there is an unavoidable real water loss but there's
23 an economic component to it, as well.

24 So if you look at the economics of
25 real water loss, for example, it -- it is possible to --

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2 some of it is technically infeasible; right? But another
3 component, my understanding, is that there's a -- there's
4 a cost effectiveness to it, as well.

5 So if it were to cost -- and we'll use
6 some of the numbers from the report. So for example, if
7 the cost of water loss reduction -- we'll use the 12
8 million dollars per MGD if -- if that's acceptable from
9 the -- the Company testimony and report, right.

10 So -- so let's say that that is the
11 cost effectiveness benchmark for what we're talking about.
12 If it's going to cost more than that or significantly more
13 than that, my understanding is that there's an economic
14 component to the unavoidable real water loss. You have to
15 take a look at whether or not it is worth the investment
16 to -- to get there.

17 The more expensive the water is, the -
18 - the more reasonable it is to make the technical
19 investment to be able to capture it. There's a certain
20 amount of water loss that is technically infeasible, but I
21 -- I thought or believe that there's an economic component
22 to what is unavoidable.

23 Q. So you believe there's an economic
24 component to unavoidable real water loss; correct?

25 A. Yes.

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2 Q. Now these 2 aspects of real water
3 loss, unavoidable real water loss and avoidable
4 recoverable real water losses, those are important in a
5 discussion on reduction of nonrevenue water; correct?

6 A. Yes.

7 MR. ALESSI: Before you hand out the
8 exhibit, I'm sorry, I -- I -- I have one more question for
9 Mr. -- Mr. Kleinman.

10 A. (Cont'g.) Okay.

11 BY MR. ALESSI: (Cont'g.)

12 Q. What is the source of your authority
13 that there's an economic component to unavoidable real
14 water loss?

15 A. So to the best of my recollection, it
16 is from the M-36 manual for AWWA and also the software
17 that's used and the -- the training that I received at the
18 WaterSmart Innovations Conference that I took.

19 Q. Thank you.

20 A.L.J. PHILLIPS: I'll just note while
21 this is being handed out that it will be marked for
22 identification as Hearing Exhibit 66. But we'll wait
23 until everyone has a copy and I'll indicate when we should
24 proceed.

25 MR. ALESSI: May I proceed, your

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2 Honor?

3 A.L.J. PHILLIPS: Yes.

4 MR. ALESSI: Thank you.

5 BY MR. ALESSI: (Cont'g.)

6 Q. Mr. Kleinman, I have it's -- what's
7 been marked as Hearing Exhibit 66. The cover page is
8 Manual Water Supply Practices M-36 Water Audits and Loss
9 Control Programs 4th Edition, American Water Works
10 Association; correct?

11 A. Yes, that's correct.

12 Q. And you're familiar with what I'm
13 going to shorthand as M-36 because you referred to it in
14 your last answer; correct?

15 A. Yes, that's correct.

16 Q. Now would you agree or disagree that a
17 water supply system cannot eliminate unavoidable real
18 water losses, regardless of how much they spend? Would
19 you agree or disagree with that?

20 A. I agree with that.

21 Q. So is that a change to the answer you
22 gave before that there was an economic component to
23 unavoidable real loss -- real water loss?

24 A. I'm sorry; yes, it is a change. So
25 let's --.

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2 Q. So you would like --?

3 A. So, yes.

4 Q. I'm sorry. Go ahead. I was -- I
5 thought you were finished.

6 A. No -- no; it's okay. So -- so let's
7 go back. So let's talk about the unavoidable annual real
8 loss as a noneconomic component. It's just a -- it's a
9 function of the technical characteristics of the system.

10 Q. Thank you for that correction.

11 A. Thank you.

12 Q. And as you also mentioned in your --
13 one of your answers, there's software that accompanies the
14 manual so water managers can, among other things, more
15 accurately report system water losses; correct?

16 A. Yes, that's correct.

17 MR. ALESSI: Mark another exhibit.

18 A.L.J. PHILLIPS: So I believe
19 everyone has a copy of the latest document that was
20 circulated. We'll mark it for identification as Hearing
21 Exhibit 67.

22 Can you briefly describe what this is?

23 BY MR. ALESSI: (Cont'g.)

24 Q. Mr. Kleinman, this document is an
25 analysis that you coauthored, dated April 22nd, 2016,

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2 entitled Energy Efficiency Potential for Real Water Loss
3 Reduction in the Pacific Northwest; correct?

4 A. Yes, that's correct.

5 Q. So you're familiar, obviously, with
6 this document as you coauthored it; correct?

7 A. Yes, I -- yes, I am.

8 Q. Now the M-36 manual that we were just
9 referring to --

10 A. Yes.

11 Q. -- Hearing Exhibit 66, that's the
12 generally accepted standard in the -- I'm sorry -- my mic
13 was off for the reporter so I'm going to repeat the
14 question.

15 The M-36 manual is the generally
16 accepted standard in the water supply industry for
17 calculating unavoidable and hence avoidable real water
18 losses; correct?

19 A. Yes, that's correct.

20 Q. The M-36 manual, if you could turn to
21 page 102, I'm going back now --.

22 A. Of the manual. Okay.

23 Q. Yeah, if you can keep that report
24 handy, but we're going to go back and forth between the
25 manual and the report.

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2 A. All right.

3 Q. So if you can turn to page 102 and go
4 down to task 6.

5 A. Yes.

6 Q. So that contains a section on
7 determining system attributes; right?

8 A. Yes, it does.

9 Q. In that section, there is a required
10 step for calculating unavoidable annual real losses, UARL;
11 correct?

12 A. Where is the required step that you're
13 referring to?

14 Q. Well, is -- well, let me rephrase it.
15 Is there a step in the manual for
16 calculating unavoidable --

17 A. Oh.

18 Q. -- annual real losses?

19 A. The whole section. Yes, there is.

20 Q. So there's, therefore, a requirement
21 in the manual that you do that in determining system
22 attributes; correct?

23 A. Yes, that's correct.

24 Q. If you could go back to Hearing
25 Exhibit 63, if you can keep -- now I'm going to have you

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2 have 3 exhibits open at the same time.

3 A. Okay.

4 Q. That's the depiction.

5 A. Yes.

6 Q. Unavoidable real water losses, the
7 bottom left-hand box, which is in the parlance referred to
8 as UARL, is a system-specific calculation; correct?

9 A. Yes, it is.

10 Q. And you can tell that because if you
11 go to the manual, page 102, task 6, the third sentence, it
12 says the UARL represents the minimum level of leakage that
13 is calculated in a system-specific manner for a water
14 utility; correct?

15 A. Yes.

16 Q. That means to comply with the M-36
17 manual methodology, you must use system-specific data on
18 unavoidable real loss; correct?

19 A. Yes, that's correct.

20 Q. So M-36 doesn't allow you to search
21 for surrogates in the literature or in conversations with
22 other consultants and use data from places like Bordeaux,
23 France or Scottish Water to apply to other data from a
24 site-specific water system in the northeast United States
25 like Suez, as you did on page 21, table 4 of your report,

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2 and as you did in your direct testimony, page 8, lines 2
3 to 7; correct?

4 A. Yes. But that isn't necessarily the
5 approach that's taken to set a goal for performance on a
6 program.

7 Q. Right. But my question -- so you're
8 saying yes to my question.

9 A. I am.

10 Q. The -- the M-36 manual doesn't allow
11 you to do that?

12 A. That is correct.

13 Q. And it was from those other European
14 systems where you derive the critical calculation of range
15 and conclusion for your assertion that the Company could
16 reduce real water loss by 1 to 2 MGD; correct?

17 A. Yes, for the purpose of setting a
18 target to being combined with water conservation to set an
19 aggregate goal.

20 Q. Did you even discuss the concepts of
21 avoidable or unavoidable real water loss in your report?

22 A. No, I did not.

23 Q. Did you even disclose these concepts
24 in your report?

25 A. No, I did not.

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2 Q. And by not disclosing these concepts
3 in your report, doesn't that nondisclosure materially
4 increase the risk that the reader may believe that all
5 real water losses can be avoided?

6 A. I'm -- I need you to repeat the
7 question, please.

8 Q. Sure.

9 A. Okay.

10 Q. By not disclosing the concepts of
11 unavoidable real water losses and avoidable or recoverable
12 real water losses in your report, doesn't that
13 nondisclosure materially increase the risk that the reader
14 of your report may believe that all real water losses can
15 be avoided?

16 MR. DUTHIE: Objection, your Honor.
17 This calls for Mr. Kleinman to speculate on some
18 undisclosed reader and their potential assumptions about
19 the report.

20 A.L.J. PHILLIPS: I'm going to
21 overrule the objection.

22 A. My answer is I don't know.

23 BY MR. ALESSI: (Cont'g.)

24 Q. In addition to not disclosing or
25 otherwise accounting for the Suez Water New York site-

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2 specific UARL number, 1 of the 2 components of real water
3 loss, anywhere in your report or testimony in this case,
4 you also don't even disclose the existence of the AWWA M-
5 36 manual in methodology for calculating unavoidable real
6 losses in your report or testimony; do you?

7 A. No, I do not.

8 Q. You do know, however, how to apply the
9 concept of avoidable recoverable water loss when analyzing
10 a water system; don't you?

11 A. Yes, I do.

12 Q. And you have disclosed and applied the
13 concepts of avoidable recoverable water loss
14 quantitatively in other reports you have authored or
15 coauthored, recently. Isn't that correct?

16 A. No. The -- so the concept of
17 unavoidable real water loss was described; however, it
18 could not be applied in the only other report that I have
19 on the subject.

20 Q. You may have misunderstood my
21 question.

22 A. Okay.

23 Q. My question was you have disclosed and
24 applied the concepts of avoidable, slash, recoverable real
25 water loss --

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2 A. Okay.

3 Q. -- quantitatively in other reports
4 that you have authored or coauthored, recently. Isn't
5 that correct?

6 A. Yes, that's correct.

7 Q. And if you could turn to hearing
8 Exhibit 67. Let me know when you have it.

9 A. I have it.

10 Q. Now that report was authored on April
11 22nd, 2016; correct?

12 A. Yes, that's correct.

13 Q. And that is just one and a half months
14 before you authored your report in this proceeding;
15 correct?

16 A. That is correct.

17 Q. Please turn to page 19 of that report.
18 Are you there?

19 A. Yes, I am.

20 Q. In the second sentence, you state,
21 quote, The American Water Works Association M-36 Water
22 Audits and Loss Control Programs 4th Edition establishes
23 the framework for understanding various components of a
24 water supply system and how to quantify them; correct?

25 A. Yes, that's correct.

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2 Q. Please turn to page 29 of the same
3 report.

4 A. Okay.

5 Q. Under the subheading Water Loss
6 Policies, down toward the bottom, you see that in blue?

7 A. Yes, I do.

8 Q. Yeah, you may have a black and white -
9 -

10 A. Yeah -- yeah.

11 Q. -- but it's water loss policies?

12 A. Yes.

13 Q. There you state, quote, trends U.S.
14 water loss policies as well as steps to reduce system
15 water losses by -- or system water losses include, colon,
16 and then you have a number of bullets; correct?

17 A. Yes, that's correct.

18 Q. And in terms of in that section, I'm
19 going to read the first 3, annual reporting of system
20 water losses both real and apparent losses, analysis and
21 reporting of system water losses using the AWWA water
22 audit software, a free Excel-based program; correct?

23 A. Yes, that's correct.

24 Q. And then the fourth one, training of
25 water managers to more accurately report system water

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2 losses using the AWWA audit software; correct?

3 A. Yes, that's correct.

4 Q. Please go back to page 19 of this
5 report, this report meaning Hearing Exhibit 67, the one
6 we're on.

7 A. Okay.

8 Q. I'd like to draw your attention to the
9 second line. It states, The American -- and this is your
10 report -- the American Water Works Association's M-36
11 water audits and loss control program -- we read that
12 before -- but what I'd like to do is to go right above to
13 the first sentence. Any discussion on water loss needs to
14 start with a definition of terms. You see that?

15 A. I do see that.

16 Q. You then go on to identify terms below
17 on page 19 and you carry those definitions over onto page
18 20; correct?

19 A. Okay. Could we get a -- could we make
20 a clarification if that's all right? The -- so the paper
21 is coauthored by myself and Amy Vickers. So the sections
22 pertaining to energy efficiency were authored by myself
23 and the sections on water loss were authored by Amy. So
24 instead of saying you, could we just say the report?

25 I -- I didn't necessarily write all of

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2 this since we shared sections of the report.

3 Q. You are listed as a coauthor --

4 A. Coauthor, yes, that's correct.

5 Q. -- of the report; correct?

6 A. Yes, that's right.

7 Q. So are you responsible for the
8 entirety of the report as a coauthor in the scientific
9 literature?

10 A. Jointly with Amy, yes.

11 Q. Yes.

12 A. Okay.

13 Q. Now let's go back to Hearing Exhibit
14 63.

15 A. Okay.

16 Q. Again, I want you to have that there
17 because I want to focus on real water losses and the
18 breakdown of real water losses into unavoidable real water
19 losses and avoidable recoverable water losses.

20 Now let's go back to the report you
21 coauthored with Ms. Vickers. And let's go back to page 19
22 and now to page 20.

23 A. Okay.

24 Q. Up at the top, that's the end of the
25 definitional terms; correct?

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2 A. Yes.

3 Q. And it ends with real losses; correct?

4 A. Yes.

5 Q. So while the report identifies and
6 defines real losses in the last bubble, once again now in
7 the -- this report, there's a failure to disclose to the
8 reader in the definitional section of the report that real
9 losses break down further into unavoidable real losses as
10 is clearly identified in the AWWA M-36 manual and the
11 accompanying AWWA software; correct?

12 A. Yes, that's correct.

13 Q. Please turn to page 28 of the Hearing
14 Exhibit 67.

15 A.L.J. PHILLIPS: May I just ask a
16 question? Can you let me know when you get to a good
17 point for a break?

18 MR. ALESSI: It will be probably
19 within 3 minutes.

20 A. Sorry; page 28 you said?

21 BY MR. ALESSI: (Cont'g.)

22 Q. Page 28, please.

23 A. Okay.

24 Q. And please go to the heading
25 Achievable Energy Efficiency Potential.

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2 A. Yes.

3 Q. Under that heading, you discuss -- you
4 do discuss and calculate the percentage of real water that
5 is, quote, recoverable, end quote, for the 4 Pacific
6 Northwest systems; correct?

7 A. Yes.

8 Q. So there you do, by calculations,
9 perform the extra methodological and math step that is
10 necessary after you calculate real water loss to break
11 down the real water loss number into a further component
12 as you do here of avoidable recoverable real loss;
13 correct?

14 A. Okay. In this instance, it's
15 different. I think the application of the term
16 recoverable here is -- is being misinterpreted.

17 Q. By who?

18 A. By you.

19 Q. I just asked a question as to whether

20 --

21 A. So --.

22 Q. -- if it -- yeah, I'll repeat the
23 question.

24 A. Okay. So -- but --.

25 Q. It was a question.

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2 A. Okay. Sorry. Could you repeat the
3 question, please?

4 Q. Sure.

5 A. Okay.

6 Q. Let me -- let me go more quickly here.
7 You, in this section of the report, do not mention the
8 words unavoidable real water loss or -- or anywhere else
9 in the PNW, the Pacific Northwest report, just as UARL,
10 unavoidable real loss, is never mentioned in your report
11 or testimony in this case. Is that correct?

12 A. It is correct, but it wasn't necessary
13 to define in the Pacific Northwest site.

14 Q. Let's go back to the page 19.

15 A. Of the --?

16 Q. The report.

17 A. 67?

18 Q. Yes.

19 A. Okay.

20 Q. So in the first sentence, again, any
21 discussion on water loss needs to start with a definition
22 of terms. So is it your testimony that when someone reads
23 this report, there's no need to define all the terms when
24 you're talking about real water loss, the 2 components of
25 real water loss -- is it your testimony one does not need

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2 to know that there are 2 components, unavoidable real
3 water losses or avoidable recoverable real water losses?

4 A. So with respect to this particular
5 report, I would say that the answer is yes. Can I explain
6 why?

7 Q. So the answer -- I just want -- yes,
8 you can. I just want --.

9 A. The answer is yes.

10 Q. That's -- okay.

11 A. Can I explain why? Okay. So this
12 report is based upon -- is following the general practice
13 of an energy efficiency potential study. When talking
14 about energy efficiency potential, there's -- there's --
15 the achievable potential does represent an element of cost
16 effectiveness and it also represents an element of if you
17 -- if you run a program out in the field, are you likely
18 to successfully capture that amount of water.

19 So with regard to the discussion on --
20 so -- so the reason I was making that point before is here
21 recoverable reflects what has been achieved in practice in
22 the field in terms of a percent reduction. And that is
23 for the purpose of determining what is the amount of
24 embedded energy in -- in that water.

25 So -- so in this instance we never got

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2 to, nor never -- or -- or ran into the notion of
3 unavoidable real water loss. It was outside of the scope
4 of the study.

5 And you are correct that in the
6 definition of terms, we do not have the unavoidable real
7 water loss bullet points to complete the discussion terms.

8 Q. Mr. Kleinman, doesn't the AWWA M-36
9 manual say that the only way you can calculate avoidable
10 or recoverable water loss is that you first have to
11 subtract unavoidable real water losses from real water
12 losses?

13 A. So, yes, but within the scope of a
14 cost-effective study to determine whether it is -- whether
15 additional investment in -- at the site-specific level is
16 necessary, you have to start with a screening analysis.

17 So the report that you have here dated
18 April 22nd is a screening analysis. The intent was to
19 determine whether or not the Northwest Energy Efficiency
20 Alliance should or should not continue to invest in real
21 water loss as a energy efficiency measure within the
22 portfolio.

23 The -- the conclusion of the report
24 was no. And it was not necessary to explicitly identify
25 unavoidable real water losses on a system specific basis

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2 to reach that conclusion.

3 Q. So as I understand it, even though in
4 your report on page 19, second sentence, you say the
5 American Water Works Association's M-36 Water Audits and
6 Loss Control Programs 4th Edition establishes the
7 framework for understanding the various components, and
8 even though the framework of that manual and methodology
9 requires you to identify an unavoidable real water loss
10 number before you can even calculate a recoverable, your
11 testimony is that you did not follow that methodology in
12 this report?

13 A. So -- okay. So by this report, you
14 are referencing Exhibit Number 67; correct?

15 Q. Yes.

16 A. Okay. So the answer to your question
17 is yes. It was not necessary, cost effective, or prudent
18 to go to that level of effort to achieve the client
19 objectives.

20 Q. So in conclusion in hearing Exhibit 67
21 --

22 A. Yes.

23 Q. -- you did not follow the AWWA M-36
24 methodology that requires a calculation of unavoidable
25 real water loss?

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2 A. Yes; it was not possible to do so.

3 MR. ALESSI: Your Honor, at this time,
4 it would be an appropriate point for the break you
5 mentioned.

6 A.L.J. PHILLIPS: Very good. 20-
7 minute break. We're off the record.

8 (Off the record)

9 A.L.J. PHILLIPS: Let's go back on the
10 record.

11 We're going to continue with cross
12 examination of Mr. Kleinman.

13 MR. ALESSI: Thank you, your Honor.

14 BY MR. ALESSI: (Cont'g.)

15 Q. Mr. Kleinman, please turn to your
16 direct testimony, page 7, line 10. And this line of
17 questioning, we'll start there.

18 A. Okay.

19 Q. Now on page 7, line 10, there you have
20 the 4.3 MGD or real water loss for the SWNY for the test
21 year; correct?

22 A. Yes, that's correct.

23 Q. And on Hearing Exhibit 63, just to
24 reorient ourselves where we are, we're down at, again,
25 where we've been most of the time, real water losses and

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2 the 2 components there. So your 4.3 MGD of real water
3 loss is relating to the box real water losses; correct?
4 On Hearing Exhibit 63?

5 A. Yes, that's correct.

6 Q. Now pursuant to the AWWA methodology
7 in the M-36 manual that we've been discussing, each water
8 supply system has a fixed unavoidable component of real
9 water loss; correct?

10 A. Yes, that's what we've been talking
11 about.

12 Q. Right. So that means that even if the
13 system pipes and mains are brand new, the unavoidable real
14 water loss number will be the same number; correct?

15 A. I'm sorry. Can you repeat the
16 question?

17 Q. Sure. When the manual establishes the
18 terminology and definition for a fixed unavoidable
19 component of real water loss, that means that even if
20 system pipes and mains are brand new, the unavoidable real
21 water loss will be the same; correct?

22 Let me ask another way.

23 A. Thank you.

24 Q. The -- the unavoidable real water
25 loss number is not affected by the age of the pipe;

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2 correct? If you need to refer to a document, that's fine.

3 Just please let me know what document you're referring to.

4 A. Sure. So I'm -- I forget which number
5 this was, but I'm going back to the M-36 manual.

6 Q. That's Hearing Exhibit 66.

7 A. Thank you.

8 Q. You're welcome.

9 A. Let me make sure I write that down.

10 Q. And you may want to go to page 102,
11 where we were.

12 A. Okay.

13 Q. And then carry over to 103, where it
14 tells you the data needed to calculate UARL

15 A. Thank you.

16 Q. You're welcome.

17 A. So with -- yeah, with the exception of
18 the small systems requirement on page 104, the answer is
19 yes, it does not require the age of the pipe.

20 Q. So the Suez Water New York system is
21 not a small system. You would agree; correct?

22 A. Yes.

23 Q. So for the definition of UARL for the
24 Suez system, the age of the pipes and mains has no bearing
25 on calculating unavoidable real losses; correct?

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2 A. Correct.

3 Q. So even if, hypothetically, the Suez
4 Water New York system had brand new pipes, that would not
5 affect the calculation of unavoidable real water losses;
6 correct?

7 A. Yes, that's right.

8 Q. Do you know what the fixed unavoidable
9 real water loss number is for the Suez Water New York
10 system?

11 A. So that number is referenced in
12 another document -- well, the -- the calculation or the
13 application of the M-36 data was supplied in another
14 exhibit. And so I would have to turn to that exhibit to
15 look at what was reported to be that number.

16 Q. And that other exhibit you're
17 referring to is not any of your exhibits because you
18 didn't calculate that number; correct?

19 A. That is correct. It's the 2015 NRW
20 number -- 2015 NRW report number which --

21 Q. So --

22 A. -- the -- the one that used the M-36
23 software and has that printed out in the appendix.

24 Q. We're -- we're going to get there.

25 A. Okay.

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2 Q. So you did not perform any research to
3 obtain the unavoidable real loss number for the Suez Water
4 New York water supply system as part of the preparation of
5 your report; correct?

6 A. No. Again, this was a -- this is a
7 study to set a -- a goal. So -- so I have developed
8 demand-site management plans in numerous jurisdictions for
9 the energy efficiency sector. The research that is done
10 to set goals is done at a -- at a planning level and not
11 at an engineering level.

12 So for example, you know, if you look
13 at the Energy Efficiency Portfolio Standards -- not the
14 one set in New York, but let's take Ohio. Sometimes it's
15 called a -- well, it's not an RPS, but it's a portfolio
16 standard that sets, for example, you know, 1% savings
17 target per year. That number is not based upon an
18 engineering analysis. Right?

19 So the way that it goes is usually
20 like this. Legislation is passed that directs what's
21 called an Energy Efficiency Potential Study. So that
22 potential study is conducted usually on a statewide basis.
23 So at the state level, you're trying to figure out,
24 generally speaking, not in any specific circumstance, how
25 much does a -- how much energy does a home use? How much

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2 energy does a small business use?

3 And then you're making guesses. In
4 some cases you have baseline data. In some cases, you
5 don't. What are the kinds of light fixtures that you've
6 got so, you know, these are fluorescent lights up here;
7 they use a certain amount of energy. But they're not
8 trying to figure out the amount of energy you could save
9 in this building. They're just trying to figure out, in
10 general, across the commercial industrial sector how much
11 could you save.

12 So based upon that level of analysis,
13 they try to figure out what is the achievable amount of
14 energy efficiency that could be accomplished and at what
15 program costs. From that analysis, the regulators often
16 set a goal. Again, it's not based upon any specific
17 system. It's based upon the system at large. And then
18 utility responsibility is to then design a plan, still not
19 engineering level, but just a plan that says here's how
20 we're going to get there.

21 That's a comparable level to what the
22 Suez Water New York Water Conservation Plan, the SWNY
23 Water Conservation Plan, prepared by Black and Veatch, is
24 -- is at. There's some, you know, site specific --
25 there's some information based upon surveys, but it isn't

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2 a careful analysis of all the water consumption of every
3 building. It's -- it's still at a general level.

4 So then you create a plan, you
5 estimate costs, you set the goal, and in the process of
6 implementing the program, you learn more about what's --
7 what's out there. So for the purpose of this study, which
8 is to help figure out what a goal is, I used benchmarks
9 from other places and I did not try to figure out what the
10 specific unavoidable real water loss is on a -- on a site-
11 specific basis.

12 Q. So I want to break down some of your
13 answer.

14 A. Okay.

15 Q. So you would agree then that you did
16 not apply the AWWA M-36 manual methodology in determining
17 your conclusion on page 8, line 4 and 5, where you state
18 applying these ranges suggests that the company could
19 reduce real water loss by 1 to 2 MGD; correct?

20 A. That is correct. As -- as we
21 discussed before, at -- for certain levels of study, that
22 amount of analysis that you are calling for is neither
23 prudent nor necessary or cost effective.

24 Q. So let me ask you this. Your sentence
25 says applying these ranges suggests that the Company could

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2 reduce real water loss.

3 I think I heard in your answer, your
4 methodology is not based on any system-specific system;
5 correct? Your previous answer?

6 A. So when I was -- so yes, that is
7 correct.

8 Q. All right.

9 A. The system -- I did not have access to
10 the system-specific information to conduct a specific
11 calculation --.

12 Q. Right. We'll get to that.

13 A. Okay.

14 Q. But you also said, I believe, in your
15 answer, correct me if I'm wrong, that your report is a
16 planning, not an engineering level analysis. Is that
17 correct?

18 A. Yes, that is correct.

19 Q. So your report is not an engineering
20 analysis; correct?

21 A. I'm not a registered engineer. That
22 is correct.

23 Q. So your report is a planning report;
24 correct?

25 A. It is a -- it is a goal -- it is a

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2 technical analysis to support goals, which is comparable
3 to the level of technical analyses that are done to set
4 other goals in the Energy Efficiency Portfolio Standards
5 for New York, as well as in other jurisdictions and also
6 setting water conservation goals.

7 Q. Now you indicated -- did you say you
8 did not have access to site specific data? Is that -- was
9 in your answer for what --?

10 A. It was not -- it was not available to
11 me at the -- the time of the report. And I -- we did not
12 procure -- I think -- so when you said procure earlier,
13 you were meaning efforts to obtain the data of this;
14 right?

15 Q. Exactly.

16 A. I did not procure the data to conduct
17 a site-specific analysis of the unavoidable real water
18 losses for Suez.

19 Q. Would you agree that the most accurate
20 way to determine what the Company could reduce real water
21 loss by would be to procure site-specific data for the
22 Suez Water New York system and apply the AWWA M-36
23 methodology?

24 A. So yes, provided that the data
25 validity score in the software is sufficiently high upon

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2 which to base that analysis.

3 Q. But you don't know whether it would be
4 high enough in the software because you didn't procure
5 that data and perform that function in the software;
6 correct?

7 A. I did not personally perform that
8 analysis, no.

9 Q. Did somebody else perform that
10 analysis?

11 A. So -- not for me, no.

12 Q. Not for this report?

13 A. That is correct.

14 A.L.J. PHILLIPS: May I ask, while
15 this is being passed out? This is something that is
16 already in DMM; correct? And it may even be in this
17 record already?

18 MR. ALESSI: I was going to clarify
19 that, your Honor. You're correct as to both.

20 A.L.J. PHILLIPS: Okay. So I -- I'm
21 not going to mark it unless you explain a reason why we
22 should, but do describe it so that everyone knows where to
23 find it.

24 MR. ALESSI: That's exactly what I was
25 intending to do, your Honor. And I'm going to check to

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2 make sure I've got the exact correct citation for where it
3 is in testimony.

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

5 Let's go off the record.

6 (Off the record)

7 A.L.J. PHILLIPS: For the record, we
8 had discussion off the record about a document that has
9 been circulated. It is my understanding that it is
10 available on DMM and Counsel is going to provide that
11 reference. Therefore, it will not be marked for
12 identification. But the witness will be referring to it
13 and so I'm turning to Counsel to indicate where this
14 document might be found.

15 MR. ALESSI: Thank you, your Honor.

16 This document can be found on the DMM system in case
17 number 13-W -- 13 -- let me go off the record.

18 (Off the record)

19 A.L.J. PHILLIPS: Back on the record.

20 MR. ALESSI: Thank you, your Honor.

21 The document we presented to the
22 witness and given to the parties is Document Number 125 in
23 13-W-0295.

24 In this document, the cover page is a
25 February 29, 2016, letter from Mr. Christopher Graziano,

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2 Vice President General Manager of Suez, to the Honorable
3 Kathleen H. Burgess. And it attaches a document that's
4 entitled Suez Water New York 2015 Year-End Nonrevenue
5 Water Report and Nonrevenue Water Reduction Plan prepared
6 by N C-U-R-C-I-O.

7 BY MR. ALESSI: (Cont'g.)

8 Q. Do you have that entire report
9 available to you now, Mr. Kleinman?

10 A. Yes, I do.

11 Q. Please turn to Appendix A of -- and
12 I'm just going to call this, for purposes of your
13 examination, Document Number 125.

14 A. Okay.

15 Q. Not to be confused with exhibit, but
16 just so we can shorthand it.

17 A. Okay.

18 Q. Okay. Please turn to Appendix A,
19 which is number 21 at the bottom. It says Appendix A 2015
20 AWWA Water Audit Summary.

21 A. Yes.

22 Q. Now please turn to the second page of
23 Appendix A --

24 A. Uh-huh.

25 Q. -- which is entitled System Attributes

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2 and Performance Indicators. Do you see that?

3 A. I'm sorry. I'm going to --?

4 Q. It's -- at the very top, it says --.

5 A. Oh, yes. Okay. I see that.

6 Q. Do you see that?

7 A. Uh-huh.

8 Q. The fourth yellow box from the top
9 states that SWNY's 2015 unavoidable annual real losses,
10 UARL, were 823.78 million gallons in 2015; correct?

11 A. Yes, that's correct.

12 MR. ALESSI: I'm going to mark another
13 exhibit. And this, your Honor, we're going to be
14 requesting get an exhibit number.

15 A.L.J. PHILLIPS: The 1-page document
16 that's being circulated will be marked for identification
17 as Hearing Exhibit 68.

18

19 6

20 A.L.J. PHILLIPS: Let's go off the
21 record for a minute.

22 (Off the record)

23 A.L.J. PHILLIPS: On the record.

24 BY MR. ALESSI: (Cont'g.)

25 Q. Mr. Kleinman, have you had a fair

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2 opportunity to look at H.E. 68?

3 A. Yes, I have.

4 Q. And is that the fair and accurate
5 representation of the calculation one needs to perform
6 from Document Number 125 to be able to calculate the Suez
7 Water New York 2015 average daily unavoidable real loss
8 number and get to the number of 2.3 MGD?

9 A. Yes, the -- so the calculation assumes
10 that you know what the average operating pressure is
11 across the distribution system. And so I guess that the
12 pressure reduction management strategies that are talked
13 about as part of the nonrevenue water have not been
14 implemented to affect that number or won't materially
15 affect that number. Is that correct?

16 Q. Unfortunately, I'm not able to answer
17 your questions --

18 A. Okay. All right. Sorry.

19 Q. -- as much as I'd like to.

20 A. Okay.

21 Q. So the operating pressure you talked
22 about is an average; correct?

23 A. That's what the M-36 calls for, yes.

24 Q. Here in Hearing Exhibit 68, we're just
25 trying to get the average of the 2.3 MGD --

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2 A. Yes.

3 Q. -- so does the pressure really matter
4 to get just the 2.3 MGD number?

5 A. It -- well, it -- I mean it does
6 because the -- so -- so if you go back to Exhibit -- sorry
7 -- 66, on page 103, below table 3-23, the second bullet,
8 so that says the average --.

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

10 A. Okay. Apologies.

11 Q. Can you repeat what you were saying?

12 A. I'm sorry.

13 Q. Thanks.

14 A. So you go to page 103 of Exhibit 66.

15 Q. Yes.

16 A. Below table 3-23, there's a list of
17 bullets there.

18 Q. Yes.

19 A. And then the second bullet says
20 average operating pressure across the distribution system.

21 Q. Yes.

22 A. So I -- I don't know whether the
23 pressure reduction management system will materially
24 affect the result, although I do know that pressure
25 reduction management is intended as a strategy to reduce

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2 real water loss.

3 So I'm just -- so I mean -- so the 800
4 -- so this calculation is correct provided that the
5 823,780,000- gallon number doesn't materially change as a
6 result of the operating pressure materially changing.
7 That's -- that's all I'm saying.

8 Q. So -- I understand what you're saying.

9 A. Okay.

10 Q. Thank you for that.

11 Are you saying you don't know what the
12 Suez Water New York average operating pressure is, as you
13 sit here?

14 A. Yes, that's correct. I don't know it.

15 But my --

16 Q. And are -- are --?

17 A. -- my assumption is that the people
18 who do are the ones who filled out the spreadsheet.

19 Q. Right. But you did say earlier and as
20 I understood from others that the Appendix A that I
21 referenced in Document 125 is an exhibit to your report;
22 correct?

23 A. One second.

24 Q. Or testimony?

25 A. Yes, I included that in my -- I

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2 believe I included that in my reply.

3 Q. Now what I'd like to do is to draw
4 your attention to the -- because I understood from your
5 answer you didn't have the average operating pressure
6 available and, therefore, you couldn't weigh in on the 2.3
7 MGD number on Hearing Exhibit 68. But what I'd like you
8 to do is to take a look at the Document 125, the worksheet
9 AWWA Free Water Audit software.

10 A. Okay.

11 Q. Go down under system data --

12 A. There it is.

13 Q. -- isn't there an entry there for
14 average operating pressure?

15 A. Yes, you are correct.

16 Q. And that's 103.3; correct?

17 A. Yes, it is.

18 Q. So now knowing the average operating
19 pressure, which was available to you in your exhibit, is
20 103.3, are you now able to conclude that the 2.3 MGD is
21 the number you get from the AWWA M-36 methodology to get
22 the 2015 average daily unavoidable real loss number for
23 the SWNY system?

24 A. So for an SWNY system that is
25 operating at 103 -- sorry. The answer is yes for an SWNY

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2 system that's operating at an average operating pressure
3 of 103.3 PSI, yes, this is the unavoidable real water loss
4 result that you get.

5 Q. Do you have any basis, as you sit here
6 today, Mr. Kleinman, to contest the average operating
7 pressure of 103.3 that's been filed with the Secretary of
8 the Commission?

