STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of New York on December 13, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman, concurring
James S. Alesi

CASE 16-W-0259 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York American Water Company, Inc. for Water Service.

CASE 17-M-0815 - Proceeding on Motion of the Commission on Changes in Law that May Affect Rates.

CASE 18-W-0554 - Petition for Approval, Pursuant to Public Service Law, Section 113(2), of a Proposed Allocation of Certain Tax Refunds between New York American Water Company, Inc. and Ratepayers.

ORDER DETERMINING NET REFUND AMOUNT

(Issued and Effective December 13, 2018)

BY THE COMMISSION:

INTRODUCTION

This Order addresses ratemaking for a number of New York American Water Company, Inc. (NYAW[1] or the Company) petitions and its Revenue Adjustment Clause (RAC) and Property Tax Reconciliation (PTR) filings (RAC/PTR), and nets the

[1] NYAW consists of two service areas known as SA1 and SA2. SA1 includes the Lynbrook District and the Upstate Districts. SA2 includes the Merrick District and the Sea Cliff District.

resulting amounts due to/from customers into a one-time sur-credit for customers. These petitions set forth proposals that are consistent with requirements of a Consent Order and Judgment (Consent Order),[2] but the calculations and the ratemaking for these petitions are determined by the Commission within this Order.

Specifically, this Order addresses:

1) the disposition of the customers' share of a $7.1 million property tax refund from the Town of Hempstead garbage district settlement;[3]

2) the disposition of the $2.1 million benefit arising from the Federal Income Tax rate change resulting from the Tax Cut and Jobs Act (TCJA or Tax Act) for the period January through September 2018;[4]

3) recovery of $3.0 million related to the Revenue Adjustment Clause and Property Tax Reconciliation (RAC/PTR),[5] which also includes:

   a. a correction to the Rate Year 1 (RY1) RAC target due to the net change in the number of billed days due to the change from bi-monthly and quarterly to monthly billings;

   b. a correction to the Sea Cliff District's RY1 RAC target due to the January 1, 2018 reduction to its

[2] On September 11, 2018, a Consent Order and Judgment of the New York State Supreme Court (*New York State Department of Public Service v. New York American Water Company, Inc.*, Index No. 05480-18 (Supreme Court, Albany County)) was approved.

[3] The amount of the customers' share was decided by the Commission in Case 18-W-0554, New York American Water Company, Inc. – Tax Refund, Order Allocating Property Tax Refunds (issued December 13, 2018) (Garbage Tax Refund Order), an order issued concurrently with this Order.

[4] Case 17-M-0815, Tax Cuts and Jobs Act of 2017, Order Determining Rate Treatment of Tax Changes (issued August 9, 2018) (August 2018 TCJA Order).

[5] Case 16-W-0259, supra, Order Establishing Rates for Water Service (issued May 18, 2017) (2017 Rate Order).

property tax surcharge, in order to align the revenue target with the adjustments to property tax collections.[6]

Consistent with the recent Consent Order,[7] the Company requests that the customer credits related to the Town of Hempstead garbage district refund and the nine-month deferral related to the federal income tax rate change, first be used to offset its RY1 RAC/PTR balance, which otherwise would have resulted in a customer surcharge. The table below summarizes the net amount owed to customers:

NYAW Net Refund Summary Table[8] ($ Millions)				
	Lynbrook	**Merrick**	**Sea Cliff**	**Total**
Garbage Tax Refund (Town of Hempstead)	4.532	2.603	N/A[9]	7.136
TCJA- FIT Decrease (Jan–Sept 2018 deferral)	1.535	0.430	0.074	2.056
RAC/PTR – RY1	(2.496)	(.394)	(.048)	(2.966)
Net Owed Customers	**3.572**	**2.639**	**.026**	**6.226**

[6] Cases 16-W-0259 and 17-W-0300, New York American Water. Inc. – Property Taxes, Order Determining the Amount and Method for Reparations (issued August 9, 2018)(August 9th Reparations Order).

[7] Consent Order, page 6.

[8] For the Upstate Districts, the TCJA credit is $17,337 owed to customers and the RAC/PTR is $28,180 owed by customers, which nets to $10,843 owed by customers. Since the amount is so small, the Company has agreed to forgo sur-charging the Upstate Districts' customers.

