STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 20-W-0102 - Joint Petition of American Water Works Company, Inc.; New York American Water Company, Inc.; and Liberty Utilities (Eastern Water Holdings) Corp. for Approval, Pursuant to Section 89-h of the New York Public Service Law, of the Acquisition by Liberty Utilities (Eastern Water Holdings) Corp. of 100% of New York American Water Company, Inc. Issued and Outstanding Capital Stock and for Approval, Pursuant to Section 89-f of the New York Public Service Law, of the Issuance of Long-Term Indebtedness.

ORDER ADOPTING TERMS OF JOINT PROPOSAL, APPROVING STOCK PURCHASE AGREEMENT AND LONG-TERM INDEBTEDNESS, WITH ADDITIONAL REQUIREMENTS

Issued and Effective: December 16, 2021

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on December 16, 2021

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman, concurring
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 20-W-0102 – Joint Petition of American Water Works Company, Inc.; New York American Water Company, Inc.; and Liberty Utilities (Eastern Water Holdings) Corp. for Approval, Pursuant to Section 89-h of the New York Public Service Law, of the Acquisition by Liberty Utilities (Eastern Water Holdings) Corp. of 100% of New York American Water Company, Inc.'s Issued and Outstanding Capital Stock and for Approval, Pursuant to Section 89-f of the New York Public Service Law, of the Issuance of Long-Term Indebtedness

ORDER ADOPTING TERMS OF JOINT PROPOSAL, APPROVING STOCK PURCHASE AGREEMENT AND LONG-TERM INDEBTEDNESS, WITH ADDITIONAL REQUIREMENTS

(Issued and Effective December 16, 2021)

BY THE COMMISSION:

I. INTRODUCTION

On November 3, 2021, American Water Works Company, Inc. (American Water), New York American Water Company, Inc. (NY American Water), and Liberty Utilities (Eastern Water Holdings) Corp. (Liberty Eastern) (collectively, the Companies or Joint

Petitioners) filed a Joint Proposal reflecting an agreement with the Department of Public Service Trial Staff (DPS Staff), the Massapequa Water District (Massapequa WD), the Village of Sea Cliff (Sea Cliff), North Shore Concerned Citizens (NSCC), and the Glen Head-Glenwood Civic Council (GHGCC) regarding Liberty Eastern's acquisition of NY American Water's capital stock and issuance of long-term indebtedness.

For the reasons set forth below, we find that the Joint Proposal is in the public interest and is consistent with the Commission's Settlement Guidelines. We therefore adopt its terms and the associated exhibits, with additional requirements. We authorize Liberty Eastern's acquisition, and NY American Water's transfer, of 100 percent of NY American Water's issued and outstanding capital stock pursuant to Public Service Law (PSL) §89-h and 16 NYCRR §§17.2 and 39.1. We preserve NY American Water's capital structure upon the transfer of NY American Water's stock to Liberty Eastern.

We also authorize Liberty Eastern's issuance of long-term indebtedness of no more than $198 million for the purpose of paying NY American Water's existing long-term inter-company debt pursuant to PSL §89-f and 16 NYCRR §37.1. Except as otherwise expressly provided herein, this Order also reaffirms and preserves the terms and conditions in the Commission's May 18, 2017 Order Approving Rates (2017 Rate Order),[1] as modified by the Commission's subsequently issued Orders.

[1] 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 (NY American Water – Rates), Order Establishing Rates for Water Service (issued May 18, 2017) (2017 Rate Order).

II. FACTUAL AND REGULATORY BACKGROUND

On February 28, 2020, NY American Water and Liberty Eastern filed a petition seeking Commission approval for Liberty Eastern to purchase and acquire 100 percent of NY American Water's outstanding capital stock for $608 million, pursuant to PSL §89-h and 16 NYCRR §§17.2 and 39.1, and to issue long-term indebtedness, replacing NY American Water's existing $196 million of long-term inter-company debt, pursuant to PSL §89-f and 16 NYCRR §37.1 (Joint Petition).[2] With the Joint Petition, the Companies included the November 20, 2019 Stock Purchase Agreement and associated schedules, 18 attachments containing corporate, financial and operational information, as well as supporting testimony and exhibits, an Environmental Assessment Form, and other related information.[3]

A. The Petitioning Companies

NY American Water is a subsidiary of American Water Works and provides residential and non-residential water and wastewater services and public and private fire protection services primarily on Long Island, but also in certain upstate communities. It has approximately 125,000 customers throughout parts of Nassau, Orange, Putnam, Sullivan, Ulster, Washington, and Westchester Counties.[4] NY American Water owns and operates water utility systems and it employs approximately 130 people

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[2] NY American Water's long-term debt is owed to affiliate American Water Capital Corp., a direct and wholly owned subsidiary of affiliate American Water.

[3] Hearing Exhibit 7-C, Attachment 6 (Confidential November 20, 2019 Stock Purchase Agreement). A complete list of the financial, organizational, corporate, and other Joint Petition Attachments are contained in the Companies' original filing. Hearing Exhibits 2-19; Joint Petition and Attachments.

[4] Hearing Exhibit 1 (Joint Petition), p. 6.

and its assets include iron removal treatment plants, ground water production facilities, 1,200 miles of water mains, 8,800 fire hydrants, and 25 water storage tanks.[5]

NY American Water's service territories consist of three distinct areas: Service Area 1 includes the Lynbrook Operations District and communities in Southwestern Nassau County and Upstate New York;[6] Service Area 2 – North Shore is comprised of the Sea Cliff Operations District, and several other Long Island communities;[7] Service Area 2 – South Shore is comprised of the Merrick Operations District and several communities in Southeastern Nassau County.[8]

Liberty Eastern is a subsidiary of Liberty Utilities Co. (LUCo), which in turn is a subsidiary of Liberty Canada, all

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[5] Hearing Exhibit 3 (Joint Petition, Attachment 2, NY American Water Direct Testimony of Lynda B. DiMenna), pp. 2-3.

[6] Hearing Exhibit 94 (Responses to DPS 27-3, n. 1 - n. 3). The communities in Service Area 1 include Atlantic Beach, Baldwin, Baldwin Harbor, Barnum Island, Bay Park, Cedarhurst, East Atlantic Beach, East Rockaway, Harbor Isle, Hewlett, Hewlett Bay Park, Hewlett Harbor, Hewlett Neck, Inwood, Island Park, Lakeview, Lawrence, Lynbrook, Malverne, Malverne Park-Oaks, Meadowmere, a portion of the Village of Mill Neck, North Lawrence, North Lynbrook, North Woodmere, Oceanside, Roosevelt, South Hempstead, Valley Stream, West Hempstead, Woodmere, Woodsburgh, New Vernon, Waccabuc, West Branch, Whitlock Farms, Wild Oaks, Beaver Dam Lake, Cambridge, Dykeer, Hoey DeGraw, Kingsvale, Mt. Ebo, a portion of the Town of Mamakating (Sullivan County), and the Town of Rochester (Ulster County).

[7] Id. The communities in Service Area 2 - North Shore include the Villages of Sea Cliff, Glenwood Landing, and the Glen Head-Glenwood Water District of the Village of Old Brookville; a small area in the Village of Roslyn Harbor; and a small area in the City of Glen Cove.

[8] Id. The communities in Service Area 2 – South Shore include Bellmore, Levittown, a portion of Massapequa, Massapequa Park, and Levittown, Merrick, North Bellmore, North Merrick, North Seaford, North Wantagh, Seaford, and Wantagh.

of which are subsidiaries of Algonquin Power & Utilities Corp. (Algonquin).[9] Liberty Eastern was formed for the purpose of purchasing, acquiring and otherwise holding NY American Water's capital stock and issuing long term indebtedness, which are the subject of the Joint Petition.[10]

LUCo is the corporate parent of numerous regulated water, natural gas and electric distribution, sewer and transmission utilities, including Liberty Utilities (St. Lawrence Gas) Corporation in New York.[11] It provides water service to approximately 168,000 water and wastewater customers in several other States and has a "BBB" credit rating from both Standard & Poor's and Fitch rating services.[12] Liberty Eastern indicates that LUCo has raised $1.28 billion in private debt

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[9] Algonquin is a publicly traded energy services entity doing business in the United States and Canada, with diversified regulated and non-regulated generation, distribution and transmission operations through LUCo and approximately $10 billion in total assets. In October 2019, it completed an initial public offering of 26.3 million shares, generating gross proceeds of $354.4 million. Hearing Exhibit 2 (Liberty Eastern Direct Testimony), p. 14.

[10] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), pp. 1, 28-29.

[11] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), p. 9. LUCo identifies itself as a United States-based holding company that owns and operates a national portfolio of over 25 regulated electric, natural gas, water, and wastewater businesses across 13 States and one Canadian Province serving approximately 800,000 residential, commercial, and industrial customers in the United States and Canada. LUCo also owns and operates regulated natural gas distribution utility systems in Georgia, Illinois, Iowa, Massachusetts, Missouri, and New Hampshire; and regulated water distribution and wastewater collection utility systems in the States of Arizona, Arkansas, California, Illinois, Missouri, and Texas.

[12] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), pp. 13-14, 17, 29; Hearing Exhibit 5-C (Joint Petition Attachment 4: Confidential LUCo/Algonquin Credit Rating Reports).

since 2012, which has been used to fund acquisitions similar to the Transaction proposed in the Joint Petition, and that LUCo can access equity markets through its relationship with Algonquin.[13]

B. The Joint Petition

On November 20, 2019, NY American Water and LUCo executed a Stock Purchase Agreement providing for the purchase of 100 percent of NY American Water's issued and outstanding capital stock (the Transaction).[14] As part of the Transaction, Algonquin executed a guarantee of all payment obligations incurred by LUCo as a result of the stock purchase Transaction.[15]

The testimony submitted with the Joint Petition by Liberty Eastern provides additional details associated with the Transaction. Following approval and closing of the Transaction, the surviving entity (identified as "Liberty NY") would operate on a stand-alone basis, with assets, books, and records that are separate and distinct from those of LUCo, Liberty Eastern, and

[13] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), p. 14. Liberty Eastern also includes Algonquin's annual report, balance sheet and income statement for the period ending December 31, 2018, and the 9 months ending September 30, 2019. Hearing Exhibit 17 (Joint Petition, Attachment 16).

[14] Hearing Exhibit 7 (Joint Petition, Attachment 6). The stock acquisition Transaction includes acquisition of the stock of the Mt. Ebo Sewer Works, Inc. which is characterized in the Stock Purchase Agreement as an unregulated sewer company and subsidiary of NY American Water. Hearing Exhibit 1 (Joint Petition), p. 6.

[15] Hearing Exhibit 7 (Joint Petition, Attachment 6, Stock Purchase Agreement); Hearing Exhibit 7-9 (Joint Petition, Attachment 6, Algonquin Corporate Parent Guaranty).

all other affiliates.[16] Liberty Eastern asserts that the new entity, Liberty NY, will be a subsidiary of LUCo and will have the financial backing of both LUCo and Algonquin.[17]

Liberty Eastern asserts that it intends "to immediately address NYAW's [NY American Water's] capital needs and work with all interested stakeholders to address various operational issues," including the implementation of drinking water remedial treatment systems for perfluorooctane sulfonate (PFOS), perfluorooctanoic acid (PFOA), and 1,4-dioxane contaminants found in excess of maximum contaminant levels (MCLs) in several drinking water wells serving some of NY American Water's customers.[18] Liberty Eastern indicates that it has experience in this area, having designed, constructed and

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[16] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), p. 29; Hearing Exhibit 8 (Joint Petition, Attachment 7). As described below, the Joint Proposal provides for NY American Water to retain its name and continue to operate as such under Liberty Eastern's stock ownership.