9 A. Not today. However, the -- the
10 Company testimony indicates that pressure reduction
11 management is a strategy that is going to be deployed for
12 the reduction of nonrevenue water.

13 Personally, I don't know what that --
14 what that effort does to 103.3. However, having
15 researched strategies to reduce real water loss as -- I --
16 I won't go to the specific page, but as evidenced in
17 Exhibit 67, I would guess that the object of that effort
18 is to drop that number.

19 But I can't speak to -- Paula McEvoy
20 was the -- the expert witness who provided that
21 information. I can't speak to what number that's going to
22 change it to. I would just anticipate that it would.

23 Q. All right. My question, though, was
24 not regarding any of the parts of your answer.

25 A. Okay.

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2 Q. Mine was just in calculate -- if you
3 look at Hearing Exhibit 68, I'm asking you not what it may
4 be in the future, this -- I'm sorry -- is the calculation
5 of it says SWNY 2015 average daily unavoidable real
6 losses.

7 A. Yes.

8 Q. That is a calculation of 2015. So my
9 question is do you have any basis, as you sit there, to
10 contest the average operating pressure number of 103.3 for
11 the calculation in Hearing Exhibit 68, which regards 2015,
12 not something that may happen in the future?

13 A. No, I do not.

14 Q. Now knowing that Suez Water New York
15 water supply system has an unavoidable annual real losses
16 of 2.3 MGD, as calculated using the AWWA M-36 methodology,
17 to then find the avoidable recoverable real water loss
18 component of real water losses, and if you can go to that
19 Hearing Exhibit 63, we simply subtract the 2.3 unavoidable
20 annual real water loss from your 4.3 MG number -- MGD
21 number and get 2.0; correct?

22 A. That's the way that calculation ends
23 up, yes.

24 MR. ALESSI: Now we're going to mark
25 another exhibit.

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2 A.L.J. PHILLIPS: We'll mark this
3 document for identification as Hearing Exhibit 69.

4 And once everyone has a copy, you can
5 proceed.

6 MR. ALESSI: May I proceed, your
7 Honor? I believe everyone has a copy.

8 A.L.J. PHILLIPS: Yes.

9 MR. ALESSI: Thank you.

10 BY MR. ALESSI: (Cont'g.)

11 Q. Does Hearing Exhibit 69 fairly and
12 accurately depict the calculation we just went through
13 verbally?

14 A. Yes, it does.

15 Q. Now under the AWWA M-36 methodology,
16 avoidable or recoverable real water loss is the only
17 amount of MGDs that you can even begin to target for real
18 water loss reduction; correct?

19 A. Yes, that is correct.

20 Q. Thus, even assuming, hypothetically,
21 that it would be valid to apply your percent NRW,
22 nonrevenue water, water reduction ranges in table 4 of
23 your report from the two European systems of 23.5% and 48%
24 that we discussed earlier, to the site-specific SWNY,
25 those percent reductions in the 23.5% and 48% cannot be

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2 applied to the 2.3 MGD of unavoidable annual real losses;
3 correct?

4 A. Yes, that's correct.

5 Q. And the reason is because you can't
6 reduce unavoidable annual real losses; correct?

7 A. Yes, that's correct.

8 MR. ALESSI: Next exhibit.

9 A.L.J. PHILLIPS: So the 1-page
10 document that was handed out will be marked for
11 identification as Hearing Exhibit 70.

12 Please proceed.

13 MR. ALESSI: Thank you, your Honor.

14 BY MR. ALESSI: (Cont'g.)

15 Q. Now Mr. Kleinman, based upon your last
16 answer, Hearing Exhibit 70 has 2 calculations based upon
17 the ranges you provided. One is 2 MGD which is now when
18 we've been going through the avoidable recoverable real
19 water loss that we got from the 4.3 minus the 2.3. We
20 apply that 2 MGD number twice, first to the 23.5% and then
21 to the 2 -- then to the 48%, the higher end of your range.
22 And we get 2 numbers, 0.47 MGD and 0.96 MGD

23 Here is my question. Do you agree or
24 disagree that you need to pull out of the 23.5% and 48%
25 number the unavoidable real loss components of those so

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2 you can stick to identifying what the avoidable
3 recoverable real losses would be using the AWWA
4 methodology?

5 A. I'm going through it in my head.

6 Q. Okay. Take your time.

7 A. No, I don't think it can be
8 determined.

9 Q. Well, that wasn't my question.

10 A. Okay. Well, I don't know that the
11 percentages in question should be applied in the way that
12 you're describing.

13 Q. Here's my question.

14 A. Okay.

15 Q. And let me back up first. Mr.
16 Kleinman, I notice you've been looking at your phone?

17 A. Yes.

18 MR. ALESSI: Your Honor, that wasn't
19 part of the ground rules.

20 THE WITNESS: I apologize. There was
21 a call that came in from my home city. And I'm just a
22 little concerned about anything happening, but I can show
23 you the call record if you --?

24 MR. ALESSI: I -- I don't need to do the
25 call record.

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2 THE WITNESS: All right.

3 MR. ALESSI: I just noticed you looked at
4 it a couple of times.

5 THE WITNESS: Well, that's why I put it --
6 that why I put it down.

7 MR. ALESSI: I understand.

8 THE WITNESS: It's the calculator that I
9 use.

10 MR. ALESSI: If you need to take a break to
11 look at your phone with the consent of the judge, it's
12 just we have to make sure we understand --

13 THE WITNESS: No, I understand.

14 MR. ALESSI: -- what's at play here. Okay?

15 THE WITNESS: I apologize.

16 MR. ALESSI: Thank you.

17 THE WITNESS: I apologize, your Honor.

18 MR. ALESSI: Thank you.

19 THE WITNESS: Okay. All right.

20 BY MR. ALESSI: (Cont'g.)

21 Q. Here's my question and I'm going to
22 ask it a different way.

23 A. Okay.

24 Q. Please turn to your exhibit, page 21
25 of 45.

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2 A. Yes.

3 Q. Table 4.

4 A. Yeah.

5 Q. We established earlier that for the
6 two ranges you selected, Bordeaux, France and Scottish
7 Water --

8 A. Yes.

9 Q. -- we established that Bordeaux in the
10 far right, you do a calculation, you get the 23.5%
11 reduction; correct?

12 A. And that's a percent reduction to
13 nonrevenue water.

14 Q. Correct.

15 A. Yes.

16 Q. But -- and then for Scottish Water,
17 you do a calculation, you get 48%; right? Now let's just
18 stay with Bordeaux, France.

19 A. Okay.

20 Q. What's in that box is nonrevenue
21 water; correct?

22 A. Yes, that's correct.

23 Q. So that's 23.5% nonrevenue water. But
24 wouldn't you agree that nonrevenue water, if you go back
25 to Hearing Exhibit 63 --

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2 A. Uh-huh.

3 Q. -- that nonrevenue water has two
4 components, real water losses and apparent water losses;
5 correct?

6 A. Yes, that's correct.

7 Q. So you have to pull out of the 23.5%
8 to start with apparent losses; correct?

9 A. Not necessarily. So no. So let me --
10 let's -- let's try -- can I try it a different way, given
11 the numbers that we have on -- on AWWA and then try to
12 apply the percentages from the table?

13 Q. Actually, what I'd like to do is stick
14 to the questions. If you need to elaborate on the answers
15 --.

16 A. Okay.

17 Q. The question pending is is the
18 methodology -- well, let's start with the basics.

19 A. Okay.

20 Q. Assume -- assume that you need to
21 multiply the 2 MGD we got from 4.3 real water losses minus
22 2.3 unavoidable real water losses and you get to the 2.
23 Before you can use the 2 -- 23.5% that you used, I'm going
24 to ask you first is the math correct? Without agreeing
25 with the methodology, is the math 2 times 23.5 give you

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2 .47 and does the 2 times 48 give you 0.96 just from a
3 straight math without regard to methodology?

4 A. Yes, the math is correct.

5 Q. Okay. Now let's go to the
6 methodology.

7 A. Okay.

8 Q. In order to make an equivalent, that's
9 the title of the exhibit Real Water Loss Reduction, isn't
10 it necessary to equate the metrics of the multiplicands in
11 order to get an apples-to-apples comparison?

12 A. All right. So let's -- let's work
13 through this together if we can?

14 Q. Actually, I -- I have a question
15 pending --

16 A. Okay.

17 Q. -- and I can ask it a different way,
18 but I'd like you to answer my question pending, if you
19 can.

20 A. Okay. So the answer is I don't know
21 because I have to work through this to see whether it --
22 it comes out the same way.

23 Q. All right. We may get to that, but we
24 may not need to.

25 A. Okay.

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2 Q. Let me ask it this way. Turn to H.E.
3 70 again, please. That's the calculation.

4 A. Got it. Okay.

5 Q. Okay? 2.0 MGD is the only component,
6 if you go to the cartoon -- I call it a cartoon -- H.E. 63
7 --

8 A. Uh-huh.

9 Q. -- isn't the 2.0, which would go in
10 that avoidable recoverable real water losses, the only one
11 of the two boxes at the bottom that you could even
12 potentially reduce?

13 A. So yes, but that's not the percentage
14 reduction the case studies identified.

15 Q. All right. We'll get to that, but --
16 so your answer is yes.

17 A. Okay.

18 Q. If the 2.0 is the only one of the two
19 you could reduce --

20 A. Uh-huh.

21 Q. -- isn't it an incorrect methodology
22 to use the 23.5% number which is a nonrevenue water that
23 contains in that number unavoidable real water losses?
24 Isn't that an incorrect methodology?

25 A. To follow -- so the answer is it

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2 depends. And the answer -- and the reason I say that is
3 because that depends upon whether or not the nonrevenue
4 water reduction percentages identified in the table
5 similarly dropped the unavoidable real water losses from
6 nonrevenue water.

7 So for example, if you can get a 48%
8 reduction in nonrevenue water, that would be -- the -- one
9 way to calculate that, you know, based on Exhibit 125, for
10 example, so there's a total water loss, right, apparent
11 and real. So that's total nonrevenue water of 2,464
12 million gallons per year.

13 So the way that the table reads, you
14 would actually reduce that by 48.5% and then you would
15 have to figure out what percentages of that are real and
16 then what percentages of that are apparent. And then you
17 would subtract the unavoidable real water loss at the
18 time.

19 So -- but you're getting an overall
20 reduction first, so I -- I don't know the answer to your
21 question.

22 Q. All right. Let me go and break down
23 your answer.

24 A. Okay.

25 Q. Did I hear you say that you don't know

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2 the components of your 23.5% number that you applied in
3 your testimony to break down the nonrevenue water? Did I
4 hear that correctly?

5 A. Yes. That level of specificity wasn't
6 provided or applied. The -- the term nonrevenue water is
7 used and, by definition, is inclusive of unavoidable real
8 water losses.

9 Q. All right. So you assumed in your
10 report and in your testimony, though -- even though you
11 didn't know the breakdown, you assumed that the 23.5 --
12 the -- all of the 23.5% was available for reduction;
13 correct?

14 A. Yes, I did.

15 Q. And that's a key assumption of your
16 calculation to get to 1 to 2; correct?

17 A. Yes, it is.

18 Q. The methodology -- let me turn my mic
19 on.

20 The methodology I just went through
21 with you and which is represented in Hearing Exhibit 70
22 shows how unrealistic the 2.0 MGD number is that you state
23 in your direct testimony at page 8, line 5; doesn't it?

24 A. Yes, it does. For a 2.0 MGD
25 avoidable real water loss achieving 2.0 MGD of reduction

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2 is unrealistic.

3 Q. And isn't it impossible? If all
4 you've got to start with to reduce is 2.0 and to say that
5 you got to reduce 2.0, isn't that an impossibility?

6 A. So again, presuming that the 2.0 MGD
7 is the right number --

8 Q. Yeah.

9 A. -- to start with, then the answer is
10 yes.

11 MR. ALESSI: We're going to do the next
12 exhibit, your Honor.

13 A.L.J. PHILLIPS: Okay. So I believe
14 everyone has a copy. It's marked for identification as
15 Hearing Exhibit 71.

16 BY MR. ALESSI: (Cont'g.)

17 Q. Mr. Kleinman, Hearing Exhibit 71, I'm
18 going to describe. And I think you know what I'm doing
19 here, but I'll -- I'll describe it. If you could please
20 turn to your direct testimony, page 8, lines 5 to 8?

21 A. Yes.

22 Q. And if you could keep Hearing Exhibit
23 70 next to you, as well?

24 A. Yes.

25 Q. On your direct testimony, page 8 lines

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2 5 to 8, you state that after you did your range of 1 to 2,
3 the 2 number we just spoke about in your last answer, you
4 say that level of reduction could save ratepayers 12
5 million to 24 million in new supply well capital costs
6 plus \$240,000 to \$480,000 annually in ground water well
7 operating costs. Correct?

8 A. Yes, that's correct.

9 Q. Now given your testimony that 2.0 MGD
10 is an impossibility for the Suez Water New York system,
11 that calculation is necessarily incorrect; correct?

12 A. So -- so yes, again, assuming that the
13 2 MGD number is the number that we're talking about. So -
14 - so you've got a number and I'm going with it.

15 Q. Okay.

16 A. So based upon that number, then yes.

17 Q. So you would agree then that Hearing
18 Exhibit 71 fairly and accurately represents the
19 recalculated numbers that you list on page 8, line 5
20 through 7 of your testimony?

21 A. Well, it's -- it -- for the capital
22 costs, yes, but it doesn't include the operating costs.

23 Q. You are correct, Mr. Kleinman. And we
24 will now mark the next exhibit that goes to that.

25 A. Okay.

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2 A.L.J. PHILLIPS: I believe everyone
3 has a copy of the 1-page document, Ground Water Wells
4 Operating Costs. It will be marked for identification as
5 Hearing Exhibit 72.

6 MR. ALESSI: May I proceed, your
7 Honor?

8 A.L.J. PHILLIPS: Yes.

9 MR. ALESSI: Thank you.

10 BY MR. ALESSI: (Cont'g.)

11 Q. Mr. Kleinman, you now have before you
12 Hearing Exhibit 72. Does Hearing Exhibit 72 fairly and
13 accurately depict the mathematical computations that would
14 result from the adjustment of your testimony on page 8,
15 lines 5 through 7, as pertains to the annual ground water
16 well operating costs?

17 A. Yes, it does.

18 MR. ALESSI: Your -- your Honor, my
19 next line of questioning which I would prefer to continue
20 to is -- is going to take a little bit of time, so for
21 your scheduling purposes I'll be guided by you.

22 A.L.J. PHILLIPS: Okay. I'd like to
23 cover as much ground as we can in the next 45 minutes and
24 then take a break for lunch.

25 MR. ALESSI: We will do so, your

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2 Honor.

3 BY MR. ALESSI: (Cont'g.)

4 Q. Mr. Kleinman, please turn to page 9,
5 lines 5 through 6, of your direct testimony.

6 A. I'm sorry. Lines --?

7 Q. Sure. Page 9, lines 5 through 6.

8 A. 5 through 6. Okay.

9 Q. There, you include another part of
10 your nonrevenue water program, namely, quote, increasing
11 the main replacement rate to 2 -- to 1% with an
12 accelerated rate of 1.5% per year for the next 5 years to,
13 quote, catch up. Right?

14 A. Yes, I do.

15 Q. Have you ever provided engineering
16 services to a water utility for its main replacement
17 program?

18 A. No, I have not.

19 Q. Please turn to page 26 of your report.

20 A. I'm there.

21 Q. Have you ever provided an analysis of
22 engineering services about a main replacement program for
23 a utility?

24 A. No, I have not.

25 Q. So this is your first time doing this?

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2 A. Yes, it is.

3 Q. On page 26, if you could please, go to
4 the bottom at section 4.13.

5 A. Uh-huh.

6 Q. And the carryover text onto the first
7 two paragraphs on page 27.

8 A. Yes.

9 Q. There you are stating effectively that
10 SWNY's proposal, as you call it, to increase its annual
11 main replacement rate from 0.24% to 0.7% will more closely
12 align it with recommended industry practice; correct?

13 A. Yes, that's what it says.

14 Q. But in the second paragraph on page
15 27, you recommend that SWNY target an annual main
16 replacement rate of 1%. Is that a fair summary of that
17 part of your report?

18 A. It is.

19 Q. And because it's your recommendation
20 in your report, you believe a 1% annual main replacement
21 rate would be acceptable for the Suez Water New York water
22 supply system -- let's just put aside the 1.5% catch up
23 for the moment. Correct?

24 A. Sure. So based upon the report that
25 was issued by the American Water Works Association, Buried

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2 No Longer, there is a table that is established to create
3 industry recommendations that's generally based upon the
4 average life of the pipe.

5 Given the statement that there's 100-
6 year average life in the system that the company provided,
7 then a 1% replacement rate sounds reasonable.

8 Q. Right. And that is what you're
9 recommending; correct?

10 A. Yes, it is.

11 Q. So you would find -- you say it's
12 reasonable, but that's also what you're recommending for
13 Suez Water New York here; correct?

14 A. Yes, that's correct.

15 Q. All right. Please -- do you have the
16 Joint Proposal available to you? And you know what I'm
17 referring to as the Joint Proposal in this proceeding?

18 A. I do. And I don't have it immediately
19 available, but it won't take me long to find.

20 Q. If it's helpful to you, we may be able
21 to get you a hard copy of it. You tell me what you
22 prefer.

23 A. Hard copy would be preferable. I
24 don't want hold everybody up.

25 MR. ALESSI: Your Honor?

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2 MR. DUTHIE: I have my copy I can give
3 to my client.

4 THE WITNESS: Okay. Thank you.

5 Here it is, but -- okay. Thank you.

6 BY MR. ALESSI: (Cont'g.)

7 Q. Whatever your preference is.

8 A. All right. Thank you. Are you guys
9 okay with Dan just handing me the one that he's got?

10 Q. Yes.

11 A. All right. Good.

12 Q. We -- we assume there's no marking on
13 -- on it, so we're okay. You'll tell us if there is.

14 A. Okay. All right.

15 Q. Are you there?

16 A. Yes, I am.

17 Q. Okay.

18 A. So I have it, but where are we going
19 in the Joint Proposal?

20 Q. If you could go to page 12 -- go to
21 page 13.

22 A. Yes.

23 Q. Number 3?

24 A. Yes.

25 Q. Can you read it?

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2 A. To facilitate nonrevenue water
3 reduction efforts, the Company will increase its T&D main
4 replacement rate to 1% replacement annual by 2020.
5 Notwithstanding the forgoing, the replacement rate will be
6 capped at the level of replacement achievable within the
7 aggregate amount of \$17 million.

8 Q. So you agree the Joint Proposal has in
9 it the 1% that you have in your report; correct?

10 A. Yes. My report was written prior to
11 the issuance of the Joint Proposal.

12 Q. Okay. But the Joint Proposal was
13 written before your testimony; correct?

14 A. Yes, it was.

15 Q. And you didn't correct your testimony
16 to include the fact that your report suggesting that the
17 Company wasn't going to a 1.0 was incorrect?

18 A. One moment, please. So that is
19 correct. The -- so if you go to line 8 in the direct
20 testimony, on the same page, so it's page 8, line 8, where
21 it says please summarize the Company's proposed approach
22 to nonrevenue water management as set forth in Company
23 testimony.

24 So the 0.7%, just -- just so that no
25 one is suggesting that I intentionally omitted anything,

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2 the -- the 0.2 -- sorry -- 0.24% to 0.7% comes from
3 Company testimony. And I do -- one moment. Okay. Oh --
4 and then -- so on page 10, starting at line 1, I say that
5 the Joint Proposal increases the T&D main replacement rate
6 to 1% annually with a cap of 17 million. Given Company
7 specified that its annual replacement costs were 1.6
8 million per mile, the 17 million cap seems to be an annual
9 expenditure.

10 So I -- I -- I did acknowledge that
11 the Joint Proposal went to 1%.

12 Q. Right. So I want to cover two areas
13 based upon your answer.

14 A. Okay.

15 Q. The first is can you turn to page 9,
16 the second bullet? And I'd actually ask you to start at
17 page 8, line 23.

18 A. Sure.

19 Q. Start at line 21. It says what
20 changes --

21 A. Okay.

22 Q. -- must be made to the NRW program
23 originally proposed by the Company. So I'm -- I'm going
24 to try and clarify this and see.

25 A. Okay.

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2 Q. You've got increasing on the -- page
3 9, the second bullet, you've got increasing the main
4 replacement rate to 1% per year with an accelerated rate
5 of 1.5% per year for the next 5 years to catch up.
6 Correct?

7 A. Yes -- that is -- yes, that's what it
8 says.

9 Q. So I guess what the fair reading of
10 this is when you then take page 10 that you read line 1
11 through 7, what you're indicating to the reader there is -
12 -

13 A. Oh.

14 Q. -- that you're recognizing the Joint
15 Proposal has the 1% in it. Is that what you're saying?

16 A. Yes. So that -- yes, that's correct.

17 Q. Okay.

18 A. So for clarification purpose, the main
19 intent of that bullet would be to ask for a 1.5% per year
20 for the next 5 years, given that the main replacement rate
21 has been at 0.24% for some period of time, 7 years.

22 Q. We're going to get to the 1.5%, but I
23 just wanted to be fair to you --

24 A. Okay.

25 Q. -- that I'm now understanding what I

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2 believe your testimony to be that even if it's just --
3 you're increasing the main replacement to 1, you're
4 acknowledging that that's been done in the Joint Proposal
5 on page 10 at top 1; correct?

6 A. Yes, that's correct.

7 Q. All right. Now so to conclude this,
8 you agree that -- let's again keep the -- the catch-up
9 1.5%, you call it, to the side --

10 A. Okay.

11 Q. -- you agree with the Joint Proposal's
12 1% annual main replacement rate; correct?

13 A. Yes, I do. Yes, I do.

14 Q. You testified earlier that you were
15 aware of the average age of the water mains in the Suez
16 Water New York water supply system; correct?

17 A. I -- so I found that citation
18 relatively recently, but --

19 Q. Okay. Go ahead and state it.

20 A. -- yes.

21 Q. Sure. And is the 49 or 50 -- which
22 number would you like to use?

23 A. Let's use 50.

24 Q. We'll use 50. All right. Do you know
25 what materials comprise the water main pipes in the Suez

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2 Water New York water supply system?

3 A. I would have to -- I would have to go
4 back and look.

5 Q. Where would you look?

6 A. Either testimony by Donald Distanto or
7 testimony by Chris Graziano prior to the Joint Proposal.
8 I want to say it's cast iron, but I'm not 100% certain.

9 Q. So in your -- as you sit here today,
10 you just don't know where it is, but your number is 50;
11 correct?

12 A. Yes.

13 Q. Let's turn now to the 1.5% accelerated
14 rate aspect of your main replacement program.

15 A. Okay.

16 Q. Please turn back to page 9, lines 5 to
17 6, of your direct testimony.

18 A. Okay.

19 Q. There, you propose an accelerated rate
20 of 1.5% per year for the Suez Water New York system mains
21 for the next 5 years to, as you put here, quote, catch up;
22 correct?

23 A. Yes.

24 Q. Let's now turn to your report, page
25 27.

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2 A. Okay.

3 Q. Second paragraph, starts with based
4 upon?

5 A. Yes.

6 Q. Second sentence, starting with
7 additionally?

8 A. Additionally, yes.

9 Q. Okay. There, you state the rationale
10 for your recommended 1.5% per year accelerated main
11 replacement program; correct?

12 A. Yes, I do.

13 Q. And the basis for your recommendation
14 for the 1.5% aspect in your program is one sentence in the
15 third paragraph and one figure, figure .2 on page 27 of
16 your report; correct?

17 A. Yes, that's correct.

18 Q. As a general matter, at what age of
19 system mains would you recommend a water supply system
20 create an accelerated main replacement program?

21 A. So as a general matter, assuming that
22 the age of the pipe has a distribution of actual service
23 life that departs from the average of 100, I would need to
24 figure out to what extent a .24% has put the possible age
25 of any pipes in jeopardy.

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2 Again, I don't know what the -- I
3 don't recall and would need to go back and look up the
4 different materials of the pipe and see what the rated
5 useful life of those materials are, and then have to look
6 at some kind of probability that the pipes have degraded.
7 So I -- I don't have an easy or quick answer to your
8 question.

9 Q. So what you just described, you
10 haven't done?

11 A. That is correct.

12 Q. And that's what you would need to do
13 to determine whether to recommend an accelerated main
14 replacement program for a system; correct?

15 A. Yes, it is.

16 Q. But nonetheless, even though you
17 haven't done that, you're recommending an accelerated 1.5%
18 per year for this system, Suez Water. Correct?

19 A. Yes, that is what the report says.

20 Q. Is it correct that your report cites
21 no literature on a so-called accelerated rate for main
22 replacements?

23 A. Yes, that is correct.

24 Q. As you sit here today, and keeping in
25 mind good engineering practices, would you recommend that

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2 a water supply system with system mains having an average
3 of 50 years use an accelerated main replacement program?

4 A. No, not without further analysis.

5 Q. Please turn back to your report, page
6 27.

7 A. Okay.

8 Q. Second paragraph.

9 A. Yes.

10 Q. Again, I'm going to focus on that
11 sentence, additionally. Are you there?

12 A. I am.

13 Q. And I'm now going to read it and put
14 it in context. Additionally, because Suez Water New York
15 has been replacing mains at a rate of 0.24%, it is
16 possible that system mains have degraded past the point of
17 their useful service life and are contributing to SWNY's
18 currently high levels of NRW

19 Do you see that?

20 A. I do see that.

21 Q. Mr. Kleinman, did you disclose in your
22 report the data gap that you had at the time you wrote it,
23 namely that you didn't know the age of the system main
24 pipes for the Suez Water New York water supply system?

25 A. No, I did not.

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2 Q. All right. Is -- is cost
3 effectiveness an important concept to you in the
4 management of a water supply system?

5 A. Yes, it is.

6 Q. And it's an important concept for you
7 in your report because, by way of example, you often
8 mention what you consider to be the cost effectiveness of
9 your proposed water conservation program, compared to that
10 of the Company; correct?

11 A. Yes, that's correct.

12 Q. And if you could turn to pages 18 and
13 19 of your report?

14 A. Okay.

15 Q. And for example, it's the top of table
16 2, you've got review of cost effectiveness. I won't read
17 it all. I'm just trying to point out the various places
18 you talk about cost effectiveness.

19 A. Uh-huh.

20 Q. 2.43, Evaluation of the Cost
21 Effectiveness of SWNY Options, and then if you could turn
22 lastly to page 23, table 5.

23 A. Uh-huh. Yes.

24 Q. And there again Cost Effectiveness of
25 Comparable Water Loss Control Programs; correct?

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2 A. Yes.

3 Q. So right there you're talking about
4 cost effectiveness of water loss control programs -- the
5 sort of nonrevenue water prong that we've been talking
6 about before; correct?

7 A. Yes.

8 Q. The cost of any main replacement
9 program is, at a minimum, a relevant factor in evaluating
10 the program; isn't it?

11 A. It is. And so this is the reason in
12 direct testimony -- so if we were to go to page 10 of the
13 direct testimony, lines 4 through 7, that I recognized
14 that T&D main replacement -- and I was thinking about this
15 is -- T&D main replacement part of a nonrevenue water
16 management program. It's certainly part of managing
17 nonrevenue water, but it is a capital and not an operating
18 expense.

19 So I started reassessing whether that
20 should be part of the capex and the equity for the
21 Company, as opposed to an annual operating or just ongoing
22 operating expense.

23 Q. So you said you started assessing.
24 Did you ever end that assessment?

25 A. So I state in line 6 through 7, should

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2 not be viewed as integral to a discretionary nonrevenue
3 water management program. It seems to be part of the
4 ongoing operations of the utility.

5 Q. Please turn to your report, page 8.

6 A. Okay.

7 Q. ES 4-1.

8 A. All right. I'm there.

9 Q. Now in your testimony, you were just
10 referencing page -- and just please keep with the report
11 because I'm just doing a context here.

12 A. Okay.

13 Q. Page 10 at the end, that clause line
14 6, you said basically that the main replacement program
15 should not be viewed as integral to a discretionary
16 nonrevenue water management program. And that's what you
17 were referencing in your last answer; correct?

18 A. Yes, that's correct.

19 Q. Now on page 8, ES 4-1 --

20 A. Yes.

21 Q. -- the title is Nonrevenue Water
22 Management; correct?

23 A. Yes, it is.

24 Q. And underneath that, you state in
25 addition to SWNY's proposed deployment of AMI, DMA, and

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2 PRM, AIQUEOUS recommends the following additions and
3 changes to the overall nonrevenue water management
4 program; correct?

5 A. Yes, that's correct.

6 Q. And if you go down in number 3, which
7 is part of the -- what you call the overall NRW management
8 program, you include water main replacements including
9 both the 1% and the 1.5%; correct?

10 A. Yes, that's correct.

11 Q. So doesn't the inclusion of number 3
12 and ES 4.1 contradict your statement on page 10, line 6
13 through 7, that those programs should not be viewed as
14 integral to a discretionary nonrevenue water management
15 program?

16 A. So yes, and that's a function of the
17 date of the report. The report was originally sent to the
18 Commission on June 30th or early in July. This testimony
19 was filed September 14th.

20 I did not go back to the report which
21 had already been submitted and strike the water main
22 replacement recommendation from the report, following the
23 issuance of the Joint Proposal.

24 Q. And nor did you, in your testimony,
25 disclose or state that you no longer considered the main

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2 replacement rate as integral to a discretionary nonrevenue
3 water management program; correct?

4 A. Correct. It was not stated
5 explicitly.

6 Q. Please turn back to your report, page
7 27, again focusing on the second and third paragraph.

8 A. Yes.

9 Q. Again, your recommendation of the
10 accelerated rate, 1.5% for the next 5 years, did you do a
11 cost-effective analysis of your 1.5% per year accelerated
12 main proposal in your report?

13 A. No, I did not.

14 Q. Did you even disclose the cost of that
15 proposal in your report?

16 A. I did not disclose the cost of that
17 proposal in the report.

18 Q. And because you didn't provide the
19 cost of your accelerated main replacement program in your
20 testimony or in your report, you don't compare the Joint
21 Proposal main replacement to your program from a cost
22 perspective; do you?

23 A. That is correct.

24 Q. Now the 1.5% per year accelerated rate
25 main replacement component of your program is one of the

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2 few, if not the only, component of your program in your
3 report for which you provide no cost information; correct?

4 A. That is correct.

5 Q. And it's the only component of your
6 program that you don't do a cost effectiveness analysis;
7 correct?

8 A. That is correct.

9 Q. Did you calculate the cost of your
10 1.5% per year accelerated main replacement program for the
11 Suez Water New York water supply system that you propose
12 on page 27 of your report?

13 A. No, I did not.

14 MR. ALESSI: Next exhibit, please.

15 A.L.J. PHILLIPS: A 1-page document
16 that was distributed has been marked for identification as
17 Hearing Exhibit 73. It's SWNY Estimated Incremental
18 Capital Impact of Increasing Main Replacement to 1.5%.

19 MR. ALESSI: May I proceed, your
20 Honor?

21 A.L.J. PHILLIPS: Yes.

22 MR. ALESSI: Thank you.

23 BY MR. ALESSI: (Cont'g.)

24 Q. Now Mr. Kleinman, given your
25 background, you are well capable of performing

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2 calculations; correct?

3 A. Yes, that's correct.

4 Q. H.E. 73 shows all the math --

5 A. Yes.

6 Q. -- with regard to the calculation of
7 how much your proposed 1.5% for 5 years would cost the
8 ratepayers. So I would highlight 2 items and then I'm
9 going to ask you a question.

10 A. Uh-huh.

11 Q. You see the yellow boxes. The first
12 is incremental capital.

13 A. Yes.

14 Q. The total at the bottom is about \$68
15 million for the years 2017, 2018, 2019, 2020, and 2021.
16 And then the far right is the percent of incremental mains
17 to the JP Capital, which is 71%, 55%, and 46%.

18 Does H.E. 73 fairly and accurately
19 depict the cost of your 1.5% per year accelerated main
20 replacement program for the Suez Water New York water
21 supply system that you propose on page 27 of your report?

22 A. No, I don't think it does.

23 Q. Why doesn't it?

24 A. Well, I think you're missing the fact
25 that the mains that you are replacing in an accelerated

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2 schedule would have been accelerated at some point in the
3 future and now what you've done is you've essentially
4 extended their life by whatever timeframe there is.

5 So there would be a credit of the net
6 present value of the what the replacement costs would have
7 been at that point in the future.

8 Q. So what calculation, and you can
9 estimate it if you would like, would you perform on H.E.
10 73 to achieve what you just said in your last answer?

11 A. So -- so based upon the -- based upon
12 the current age of the pipe and some spread of the age of
13 the pipe, you would take a look at accelerating some of
14 the replacement. I'm assuming that not all of the system
15 was installed at the same time?

16 Q. I'm sorry, Mr. Kleinman. I apologize.
17 I was -- I was conferring. Can you repeat your answer?

18 A. Sure.

19 Q. Thank you.

20 A. So looking at the age of -- so
21 assuming that not all the system was installed at the same
22 time or there have been -- you know, some have obviously
23 been replaced sooner, you would take a look at the age of
24 the pipe that gets targeted by the extra half percent per
25 year. You would see how close it is to the end of its

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2 average life, which is 100 years.

3 You would then assume that at the end
4 of the age -- of its useful life, you would do an
5 installation at that time. And then that would be
6 essentially an accelerated credit toward the capital cost
7 because you would have spent that money anyway at some
8 point into the future.

9 Q. So what would your number be?

10 A. So based on energy efficiency
11 programs, you know, with measure lives that are shorter,
12 I've seen reductions of anywhere from 25 to 50% of the
13 cost. But because the ages of this are longer, I would
14 assume a 10 to 15% reduction. So why don't we use the
15 middle of that range, so call it 8.5 million.

16 Q. And where would you apply the 8.5
17 million on this chart?

18 A. I would subtract that from the 67,949.

19 Q. Would you be comfortable with saying -
20 - and you said subtract 8 million?

21 A. Yeah, I -- I mean we can make that
22 number 60 if you want. It's not --.

23 Q. All right. That's what I wanted to do
24 is come to a number that's round.

25 A. Okay.

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2 Q. Okay?

3 A. Let's say 60.

4 Q. So that's 60 million.

5 A. Okay.

6 Q. So let's assume your answer, would you
7 then -- and let's just cross off -- for just purposes of
8 your testimony and what you just said, let's just use the
9 total number of 60 million, instead of 67,949. Okay?

10 A. 67 million. Sure. Yes.

11 Q. All right. Now I'm going to go with
12 your number for my questions --

13 A. Okay.

14 Q. -- but I would like to ask you one
15 more question if I could, please?

16 A. Sure.

17 Q. Do you agree that Hearing Exhibit 73,
18 before your corrections, in its original form, shows the
19 incremental capital investment over and above the current
20 plan in the Joint Proposal?