[9] Sea Cliff and the Upstate Districts are not in the Town of Hempstead, so they did not pay the original taxes associated with the Garbage Tax Refund.

BACKGROUND

Garbage Tax Property Tax Refund (18-W-0554)

On August 27, 2018, NYAW filed a petition regarding property tax refunds it received after challenging the special ad valorem levies for garbage and refuse taxes on the Company's mass property by the Town of Hempstead. The details of that case and the determination of the net refund amount were decided by the Commission in a companion order that is being issued concurrently with this Order. In the Garbage Tax Refund Order, the Commission determined that $4,532,048 should be refunded to Lynbrook customers and $2,603,593 should be refunded to Merrick customers. It also determined that the $1,010,088 shareholder portion of the tax refund should be used to fund a conservation study. The Company requests authorization to use the customer portion of the tax refund to offset the Company's RAC/PTR surcharges.

TCJA – January 2018 through September 2018 Deferral (17-M-0815)

The TCJA reduced the federal corporate income tax (FIT) rate paid by NYAW from 35% to 21%, among other changes. The August 2018 TCJA Order required that the tax benefits of the TCJA, be preserved for ratepayers' benefit. There were three primary areas that affected NYAW:

1) its prospective tax liability was reduced from 35% to 21% of the pre-tax net income. In compliance with the TCJA Order, the Company implemented a sur-credit on October 1, 2018 to credit customers the over collection of FIT expense in base rates;

2) the Company's accumulated deferred federal income taxes (ADFIT) as of December 31, 2017, which were collected to pay for future tax liabilities, will be reversed at the 21% tax rate resulting in excess ADFIT that will benefit customers. The August 2018 TCJA Order determined that the

disposition of this excess ADFIT will be addressed in the QNYM Case[10]; and

3) the Company over collected and deferred for customer benefit, the FIT expense built in current rates from when the TCJA went into effect on January 1, 2018 to October 1, 2018, the start of the customer sur-credit. This third element is addressed in this Order.

As part of the August 2018 TCJA Order, the Commission ordered NYAW to pass back the deferred savings over a three-year period.[11] On August 27, 2018, the Company filed a petition requesting authorization to return the overcollection owed ratepayers through a one-time bill credit, rather than passing it back over three years, as contemplated in the TCJA Order. Additionally, the Company's petition requests authorization to use the deferred tax savings sur-credit to offset the Company's RAC/PTR surcharges.

RAC/PTR Reconciliation – Due From Customers (16-W-0259)

The 2017 Rate Order established the Company's current RAC/PTR Mechanisms for its two service areas. The mechanisms allow NYAW to reconcile its actual annual metered revenues, production costs (fuel, power and chemicals), and property taxes with the amounts projected in rates and to recover under-collections/refund over-collections through a surcharge/sur-credit in the following rate year.

On May 30, 2018, NYAW filed its proposed treatment for the Company's RAC/PTR Mechanisms for the rate year ended March 31, 2018. Subsequently, on November 27, 2018, the Company

[10] Case 17-W-0232, Water Utilities – Qualified New York Manufacturers, Notice Establishing Proceeding Concerning Rate Impacts Due to a Change in the Tax Law (issued May 25, 2017) (QNYM Case).

[11] August 2018 TCJA Order, page 55.

submitted an update to its May filing updating its interest calculations through December 31, 2018 and removing the balances related to the Temporary State Assessment from its request. For NYAW's Service Area 1 (SA1), the revised filing reports $1,637,953 of under-collected revenues and related interest, $859,821 of under-collected property taxes and related interest, and $26,148 in reconciliation items for a total surcharge of $2,523,922.

For the Company's Service Area 2 (SA2) Merrick District, the revised filing reports $298,665 of under-collected revenues and related interest, $95,660 of under-collected property taxes and related interest, and a credit of $115 for reconciliation items for a total surcharge of $394,210. For the SA2 Sea Cliff District, NYAW reports $51,579 of under-collected revenues and related interest and a credit of $3,830 for reconciliation items for a total surcharge of $47,749. Property taxes in the Sea Cliff District were the subject of a Department of Public Service Staff (Staff) investigation and report,[12] and per the August 9th Reparations Order,[13] a sur-credit of $68.14 per customer, which included the RY1 property tax reconciliation, was passed back to ratepayers in September 2018.