[17] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), pp. 15, 29; Hearing Exhibit 7-9 (Algonquin Corporate Parent Guarantee).

[18] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), p. 30; Hearing Exhibit 86 (DPS Staff Infrastructure Panel Exhibits, Responses to DPS 171.1 and 171.2). Levels of PFOS, PFOA, and 1,4-dioxane in excess of the MCLs have been detected in NY American Water's water supply system, including the Glen Head Well, the Dykeer System in Somers, the Seaman's Neck Plant in Wantagh and Plant 16 in Roosevelt. In its August 7, 2020 responses to DPS 171.1 and 171.2, NY American Water indicates that it is constructing treatment systems to address the exceedances except for Plant 16, which it calls "inactive." The Companies also identified dates for completion of construction of the treatment systems: Glen Head Well will be completed in December 2021; Dykeer will be completed in May 2022; and Seaman's Neck will be completed by the Fourth Quarter of 2023. Hearing Exhibit 38-4 (Supplemental Responses to ALJ-3(b)-(c)).

received regulatory approval to implement PFOA and PFOS remediation treatment systems in Litchfield Park, Arizona.[19]

The provisions of the Joint Petition and the direct testimony filed by the Companies claim that the Transaction will benefit ratepayers and therefore is in the public interest. First, Liberty Eastern claims that there will be a "rate freeze" insofar as it is agreeing not to file for a rate increase before March 31, 2023.[20] Liberty Eastern asserts that the base rate freeze does not preclude modification before April 1, 2023, to certain rates approved under the 2017 Rate Order, including the System Improvement Charge and the Levelization Surcharge, if the Commission approves the continued imposition of both as part of the Transaction.[21]

Second, Liberty Eastern asserts that the acquiring Company can recapitalize NY American Water's existing debt at a lower cost than the costs embedded in rates under the 2017 Rate Order, and that this will result in an annual savings of $500,000 and an $11.5 million savings over the 23-year life of the existing debt. This recapitalization "represents a significant savings to customers," according to the Joint Petition.[22]

Third, Liberty Eastern claims that the Transaction will result in enhanced local management and better customer service, with several functions being handled locally; that it will continue water conservation efforts; and that 14 new

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[19] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), pp. 18, 30.

[20] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), pp. 30-31.

[21] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), p. 31, n. 3.

[22] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), p. 31.

customer service positions and six more information technology (IT) and other regulatory and legal services positions will be created on Long Island (for a total of 20 new positions).[23] Liberty Eastern asserts that, as a result of the Transaction, there will be better employee retention, ready-access to capital, implementation of a business code of conduct, better cost allocation, and a strong regulatory relationship with Commission Staff.[24]

Liberty Eastern's testimony indicates that the costs of the Transaction will not be passed on to customers, including the premium above-book value (i.e., good will), or the costs associated with the Transaction itself.[25]

Liberty Eastern also asserts that the Transaction will result in the use of a decentralized approach to operations that emphasize local management and control of day-to-day business operations, including customer service, employee, regulatory functions, and community outreach activities and will result in the addition of approximately 20 jobs in the service areas.[26]

The Transaction also will involve the use of a shared services model whereby certain services will be provided by affiliates based on a direct charge or a defined cost allocation

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[23] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), pp. 32, 35-36.

[24] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), pp. 33-34.

[25] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), pp. 30-31.

[26] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), pp. 15-16. Liberty Eastern asserts in its Direct Testimony (p. 23) that NY American Water currently has a "top-down" management approach whereby many services are performed outside of the service territory rather than locally. Post-acquisition, most services will be provided at NY American Water's Merrick, Long Island headquarters. Hearing Exhibit 2 (Liberty Eastern Direct Testimony, p. 16; Exhibit 6).

methodology.[27] Costs not specifically attributable to Liberty NY would be allocated across all businesses under a defined cost allocation methodology based on guidelines published by the National Association of Regulatory Utility Commissions. These services are provided from a central location, including treasury, information technology, internal audit, compliance, health and safety, procurement insurance, legal, human resources, and risk management services, among others. Liberty Eastern claims that this approach will provide the benefits of an experienced service group, will deliver certain economies of scale, and will facilitate the standardization of these service activities.[28] Liberty Eastern and NY American Water indicate they are developing a joint transition team to prepare and implement a plan that ensures a consistent level of service following the closing of the Transaction.[29]

In its testimony, Liberty Eastern indicates that it will seek to have the United States Internal Revenue Service (IRS) treat the Transaction as an asset purchase and make an Internal Revenue Code Section 338(h)(10) election, resulting in a reset of the accumulated deferred tax balances once the transaction closes.[30] Consequently, this election will have no impact to ratepayers until the next rate case.

Liberty Eastern also indicates that its priority is to maintain a BBB investment grade rating. With respect to financing the Transaction, the proceeds of a term loan will be

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[27] Hearing Exhibit 2, p. 25. LUCo conducts cost allocation training and uses its own Cost Allocation Manual for this purpose. Hearing Exhibit 2 (Liberty Eastern Direct Testimony, Exhibits 3 and 4).

[28] Hearing Exhibit 2, pp. 16, 26.

[29] Hearing Exhibit 2, p. 39.

[30] Hearing Exhibit 2, pp. 36-37.

retired from a combination of equity, cash from operations, commercial paper, borrowings under a revolving credit facility, and proceeds from a long-term debt issuance.[31]

With respect to its request for Commission approval to issue and incur long-term debt pursuant to PSL §89-f, Liberty Eastern states that NY American Water's existing debt, which consists entirely of long-term intercompany debt of approximately $196 million as of January 1, 2020, will be eliminated at closing of the Transaction and Liberty Eastern will then recapitalize the debt with a combination of long-term debt in the form of (1) one or more tranches of intercompany debt in one or more tranches of long-term notes with terms and maturities ranging from 10-30 years; and/or (2) equity in accordance with NY American Water's approved capital structure.[32] The Joint Petition indicates that because NY American Water's existing debt is being replaced, the new debt issuance will not have a negative impact on the existing reimbursement margin and, given current interest rates and conditions in the credit capital markets and under LUCo's corporate umbrella, the new acquiring entity will be able to issue this new debt at a lower cost than NY American Water's current debt, thereby reducing annual interest expense by approximately $500,000 for the duration of NY American Water's existing loans, which is approximately 23 years.[33]

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[31] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), p. 40.

[32] Hearing Exhibit 2 (Liberty Eastern Direct Testimony), p. 42. LUCo is seeking Commission approval to employ one or more financing measures and incur debt equal to NY American Water's inter-company debt.

[33] Hearing Exhibit 1 (Joint Petition), p. 20.

C. Prior Mergers and Acquisitions

In April 2012, the Commission approved American Water's acquisition of Aqua NY and its wholly owned subsidiaries, New York Water Service Corporation and Aquarian Water Company of Sea Cliff, Inc. (Sea Cliff).[34] The Commission thereafter approved a petition to merge all of those companies into a single corporate entity now known as NY American Water.[35]

In 2014, the Commission approved NY American Water's acquisition of Mt. Ebo Water Works, Inc. and its merger into NY American Water, replacing all non-revenue terms of Mt. Ebo's tariff with those used in NY American Water's tariff.[36] From 2014 to 2016, the Commission issued orders approving three additional NY American Water acquisitions, namely, Lucas Estates Water Company, Inc., Spring Glen Lake Water Company LLC, and the Mill Neck Estates Water System,[37] replacing their existing tariffs with NY American Water's tariff and rates.[38]

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[34] Case 11-W-0472, American Water Works Co., Inc., et al. – Acquisition of Aqua New York, Inc., Order Approving Stock Acquisition (issued April 20, 2012).

[35] Case 12-W-0217, Aqua of New York of Sea Cliff, Inc. et al. – Merger, Order Approving Merger (issued August 17, 2012).

[36] Case 14-W-0067, New York American Water Company, Inc. – Acquisition of Mt. Ebo Water Works, Inc., Order Approving Stock Sale and Acquisition (issued June 13, 2014).

[37] Case 14-W-0148, New York American Water Company, Inc. – Acquisition of Lucas Estates Water Company, Inc., Order Approving Sale and Acquisition (issued July 25, 2014); Case 15-W-0375, New York American Water Company, Inc. – Acquisition of Spring Glen Lake Water Company LLC, Order Approving Sale and Acquisition (issued October 15, 2015); Case 15-W-0639, New York American Water Company, Inc. – Acquisition of Mill Neck Estates Water System, Order Approving Sale and Acquisition (issued February 25, 2016).

[38] Case 11-W-0200, New York American Water Company, Inc. – Rates, Order Determining Revenue Requirement and Rate Design (issued March 20, 2012).

D. 2017 Rate Order (Case 16-W-0259)

On May 18, 2017, the Commission issued an order adopting a Joint Proposal, which established a four-year rate plan (2017 Rate Order) for NY American Water for the period commencing on April 1, 2017, and ending on March 31, 2021.[39] Pursuant to the 2017 Rate Order, beginning on April 1, 2020, until March 31, 2021, rates for water service were set to increase by a total of $4.3 million for customers in Service Area 1 and by a total of $3.1 million for customers in Service Area 2.[40]

The 2017 Rate Plan included authorization for recovery of the cost of nine capital projects totaling $38.6 million through a monthly System Improvement Charge.[41] In addition, to mitigate the Rate Year One bill impact, the Commission levelized the base rate increases over the term of the four-year rate plan through a Levelization Surcharge. In Service Area 1, a portion of the revenue increases would be collected through the Surcharge during Rate Years 3 and 4, ending on March 31, 2021. At the end of the four-year rate plan, the Levelization Surcharge would end so that base rates would not be higher than they would have been if the Rate Year 1 bill impacts due to revenue increases had not been levelized. In the 2017 Rate

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[39] Case 16-W-0259, NY American Water – Rates, 2017 Rate Order.

[40] Case 16-W-0259, NY American Water – Rates, 2017 Rate Order.

[41] Case 16-W-0259, NY American Water – Rates. In the 2017 Rate Order (pp. 34-36), the Commission approved capital expenditures for Service Area 1 and Service Area 2 and set utility plant in service targets for each Rate Year, with underspending deferred for the benefit of customers and overspending made the responsibility of NY American Water. The 2017 Rate Order (pp. 47-52) provided for continuation of the System Improvement Charge mechanism and its extension throughout the service territory for recovery of authorized capital improvement costs when completed and in service (with each service area subject to separate surcharges).

Order, the Commission also included inclining block rates designed to encourage conservation of water.[42]

In the 2017 Rate Order, the Commission approved nine capital projects, over the four-year term of the rate plan. The costs of these capital projects would be recovered through the System Improvement Charge, which was intended to provide financial flexibility for NY American Water to undertake significant capital construction work while protecting ratepayers against the possibility of delays in scheduled construction because no allowance for carrying charges on the designated projects was included in base rates. The System Improvement Charge was not to be imposed until capital project work was completed and verified by DPS Staff as "used and useful."