21 A. Yes.

22 Q. Are you -- are you aware that the
23 ratepayers of Suez Water New York would have to pay -- I'm
24 going to use your number -- the \$60 million incremental
25 cost for your 1.5% per year accelerated system main

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2 replacement proposal, assuming, hypothetically, it were to
3 be implemented?

4 A. Yes. And in future dollars, they
5 would not have to spend a comparable amount of rate
6 dollars discounted to the present, but they would not have
7 to spend that money later in the future.

8 MR. ALESSI: Next exhibit, please?

9 A.L.J. PHILLIPS: So a 1-page document
10 entitled SWNY Estimated Incremental Capital and Revenue
11 Requirement Impact of Increasing Main Replacement to 1.5%
12 is marked for identification as Hearing Exhibit 74.

13 MR. ALESSI: May I proceed, your
14 Honor?

15 A.L.J. PHILLIPS: Yes.

16 MR. ALESSI: Thank you.

17 BY MR. ALESSI: (Cont'g.)

18 Q. Mr. Kleinman, you've put in your
19 testimony that you've testified in other proceedings
20 before other public utility commissions in other states;
21 correct?

22 A. Yes, that's correct.

23 Q. And in those other proceedings,
24 ratemaking was at issue; correct?

25 A. No, ratemaking was not an issue.

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2 Q. Okay. In terms of Hearing Exhibit 74

3 --

4 A. Uh-huh.

5 Q. -- are you able to render an opinion,
6 assuming -- I'm going to go back to Hearing Exhibit 73,
7 I'm going to stick with my number that I have of about 68
8 million, and I'm going to qualify that in saying the 68
9 million I'm carrying forward is what I understood you to
10 agree to, which is the incremental capital investment over
11 and above the current plan.

12 So assuming that, are you able to
13 agree or disagree with the last column in yellow in H.E.
14 74 that calculates the estimated revenue requirement
15 impact of your 1.5% catch-up plan?

16 A. Not without just having a couple of
17 questions answered. Okay. So the -- the 50% number in
18 column 9, where does that 50% number come from, just
19 helping -- helping me to understand the process? So you -
20 - you've got column 9 in which you're showing that you're
21 going to take your capital and multiply it by the 1.5% for
22 the book value and then there's a 50% number. Where does
23 that come from?

24 Q. Assume hypothetically that that number
25 assumes that they're -- they're put in throughout the

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2 year.

3 A. Oh, okay. I get it. So some of it
4 happens at the beginning of the year; some of it happens -
5 -.

6 Q. Not on day 1.

7 A. On average, it's a 6 month -- got it.

8 Q. Exactly.

9 A. Okay. And that's the same thing with
10 column 10?

11 Q. That's -- assume that that's the same
12 for column 10.

13 A. Okay. And then the 34% in column 11,
14 is -- is that just based on the Company's taxes for the
15 year?

16 Q. Assume that's ratemaking federal tax
17 rate.

18 A. Got it. Okay. One second here. And
19 then how do you go from -- oh, there it is. Okay. And
20 then -- sorry -- under the estimated revenue requirement
21 formula?

22 Q. Yes.

23 A. The 2.78%?

24 Q. That's the weighted average cost of
25 debt from the bottom of the table.

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2 A. Okay. 4.14 -- sorry to do this to
3 everybody.

4 Q. No; I appreciate your patience.

5 A. Okay. There it is. And you know
6 where I'm going with the 65.882 so --.

7 Q. I do.

8 A. Just -- okay. All right.

9 Q. Would it help if you had a calculator?
10 Can we give you a calculator? Do you want to use one off
11 your computer?

12 A. No, I don't. I just -- I'm just
13 trying to understand the basis for it.

14 Q. Understood.

15 A. So I'm not going to redo everything.
16 I just want to understand.

17 Q. Take your time.

18 A. Thank you. Okay.

19 (Off the record)

20 A.L.J. PHILLIPS: Let's go back on the
21 record then.

22 MR. ALESSI: Oh, okay. Sorry. I
23 apologize.

24 A. So the 4.14% number comes from?

25 BY MR. ALESSI: (Cont'g.)

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2 Q. The weighted -- assume it comes from
3 the weighted average cost of equity.

4 A. Got it. Okay. And then the 60 --
5 then you're dividing by 65.88%?

6 Q. For the gross revenue conversion
7 factor of 65.88%.

8 A. Okay.

9 Q. And then assume equity earnings are
10 taxed and have to be grossed up.

11 A. Got it. Okay. All right. Thank you
12 very much.

13 Q. You're welcome and those -- those are
14 in the JP Appendices should you need to refer to them
15 later.

16 A. Okay.

17 Q. As to how that was arrived at.

18 A. Okay. Thank you.

19 So the answer is yes, I do see how you
20 calculated your estimated revenue requirement impact?

21 Q. And so then does H.E. 74 fairly and
22 accurately depict what is in the yellow box at the far
23 right-hand corner, the estimated revenue requirement
24 impact?

25 A. Yes, it does.

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2 Q. Assuming -- assuming the \$68 million
3 incremental -- \$68 million incremental capital investment
4 over and above the current Joint Proposal plan, 68, of
5 your 1.5% per year accelerated main replacement program,
6 and now knowing and stating that the average age of the
7 mains in SWNY's system is approximately 50 years, and not
8 having any knowledge of, that you've stated here, of the
9 material of the pipe in the Suez -- let me -- let me start
10 over. I'm going to take that out of the -- I'm going to
11 take that out of the question. I'm going to start my
12 question over.

13 A. I'd be happy to go look it up if you
14 want to take the time.

15 Q. No; I'm going --.

16 A. Okay.

17 Q. I'm actually going to restate it.
18 Okay?

19 A. All right. Thank you. Sure.

20 Q. Assuming the \$68 million in
21 incremental capital investment over and above the current
22 plan in the Joint Proposal to SWNY ratepayers of your 1.5%
23 per year accelerated main replacement program, knowing the
24 average age of the mains in SWNY's system is about 50
25 years, can you, in good faith, taking into consideration

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2 generally accepted engineering, scientific, and cost-
3 effective principles, now recommend an accelerated 1.5%
4 per year system main replacement program for the SWNY
5 system?

6 A. No, I can't.

7 Q. So would you like to withdraw from
8 your report and your proposal the 1.5% accelerated main
9 replacement proposal?

10 A. Yes, I would.

11 Q. Thank you.

12 MR. ALESSI: Your Honor, if it's
13 convenient for you, this would be a good place for the
14 Company to stop before it gets into the next line of its
15 questioning.

16 A.L.J. PHILLIPS: Okay. Let's take
17 the lunch break. It will be one hour. Thank you.

18 (A luncheon recess was taken at 12:43 p.m.)

19 A.L.J. PHILLIPS: We're going to
20 continue with the cross examination of Witness Kleinman by
21 the Company.

22 MR. ALESSI: May I proceed, your
23 Honor?

24 A.L.J. PHILLIPS: Yes.

25 MR. ALESSI: Thank you

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2 BY MR. ALESSI: (Cont'g.)

3 Q. Good afternoon, Mr. Kleinman.

4 A. Good afternoon.

5 Q. Let's leave nonrevenue water for now
6 and turn to the second main prong of your proposal, water
7 conservation. Please turn to your report, page 10, table
8 ES 6.

9 A. Okay.

10 Q. At the very bottom right-hand corner,
11 do you see a 2.228 number?

12 A. Yes, I do.

13 Q. And that 2.228 number represents the
14 total water savings in MGD in 2021 that you estimate for
15 your water conservation program in this case; correct?

16 A. Yes, that's correct.

17 Q. Please turn to page 7 of your report,
18 section ES-4.

19 A. Yes.

20 Q. Bear with me one moment.

21 A. You're at the bottom of page 7. Is
22 that correct?

23 Q. You know what I want to do is -- is
24 make sure that I -- for this line of questioning, I've got
25 all the components of the questions so I can do it

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2 efficiently. So if you could, Mr. Kleinman, just bear
3 with me. I'm going to make sure that that's the case.

4 A. Okay.

5 Q. I'm now ready, Mr. Kleinman. That 2.0
6 -- 2.228 number, we just discussed from your asserted
7 water conservation programs, when added to your asserted
8 2.0 nonrevenue water number, mathematically gets you to
9 the total 4.228 MGD in savings you assert in section ES 4
10 on page 7 of your report. And I know we covered that
11 before. I just want to recalibrate for purposes of the
12 questions. Is that correct?

13 A. Yes, the -- and the reason for
14 providing a combined number is in the event that one or
15 other element of the program underperforms, for whatever
16 reason, that there's flexibility provided to be able to
17 achieve an aggregate goal.

18 Q. Now please move up to page 7 of your
19 report, to table ES 5.

20 A. Yes.

21 Q. And I'd like to discuss the context
22 for your asserted 2.228 MGD number for water conservation
23 programs that you're asserting in this case.

24 A. Okay.

25 Q. In table ES 5, you list a number of

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2 utilities and their purported performance with their water
3 conservation programs; correct?

4 A. Yes.

5 Q. And at the top of the far right as we
6 discussed earlier this morning, you've got a column
7 entitled key performance indicators; correct?

8 A. Yes.

9 Q. I'd like to zero in on the percent
10 savings column --

11 A. Yes.

12 Q. -- under key performance indicators.

13 A. Uh-huh.

14 Q. For Suez Water New York you identified
15 2.2% or 3.4%; correct?

16 A. Yes.

17 Q. The bottom number of 2.2% is better
18 than all of the other utilities in table ES 5 except for
19 one, the second one, Seattle at 2.7%; correct?

20 A. No. Those are -- those are percent
21 savings numbers -- and this is not stated in the report.

22 Those are the percent savings numbers for the associated
23 time horizon. So for example, 1.5% achieved by San
24 Antonio water system is just for the program year of 2015.

25 Q. Yes.

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2 A. So that would be compared with a 5-
3 year implementation time horizon for Suez that achieves
4 either 2.2 or 3.4%.

5 Q. Let's hold that for -- I understand
6 what you said.

7 A. Okay.

8 Q. Let's hold that for a moment.

9 A. Okay.

10 Q. The top number of percent savings for
11 Suez Water New York is 3.4%.

12 A. So 3.4% includes active and passive
13 savings. So to calculate that, I took the 1.044 MGD from
14 the Joint Proposal -- corrected Joint Proposal and Black
15 and Veatch. And then I believe I divided that by an
16 approximate either 29 or 30 MGD number for total produced
17 water.

18 Q. We're going to mark an exhibit.

19 A. Okay.

20 MR. ALESSI: Carol, can you hold a
21 moment, please? Hold a moment.

22 BY MR. ALESSI: (Cont'g.)

23 Q. So is it fair to say that the Suez
24 Water New York Water Conservation Program, on one of your
25 two key performance indicators, on table ES-5 compares

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2 favorably or unfavorably with the others on table ES-5?

3 A. It would be middle of the pack.

4 Q. Now as we discussed moments ago and
5 you answered, you've got your 2.228 MGD water savings
6 number. Do you discuss, anywhere in your report or
7 testimony in this case, how your 2.228 MGD proposal
8 translates into one of your key performance indicators on
9 table ES-5, namely percent savings?

10 A. No. I only discuss it in terms of --
11 well, I do discuss it in terms of the dollars per million
12 gallons per day.

13 Q. Right. But I'm talking about not
14 that, but simply stating in your report or your testimony
15 how the 2.228 translates into the percentage that you list
16 on -- percentages that you list on table ES-5?

17 A. No, the report does not do that.

18 Q. If you had done that translation, the
19 reader of the report could have compared the percent
20 savings you are proposing for SWNY to the best performers
21 in your table ES-5; couldn't they?

22 A. Yes.

23 MR. ALESSI: Let's mark the next
24 exhibit.

25 A.L.J. PHILLIPS: So the 1-page

1 16-W-0130 - October 27, 2016 - Suez Water
2 document entitled Percentage Savings for AIQUEOUS's
3 Proposed Conservation Program has been marked for
4 identification as Hearing Exhibit 75.

5 MR. ALESSI: May I proceed, your
6 Honor?

7 A.L.J. PHILLIPS: Yes.

8 MR. ALESSI: Thank you.

9 BY MR. ALESSI: (Cont'g.)

10 Q. Isn't it correct that to obtain the
11 percent savings you are proposing for Suez in this case,
12 you take your 2.228 number, divide it by 30, the number
13 under the sales MGD column next to Suez Water Conservation
14 Plan in table ES-5?

15 A. Yes, that's correct.

16 Q. And multiply the resulting number from
17 the division by 100 to get to the percent which is 7.43%?

18 A. Yes, that's correct.

19 Q. That 7.43% savings that you are
20 proposing for Suez is almost -- well, it is 2.75 or almost
21 3 times higher than what appears to be the best performer
22 of Seattle Public Utilities in your table ES-5. Is that
23 correct?

24 A. No, that is not correct.

25 Q. How does the 7 -- well, does Hearing

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2 Exhibit 75 fairly and accurately represent the calculation
3 to get to the 7.43% for Suez?

4 A. Yes, it does.

5 Q. How does the 7.43% for the Suez Water
6 Conservation Plan compare with the other utilities you
7 have identified on table ES-5?

8 A. So San Antonio Water System, which was
9 one of the systems evaluated by Black and Veatch when
10 creating the Water Conservation Plan is a best in class
11 water conservation program in the United States. The
12 director, Karen Guz, speaks regularly at conferences. She
13 was in multiple sessions at the -- the one I attended
14 recently.

15 So the San Antonio Water System
16 program, in 2015, achieved a 1.5% level of savings in a
17 single year. If they were able to achieve that level of
18 performance over a 5-year horizon, that would be 7.5%,
19 which is coincidentally just about what I was targeting
20 for the Suez Water Plan.

21 Q. How do you make the assumption I think
22 I heard in your answer that the 1.5% achieved in 1 year
23 for San Antonio could persist for 5 years?

24 A. Because that level of performance has
25 been routinely achieved. So I -- what I would need to do

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2 is -- and again, the publicly available information for
3 2015 -- well, sorry.

4 The publicly available information for
5 San Antonio provided the -- the 2015 information. Very
6 clearly, the issue is that for prior years, water
7 conservation program performance is combined with, for
8 example, water waste restriction performance.

9 So for the past 4 years, Texas went
10 through its drought of record and that obviously has
11 created a lot of activity in the water -- water planning
12 and also water conservation planning activities. So they
13 were reporting total savings reductions, but they couldn't
14 easily isolate the water conservation programs from other
15 activities like the implementation of water waste
16 ordinances.

17 So -- however, based upon the
18 continuation of budget exercises, I am willing to argue
19 that the level of performance indicated by San Antonio can
20 be sustained for 5 years.

21 Q. You say you're willing to argue, but
22 you do not have any data, as you sit here, to make a
23 judgement based upon a scientific method that that 1.5%
24 will continue for 5 years. Is that correct?

25 A. So to be able to answer that question,

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2 I would need to dig into the integrated resources plan
3 that San Antonio has provided, which stipulates what that
4 level of savings is intended to be. And that information
5 was not publicly available to be able to make that
6 argument.

7 Q. So you have not done what you just
8 stated you would need to do to be able to state with a
9 degree of -- reasonable degree of scientific certainty
10 that that 1.5% number could sustain itself for 5 years.
11 You'd need to look at more data and do more work; correct?

12 A. So that would be --.

13 Q. It's a projection?

14 A. That would be one way to do it.

15 Another way -- so -- so I spent 7 years working for the
16 Energy Efficiency Utility in Vermont. I also spent 8
17 years implementing the Energy Efficiency programs in
18 Texas. Our targets were consistent in terms of a percent
19 savings goal. There were budgets associated with them.
20 We had no issue performing or even over-performing on that
21 basis.

22 So based upon my personal in-the-field
23 experience actually running programs to get customers to
24 take action and take savings, based upon the indication
25 that budget levels are supported politically within San

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2 Antonio, I am making the assertion that maintaining that
3 level of performance is within the ability of that team to
4 accomplish.

5 Q. And you provide none of that data or
6 those assumptions or those assertions in your report; do
7 you?

8 A. That's outside of the scope of the
9 report. My report is about the water conservation
10 performance given publicly available information for these
11 various portfolios, similar portfolios to what Suez Water
12 investigated and evaluated when it took a look at its
13 study.

14 You know -- sorry -- Black and Veatch.
15 My apologies.

16 Black and Veatch didn't indicate or
17 research whether or not the incentive levels for the
18 programs were going to change in -- in subsequent years.
19 They took a look at what the snapshot is, currently. So,
20 you know, again from a planning perspective, it seems a
21 legitimate exercise.

22 Q. So from a planning perspective, but
23 not from an engineering perspective; correct?

24 A. Well, again, this is a planning
25 document and not an engineering document.

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2 Q. And when you mention the process that
3 you just described, in addition to that not being in your
4 report and the additional information that you've
5 discussed here, that's not in your testimony, either;
6 correct?

7 A. That is correct.

8 Q. All right.

9 A. Similar to the level of detail was
10 provided by Black and Veatch to develop their water
11 conservation plan.

12 Q. Now please turn to page 10, table ES
13 6, of your report.

14 A. Okay.

15 Q. It's entitled Comparison of Proposed
16 Water Conservation Plan and AIQUEOUS Recommendations;
17 correct?

18 A. Yes.

19 Q. And there, you performed a comparison
20 of your recommendations to the proposed water conservation
21 plan in the Joint Proposal; correct?

22 A. Yes.

23 Q. In fact, you even carry over from
24 table ES 5 the other one of your key performance
25 indicators we were speaking about previously, cost

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2 effectiveness. Right?

3 A. Yes.

4 Q. Now is it fair to state that you
5 intend the reader of ES 6 to conclude in this -- that in
6 this table you provide a cost-effective comparison between
7 the Joint Proposal Water Conservation Plan and your
8 recommended plan?

9 A. Yes.

10 Q. Indeed, if you go to the bottom of
11 table ES 6, and I'm going to ask you to look at the -- it
12 starts from left to right, the dark blue shading where
13 you've got totals and then you've got cost effectiveness
14 in dollars per MGD

15 You assert a -- for the Joint
16 Proposal, a cost effectiveness of dollars per MGD of
17 7,076,914 for the proposal in the Joint Proposal; correct?

18 A. Yes.

19 Q. And for your recommended water
20 conservation plan, you assert a cost effectiveness of --
21 reading right over to the right --

22 A. Uh-huh.

23 Q. -- \$3,109,652 for your recommended
24 water conservation plan; correct?

25 A. Yes.

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2 Q. And the differences, as you purport it
3 to be, is almost a two-fold difference; correct?

4 A. Yes.

5 Q. So is it your intention that you want
6 the reader of table ES 6 to believe that you made an
7 apples-to-apples comparison of the cost effectiveness of
8 the 2 programs, the one in the Joint Proposal and your
9 proposed program?

10 A. Yes.

11 Q. Do you believe that you, in fact, made
12 an apples-to-apples comparison of the 2 proposed programs
13 in table ES 6?

14 A. Yes, I do.

15 Q. Let's see how you got to your cost
16 effectiveness comparison numbers on table ES 6.

17 A. Okay.

18 Q. Let's look at how you made entries for
19 the costs and savings associated with the smart meter
20 program aspects --

21 A. Right.

22 Q. -- for single family residential,
23 multifamily residential, and commercial, institutional,
24 and industrial in table ES 6.

25 A. Okay.

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2 Q. And you see, off to the left there,
3 because it's your table, in the gray, that's where I'm
4 referencing starting single family, multifamily, and
5 commercial, institutional. Do you see that?

6 A. I do.

7 Q. Are you comfortable with me using SFR,
8 MFR, and CII to move this along?

9 A. Yes, I am.

10 Q. Thank you.

11 MR. DICHTER: Sorry to interrupt, but
12 could I have a clarification? On the 5-year cost as to
13 proposed is the Company's filing or the JP that we're
14 comparing here?

15 THE WITNESS: That's a good -- thank
16 you.

17 There are -- there's an increase in
18 cost from the original proposal in the Black and Veatch
19 report to the Joint Proposal, so -- of about a half
20 million dollars. So the number that is here is not -- the
21 savings are for the Joint Proposal, but there is a -- a
22 difference with the Joint Proposal. Thank you.

23 MR. ALESSI: Is there any more
24 friendly cross for Mr. Dichter? I'll move on.

25 BY MR. ALESSI: (Cont'g.)

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2 Q. Please turn to the heading on the
3 table to the far right at the top, entitled 2021 Savings
4 Estimate MGD

5 A. Got it.

6 Q. That's the very top in blue.

7 A. Yes.

8 Q. If you go to the column underneath
9 that's entitled Active - REC.

10 A. Yes.

11 Q. The REC stands for recommended;
12 correct?

13 A. Yes, it does.

14 Q. And that's your recommended
15 conservation proposal column; correct?

16 A. Yes, that is correct.

17 Q. Please read down that column until you
18 find the numerical entry 0.55.

19 A. For the SFR Smart Meter Program?

20 Q. Yes. And so that's the -- as you just
21 stated for the SFR Next, please go -- now you got the
22 0.55 number. Hold that, please.

23 A. I will.

24 Q. And go to the -- well, actually, let's
25 now just read down to the MFR You see a 0.12 for the MFR

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2 A. I do.

3 Q. And then keep reading down. You see a
4 0.18 number for the CII for smart meters; correct?

5 A. I do.

6 Q. Now by identifying in table ES 6,
7 water savings for smart meters for each of those
8 categories, and the numbers are 0.55, plus 0.12 and 0.18.

9 A. Uh-huh.

10 Q. You're effectively taking a credit in
11 the cost effectiveness of your proposed program of a total
12 of 0.85; correct?

13 A. No, I'm not taking a credit.

14 Q. All right. Let me rephrase it.

15 A. Okay.

16 Q. When you add 0.55 and 0.12 and 0.18,
17 would you agree from that column you get a total of 0.85?

18 A. Yes, I do.

19 Q. And that 0.85 is part of your 1.861
20 number at the bottom of the chart; correct?

21 A. Yes, it is.

22 Q. Then you take the total 5-year cost
23 estimate of your proposed program that we talked about
24 earlier in the totals.

25 A. Yes.

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2 Q. 5,787,434 column, and you divide it by
3 your number of 1.861, to derive your cost-effective number
4 for the program, of \$3,109,851; correct?

5 A. I'm going to ask to get my phone for
6 the use of its calculator. Is that acceptable?

7 Q. Absolutely.

8 A. Okay. Thank you.

9 Q. I've got a calculator here. If you're
10 more comfortable with your phone, use it.

11 A. I'm all right. That was just my
12 parents calling me from far away, for some crazy reason.
13 The fact that they called me twice is what got me worried.

14 Q. Understandable.

15 A. Yes. Okay. Yes, that's correct.

16 Q. So in simple terms, your cost
17 effectiveness calculation --

18 A. Uh-huh.

19 Q. -- purports to take your total cost
20 and divide them into your total savings estimate. Is that
21 correct?

22 A. Yes, that's correct.

23 Q. Please turn to your report, page 9,
24 item 4.

25 A. Yes.

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2 Q. Now your purported 0.85 MGD of savings
3 is made up of 0.4 MGD from the implementation of a
4 customer portal and leak alerts program --

5 A. Uh-huh.

6 Q. -- and the remaining savings you
7 assert are due to implementation of a behavior-based
8 software program; correct?

9 A. Uh-huh.

10 Q. But you did not base your estimated
11 savings of 0.85 MGD on any specific data from the Suez
12 Water New York service area; correct?

13 A. That's correct. That is the result of
14 numerous evaluation studies that have been conducted for
15 the Water Smart Program.

16 Q. Now almost the entire cost -- let's --
17 let's just go back to table ES 6.

18 A. All right.

19 Q. Let's go down, once again, to the
20 difference at the bottom in cost effectiveness between the
21 proposed and recommended, as you label it.

22 A. Uh-huh.

23 Q. Almost the entire difference there is
24 attributable to the 0.85 in savings you assert would
25 accrue from the Smart Meter Program; correct?

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2 A. I can't assert that without taking a
3 quick look.

4 Q. Well, we'll mark an exhibit. Maybe
5 that will help.

6 A. Okay.

7 A.L.J. PHILLIPS: I think he's doing a
8 calculation on his calculator. Is that correct?

9 THE WITNESS: Yes, that's correct.

10 A.L.J. PHILLIPS: Okay. So when you
11 finish, can you just answer?

12 THE WITNESS: Sure. Thank you.

13 MR. ALESSI: We'll just wait until he
14 finishes.

15 THE WITNESS: Okay. Thank you.

16 A.L.J. PHILLIPS: Is that your answer?

17 A. (Cont'g.) My answer is that there --
18 no -- that there is still a -- a difference between the
19 two of them. So we'll have to figure out what's going on.

20 A.L.J. PHILLIPS: Let's go off the
21 record.

22 (Off the record)

23 A.L.J. PHILLIPS: Back on the record.

24 A 1-page document has been circulated
25 that I will mark for identification as Hearing Exhibit 76.

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2 And I've asked Counsel, off the record, to now explain
3 what this document is.

4 MR. ALESSI: Yes, your Honor.

5 This document, the -- the labeling up
6 at the top is confusing, so what I will describe it as,
7 this is Mr. Kleinman's table ES-6. And there are three,
8 four -- let's see -- five changes to it. But
9 methodologically, what this table does is provides the
10 same number of savings for the smart meter program for
11 each of the categories, single family residential, multi-
12 family residential, and commercial, institutional, and
13 industrial that Mr. Kleinman has taken for his proposal.

14 And you can see that by just looking
15 to the -- so there -- what we do to put those into the
16 active proposed program, which is the -- our program,
17 that's in the yellow box. You look to the right of each
18 yellow box, you will see the same number all the way down.

19 And what we do is we add up -- if you
20 take table ES-6 as originally in his, Mr. Kleinman's --
21 and instead of the 0.677 number, under active proposed,
22 when you give us, the Company, the same savings, the
23 number goes from 0.677 to 1.527.

24 And given, again, without agreeing
25 with the methodology or anything, but just doing an

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2 apples-to-apples, then you take how Mr. Kleinman described
3 his methodology for doing cost effectiveness, you then
4 take the 3,137,571 and you put that over the 1.527 -- I'm
5 -- I'm going to have -- this is the area that I just want
6 amend for a moment.

7 A.L.J. PHILLIPS: Let's go off the
8 record again.

9 (Off the record)

10 A.L.J. PHILLIPS: Back on the record.

11 Just off the record, I clarified that
12 the document that has been marked for identification as
13 Hearing Exhibit 76 is a reproduction of one of Mr.
14 Kleinman's tables, table ES-6; however, it does have
15 modifications by the Company that are highlighted with
16 yellow highlighter. And we are going to allow the
17 questioning on this document to proceed with that
18 understanding.

19 MR. ALESSI: Thank you, your Honor.

20 BY MR. ALESSI: (Cont'g.)

21 Q. Now, Mr. Kleinman, you take the --
22 assume that you -- assume the 1.527 number, --

23 A. Uh-huh.

24 Q. -- methodologically then, do you take
25 the -- to compare it to the same way you did it, you take

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2 the 4,791,071, put that over 1.527, and get 3,137,571.
3 Assuming that we do what's on this chart, is that correct
4 mathematically?

5 A. So -- so yes. Staff indicated that
6 they didn't think that savings are possible to calculate
7 using an AMI program. So I'm -- I'm glad to see that
8 you're starting to put numbers down for conservation
9 savings associated with the smart meter program.

10 Q. So you would agree that Hearing
11 Exhibit 76 now is an apples-to-apples comparison of table
12 ES-6 due to the addition of the same savings from the
13 smart meter programs that you had placed into your
14 proposal?

15 A. So when you say apples-to-apples,
16 you're just talking about the -- the relative contribution
17 of the smart meter program and this is not whether I
18 think, for example, that spending that amount of money on
19 -- on toilet rebates is the right idea. You're just
20 trying to get to the -- the numbers; correct?

21 Q. That is correct.

22 A. Okay. So then, yes. If you take your
23 program costs and divide it by the 1.527, you get a cost
24 per mega -- million gallons per day of the \$3.14 million.

25 Q. And that is very close -- that

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2 3,137,571 is very close to your cost effectiveness number
3 of 3,109,652; correct?

4 A. Yes, it is.

5 Q. And statistically speaking, from a
6 mathematical perspective, there's no real difference
7 between those numbers. Is that correct?

8 A. Only the -- the numbers, but not the
9 accountability that goes behind the numbers of signing
10 onto the goal.

11 Q. Got it. Okay.

12 A. Okay.

13 Q. Please turn to your direct testimony,
14 page 16, line 7.

15 A. Yes.

16 Q. There you begin your testimony on free
17 ridership levels; correct?

18 A. Yes, I do.

19 Q. Please turn to your report, page 18.

20 A. Okay. All right.

21 Q. And if you could go to footnote 4?

22 A. Yes.

23 Q. There you define a free rider as,
24 quote, A program participant who would've installed a
25 water conserving fixture in the absence of the program and

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2 collects a rebate from that program while providing no
3 incremental savings. Correct?

4 A. Yes, that's correct.

5 Q. Now, let's go to your direct
6 testimony, page 16.

7 A. Okay.

8 Q. And if you go to line 9, please?

9 A. Yes.

10 Q. There you opine regarding the free
11 ridership levels in the Joint Proposal, which you deem are
12 very high. You say, quote, This can be addressed through
13 a direct install program which can target customers based
14 upon age of the home, income level, or other factors that
15 suggest a low likelihood of toilet replacement in the
16 absence of a program.

17 Correct?

18 A. Yes, it says that.

19 Q. And similarly, on page 17, beginning
20 on line 3, you state, quote, As a consequence, I recommend
21 a direct install program that will replace toilets and
22 showerheads at 3,150 households over the 5-year program
23 period.

24 Correct?

25 A. I do. That would be in addition to

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2 the 10,000 toilet replacements that are estimated to
3 already occur in the absence of any program.

4 Q. Right. Your testimony in this case in
5 -- in -- and including your report does not appear to
6 state whether your proposed direct install program covers
7 all costs of your program; does it?

8 A. Yes, the direct install cost does
9 cover the full cost of a toilet replacement --

10 Q. Now --.

11 A. -- parts and labor.

12 Q. Should the reader of these two
13 sections of your direct testimony we just went through
14 conclude that it's your position that your proposed direct
15 install program can eliminate the free ridership issue?

16 A. Yes. So free ridership can be dropped
17 to below 10%, possibly even as low as 5%, through a
18 quality direct install program. And so yes, for the
19 purpose of putting together the table, I assume the
20 elimination of free ridership based upon the way that the
21 program would get evaluated.

22 Q. And the program, to be --

23 A. The direct

24 Q. -- specific --?

25 A. -- install program.

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2 Q. Your direct install program; correct?

3 A. Yes, that's correct.

4 Q. So just so I'm clear --

5 A. Uh-huh.

6 Q. -- you -- your -- your testimony here
7 should be read as your direct -- your proposed direct all
8 -- install program would eliminate free ridership/

9 A. For the direct install program.

10 Q. Right. Please turn to your report,
11 page ten, table ES-6.

12 A. Okay.

13 Q. Going back to the single family
14 residential category on the left --

15 A. Uh-huh.

16 Q. -- and then reading to the second
17 column, second box, do you see the quote for SFR direct
18 install?

19 A. Yes.

20 Q. And then you keep reading to the
21 right, do you see -- well, that -- that entry represents
22 the direct install program you --

23 A. Yep.

24 Q. -- you just identified in your direct
25 testimony?

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2 A. Yes, it is. It's -- it's .17. And
3 then in the direct testimony it's .174 in the table. It's
4 just because of the number of digits, not anything
5 intentional.

6 Q. No -- no -- no -- no --.

7 A. Got it.

8 Q. We're not going to go there.

9 A. Okay.

10 Q. All right. So now if you could,
11 please, that -- that 0.174 represents the 2021 savings
12 estimate in MGD for your proposed direct install program;
13 correct?

14 A. Yes, that's correct.

15 Q. To the right, what I want to focus on,
16 of that 0.174 number, is a blank box under the column of
17 baseline; correct?

18 A. Yes, that's correct.

19 Q. Now, a blank in this baseline column,
20 next to the direct install program of 0.174, means that
21 for purposes of your comparative cost effectiveness
22 evaluation of the Joint Proposal water conservation plan,
23 on the one hand, and your recommended water conservation
24 plan proposal on the other, aren't you stating in this
25 table that there would be no free ridership from your

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2 direct install program as a result of that blank next to
3 0.174?

4 A. Yes, I do. Can I explain why?

5 Q. Well, look -- you -- the answer is yes
6 --

7 A. Uh-huh.

8 Q. -- but I just want to -- and that
9 contradicts, doesn't it, what you said earlier that there
10 -- your direct install program would not eliminate free
11 ridership?

12 A. Well, no. I said it depends upon how
13 it's managed. So the way that free ridership gets
14 measured is through a series of questions that get asked.

15 So if you look at the -- for example,
16 if you look at the -- the impact evaluation that was cited
17 by Staff testimony on the Central Hudson Residential HVAC
18 program -- do we need to go to that exhibit or can I just
19 reference it from -- for the purpose of discussion.

20 Q. I'm comfortable with you just
21 referencing it --

22 A. Okay. So --.

23 Q. -- as long as you're comfortable doing
24 that.

25 A. Yeah -- yeah -- yeah. So -- so

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2 there's a series of questions that get asked in order to
3 determine whether somebody's a free rider. So as -- as
4 has been pointed out, the level of free ridership that you
5 identify is a function of measurement.

6 So the -- the -- the questions are
7 typically, you know, did you install this program as a --
8 did you install this measure as a result of the program?
9 Were you planning on doing it within the next three months
10 or, you know, did -- did this program accelerate the rate
11 at which you would do the installation? Based upon
12 the review of the information that is presumed to be in
13 the possession of -- of the Company from the Black and
14 Veatch Water Conservation plan, it seems logical that
15 targeting middle to low-income families, not necessarily
16 crossing the threshold of the low-income program, which
17 was -- I know is a separate component of the Joint
18 Proposal, but let's call them the working poor, as opposed
19 to technically the low-income program.

20 The likelihood that they would
21 actually be implementing a toilet retrofit of their -- on
22 their own, or installing the low flow showerheads, unless
23 they already had them, is going to be fairly low. And so
24 if you look at that kind of a program, and you take into
25 account things like income, et cetera, when you target the

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2 program -- that's one of the main advantages of direct
3 install from a rebate program is your ability to be very
4 selective in who you recruit because what you're doing is
5 your controlling the message, for -- unless -- for a
6 rebate program, you know, it's very difficult to say to
7 one neighbor versus another that you are or are not
8 eligible for being able to take that coupon to the
9 retailer and get that credit for the -- the toilet.

10 For a direct install program where
11 only certain people are eligible, given specific criteria
12 that you can defend, you can help manage that message a
13 lot better.

14 So -- so the reason that I put the
15 direct install program is because it helps to manage the
16 likelihood that you're going to be dealing with somebody
17 who was already going to be undertaking that installation
18 and you can also put in a more efficient toilet.