RAC Target Adjustment Due to Change to Monthly Billing (16-W-0259)

The Company's 2017 Rate Order authorized NYAW to switch to monthly billing for all customers, some of which were

[12] Cases 16-W-0259 and 17-W-0300, New York American Water. Inc. – Property Taxes, Staff Interim Report. (issued April 30, 2018).

[13] Cases 16-W-0259 and 17-W-0300, New York American Water. Inc. – Property Taxes, Order Determining the Amount and Method for Reparations (issued August 9, 2018) (August 9th Reparations Order).

previously billed on a bi-monthly or quarterly billing cycle. On April 19, 2018, NYAW filed a petition to address the change in billing cycle. The petition stated that a byproduct of the transition to monthly billing cycles from bi-monthly or quarterly is that, in the year of transition, the Company will experience a one-time increase in billed days, with an offsetting decrease in unbilled days. Unbilled days are used to calculate unbilled revenues, which is an asset reflecting money owed to the Company by customers for the service provided prior to when the bills are issued, which at that time will become a receivable. If the Company ceased to exist tomorrow, those unbilled revenues would still be owed to the Company by the customers for services rendered. If there was not a corresponding increase in the revenue target for the transition year, this would have the unintended consequence of shifting unbilled revenue that properly belong to the Company to the customers. To correct this error, the Company proposed to use the methodology employed when its Lynbrook District within SA1 transitioned to monthly billing,[14] in which the authorized revenue level is increased to reflect the additional billing days experienced because of the switch to monthly billing. This increase in billed days and the decrease in unbilled days will result in a net decrease in the revenue target level for SA1 of $9,076 and a net increase in the revenue target level for SA2 of $528,657. The Company states that this will hold NYAW harmless for the transition to monthly billing and provide accurate data for the Company's revenue reconciliation mechanism.

[14] Case 07-W-0508, Long Island Water Corporation - Rates, Order Determining Revenue Requirement and Rate Design (issued March 5, 2008)

RAC Target Adjustment for Sea Cliff Due to Property Tax Surcharge Adjustment (16-W-0259)

On January 29, 2018, the Company filed a petition seeking, among other things, approval to adjust RAC targets to account for the impact of the January 1, 2018 reduction to the Incremental Property Tax Surcharge (IPTS) from 49.47 cents to 36.24 cents per 100 gallons, which is equivalent to a $99,629 reduction in the property tax surcharge in the remainder of RY1 (January to March 2018). Because this RAC target adjustment relates to the property tax filing error, it only impacts the Sea Cliff service territory. In its Sea Cliff RAC filing, the Company made an adjustment to reduce the revenue target by $99,629 to reflect this adjustment; otherwise, the Company would inappropriately collect the $99,629 through the RAC reconciliation that was due to customers.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), Notices of Proposed Rulemaking were published in the State Register on September 5, 2018 in Case 16-W-0259 for the proposed accounting change to revise the revenue targets due to change to monthly billings [SAPA No. 16-W-0259SP5] and for the proposed change to revise revenue targets due to changes in property tax targets [SAPA No. 16-W-0259SP6]. The time for submission of comments pursuant to the Notices expired on November 5, 2018. During the comment period, 17 comments were received, however, they were generally regarding the Company's rates and service quality, ratepayers' desire for public water, and Staff's investigation into NYAW's property tax expense error.

A Notice of Commission Order in Case 17-M-0815 on the TCJA was published in the State Register on August 29, 2018 [SAPA No. 17-M-0815SA1]. Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on September 12, 2018, in Case 17-M-0815 for the proposed accelerated return of the TCJA customer credit [SAPA No. 17-M-0815SP2]. The time for submission of comments pursuant to the Notice expired on November 12, 2018. During the comment period, two comments were received requesting that all of the tax savings be returned to ratepayers expeditiously.

A Notice of Proposed Rulemaking was published in the State Register on September 12, 2018, in Case 18-W-0554 on the property tax refund [SAPA No. 18-W-0554SP1]. The time for submission of comments pursuant to the Notice expired on November 19, 2018. No comments were received.

STATUTORY AUTHORITY

Under PSL §§89-b and 89-c, the Commission has the authority to ensure just and reasonable rates and safe and adequate service. Under PSL §113(2), the Commission may determine, after a hearing, the disposition of any tax refund received by a utility.