Under the terms of the 2017 Rate Order, on May 30, 2019, NY American Water presented evidence to DPS Staff that it had completed four capital projects and the Commission then authorized initiation of the System Improvement Charge to recover the capital costs from customers.[43]

E. Property Tax Reporting Errors

On December 7, 2017, seven months after the Commission's issuance of the 2017 Rate Order, NY American Water notified DPS Staff that it had failed to correct erroneous real property tax expense information filed in the 2017 Rate Proceeding, resulting in significantly over-assessed property values in the Sea Cliff Water District and several Upstate water

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[42] The New York State Department of Environmental Conservation has instituted a State-wide 15 percent peak season water demand reduction goal.

[43] The Commission allowed NY American Water to institute a System Improvement Charge of 2.41 percent in Service Area 1 and 0.83 percent in Service Area 2.

systems, including Cambridge, Dykeer, Kingsvale, Waccabuc, and Wild Oaks, which resulted in customer overpayments. On December 26, 2017, DPS Staff informed NY American Water that it was investigating the incorrect and inflated tax expenses presented during the rate case.

On December 28, 2017, NY American Water filed a petition seeking to reconcile and correct the inflated tax expenses in the Sea Cliff District, calculating that the inflated expense was approximately $2 million and disclosing that it had led to customer overcharges (Reconciliation Petition).[44] In its Reconciliation Petition, NY American Water indicated that the rate plan approved in the 2017 Rate Order "was materially affected" because "the Company's current rate plan over-estimates the Company's real property tax expense for its Sea Cliff District."[45] NY American Water proposed a mitigation strategy for the over-collection of property tax expenses from customers and updated its tax projection model, estimating a $2.86 million credit to customers over the four-year rate plan ending on March 31, 2021. The Company terminated the Revenue Adjustment Clause and Property Tax Reconciliation (RAC/PTR) surcharge for Sea Cliff's customers effective January 1, 2018, and reduced the Incremental Property Tax Surcharge for the same customers, also effective January 1, 2018.

In January 2018, the Commission instituted a proceeding to investigate the error and the reason why NY American Water had not reported or addressed during the rate

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[44] Case 16-W-0259, NY American Water - Rates, Petition of New York American Water Company, Inc. for Authorization to Reconcile Real Property Tax Expense (filed December 28, 2017; updated January 29, 2018).

[45] Id., pp. 4-5.

proceeding the error associated with the Sea Cliff property overvaluation and excess taxation that resulted in the 2017 Rate Order, since the Company had been aware of the issue since 2013.[46] The Commission directed DPS Staff to thoroughly review and analyze NY American Water's new calculations of tax expenses and to investigate and report on the Company's disclosures regarding the errors, including all statements made in the Reconciliation Petition.

After an investigation, DPS Staff issued two reports, the first of which examined a proposed rate adjustment to ensure ratepayers were held harmless in relation to the property tax miscalculation error, and the second examined the root cause of the error.[47] In its first report, DPS Staff calculated the customer impacts resulting from the property tax errors and identified additional rate adjustments necessary to hold customers harmless and address instances where NY American Water had violated Commission regulations and requirements designed to prevent such errors.[48] In its second report, DPS Staff determined that the Company had been overcharged property taxes by $2.3 million over four years in the Sea Cliff District, resulting in customer overcharges, and had knowingly concealed

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[46] Case 16-W-0259, NY American Water - Rates, Order Initiating Investigation (issued January 18, 2018).

[47] Cases 16-W-0259, NY American Water – Rates; and 17-W-0300, Petition of New York American Water Company, Inc. for Approval to Offset the RAC/PTR Surcharge, P.S.C. No. 5., "Staff Interim Report on Its Investigation Into New York American Water's Property Tax Overcharges Hold Harmless Calculation" (filed April 30, 2018) (First DPS Staff Tax Report); and "Staff Investigation into Causes of New York American Water's Property Tax Expense Error, and Reasons for Untimely Reporting to the Department of Public Service and the Commission" (filed June 29, 2018) (Second DPS Staff Tax Report).

[48] Id., Second DPS Staff Tax Report, pp. 21-27; 38-39.

the problem from DPS Staff.[49] DPS Staff recommended that the Commission consider further enforcement actions, including retention of an independent monitor and review of certain costs to determine if the Company's errors should be paid by shareholders rather than ratepayers.

On July 12, 2018, the Commission issued an order directing initiation of a judicial enforcement action against NY American Water in New York Supreme Court, Albany County, to stop and prevent future violations of applicable Commission regulations and orders, among other things.[50]

On September 11, 2018, the New York Supreme Court entered a Consent Order and Judgment (Consent Order) approving a stipulation between NY American Water, DPS, and the Commission that resolved the judicial action.[51] The Consent Order required retention of an Independent Monitor to investigate and oversee practices related to property tax filings, rate case filings, implementation of recommendations from DPS Staff reports, and the cause of increased customer complaints related to rates and the Company's responses to the complaints. Subsequently, the Commission authorized the Independent Monitor's retention and scope of work.[52] The Independent Monitor thereafter submitted quarterly reports with recommendations for NY American Water's implementation. The Independent Monitor's role ended on

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49 Id.

50 Case 16-W-0259, NY American Water - Rates, Order Directing Commencement of Judicial Enforcement Proceedings (issued July 12, 2018), p. 7.

51 New York State Department of Public Service and New York State Public Service Commission v. New York American Water Company, Inc., (Index No. 05480-18), Consent Order and Judgment (September 14, 2018).

52 Case 16-W-0259, NY American Water – Rates, Order Authorizing Contract for Independent Monitor (issued October 18, 2018), pp. 5-7.

September 30, 2021, and a final report was submitted on October 22, 2021.[53]

On August 9, 2018, the Commission issued an order requiring NY American Water to refund overcollection amounts to customers due to the Sea Cliff property tax errors and removed the valuation errors from rates.[54]

F. Levelization Surcharge Proceeding

On February 25, 2019, NY American Water filed an emergency Petition requesting, among other things, Commission approval to postpone for one year the previously approved Rate Year 3 Levelization Surcharge for Service Area 1 customers set to go into effect April 1, 2019, and to amend the System Improvement Charge.[55] Long Island Clean Air Water and Soil (LI CAWS) filed opposition to the Petition.

On February 27, 2019, the Commission issued an order approving postponement of the Rate Year 3 Levelization Surcharge

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53 Case 16-W-0259, PA Consulting Group, "Independent Monitor Services Third Quarter 2021 Activities Report/Final Quarterly Report Sea Cliff Property Tax Matter" (September 30, 2021) (Independent Monitor's Final Report).

54 Case 16-W-0259, NY American Water – Rates, Order Determining the Amount and Method for Reparations (issued August 9, 2018).

55 Case 16-W-0259, Verified Petition of New York American Water Company, Inc. for Authorization to Modify Levelization Surcharge and Amend System Improvement Charge Projects (filed February 25, 2019). NY American Water's Petition also sought to impose a modified Levelization Surcharge effective April 1, 2020, and to modify the System Improvement Charge by substituting and expanding the number of capital projects eligible for cost recovery, including but not limited to deployment of Advanced Metering Infrastructure (AMI), thereby increasing the $38.6 million in capital expenditures approved in the 2017 Rate Order to $57.1 million. The Company also proposed an additional one-year stay out period before it would again file for new rates.

for Service Area 1 until April 1, 2020, but expressly deferred action on the other issues raised in the Petition, including amending the System Improvement Charge.[56] The Commission noted that if the Rate Year 3 Levelization Surcharge had gone into effect, the Company would have collected approximately $4.5 million from the Service Area 1 customers over the twelve months ending March 31, 2020. Instead, the Commission authorized NY American Water to implement a Levelization Surcharge mechanism that amortized collection of those costs over three years rather than over two years, thereby mitigating rate impacts on customers.[57]

On October 21, 2019, the Commission issued an order approving the imposition of revenue and property tax surcharges.[58] The Commission approved the Revenue, Production Costs and Property Tax Reconciliation Surcharges for Service Area 1 and Service Area 2 (Merrick and Sea Cliff) customers, adjustments to Sea Cliff's revenue targets for Rate Years 2 through 4, and authorized Rate Year 3 tariff amendments related to the levelization on a permanent basis.

NY American Water thereafter supplemented its Petition revising the scope and cost estimates for certain capital projects, adding two new projects subject to cost recovery through the System Improvement Charge mechanism, and reducing by

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[56] Case 16-W-0259, NY American Water – Rates, One Commissioner Order Postponing Levelization Charge (issued February 27, 2019); Confirming Order (issued March 14, 2019) (Levelization Order).

[57] Id., pp. 3-4.

[58] Case 16-W-0259, NY American Water – Rates, Order Authorizing Revenue and Property Tax Surcharges and Making Rate Year Three Tariff Amendments Permanent (issued October 21, 2019).

$6 million the total capital budget.[59] NY American Water indicated in the Supplemental Petition that the newly proposed projects are scheduled to be completed by 2025.

In a February 6, 2020 order, the Commission approved NY American Water's substitution and expansion of the number of projects recoverable through the System Improvement Charge mechanism and extended the rate plan for one year through March 31, 2022 (Rate Year 5).[60] In addition, the Commission postponed the implementation of the Rate Year 3 and Rate Year 4 Levelization Surcharges for Service Area 1.[61]

G. NY American Water Covid-19 Emergency Petitions

On March 24, 2020, NY American Water filed an Emergency Petition to postpone the rate increases and charges previously approved by the Commission in the 2017 Rate Order that were scheduled to go into effect on April 1, 2020 (Emergency Petition I). Emergency Petition I asserted that it

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[59] Case 16-W-0259, NY American Water – Rates, Supplement and Amendment to Petition to Modify Levelization Surcharge and Amend System Improvement Charge Projects (filed November 5, 2019). The revised AMI deployment scope and cost estimates proposed encompass installing AMI systems with a third-party cellular communication infrastructure and replacing all water meters for its 125,597 customer accounts between 2020 and 2025. The Company indicates that the AMI system will deliver access to high-use water alerts, continuous flow and leak alerts, near real-time access to account information, comparative analysis, conservation and bill reducing tips, and accurate meter consumption data.

[60] Hearing Exhibit 89 (DPS Staff Accounting Panel), p. 9; Case 16-W-0259, NY American Water – Rates, Order Postponing the Levelization Surcharge and Authorizing Amended System Improvement Charge Projects (issued February 6, 2020) (2020 System Improvement Charge Order).

[61] Case 16-W-0259, NY American Water – Rates, 2020 System Improvement Charge Order.

was intended to ease the financial impact of Covid-19 on customers in its service territory.[62]

Specifically, Emergency Petition I sought (1) to postpone for five months, until September 1, 2020, the rate increases that would have gone into effect on April 1, 2020, under the 2017 Rate Order; and (2) to postpone for one month the System Improvement Charge scheduled to become effective August 1, 2020. Emergency Petition I sought approval for implementation of a "make whole" surcharge through March 31, 2022, keeping NY American Water in the same position in which it would have been had the scheduled rate increases gone into effect as scheduled on April 1, 2020. NY American Water agreed to forego any interest on the revenues the surcharge would have collected during the postponement period. With respect to the System Improvement Charge, Emergency Petition I proposed recovery from customers of any resulting under-collection of revenues due to the postponement through the System Improvement Charge mechanism's reconciliation process. Cost recovery would occur when the Company updated the System Improvement Charge surcharge in 2021.