19 So that's the second part of the
20 direct install program, is that if you drive performance
21 to the .8 gallon-per-flush, for example, as opposed to
22 just the minimum WaterSense standard, which is 1.28, you
23 reduce the likelihood that somebody was just going to go
24 ahead and put the .8 gallon-per-flush toilet in there.

25 So while we can argue about whether it

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2 should be 1 or 2 or 0%, the impact on the cost
3 effectiveness ends up being negligible. So for the
4 purpose of this table, yes, I don't have any free riders
5 in there.

6 Q. Please turn back to your direct
7 testimony, page 16. Wait, I had my mic off.

8 Please turn back to your direct
9 testimony, page 16, lines 9 to 11.

10 A. Yes.

11 Q. There, you state the components of
12 your direct install program as, quote, This can be
13 addressed. And this is referring to free ridership;
14 correct?

15 A. Yes.

16 Q. This can be addressed through a direct
17 install program, which can target customers based upon age
18 of the home --

19 A. Uh-huh.

20 Q. -- income level --

21 A. Uh-huh.

22 Q. -- or other factors that suggest a low
23 likelihood of toilet replacement in the absence of a
24 program; correct?

25 A. Uh-huh.

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2 Q. So you identify two components of your
3 direct install program, age of the home and income level,
4 that will make your program better than in the Joint
5 Proposal. Is that correct?

6 A. So yes, the -- you know, the Joint
7 Proposal is proposing to spend -- hold on a second. I
8 have to go back to the -- the table directly out of the --
9 the Joint Proposal. One moment.

10 Actually, you don't provide a total
11 number there for the program. Let's see. So the 5-year
12 cost for the single-family toilet program is \$1.2 million.
13 Okay? 10,000 of the 15,000 participants for that program
14 are assumed to be individuals who would have made that
15 replacement anyway.

16 So on -- on the straight numbers,
17 let's just use a million just to make the math easy. So
18 that's suggests about 670 to \$700,000 are going to go to
19 participants whose participation would have resulted in
20 that amount of water conservation. And, and in fact, the
21 market saturation of a -- of a WaterSense or a low flow
22 toilet, high efficiency toilet, is so high that that's
23 part of what's contributing to the demand reduction on the
24 Suez system overall.

25 So you've got codes and standards and

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2 even states like Texas and California that have passed
3 laws saying that you have to have a WaterSense toilet. So
4 when manufacturers are producing these products, they're
5 meeting the WaterSense standard, generally speaking, and
6 they're making it available everywhere.

7 So what I was proposing to do was to
8 say, given the fact that 2/3 of that activity is going to
9 happen anyway, what if -- what -- can we spend that more
10 efficiently to target people who aren't going to
11 participate in that program, and to go ahead and do the
12 replacement, very similar to low-income program, but
13 again, not meeting the income threshold.

14 So age of home, income level, those
15 are certain factors that you can take into account. There
16 are others, based upon local knowledge and just being able
17 to reach out into the community.

18 Q. Okay. I -- my question was just --
19 and I understand your answer.

20 A. Okay.

21 Q. My question was just confirming that
22 your direct install program, as you stated in your
23 testimony, you identified 2 factors age of the home and
24 income level, and then you say or other factors, but you
25 don't identify them. So I just wanted to get the

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2 components of your program for my questioning.

3 A. Okay.

4 Q. So am I accurate in stating that?

5 A. Yes. That is what the testimony
6 reads.

7 MR. ALESSI: Okay. And we're now
8 going to mark an exhibit.

9 A.L.J. PHILLIPS: I want to go off the
10 record.

11 (Off the record)

12 A.L.J. PHILLIPS: A document was
13 circulated that I'm marking for identification as Hearing
14 Exhibit 77.

15 MR. ALESSI: And your Honor, just a
16 follow-up to our last conversation, would it be
17 acceptable, depending upon the length of Mr. Kleinman's
18 answers, that if you can make a judgment and also if we
19 need to cut into more time, into Mr. Berkley, could we
20 have that option?

21 A.L.J. PHILLIPS: Let's play it by
22 ear.

23 MR. ALESSI: Okay.

24 A.L.J. PHILLIPS: For now, let's --
25 let's shoot for completing this by -- by my clock, 3:36,

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2 but note that we'll -- we will take a break at 3 p.m.

3 MR. ALESSI: Okay. Thank you, your
4 Honor.

5 A.L.J. PHILLIPS: Oh, I'm sorry. Were
6 we off or on at that point?

7 THE REPORTER: We're on right now.

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

9 MR. ALESSI: May I proceed, your
10 Honor?

11 A.L.J. PHILLIPS: Yes.

12 MR. ALESSI: Thank you.

13 BY MR. ALESSI: (Cont'g.)

14 Q. Mr. Kleinman, you're -- what we have
15 marked as Hearing Exhibit 77 is entitled Suez Water New
16 York, Water Conservation Plan, Black and Veatch, and it
17 has a project number. It's prepared for Suez Water New
18 York, April 29, 2016. And you can see it's an excerpt.
19 It's not the whole report.

20 A. Uh-huh.

21 Q. It's pages 44, 49, 50, and 51. Do you
22 recognize that document and those excerpts?

23 A. Yes, I do.

24 Q. Now, please turn to page 49 of Hearing
25 Exhibit 77.

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2 A. Yep.

3 Q. At the top, in section 6.2, the report
4 sets up other components of the Suez Water Conservation
5 plan; correct? And when I say other components, there
6 were components before that.

7 A. Yes, that's correct.

8 Q. All right. Now, please turn to page
9 50 of the report, the first full paragraph, second to last
10 sentence.

11 A. Okay. Could you say the -- cite the
12 location one more time, please?

13 Q. Sure. Page 50 --

14 A. Uh-huh.

15 Q. -- the first full paragraph --

16 A. Yep.

17 Q. -- beginning with do --

18 A. Yes.

19 Q. -- and then the second to last
20 sentence.

21 A. Uh-huh.

22 Q. There it states, quote, For the SWNY
23 program, additional steps are proposed to help with
24 implementation, such as obtaining real estate data to help
25 identify homes that are most likely to be eligible for

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2 rebates.

3 A. Uh-huh.

4 Q. This includes obtaining data on the
5 following: the year a property was built, customers and
6 homes built after 1994 would not be eligible for a rebate,
7 date the property was last sold, and then on the basis
8 that bathroom renovations often shortly occur before or
9 after a home is sold, identifying homes that have not sold
10 since 1994 may be a way to focus in on homes more likely
11 to still have inefficient fixtures.

12 Correct?

13 A. Uh-huh. Uh-huh.

14 Q. And the last paragraph on page 50,
15 there's a description of working with third party
16 companies and realtors and working within the context of
17 the Suez Cares low-income support programs, and in the
18 last sentence in the paragraph, a statement about these
19 programs being adapted to include rebates or other
20 incentives.

21 Correct?

22 A. Yes.

23 Q. Now, please turn back to your direct
24 testimony, page 16, line 10.

25 A. Okay.

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2 Q. So the Suez Water conservation program
3 that I just went through on H.E. 77, which is in the Joint
4 Proposal, targets the same two categories of target
5 customers identified in your proposed direct install
6 program, age of the home and income level. Correct?

7 A. Those two, yes.

8 Q. Please turn to your direct testimony -
9 -.

10 A. Well, no. Income level isn't in the -
11 - sorry. Income level is in mine, but it's not in the
12 Black and Veatch report. Right? It's just the year and
13 the date it was last sold. I don't see income here. Did
14 I miss it?

15 Q. You -- I can't answer that question,
16 but --

17 A. Sir.

18 Q. -- if I could direct your attention to
19 page 50 --

20 A. Yep.

21 Q. -- the paragraph this type of data is,
22 generally, and then if you could go to the line,
23 customers, in the middle, applying for SWNY's existing
24 low-income support program.

25 A. Okay.

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2 Q. You see that?

3 A. I do. And that -- so that's -- again,
4 we're talking about the threshold about whether you fall
5 into a mandated low-income -- low-income program versus
6 you're technically above the low-income threshold,
7 however.

8 So it's -- I -- I -- I see what you're
9 saying here. It's not necessarily the same thing that
10 I've said.

11 Q. All right. And then you see where it
12 says the Suez Cares program? You see that below?

13 A. Yes, I do.

14 Q. So are you able to tell that there is
15 a difference in the income level approaches between yours
16 and the Suez program?

17 A. Well, no.

18 Q. For --.

19 A. However, I -- I -- then I don't
20 understand why the report indicates that 2/3 of the study
21 is going -- 2/3 of the savings are going to people who
22 would've bought it anyway if that's where you're targeting
23 the program.

24 Q. What I just wanted to do is to see if
25 the two elements in page 16 of your direct testimony, the

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2 two factors, age of the home --

3 A. Uh-huh.

4 Q. -- and income level, are also
5 addressed on page 50 of H.E. 77.

6 A. So I -- so -- I can't say that because
7 the answer is possibly. And that's, again, a function of
8 the thresholds for the low-income support program and the
9 Suez Cares program.

10 Q. Now, please turn to your direct
11 testimony, page 17, lines 3 to 7.

12 A. Okay.

13 Q. So we're just flipping the page.

14 A. Okay.

15 Q. While you provide several number --
16 I'm going to have repeat because my mic was off.

17 Please turn to your direct testimony,
18 page seventeen, lines 3 to 7.

19 A. Uh-huh.

20 Q. While you provide several numbers
21 there, you don't show your math as to identify the cost
22 per household for what you propose as part of your direct
23 install program to replace toilets and showerheads; do
24 you?

25 A. No. I have work papers. I have

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2 printed them out and can make available to 10 individuals
3 here.

4 Q. Now, I believe you -- you had some
5 math before, but would you agree that the approximate --
6 based upon the numbers you put there, would you agree that
7 the approximate cost you assumed to install 2.43 new
8 toilets -- now knowing that nobody installs 2.43, but just
9 the way the math breaks down --

10 A. Uh-huh.

11 Q. -- and one showerhead and also pay the
12 travel and labor for the plumber for her or his labor for
13 the installation of these items is merely \$384.50.

14 A. Yes, that's correct.

15 Q. Do you believe that \$384.50 is a
16 sufficient amount of money, now knowing that math, to pay
17 for 2.43 toilets, one showerhead, and the travel and labor
18 for the plumber for Rockland County?

19 A. So based upon conversations that I had
20 with providers of direct install companies, the answer is
21 yes.

22 Q. But you provide no back-up for
23 hardware costs, labor, or time of any of these components
24 in your testimony in this proceeding, including in your
25 report, so the accuracy of that statement could be

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2 assessed; correct?

3 A. Yes, that is correct.

4 Q. You mentioned you had conversations
5 with direct installers?

6 A. Uh-huh.

7 Q. Where were those direct installers
8 located?

9 A. They're a national -- they're a
10 national company doing work in Texas, California, and
11 other jurisdictions.

12 Q. Do any of those other jurisdictions
13 include Rockland County?

14 A. I do not know. I would find it hard
15 to believe that the product price for a toilet on Home
16 Depot dot com would differ for Rockland County than for
17 one of the other counties, but -- where they actually do
18 operate, given the fact that it's a national manufacturing
19 firm.

20 Q. Would you find it difficult to believe
21 that the price of a plumber might differ in Rockland
22 County, from Texas?

23 A. Staff testimony was very clear to
24 indicate that this is not so complex as to require a
25 plumber to do the toilet installation. So that's one of

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2 the reasons or ways that they're able to make the cost go
3 down.

4 Q. Are you -- do you agree or disagree
5 with the statement that direct installation programs are
6 distinguished by supplier or a contractor of a supplier
7 purchasing and installing the device with no cost to the
8 customer?

9 A. Yes.

10 Q. Assuming the cost to install 2.43
11 toilets and one showerhead and the cost of that hardware
12 and the cost of a plumber was greater than \$385.00, the
13 cost effectiveness of your program, as depicted on table
14 ES-6 of your report, would go down. Correct?

15 A. So again -- so

16 Q. Are you --

17 A. -- the answer is --

18 Q. -- able to answer that yes or no?

19 A. -- the answer is -- the answer is yes.

20 Again, a plumber is not necessary for the implementation
21 of the program.

22 Q. So your testimony is that every
23 resident will install their own toilets?

24 A. No. It is a contractor that does not
25 need to be a licensed plumber or a plumber -- all right.

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2 Let me take a step back.

3 The cost information that I got is
4 from the actual implementer of a direct install program.
5 So I -- so I will just leave it at that.

6 Q. Let's look at another aspect of
7 conservation. Please turn to your report, page 7, table
8 ES-5.

9 A. Sorry. Direct testimony or report?

10 Q. I'm sorry. Your report.

11 A. Thank you.

12 Q. You're welcome.

13 MR. ALESSI: May we go off the record
14 for a moment, your Honor?

15 A.L.J. PHILLIPS: Okay.

16 (Off the record)

17 A.L.J. PHILLIPS: Back on.

18 BY MR. ALESSI: (Cont'g.)

19 Q. Are you at your report, page seven,
20 table ES-5?

21 A. Yes, I am.

22 Q. The third utility name is the Town of
23 Cary, North Carolina; correct?

24 A. Yes.

25 Q. All right. So you evaluated the Town

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2 of Cary's water conservation program?

3 A. We looked at the performance of the
4 program, yes.

5 Q. Do you recall whether the Town of
6 Cary, a municipality, has a municipal law restricting
7 watering for residential and non-residential utility
8 customers year-round with enforcement by fines for
9 violation escalating from \$100 to \$500.

10 A. No, I did not research that.

11 Q. We're going to mark an exhibit.

12 MR. ALESSI: Are we ready to go back -
13 -?

14 A.L.J. PHILLIPS: We're on the record.
15 The document has been marked as Hearing Exhibit 78.

16 Please, proceed.

17 MR. ALESSI: Thank you, your Honor.

18 What has been marked as Hearing
19 Exhibit 78 consists of 2 documents. It's easiest,
20 logically, to go to the second document, which is an
21 ordinance from the Cary, North Carolina, Code of
22 Ordinances and Land Development Ordinances. That's
23 Document 1.

24 Document 2 is off the Town of Cary
25 website. And it describes an alternating day watering

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2 program. The second document that I described is a
3 document, an ordinance of which the -- your Honor can take
4 administrative notice, as well as the first document that
5 is on Exhibit H.E. 78.

6 What I would like to do, given the
7 witness said he looked at the Town of Cary water
8 conservation program, I would like to ask -- proceed with
9 asking the witness questions with regard to the Town of
10 Cary that he has listed on ES-5 in terms of water
11 conservation program performance.

12 A.L.J. PHILLIPS: Proceed.

13 MR. ALESSI: Thank you.

14 BY MR. ALESSI: (Cont'g.)

15 Q. Have you had an opportunity, Mr.
16 Kleinman, to take a look at Hearing Exhibit 78?

17 A. Yes, I have.

18 Q. Do you see on page one, under
19 enforcement --?

20 A. This is the first document --

21 Q. I'm sorry. Yes.

22 A. -- correct?

23 Q. There's a --

24 A. Okay.

25 Q. -- cover page?

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2 A. Yep.

3 Q. Under enforcement, residential
4 customers who violate the alternate date watering rule
5 will receive and oral or written notice. Repeat
6 violations can lead to civil penalties of \$100 for the
7 first citation, 250 for the second, and 500 for the third.
8 Non-residential customer fines range from \$250 to \$2,000.

9 Do you see that? It's under
10 enforcement, at the very bottom. There's a heading.

11 A. I'm sorry. I see emergency suspension
12 of service to promote --.

13 Q. Do you see highlighting at --?

14 A. No, I don't.

15 Q. Maybe -- can you just check -- would -
16 - could Ms. Clark approach you and see if you have the
17 same document?

18 A. Yeah, absolutely.

19 Q. Thank you. You're looking at the
20 ordinance. I'm just looking at the website.

21 A. Oh, there you -- okay. I'm sorry. It
22 was -- that's the second -- okay. Got it.

23 Q. I'm sorry.

24 A. All right.

25 Q. Okay.

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2 A. Yep.

3 Q. So this is alternate day watering;
4 correct?

5 A. Yes, it is.

6 Q. And the enforcement I read, I won't
7 read again, but there's an enforcement provision down
8 there with fines; correct?

9 A. That is correct.

10 Q. Now -- now, with regard to the Town of
11 Cary and Rockland County, in your evaluation of Rockland
12 County's water conservation programs, did you identify any
13 ordinances in Rockland County that dealt with water
14 conservation?

15 A. No, I did not. At -- to compare with
16 Cary, there's a high efficiency toilet rebate program and
17 a turf buy-back program. So there's no irrigation program
18 that would interfere with their resultant double counting
19 the savings with the watering restrictions.

20 Q. I wasn't going there. It was just for
21 the purposes of seeing --

22 A. All right.

23 Q. -- in your work for your clients --

24 A. Okay.

25 Q. -- who you've described and we-re

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2 dealing with Rockland County, did you come across any
3 water ordinances in Rockland County that are like what is
4 depicted here in H.E. 78?

5 A. No. That was outside of the scope of
6 the report.

7 Q. Now, is the existence of such an
8 ordinance as H.E. 78 consistent with your beliefs as a
9 consultant as to the need for ordinances in municipalities
10 to be part of water conservation programs? Or is it
11 inconsistent with your beliefs?

12 A. So you're asking me, generally,
13 whether it is, not whether we're dealing with a municipal
14 utility or the situation you have, where it's a private
15 investor-owned utility and there're also municipalities
16 there. Is that correct?

17 Q. I'm just -- that's correct. I'm just
18 asking is having a water restricting ordinance, in this
19 case it's alternate day watering --

20 A. Uh-huh.

21 Q. -- is that consistent or inconsistent
22 with your beliefs as to a complete water conservation
23 program for the municipality, whether or not the water
24 company is run by the municipality or a private company?

25 A. Yes, it is.

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2 MR. ALESSI: Mark another exhibit.

3 THE WITNESS: Thank you.

4 A.L.J. PHILLIPS: 1-page document
5 entitled Intensely Local, November 4th, 2015, Jonathan
6 Kleinman, marked for identification as Hearing Exhibit 79.

7

8 MR. ALESSI: Thank you, your Honor.

9 May I proceed?

10 A.L.J. PHILLIPS: Please proceed.

11 MR. ALESSI: Thank you.

12 BY MR. ALESSI: (Cont'g.)

13 Q. Mr. Kleinman, this is your blog entry;
14 correct?

15 A. Yes, it is.

16 Q. And this is your blog entry that you
17 made on November 4, 2015; correct?

18 A. Yes, it is.

19 Q. Almost one year to the day of today;
20 correct?

21 A. Yes, it is.

22 Q. Now, in the fifth paragraph of that
23 blog, so where I am is the paragraph that starts one
24 option is suggested by Elinor Ostrom. Do you see that?

25 A. I do.

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2 Q. And in that paragraph, you put forth a
3 blueprint for successfully managing a water -- water --
4 successfully managing water as a resource; right?

5 A. I do.

6 Q. And number two discusses water
7 conservation and management plans; correct?

8 A. Yes.

9 Q. And if you go down to number 6 of your
10 blueprint, you have, quote, Penalties for water use
11 violation rules should start small and get big, and
12 communities need to ensure that everyone knows and
13 understands in advance what those penalties will be.

14 Correct?

15 A. Yes. Community represents all
16 entities within the community, not just the municipality
17 in this case. So I would --

18 Q. Okay.

19 A. -- I would -- I would constitute the
20 Company is part of the community in that case, just for
21 clarification. All right?

22 Q. All right. So -- so community to you
23 kind of means everybody. It means the municipal
24 government. It means the water utility. It means the
25 people in the community.

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2 A. The authorities, yeah. Yeah.

3 Q. Yes. Okay. So it includes the
4 authorities?

5 A. Yep.

6 Q. Now, in proffering item number 6 on
7 your H.E. 79 --

8 A. Uh-huh.

9 Q. -- you're --

10 A. Okay.

11 Q. -- assuming a municipal ordinance is
12 in place to effectuate this item. They're fines; right?
13 Penalties for water use violation rules should start small
14 and get big and communities need to ensure that everyone
15 knows and understands in advance what those penalties will
16 be. You're referring to the governmental entity; correct?

17 A. Yes.

18 Q. And aren't municipal ordinances that
19 you're referring to here, that restrict water use and
20 establish penalties for failure to follow the rules in the
21 municipal ordinances, one of the most cost-effective
22 components of a water conservation plan, because they cost
23 very little in dollars to enact, and they can be very
24 effective if they are followed and enforced by the
25 municipal entity.

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2 A. So yes and no. The answer is yes;
3 however, many times this is considered to be a drought
4 management strategy and not necessarily water conservation
5 strategy. So -- so watering restrictions are one of those
6 areas where you start running into is that true
7 conservation or is that something that could just get
8 suspended at some point, as opposed to it being a hardware
9 change that is much more difficult to override. So --

10 Q. Well --.

11 A. -- in Texas, for example, this would
12 be considered a drought management strategy and not a
13 water conservation strategy.

14 Q. Let's turn to H.E. 78. That's the
15 Town of Cary.

16 A. Yep.

17 Q. That's not for merely drought; is it?
18 That's an alternate day watering year-round; correct?

19 A. Yes, it is.

20 Q. So that's an example of an ordinance,
21 a municipal ordinance that can address the concern you
22 just espoused that one might be for drought, one might be
23 for water conservation, not sure. But isn't H.E. 78 an
24 example of a pure --

25 A. Yes. San --.

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2 Q. -- ordinance for water conservation?

3 A. Yes. San Antonio has a similar
4 ordinance in place.

5 Q. All right. So there are -- you're
6 familiar with a number of municipalities that have enacted
7 water ordinances with penalties that address water
8 conservation; correct?

9 A. Yes. So City of Austin, for example,
10 has a watering --

11 Q. Uh-huh.

12 A. -- restriction, as well.

13 Q. Do you know whether Rockland County
14 has enacted such an ordinance?

15 A. It was -- so looking at the activities
16 or actions of the municipalities was outside the scope of
17 the report. This was a water conservation study for
18 activities that Suez Water would undertake.

19 Q. So you -- let me understand your
20 scope.

21 A. Okay.

22 Q. You have proffered testimony with
23 regard to a water conservation program --

24 A. Yes.

25 Q. -- correct?

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2 A. Yes.

3 Q. And you did not have a conversation
4 with any of the many of your clients, which include the
5 Municipal Consortium, which includes Rockland County, and
6 you never had a conversation with them about the benefits
7 of water conservation municipal ordinances as you write
8 about in H.E. 79?

9 A. So two answers. So number one, let's
10 talk about San Antonio for a moment.

11 Q. Can you answer the question about a
12 conversation with your clients about Rockland County?
13 Then with the judge's permission or not, you can go on to
14 others?

15 A. Okay. I did not. So let me just make
16 a statement. I'm trying to figure out if the answer is
17 yes or no. I did not speak the client -- I did not speak
18 to municipalities in Rockland County about their ordinance
19 efforts and how that contributes to water conservation.

20 Q. And you never raised that topic with
21 them?

22 A. I did not.

23 Q. Did they ever raise that with you?

24 A. I honestly don't remember.

25 Q. So you -- are you aware -- so -- so

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2 just to -- I understand it. You don't recall ever having
3 a conversation, whether you raised it or not, with any of
4 your clients or with any municipal government official in
5 Rockland County about water conservation programs through
6 municipal ordinances?

7 A. I -- so the scope -- so if you look at
8 the Black and Veatch study --.

9 Q. Are you able to answer that yes or no
10 and then you can elaborate on it?

11 A. Okay. The answer is --

12 Q. You don't recall having --?

13 A. No, I do not recall.

14 Q. All right.

15 A. Okay. The Black and Veatch study does
16 not claim savings from watering restrictions either. This
17 is an apples-to-apples comparison.

18 Q. When you say it's an apples-to-apples,
19 though --

20 A. Well --.

21 Q. -- you've got many elements; do you
22 not, in your program that are not in the program in the
23 Joint Proposal? Is that correct?

24 A. It -- if the Joint Proposal is willing
25 to sign up for a .85 MGD reduction from smart meters,

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2 that's great. But it just kicks the can down the road for
3 some unspecified value.

4 Q. Mr. Kleinman, I was just asking you a
5 question.

6 A. Okay.

7 Q. You had said, with regard to water
8 conservation programs --

9 A. Yes.

10 Q. -- that you were just comparing --

11 A. Yes.

12 Q. -- the Black and Veatch elements. And
13 that's, as I understand it, all that you have in your
14 program. But isn't it correct, we've gone other -- other
15 -- gone over other items in your program -- for example,
16 we had talked about the 1.5 accelerator rate. Aren't
17 there other components that you put forth in your
18 testimony and report that are not in the Joint Proposal?

19 A. Okay. So by apples to apples, I mean,
20 things that are within the sphere of the authority and
21 control of the utility, as opposed to outside entities
22 such as the municipality.

23 Q. All right. So now back to the
24 conversation. So the answer is there are other elements
25 of water -- there are water element -- excuse me -- water

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2 conservation elements in your proposed program that are
3 not in the Joint Proposal; correct?

4 A. The -- the direct install program we
5 just discussed is an example of that --

6 Q. Right, but --

7 A. -- yes.

8 Q. -- one item of water conservation that
9 you write about in your blog, H.E. 79, is not in your
10 program; correct?

11 A. Yes, that's correct.

12 Q. All right.

13 A. It wouldn't be part of the rate case
14 either --

15 Q. Now --.

16 A. -- to the extent that -- well, okay.
17 Let me take a step back. To the extent that other
18 people's actions can affect your sales, that does impact,
19 ultimately, your revenues. But again, the scope of my
20 study was to look at things within the sphere of control
21 of the Company.

22 Q. What I'm trying to do is button down
23 this line, but you, in your answers, which your -- the
24 judge is the referee here; right?

25 A.L.J. PHILLIPS: Let me just jump in.

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2 It's getting late in the day. You ask the questions. You
3 answer the questions. If we can stick to that, I think we
4 can move a lot quicker and make sure that you get home
5 today.

6 THE WITNESS: All right, ma'am.

7 MR. ALESSI: Thank you.

8 BY MR. ALESSI: (Cont'g.)

9 Q. So my question is you have elements in
10 your water conservation program that you put forth in your
11 report that are not included in the Joint Proposal?

12 A. Yes, that's correct.

13 Q. Correct? But one of the additional
14 components that you have testified is efficacious and is
15 cost effective in municipal ordinance, the municipal
16 ordinance is not one of the additional components of your
17 water conservation plan, for whatever reason, that's in
18 your direct testimony report; correct?

19 A. That is correct.

20 MR. DUTHIE: Objection, your Honor.

21 Asked and answered.

22 A.L.J. PHILLIPS: I guess -- I'm
23 sorry. I think he already answered the question. I
24 think you're right. It has been asked and answered. If
25 we could move on to something --

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2 MR. ALESSI: I'm ready to move on --

3 A.L.J. PHILLIPS: -- that's different

4 --

5 MR. ALESSI: -- your Honor.

6 A.L.J. PHILLIPS: That would be

7 helpful.

8 MR. ALESSI: I have -- your Honor, if
9 I could take a moment, I may be able to conclude the cross
10 at this moment before the break.

11 A.L.J. PHILLIPS: Go ahead.

12 MR. ALESSI: Thank you. May I
13 proceed, your Honor?

14 A.L.J. PHILLIPS: Uh-huh.

15 MR. ALESSI: And I -- I think I can.

16 BY MR. ALESSI: (Cont'g.)

17 Q. Mr. Kleinman, your report and
18 testimony that we discussed, and I'm just providing this
19 for context even though we've discussed it, requires a 2
20 MGD reduction in non-revenue water, and we've talked about
21 that, and a 2.228 MGD reduction in demand from water
22 conservation measures, based upon a template of
23 performance from other systems and predictions of behavior
24 of water users in Rockland County on several new programs;
25 correct?

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2 A. Correct.

3 Q. And it's your proposal that Suez Water
4 New York not secure any new water supply to either ensure
5 -- well, let me stop there.

6 Is it your testimony that Suez Water
7 New York not secure any new water supply?

8 A. I --.

9 Q. Do you opine on that?

10 A. I'm not going to opine on that. The
11 scope of my study is to look at the water conservation
12 potential based upon other jurisdictions. Is there a
13 place in my testimony where I've stated? Okay. Let's go
14 take a look. All right. Direct or referral --

15 Q. Direct.

16 A. -- rebuttal? Okay.

17 Q. Direct.

18 A. I see where I call it economically
19 preferred. I'm trying to find it.

20 A.L.J. PHILLIPS: When you say "it" are
21 you talking about supply?

22 THE WITNESS: I'm sorry. Yes, well,
23 what I -- I see a part of my testimony. Mr. Alessi will
24 point me to the other one. You know, for example --.

25 A.L.J. PHILLIPS: Where are you in

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2 your testimony?

3 THE WITNESS: I'm -- yeah. I was -- I
4 was just getting there.

5 A. (Cont'g.) So if you go to page 11 of
6 the direct testimony, lines 1 through 3, so that reads the
7 following. If real water loss reduction can be achieved
8 at a cost less than \$12 million per MGD and \$240,000 per
9 year, then real loss -- water loss reduction is an
10 economically preferred approach to addressing long-term
11 water supply.

12 BY MR. ALESSI: (Cont'g.)

13 Q. Exactly.

14 A. Well, that just means that it's more
15 cost effective. That doesn't mean that you do it -- so
16 again, so if -- if you are -- if you are faced with a
17 choice of spending less than -- so the -- the testimony
18 from the Company says that new supply is at a cost of \$12
19 million per MGD and that's rough numbers for new ground
20 water supply and -- and that's a planning number; right?

21 So if you're able to reduce that
22 consumption on a verifiable and reliable basis -- sorry; I
23 shouldn't use reliable. If you can verify the reduction,
24 and it costs less than that, then from a long-term
25 ratepayer cost perspective, it is logical and in the

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2 ratepayer's best interest to pursue the conservation in
3 lieu of additional supply.

4 Q. And that's the import of what you're
5 saying on page 11 that you just referenced; correct?

6 A. Yes.

7 Q. All right.

8 A.L.J. PHILLIPS: Can I just ask,
9 though, was the question whether he's recommending that
10 the Company not pursue new supply? Is that the question?

11 THE WITNESS: That was the --

12 A.L.J. PHILLIPS: Wait.

13 THE WITNESS: -- question.

14 MR. ALESSI: That -- that is the
15 question.

16 A.L.J. PHILLIPS: Okay. So I'm going
17 to ask the question.

18 THE WITNESS: Okay.

19 A.L.J. PHILLIPS: Are you -- are you
20 testifying that the Company should not pursue any new
21 sources of supply? Yes or no?

22 THE WITNESS: No. Not until the less
23 expensive alternatives have been pursued.

24 A.L.J. PHILLIPS: So they should not
25 pursue any new sources of supply is what your testimony

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2 is?

3 THE WITNESS: Until the -- until the
4 cost of new supply drops below the cost of conservation,
5 yes. So in other words, if -- if supply becomes less
6 expensive than conservation, then you should do new
7 supply.

8 A.L.J. PHILLIPS: Okay. Is that an
9 answer to your question?

10 MR. ALESSI: It is an answer. I need
11 to follow up, your Honor, but it is an answer.

12 A.L.J. PHILLIPS: Go ahead.

13 BY MR. ALESSI: (Cont'g.)

14 Q. So you recall our discussion about
15 safe yield earlier; don't you?

16 A. Yes, I do.

17 Q. And you understand that the Company
18 does not have the luxury of waiting for what you described
19 to happen because they have to have a plan on file that
20 shows that they have a safe and secure and reliable source
21 of water; correct?

22 A. Yes, and --

23 Q. So --.

24 A. -- so --

25 Q. I'm sorry.

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2 A. -- well, if -- okay. But it also says
3 such projection shall be updated on an ongoing basis where
4 they show that demand will exceed supply, water
5 corporation shall undertake all reasonable efforts to
6 reduce and control future demands to bring them into
7 balance with supply.

8 So that -- I mean that indicates that
9 demand-side management is part of that overall process.

10 Q. You've said in your answer if you can
11 verify the reductions from conservation.

12 A. Yes.

13 Q. You don't know, as you sit here today,
14 if what you propose can actually occur in conservation for
15 this water system; do you?

16 A. Well, neither does Black and Veatch or
17 you in the Joint Proposal. I mean, that's part of the
18 reason you start implementing is to figure that out.

19 Q. And so in the interim, you do nothing
20 with water supply --

21 A. You plan it.

22 Q. -- side?

23 A. No. You -- I mean so part of your
24 risk management strategy is to plan; correct? Is to -- is
25 to make -- is to take steps in terms of contingency to

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2 figure out where the -- the water is.

3 I mean, do you -- so -- so the risk
4 reward -- again, it's -- it -- so you mentioned safe
5 yield; right? And then there's a time horizon associated
6 with new construction, construction of new supply. If you
7 conclude that you just should go ahead and start building
8 it because you don't know that conservation is going to
9 pan out, you will never give conservation a chance to pan
10 out.

11 So you -- you have to actually put
12 some skin in the game to make the conservation work.

13 Q. So your skin in the game is to incur
14 the risk that the water supply system will run out of
15 water?

16 A. So what's the risk of oversupply?
17 What's the risk of spending \$12 million on an MGD -- it's
18 a rhetorical question. So --

19 Q. I've -- I asked you --

20 A. -- there's a risk --.

21 Q. -- a question. I'm sorry.

22 A. Okay.

23 Q. I asked you a question. You can
24 answer --

25 A.L.J. PHILLIPS: Yes.

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2 BY MR. ALESSI: (Cont'g.)

3 Q. -- however the judge allows.

4 A.L.J. PHILLIPS: Can you please
5 answer the question --

6 THE WITNESS: I'm sorry.

7 A.L.J. PHILLIPS: -- and then provide
8 your clarification?

9 THE WITNESS: Okay. I apologize.

10 A. Could you repeat the question, please?

11 BY MR. ALESSI: (Cont'g.)

12 Q. So your answer is -- you're proposing
13 that a risk be taken that there not be a sufficient water
14 supply in Rockland County so that your proposed
15 conservation program, which you need to verify as to its
16 success, could proceed?

17 A. Yes, if -- however -- all right. How
18 close are you to the safe yield?

19 Q. Let me ask you one final question.

20 A. Okay.

21 Q. Are you aware that fire departments,
22 hospitals, and other important providers of services rely
23 upon a safe and reliable water system, so you understand
24 the stakes at play when methodologies are not correctly
25 applied to site-specific water systems?

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2 A. Yes, I'm aware that public safety
3 depends upon an available, reliable water supply.

4 MR. ALESSI: No further questions at
5 this time, your Honor.

6 A.L.J. PHILLIPS: Okay. At this time,
7 I would like to take a 20-minute break. But during that
8 time, I ask Mr. Duthie to confer with his client and
9 decide whether or not you have any redirect.