DISCUSSION AND CONCLUSION

This Order resolves petitions by NYAW for the disposition of the customers' share of the Town of Hempstead garbage tax refund, savings realized in 2018 from the Tax Act and the reconciliation under the RAC/PTR, each of which would result in either surcharges or sur-credits to ratepayers' bills. While each case could be resolved separately, determining the net effect and ordering a single adjustment to ratepayers' bills

is beneficial to customers, more efficient and less disruptive than having multiple surcharges and credits. The Commission approves the Company's proposal to return to customers the net customer credit resulting from these related proceedings through a one-time sur-credit. In addition, necessary changes to the RAC targets are approved as described herein.

Garbage Tax Property Tax Refund (18-W-0554)

The determination of the net refund amounts for the Garbage Tax Refund was decided by the Commission in a companion Order, which is being issued concurrently with this Order. In the Garbage Tax Refund Order, the Commission determined that $4,532,048 should be refunded to Lynbrook customers and $2,603,593 should be refunded to Merrick customers. It also determined that the $1,010,088 shareholder portion of the tax refund should be used to fund a conservation study.

Consistent with a recent Consent Order and Judgment[15], NYAW has committed to use the shareholder portion of the refund to fund conservation study and potential rebate program. NYAW will work with Staff on the details of the proposed conservation study. This study should include an analysis of the avoided capital costs associated with procuring additional water supply as compared to the cost of implementing any water conservation measures, demonstrate the best possible plan for a rebate program to achieve specific goals and water-use reductions, and provide defined benefits to NYAW customers. In addition, the study should provide feedback on customer interest in a rebate program, data about the efficiency of the current water appliances throughout the Company's service territory and an estimate of how much water saving potential is available through

[15] Consent Order, page 6.

any rebate program. The Company should update Staff throughout the process of completing this study.

TCJA – January 2018 through September 2018 Deferral (17-M-0815)

As discussed above, this Order addresses the Company's overcollection related to the FIT rate reduction from January through September 2018. Instead of passing back the overcollection over a three-year period as directed by the August 2018 TCJA Order, the Company's proposal to pass back the $2.056 million credit through a one-time credit that offsets the RAC/PTR surcharge is reasonable and approved. While the August 2018 TCJA Order allowed a slower return of these funds to smooth cash flow impacts, the Company's proposed approach for a one-time credit is a more expeditious and efficient way to ameliorate other bill impacts being experienced by NYAW customers. This credit is subject to reconciliation as provided in the TCJA Order.[16]

RAC/PTR Reconciliation – Due From Customers (16-W-0259)

As updated by the Company, the total under-collection of revenues, production costs, and property taxes for the twelve months ending March 31, 2018, is $2,523,922, $394,210 and $47,749 for SA1, SA2 Merrick District and SA2 Sea Cliff District, respectively. The individual elements included within the reconciliations are detailed in Attachment A. A review of the Company's workpapers and supporting calculations, accounting records, and the Company's 2017 Rate Order was performed. Additionally, the Company's property tax invoices were reviewed to verify that amounts included were for the correct billing

[16] August 2018 TCJA Order, page 59.

periods and related to the correct Company and Service Area. The reasoning behind any large changes in total property tax amounts and missing and additional properties was investigated. The Company properly reflected the RY1 RAC/PTR revisions due to the billing change and Sea Cliff property tax correction and no adjustments were found to be necessary.

RAC Target Adjustment Due to Change to Monthly Billing Change (16-W-0259)

The Company's 2017 Rate Order authorized NYAW to switch to monthly billing for all customers previously billed on a bi-monthly or quarterly basis. On April 19, 2018, NYAW filed a petition related to the 2017 Rate Order's authorization for the Company to switch all customers previously billed on either a bi-monthly or quarterly basis to monthly billing. A byproduct of the transition to monthly billing cycles from bi-monthly or quarterly is that, in the year of transition, the Company will experience a one-time increase in billed days, with an offsetting decrease in unbilled days. The Company's proposed update to the RY1 revenue targets resulting from the changes from bi-weekly or quarterly to monthly billings is appropriate and approved by the Commission.