On March 25, 2020, in a one Commissioner Order, the Commission approved the delay to the rate increases and to the System Improvement Charge until September 1, 2020, as requested

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[62] Case 16-W-0259, NY American Water – Rates, Verified Petition Of New York American Water Company, Inc. for Approval on an Emergency Basis to Postpone Approved Rate Increases to Ease the Financial Impact to Customers of Covid-19 (Coronavirus) (Emergency Petition I). Emergency Petition I was applicable to rates and charges for residential, public and private fire, residential irrigation, and commercial customers in Service Areas 1 and 2; the levelization surcharge in Service Area 2; and the incremental property tax surcharge in the Sea Cliff District of Service Area 2.

in Emergency Petition I.[63] The Commission determined that NY American Water could continue to charge customers water rates outlined in Rate Year 3, as provided in the 2017 Rate Order and in the Commission's October 21, 2019 Revenue and Property Tax Surcharges Order that had authorized such surcharges.[64]

On September 1, 2020, NY American Water filed a second Emergency Petition (Emergency Petition II) seeking to postpone until January 1, 2021, (1) the Rate Year 3 and Rate Year 4 rate increases, subject to a make whole provision; (2) increases to the System Improvement Charge; (3) the implementation of the Revenue Adjustment Clause and Property Tax Reconciliation Surcharge; and (4) the Incremental Property Tax Surcharge statement and the Rate Year 4 Levelization Surcharge for Service Area 2.[65]

Emergency Petition II also sought to modify the previously approved make whole surcharge (effective on April 1, 2021) to include certain carrying charges to allow for the recovery of carrying charges on revenue lost between September 1, 2020, and January 1, 2021, during the pendency of the postponement, including interest related to both the postponed rate increases and the System Improvement Charge

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[63] Case 16-W-0259, NY American Water – Rates, Order Postponing Approved Delivery Rate Increases and System Improvement Charge (issued March 25, 2020); Confirming Order (issued April 28, 2020).

[64] Case 16-W-0259, NY American Water – Rates, Order Authorizing Revenue and Property Tax Surcharges and Making Rate Year Three Tariff Amendments Permanent (issued October 21, 2019).

[65] Case 16-W-0259, NY American Water – Rates, Verified Petition of New York American Water Company, Inc. for Approval on an Emergency Basis to Further Postpone Approved Rate Increases (Emergency Petition II), DMM Item No. 262. As NY American Water indicated in Emergency Petition II (p. 6), it was not seeking to change its Levelization Surcharge for Service Area 1.

incurred from September 1, 2020, to January 1, 2021.[66] The make-whole surcharge would terminate on March 31, 2022. Emergency Petition II proposed that recovery of revenue under-collections accrue interest and be amortized over twelve months and that a surcharge be applied to customer bills in Rate Year 5 (April 1, 2021, through March 31, 2022).[67]

In a One Commissioner Order dated September 1, 2020, the Commission granted Emergency Petition II and again approved the delay in rate increases from September 1, 2020, until January 1, 2021, subject to a make-whole provision and the assessment of the System Improvement Charge.[68]

On December 29, 2021, NY American Water filed a third Emergency Petition (Emergency Petition III) to further postpone until May 1, 2021, the previously approved (1) rate increases scheduled to be effective on January 1, 2021; (2) make whole surcharge scheduled to be effective on April 1, 2021; (3) increases to the System Improvement Charge scheduled to be effective on January 1, 2021; (4) the Rate Year 3 RAC/PTR surcharge; (4) the Incremental Property Tax Surcharge Statement; and (5) the Incremental Property Tax Surcharge Statement and Rate Year 4 Levelization Surcharge for Service Area 2.

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[66] In Emergency Petition I, the Company had previously chosen to forego recovering carrying charges on lost revenues during the initial postponement timeframe, but in Emergency Petition II requested approval to recover such charges during that timeframe and the entire postponed timeframe.

[67] Case 16-W-0259, NY American Water – Rates, Emergency Petition II, pp. 4-5.

[68] Case 16-W-0259, NY American Water – Rates, One Commissioner Order Postponing Rate Changes (issued September 1, 2020) (Emergency Petition II Order); Confirming Order (issued September 22, 2020). The Commission thereafter adopted the Order permanently, as required by SAPA §202(6). Order Adopting Emergency Rule on a Permanent Basis (issued November 20, 2020).

Emergency Petition III also requested approval to continue to accrue carrying charges on the foregoing.[69]

In a December 30, 2020 One Commissioner Order, the Commission granted Emergency Petition III, postponed rate increases and surcharges until May 1, 2021, and ordered the Company to notify customers of the Commission's actions and educate them about the changes.[70]

On April 27, 2021, Sea Cliff filed an Emergency Petition to postpone for not less than 90 days NY American Water's rate and surcharge increases scheduled to take effect on May 1, 2021.[71] Sea Cliff's Petition asserted that Village residents and business owners continue to suffer from Covid-19's financial and economic impacts and that rate increases would exacerbate those impacts. NY American Water and Liberty Eastern did not respond to Sea Cliff's Petition, the Commission did not address it, and rates and surcharges went into effect in NY American Water's service territories on May 1, 2021, pursuant to the Commission's December 30, 2020 Order and January 25, 2021 Confirming Order.

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[69] Case 16-W-0259, NY American Water – Rates, Verified Petition of NY American Water for Approval on an Emergency Basis to Postpone Approved Rate Increases until May 1, 2021 (filed December 29, 2020).

[70] Case 16-W-0259, NY American Water – Rates, Order Postponing Rate Changes (issued December 30, 2020); Confirming Order (issued January 25, 2021).

[71] Case 16-W-0259, NY American Water – Rates, Petition of Village of Sea Cliff for an Order, on an Emergency Basis Pursuant to State Administrative Procedures Act 202(6), to Postpone Increases in New York American Water Company, Inc. Rates and Charges Presently Scheduled to take Effect on May 1, 2021 (filed April 27, 2021).

H. Municipalization Efforts

On a separate administrative track commenced during this proceeding, the Secretary to the Commission issued a notice requesting comments from municipalities and authorities that had plans or proposal for the acquisition of all or part of NY American Water's infrastructure.[72] Then-serving New York Governor Andrew M. Cuomo thereafter directed DPS Staff to conduct a municipalization feasibility study and report its findings related to the impact a full or partial public takeover of NY American Water would have on rates, property taxes, service delivery, transparency, and accountability.

On March 29, 2021, DPS Staff issued a report summarizing the projected benefits and feasibility of municipalizing NY American Water's system, which concluded that "municipalization is both feasible and, under a variety of scenarios, in the public interest, even with an upfront investment of nearly $800 million" for assets, infrastructure improvements, and transaction costs (Municipalization Report).[73] DPS Staff's Municipalization Report recommended elimination of property and other taxes from customer bills and passage of legislation creating a Nassau County water authority to undertake acquisition efforts.

On February 10, 2021, the Secretary issued a Notice of Public Forums and Requesting Comments in this proceeding concerning the Municipalization Report. Public forums were held on February 23-25, 2021, by the DPS Special Counsel for Ratepayer Protection, who accepted public comments about the

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[72] Notice Soliciting Comments (issued June 22, 2020).

[73] DPS Staff "Report on the Feasibility of Municipalizing New York American Water Company, Inc.'s Nassau County Service Territories" (March 29, 2021, amended April 1, 2021), pp. 1-2.

potential municipalization of some or all of NY American Water's service territories and water districts.[74]

On November 3, 2021, Governor Kathy Hochul signed legislation, effective February 1, 2022, that established the North Shore Water Authority and the South Nassau Water Authority for the purpose of enabling the municipalization of parts of NY American Water's system.[75]

I. Related Tax Refund Proceedings

NY American Water has four separate tax refund petitions pending. Two seek Commission approval for the disposition of sales and use tax refunds from the New York State Department of Taxation and Finance for tax years 2016 through 2019 (Cases 21-W-0356 and 20-W-0654), which NY American Water proposes to be allocated, in part to offset the RAC/PTR regulatory assets and in part to be returned to customers in a rate base deduction.[76] The third petition seeks Commission approval for the disposition of a property tax refund from the Town of Island Park (Case 21-W-0060), which NY American Water proposes to be deferred as a regulatory liability for the

[74] Notice of Public Forums and Requesting Comments (issued February 10, 2021).

[75] S. 06707, A. 07654; S. 05527, A. 06393.

[76] Case 21-W-0356, Petition of New York American Water Company, Inc. for Approval, Pursuant to New York State Public Service Law Section 113(2), of the Proposed Disposition of a Tax Refund (filed June 24, 2021) ($527,050 sales tax refund and $146,277 use tax refund); Case 20-W-0654, Petition of New York American Water Company, Inc. for Approval, Pursuant to New York State Public Service Law Section 113(2), of the Proposed Disposition of a Sales Tax Refund (filed December 15, 2020) ($934,898 sales tax refund).

benefit of customers.[77] In a November 4, 2021 ruling, the tax refund proceedings were consolidated at the request of NY American Water and are pending under one proceeding (Case 21-W-0060).[78] These tax refund proceedings remain pending.

The remaining petition sought Commission approval for the disposition of the Town of Hempstead's garbage tax refunds (Case 18-W-0554). On December 13, 2018, the Commission issued an order preliminarily approving disposition of the tax refunds subject to then-pending cross-appeals involving the applicable interest rate.[79] After settlement of the cross-appeals was reached, on October 15, 2021, NY American Water filed a petition seeking final allocation and disposition of the tax refunds, which also remains pending.[80] NY American Water has numerous other outstanding, unresolved local tax matters currently pending, at least one of which is on appeal from a significant judgment in its favor.[81]

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77 Case 21-W-0060, Petition of New York American Water Company, Inc. Pursuant to § 113(2) of the New York State Public Service Law Regarding Property Tax Refund Disposition (filed January 19, 2021) ($65,000 property tax refund for tax years 2010 to 2020).

78 Id., Ruling Further Consolidating Cases and Establishing A Common Record (issued November 4, 2021).

79 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 Allocating Property Tax Refunds (issued December 13, 2018).

80 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 (filed October 15, 2021).

81 See, e.g., Long Island Water Corporation v. Nassau County, et al., (Index No. 12856/97); New York Water Service Corp. v. Nassau County, et al., (Index No. 12762/97) (Special District Litigation).

J. Procedural History of This Proceeding

Following the Companies' filing of the Joint Petition, on March 11, 2020, LI CAWS filed a motion seeking public statement hearings regarding the sale of NY American Water to Liberty Eastern. On March 18, 2020, the Administrative Law Judges (ALJs) assigned to this proceeding issued a ruling establishing a procedural schedule for parties to seek party status, scheduling a telephonic procedural conference, directing service of the Joint Petition on the towns and municipalities within NY American Water's service territory, and staying LI CAWS' motion for hearings.[82]

On June 4, 2020, the ALJs conducted a procedural conference with the parties. At that time, the Joint Petitioners and DPS Staff jointly proposed a procedural schedule culminating in commencement of an evidentiary hearing on October 7, 2020.[83] On June 9, 2020, the ALJs issued a ruling establishing a procedural schedule that culminated in the commencement of the evidentiary hearing on November 2, 2020.[84]

In a June 22, 2020 Notice Soliciting Comments, the Secretary invited municipalities and public authorities in the areas served by NY American Water to submit comments or municipal plans and proposals related to the acquisition of all or part of NY American Water's utility infrastructure assets.

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[82] Ruling Establishing Procedural Schedule (issued March 18, 2020). On March 30, 2020, the Companies filed an affidavit confirming service of the Joint Petition and non-confidential supporting documents on 42 towns, counties, and municipalities in its service territory.