10 MR. DUTHIE: Yes, your Honor.

11 A.L.J. PHILLIPS: So 20 minutes.

12 MR. ALESSI: Thank you, your Honor.

13 (Off the record)

14 MR. DUTHIE: Now should I wait until
15 after Mr. Levine conducts cross?

16 A.L.J. PHILLIPS: No. You can go
17 ahead.

18 MR. DUTHIE: Okay. All right.

19 REDIRECT EXAMINATION

20 BY MR. DUTHIE:

21 Q. Mr. Kleinman, do you have in front of
22 you what was marked as Hearing Exhibit 59?

23 A. Yes, I do.

24 Q. And Hearing Exhibit 59, to remind
25 everyone, is the nonrevenue water 2015 update that was

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2 filed by Mr. Chris Graziano, Vice President, General
3 Manager of Suez, by letter dated February 29, 2016.

4 Mr. Kleinman, would you go to page 2
5 of that report?

6 A. Yes.

7 Q. And would you read me the second
8 sentence in the second paragraph?

9 A. Sure.

10 In the medium to long-term nonrevenue
11 water levels in the 15 to 18% range will be the goal to
12 drive towards in Suez Water New York service area given
13 the geographical topography system age composition and
14 diminishing return seen as NRW levels approach the
15 economic level of loss.

16 Q. Do you agree with that goal?

17 A. Yes. Yes, I do.

18 MR. DUTHIE: Nothing further, your
19 Honor.

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

21 Mr. Levine?

22 MR. LEVINE: Thank you, your Honor.

23 CROSS EXAMINATION

24 BY MR. LEVINE:

25 Q. So I just have a few questions. Are

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2 you familiar with the concept payback period from --?

3 A.L.J. PHILLIPS: Page and line
4 number?

5 MR. LEVINE: This -- this is not in a
6 page and line number. But if I need to, page 13.

7 A.L.J. PHILLIPS: Of?

8 MR. LEVINE: Of the testimony. Only
9 the testimony.

10 A.L.J. PHILLIPS: Direct?

11 MR. LEVINE: Of -- of the direct
12 testimony, yes.

13 A.L.J. PHILLIPS: Okay.

14 MR. LEVINE: Direct testimony.

15 MR. ALESSI: I'm sorry; could you
16 repeat the page number? Was it --?

17 MR. LEVINE: Well, it's -- it was a
18 preliminary question. I'll ask the whole thing at once.

19 BY MR. LEVINE: (Cont'g.)

20 Q. You have extensive experience in the
21 energy conservation area where we all have become
22 accustomed to a payback in a certain number of years --
23 payback period. Is there something similar for water
24 conservation where costs are generally much lower for the
25 gallons saved?

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2 MR. ALESSI: Your Honor, I'm going to
3 object to the question on two bases. One, your Honor's
4 ruling that you cite to the testimony to see where it is
5 in the testimony, to see it's even covered in the
6 testimony.

7 MR. LEVINE: I'll withdraw it. And
8 I'll go back to the beginning. All right.

9 A.L.J. PHILLIPS: Okay. And again, I
10 did give you leeway last time --

11 MR. LEVINE: No, that's okay.

12 A.L.J. PHILLIPS: -- because I know
13 you were not familiar.

14 MR. LEVINE: I tried to put in --.

15 A.L.J. PHILLIPS: But it helps to
16 establish a foundation if we know where in his testimony
17 you're -- we should direct the witness and focus on.

18 MR. LEVINE: Okay. And I was trying
19 to short circuit it in the interest of time.

20 BY MR. LEVINE: (Cont'g.)

21 Q. Okay. On page 13 of your testimony,
22 lines 10 and 11.

23 A. Yes, I'm there.

24 Q. Got it?

25 A. Uh-huh.

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2 Q. All right. Let me see. Is that where
3 I want to ask? I'm sorry. You're not -- that's not
4 really -- that's not really where I wanted to go.

5 All right. Let me go to a different
6 one. Page 14, line 1.

7 A. Okay.

8 Q. You're recommending a conservation
9 surcharge. Is that correct?

10 A. Yes, I am.

11 MR. ALESSI: I'm going to object, your
12 Honor. There was no discussion of conservation surcharge
13 in my questioning of cross. But if he is conducting cross
14 and it's not --.

15 A.L.J. PHILLIPS: No -- no -- no.

16 MR. ALESSI: I'm going to withdraw. I
17 just want to make sure that's --.

18 A.L.J. PHILLIPS: He -- he's
19 conducting his own cross examination.

20 MR. ALESSI: Cross.

21 A.L.J. PHILLIPS: Separate from what
22 you did.

23 MR. ALESSI: Understood. Thank you
24 for the clarification.

25 A.L.J. PHILLIPS: Which is why I

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2 allowed for the redirect solely on your cross examination.

3 MR. ALESSI: I got it. Yes.

4 A.L.J. PHILLIPS: So now we're moving
5 to Mr. Levine's cross.

6 MR. ALESSI: I withdraw my objection.

7 A.L.J. PHILLIPS: And there is a --

8 MR. LEVINE: To some extent --

9 A.L.J. PHILLIPS: -- statement in here
10 about --

11 MR. LEVINE: ___ I'm trying to
12 understand --

13 A.L.J. PHILLIPS: -- conservation
14 surcharge.

15 MR. LEVINE: -- reason --.

16 A.L.J. PHILLIPS: So can -- do you
17 still have a question in mind or should he repeat the
18 question?

19 THE WITNESS: I see that there's a
20 discussion on the conservation surcharge on page 14, line
21 1, yes.

22 BY MR. LEVINE: (Cont'g.)

23 Q. What's the advantage of it, versus
24 having it within the rates?

25 A. So if you take into account today's --

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2 today's discussion, for example, a conservation surcharge
3 is a separate proceeding in the energy efficiency space as
4 a different flavor. It's more flexible and allows for
5 more planning level discussions, as opposed to engineering
6 level discussions.

7 It also allows for, I think, easier
8 annual reconciliation of -- of budgets and savings
9 targets, than a rate proceeding typically does. And so in
10 my experience, I've generally seen these types of programs
11 handled through an annual surcharge that is separate from
12 the ratemaking proceeding.

13 Q. Are you concerned that if money is
14 overspent in other areas, conservation dollars would be
15 used for the -- to fill those gaps?

16 A. No, I had not thought of that.

17 Q. Okay. All right. So you're
18 recommending a direct install program.

19 MR. LEVINE: Do I need to do the line
20 for that?

21 A.L.J. PHILLIPS: I'm sorry?

22 MR. LEVINE: He's --.

23 BY MR. LEVINE: (Cont'g.)

24 Q. You do a --?

25 A.L.J. PHILLIPS: I'm sorry; what did

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2 you say?

3 BY MR. LEVINE: (Cont'g.)

4 Q. You're -- you're -- you're
5 recommending a direct install program. Is that correct?
6 That's on page 17.

7 A. Yes, that is correct.

8 Q. And through testimony, through Mr.
9 Alessi, it -- the plan is to go something like 384.12 per
10 home. Is that correct, approximately?

11 A. Yes, that's correct.

12 Q. Okay. So are -- are you familiar with
13 the plan that I proposed?

14 A. I -- so yes. But only at a -- at a
15 high and brief level.

16 Q. Okay.

17 A. I read your testimony.

18 Q. All right. So basically, why is --
19 why are you having a rebate, if you will, or cost per home
20 that's higher than the rebates that I suggest in my plan?

21 A. So the -- the direct -- the proposal
22 for the direct install program is to cover 100% of the
23 installation cost. There are direct install programs out
24 there, notably for small businesses, that cover less.
25 Somewhere between -- anywhere from 60 to 80%. But the --

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2 the proposed cost here is intended to be a turnkey
3 process.

4 The contractor shows up to the home,
5 does an assessment, confirms eligibility, and then does
6 the installation. And it covers -- and -- and so the
7 homeowner does not have to pay anything in this design for
8 that scope of work.

9 Q. All right. Is there any reason why
10 that couldn't be done for multiple families?

11 A. There's no reason why that couldn't be
12 done for multifamily dwellings.

13 Q. All right. Now is there -- the
14 Company plan, this is page 8 of your -- your study, I
15 think. On direct install costs, is the -- as I understand
16 it, you're not putting a limit on the number of toilets or
17 other fixtures that could be dealt with in a -- in a -- in
18 the -- when a -- when a -- in a direct install program.
19 Is that correct?

20 So if there were 2 or 3 or -- or 3
21 showerheads or a sink or faucets, that could all be done
22 at the same time; correct?

23 A. They could all be done at the same
24 time. As more toilets or showerheads are installed higher
25 than the average, that ends up eating up the program cost

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2 faster. So you may not get to all the homes.

3 Q. Okay. This program is -- does not
4 have a -- your -- your proposal does not have an absolute
5 limit on it. Is that correct? In terms of it finishes in
6 5 years? Or is it something that's going to continue?

7 A. The -- the goal -- so the -- as with
8 the Joint Proposal, the water conservation plan that I
9 proposed is a -- is a 5-year plan. It does not mandate
10 that it terminates -- that it stops at that point. But I
11 don't look out further for additional savings or
12 additional spending.

13 Q. Okay. All right. Last thing, in
14 terms of the amounts of money spent, I'm -- I've
15 recommended something a 100 or more for a toilet. I just
16 want to -- let's try to do this.

17 A. Thank you.

18 Q. I have an exhibit. Look at the last
19 line and the top line, you can see what it is.

20 A. Okay.

21 A.L.J. PHILLIPS: Do you have a copy
22 for me?

23 MR. LEVINE: Yeah, I'm getting --.

24 (Off-the-record discussion)

25 A.L.J. PHILLIPS: I have a multipage

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2 document, Toilet and Reliability, 12/26/16 (sic), 8:55
3 p.m., apparently from Consumer Reports organization.

4 MR. LEVINE: That's correct.

5 A.L.J. PHILLIPS: Marked for
6 identification as Hearing Exhibit 80.

7 BY MR. LEVINE: (Cont'g.)

8 Q. So is it -- is it fair to say -- if
9 you could just take a brief moment to glance through it if
10 you haven't already.

11 A. Uh-huh. I -- I have taken a quick
12 look through.

13 Q. All right. Is it fair to say that
14 there aren't any toilets listed on all the pages of that
15 document that cost only \$75?

16 A. Yes, it is fair to say that.

17 Now these are retail prices that
18 include the markup at the retail establishment. So
19 through a direct install program, that purchase the --
20 purchases the products in bulk and also doesn't include
21 the upcharge at the retailer, it is possible to buy the
22 parts for less than what you're going to see listed here.

23 Q. If direct install program were not to
24 be adopted by the Commission, then would -- would your
25 analysis and what you said before about why you believe

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2 About mine.

3 A.L.J. PHILLIPS: He's not testifying
4 about your proposal, though.

5 MR. LEVINE: Well, you -- I'm trying
6 to -- there are, right now, 3 proposals of conservation
7 plans on the table.

8 A.L.J. PHILLIPS: I understand, but
9 you're allowed to ask him about his testimony. And it
10 sounds like you're asking him about yours.

11 MR. LEVINE: Well, his testimony --.

12 A.L.J. PHILLIPS: Am I understanding
13 that correctly?

14 MR. LEVINE: Well, actually his
15 testimony is saying that we should spend as much as 300 --
16 over \$300 per home. Mine is less than that.

17 A.L.J. PHILLIPS: I -- I understand
18 and your testimony is already in the record. But --.

19 MR. LEVINE: And I'm trying to see
20 whether or not mine would be -- would be equally
21 effective, or if not, why not.

22 A.L.J. PHILLIPS: But he's -- he's not
23 you. I mean, you're asking about your testimony.

24 MR. LEVINE: All right. All right.
25 I'll -- I'll move on.

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2 BY MR. LEVINE: (Cont'g.)

3 Q. So just very briefly. The -- on the --
4 - the commercial, industrial, and institutional, you're
5 recommending more -- a more tailored custom-driven program
6 including in terms of financial incentives. Is that
7 correct?

8 A. Yes, that's correct. So it -- it
9 involves measures that don't have a pre-calculated savings
10 amount or a pre-established -- sorry -- pre-calculated
11 savings amount or a pre-established incentive amount. But
12 it's done on a case-by-case basis, depending upon the
13 opportunity at the location.

14 Q. But is it fair to say that, let's say,
15 most school buildings will have similar issues? Or
16 similar opportunities for conservation?

17 A. Yes, many -- many could or would.
18 Outdoor irrigation, for example, cooling towers if they
19 have them, commercial kitchen equipment, for example.

20 Q. And would that same thing be true,
21 would most restaurants have similar issues?

22 A. Yes. So beyond the pre-rinse spray
23 valve which is already part of the Joint Proposal, you
24 could have commercial kitchen equipment. That would
25 probably be the limit of the additional opportunities.

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2 Q. And -- and would this be true for
3 other categories of commercial institutional, hospitals,
4 other things --?

5 A. Yes, it would.

6 Q. They would have similar --?

7 A. So those opportunities would exist.

8 The audits as identified in the Joint Proposal may
9 identify them, but they won't provide any -- as currently
10 constructed, won't provide financial incentives to pursue
11 those opportunities.

12 MR. LEVINE: Okay. I have no further
13 questions.

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

15 Do you have any redirect based on
16 that?

17 MR. DUTHIE: No, your Honor.

18 A.L.J. PHILLIPS: Okay. With that, I
19 believe there are no other questions for this witness;
20 correct?

21 MR. DICHTER: Your Honor, can I
22 change? I have a couple of questions that came to mind.

23 A.L.J. PHILLIPS: It depends on how
24 badly you want to cross Mr. Berkley.

25 MR. DICHTER: I have 5 minutes for

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2 this witness. So we take 1 step at a time, your Honor.

3 A.L.J. PHILLIPS: I'm going to allow
4 it against my better judgement, so 5 minutes.

5 MR. DICHTER: Thank you, your Honor.
6 I really am trying to clarify something.

7 A.L.J. PHILLIPS: And I -- I need you
8 to tie it to his testimony.

9 MR. DICHTER: Absolutely.

10 CROSS EXAMINATION

11 BY MR. DICHTER:

12 Q. Looking at page 10 of your testimony,
13 line 8, there's a question is the nonrevenue water program
14 in the JP sufficient. Do you see that?

15 A. Yes, I do.

16 Q. Line 8. And your answer runs through
17 line 12.

18 A. Yes, it is.

19 Q. And I think you're saying that the JP
20 does not provide sufficient incentive for the Company to
21 meet a goal of getting nonrevenue water below 18%?

22 A. Yes, that's correct.

23 Q. Is that because there's no penalty
24 provision in place?

25 A. No. It's because they won't get

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2 rewarded with additional shareholder incentive for getting
3 below it.

4 Q. Okay.

5 A. I mean, there is the -- there is the
6 potential for the avoidance of a penalty, but I'm talking
7 about a -- a proactive shareholder reward.

8 Q. And how would you measure that reward?

9 A. So the -- so my -- what my testimony
10 did was it combined the real water loss reduction from the
11 NRW efforts to water conservation, against a scaled tiered
12 structure for the incentive so that the savings from real
13 water loss reduction could be added to water conservation
14 savings.

15 The measurement of real water loss
16 reduction would be done similarly to how we've had
17 conversations about this earlier around the use of the M-
18 36 software. That would be reviewed -- according to my
19 proposal, that would be reviewed and then essentially
20 verified. And then improvements would be measured against
21 the results of that analysis on an annual basis.

22 Q. Because you go on in that response and
23 talk about the -- a lack of commitment to collect adequate
24 data. Is that going towards meeting what you need to put
25 into the software, or something else?

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2 MR. ALESSI: Your Honor, I don't know
3 -- I've been listening, but this is, as I understand it, a
4 criticism of the -- the Joint Proposal. And I haven't
5 heard yet how this is not yet friendly cross. The first
6 few questions elicited --.

7 A.L.J. PHILLIPS: Okay. Let -- let me
8 ask a question, and I'll short circuit this.

9 MR. ALESSI: Okay.

10 A.L.J. PHILLIPS: How is this
11 statement adverse to Mr. Peterson's testimony?

12 MR. ALESSI: I'm sorry; I think you
13 meant Mr. Kleinman?

14 A.L.J. PHILLIPS: No. Isn't Mr.
15 Peterson your -- your witness?

16 MR. ALESSI: Oh, yeah. Okay. I get
17 what you're going. Yes.

18 MR. DICHTER: Your Honor, I'm not
19 limited to the -- to the testimony of my witness in
20 conducting cross examination, provided --.

21 A.L.J. PHILLIPS: I did ask though
22 that we not conduct friendly cross. So I'm trying to just
23 short circuit this discussion and have you explain to me
24 how this is either adverse to your position or to
25 something that your witness said to try to make sure that

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2 that's not where we're going.

3 MR. DICHTER: It's neither one, your
4 Honor.

5 A.L.J. PHILLIPS: Okay.

6 MR. DICHTER: It's attempting to
7 clarify what the position of the witness is so I know if
8 it's something favorable or unfavorable to my client. As
9 it stands now, I'm trying to under -- just understand his
10 position, get clarification. That's not friendly cross to
11 try and understand what his testimony is.

12 MR. ALESSI: Your Honor, my only
13 comment would be what is the thing that's not clear in
14 here? And maybe there's a question that could be asked to
15 clarify it. But I haven't heard that type of a question
16 yet. The first two I heard, based on the answers, were
17 friendly cross at least with regard to the answer.

18 MR. DICHTER: I'm asking what data
19 should be collected that he's referring to here in his
20 testimony. That's not friendly cross. That's asking him
21 what data needs to be collected, so I can understand what
22 his position is.

23 A.L.J. PHILLIPS: All right. So the
24 question then is with respect to what would constitute
25 adequate data as that term is used in line 11 on page 10

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2 of your testimony, what is the answer? Just answer that
3 question?

4 THE WITNESS: Yes, ma'am. It would be
5 additional cost information on all labor associated with
6 the implementation of nonrevenue water management efforts.

7 BY MR. DICHTER: (Cont'g.)

8 Q. Okay. Thank you. Now have you
9 calculated or is it possible to calculate what real water
10 loss savings would be needed to get below the 18%
11 threshold?

12 A. I haven't done that analysis.
13 However, it could be done if you treat the -- so if you
14 look at the exhibit that we were discussing earlier, which
15 was H.E. 59 -- was that what this was? Is this the
16 correct number for this?

17 MR. DICHTER: Yes.

18 A. (Cont'g.) Okay. So if you look at
19 H.E. 59, you go back to the appendix. If -- if you take
20 the numbers there as -- as a given, then you would be able
21 to calculate what real water loss in addition to what
22 apparent water loss would be necessary to get nonrevenue
23 water below 18%.

24 MR. ALESSI: Your Honor, I'm going to
25 ask again, how is this adverse to Mr. Dichter's client's

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2 position about what you need to do to do what he's talking
3 about?

4 A.L.J. PHILLIPS: I actually have a
5 different concern. It seems like this is a little bit
6 redundant. We had, I want to say, hours of testimony and
7 cross examination about how to calculate nonrevenue water,
8 whether or not he calculated that. And he began his
9 answer with he did not.

10 So if you want to put forth a proposal
11 based on how to calculate nonrevenue water that's based on
12 the testimony in the record, you're free to do that.

13 But I'm not sure that this is new
14 cross examination and I'm -- I'm not sure it's appropriate
15 at this time. So you can try rephrasing it, but I -- we
16 don't want to repeat what we've already covered this
17 morning and earlier this afternoon. And if the witness
18 hasn't done that calculation and I don't think it's
19 appropriate to -- to now do that since we've already
20 covered that ground.

21 BY MR. DICHTER: (Cont'g.)

22 Q. Let me try one last time.

23 A. Okay.

24 Q. Do you believe a real water loss
25 savings of 1%, achieved by the Company, would bring

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2 nonrevenue water below 18%? And if you don't know the
3 answer, that's fine.

4 A. So I -- I don't know the answer. It -
5 - you're referring to 1 million gallons per day, or 1 MGD,
6 instead of a 1 -- are you saying a 1% reduction or 1 MGD?

7 Q. 1 MGD

8 A. Okay.

9 A.L.J. PHILLIPS: And did you just say
10 you don't know the answer?

11 THE WITNESS: I don't know the answer
12 to that question.

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

14 Are you finished, Mr. Dichter?

15 MR. DICHTER: Yes, your Honor.

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

17 Mr. --?

18 MR. DUTHIE: Nothing, your Honor.

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

20 Those are all of the parties that
21 indicated cross examination for this witness.

22 So I want to thank you for your time
23 and you are now excused.

24 THE WITNESS: Thank you.

25 A.L.J. PHILLIPS: All right. So

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2 before we actually shift gears, we do have an outstanding
3 motion that I want to deal with.

4 In a September 26 e-mail to the
5 parties, I communicated the applicable evidentiary hearing
6 procedures. And, in relevant part, I required any party
7 that was going to object to all or a portion of testimony
8 supporting or opposing the Joint Proposal to notify me and
9 all of the parties by e-mail by noon on October 4th, 2016.
10 And I added that any such objections would be addressed at
11 the evidentiary hearing.

12 Suez Water New York timely filed an
13 objection to the initial and responsive testimony that had
14 been filed by the Public Utility Law Project and several
15 other parties. I've already addressed the portions of
16 that motion that moved to strike Mr. Tompkins' testimony and
17 the Rockland County Water Task Force testimony. Those
18 requests were denied and that's indicated at the
19 transcript at pages 425 and 571.

20 Suez Water -- Water New York also
21 moved to strike portions of the Municipal Consortium, Mr.
22 Duthie's testimony. That request was granted in part and
23 denied in part. And you can refer to the transcript at
24 467 through 468 for a description of that ruling.

25 I did hear some argument during the

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2 day on October 6th with respect to the portion of the
3 motion that applied to PULP and also received a written
4 response that was filed on October 13th, 2016, from PULP.

5 What remains of the Company's motion,
6 at this point, is specifically its request to strike the
7 Berkley direct testimony at page 11, page 12, page 16,
8 also pages 14, page 26, and in the rebuttal testimony at
9 page 6. Those specific line references are indicated in
10 that motion.

11 The reason that Suez argued that
12 PULP's initial testimony, at page 11, lines 15 through 23;
13 page 12, lines 11 through 12; page 16, lines 10 through
14 11; page 14, lines 1 through 23; page 15, lines 1 through
15 10; and page 26, lines 11 through 22; as well as page 27,
16 lines 1 through 3, should be stricken is because they
17 argued that it impermissibly attempted to relitigate
18 issues that have already been decided by the Commission
19 and, thus, are beyond the scope of this proceeding.

20 Specifically, the Company noted that
21 the Company's already -- or the Commission has already
22 decided that their -- the Company's decisions in
23 developing the Haverstraw Desalination Project, which will
24 be referred to as Project hereafter, were reasonable and
25 prudent at the time they were made and that it was not

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2 imprudent for Suez to continue developing the Project
3 after or in light of the USGS study that was published in
4 2010, and that a certain amount of costs the Company
5 indicated it was 39.7 million roughly in costs that they
6 had incurred in developing the Project through March
7 2013, are eligible for recovery.

8 The Company provided numerous cites to
9 the relevant orders wherein these issues were considered
10 and decided by the Commission.

11 I've reviewed the orders. I've
12 reviewed the transcript argument. And I will note the
13 following with respect to the citations that have been
14 provided and in my own review of those orders.

15 First, the Commission found that
16 several parties, and I won't name them, basically had
17 failed, and this is a quote, "have failed to meet their
18 burden of presenting a prima facie case of imprudence,
19 and that United Water New York's decisions to pursue a
20 long-term water supply source were reasonable and,
21 therefore, prudent at the times they were made."

22 This quote comes from the Case 13-W-
23 0303 order that was issued November 17th, 2014. If you
24 refer to pages 65 and 66 and then you should also refer to
25 pages 60 through 64.

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2 Second, the Commission rejected
3 assertions that the Company should be presumed imprudent
4 or presumed to have acted improperly because it continued
5 to pursue the Project after the release of the USGS study.
6 There, I refer you to that same order at page 58. It
7 further said that the Company -- the fact that the Company
8 was aware, before other parties, of that study and that it
9 did not disclose the publication of the USGS study were
10 also issues that were raised.

11 It stated that the various parties
12 argue that United Water New York was imprudent for
13 continuing to pursue the Haverstraw Project after the
14 release of the USGS study, and that these arguments ignore
15 the fact that United Water was ordered by the Commission
16 to identify and pursue a long-term water supply source and
17 faced financial penalties for failing to do so.

18 Again, I refer you to the same order
19 at pages 58, 59, 60, also 61 and 62.

20 Finally, with respect to the costs
21 associated with the Project, the Commission has already
22 determined and specified the amount that's eligible for
23 recovery and further determined that the audit of such
24 costs as performed by Staff was adequate.

25 There's a quote specifically in the, I

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2 believe, the order on rehearing that talks about the
3 specific dollar amount. That dollar amount is repeated in
4 Appendix A to that order. It was, in fact, slightly
5 modified, so that it was roughly \$38.8 million.

6 And, again, I refer you to Case 13-W-
7 0246, order issued February 25th, 2016, at pages 2 to 3
8 and also at the Appendix A that's attached to that.

9 Based on all of the foregoing and
10 consistent with my prior ruling that's already reflected
11 in the previous transcripts, I find that it's not
12 appropriate for any party to attempt to relitigate in this
13 case, number 1, whether the Company was imprudent in
14 selecting or pursuing the Haverstraw Desalination Project
15 or, number 2, whether the Company may seek to recover
16 costs that have already been reviewed and approved for
17 recovery by the Commission.

18 And again, I'm referring to those
19 costs as they are articulated in the February 25th, 2016,
20 order, specifically at Appendix A and also at pages 2
21 through 4 of that order.

22 The Commission further addressed the
23 costs that could be incurred through March 2013 that were
24 -- they determined could be accounted for as construction
25 work in progress. And it also spoke about the

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2 appropriate AFUDC rates that should be applied to those
3 costs.

4 As these issues were decided by the
5 Commission in prior orders identified in the Company's
6 motion and, moreover, as a full and fair opportunity to
7 contest those decisions has been provided and, indeed, at
8 least one of the parties to this proceeding, Rockland
9 County has availed itself of such opportunity, I find that
10 the parties are estopped from attempting to relitigate
11 such issues in this proceeding.

12 Thus, any testimony concerning whether
13 the Company acted prudently in pursuing or selecting the
14 Haverstraw Desalination Project, or whether it may seek to
15 recover costs that have already been reviewed and approved
16 by the Commission is beyond the scope of this proceeding
17 and such testimony should be stricken.

18 Accordingly, I'm striking the
19 following: The Berkley direct testimony at page 11, lines
20 15 through 23; page 12, lines 1 through 12; and line 15,
21 starting with the word, if, through line 18, ending with
22 the word, words; page 14, lines 1 through 23; page 15,
23 lines 1 through 10; page 16, line 8, starting with the
24 word, here, through line 11, ending with the word,
25 examples; and page 26, lines 13, starting with the word,

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2 there, through line 22; also page 27, line 1, up to the
3 word that.

4 The Berkley rebuttal testimony, there
5 are also portions on page 6, line 4 through 13; and page 7
6 lines 1 through 17.

7 One second.

8 I also am striking the Berkley direct
9 testimony at page 16.

10 One second. No, I think that's it.

11 With respect to a separate portion,
12 the rebuttal testimony -- Berkley rebuttal testimony at
13 page 6, lines 4 through 33; and page 7, lines 1 through 7,
14 Suez argued that those portions of the testimony should be
15 stricken because they were irrelevant to determining
16 whether the Joint Proposal is in the public interest and
17 should be adopted by the Commission. They constituted
18 pure speculation, called for protected information and
19 undermined directives contained in the Settlement
20 Guidelines, and finally, violated rules that were
21 established in this proceeding.

22 And again, I am paraphrasing and
23 summarizing this to hopefully make this a little bit
24 briefer.

25 PULP responded by arguing that that

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2 testimony was relevant because actual notice to all
3 parties is a prerequisite to the Commission's approval of
4 the Joint Proposal. And they claimed, further, that
5 Company and Staff admitted to engaging in settlement
6 communications without notice to others -- other parties.

7 PULP also argued that Suez could
8 defend itself by waiving the Settlement Guidelines with
9 respect to nondisclosure. They claim that including the
10 contested testimony would enhance the integrity of future
11 settlement negotiations.

12 And finally, they say that they did
13 not violate any established rules or procedures.

14 I will merely note that the Settlement
15 Guidelines require notice to be provided as soon as it
16 appears, based on exploratory discussions with another
17 party or potential party, the settlement of an issue or
18 issues in a pending proceeding is possible. Such notice
19 was provided by the Company in this case on July 19th,
20 2016. It was reviewed by me and found to be in compliance
21 with 16 NYCRR 3.9(a).

22 I will further note that Settlement
23 Guidelines are designed to ensure that the appropriate
24 interested persons are provided with a reasonable
25 opportunity to prepare for and participate in

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2 negotiations. Once an agreement in principle is reached
3 by one or more of the parties to negotiations, drafting an
4 agreement that fully and completely expresses that
5 agreement usually ensues.

6 And then parties have an opportunity
7 to submit evidence in opposition to the resulting Joint
8 Proposal that was drafted, and also to conduct cross
9 examination of the JP's proponents.

10 That is exactly what occurred in this
11 case. In my opinion, drafting does not equal negotiation.
12 And by virtue of PULP's own characterizations of what
13 occurred, they say that the negotiations broke off on
14 August 12th, and that 2 weeks later there was an e-mail
15 draft of the Joint Proposal.

16 So under such circumstances, I think
17 the appropriate standard is that evidence still needs to
18 be relevant. And I don't think that the testimony that's
19 indicated in the rebuttal page 6, line 4 through page 7,
20 line 17, meet that standard and, therefore, they should be
21 stricken.

22 That is my ruling.

23 Does PULP wish to call its witness at
24 this time?

25 MR. RIGBERG: Yes, your Honor.

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2 I'd ask Mr. Berkley to sit at the
3 witness table.

4 A.L.J. PHILLIPS: Mr. Berkley, if you
5 could please stand and raise your right hand? And also
6 the court reporter has asked if you could state and spell
7 your name.

8 MR. BERKLEY: My name is Richard
9 Berkley, R-I-C-H-A-R-D, last name B-E-R-K-L-E-Y.

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

13 MR. BERKLEY: Yes, I do, your Honor.

14 RICHARD BERKLEY; Sworn

15 A.L.J. PHILLIPS: Thank you. Please
16 be seated.

17 MR. RIGBERG: Your Honor, I'd -- I'd
18 first like to identify the exhibits that we'd like entered
19 into the record from Mr. Berkley's direct and rebuttal
20 testimony in July, and his Exhibits 1 through 4 that were
21 part of his direct testimony in July.

22 So I'd like -- they could all be
23 marked together as Exhibit 81. I think that's the next
24 number.

25 A.L.J. PHILLIPS: Do -- do you want to

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2 document entitled Direct Testimony of Richard Berkley on
3 the Joint Proposal, dated September 14th, 2016, consisting
4 of 27 pages of questions and answers?

5 A. Yes, I do.

6 Q. Do you have any corrections to that
7 testimony?

8 A. Yes, I do.

9 Q. Will you please identify those
10 corrections?

11 A. On page 11 of that testimony, on line
12 9 and 10 -- on line 9, it says in my exhibit R.B. 2. It
13 should be in my exhibits R.B. 2 through R.B. 4.

14 Q. Okay. And do you have another typo
15 that you'd like to correct?

16 A. I -- and forgive me. In that line, it
17 also says which was appended. Since it's now plural, it
18 should say which were appended.

19 Q. Thank you.

20 A. Turning to page 20, on lines 1 and 2,
21 the sentence begins, the Company's projected -- and it
22 should read the JP's -- rate case expense of -- and that
23 has now been corrected to approximately \$1 million is --
24 and continue on to line 2, greater than 5% of the overall
25 rate base -- I'm sorry -- the overall base rate request.

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2 And this is based on Appendix 2 of the
3 JP

4 A.L.J. PHILLIPS: I'm sorry; can you
5 repeat that? It should read the JP's projected rate base?

6 THE WITNESS: Yes, it -- lines 1 and 2
7 should now read in that first sentence, the JP's rate case
8 expense of approximately \$1 million is greater than 5% of
9 the overall base rate request period.

10 No other changes to those 2 lines.

11 A. (Cont'g.) Continuing on to page 25,
12 on line 17, word -- word 7 is changed from 3 million to
13 286,000. And that is based on the cross of the Company of
14 Mr. Tompkins, I believe.

15 MR. FITZGERALD: Could you give us a
16 line --?

17 MR. ALESSI: I can't follow that.

18 A.L.J. PHILLIPS: Can you repeat that?

19 A. (Cont'g.) I'm sorry. The line 17
20 says -- and let me read 16 and 17 for context, the --.

21 MR. FITZGERALD: Is this --?

22 MR. ALESSI: I'm sorry; you're on page
23 25?

24 A.L.J. PHILLIPS: No.

25 MR. FITZGERALD: Line 17 is a heading.

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2 A.L.J. PHILLIPS: Page 25?

3 THE WITNESS: Yes. Sorry.

4 A.L.J. PHILLIPS: There's nothing on
5 page 6, line 16.

6 MR. DICHTER: It's 14 and 15, your
7 Honor, is what I have.

8 MR. RIGBERG: Oh, okay. Well, 16 and
9 17 in my copy.

10 THE WITNESS: Sorry; we appear to have
11 different line numbers.

12 Thank you for noting that, Counsel.

13 MR. FITZGERALD: If you could read the
14 sentence, that would be helpful.

15 A. (Cont'g.) Yes. The sentence is the
16 JP's cumulative base rate increases total -- and this is
17 the original language -- 13.9 million. And they are
18 changed to the JP's cumulative base rate increases total
19 13.9 million without levelization, but are 286,000 higher
20 with levelization.

21 A.L.J. PHILLIPS: To a --.

22 THE WITNESS: That's a correction from

23 --

24 A.L.J. PHILLIPS: Sorry.

25 THE WITNESS: -- a larger number.

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2 A.L.J. PHILLIPS: So 286,000 dollars
3 higher with levelization?

4 THE WITNESS: With levelization, yes,
5 your Honor.

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

7 BY MR. RIGBERG: (Cont'g.)

8 Q. Mr. Berkley, do you have any other
9 corrections to your testimony? To your direct testimony?

10 A. No, I do not.

11 Q. Thank you.

12 And if I were to ask you these
13 questions today, other than the corrections you made,
14 would your answers be the same as in your prefiled
15 testimony?

16 A. Yes, they would.

17 MR. RIGBERG: Okay. Your Honor, I
18 would move that Mr. Berkley's testimony be entered into
19 the record as -- along with the -- the material that
20 you've stricken through your ruling. I'm not sure how you
21 want to handle that.

22 MR. ALESSI: Just, your Honor, he said
23 along with the material you've stricken. I think he meant
24 to say something differently.

25 MR. RIGBERG: Right.

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2 MR. ALESSI: Mr. Rigberg, you meant to
3 say --.