RAC Target Adjustment for Sea Cliff Due to Property Tax Surcharge Adjustment (16-W-0259)

On January 29, 2018, the Company filed a petition related to its Sea Cliff service area, seeking, among other things, approval to adjust its RAC target, to account for the impact of the January 1, 2018 reduction to the Incremental Property Tax Surcharge (IPTS) from 49.47 cents to 36.24 cents per 100 gallons. In its Sea Cliff RAC filing, the Company made a $99,629 reduction to its revenue target. Without this

adjustment to the RAC target approved in the 2017 Rate Order, the Company would end up collecting through the RAC an amount that was properly passed back to customers in the Commission's August 9th Reparations Order. The Company's proposed update to Sea Cliff's RY1 revenue targets resulting from the IPTS adjustment is appropriate and approved by the Commission.

Refund Methodology

As stated previously, the Garbage Tax Refund and TCJA deferrals have been offset by the RAC/PTR resulting in net credits to customers in each district. As shown in the table on page 2, Lynbrook customers should be credited $3.572 million, Merrick customers $2.639 million and Sea Cliff customers $0.026 million for a total credit to NYAW customers of $6.226. These amounts will be refunded to customers as a one-time bill credit on bills issued between January 1, 2019, and March 31, 2019. The amount of each customer's credit will be calculated on an individual customer basis, using each customer's consumption from November 1, 2017, through October 31, 2018 (usage period). The consumption for each customer will be multiplied by the metered sales sur-credit rate for the appropriate district, which will be calculated for each district based on the total credit amount allocated to metered customers divided by the total metered consumption during the usage period for the district. Therefore, each customer's total credit amount will depend on consumption during the usage period. For fire protection customers, this credit will be a percentage reduction of the customer bill.

The Commission orders:

1. The Commission adopts, as described in the body of this order, proposals by New York American Water Company, Inc., to:

a) return to customers the net customer credit resulting from these proceedings through a one-time sur-credit on bills issued between January 1, 2019 and March 31, 2019;
b) update Rate Year 1 revenue targets resulting from the changes from bi-weekly or quarterly to monthly billings;
c) update Sea Cliff's Rate Year 1 revenue targets resulting from the Incremental Property Tax Surcharge.

2. New York American Water Company, Inc., is directed to file tariff amendments necessary to effectuate the directives described in the body of this order, on or before December 28, 2018, to become effective January 1, 2019.

3. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 as to newspaper publication for the proposed changes directed in Clause 2 is waived.

4. New York American Water Company, Inc., is directed to work with Staff on the details of the proposed conservation study and provide updates to Staff throughout on its progress as described in the body of this order.

5. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

6. Case 16-W-0259 and Case 17-M-0815 are continued.

7. Case 18-W-0554 is closed.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary

Case 16-W-0259
Attachment A

SUMMARY OF REVENUE AND PROPERTY TAX RECONCILIATION MECHANISMS RECONCILIATION
FOR THE PERIOD 4/1/2017 - 3/31/2018
Revised 11/27/18

NEW YORK AMERICAN WATER COMPANY - SERVICE AREA 1

	Principal Amount	Interest	Amount
Revenue and Production Costs	$1,587,378	$ 50,575	$ 1,637,953
Property Tax Reconciliation Clause	$ 840,586	$ 19,234	$ 859,821
Reconciliation Items (Refunds/Surcharges)	$ 26,148	$ -	$ 26,148
Total for Rate Year - SA1	**$2,454,113**	**$ 69,809**	**$ 2,523,922**

NEW YORK AMERICAN WATER COMPANY - SERVICE AREA 2 - MERRICK DISTRICT

	Principal Amount	Interest	Amount
Revenue and Production Costs	$ 291,992	$ 6,673	$ 298,665
Property Tax Reconciliation Clause	$ 94,282	$ 1,378	$ 95,660
Reconciliation Items (Refunds/Surcharges)	$ (115)	$ -	$ (115)
Total for Rate Year - Merrick	**$ 386,159**	**$ 8,051**	**$ 394,210**

NEW YORK AMERICAN WATER COMPANY - SERVICE AREA 2 - SEA CLIFF DISTRICT

	Principal Amount	Interest	Amount
Revenue and Production Costs	$ 50,427	$ 1,153	$ 51,579
Reconciliation Items (Refunds/Surcharges)	$ (3,830)	$ -	$ (3,830)
Total for Rate Year - Sea Cliff	**$ 46,596**	**$ 1,153**	**$ 47,749**