[83] In response to the schedule proposed by the Joint Petitioners and DPS Staff, LI CAWS, and NSCC proposed an alternative schedule that would culminate in commencement of an evidentiary hearing on November 7, 2020.

[84] Ruling Granting Party Status and Establishing Procedural Schedule (issued June 9, 2020).

The Notice established an August 3, 2020 deadline for municipal submissions (Municipal Comment Deadline).

On July 15, 2020, the Secretary issued a Notice Extending Comment Deadline and set October 15, 2020, as the new Municipal Comment Deadline. Relying in part on the Secretary's July 15, 2020 Notice Extending Comment Deadline, on July 30, 2020, the ALJs issued a ruling revising the procedural schedule, which (among other things) established the following deadlines: October 26, 2020, for filing direct testimony; November 24, 2020, for filing rebuttal testimony; and December 14, 2020, for commencement of the evidentiary hearing.[85]

On October 14, 2020, the Secretary issued a second Notice Extending Comment Deadline extending the Municipal Comment Deadline to December 31, 2020. This extension gave municipalities and authorities approximately two weeks after the start of the evidentiary hearing to provide any comments on the Joint Petition or any plans or proposals to acquire NY American Water infrastructure assets.

On October 26, 2020, DPS Staff, LI CAWS, GHGCC, and NSCC filed testimony and exhibits. DPS Staff's testimony asserted that the Transaction was not in the public interest. The testimony submitted by the other parties opposed Commission approval of the Transaction.

During the first two weeks of November 2020, public statement hearings were held regarding the Transaction proposed in the Joint Petition. The public comments received during the hearings are discussed below.

On November 12, 2020, the Companies filed a Notice of Impending Settlement Negotiations pursuant to 16 NYCRR §3.9, advising all parties that the first settlement conference would

[85] Ruling Revising Procedural Schedule and Granting Party Status (issued July 30, 2020).

be held on November 17, 2020. Several parties thereafter filed letters of intent to participate in settlement negotiations.[86]

On November 24, 2020, the Joint Petitioners filed rebuttal testimony in further support of the Transaction proposed in the Joint Petition and a letter motion requesting that the procedural schedule be adjourned to allow for continued settlement negotiations. DPS Staff thereafter filed a November 25, 2020 letter supporting continued settlement negotiations.

On December 3, 2020, the ALJs issued a ruling granting the Companies' and DPS Staff's request to adjourn the procedural schedule. Thereafter, the ALJs issued several rulings further adjourning and revising the procedural schedule in favor of the parties pursuing settlement negotiations.[87]

On December 31, 2020, the Village of Sea Cliff filed a Valuation and Feasibility Study. On March 4, 2021, LI CAWS filed a report commissioned by the Town of Hempstead known as the "Walden Report" as well as a study commissioned by the Town of Massapequa. Both addressed the feasibility of municipal acquisition of parts of the NY American Water service territory.

In an August 24, 2021 ruling, the ALJs scheduled a status conference for October 18, 2021, for the purpose of determining whether settlement discussions should continue or an evidentiary hearing date should be set. The parties reported

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[86] The parties that filed letters of intent to participate included Sea Cliff, NSCC, the Massapequa WD, GHGCC, and LI CAWS. Settlement meetings were held on November 17, 2020, December 1, 2020, April 16, 2021, September 17, 2021, September 22, 2021, September 27, 2021, September 29, 2021, and October 8, 2021.

[87] In rulings issued on February 10, 2021, March 15, 2021, June 7, 2021, August 17, 2021, the ALJs revised the procedural schedule and adjourned the evidentiary hearing in favor of settlement negotiations continuing.

that additional time for settlement was necessary and that an evidentiary hearing should be further postponed.

As a result of settlement negotiations conducted for nearly a year, on November 3, 2021, a Joint Proposal signed by several parties to the proceeding was filed with the Secretary. On November 8, 2021, DPS Staff filed its Statement in Support of the Joint Proposal. On November 9, 2021, the Secretary issued a Notice of Evidentiary Hearing to commence on November 16, 2021. On November 10, 2021, the Companies, NSCC, GHGCC, and Sea Cliff filed Statements in Support and LI CAWS filed its Statement in Opposition to the Joint Proposal.

On November 12, 2021, the ALJs circulated to the parties nine questions to be answered by the Companies at the evidentiary hearing related to the Joint Proposal (ALJ Questions 1-9). On November 12 and November 15, 2021, the Companies provided written responses to ALJ Questions 1-9 along with several attachments.[88] On November 18, 2021, the Companies provided Supplemental Responses to the Questions.

On November 12, 2021, DPS Staff filed its Reply to the Statement in Opposition submitted by LI CAWS. On November 15, 2021, the Companies filed their Reply Statement in Further Support of the Joint Proposal and provided certain pre-hearing submissions. On that date, LI CAWS filed its Reply to the Statements in Support.

A notice of evidentiary hearing on the Joint Proposal was issued on November 9, 2021. The ALJs conducted a one-day

[88] Hearing Exhibit 38-4 (Supplemental Response to ALJ-9). On November 17, 2021, the Companies supplemented certain responses to ALJ Questions 1-9 after consultation with DPS Staff, as directed by the ALJs at the November 16, 2021 evidentiary hearing. The Companies also made available at the evidentiary hearing certain witnesses who had prepared the responses.

evidentiary hearing on November 16, 2021, at which time Liberty Eastern and DPS Staff witnesses were cross-examined by LI CAWS. At the hearing, LI CAWS also sought to admit to the evidentiary hearing record a written statement from Senator John Brooks, who represents New York's Eighth District on Long Island, regarding certain "discussions" with NY American Water.[89] DPS Staff and the Companies objected to its admission. Senator Brooks thereafter filed the statement in the Department's Document and Matter Management system, and it is contained in the public comments section of DMM.

In a November 19, 2021 ruling, the ALJs denied admission of Senator Brooks' statement to the evidentiary hearing record, but noted that the Commission would consider it as a public comment made during this proceeding.[90] The ALJs found that the contents of the statement raised factual and legal issues not before the Commission, namely, the Senator's characterization and asserted percentage amount of infrastructure surcharges and whether ratepayers have ownership rights in the infrastructure through which their utility service is provided.[91]

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[89] Senator Brook's statement asserted that NY American Water has a "practice of adding an 8.5% surcharge to every stage of infrastructure development before these projects are brought before the PSC" and that he "will be asking the PSC, the Office of the Comptroller, and the Governor of NY to establish an official review of said practices requiring demonstrative proof from NY AW [NY American Water] as to their investment in these projects with a goal of determining exactly what percentage is owned by NY AW [NY American Water] versus what percentage is owned by the consumer."

[90] Ruling Denying Admission of November 16, 2021 Letter from Senator John E. Brooks (issued November 19, 2021).

[91] Id., p. 3

K. Terms of the Joint Proposal: Stock Acquisition

The November 4, 2021 Joint Proposal is signed by the Companies, DPS Staff, the Village of Sea Cliff, NSCC, GHGCC, and the Massapequa WD.

1. Corporate Structure.

The Joint Proposal provides for Liberty Eastern's ownership of 100 percent of the outstanding capital stock of NY American Water, with all assets continuing to be owned by NY American Water.[92] The Joint Proposal also maintains the existing corporate structure of NY American Water while under Liberty Eastern's stock ownership and control, but it will become a part of LUCo's holding company structure. NY American Water will retain its name after the Transaction. Liberty Eastern and NY American Water will continue to be separate legal entities with separate boards of directors, and both will be subject to the Commission's regulatory oversight. The Joint Proposal prohibits NY American Water from encumbering, selling or transferring any used and useful utility assets or from issuing long-term debt or guaranteeing any debt without Commission approval.

The Joint Proposal also provides that, once an opening occurs on the NY American Water board of directors, an independent member who resides in NY American Water's service area will be appointed to the board. The new member will be required to comply with Liberty Eastern's requirements for board membership to the same extent that they are applicable to other board members.[93]

Under the Joint Proposal and following the Commission's approval and the Transaction closing, NY American Water will be subject to Algonquin's cost allocation

[92] Joint Proposal, pp. 4-5.

[93] Joint Proposal, pp. 4-5.

methodology, which calculates the overall cost attributable among all corporate affiliates.[94] The Joint Proposal reflects NY American Water's agreement to discuss with DPS Staff as part of the next rate case the use of Algonquin's cost allocation methodology for NY American Water.[95]

The Joint Proposal provides for Liberty Eastern to work with DPS Staff and other stakeholders in developing and implementing an Affiliate Code of Conduct to govern NY American Water's interactions with its new affiliates, including Algonquin.[96] This Code will be filed with the Commission within 60 days of a final order in this proceeding. NY American Water is currently not operating under an affiliate Code of Conduct.

2. Operations

NY American Water will continue operations and retain its own management, employees, and Merrick, Long Island headquarters. It will continue to maintain its own books and records in New York, but will have capitalization, financing, and operational support from Algonquin and LUCo's corporate services.[97] Although the surviving operating entity will retain

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[94] Hearing Exhibit 23 (Liberty Eastern Direct Testimony, Exhibit 4).

[95] Joint Proposal, p. 6.

[96] Joint Proposal pp. 6-7.

[97] The services provided out of the Merrick, Long Island headquarters include customer service, engineering, information technology, environmental health and safety, accounting, regulatory affairs, human resources, operations, and legal. LUCo's Eastern Regional Office in Londonderry, New Hampshire will provide finance and internal audit services. Hearing Exhibit 23 (Liberty Eastern Direct Testimony, Exhibit 7).

the name NY American Water, that name is subject to change later under Liberty Eastern's stock ownership.[98]

Current NY American Water employees, including management, will be retained for a two-year period and the current union contract will continue until it expires.[99] In addition, 14 new customer service positions will be added and based in New York, and additional accounting, information technology, business and community development, and local regulatory and legal services positions also will be added.

3. NY American Water Net Book Value

The Joint Proposal outlines the net book value of various parts of NY American Water's system, broken down by utility plant in service, construction work in progress, and accumulated depreciation.[100] These values for each portion of the system as of December 31, 2020, are as follows:

Sea Cliff	$ 27.2 million
Massapequa	$ 12.32 million
Merrick	$ 90.75 million
Lynbrook	$ 324.76 million
Mill Neck	$ 3.62 million
Upstate	$ 29.32 million

The Joint Proposal also provides net book values for Wastewater ($76,895) and Corporate ($11.86 million).

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98 Joint Proposal p. 5, n. 7. Initially, the Companies proposed in the Joint Petition (p. 14) to change NY American Water's name to "Liberty Utilities (New York Water) Corporation." The Joint Proposal instead requires that, in the event of a future name change, Liberty Eastern will notify the Commission and coordinate with DPS Staff to inform customers of the name change.