4 A.L.J. PHILLIPS: I got it.

5 MR. RIGBERG: The opposite of --.

6 MR. ALESSI: Oh, you got it. Okay.

7 Thank you.

8 A.L.J. PHILLIPS: I've got it. Thank
9 you.

10 So -- and also, I just wanted to note,
11 too, this document was 29 pages in length. I believe you
12 might have said 27. So the direct testimony of Richard
13 Berkley, dated September 14th, 2016, I believe of 29 pages
14 in length should be copied into the record as though given
15 orally, with the exception of those portions that I ruled
16 should be stricken.

17

18

19

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21

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25

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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 NO. 16-W-0130

**DIRECT TESTIMONY OF RICHARD BERKLEY
ON THE JOINT PROPOSAL**

September 14, 2016

Executive Director and General Counsel
Public Utility Law Project of N.Y.
90 South Swan Street – Suite 401
Albany, NY 12210

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1 **I. Introduction**

2
3 Q. Are you the same Richard Berkley who previously submitted testimony in this proceeding?

4 A. Yes. I continue to be employed by the Public Utility Law Project (PULP) as Executive
5 Director and General Counsel.

6

7 **II. Purpose and Structure of the Testimony**

8
9 Q. What is the purpose of this testimony?

10 A. The purpose of this testimony is to provide examples of how the Joint Proposal (JP) put
11 forward by two of the many parties in this proceeding contravenes the public interest. I do this
12 by offering, among other things, critiques of the JP's revenue "giveaways" to the Company as
13 well as several other of the proposed programs, by identifying areas where programs should have
14 been advanced in the JP, and discussing broader policy issues.

15

16 Q. How is your testimony structured?

17 A. To provide context for my criticisms of the JP, I first recount several of the points I made in
18 my testimony in this case docket filed on July 1, 2016. I then discuss each of the specific
19 elements of the JP that are not in the public interest (items A through L below), primarily
20 because they would result in unjust and unreasonable rates during the proposed three-year rate
21 plan, but under the JP as currently written, could extend those rates indefinitely.

22

23 Q. What are the policy subjects this testimony will address?

1 A. I am offering policy testimony on (1) the objective need for Suez's low- and fixed-income
2 customers to have a robust low-income and fixed-income rate reduction program for water, (2)
3 the Ratemaking Treatment of the Abandoned Haverstraw Desalination Project, (3) Suez'
4 customer outreach and education efforts, (4) the level of rate case expense, and (5) comments
5 and recommendations on the public statement process that could maximize public knowledge
6 and participation in securing the fullest developed record for decision-making.

7

8 Q. Which elements of the JP do you assert are contrary to the public interest and would result in
9 unjust and unreasonable rates?

10 A. The elements with which I am concerned include:

- 11 A. Length of Rate Plan
- 12 B. Return on Equity
- 13 C. Cost to Ratepayers of Levelizing Rate Increases
- 14 D. Earnings Sharing Mechanism
- 15 E. Haverstraw Water Supply Costs
- 16 F. Non-Revenue Water
- 17 G. Advanced Metering Infrastructure
- 18 H. System Improvement Charge
- 19 I. Service Classification Study
- 20 J. Customer Outreach and Education
- 21 K. Conservation Program Incentive Mechanism
- 22 L. Filing of the Next Rate Case

23

1 Q. Are you sponsoring any exhibits?

2 A. Not at this time. I reserve the right to file an exhibit with my rebuttal testimony consisting of
3 responses to the information requests submitted by me and other parties on the JP that have not
4 yet been provided.

5

6 **III. Policy Context**

7

8 **A. The Need for a Robust Low-Income Rate Reduction Program**

9 Q. What are some of the major population demographics of Rockland County?

10 A. According to the U.S. Census American Community Survey, the population of Rockland
11 County was roughly 326,000 in 2015. Of that population, roughly 1/3 are age 50 and older, and
12 23% are below the age of 14 years; if you expand that population to 18 years of age, then we
13 learn that that in 2014 there were roughly 87,000 children younger than 18 documented in the
14 County, of whom 24% lived below the poverty line. Overall, the ACS reports that slightly more
15 than Rockland 44,000 residents live below the poverty level; and there are many ways to slice
16 and dice this data, but by and large, the face of poverty in Rockland County is composed
17 predominantly of seniors and children.

18

19 Q. Does Rockland County have large numbers of low-income and fixed-income households?

20 A. Of the more than 98,000 households in Rockland County, about 21,000, or 21%, have annual
21 incomes less than \$35,000, which approximates 200% of the federal poverty line for an average
22 size household in the county. Based on the ACS, 90% (19,000) of these low income households
23 spend at least 30% of their income on housing costs, *including utilities*.

24

1 Q. Is it possible to estimate how many low income households are customers of the Company?

2 Yes. Seventy-four thousand (74,000) of the more than 98,000 households in Rockland County,
3 or 75%, are customers of the Company. By applying this ratio to low income households, I
4 estimate that roughly 14,250 of the Company's customers have incomes below 200% of the
5 federal poverty line and are therefore "low income customers" as defined by the Public Service
6 Commission in its May 20, 2016 *Order Adopting Low Income Program Modifications and*
7 *Directing Utility Filings* (Case 14-M-0565, Order at 4; the "Affordability Order").

8

9 Q. What are the current and proposed average monthly bills for a typical residential customer of
10 the Company?

11 A. Based on information provided by the Company at its June 15-16, 2016 public statement
12 hearing, the average monthly bill, before surcharges and adjustments, of a typical residential
13 customer using 9 CCF (6,732 gallons) per month is \$61.77. The Company's proposed rate plan
14 would increase this monthly bill 13.2%, to \$69.94, before surcharges and adjustments.

15

16 Q. Can you estimate the amount of discount for the Company's low income customers that
17 would be necessary to be consistent with the goals of ameliorating the utility portion of the
18 Housing-Cost Burden for low income customers as set forth in the Public Service Commission's
19 order in Case 14-M-0565?

20 A. Not directly. However, based on data provided in Case 14-M-0565, it is possible to estimate
21 the total utility burden of the Company's low income customers who pay their own electric, gas
22 *and* water bills. A typical full service low income customer of Orange and Rockland Utilities
23 pays \$265 per month if they are a gas-heating customer and \$206 per month if they are an

1 electric heating customer. By adding the current typical water bill, before surcharges and
2 adjustments, of about \$62 to electric and gas bills for these customers, the total electric, gas and
3 water utility burden of these customers would be between \$264 and \$327 per month, or \$3,168 -
4 \$3,924 annually. For the Company's low income customers, this utility burden represents
5 approximately 9 – 11% of annual household income, which exceeds the Affordability Order's
6 6% income cap by 50-80%.

7

8 Q. Did the Commission contemplate the inclusion of utility water service in Case 14-M-0565 (its
9 "Affordability Proceeding")?

10 A. No, the Commission did not directly address the Affordability Order to costs other than those
11 of energy service. It was the Commission's apparent intent however, to make concerns about
12 affordability to the Commission's public utility policy and analysis as shown by the concept's
13 expansion into the Reforming the Energy Vision (REV) proceeding. Additionally, it is important
14 to note that the Census Bureau *does* include water utility service when considering the utility
15 portion of computing total housing costs (and burden) including utilities. Therefore, it is
16 possible and prudent from a policy standpoint to extend the Commission's maximum "Energy
17 Burden" targeted in the Affordability Proceeding to include water utility service in the
18 Company's service area and estimate a monthly discount necessary to reduce the total "Utility
19 Burden" of the Company's low income customers to 6%, or \$2,100 annually. For the Company's
20 low income customers who are also electric or gas heating customers of Orange and Rockland,
21 total Utility Burden would need to be reduced by \$1,068 or 34 percent annually (electric heating)
22 and \$1,824 or 46% (gas heating). Applying these percentages uniformly to water utility service,
23 a monthly low income discount of between \$21 and \$28 would be necessary to reduce the water

1 portion of the Utility Burden of the Company's low income customers to 6%, *based on current*
2 *rates before surcharges and adjustments.*

3

4 **Q.** What would be the cost of such a discount program?

5 **A.** I'm unable to determine the cost of such a program because due to the Company's omission
6 of tracking such data, I don't possess the data on the Company's low income customers
7 necessary to determine how many are also customers of Orange and Rockland Utilities and, for
8 those who are, how many are full (or only electric) service customers. However, I can estimate
9 that if all of the Company's low income customers are also full-service electric and gas
10 customers or Orange and Rockland, then the maximum cost of such a low income program
11 would be \$4.8 million. Since such a scenario doubtlessly inflates the potential costs, instituting a
12 low income rate reduction program would be less costly.

13

14 **Q.** Are there any examples of low-income or fixed-income water rate reduction programs in New
15 York?

16 **A.** There are no formal rate reduction programs in New York's privately owned water companies
17 at this point, to my knowledge. Suez, however, has a charitable entity that provides small grants
18 formerly called UWCares, and now called SuezCares, which is completely voluntary and has
19 provided grants of approximately \$100 to 100 or fewer ratepayers each year beginning in 2005. I
20 discuss this program in more detail later in my testimony.

21

22 **Q.** Does the Company keep data on how many customers would be eligible for rate reductions if
23 receipt of SNAP, TANF or another safety net program was used to determine eligibility?

1 A. No. The company does not receive data on how many customers apply for the program, or
2 how many people are eligible – presumably some fairly large portion of the 44,000 Rockland
3 residents living in poverty. Instead, the Company simply learns of how many customers qualified
4 for grants.

5

6 Q. Do any other states have low-income and fixed-income rate reduction programs operated by
7 investor-owned water utilities?

8 A. Yes. The state of California contains a utility called California Water Service (Cal Water). Cal
9 Water services more than twenty water districts, and offers an income-tested program called
10 Low-Income Rate Assistance (LIRA), which may reduce water costs for residential users up to
11 \$18 per month, and up to \$30 per month in special targeted areas.

12

13 Q. Do any East Coast investor-owned water utilities offer low-income rate reduction programs?

14 A. Yes, American Water, a utility that provides service in sixteen states. Although New York
15 American Water does not currently operate a low-income assistance program (please note that
16 American Water has proposed introducing such a program in its pending rate proceeding—16-
17 W-0259), Pennsylvania and New Jersey American Water both have rate reduction programs.
18 Like Suez, Pennsylvania American Water’s rate reduction program is funded through voluntary
19 contributions – approximately \$260,000 by the Company and roughly another \$100,000 from
20 employee and customer donations. Grants reduce rates by up to \$500 per year and an 80%
21 discount on the monthly “water service fee.” New Jersey American water has a similar program
22 for income eligible households of up to a \$500 annual grant, and up to a 100% discount of the
23 monthly “fixed service charge,” which more than 5,900 customers receives.

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Q. Is there any objective information that clarifies the importance and need for a low-income water rate reduction program?

A. Yes. The Water Research Foundation and U.S. EPA co-funded a definitive report entitled “Best Practices in Customer Payment Assistance Programs” that directly linked the unaffordability of water and deleterious public health outcomes and had extensive review of best practices for utilities that might move to create a customer payment assistance program.

Q. Are there any best practices the Company could follow in creating a low-income rate reduction program?

A. Yes. The National Consumer Law Center (NCLC) authored a report in 2014 on water affordability that provided extensive analysis of best practices in existing water affordability programs, and information that would be valuable to a utility creating such a program. Similarly, the University of North Carolina’s environmental finance blog notes in a late 2015 article that Atlanta, Georgia targets at least one program toward income-eligible senior homeowners that provides a 30% discount on water and sewer fees.

Q. Based on the foregoing, do you have any recommendation for the Commission?

A. Yes, I recommend that the Commission direct Suez to file tariff amendments to implement a low-income rate reduction program equivalent to the program American Water has proposed in its current rate proceeding.

B. Ratemaking Treatment for the Abandoned Haverstraw Desalination Project

1 Q. Please provide a brief background pertinent to your recommendation regarding the
2 ratemaking treatment for the \$54.5 million in pre-construction costs associated with the
3 abandoned Haverstraw Desalination Project (Project).

4 A. It is important to note at the outset that the majority of the JP's requested Rate Year 1 revenue
5 increase of \$7.7 million (or 9.07% over projected revenues at existing rates) is attributable to the
6 Project. According to the Company's response to PULP IR No. 3, the requested rate treatment of
7 the Project accounts for \$6.2 million of the proposed revenue increase. [Please note: any IR
8 responses to which I refer are included in my Exhibit ___ (RB-2-4), which ~~was~~ were appended to
9 my testimony filed on July 1, 2016.]

10 The Haverstraw Desalination Project was selected by United Water's (now Suez) management as
11 the solution for the projected long-term water supply shortfall, pursuant to the PSC's 2006 rate
12 order. Shortly after announcing the project, however, the demand for water started to abate. (It
13 has now been virtually flat for the last five years even though the population continues to
14 increase.) ~~By 2009 the Company knew the results of the USGS study that found the aquifer was~~
15 ~~recharging at a faster rate than previously thought. These two major facts should have caused~~
16 ~~Suez to undertake a complete review of the need for the project. But that did not happen.~~

17

18 ~~Q. At the point the Company knew the aquifer was recharging faster than originally projected,~~
19 ~~and that demand had slumped, what should it have done?~~

20 ~~A. The Company should have communicated with the PSC and the parties in the 2006 and 2009~~
21 ~~rate cases, and with the ratepayers about the changed circumstances, and it should have proposed~~
22 ~~ending or at a minimum delaying the project until it had received new direction from the PSC.~~
23 ~~During the pendency of the 2009 rate case, in particular, various parties submitted public~~

1 ~~comments to the PSC and Suez about the lack of need for the Haverstraw Desalination Facility~~
2 ~~due to known measurable changes in consumption patterns, the new information on the aquifer~~
3 ~~recharge rate, and the availability of less expensive and environmentally sustainable smaller~~
4 ~~sources of new water supply.~~

5 ~~In consideration of the reduction in demand, development of one or more smaller sources of new~~
6 ~~supply, in contrast to the large and expensive (per unit and overall) Haverstraw Desalination~~
7 ~~Project, would have been in the public interest and in ratepayers' interest. Instead, the Company~~
8 ~~began spending money developing the project at an even faster rate. This was a poor~~
9 ~~management decision. The parent company of Suez should be responsible for the costs arising~~
10 ~~from this failed misguided project, rather than the ratepayers, so that a clear market signal is sent~~
11 ~~to public utilities that the cost of similarly flawed projects will not be imposed 100% on~~
12 ~~ratepayers.~~

13

14 Q. Should there be a return on the unamortized balance?

15 A. ~~No, if the PSC maintains its determination not to place all or some of the spending on this~~
16 ~~failed project on Suez' shareholders, there should be no return on the unamortized balance. To~~
17 ~~provide a full rate of return on this management failure would be to encourage similar ill advised~~
18 ~~projects in the future. In other words, allowing a return on the unamortized balanced of a failed~~
19 ~~project creates both perverse precedent and a perverse incentive for public utilities not to adhere~~
20 ~~to a due standard of care when planning major capital projects.~~

21

22 Q. Is there anything unusual about the amortization period?

1 A. Ironically, the JP's fifteen-year recovery term represents a faster amortization than if the
2 Project had been built and placed in service. It is as if the Company were being rewarded for its
3 failure in completing the project.

4

5 Q. Why do you say the desalination plant is a management failure and a regulatory failure?

6 A. Historically, regulation of public utilities is supposed to be a counterbalance against their
7 monopoly or monopsony status and the dominant market power of monopolies, not to reward
8 monopolies for failed decision-making. If a competitive company like Apple produces a product
9 no one wants, then Apple's shareholders (and eventually management) suffer. Historically
10 however, without intervention by a regulator acting in the public interest, utilities and other
11 monopolies are not exposed to the discipline of the marketplace like the example just given of
12 Apple. And because the utilities' shareholders would not pay in such a hypothetical, there is no
13 incentive to act prudently. There are obvious parallels to the current posture of this case.

14

15 Q. What sort of return should the Commission approve if it determines not to send improper
16 market signals to the Company?

17 A. At the very least, the Commission should authorize only a return reflective of short-term debt
18 interest rates. The pre-construction costs were undoubtedly financed with short-term debt or if
19 financed out of current cash, the opportunity return would be measured by the short-term debt
20 interest rate. To provide a full return as if these development costs led to a successful project
21 would create an impermissible arbitrage that should be against public policy. Suez is in the
22 business of providing water service. It should not be allowed to profit by substituting a long-
23 term rate of return on expenditures that will never contribute to providing water service.

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~~Q. Did the Company's expenditures generate any "used and useful" infrastructure?~~

~~A. No. The expenditures did not result in any "used and useful" addition to the Company's infrastructure.~~

~~Q. What is important about the "used and useful" standard and its relation to this case?~~

~~A. The "used and useful" standard is followed by approximately half of the states and, generally, provides that the cost of construction or expansion of a facility undertaken by a public utility is not included in the rate base or otherwise included in rates until such time as the facility is used and useful in service to the public. Although New York does not strictly follow this standard, as the New York Times noted in analyzing the Supreme Court's decision in the case of Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989), the New York PSC's departure from this national precedent was occasionally to allow utilities to recover in rates on uncompleted plant. Generally speaking, however, the used and useful principle is that ratepayers should only pay for physical plant that is actually benefitting the ratepayers, as Commissioner Florio stated concisely in the California PUC's decision in the Aliso Canyon Dam case decided in Decision 13-04-014, April 2013.~~

~~Q. Does New York's PSC apply the "used and useful" test?~~

~~A. Yes and No, although as the PSC said in its decision in Opinion 86-14, 26 NY PSC 1433, the Shoreham case, it is not bound by that principle. However, here Suez spent huge sums of money over more than seven years just trying to obtain various permits; this is far different from a situation where a utility began construction of a facility and then circumstances changed. The~~

1 ~~regulatory hurdles the Project faced year after year after year should have elicited an awareness~~
2 ~~on the part of Suez that it must rethink, regroup and react in a reasonable manner. It is bad~~
3 ~~policy, bad precedent and an inversion of the appropriate use of market incentives for the~~
4 ~~ratepayers to spend millions of dollars for a failed project that despite millions of dollars of~~
5 ~~expenditures was effectively only able to “construct” a pile of papers that are of no use to the~~
6 ~~ratepayers or, presumably, to the Company.~~

7

8 ~~Q. Should the New York PSC have applied the “used and useful” test in this case?~~

9 ~~A. Yes, undoubtedly. Particularly so when the avenues to recovery via a prudence proceeding are~~
10 ~~not available, as in this case.~~

11

12 Q. How would such expenditures normally be recovered?

13 A. In traditional rate regulation, the investors raise the debt and equity funds to support the
14 investment in plant. The utility is allowed to accrue interest on the Construction Work in
15 Progress (CWIP) during the construction period, known as an Allowance for Funds Used During
16 Construction (AFUDC). Tellingly, Suez failed to provide any case law or PSC precedent in
17 support of its request to include Project development costs in rate base. See the Company's
18 response to PULP IR No. 18(c).

19

20 Q. When does AFUDC end?

21 A. As soon as the project is completed and operating, AFUDC ceases and total balance including
22 accumulated AFUDC is transferred to the plant account(s) and in the next rate case is picked up
23 as part of the rate base or through a surcharge. The investment then earns the opportunity to

1 obtain a full return, if management is efficient and can stay within the authorized O&M
2 allowances provided for in the last rate case.

3

4 Q. Do you believe the Company's receipt of a return on a failed project is bad policy?

5 A. Yes, for several reasons. First, the manner in which the PSC treats Company ventures sends
6 market signals that should either encourage the Company to continue engaging in properly
7 planned prudent expenditures, or discourage the Company from proposing risky, overly
8 expensive or otherwise imprudent expenditures of the ratepayers' money. ~~Here, the PSC is~~
9 ~~awarding a return to a failed project where no productive infrastructure was ever built, and where~~
10 ~~the Company ignored several indicia over almost a decade that should have alerted it to end the~~
11 ~~project, such as the USGS study and the failure of demand to rise, to name two examples. That is~~
12 bad policy and bad precedent.

13

14 ~~Q. Do you have another reason you believe this is bad policy?~~

15 ~~A. Yes. In granting a return on this project, the PSC has additionally chosen not to adhere to~~
16 ~~commonly accepted accounting and contracting standards by effectively ignoring the fact that the~~
17 ~~Company submitted large numbers of legal invoices that are so heavily redacted they could not~~
18 ~~be audited. Perhaps even more distressingly, the PSC has also chosen to accept without question~~
19 ~~large numbers of invoices that contain no explanation of the work performed. Accepting invoices~~
20 ~~that cannot be verified in a properly conducted audit is bad policy and bad precedent, and~~
21 ~~violates the PSC's fiduciary duty to act in the public interest.~~

22

1 Q. Has the Company made any attempt to offset, somehow, the cost of the “planning process” in
2 a manner that would reduce ratepayer impact?

3 A. The Company has produced no testimony concerning such an attempt, if indeed it has made
4 one. Instead, the Company’s actions appear more like it is seeking to convert a failed project into
5 a profit center. Putting aside the issues of whether or not the Company has a duty to try and
6 mitigate the ratepayer impact from such a large failed project, the Company does not appear
7 from its rate panels to have made an attempt to determine if there is any value to the work that
8 was done. Suez is a large multi-national organization and it is difficult to credit that none of the
9 work could be used in whole or in part within the Suez empire.

10

11 **C. Customer Service, Outreach and Education**

12 Q. Do you have a general observation about the Company's customer service and outreach and
13 education efforts?

14 A. I found surprising the response of Suez to PULP IR No. 8(b) that it provides no written
15 material in any language other than English. There, the Company stated: "The company's
16 outreach and education programs are geared towards its overall customer base. The company
17 does not have a program targeted to customers for whom English is a second language." In the
18 subject service territory however, many of the residents are Spanish, Yiddish and Creole
19 speakers for whom English is a second language. It is common for municipal and business
20 signage, in downtown Haverstraw, for instance, to be in both English and Spanish.

21 This could be particularly problematic because, for example, the proposed language put forth in
22 the Company’s tariff leaf 40 of P.S.C. No. 1 – Water arguably violates the portions of the Home
23 Energy Fair Practices Act (HEFPA) relating to private water companies because it is contrary to
24 the due process protections HEFPA provides against shut offs and/or terminations. In addition,

1 the proposed language is contrary to public policy, since it does not distinguish between the acts
2 of landlords and/or property owners, and the effects that terminations aimed at sending signals to
3 landlords/owner will have upon tenants that do not have control of the leaking infrastructure.
4 However, the consumers that would be unable to read the Company's notices would have no way
5 of knowing that their rights were being transgressed.

6

7 Q. Do you have any observations and recommendations regarding the Company's outreach and
8 education efforts targeted to low-income and payment-troubled customers?

9 A. It appears from the responses to PULP IR Nos. 8, 9 and 10, that improvement opportunities
10 exist. Suez' financial assistance program (Suez Cares) should be promoted in more venues and in
11 more languages. Currently, it appears, information about the program is provided only annually
12 in the Customer Information Guide and quarterly in bill inserts and only in English. In its
13 response to 8(a), Suez also indicated that it refers customers to Suez Cares and to the Rockland
14 County Department of Social Services. The response does not describe how many customers are
15 referred, what is said them, if the Company employees can speak in languages other than
16 English, or whether the Company follows up with the customer.

17 Similarly, the response to PULP No. 9 suggests that enhancements to Suez Cares are warranted.
18 The typical grant is \$100; in 2013 and 2014, just 101 customers and 99 customers, respectively,
19 received this assistance and in 2015, a meager 64 customers received assistance. I recommend
20 that Suez actively promote the program in community centers, houses of worship and in similar
21 venues and in several languages as appropriate.

22

23 Q. Does PULP have other concerns linked to insufficient communications by the Company?

1 A. Yes. PULP is also concerned about the proposal on page 5 of the JP's Appendix 3 to allow
2 Suez the discretion to shut off residential customers if they "willfully" waste water. I appreciate
3 that Suez suggested in its response to PULP IR No. 10 that it plans to send three letters to the
4 customer one week apart informing the customer of the situation, but if those letters are only in
5 English and not also in Spanish, Creole and Yiddish (the languages mentioned elsewhere in the
6 JP), a significant portion of the Company's customers will not be able to understand such
7 notices. That is particularly dangerous because water is essential to life. Instead, I believe that
8 strict HEFPA-like protocols must be developed and implemented before any residential customer
9 is threatened with termination. The absence of these basic consumer protections is another
10 reason to reject the JP as filed. Further, I also find inadequate the Company's suggestion that its
11 Homeserve program would protect all low-income customers from loss of service due to leaks.
12 There is no evidence in the record at this point that the Homeserve program is capable of such
13 protection. Without protections and requirements, this proposal is fatally flawed.

14 **D. Rate Case Expense**

15 Q. Do you have any observations regarding the rate case expense for which Suez is seeking
16 reimbursement from ratepayers?

17 A. Yes. This case provides an excellent example of the disparity of resources among parties, and
18 the need for robust intervenor funding similar to that available in such states as California. The
19 Company's rate case expense more than doubled between its 2006 rate case and this rate case.
20 (Compare Exhibit ___ Company O&M Panel-7, page 25 to Suez' response to PULP IR No.
21 16(d).) This large increase is far greater than the rate of inflation over the last decade.
22 The Company's projected rate case expense of \$1.233 million is almost 10% of the overall base
23 rate request. Not only are ratepayers asked to fund the services of inside counsel and the one
24 large full service law firm used in previous rate cases, but in this case the Company has engaged

1 another large full service law firm for additional support. Legal fees alone for this one case are
2 more than the entire annual budget of PULP.

3 It is simply wrong that the PSC has given almost complete discretion to utilities to engage rate
4 case lawyers and consultants regardless of the cost to ratepayers. Without cost controls or any
5 metrics whatsoever, utilities have been given the incentive to maximize the use of rate case
6 lawyers and consultants so as to achieve a higher rate increase. This policy failure is
7 compounded by the policy decision of the PSC, with which I strongly disagree, that it does not
8 have the statutory authority to provide ratepayer funds to ratepayer-intervenors to hire their own
9 rate case advocates.

10 Similarly, I strongly disagree with the PSC allowing recovery for the cost of a utility rate of
11 return witness who provides testimony in conflict with the PSC's well-established Generic
12 Financing Methodology. It makes no sense for ratepayers to pay thousands of dollars in this
13 and/or other rate cases for arguments that have not been accepted for more than 20 years.

14

15 Q. Do you have any recommendations regarding rate case expense?

16 A. Yes. I recognize that ratepayers will likely benefit from some elements of the rate case filing.
17 However, it is unfair for ratepayers to fund all or most of rate case expense since the parent is the
18 primary beneficiary of increased rates. I recommend that the recoverable portion of the
19 Company's rate case expense be reduced to the 2006 level of \$580,000, inflated to 2016 dollars. I
20 also recommend that the PSC specifically remove the expense for the rate of return witness.

21

22 **E. Public Statement Hearings and Customer Engagement**

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Q. Do you have any concerns with the scheduling of public statement hearings in this case?

A. Yes. The initial public statement hearings were arguably held too early in the process, since they occurred before the submission of testimony by expert witnesses, before a potential joint proposal was announced or developed, and before any evidentiary hearings.

Q. Were the measures taken to generate public involvement sufficient?

A. At the time of my initially filed testimony, I would have definitively said “No.” With the addition of a public statement hearing after the expert testimony and the submission of the JP, the communications with the public were far closer to adequate, as I will explain in this testimony.

Q. Was there an audience for the public statement hearings?

A. Yes. In my opinion however, and as stated by the participants at the hearings, it was only because of the Rockland Water Coalition’s extensive use of social media that the hearings were attended by roughly 60 to 80 people per session. It remains to be seen if this will also be true for the September 29, 2016 public statement hearing.

Q. Were any Commissioners of the PSC present at the public statement hearings held prior to the submission of expert witness testimony and the unveiling of the JP?

A. No. The failure of any Commissioners to be present appeared to concern the audience.

Q. Do you have any suggestions for improvement?

1 A. Yes. I recommend that there should have been at least two information sessions that would
2 be well publicized and held within six weeks of the Company's filing. Then after the rebuttal
3 testimony is submitted and all of the issues are joined, have the standard informational and
4 public statement hearings. The Commission's addition of a public statement hearing in late
5 September after the unveiling of the JP is a strong step toward the measures necessary to fully
6 engage the public, but should be supplemented with informational events as noted above.

7

8 Q. Why would that improve the process in any way?

9 A. Water is a necessity of life, and the failure to engage the public completely on the issues will
10 only create future antipathy to the cost of the JP and the eventual need to take further measures to
11 ensure the water security of the county, because the ratepayers will believe that they should have
12 received more transparency and more process. With such additional transparency measures, any
13 interested person can become properly informed early in the case and then when the issues are
14 joined the public comments can be more specific and meaningful. Additionally, one of the early
15 information sessions should be posted on the Company's and the Commission's website for
16 anyone to review at their leisure.

17

18 Q. Do you believe the process followed in this case depressed public participation?

19 A. Yes. The process followed in this case appeared to minimize public participation, despite the
20 fact that the County's water task force represents a strongly engaged electorate and numerous
21 elected officials. The Secretary issued a notice to the parties three weeks before the hearings, but
22 it issued right before the long Memorial Day weekend, which was extended in Rockland's school

1 districts year due to the absence of “snow days” for the school children. The result of this timing
2 and concurrent distractions allowed insufficient time to enable people to plan their schedules.

3

4 Q. Was the notice insufficient?

5 A. Yes. A quarter-page advertisement run on Monday and Tuesday, the lowest circulation days
6 of the year was also inadequate notice. Similarly, the Commission Press Release coming out on
7 Monday – two days before the first hearing, was not timed to increase turnout and participation.
8 Recognizing that there are already two active groups -- Rockland County Task Force on Water
9 Management and the Rockland River Coalition -- the Commission could easily have coordinated
10 the scheduling with them, and requested those two groups to use their social media and
11 membership lists to publicize the public statement hearings. Additionally, the relevant section of
12 the Hudson Valley has a plethora of active environmental advocacy groups like Scenic Hudson,
13 Riverkeeper, the Sierra Club, and NRDC, to name a few, that have well-developed member lists
14 and media contacts that could have further publicized the hearings if they had been engaged as
15 partners in the process.

16 Additionally, a full size one-page add should be published in local newspapers at least three days
17 in a row – on Friday, Saturday and Sunday. Finally, and quite frankly, people do not read
18 newspapers as they did in the past. Much news now comes from the internet and the
19 Commission should update its outreach mechanisms and consider using its social media outlets
20 to increase outreach as it does for the REV initiative.

21

22 **IV. Flawed Elements of the Joint Proposal**

1 *A. Length of Rate Plan*

2 Q. The JP calls for a three-year rate plan. Do you find the length of the rate plan objectionable?

3 A. Yes, for several reasons. The multi-year rate plan comes at a hefty price for ratepayers. The
4 so-called “risk premium” or “stay out premium” is completely unnecessary in this case, given the
5 inherent nature of the water business and a multitude of true-ups and reconciliations. Further,
6 Staff testified that the appropriate return on equity for Suez, based upon the Commission’s
7 Generic Financing Methodology (GFM), is 8.5%. Staff further testified that, to achieve a neutral
8 impact on revenue requirement, using the JP’s ROE of 9.0% instead of the GFM’s 8.5%, the
9 appropriate common equity ratio is 42.8%. The JP’s common equity ratio is 46%. This
10 provision increases revenue requirement by approximately \$1 million a year.

11

12 The length of the rate plan is not in the public interest for three other reasons. First, a
13 comprehensive service classification study is critical in designing a robust conservation plan.
14 The JP (on page 22) states that the Company is not obligated to provide such study until it files
15 its next rate case. I believe Suez should commence the study early enough that its results can be
16 implemented on February 1, 2018 (the next rate year will conclude on January 31, 2018).

17

18 Second, the JP recommends implementation of a conservation program. This program should be
19 subject to the type of rigorous analysis that occurs during a rate proceeding well before three
20 years elapse.

21

22 Third, as noted above, PULP urges the Commission to require Suez to implement a low income
23 rate reduction program to address affordability obstacles in the service territory. If the

1 Commission declines to do so, PULP must have the ability to argue for that program next year
2 rather than wait three years.

3
4 *B. Return on Equity*

5 Q. What are your observations regarding the JP's 9.0 ROE?

6 A. It was arbitrary and capricious for the Signatory Parties to depart from the Commission's
7 long-standing GFM by 50 basis points. The resulting revenue requirement is by definition
8 unjust and unreasonable because it is not grounded on a defensible process.

9
10 *C. Cost to Ratepayers of Levelizing Rate Increases*

11 Q. Do you support the alternative proposal of levelizing the cumulative base rate increases over
12 three years?

13 A. No. Levelizing the increase reduces the first year increase about one-third, from 9.07% to
14 5.9%, but this reduction is costly to ratepayers. The JP's cumulative base rate increases total
15 \$13.9 million without levelization but are \$286,000 higher with levelization.

16
17 *D. Earnings Sharing Mechanism*

18 Q. In your opinion, is the structure of the ESM in the public interest?

19 A. No. ESMs are another way the Commission rewards utilities for agreeing not to file a rate
20 case each year. Due to the introduction of a conservation plan, the need for scrutiny of service
21 classes, and continuing oversight required regarding the Company's relationship with the
22 Rockland County Water Task Force, the ESM incentive is misplaced. It is not clear, for
23 example, whether or not spending less than the budgeted amounts on rebates would inure to the
24 Company's benefit regarding the ESM.

25

1 Additionally, the ESM is flawed because the 65 basis point dead band is larger than in most JPs;
2 Suez has done nothing extraordinary to deserve this benefit. The ESM is also flawed because the
3 calculations exclude the shareholder portion of property tax refunds, property tax reconciliations
4 and antennae lease revenue.

5
6 Finally, the ESM in this case is plain poor public policy. Suez has a poor relationship with its
7 ratepayers. In a case where the Company is seeking to recover millions of dollars for an
8 unpopular project that was not authorized and hence never built, providing a potential reward is
9 unseemly.

10

11 *E. Haverstraw Water Supply Costs*

12 Q. In your opinion, should the Haverstraw Water Supply Project Costs be put in the ratebase in
13 the manner anticipated in the JP?

14 A. No. ~~There are several reasons why the Haverstraw Water Supply Project (“HWSP”) costs~~
15 ~~should not have been allowed into the ratebase, chief among which are the facts that: (i) the~~
16 ~~Commission should not breach the nationally accepted legal firewall of only allowing recovery~~
17 ~~in the ratebase for infrastructure that is both “used and useful;” (ii) irrespective of the~~
18 ~~Commission’s “explicit instructions” to the Company to continue in its process of developing the~~
19 ~~project, once the underlying facts underpinning the declared need to construct the desalination~~
20 ~~plant had changed, it is hard to see how the public interest was furthered by allowing the~~
21 ~~relatively vast per capita costs to continue to be incurred; and (iii) to allow full recovery on~~
22 ~~projects such as this will send inappropriate market signals to the Company and other utilities,~~
23 ~~which must, under the regulatory compact, bear some of the risk of developing failed projects.~~

1 ~~Finally, I would only add that~~ recovery of these costs in the context of the JP's flawed
2 conservation plan and incentive mechanism and the reluctance of Suez to work collaboratively
3 with the Rockland County Water Task Force is especially misguided public policy.
4

5 *F. Non-Revenue Water*

6 Q. Are the Company's proposals to track and reduce the instances of "non-revenue water"
7 exceeding 18% in a given year, and particularly the use of new tariff language to effect such
8 reductions in the public interest?

9 A. No. It is good that the Company agreed to comply with PSC reporting regulations. However,
10 as described in the testimony of other witnesses, the JP is sorely deficient in resolving the
11 Company's large NRW in a way that benefits ratepayers.
12

13 *G. Advanced Metering Infrastructure*

14 Q. What is your concern about AMI in the JP?

15 A. The cost of the AMI program appears not to have a cap or any cost controls or be supported
16 by a benefit cost analysis. A cap and such analysis are important because ratepayers will be
17 paying for this still new technology.
18

19 *H. System Improvement Charge*

20 Q. Please comment on the SIC as set forth in the JP.

21 A. In my judgment, the JP misconstrues the purpose of a SIC. The general practice in New York
22 is for recovery of and on project costs to begin after a plant is placed into service. For smaller
23 companies with relatively higher financing costs, it makes sense to allow recovery during

1 construction for projects that are both expensive and for which the timing is uncertain. In this
2 JP, though, even minor projects, with planned dates, are included in the SIC. This has the effect
3 of artificially suppressing the announced rate increase and associated bill impacts.

4

5 *I. Service Classification Study*

6 Q. Are there any deficiencies in the Service Classification Study as proposed in the JP?

7 A. Yes. The study should be completed in order to be implemented as of the beginning of the
8 rate year 2018.

9

10 *J. Customer Outreach and Education*

11 Q. Is the JP clear about which languages the Company's material will be translated into?

12 A. No. In some places, the JP indicates that material will be translated into Spanish, Creole and
13 Yiddish, which are the first languages of many Rockland County residents. I recommend that the
14 Commission require the Company to translate all of its customer outreach and education material
15 into those three languages.

16

17 *K. Conservation Program Incentive Mechanism*

18 Q. Do you approve of the design of the Conservation Program Incentive Mechanism?

19 A. Not at all. With decades of energy efficiency programs under their belt, I am surprised that
20 DPS Staff would agree to the JP's approach. Many flaws can be identified. An overriding flaw
21 is conceptual. The design of the incentive is not intended to encourage innovation or creative
22 thinking or even hard work. All the Company need do to earn a reward at the astounding level of
23 63 basis points is spend more of the ratepayers' money on rebates. (See the JP at page 31: "For

1 the avoidance of doubt, actual water savings will equal the number of rebates redeemed
2 multiplied by the assumed water savings per rebate for each rebate type.”) This outdated
3 approach to incentives is contrary to the discussion of market-based positive incentives in REV-
4 related proceedings.

5

6 *L. Filing of the Next Rate Case*

7 Q. Do you have an opinion about the JP’s treatment of the timing of Suez’s next rate filing?

8 A. Yes. Section XXVI of the JP prohibits the Company from filing for new rates that would go
9 into effect before February 1, 2020. However, the critical converse is missing. Equally
10 important, because of the generous capital structure, the generous ESM, the need for rigorous
11 review—and possible adjustments--of the conservation plan, rate design, and a low income rate
12 reduction plan, it is in the public interest for the Commission to require the Company to file for
13 new rates that would go into effect on February 1, 2020 (assuming my recommendation is not
14 followed and a three-year rate plan is approved).

15

16 Q. Does that conclude your testimony?

17 A. Yes.

18

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2 MR. RIGBERG: Thank you, your Honor.

3 BY MR. RIGBERG: (Cont'g.)

4 Q. Mr. Berkley, do you have also before
5 you a document entitled Rebuttal Testimony of Richard
6 Berkley on the Joint Proposal, dated September 21, 2016?

7 A. Yes, I do.

8 Q. Okay. And do you have any corrections
9 to that testimony that you would like to share with the
10 judge and parties?

11 A. Yes, I do. On line 24 of page 3,
12 there is a sentence that starts with the word, exhibit.
13 And in the rebuttal testimony, it is Exhibit R.B. 3. That
14 should be corrected to R.B. 14.

15 Q. Thank you. Do you have any other
16 corrections to your testimony?

17 A. I do not.

18 Q. Okay. If -- if I -- other than that
19 correction, if I were to ask you these questions today,
20 would your answers be the same as in your prefiled
21 testimony?

22 A. Yes, they would.

23 MR. RIGBERG: Okay. Your Honor, I
24 would move that this testimony be entered into the record,
25 minus the sections that you've ruled have been -- should

1 16-W-0130 - October 27, 2016 - Suez Water

2 be stricken.

3 A.L.J. PHILLIPS: The rebuttal
4 testimony of Mr. Berkley dated -- it actually has a date
5 of September 21st on the cover -- should be copied into
6 the record as though given orally, with the exception of
7 the portions of that testimony that I've ruled should be
8 stricken.

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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 NO. 16-W-0130

**REBUTTAL TESTIMONY OF RICHARD BERKLEY
ON THE JOINT PROPOSAL**

September 21, 2016

Executive Director and General Counsel
Public Utility Law Project of N.Y.
90 South Swan Street – Suite 401
Albany, NY 12210

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1 **I. Introduction**

2 Q. Did you submit direct testimony on the Joint Proposal in this proceeding?

3 A. Yes.

4

5 **II. Purpose and Structure of the Testimony**

6 Q. What is the purpose of this rebuttal testimony?

7 A. The main purpose of my testimony is to provide my reactions to the direct testimony of the
8 DPS Staff and of Suez New York and, in a general way, of the intervenors opposing the JP. I
9 also provide recommendations based on that testimony. In addition, as I reserved the right to do
10 in my direct testimony, I comment upon several of the responses to information requests to
11 which responses were not received prior to the filing of my direct testimony.

12

13 Q. How is your testimony structured?

14 A. The testimony first discusses the metrics by which the value to the public interest of a joint
15 proposal is to be judged. It then focuses on the direct testimony of Suez New York and DPS
16 Staff in support of the JP. Third, the testimony addresses several points raised by the intervenors
17 in their direct testimony in opposition to the JP. Finally, the testimony offers a holistic
18 suggestion about the best way to handle Suez New York's water conservation efforts, using the
19 Commission's best practices experiences in energy conservation.

20

21 Q. Are you sponsoring any exhibits?

22 A. Yes. In my direct testimony, I reserved the right to file an exhibit with my rebuttal testimony
23 consisting of responses to the information requests submitted by me and other parties on the JP
24 that had not yet been provided. Exhibit ____ (RB-14) comprises responses to information
25 requests to which I refer, or on which I have relied.

26

27 **III. Overview**

28 Q. Would you comment on the theme connecting the main points discussed later in this
29 testimony?

1 A. The direct testimonies of the parties reinforce rather than weaken my view that the Joint
2 Proposal is not in the public interest because of its embrace of rate techniques and policies that
3 would lead to unjust and unreasonable rates, and because of the proposal of a seriously flawed
4 conservation plan, the design of which is contrary to the Commission's best-practices efficiency
5 programs in the energy arena. Additionally, proponents of a settlement proposal carry the
6 burden of proof to justify that its rates, rules and regulations are just and reasonable; and to
7 support any expected changes in revenues, expenses, or income with data that is neither
8 speculative nor conjectural and is accompanied by detailed explanations for all estimates. (See,
9 16 NYCRR 61.4.) The parties, in my opinion, have not met those burdens here.

10 For example, the balance sought by the Commission in its Procedural Guidelines for
11 Settlements (1992) among "(1) protection of the ratepayers, (2) fairness to investors, and (3) the
12 long term viability of the utility" is not contained within the pages of the JP or in the direct
13 testimonies of DPS Staff or the Company. Nor are integral elements of the JP "just and
14 reasonable" or "consistent with sound environmental, social and economic policies" of the
15 Commission and of New York State. Simply because the JP includes terms that were advanced
16 by the Company or by DPS Staff in testimony or are somewhere in between or a variation of
17 those testimonial positions does not mean that each of the terms represent "the range of
18 reasonable results that would likely have arisen for a Commission decision in a litigated
19 proceeding" or that any specific term promotes and protects the public interest. Nor should the
20 Commission in this case give any "weight to the fact that a settlement reflects the agreement by
21 normally adversarial parties" because the only legitimate parties that support this JP are DPS
22 Staff and the Company, and I am not aware of any joint proposal involving a rate proceeding that
23 was not supported by at least the utility involved and DPS Staff.

24

25 **IV. Reactions to Testimony of DPS Staff and Suez New York**

26 **A. Standard of Review**

27 Q. Do you agree with the direct testimonies of Suez Water (pages 3-5) and DPS Staff (pages 14-
28 15) regarding the Commission's standard of review applied to settlement agreements?

29 A. Not completely. The Company lists as one of the factors for the Commission's substantive
30 review of a proposed settlement agreement "whether the settlement reflects the agreement of

1 normally adverse parties" and implies that this factor has been satisfied. Perhaps this factor
2 made sense conceptually in 1992, when the Commission adopted its Settlement Guidelines. I see
3 at least three flaws of this concept in practice. First, I am unaware of any rate proceeding in
4 which a filed settlement agreement was not signed by both the utility and DPS Staff.
5 Accordingly, this JP is really nothing special in this regard.

6 Second, from an entirely opposite perspective, history reveals that water utilities and DPS
7 Staff assigned to water rate proceedings do not actually have an adversarial relationship. This
8 assertion is based upon my understanding that from 1992 to the present, with the sole exception
9 of this Company's previous rate proceeding (Case 13-W-0295), DPS Staff has always settled
10 with every major water utility seeking higher rates, even when, as in the situation involving this
11 Company, rates increased higher than the rate of inflation year-after-year and rising levels of
12 NRW exceeded the Commission's 18% standard.

13 Third, this JP does not reflect the agreement of any of the other parties active in the
14 proceeding with which (as the Commission acknowledged in its order in the previous rate case),
15 the Company had developed an adversarial relationship through its multi-year pursuit of the
16 widely-criticized Haverstraw Desalination Project, apparent disregard of rising NRW rates, and
17 perceived pervasive instances of mismanagement both in terms of rates and of water quality.
18 See, generally, Case 13-W-0295, *United Water New York-Rates*, Order Establishing Rates
19 (issued June 26, 2014). In that 2014 Rate Order (at 11), for instance, the PSC stated: "Yet the
20 record in this case gives rise to inferences that the Company has lost sight of its mission and no
21 longer is focusing its full attention on the operational requirements implicit in the statutory
22 standard of safe and adequate service at just and reasonable rates." On page 72 of the Rate
23 Order, the Commission stated: "We note that the public input in this proceeding, either directly
24 or through MC as an intervenor, raises serious questions about the quality of relations among
25 UWNY, its customers and local authorities." Indeed, the Commission was so concerned about
26 the poor relationship Suez had with its customers that in Ordering Clause 10, the Commission
27 stated: "The Company is directed to submit for DPS staff review, within six months after the
28 date of this order, a written plan to improve its public communications and relationships with
29 stakeholders." Regardless of Suez's filed plan and aspirations, its decision in August 2015 to
30 withdraw from participation in the Rockland Water Task Force following the issuance of a
31 critical report prepared by a consultant (see, page 6 specifically, and also generally, Testimony of

1 Harriet D. Cornell), appears to have exacerbated rather than improved the relationship between
2 the Company and the community it ostensibly serves.

3

4 ~~Q. Do you take issue with any of the other statements on the Commission's standard of review.~~

5 ~~A. Yes. The Company's testimony on page 5, stating that the JP "was arrived at after five~~
6 ~~settlement meetings and numerous all-party settlement calls," appears innocuous. However, the~~
7 ~~dates of certain events, comments in an email by one of Suez's many attorneys, comments of~~
8 ~~Suez attorneys and a DPS attorney during a conference call facilitated by the Settlement ALJ on~~
9 ~~August 31, 2016, and, significantly, the response of DPS Staff and the Company to PULP JP 4~~
10 ~~**raise the possibility** that DPS Staff and Suez did not fully comply with Section (B)3 of the~~
11 ~~Commission's 1992 Procedural Guidelines for Settlements nor the spirit of 16 NYCRR Section~~
12 ~~3.9(a)(2).~~

13

14 ~~Q. Please elaborate while remaining mindful of your obligations pursuant to the confidentiality~~
15 ~~of settlement discussions.~~

16 ~~A. DPS Staff and Suez broke off negotiations with the intervenors on August 12, 2016. Not until~~
17 ~~two weeks later, on August 26, 2016, did the Company send by email a draft of the JP to the~~
18 ~~intervenors. It is implausible that DPS Staff and the Company did not communicate about the~~
19 ~~terms or wording of the JP during the two week period, that the draft JP dated August 26, 2016~~
20 ~~was solely the work product of Suez — without any input from DPS Staff — or that the Company~~
21 ~~on its own developed a negotiation strategy to induce certain behavior on the part of the~~
22 ~~intervenors, which was set forth in the cover email sent by one of Suez' attorneys that~~
23 ~~accompanied the draft JP. Notably, during the August 31, 2016 conference call, the DPS Staff~~
24 ~~attorney reiterated the negotiation strategy described in the Company's email.~~

25 ~~My concern about potential lack of compliance with the Settlement Guidelines is reinforced by~~
26 ~~the response of DPS Staff and Suez to PULP JP 4. We asked:~~

27 ~~At any time between August 12, 2016, when "Staff and the Company reached a detailed~~
28 ~~and comprehensive agreement in principle resolving first year revenue requirements" and~~
29 ~~August 26, 2016, when the Company first provided the parties with a draft of this JP, did~~
30 ~~the Company and Staff have any communications whatsoever, whether in person,~~
31 ~~telephonic or electronic? If yes, please provide each instance of such communication,~~
32 ~~indicating date and time, mode of communication, participants by person's name and the~~
33 ~~nature of the discussion. Please also provide copies of all electronic communications and~~

1 ~~all versions of this JP and Appendices in existence prior to when versions of the~~
2 ~~documents were shared with the parties on August 26, 2016. (see, JP, p. 3.)~~
3

4 ~~DPS Staff and Suez did not directly respond to these questions, providing, in my opinion,~~
5 ~~evasive answers. The response first states that "DPS Staff does not maintain records of its~~
6 ~~telephone communications with outside parties and does not possess this information." Notably,~~
7 ~~the response does not state whether any telephone calls occurred. Nor is there any mention of~~
8 ~~electronic communications. The response further states that "the Company notes that in~~
9 ~~accordance with standard Commission practice, all parties were given full notice of the~~
10 ~~settlement proceedings" and then goes on to discuss the various public steps of the negotiating~~
11 ~~process. Significantly, however, the response does acknowledge that "Staff and the Company~~
12 ~~then drafted the Joint Proposal ("JP") from the term sheet from August 12, 2016 to August 26,~~
13 ~~2016." The failure of the Company and DPS Staff to provide the various pre-August 26 drafts of~~
14 ~~the JP or emails regarding their strategy about how they would present to the intervenors~~
15 ~~conditions placed upon the addition of certain language is telling. This conduct no doubt does~~
16 ~~nothing to allay the suspicion many people in Rockland County hold towards Suez as well as the~~
17 ~~fulfillment of the PSC's statutory oversight role.~~

18 **B. Revenue Requirement**

19 Q. DPS Staff claims on page 16 of its testimony that the revenue requirement is reasonable
20 because it is within the range that could be expected in litigation. Would you comment on that
21 assertion?

22 A. I do not consider the "within range" assertion to have much weight in this instance. First, I
23 note that the actual bill impacts will likely be much greater than shown in the response to PULP
24 JP-7 because so many expenditures (several capital projects, elements of the conservation plan)
25 are to be recovered through a surcharge rather than through base rates. See response to PULP
26 JP-23. Second, according to the response to PULP JP-5, almost half (approximately \$1.9 million
27 compared to \$4.2 million) of the difference between the Company's requested increase for Rate
28 Year 1 of \$11.9 million and the JP's \$7.7 million is simply due to the Signatory Parties decision
29 to move closer to the Commission's standard approach to cost of capital than the approach
30 originally proposed by Suez. Third, according to the response to PULP JP-9, approximately \$6.7

1 million of Rate Year 1's revenue requirement of \$7.7 million is attributable to recovery of
2 Haverstraw Water Supply Project costs.

3

4 **C. Levelization of Rates**

5 Q. DPS Staff (at 17) and Suez (at 8) claim that levelized rate increases are in the public interest.

6 Do you agree?

7 A. No. In some situations, that approach makes sense. It does not in this case. Reducing the
8 first year base rate increase to \$5.033 million from \$7.691 million, a difference of \$2.658
9 million, is not cost effective for ratepayers because they will have to pay \$2.14 million more over
10 three years using the levelized approach. [$\$7.692\text{M} + \$1.966\text{M} + \$3.300\text{M} = \12.958M versus
11 $\$5.033\text{M} \times 3 = \15.099M] Perhaps a better approach to mitigating the first year revenue
12 requirement the Commission should consider taking involves the Qualified New York
13 Manufacturer Credit (see Company testimony at 24-25 and Staff testimony at 31-32). I urge the
14 Commission to analyze the effects of applying more of this credit to reduce the Rate Year 1
15 revenue requirement.

16

17 **D. Rate of Return and Earnings Sharing Mechanism**

18 Q. Suez (at 9) states that "the movements of both Signatory Parties from their litigation positions
19 necessarily reflect an interrelated balancing of outcomes on all settlement issues" and that such
20 "movement demonstrates that the Joint Proposal terms represent a reasonable outcome and
21 compromise of litigation positions." Staff asserts "the return on equity reflects a balancing of all
22 the concessions made by the signatory parties." Do you agree with these statements?

23 A. These statements might have some relevance if the Commission's Generic Financing
24 Methodology ("GFM") had not been followed for more than two decades. Suez merely "moved"
25 from its unreasonable filed ROE to one closer to the output of the standard methodology.
26 However, the JP's ROE still represents a departure from the GFM. Moreover, the claims that
27 Staff and the Company assessed "an interrelated balancing of outcomes on all settlement issues"
28 or "a balancing of all the concessions" are not supported with examples and are undermined by
29 the fact that, as the Company (at 9-10) and Staff (20) acknowledge, recent settlement agreements
30 contain that very same ROE.

31

1 Q. Do you agree with Staff's claims (at 19-20) that Suez faces financial risk over the three years
2 of the proposed rate plan stemming from possible increases in the cost of capital and in operating
3 expenses?

4 A. Staff did not provide any evidence to support its conclusions. Additionally, to make such a
5 statement implies Staff is ignoring the risk abatement effects of the JP's various true-up and
6 deferral mechanisms; accordingly, it is difficult to assess the validity of these claims. If Staff
7 were correct however, and I do not concede that point, the important question for the
8 Commission is whether ratepayers benefit from this proposed three-year rate plan as compared to
9 a one-year rate plan.

10 The major advantage of a three-year rate plan over a one-year rate plan is the ability for
11 the Company to spread out the revenue increases. I have already shown, however, that levelizing
12 RY1's base revenue increase is not a good use of ratepayers' money. Following Staff's apparent
13 logic regarding the need to protect Suez from financial risk by providing the Company with a
14 "risk premium" or "stay out" premium of 50 basis points, I question whether ratepayers benefit
15 from paying more than a million dollars extra for the JP's three-year rate plan. Instead, adopting
16 a rate plan of three years, rather than a one-year plan, upsets the required balancing of the
17 interests of ratepayers and the company. See the response to PULP JP-10; the dollar value of 65
18 basis points based on the JP's base rate increases is \$1.5 million.

19

20 Q. Are you persuaded by the assertions of Staff (at 23) and Suez (at 10), as well as the response
21 to PULP JP-11, that the structure of the Earnings Sharing Mechanism is fair to ratepayers by
22 providing the Company with an incentive to operate efficiently and providing ratepayers both
23 with an opportunity to participate in efficiency gains and protection against large amounts of
24 excess earnings?

25 A. No. Since ratepayers are facing tens of millions of dollars associated with the abandoned
26 Haverstraw project and unknown levels of surcharges (see response to PULP JP-23), the ESM
27 should have been structured so as to begin sharing with the very first dollar earned in excess of
28 the allowed ROE, rather than giving the Company a "dead band". Immediate sharing is fairer to
29 ratepayers in an environment of high bill impacts while still accomplishing the goal of
30 encouraging the Company to operate with greater efficiency. Consistent with that approach, I

1 also disagree with the Signatory Parties' reasons (see response to PULP JP-13) for excluding the
2 shareholder portion of antenna lease revenue from the ESM.

3

4 **E. Rate Base Construction Projects**

5 Q. Did Staff justify in its direct testimony in support of the JP's construction program inclusion
6 of three new wells at a time when there is more than adequate supply and new conservation
7 measures will reduce demand?

8 A. No. Daniel P. Duthie discussed reasons why constructing three new wells was not in
9 ratepayers' interest in his direct testimony (at 4-5), filed in July 2016, that responded to the
10 Company's original filing. That issue has been carried forward from July to the present. See
11 Duthie's recently filed testimony on the JP on page 11. According to Suez and Staff in their
12 response to PULP JP-34, achieving one million gallons per day ("MGD") from conservation is
13 approximately \$5 million cheaper than achieving one MGD from additional wells [\$7.076M
14 versus \$12,066M]. From a cost perspective as well as an efficiency perspective, I believe the
15 JP's inclusion of three new wells in the construction program is contrary to the PSC's statutory
16 obligations as well as to public policy.

17 For similar reasons, I believe it is also a mistake to cap the T&D main replacement
18 program at \$17 million. I am not persuaded by the response to PULP JP-17 that the ratepayers
19 must be protected from unforeseen cost increases that may occur in 2020. A better approach
20 would be to manage the main replacement program on a short time frame.

21

22 **F. Non-Revenue Water**

23 Q. Please comment on Staff and the Company's reasons for the JP's NRW provisions.

24 A. Both Staff (at 29-31) and Suez (at 18-21) make relatively unsupported statements concerning
25 what they believe to be the importance of advanced metering infrastructure ("AMI") and district
26 meter areas ("DMAs") to achieving significant reductions in NRW. Although the costs are not
27 completely known and are not completely capped (see, for instance, the responses to PULP JP-
28 18 and PULP JP-19), these parties are convinced of the high value of the initiatives.

29 Additionally, as indicated in the response to PULP JP-20, AMI is not even in the demonstration
30 project phase yet. I find it puzzling, therefore, that no incentive mechanism with concrete
31 deliverables is attached to implementation of the proposed AMI plan, and that reducing NRW to

1 the New York standard of 18% is merely an aspirational goal, again without any incentive
2 mechanism.

3

4 **G. Revenue Allocation and Rate Design**

5 Q. Did the testimonies of Staff and of the Company allay your concerns about potential increases
6 to customer service charges and the timing of the service classification study?

7 A. No. The parties did not resolve my concerns in their respective testimonies. Instead, it appears
8 from the responses to PULP JP-25 and PULP JP-26 that customer service charges may increase
9 as a result of surcharges. The response to PULP JP-27 reinforces my concern that completion of
10 a comprehensive service classification study, which is critical to successful implementation of
11 conservation rates and programs, is many years away. I share the concerns of other intervenors
12 in this regard.

13

14 **H. Customer Service Issues**

15 Q. Did the testimonies of Suez and of Staff clarify the languages into which all customer
16 outreach and education materials will be translated?

17 A. No. Regarding the conservation and efficiency program, the JP (at 27) indicates that
18 materials will be translated into Yiddish, Spanish and Creole (see the response to PULP JP-30)
19 but Staff testified (at 44) that the languages are Hebrew, Spanish and Creole. Hebrew and
20 Yiddish are completely different languages.

21 Furthermore, Staff and the Company failed to answer my question about whether all
22 other all customer outreach and education materials would be translated from English into the
23 languages in their response to PULP JP-36. In my opinion, it is a serious shortcoming of the JP
24 not to require such translations because of the prevalence of Suez ratepayers for whom English is
25 a second language.

26

27 Q. Did the testimonies of Suez and of Staff justify or clarify the JP's tariff language regarding
28 service termination for willful waste of water?

29 A. No, neither party discussed how Suez could go about terminating service in a manner
30 consistent with HEFPA. The response to PULP JP-37, which referenced the Company's
31 response to PULP-10, merely indicates that three letters will be sent to customers one week

1 apart. The response also ignores the question I asked about how the Company will handle a
2 situation where renters do not have the ability to make the necessary repairs.

3

4 **I. Conservation Program and Incentive Mechanism**

5 Q. Have you drawn any conclusions based upon your review of all of the testimony addressing
6 the conservation program and incentive mechanism?

7 A. Yes, Staff and Suez have not justified the JP's unique approach to efficiency and
8 conservation, which sets the bar low and at the same time allows the Company to easily achieve
9 a positive incentive. See the responses to PULP JP-33 and PULP JP-35. For the reasons I and
10 other intervenors expressed in our direct testimonies, I recommend the Commission require Suez
11 to work with Staff, the Rockland Water Task Force and other intervenors to develop a best
12 practices conservation program and incentive mechanism, with costs recovered through a
13 surcharge mechanism rather than in base rates. Semi-annual reviews of this new program may
14 require design and implementation modifications so the flexibility of a surcharge mechanism is
15 desirable.

16

17 **V. Conclusion**

18 Q. Does this conclude your testimony?

19 A. Yes.

20

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2 BY MR. RIGBERG: (Cont'g.)

3 Q. And, Mr. Berkley, did you file any
4 exhibits with your rebuttal testimony?

5 A. Yes, I did.

6 Q. And is that the same exhibit that --
7 that you mentioned was misidentified as Exhibit -- Exhibit
8 R.B. 3 and is actually R.B. 14?

9 A. Yes.

10 Q. Okay. Your Honor -- and did you
11 prepare this exhibit or -- or have it prepared under your
12 supervision?

13 A. Yes, I did.

14 MR. RIGBERG: Your Honor, I would ask
15 that the document that is -- had been labeled as Exhibit 3
16 be entered into the record as -- as -- with the correct
17 heading of -- as Exhibit 14. It consists of responses
18 from the Company to interrogatory requests.

19 A.L.J. PHILLIPS: Let me just ask
20 clarification.

21 When I printed out the testimony, it
22 had attached to it a -- a multipage document consisting,
23 as you said, of -- of many IRs. Is it this document that
24 is actually R.B. 14 or is it a different document?

25 MR. RIGBERG: No; it -- this document

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2 is R.B. 14 that we're talking about. And I --

3 A.L.J. PHILLIPS: And it -- just --
4 sorry.

5 MR. RIGBERG: -- I put it on a disc
6 for the reporter with a -- so it has a correct heading.
7 Instead of R.B. 3, it's R.B. 14. And it's what I sent to
8 the parties yesterday --

9 A.L.J. PHILLIPS: Okay.

10 MR. RIGBERG: -- or this morning.

11 A.L.J. PHILLIPS: Okay. So she gave
12 the C.D. to me because the court reporter's -- I'm sorry -
13 - go off the -- we're going to go off the record.

14 (Off the record)

15 (The hearing resumed.)

16 MR. RIGBERG: So I -- I would ask that
17 that -- what should be R.B. 14 be marked for
18 identification with the next available exhibit number.

19 A.L.J. PHILLIPS: Okay. So the
20 exhibits that were attached to Mr. Berkley's rebuttal
21 testimony that should be designated as R.B. 14 will be
22 marked for identification as Hearing Exhibit 81.

23 Let's go off the record again.

24 (Off the record)

25 (The hearing resumed.)

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2 A.L.J. PHILLIPS: Back on the record.

3 MR. RIGBERG: Thank you, your Honor.

4 I'd like to request that Mr. Berkley's
5 direct and rebuttal testimony he filed in July, and
6 Exhibits 1 through 4 that he attached to his direct
7 testimony on July 1st, be marked for identification as
8 Exhibit 82.

9 A.L.J. PHILLIPS: Let's go off the
10 record.

11 (Off the record)

12 (The hearing resumed.)

13 A.L.J. PHILLIPS: When we were off the
14 record, we clarified that the request has been made to
15 mark R.B. 2, R.B. 3, and R.B. 4 as Hearing Exhibits 82,
16 83, and 84.

17 Do you have anything further?

18 MR. RIGBERG: No. Mr. Berkley is
19 available for cross, your Honor.

20 A.L.J. PHILLIPS: Okay. Was there any
21 discussion as to who -- well, I didn't -- I didn't rule on
22 -- I don't think I ruled on your request.

23 I'm looking at Mr. Dichter. I
24 apologize. You requested 15 minutes; didn't you?

25 MR. DICHTER: I did, your Honor. I'd

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2 be happy to amend that to 5 minutes of one line of
3 questioning that not even Mr. Alessi could consider to be
4 friendly cross.

5 A.L.J. PHILLIPS: Okay. Do you have
6 any preference as to who goes first?

7 Let's go off the record.

8 (Off the record)

9 (The hearing resumed.)

10 A.L.J. PHILLIPS: Mr. Dichter, please
11 proceed.

12 CROSS EXAMINATION

13 BY MR. DICHTER:

14 Q. Mr. Berkley, I'd like to refer you to
15 your direct testimony on -- at least on my copy, it starts
16 at the page 12, line 22, with the question is there
17 anything unusual about the amortization period.

18 Do you see that?

19 A. Yes, Counsel.

20 Q. Okay. And I believe your response
21 states that it's a faster amortization period in the JP
22 than as if the project had run into service. Is that
23 correct?

24 A. Yes.

25 Q. And that's because if a plant goes

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2 into service, its useful life is generally longer than the
3 15 years provided by the JP; correct?

4 A. Yes.

5 Q. Looking down at your testimony on same
6 page, page 13, line 15, and going to line 17, you state
7 that at the very least the Company should authorize only
8 return reflective of short-term debt interest rates?

9 A. Yes.

10 Q. Now if this was plant went into
11 service and was being amortized over its normal useful
12 life, it would not be the short-term debt rate that
13 applied. Is that correct?

14 A. Correct.

15 Q. It would be the long-term debt rate.
16 Is that correct?

17 A. Yes.

18 Q. Thank you.

19 MR. DICHTER: That's all I have, your
20 Honor.

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

22 Do you have any redirect based on
23 those questions, Mr. Rigberg?

24 MR. RIGBERG: No, your Honor.

25 A.L.J. PHILLIPS: I don't know who's

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2 doing cross for the Company, but please proceed.

3 MR. FITZGERALD: Thank you, your
4 Honor.

5 Actually, Mr. Alessi and I will be
6 splitting the cross in different areas.

7 CROSS EXAMINATION

8 BY MR. FITZGERALD:

9 Q. Good afternoon, Mr. Berkley.

10 A. Thank you. Good afternoon.

11 Q. On page 3 of your direct testimony,
12 you indicate that you're employed by the Public Utility
13 Law Project as executive director and general counsel. Is
14 that correct?

15 A. Yes.

16 Q. And just to be clear, you're not
17 appearing here today in your legal capacity as the general
18 counsel of that organization. Is that right?

19 A. That's correct.

20 Q. Is PULP a not-for-profit 501(c)(3) or
21 a 501(c)(4) organization?

22 A. We are not a (c)(4) organization.

23 Q. So you're a -- you're a 501(c)(3)
24 organization. Is that correct?

25 A. Yes. And we're also under another

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2 category as a legal services organization. And -- and
3 forgive me, I'm not a tax attorney. I don't know the
4 exact area of the code.

5 Q. Okay. And as executive director of
6 the Public Utility Law Project, from whom do you take
7 direction regarding the programs and activities and the
8 positions taken by the organization?

9 A. I take direction from the board of
10 directors. And also, as executive director, I have a
11 great deal of self-governance.

12 Q. Now turning to page 3 of your direct
13 testimony, and I'm looking specifically at line 11, are
14 you with me?

15 A. Yes.

16 Q. Now you indicate there that there were
17 2 parties that signed on to the Joint Proposal in this
18 case. Now you would agree with me that that number is an
19 artifact of time from when you prepared this testimony?

20 A. Could you explain that?

21 Q. Sure. How many parties have signed
22 the JP in this proceeding?

23 A. It's my understanding that some late
24 arrivals, I believe 2 of them signed, so that it may be,
25 subject to check, 4 at this point.

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2 Q. Okay. So you didn't review the JP
3 signature pages in the proceeding before your testimony?

4 A. I'm sorry; could you state that again?

5 Q. Sure. So you didn't review the JP
6 signature pages before you appeared here today for your
7 testimony?

8 A. No, I did not.

9 Q. Did you review the other provisions of
10 the JP?

11 A. Yes, I have read the JP and I also
12 have a copy here.

13 Q. On page 7 of your direct testimony,
14 I'm looking particularly at line 1. You indicate there
15 that a typical full-service low-income customer of O&R pays
16 \$265 per month if they're a gas heating customer and \$206
17 if they're a electric heating customer. Do you see that?

18 A. Yes, I do.

19 Q. And is the basis for those numbers
20 provided anywhere in your testimony?

21 A. Bear with me while I look. I do not
22 believe that's within the 4 corners of this document.
23 Those numbers were prepared under my direction by the
24 director of research for the Public Utility Law Project.

25 Q. But they're not anywhere in your

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2 testimony or in your exhibits. Is that correct?

3 A. Subject to check, yes.

4 Q. You also reference, on line 3, a
5 figure of about \$62 for a current typical water bill. Do
6 you see that?

7 A. Yes, I do.

8 Q. And can you show me where, in your
9 testimony, that figure of \$62 is calculated?

10 A. Equally, Counsel, I do not believe
11 that is within the 4 corners of this document.

12 Q. Would you agree with me that cable TV
13 is also a paid utility-type service?

14 A. Yes.

15 Q. And looking at your testimony again,
16 where you mention \$62 for water, and assuming that you
17 were correct on that, you'd agree with me that the \$62 is
18 a small percentage of the \$265 that customers pay for gas
19 and electric service?

20 A. Yes, if you believe 25% is a small
21 percentage.

22 Q. I'd like to turn to page 7, line 9, of
23 your testimony. And you talk there about the
24 affordability proceeding. Do you see that?

25 A. Yes, I do.

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2 Q. Mr. Berkley, for shorthand purposes,
3 and as you've done here, when we're referring to the
4 affordability proceeding can we have a general
5 understanding that that's 14-M-0565?

6 A. Yes.

7 Q. And the question asked there, in line
8 9 and 10, was whether the Commission contemplated
9 inclusion of utility water service. And you answer no.
10 Is that correct?

11 A. Correct.

12 Q. And then continue on to line 12, you
13 mention there the phrase, it was the Commission's apparent
14 intent, however. Do you see that?

15 A. Yes, I do.

16 Q. Now, Mr. Berkley, are you authorized
17 to speak for the Commission regarding its intent?

18 A. I cannot speak to what is on the
19 Commissioners' minds, counsel. However, in a number of
20 public meetings and on the record, subsequently to the
21 initiation of the low-income proceeding, the Commissioners
22 and DPS Staff have stated at great length that
23 affordability is a strong concern of the State of New
24 York. And making affordability a policy goal was the
25 purpose of that proceeding.

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2 Q. And actually, the question I asked was
3 whether you were authorized to speak on the Commission.
4 Could I have a yes or no answer to that?