99 Joint Proposal, p. 6.

100 Joint Proposal, Exhibit 3 (Estimated Net Book Value of New York American Water Assets as of December 31, 2020).

4. Rates

NY American Water will continue to operate under the 2017 Rate Order and the Commission's subsequent Orders that postponed rate increases and surcharges, the final of which postponed rates until May 1, 2021, as discussed above.[101] Under the Joint Proposal, NY American Water agrees not to file for a base rate increase prior to any new rates that would go into effect as of April 1, 2023, after expiration of the maximum statutory suspension period.[102] Thus, the Joint Proposal provides for a rate freeze until April 1, 2023, with certain exceptions. These exceptions would allow NY American Water to seek temporary rate relief pursuant to PSL §89-j in a Commission-initiated investigative and adjudicative proceeding involving municipal complaints under PSL §89-i as to water rates, and PSL §114 in a proceeding to establish temporary rates, but only if there are external changes in local, State or federal taxes or if necessary, to preserve NY American Water's financial integrity.[103]

The Joint Proposal further provides that the historic test year used in the next rate case will reflect at least one year of operations under Liberty Eastern's stock ownership following the Commission's approval of the Joint Proposal and the closing of the Transaction.[104]

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[101] Case 16-W-0259, NY American Water – Rates, Order Postponing Rate Changes (issued December 30, 2020)

[102] Joint Proposal, pp. 7-8. Revenue neutral filings reflecting new or revised service offerings are permitted.

[103] Joint Proposal, p. 8.

[104] Joint Proposal, pp. 7-8. The Joint Proposal requires that the historic test year to be used in the next rate case "shall reflect at least a full year of operation" under Liberty Eastern ownership.

5. Positive Benefit Adjustment

The Joint Proposal provides for Liberty Eastern's payment of a $23.5 million positive benefit adjustment (PBA). The PBA will be used initially to write-off the remaining make-whole surcharge the Commission allowed in its Orders issued in response to NY American Water's Covid-19 Emergency Petitions, which allowed customer recovery of the surcharges from May 1, 2021, to March 31, 2022.[105] The remaining portion of the PBA would be used (1) to cover the deferred Rate Years 3 and 4 Levelization Surcharge for Service Area 1 and, to the extent that the adjustment does not fully offset the Levelization Surcharge balance, NY American Water will continue to defer the remaining balance for future recovery from customers; and (2) to retain the Service Area 2 portion of the PBA on NY American Water's books as a regulatory liability to mitigate rates in the next rate case, or to be used to offset a municipal purchase price for a part or parts of NY American Water's system (including Sea Cliff and East Massapequa).[106]

6. Federal and State Tax Treatment: Deferral Balances

The Joint Proposal recites that the parties agree that the regulatory liability balance as of December 31, 2017, for

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[105] As discussed above, these Commission Orders were entered in Case 16-W-0259, NY American Water – Rates, and include: Order Postponing Approved Delivery Rate Increases and System Improvement Charge (issued March 25, 2020); Order Adopting Action on a Permanent Basis (issued June 18, 2020); Confirming Order (issued July 17, 2020); Order Postponing Rate Changes (issued September 1, 2020); Confirming Order (issued September 22, 2020); Order Adopting Emergency Rule on a Permanent Basis (issued November 20, 2020); Order Postponing Rate Changes (issued December 30, 2020); Confirming Order (issued January 25, 2021); Order Adopting Emergency Rule on a Permanent Basis (issued March 25, 2021); and Confirming Order (issued April 21, 2021).

[106] Joint Proposal, pp. 11-12.

excess accumulated deferred federal income taxes resulting from the federal 2017 Tax Cut and Jobs Act is approximately $50.05 million.[107] The disposition of the Qualified New York Manufacturer (QNYM) regulatory liability balance will be addressed in NY American Water's next rate case.

Beginning on January 1, 2018, NY American Water no longer qualified as a QNYM as a result of an amendment to New York's tax laws.[108] Due to the QNYM tax law change, NY American Water is recording two deferrals on its books related to State income taxes. The first deferral relates to the reestablishment of the accumulated deferred State income taxes. The 2017 balance for this deferral is $16.67 million.[109] The second QNYM deferral relates to the under-collection of State income tax expense in current rates. NY American Water estimates the current balance of this deferral, as of October 31, 2021, to be approximately $5.90 million.[110] It also estimates the forecasted deferral balance at the point in time when rates may be reset (March 31, 2023) to be approximately $7.31 million.[111] Like the excess accumulated deferred federal income taxes, the collection of the QNYM regulatory asset balance will be addressed in NY American Water's next rate case.

The Joint Proposal provides that if a portion of NY American Water's system is transferred to a municipality prior

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[107] Joint Proposal, p. 13. The Federal tax balance as of 2021 was updated at the evidentiary hearing at the ALJs' request, but is subject to audit. Hearing Exhibit 38-4 (Supplemental Response to ALJ-2).

[108] New York Tax Law §210(1)(a)(vi)(2017).

[109] Joint Proposal, p. 13. Again, this amount was updated to 2021 at the evidentiary hearing, but is subject to audit.

[110] This amount was also updated at the evidentiary hearing, but is subject to audit.

[111] Hearing Exhibit 38-4 (Supplemental Response to ALJ-8).

to the next rate case, both the regulatory liability resulting from the excess ADIT and the regulatory asset resulting from QNYM "will be allocated to the portion of the system being transferred and netted against the purchase price [paid] by the municipality."[112]

7. Transaction Costs

With respect to the costs of the Transaction, the Joint Proposal provides that they will not be borne by ratepayers and that such costs will be tracked in separate designated accounts, with NY American Water filing a report to the Commission that includes journal entries recording Transaction costs in accordance with generally accepted accounting principles (GAAP).[113]

8. Goodwill

The Joint Proposal provides that any goodwill associated with the Transaction will not be included in NY American Water's annual report to the Commission or be included in the equity component of its capitalization for purposes of calculating a return, future revenue requirement, or other component of rates.[114] Instead, NY American Water will file a goodwill calculation in accordance with GAAP. If goodwill is impaired, NY American Water will submit a report to the Commission analyzing the impairment.

9. Minimum Common Equity Ratio

Under the Joint Proposal, the minimum common equity ratio is defined as 300 basis points less than the approved common equity ratio of 43 percent used by the Commission to set

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[112] Joint Proposal, p. 13.

[113] Joint Proposal, p. 8. The timeframe for the Transaction cost report will allow for adjustments within 180 days of the Transaction closing.

[114] Joint Proposal, p. 9.

rates. It will be measured using a trailing 13-month average and will be maintained in relation to the common equity ratio used by the Commission to set rates. If the approved common equity ratio is adjusted in a future NY American Water rate proceeding, then the minimum common equity ratio will similarly be adjusted. If the minimum common equity ratio is not met, dividends will not be payable until it is met.

10. Section 338(h)(10) Election

The Joint Proposal indicates that Liberty Eastern and American Water (as differentiated from NY American Water) intend to take an election under Internal Revenue Code Section 338(h)(10), that will result in the Transaction being treated as Liberty Eastern's acquisition of NY American Water's assets.[115] The Joint Proposal calls for a 20-year "rate base offset," of $74.27 million in 2023, $70.56 million in 2024, $66.84 million in 2025, etc., until the offset reaches zero in 2043.[116]

11. Municipalization/Municipal Transfer

The Joint Proposal provides that Liberty Eastern is committed to a detailed plan to facilitate municipal acquisition of portions of the NY American Water system.[117] Both Liberty Eastern and NY American Water acknowledge the passage of legislation creating the North Shore Water Authority and South

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[115] Joint Proposal, pp. 10-11; Exhibit 1 (covering the period of 2023 to 2043). This provision of the Joint Proposal does not address the potential for the Section 338(h)(10) election to be disallowed by the IRS or identify the risks to customers associated with the election if it is disallowed.

[116] Joint Proposal, p. 11; Exhibit 1 (identifying the offset amounts, which will be updated on April 1, 2022, based on December 31, 2021 year-end offsets due to ADIT).

[117] Joint Proposal, pp. 11-12. The Joint Proposal specifically refers to acquisition by the Massapequa WD, Sea Cliff or the North Shore Water Authority, and the South Nassau Water Authority.

Nassau County Water Authority and the interest of certain municipalities to acquire portions of the system.[118] As such, the Joint Proposal sets forth a proposed timeline for municipalization efforts to begin at the closing of the Transaction. The Companies and the interested municipalities will exchange information, begin good-faith negotiations, conduct expert valuations and appraisals, execute a purchase agreement, obtain expeditious Commission approval, and close. The Joint Proposal preserves a municipality's right to pursue eminent domain proceedings.

The Joint Proposal further provides that if any portion of the NY American Water system is transferred to a municipality prior to the next rate case, any remaining net regulatory assets or liabilities attributable to that portion of the system should be netted against the purchase price paid by the municipality. The Joint Proposal also requires Liberty Eastern and NY American Water (or the newly named entity) to report to DPS Staff on a monthly basis about the progress of the municipalization negotiations.[119]

12. Customer Service and Low-Income Programs

There are several provisions of the Joint Proposal designed to enhance NY American Water's customer service and low-income programs as well as to require associated reporting. These include modifying the Customer Service Performance Incentive with negative revenue adjustments (NRAs); conducting a one-year customer satisfaction survey, customer outreach and education plan (including information related to the Transaction); implementing a Customer Service Improvement Plan (including description of 14 new employee positions in customer

[118] Joint Proposal, pp. 17-19.

[119] Joint Proposal, p. 19, n. 25.

service operations); and developing low-income programs designed to identify low-income customers, provide financial assistance, and manage bill payment arrearages, which will be implemented after the next rate case filing in a cost-of-service context.[120]

With respect to the Customer Service Performance Incentive NRAs, the Joint Proposal envisions modification of the existing incentives involving the Commission Complaint Rate per 100,000 customers and would convert NRAs from dollar amounts to basis points, with identified values and certain multipliers.[121]

13. Existing and New Reporting Requirements

The Joint Proposal continues the requirement that NY American Water file separate annual reports for Service Area 1 and Service Area 2 until such time as the two service areas are merged.[122] The Joint Proposal also requires the filing of a five-year capital investment forecast of system upgrades for each business unit that contains details of the scope and cost of each project or program. In addition, NY American Water is required to report on all capital expenditures.

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[120] Joint Proposal, pp. 13-15. The administrative costs for evaluating and assessing the eligibility of low-income customers will not be included in the cost-of-service documentation.

[121] Joint Proposal, p. 13; Exhibit 2. This provision of the Joint Proposal would modify the performance incentive mechanism established in the 2017 Rate Order by converting the NRA to basis point values per 100,000 customer complaints and increase associated dollar values as follows: $\geq$ 3 complaints: 10 basis points, $237,610 value (previous value $194,946); $\geq$ 3.4 complaints: 12.5 basis points, $297,015 value (previous value $292,420); and $\geq$ 4 complaints, 15 basis points, $356,415 value (previous value $389,893). See Joint Proposal, Exhibit 2. The multipliers would be triggered only if NY American Water fails to meet targets in one or more years, and would result in increasing the NRAs in subsequent years.

[122] Joint Proposal, pp. 15-16.

14. Drinking Water Treatment Systems

The Joint Proposal requires NY American Water to file annual reports on the status of cost-effective treatment technologies for the contaminants found in several of its drinking water wells, including PFOS, PFOA, and 1,4-dioxane.[123] These reports must include, among other things, any change to projected completion dates for implementing treatment technologies and the rationale supporting the change, the scope of the treatment technology project, and water quality testing results upon implementation. In addition, NY American Water will provide its customers with a simplified annual report about water quality, contaminants, and its ongoing efforts to ensure customers receive clean and safe water.

15. Enhanced Regulatory Engagement

Finally, the Joint Proposal provides for enhanced communications with DPS Staff. Liberty Eastern is required to promptly inform DPS Staff of material facts and circumstances that may significantly impair its ability to provide reliable service, emergency preparedness, response capabilities, and protections against cybersecurity risks, or that otherwise impair its financial health and credit-worthiness, compliance with applicable laws, or any other circumstances which may endanger the public health, safety, and welfare.