5 A. Yes. No, I am not.

6 Q. Has the Commission adopted a policy
7 statement regarding the apparent intent that you
8 reference?

9 A. It adopted the low-income order on May
10 20th of 2016.

11 Q. Has it adopted a policy statement
12 specifically on that topic?

13 A. It's my belief, Counsel, that orders
14 of the Commission are not only legal statements, but also
15 policy statements because the Commission is charged with
16 formulating the State's policy towards public utilities.

17 Q. Are you aware of other policy
18 statements that are formally adopted by the Commission but
19 not as Commission orders?

20 A. What do you mean by formally adopted?

21 Q. The Commission issues policy
22 statements on a lot of topics. For example, acquisition
23 of small water utility companies, financial and accounting
24 matters. Are you aware of those policy statements?

25 A. I believe that the Commission

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2 certainly has the authority to make policy statements
3 without adopting them as formal orders. I cannot speak to
4 any of the policy statements to which you just referred.

5 Q. Okay. Has the Commission adopted a
6 regulation that expressly states that affordability has to
7 be directly considered in setting water rates?

8 A. No, it has not.

9 Q. Okay. Now on page 7, line 14, you
10 make a reference to the concept expansion into the REV
11 proceeding. Do you see that?

12 A. I do.

13 Q. Where exactly in the -- is water
14 affordability addressed in the REV proceeding?

15 A. I believe, Counsel, you may be
16 misstating that sentence.

17 Q. Oh, please --.

18 A. It is concerns about affordability.
19 It does not say water in that line.

20 Q. Would you agree with me, though, that
21 the REV proceeding does not directly address water issues
22 at all?

23 A. I would agree that that is a correct
24 statement of the REV proceeding at this point.

25 Q. Now on page 7 of your direct

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2 testimony, on line 15, you make a reference to the Census
3 Bureau. Do you see that?

4 A. Yes, I do.

5 Q. And you indicated that the Census
6 Bureau has water utility service considered in computing
7 total housing costs and the burden, including utilities.
8 Is that correct?

9 A. Yes.

10 Q. And the Census Bureau, that's a
11 federal entity; correct?

12 A. That is correct.

13 Q. And you would agree with me, then,
14 that the actions of the Federal Census Bureau are not
15 binding in any way on the New York State Public Service
16 Commission?

17 A. To the extent that the Census Bureau
18 is reporting upon facts that it discovers through direct
19 examination of a population of the United States, facts
20 are binding upon all of us. If you're talking about
21 federal policy, then I would agree with you.

22 Q. And under the New York State Public
23 Service Law, does this Commission have any jurisdiction
24 over the Federal Census Bureau?

25 A. No.

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2 Q. Let's turn to line 16 to 18 of your
3 testimony -- direct testimony, on page 7. You talk there
4 about being possible and prudent from extending the
5 Commission's maximum energy burden. Do you see that?

6 A. Excuse me. Yes, I do.

7 Q. And on page 7, line 19, you talk about
8 the Commission should estimate a monthly discount for
9 water service necessary to reduce this total utility
10 burden to 6%.

11 Is that a fair statement of your
12 testimony?

13 A. Yes, it is.

14 Q. Do you agree with me that the
15 Commission's affordability order and that 6% energy burden
16 target do not apply to water service at this time?

17 A. Yes.

18 Q. Did you, personally, or PULP
19 participate in the Commission's low-income proceeding,
20 again, the affordability proceeding?

21 A. Yes.

22 Q. And in that proceeding, did PULP urge
23 the Commission, in any of its written submissions, to
24 include water service as part of that proceeding?

25 A. PULP did not urge the inclusion of

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2 water of any of its statements on the record.

3 Q. And in that record, in Case 14-M-0565,
4 all the data collected in the analysis was undertaken with
5 respect to gas and electricity service only. Is that
6 right?

7 A. That's correct.

8 Q. Would you agree with me that there was
9 over a year of collaboration, data gathering, and analysis
10 prior to issuance of the Commission's determination in 14-
11 M-0565?

12 A. Counsel, if I may, I miss-answered
13 that last question. In the same manner that you said I am
14 not entitled to speak on behalf of the Commission, I am
15 not entitled to speak on behalf of whatever other
16 information they may have collected and not put into the
17 record in the low-income proceeding.

18 As far as I know, they could have
19 studied the affordability of every utility service.

20 Could you repeat your question then,
21 please?

22 MR. FITZGERALD: Yeah, your Honor,
23 that wasn't responsive to my question, but I'm going to
24 move on in the nature of time.

25 BY MR. FITZGERALD: (Cont'g.)

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2 Q. The 6% income cap that you reference
3 on page 7, line 6 of your direct testimony, that was a
4 target level adopted by the Commission in the low-income
5 case. Is that right?

6 A. Yes.

7 Q. And in that case, the Commission also
8 set up and agreed that that 6% target cap to be achieved
9 would require a phased-in approach. Wouldn't you agree?

10 A. Yes.

11 Q. And there was also a funding limit
12 that was established in there with a total budget for each
13 utility. Is that correct?

14 A. Correct.

15 Q. And if such a funding limit of 2% was
16 applied in this case, do you know the funding level that
17 would be available?

18 A. For 2% of this utility's interstate
19 revenues?

20 Q. Yes.

21 A. I do not, Counsel.

22 Q. I'd like to turn for a minute to page
23 8, line 11 of your testimony. This is in the direct
24 again. Let me know when you're with me.

25 A. I am. Thank you.

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2 Q. You reference there a figure of 4.8
3 million. Do you see that in line 11?

4 A. Yes.

5 Q. Now assuming you're hypothetically
6 right about that \$4.8 million cost, you would agree with
7 me that that 4.8 million needs to be covered from customer
8 classes other than the low-income class. Is that right?

9 A. Well, the Company has a great deal of
10 ability to shape service classes, which we see in all
11 utility cases. Yes, I would agree with you.

12 Q. And in looking at your program there,
13 in your testimony what customers and how many would be
14 eligible for participation?

15 A. Based on this program, this would
16 cover all of the Company's customers.

17 Q. And -- and how did you determine
18 eligibility for that? Just simply making it available on
19 a dollar figure, or an income level? Is there any other
20 eligibility criteria, other than just being a customer of
21 the Company?

22 A. In the same manner that the Company
23 takes all of its customers and calls them ratepayers and
24 puts them into their ratemaking calculations, we did
25 something similar.

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2 Q. Have you presented, in your testimony,
3 any cost benefit analysis with respect to your proposed
4 low-income program?

5 A. I have not, Counsel.

6 Q. To the best of your knowledge, has the
7 Commission ever ordered any private water utility to
8 implement a low-income program?

9 A. Up to this year, the answer would be
10 no.

11 Q. Okay.

12 A. And I -- I say that, Counsel, by the
13 way -- let me -- let me clarify that. I say that without
14 full knowledge of what the Commission may have ordered to
15 the 500 small private companies which are no longer in
16 business in the State of New York and have either been
17 purchased by Suez or by American Water or by Suez
18 Westchester or by other large private entities.

19 Q. And I'll accept the -- with respect to
20 any major private water utility, have they ordered them to
21 implement a low-income program in New York yet?

22 A. No, but it's my hope this will be that
23 first year.

24 Q. I'd like to turn now to page 9, line
25 17 to 18 of your testimony. You cite there to American

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2 Water's Case 16-W-0259. Do you see that?

3 A. Yes, I do.

4 Q. And PULP is a participant in that
5 case; correct?

6 A. That's correct.

7 Q. And in that proceeding, are you
8 familiar with Staff's direct testimony in that case?

9 A. Yes, I am, although I do not have it
10 before me.

11 Q. And in that testimony, Staff opposed
12 inclusion of New York American Water's low-income program.
13 Isn't that right?

14 MR. RIGBERG: Your Honor, may I -- may
15 I ask that Mr. Berkley be given the testimony that Mr.
16 Fitzgerald is asking about?

17 MR. FITZGERALD: Well, as -- as a
18 participant in the proceeding, he's already acknowledged
19 he has knowledge of it. And I think it's a pretty generic
20 question.

21 If you feel that he needs the
22 testimony, I can provide him a copy.

23 MR. RIGBERG: I mean, what -- I think,
24 you know, referencing the pages of the -- makes sense.

25 MR. FITZGERALD: Your Honor, I'd like

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2 to mark as an exhibit -- it's an excerpt of the testimony
3 of the Staff witness in the New York American Water
4 proceeding.

5 MR. RIGBERG: Your Honor, that -- that
6 -- that excerpt has already been marked because I crossed
7 Staff on that very same document.

8 A.L.J. PHILLIPS: I -- I was going to
9 say I'd prefer not to mark it --

10 MR. FITZGERALD: Okay.

11 A.L.J. PHILLIPS: -- in any event. It
12 is available in the New York American Water docket. We'll
13 simply note -- I would like to see a copy of it. We'll
14 simply note that that's what the witness is referring to.

15 MR. FITZGERALD: That's fine, your
16 Honor. Thank you.

17 A.L.J. PHILLIPS: And where it's
18 located, unless there are objections.

19 MR. RIGBERG: Yeah, I -- I do have
20 objections, your Honor.

21 A.L.J. PHILLIPS: Go ahead.

22 MR. RIGBERG: The -- there's 3 pages
23 of discussion in this testimony and Mr. FitzGerald's only
24 providing 1 or 2 pages.

25 A.L.J. PHILLIPS: Mr. FitzGerald?

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2 MR. FITZGERALD: Your Honor,
3 admittedly, this is an excerpt of it. I didn't want to
4 waste the paper of copying the full document. I was
5 hoping that the witness which has focused on this issue
6 would be familiar with it.

7 If -- if this is not enough to refresh
8 his recollection, I'd like the witness to so state and
9 then we can move on.

10 MR. RIGBERG: Well, your -- your
11 Honor, the -- if you remember the cross of the Staff, the
12 same witness, Mr. -- Ms. O'Dell-Keller agreed that in the
13 rest of her testimony she made a recommendation for how to
14 proceed in developing a low-income program. And I don't
15 see that here in this excerpt.

16 A.L.J. PHILLIPS: Do you want to
17 respond as to why I should allow questioning on this
18 portion of it?

19 MR. FITZGERALD: Your Honor, I -- I
20 can move on.

21 A.L.J. PHILLIPS: Okay.

22 MR. RIGBERG: Thank you.

23 MR. FITZGERALD: Given the time here,
24 it's 5 o'clock, I -- I will move on.

25 BY MR. FITZGERALD: (Cont'g.)

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2 Q. Mr. Berkley, I'd like to turn to page
3 13, lines 8 to 13 of your testimony.

4 A. Is this still the direct testimony,
5 Counsel?

6 Q. It is, yes. In there, you make a
7 reference to utilization about Apple. Do you see that?

8 A. Yes, I do.

9 Q. Is Apple a regulated utility in New
10 York?

11 A. It's under the regulation of the
12 Securities and Exchange Commission, and the Attorney
13 General under the Martin Act.

14 Q. Is it under the regulation of the New
15 York State Public Service Commission?

16 A. Not unless and until it becomes an
17 electric company as it has proposed.

18 Q. Is Apple limited to an authorized rate
19 of return by the New York State Public Service Law?

20 A. No, it is not.

21 Q. Is Apple required to provide safe and
22 adequate service to all customers that -- that it has
23 located in a specific service territory?

24 A. Apple's specific service territory is
25 the whole world.

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2 Q. Well, is it required to provide
3 service -- safe and adequate service to all of its
4 customers located in a specific service territory, and you
5 can define it however you'd like?

6 A. Thank you. I will define it as the
7 whole world.

8 My answer would be, yes, for a number
9 of reasons, one of which is the Magnuson-Moss Warranty Act
10 which requires that products be sold that are safe.

11 The second, as we see from the
12 retraction of the Samsung Galaxy Note 7 from the market,
13 if a consumer electronics company creates a dangerous
14 product, it is removed immediately from the market and, in
15 fact, banned from airplanes. I would assume, although
16 Apple has not made an exploding cell phone yet, that such
17 a thing would happen similarly if that, in fact, came to
18 pass.

19 Q. And putting aside all these recalls,
20 is Apple required, under the New York State Public Service
21 Law, to provide safe and adequate service in the service
22 territory of Suez Water New York, Inc.?

23 A. That calls for some speculation,
24 Counsel, because we don't know whether or not Apple will
25 enter into any kind of business model that would put it

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2 under the Commission's jurisdiction inside or outside of
3 Suez's service territory. I assume that if it did create
4 a product that was subject to the Public Service Law, it
5 would be subject to the Public Service Law.

6 Q. All right. And its current product
7 today is not; correct?

8 A. It is not.

9 Q. Thank you. Let's turn to page 17,
10 lines 14 to 20 of your direct testimony. Now there, you
11 suggest that the Company should translate all of its
12 written outreach and education materials into 3 languages,
13 Spanish, Yiddish, and Creole. Is that correct?

14 A. That is not entirely correct, Counsel.

15 Q. Please correct what your statement
16 says.

17 A. I did not use the word all in any
18 place in that testimony, or in the lines that you stated.
19 What I said was that it was surprising that it provides no
20 written material in any language other than English at
21 this point.

22 Q. So you're merely expressing surprise.
23 Is that correct?

24 A. I'm expressing surprise, but also I'm
25 making a policy judgement which is that for a utility such

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2 as Suez, which has at least 4 major languages spoken in
3 its service territory, that to the extent on the one hand
4 that it wishes to communicate things of great import to
5 its customers, for example, a termination notice, that it
6 should be in the language so that the customer is actually
7 able to read and understand.

8 As you know, contracts that are given
9 to a potential contractee that they can't read are
10 problematic from a public -- I'm sorry -- from a public
11 interest standpoint.

12 To continue on, on that point, there's
13 also a question of the Company having, in the past, been
14 ordered by the Commission to repair its relationship with
15 the community. If it is not speaking in the language of
16 significant portions of the community, how can it be
17 repairing its relationship?

18 Q. Mr. Berkley, can you point to me in
19 the Public Service Law something that requires the
20 translation of these materials?

21 A. The Public Service Law is not the only
22 law that binds the Company, Counsel.

23 Q. I didn't suggest it was. I asked you
24 if you could point to me something in the Public Service
25 Law that requires that translation.

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2 A. I cannot point to anything in the
3 Public Service Law.

4 Q. Can you point to me something in the
5 Commission's regulations that requires that translation?

6 A. Subject to check, I cannot, Counsel.

7 Q. Mr. Berkley, in your testimony, did
8 you analyze the cost of performing these translations into
9 the various language that you've identified?

10 A. I'm sorry, Counsel. Are you referring
11 to a specific line?

12 Q. Yes. I'm actually referring to --
13 actually, I lost my line. Give me a moment. Page 17,
14 lines 14 to 20.

15 A. Could you repeat your question,
16 Counsel?

17 Q. Certainly.

18 Have you performed any cost benefit
19 analysis or costing to translate materials into various
20 languages? And have you provided it in your testimony?

21 A. One moment please, Counsel?

22 No, I did not.

23 Q. And on page 18 of your direct
24 testimony and specifically I'll point you to line 8. Let
25 me know when you're there.

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2 A. Excuse me. I'm there, Counsel.

3 Q. You talk there about recommended
4 enhancement to the Suez Cares program, is that correct?

5 A. Yes.

6 Q. Have you done any analysis as to how
7 much your proposed enhancements would cost?

8 A. I'm sorry, Counsel. That calls for
9 more speculation than I'm willing to make on the stand.

10 Q. Okay. So you haven't performed any
11 analysis, is that correct?

12 A. Counsel, I didn't even list a number
13 of people to whom the program should be extended, so it's
14 difficult to understand how we could analyze that.

15 Q. Mr. Berkley, does PULP directly
16 provide any financial support to low income water
17 customers in Suez Water New York's territory?

18 A. No, I wish I had the grant money to do
19 that though.

20 Q. Mr. Berkley, on page 23, lines three
21 to 8 of your direct testimony you talk in there about
22 different advertisements being purchased and placed in
23 newspapers, do you see that?

24 A. Is this what starts from line 4 with
25 the notice in sufficient?

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2 Q. That is correct.

3 A. Yes, I do.

4 Q. Have you priced out the cost
5 differential between publishing a quarter page ad versus
6 what you're calling for which would be a 3-page -- a full-
7 page ad 3 times on Friday, Saturday and Sunday in the
8 local papers identified?

9 A. In the Hudson Valley papers, no.
10 However, in my past as a public utility regulator for the
11 City of New York I regularly put full page ads in all of
12 the daily newspapers.

13 Q. So you haven't investigated the cost
14 differential, is that correct?

15 A. Correct.

16 Q. Like to turn to page 24 of your direct
17 testimony, line 3 to 5. Let me know when you're there.

18 A. I'm there.

19 Q. Okay. I'd like you to focus in for a
20 minute on line 5 where it talks about you've got the words
21 inherent nature of the water business. Do you see that?
22 Mr. Berkley, are you with me or did I lose you there?

23 A. No, I think I'm good. I see line 5
24 beginning with inherent.

25 Q. And talking about the inherent nature

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2 of the water business in your testimony do you hold any
3 operational certifications for running a water utility in
4 New York?

5 A. I have never operated a water utility,
6 Counsel. However, I've been active in many levels,
7 municipal level, state level, local level as an appointee,
8 as a attorney and as a -- many other different roles in
9 all sorts of policy. And I -- and I would point out by
10 the way that slightly more than 25 years ago my master's
11 thesis was on water policy in the State of New York.

12 Q. But you don't hold any operational
13 certifications, correct?

14 A. I do not.

15 Q. And you don't have any experience in
16 actually operating a regulated water utility business in
17 New York, correct?

18 A. That's correct.

19 Q. Like to now turn to your rebuttal
20 testimony, page 5 line 6.

21 A. Is that the line that starts Second?

22 Q. Actually, no. I -- I apologize. I
23 have a misstatement here. It's -- yeah, page 5 line 6.
24 It starts out with Second, correct? Now you -- you
25 reference a little bit further down on line 8 you say the

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2 sole exception of this Company's previous rate proceeding
3 Case 13W0295, you see that?

4 A. Yes, I do.

5 Q. And that case was fully litigated,
6 correct?

7 A. Yes.

8 Q. And the parties to that case they were
9 all adversarial, is that correct?

10 A. Yes.

11 Q. Now you referenced some other
12 proceedings from 1992 to the present. Were you personally
13 involved in any of those proceedings?

14 A. No, I was not.

15 Q. And did you review the staff and the
16 Company's testimony filed in the litigation phase of those
17 proceedings?

18 A. Do you mind if I go back and correct
19 my last answer, Counsel?

20 Q. Sure. Please.

21 A. From 1992 to 2006 I was not involved
22 in any of those cases.

23 Q. Okay.

24 A. From 2006 onward it depended upon whom
25 I worked for.

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2 Q. That's a -- that's a fine enough
3 answer. Now do you have any personal knowledge of the
4 positions asserted by staff or the Company in each of
5 those proceedings?

6 A. Personal knowledge, no.

7 Q. Are you aware of whether the Commission's
8 orders resolving those proceedings
9 indicated that the parties were non-adversarial?

10 A. I'm sorry, could you repeat that?

11 Q. Sure. Did the Commission's orders in
12 the proceedings that you've referenced that have settled
13 indicate that the parties in those proceedings were non-
14 adversarial?

15 A. You're asking for an opinion and my
16 opinion is, yes.

17 Q. Well, I asked you whether or not the
18 Commission's orders indicated that they were non-
19 adversarial. I -- I don't believe that's an opinion
20 question. It's a factual question.

21 A. To some extent the idea -- and I
22 should state to some extent my opinion of whether they are
23 adversarial or not depends upon a couple of things. One
24 is that if you look back over the course of those
25 proceedings you see that more often than not Company and

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2 staff come to agreement very quickly and from an
3 outsider's perspective quite easily. And there's very
4 little --.

5 MR. FITZGERALD: Your Honor, I -- I
6 have to interrupt for one moment. I -- I'd asked him
7 specifically about the Commission's orders in the
8 proceedings and what they stated.

9 A.L.J. PHILLIPS: I believe --.

10 MR. RIGBERG: Your Honor, might -- it
11 might be useful if or easier if Mr. Fitzgerald would
12 provide some orders for Mr. Berkley to look at and -- and
13 then he could say whether he agrees or disagrees with the
14 question.

15 MR. FITZGERALD: Well, actually, you
16 know, your Honor, Mr. Berkley referenced these orders in
17 his testimony. So presumably he's very familiar with
18 them.

19 A.L.J. PHILLIPS: I -- I guess I just
20 want to clarify which orders does he reference? Because
21 he does reference the previous rate proceeding. But then
22 the others seem to be not rate proceedings. So I'm not
23 really clear on which orders it is that he's referenced
24 that you're asking about.

25 MR. FITZGERALD: Okay. Your Honor,

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2 thanks. I -- I will just move on at this point.

3 BY MR. FITZGERALD: (Cont'g.)

4 Q. Mr. Berkley, in your rebuttal
5 testimony on line 21 you state that the, quote, only
6 legitimate parties that support this JP are DPS staff and
7 the Company. Do you see that?

8 A. To what page are you referring to,
9 Counsel?

10 Q. Page 4 of your rebuttal testimony.

11 A. Sorry. I was still on page 5. Yes.

12 Q. And -- and is it your testimony today
13 that the other parties that have executed this JP as
14 signatories are illegitimate parties?

15 A. For the purposes of representing the
16 community, yes, I do.

17 Q. And all the signatory parties to the
18 joint proposal they've all been granted party status in
19 this proceeding isn't that right?

20 A. Even the ones that join the case
21 shortly before the JP, yes.

22 Q. So it -- it's your testimony that
23 despite having full party status of being awarded full
24 party status by the A.L.J. per ruling this case that those
25 parties are illegitimate parties? Is that your testimony?

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2 A. For the purposes of my testimony, yes.

3 MR. FITZGERALD: Your Honor, that
4 concludes my portion of the cross of Mr. Berkley and I'm
5 going to turn it over to Mr. Alessi.

6 A.L.J. PHILLIPS: Please proceed.

7 MR. ALESSI: Thank you, your Honor.

8 BY MR. ALESSI:

9 Q. Mr. Berkley, please turn to page --
10 this is going to be your direct testimony, page 16 lines
11 15 through 18.

12 A. Is that the section that begins with
13 do you have another reason you believe this is bad policy?

14 Q. It is.

15 A. Okay. Yes, I found it.

16 Q. And you see the answer, yes, in
17 granting a return on this project the PSC has additionally
18 chosen not to adhere to commonly accepted accounting and
19 contracting standards by effectively ignoring the fact
20 that the Company submitted large numbers of legal invoices
21 that are so heavily redacted that they could not be
22 audited. Do you see that?

23 A. Yes, I do.

24 Q. Did you read the IRs, the information
25 requests and their responses in this case?

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2 A. I read some of them, Counsel.

3 Q. Before preparing your testimony did
4 you ask your staff to determine whether your testimony is
5 consistent with the responses to the R. -- IRs in this
6 case? Or did you look to determine whether your testimony
7 is consistent with the responses to the IRs in this case?
8 And the testimony I'm referring to is only the lines I
9 just read.

10 A. I asked my staff to analyze all the
11 documents in the case. Are you referring to any specific
12 IRs, Counsel?

13 Q. Are you aware that the redacted legal
14 invoices submitted by Suez in Case 13-W-0246, what we've
15 referred to sometimes as the surcharge case, were
16 resubmitted to DPS staff almost entirely unredacted in
17 response to IR staff 2 CGS 2 in this case?

18 A. I have not read those IRs, Counsel.

19 Q. Did you read the direct testimony of
20 DPS staff in this case?

21 A. I did.

22 MR. ALESSI: We're going to mark an
23 exhibit. I'm -- I'm sorry. We're not going to mark it
24 yet because with your Honor's predilection you can
25 determine based upon that whether or not that that needs

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2 to be marked. But I'll -- I'll hand it out.

3 A.L.J. PHILLIPS: Oh. This -- this is
4 our -- I'm sorry. Off the record.

5 (Off the record 5:16 p.m.)

6 (On the record 5:16 p.m.)

7 MR. ALESSI: Your Honor, would you
8 like to describe this? I'm not going to ask to be it
9 marked. Can I proceed? Thank you.

10 A.L.J. PHILLIPS: Yes.

11 BY MR. ALESSI: (Cont'g.)

12 Q. Mr. Berkley, I have handed you, and
13 I'm not asking for this to be marked, this is for
14 illustrative purposes, a document of 3 pages having the --
15 at the top before the State of New York Public Service
16 Commission in the matter of Suez Water New York Case 16-W-
17 030 September 14, 2016 and I'm not going to read the rest,
18 but if you see below it's the prepared testimony of staff
19 JP panel. And then if you turn the page it's excerpted
20 testimony pages 27 and 28.

21 What I'd like to draw your attention
22 to is page 27 line 24.

23 A. I see that line, Counsel.

24 Q. Okay. And does it state the
25 Commission also identified 4,463,217 dollars in legal

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2 expenses for later consideration and carrying all the way
3 down to page 28 line 15 that consideration is taking place
4 in the current rate case? Question, how did staff review
5 the expenses associated with the Haverstraw Supply Project
6 not already reviewed in Case 13-W-0246? Answer, staff
7 reviewed every expense item associated with Haverstraw and
8 supporting physical invoice. Staff reviewed every invoice
9 and tied it back to staff's litigation exhibit O and M
10 panel 29B page 7 -- pages 17 to 13 and attempted to match
11 up each expense with an invoice from the supplied 48
12 files.

13 In reviewing each invoice staff made
14 sure that the costs described -- described were expenses
15 that were properly associated with Haverstraw. Do you see
16 that?

17 A. Yes.

18 Q. So the testimony of staff here which
19 speaks for itself having read this now would you like to
20 change your testimony on page 16 of your direct testimony,
21 lines 15 through 18 where you assert that the Commission,
22 quote, has chosen not to adhere to commonly accepted
23 accounting and contracting standards by effectively
24 ignoring large numbers of legal invoices that are so
25 heavily redacted that they could not be audited?

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2 A. Counsel, in the language that you read
3 it says nothing about an audit. And it does not speak to
4 the issue of whether or not anything was redacted or not.

5 Q. Isn't it your testimony on page 16 --?

6 A.L.J. PHILLIPS: I'm sorry. Can you
7 please read your testimony on page 16 lines 15 through 18?

8 THE WITNESS: Yes.

9 A.L.J. PHILLIPS: No, don't read it to
10 me. Just read it.

11 THE WITNESS: Oh. Okay, your Honor.

12 A.L.J. PHILLIPS: Okay. Okay.

13 Proceed.

14 BY MR. ALESSI: (Cont'g.)

15 Q. So, Mr. Berkley, having now read that
16 a couple times do you still assert your testimony on page
17 16 lines 14 through 21 of your direct testimony?

18 A. Counsel, are you asserting that in
19 page 27 that you handed me as the exhibit that reviewed is
20 the same as audited?

21 Q. That's not my question, Mr. Berkley.
22 My question is a simple one.

23 A. Yes.

24 Q. As you sit here today having had the
25 benefit of the prepared testimony of staff JP panel

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2 September 14, 2016, do you still assert your testimony on
3 -- your direct testimony page 16 lines 15 through 21 or do
4 you withdraw that testimony now?

5 MR. RIGBERG: Your Honor, this section
6 of the testimony relates to the parts of the testimony
7 that were --.

8 MR. ALESSI: I'm sorry, your Honor.
9 He can't interpret for the witness.

10 A.L.J. PHILLIPS: Okay.

11 MR. RIGBERG: I have an objection,
12 your Honor.

13 MR. ALESSI: Well, that's a speaking
14 objection, your Honor.

15 MR. RIGBERG: Well, you want me to
16 write my objection?

17 A.L.J. PHILLIPS: So your objection is
18 -- the basis for your objection is what?

19 MR. RIGBERG: That this discussion
20 relates to the portions of the testimony that you have
21 struck. So --

22 A.L.J. PHILLIPS: You know --.

23 MR. RIGBERG: -- in context of -- so -
24 -.

25 A.L.J. PHILLIPS: Okay. Let me stop

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2 you there.

3 MR. RIGBERG: So it's not --.

4 A.L.J. PHILLIPS: Because I actually
5 gave you the benefit on the doubt on that. If -- if it
6 relates to what I struck shouldn't it also be stricken?

7 MR. RIGBERG: I would think so, your
8 Honor.

9 A.L.J. PHILLIPS: So why don't we do
10 that?

11 MR. ALESSI: That's a fine solution
12 for me, your Honor.

13 A.L.J. PHILLIPS: And --.

14 MR. ALESSI: Thank you, Mr. Rigberg.

15 MR. RIGBERG: No, it's -- it -- it --
16 it --

17 A.L.J. PHILLIPS: So lines --.

18 MR. RIGBERG: -- it doesn't mean we're
19 not going to file an interlocutory appeal.

20 A.L.J. PHILLIPS: Well, I understand
21 that.

22 MR. ALESSI: Okay.

23 MR. RIGBERG: But they're all related.

24 A.L.J. PHILLIPS: But we'll -- we'll
25 strike it from 14 to 21 then.

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2 MR. RIGBERG: Yes. Is -- what he's
3 talking about is the policy.

4 A.L.J. PHILLIPS: It's out. You don't
5 have to worry about it now. The questions on this portion
6 of the testimony will be ignored. The testimony from line
7 14 to 21 on page 16 is out.

8 MR. ALESSI: Your Honor, the Company
9 has no -- I'm sorry -- your Honor, we have no further
10 questions at this time. But we would respectfully reserve
11 our further cross in the unlikely event that an
12 interlocutory appeal changes the rulings in this matter.

13 A.L.J. PHILLIPS: Okay. If there's --
14 never mind. I won't even ask. I don't know that you need
15 to do that though because if there's an interlocutory
16 appeal and it sends it back then you all have to --.

17 MR. RIGBERG: No, your -- your Honor,
18 we -- we would prefer that the Company cross on --.

19 A.L.J. PHILLIPS: Oh, let's go off the
20 record.

21 (Off the record 5:23 p.m.)

22 (On the record 5:23 p.m.)

23 MR. ALESSI: Your Honor, the Company
24 has no further cross questions of the witness at this
25 time.

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2 A.L.J. PHILLIPS: Okay. Mr. Rigberg,
3 do you have redirect?

4 MR. RIGBERG: I -- I would like a few
5 minutes to consult with the witness, your Honor.

6 A.L.J. PHILLIPS: Go ahead.

7 (Off the record 5:23 p.m.)

8 (On the record 5:32 p.m.)

9 A.L.J. PHILLIPS: We're back on the
10 record if everyone could please come to order. No more
11 sidebars please. Let's go back on the record.

12 MR. RIGBERG: Your Honor, I -- I have
13 a 1 line of redirect.

14 A.L.J. PHILLIPS: Proceed.

15 REDIRECT EXAMINATION

16 BY MR. RIGBERG:

17 Q. Mr. Berkley, do you remember Mr.
18 Fitzgerald asked you earlier about the 3 languages that
19 you -- that you identified as -- into which documents
20 related to customer education and outreach might be
21 translated?

22 A. Yes.

23 Q. And -- and do you remember asking --
24 Mr. Fitzgerald asking you what -- what the basis, whether
25 law or regulation that led you to that line of discussion

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2 in your testimony?

3 A. I do, Counsel.

4 Q. Do you -- can you identify the basis
5 for the identification of those 3 languages?

6 A. Yes. On page 27 of the joint proposal
7 in Case 16W0130 issued on September 2nd I have no line
8 numbers but the Company and other signatories agreed that
9 the Company would have specific conservation forms
10 identified by staff -- and I'll skip over a couple of
11 words -- translated in Spanish, Yiddish and Creole up to
12 an estimated cost of 15,000 dollars.

13 Q. Thank you. Are -- are there any other
14 Commission regulations that inform your discussion or
15 recommendation regarding the translation of other Company
16 documents such as termination notices into those 3
17 languages?

18 A. Yes, Counsel. Upon reflection Section
19 89B of the Public Service Law speaks to the issue that no
20 water works corporation shall make or grant any undue or
21 unreasonable preference. Well, that line does not
22 interpret what that means. There are other sections of
23 the Public Service Law, for example, in Section 44 which
24 requires electric, gas and steam corporations to assure
25 that bills are understandable to the customers.

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2 MR. RIGBERG: Thank you, your Honor.

3 I have no further questions.

4 A.L.J. PHILLIPS: You don't have any
5 recross based on those questions do you?

6 MR. FITZGERALD: No, your Honor.

7 A.L.J. PHILLIPS: Okay. I don't think
8 anyone else indicated cross examination for this witness.
9 Is that correct? Okay. I'm going to excuse this witness
10 then and thank you very much for your time.

11 THE WITNESS: Thank you, your Honor.

12 A.L.J. PHILLIPS: I would like to ask
13 at this time are there any other procedural matters that
14 we need to deal with other than what -- which of the many
15 exhibits that were marked today need to be moved in.
16 There's nothing else that I have on my to-do list. We've
17 already talked about the briefs and when they're due, the
18 page limitation for the reply briefs, so I'm not going to
19 revisit that.

20 So if there's nothing else I'm going
21 to turn to the exhibits that were marked for
22 identification. Has everyone had an opportunity to look
23 over what was marked? Okay. So I have marked for
24 identification Exhibits 54 through 84. Are there any
25 objections to moving any of those documents into evidence?

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2 MR. FITZGERALD: Your Honor, the only
3 objection would be the specific exhibit and I may have
4 mis-numbered it that was put in by PULP I believe for
5 their prefiled testimony. And that would be for
6 identification only similar to the Company. I just wasn't
7 sure of the exact exhibit number.

8 A.L.J. PHILLIPS: I don't think he
9 ultimately did that. What I have in my notes is 81 is
10 R.B. 14 which were the exhibits attached to Mr. Berkley's
11 rebuttal. And then the exhibits that were referenced in
12 Mr. Berkley's initial testimony, R.B. 2, R.B. 3, R.B. 4 as
13 82, 83 and 84 that he purports to rely on in his
14 testimony. Those were the only things that I was asked to
15 mark by PULP.

16 MR. FITZGERALD: Okay. Thank you,
17 your Honor.

18 A.L.J. PHILLIPS: So hearing no
19 objections I'm going to move these items that have been
20 marked from 54 to 84 into evidence. Are there any other
21 procedural matters before we conclude? This is your last
22 opportunity to be heard.

23 Okay. Hearing nothing I wish you all
24 good night and thank you very much for your time.

25 (Off the record 5:37 p.m.)

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3 STATE OF NEW YORK

4 I, HANNAH ALLEN, do hereby certify that the foregoing was
5 reported by me, in the cause, at the time and place, as
6 stated in the caption hereto, at Page 1153 hereof; that
7 the foregoing typewritten transcription consisting of
8 pages 1153 through 1537, is a true record of all
9 proceedings had at the hearing.

10 IN WITNESS WHEREOF, I have hereunto
11 subscribed my name, this the 1st day of November, 2016.

12

13

14 HANNAH ALLEN, Reporter

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