L. Terms of the Joint Proposal: Long-Term Indebtedness

The Joint Proposal provides that at the time the Transaction closes, NY American Water's existing long-term, inter-company debt will be eliminated and replaced with funding from Liberty Eastern in order to preserve the existing capital

[123] Joint Proposal, p. 16.

structure.[124] The amount of debt was estimated in the Joint Petition to be $196 million as of January 2020. This amount is now estimated to be $198.63 million.[125] The Joint Proposal authorizes NY American Water to issue "up to $196 million or the current amount at the time of the closing, if higher, of intercompany long-term debt less any adjustments following the Transaction's closing."[126] The Joint Proposal also provides that the costs associated with replacing NY American Water's indebtedness will be recoverable from ratepayers.

M. Joint Proposal: General Provisions

The Joint Proposal contains several additional general provisions that address confidentiality of settlement, non-separability of provisions, good faith cooperation in effectuating implementation, continuity, dispute resolution, entirety of agreement, notice, execution, and the effect of the Commission's adoption.

III. SAPA NOTICE AND PUBLIC COMMENTS

A Notice of Proposed Rulemaking was published on April 15, 2020. A notice soliciting public comments and scheduling public statement hearings on the Joint Petition was issued on October 19, 2020. On November 4, November 5, November 10, and November 12, 2020, virtual public statement hearings

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[124] Joint Proposal, p. 19.

[125] In response to ALJ Question 5 (Hearing Exhibit 38-4), Liberty Eastern and NY American Water estimated the long-term inter-company debt to be $198.63 million, more than $2.5 million more than the $196 million initially sought in the January 2020 Joint Petition. It is unclear from the record why the indebtedness increased during the nearly two years after the Joint Petition was filed.

[126] Joint Proposal, p. 19.

were held in order to obtain public comments on the Joint Petition.

At the public statement hearings, the Companies presented information sessions regarding proposed business operations under Liberty Eastern's ownership. Several persons presented public comments at the hearings, most of which opposed the Transaction proposed in the Joint Petition and the stock purchase and sale of NY American Water's capital stock to Liberty Eastern. Many of the commenters favored municipalization of NY American Water's service territories due to excessive rates charged to customers. Several members of local unions spoke in favor of the Transaction, referring to the jobs and other economic development opportunities presented. Several representatives of Long Island legislators spoke at the public statement hearings and expressed opposition to the acquisition and in favor of municipalization.

In addition, approximately 704 public comments were filed electronically in this proceeding, many of which also expressed opposition to the acquisition and in favor of municipalization.

A separate notice seeking public comments and scheduling public forums on municipalization overseen by the DPS Special Counsel for Ratepayer Protection was issued on February 19, 2021. On February 23, 2021, February 24, 2021, and February 25, 2021, public forums were held in NY American Water's service territories. Many commenters again expressed opposition to the Transaction.

IV. STATE ENVIRONMENTAL QUALITY REVIEW

The purpose of the State Environmental Quality Review Act (SEQRA), ECL §8-0101, et seq., and the implementing regulations, (6 NYCRR Part 617 and 16 NYCRR Part 7), is to

incorporate consideration of environmental factors in the existing planning, review and decision-making processes of state, regional and local governmental agencies at the earliest possible time. To accomplish this objective, SEQRA requires that the Commission determine whether the actions it is asked to approve may have a significant adverse impact on the environment. If the Commission determines that the actions may have a significant adverse impact, the applicant is required to prepare an environmental impact statement.

The Commission has assumed lead agency status under SEQRA for the proposed action sought in the Joint Petition and has conducted an environmental assessment of the action. Pursuant to 6 NYCRR §617.6(a)(3), the Petitioning Companies here submitted a short form Environmental Assessment Forms (EAF) to assist the Commission with its environmental review and assessment of the proposed action pursuant to the requirements of SEQRA and the Commission's regulations set forth in 16 NYCRR §7.2.[127]

The Commission has considered the EAF, the Transaction proposed in the Joint Proposal, the underlying factual submissions submitted in support of the Petitioning Companies, and the applicable SEQRA criteria for determining significance listed in 6 NYCRR §617.7(c). We find that, based upon SEQRA's criteria, our action in adopting the Joint Proposal, including approval of the stock purchase agreement and asset transfer, is an unlisted action because it involves the acquisition and operation of existing water supply facilities and assets, including buildings, water pumping stations, water mains and pipes, water meters, and appurtenances thereto, and water treatment works and does not involve a substantial expansion of

[127] Hearing Exhibit 18 (Joint Petition, Attachment 17, Short Environmental Assessment Form).

these existing water supply facilities and assets.[128] Accordingly, there will be no significant changes to the operation of the existing utilities and infrastructure that has the potential to result in significant adverse environmental impacts.

The Commission's adoption of the Joint Proposal will therefore not result in any significant adverse impacts on the environment. As such, we are issuing with this Order a Determination of Non-Significance and negative declaration for this unlisted action.[129]

Other than our approval of the Joint Proposal and the Transaction proposed here, there are no other state or local permits or approvals required and a coordinated SEQRA review is not needed.[130]

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[128] The action proposed, namely, the Commission's adoption of the Joint Proposal authorizing the stock acquisition and long-term debt issuance, is classified as an "unlisted" action because it does not fit squarely within the definition of a SEQRA Type I action (i.e., a Type I action is one presumed to have a significant adverse environmental impact); or a Type II action (i.e., a Type II action is presumed to have no significant adverse environmental impact). See Department of Environmental Conservation's (DEC'S) SEQRA regulations, 6 NYCRR §§617.4 and 617.5, for examples of Type I and Type II actions. DEC's SEQRA regulations have been adopted by the Commission in its regulations and are incorporated by reference in 16 NYCRR §7.1 et seq.

[129] The completed EAF will be retained with the Commission's negative declaration in the Commission's files.

[130] The Commission also has reviewed its action here in the context of Section 7(2) of the Climate Leadership and Community Protection Act (CLCPA) and finds that it is inapplicable. The Joint Proposal being adopted relates to the acquisition and indebtedness of a water utility, which lacks measurable greenhouse gas emissions impacts. Thus, it cannot interfere with achieving the CLCPA's objectives.

V. STATUTORY AND REGULATORY FRAMEWORK

The sale, furnishing and distribution of water for domestic, commercial and public purposes is governed by PSL Article 4-b, §89-a et seq. The Commission has broad jurisdiction to regulate the distribution of water for domestic, commercial or public uses and to regulate those persons and entities operating the systems in New York State.[131] Every "water-works corporation"[132] is required to furnish and provide safe and adequate water service at just and reasonable rates and may not charge any person or corporation more for such service than it charges another person or corporation for the same service nor grant an unreasonable preference, prejudice or disadvantage.[133] In setting just and reasonable rates, the Commission is required to balance the customers' interests with those of the utility's investors.[134]

Pursuant to PSL §89-h, the transfer of ownership of all or any part of a utility franchise, works or system for any water-works corporation is prohibited without the consent of the Commission. The Commission's consent may be given only if the proposed transfer and acquisition "is in the public interest."[135] In evaluating whether a proposed transaction is in the public

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131 PSL §§2(26)-(27); 4(1); 5(1)(f); 89-c(1).

132 The term "water-works corporation" is broadly defined in PSL §2(27) to mean any entity "owning, operating, or managing any water plant or water-works, except where water is distributed solely on or through private property solely for the use of the distributor and not for sale to others."

133 PSL §89-b(1)-(3).

134 See Abrams v. Public Service Commission, 67 N.Y.2d 205, 212 (1986) (in establishing electric rates, the Commission is empowered to consider all factors that, in its judgment, are relevant "with due regard among other things to a reasonable average return upon capital actually expended").

135 PSL §89-h(5).

interest, "petitioners must show that the transaction would provide customers positive net benefits after considering the expected benefits offset by any risks or detriments that would remain after applying reasonable mitigation measures."[136] The Commission has the authority to impose terms and conditions on the transfer and acquisition as it deems appropriate. Pursuant to PSL §108, the Commission must also approve the certificate of merger before it can be filed with the Department of State.

Pursuant to PSL §89-f(1), a water-works corporation may incur indebtedness only with Commission approval. Such indebtedness must be necessary for the acquisition of property, the construction, completion, extension or improvement of a water system, or for improvement or maintenance of service.

In reviewing the valuation assigned to the Transaction proposed in the Joint Petition, the Commission does not second guess the parties' arms-length transaction because due process does not ensure values or restore values that have been lost by the operation of economic forces.[137] Nor is the Commission required to force ratepayers to ensure a profitable return on investment in an enterprise that may not necessarily be profitable.[138]

As noted above, in reviewing the Joint Proposal, the Commission's obligation is to ensure that its terms, when viewed

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[136] Case 07-M-0906, Iberdrola, S.A. et al. Acquisition Petition, Order Authorizing Acquisition Subject to Conditions (issued January 6, 2009), p. 111.

[137] See Market Street Railway Co. v. California Railroad Commission, 324 U.S. 548, 567 (1945).

[138] San Diego Land & Town Co. v Jasper, 189 U.S. 439, 446-447 (1903); Matter of Rochester Gas & Elec. Corp. v Public Service Commission, 108 A.D.2d 35, 37 (3rd Dept. 1985) (no absolute guarantee for utility to yield profit and only requirement is Commission's balancing of consumer interests against those of utility shareholders).

together, produce a result that is in the public interest and fall within the range of litigated outcomes and that the rates proposed are just and reasonable.[139] The Joint Proposal here should balance protection of consumers with fairness to investors and promote the long-term viability of the utility. The factors the Commission takes into account in evaluating a joint proposal, are "themselves elements of the public interest standard."[140] These factors are: (1) the settlement's consistency with law and with the regulatory, economic, social and environmental policies of the Commission and the State; (2) whether the result compares favorably with the likely result of full litigation and is within the range of reasonable outcomes; (3) whether the settlement strikes a fair balance among the interests of ratepayers and investors and the long-term soundness of the utility; and (4) the existence of a rational basis for the decision.

VI. STANDARD OF REVIEW FOR JOINT PROPOSAL ADOPTION

Review of the Joint Proposal is subject to the Commission's Settlement Guidelines, including a determination of compliance with required procedures and a finding that the terms are in the public interest.[141] The Commission views the Joint Proposal in the following context:

> Whether it is consistent with the law and regulatory economic, social and environmental State and Commission policies;

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[139] Case 90-M-0255 and Case 92-M-0138, In the Matter of Settlement Procedures, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion 92-2 (issued March 24, 1992) (Commission Settlement Guidelines).

[140] Id.

[141] Cases 90-M-0225 and 92-M-0138, Commission Settlement Guidelines, pp. 30-31.

Whether the terms compare favorably with the likely result of a fully litigated case and produce a result within the range of reasonable outcomes;

Whether it fairly balances the interests of ratepayers, investors and the long-term soundness of the utility; and

Whether it provides a rational basis for the Commission's decision to adopt the Joint Proposal.

VII. DISCUSSION

We have reviewed the Joint Proposal and find that its terms meet the criteria set forth in both PSL §89-h and PSL §89-f and that it is in the public interest. Ratepayers will realize positive net benefits, offset by any potential risks, as a result of its provisions. We also find that the Joint Proposal fully complies with the Commission's Settlement Guidelines insofar as it is consistent with the likely result of a litigated outcome.

We therefore adopt the Joint Proposal, subject to the discussions and additions outlined below, and approve Liberty Eastern's acquisition of 100 percent of NY American Water's outstanding capital stock and LUCo's issuance of long-term indebtedness to replace NY American Water's existing long-term inter-company debt.

A. Benefits of Liberty Eastern Stock Acquisition.

The Joint Proposal's terms related to Liberty Eastern's stock acquisition are in the public interest for several reasons that can be summarized in the observation that they are designed to bring improvements to NY American Water's operations and the interests of its customers, regardless of whether municipalization of parts of the system occurs.

1. Municipalization Terms

The Joint Proposal creates a framework designed to ease the process for any potential municipalization of parts of NY American Water's system, an issue raised repeatedly by parties to this proceeding, elected officials, and the public. The Joint Proposal's municipal and residential signatories, Sea Cliff, the Massapequa WD, NSCC, and GHGCC, provide further support for a finding that the municipalization provisions are in the public interest. In addition, the legislation creating the North Shore Water Authority and South Nassau Water Authority signed by the Governor in November 2021 reflects the public's preference for municipalization. Should municipalization occur, it has the potential to provide customer benefits by eliminating one of the main rate drivers, namely, the inclusion of high property taxes that were previously recovered in rates.[142]

The Joint Proposal provides both a procedure and a timetable for negotiations toward municipalization of portions of the system, which begins with an exchange of information, followed by negotiations and asset appraisals, and ends with a purchase agreement.[143] We find that the Joint Proposal's provisions requiring good-faith negotiations and adherence to a strict schedule will foster efficient municipal acquisition

[142] Municipal-owned property is exempt from real property taxes and Federal and State income taxes, whereas the property of investor-owned utilities like NY American Water is not. Once a municipality acquires private utility assets, it will no longer benefit from the ability to tax such assets and will see a corresponding decrease in its tax base as a result of municipalization. These are the kinds of issues that can be addressed under the Joint Proposal's terms dealing with the municipalization process.

[143] This process is designed to cover a period of approximately 465 days. DPS Staff Statement in Support, pp. 14-15.

efforts.[144] The Joint Proposal's reporting requirement to DPS Staff on the progress of negotiations creates a strong level of regulatory oversight of any municipalization efforts. The Joint Proposal's express preservation of municipal eminent domain rights provides an additional option for a municipality, if needed.

We take limited exception to the Joint Proposal's stated assumption that the municipalization schedule contemplates that "expedited approval by the Commission will be granted."[145] First, the Joint Proposal does not define the temporal intent of "expedited approval." Second, although the Commission's consideration of matters is normally undertaken efficiently, particularly given the statutory timeframes governing certain approvals, this provision of the Joint Proposal does not - and cannot - bind the Commission to a particular timeframe. Finally, this provision should not usurp municipalization efforts or operate as an escape hatch for NY American Water after reaching an agreement with a municipality.

2. Positive Benefit Adjustment

The $23.5 million PBA will mitigate immediate customer rate impacts by defraying both the make-whole surcharge (scheduled to expire on March 31, 2022) and a portion of the deferred Levelization Surcharge. Service Area 2 will be allocated the remainder of the PBA, if any, in the next rate

[144] At the hearing on the Joint Proposal, both NY American Water and DPS Staff explained the flexible approach intended by the Joint Proposal's municipalization procedure and timeframe provisions despite its mandatory language. When asked whether this language would allow negotiations to cease in the event of a municipality's non-compliance with the dates set for certain discovery, negotiations, and other milestones, both Liberty Eastern and DPS Staff responded in the negative.

[145] Joint Proposal, p. 18.

case or a part of the remainder of the PBA will be applied to offset the sale of part of the system to a public water district.

DPS Staff supports the PBA provision, indicating that it is comparable to imputed PBAs in other acquisition cases approved by the Commission.[146] We agree and find the PBA to be reasonable in the context of the other terms of the Joint Proposal and the overall mitigation of rate impacts. The PBA terms of the Joint Proposal also meet the Commission's Settlement Guidelines insofar as the Companies did not initially propose the PBA as part of the litigated case, but the negotiated settlement provided this rate mitigation measure as a part of an overall settlement agreement.[147]

3. Additional One-Year Rate Freeze

The Joint Proposal's one-year rate freeze through March 31, 2023, is also in the public interest because it mitigates current rate impacts and will delay any rate increase for an additional year beyond the timeframe provided in the 2017 Rate Order and the Commission's subsequent Orders. In addition, the Joint Proposal provides that the historic test year used in NY American Water's next rate filing will reflect a full year under Liberty Eastern's ownership, which may result in a rate freeze until a date in 2024.

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[146] DPS Staff Statement in Support, pp. 8-9, n. 28 (citing Case 07-M-0906, New York State Electric & Gas Corporation, et al. – Acquisition, Order Authorizing Acquisition Subject to Conditions (issued January 6, 2009); and Case 18-G-0140, Joint Petition of Liberty Utilities Co. and St. Lawrence Gas Company, Inc. – Acquisition, Order Adopting Terms of Joint Proposal (issued October 18, 2019)).

[147] In their initial testimony, the Companies did not propose a PBA and instead proposed a rate freeze until April 1, 2023. Hearing Exhibit 2, pp. 30-31.

4. Financial Protection Provisions

The Joint Proposal provides several financial protections for ratepayers. First, it provides that the premium above book value (i.e., goodwill) and Transaction costs will not be recoverable from ratepayers. Second, it requires NY American Water's maintenance of (1) a minimum common equity ratio of at least 300 basis points below the common equity ratio used in setting rates, as calculated on a rolling 13-month average, and (2) a "BBB" credit rating for the three years following the Transaction closing (except if there is an extraordinary "industry-wide event" that impacts all New York utilities). Third, it prohibits dividend payments in the event that NY American Water fails to maintain the requisite minimum equity ratio. Fourth, it restricts NY American Water's participation in a "money pool" unless the other participants are also regulated entities and provides that Liberty Eastern may participate only as a lender.[148] Finally, DPS Staff is also given full review of Algonquin's cost allocation to NY American Water and the ability to adjust the methodology being used in the next rate proceeding.[149]

These provisions are designed to insulate ratepayers from bearing the costs and potential financial impairment of NY American Water as a result of the Transaction and future operations under Liberty Eastern's ownership. Each of these provisions are consistent with the positions advanced in testimony by DPS Staff[150] and, to an extent, by the testimony of the Companies.

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[148] Joint Proposal, pp. 8-10.

[149] DPS Staff Statement in Support, p. 5.

[150] Hearing Exhibit 87 (DPS Staff Finance Panel), pp. 19-21, 42-43.

5. Oversight Provisions

The Joint Proposal provides for the appointment of a local resident to the NY American Water board of directors. That member is required to reside in the Long Island service territory. An additional provision calls for the adoption of an Affiliate Code of Conduct to govern NY American Water's interactions with its affiliates, including Algonquin, LUCo, and Liberty Eastern. This will afford ratepayer protections, promote transparency, and prevent improper affiliate benefits.

6. Other Economic Benefits

Other provisions of the Joint Proposal that are also in the public interest include the creation of 14 new jobs, the retention of NY American Water local area employees and management for a period of two years, and the continuation of existing union contracts. We agree with DPS Staff that these provisions will assure a smooth transition to Liberty Eastern's new ownership while maintaining NY American Water's separate corporate structure.[151]

7. Customer Service Provisions

The Joint Proposal focuses on customer service in several respects, most notably, through the addition of 14 customer service representatives intended to foster significant improvement in this area.

In its Joint Petition and its testimony, Liberty Eastern asserted that it would adhere post-acquisition to the 2017 Rate Order's provisions with respect to customer service and the associated negative revenue adjustments (NRAs). As recommended in DPS Staff's testimony after reviewing NY American Water's recent annual customer service performance, the Joint

[151] DPS Staff Statement in Support, p. 5; Hearing Exhibit 93 (DPS Staff Policy Panel), pp. 10-11.

Proposal essentially provides for the continuation of NY American Water's Customer Service Performance Incentive and the NRAs established under the 2017 Rate Order, with some modifications.[152]

The Customer Service Performance Incentive provides for earnings consequences based on the quality of customer service provided. It has one metric, namely, the Annual Complaint Rate by customers, with established targets of $\geq$ 3, $\geq$ 3.4 and $\geq$ 4 customer complaints, which remain unchanged.[153] The Joint Proposal modifies the Customer Service Performance Incentive by converting the fixed NRA dollar amounts at risk to pre-tax basis points (set at 15, 12.5 and 10).[154] The conversion to basis points is consistent with the Commission's recent approach to NRAs applied among regulated utilities in New York. NRAs are applied at each target tier. We find the addition of multipliers to the Customer Service Performance Incentive, which doubles the NRAs if NY American Water misses a target in any year and then triples the NRAs if NY American Water misses targets in consecutive years, are critical provisions to ensure that customer service operations are not adversely impacted as a result of the Transaction.[155]

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[152] Joint Proposal, p. 14 and Exhibit 2; Hearing Exhibit 82 (DPS Staff Consumer Services Panel, pp. 5-6, 13-15.

[153] Hearing Exhibit 84 (DPS Staff Consumer Services Panel Exhibit SCSP-2). The Annual Complaint Rate refers to those customer complaints about NY American Water service that are received by the Department's Office of Consumer Services in the monthly report of complaint activity. The Complaint Rate is calculated based on the annual average number of complaints received by the Department per month and per 100,000 customers.

[154] Joint Proposal, pp. 13-14 and Exhibit 2; Hearing Exhibit 82 (DPS Staff Consumer Services Panel), p. 16.

[155] Joint Proposal, pp. 13-14; Hearing Exhibit 82 (DPS Staff Consumer Services Panel), p. 16.

The Joint Proposal further requires NY American Water to conduct a customer service benchmarking survey to measure customer satisfaction and to report the results to DPS Staff within a year.[156] The Joint Proposal also requires submission of two plans: an updated Customer Outreach and Education Plan to advise customers of the acquisition and its impacts;[157] and a Customer Service Improvement Plan to implement a local management approach, provide the operations budget, describe the 14 new customer service positions, and otherwise plan to enhance customer service.[158] Again, DPS Staff recommended these provisions of the Joint Proposal in testimony. We expect the Customer Service Improvement Plan to fully demonstrate the benefits of hiring 14 additional employees to fill customer service positions and thereby justify the associated costs.

We find these provisions of the Joint Proposal to be in the public interest insofar as they will operate as an effective mechanism to improve NY American Water's customer service performance.

8. Low Income Provisions

The Joint Proposal reflects NY American Water's agreement to work with State and local agencies and low-income advocacy groups to develop a program to identify and serve low-income customers in its service territories.[159] The program will be proposed in NY American Water's next rate case. In addition,

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156 Joint Proposal, p. 14; Hearing Exhibit 82 (DPS Staff Consumer Services Panel), p. 20.

157 Joint Proposal, p. 14. The Joint Proposal also requires the filing of annual Customer Outreach and Education Plans, which are intended to keep customers apprised of NY American Water's operations.

158 Joint Proposal, p. 15; DPS Staff Statement in Support, pp. 11-12.

159 Joint Proposal, pp. 14-15.

the Joint Proposal provides that NY American Water will develop a Financial Assistance and Arrearages Management Program to provide low-income customers with financial help and reduce arrears.

We find these provisions of the Joint Proposal to be timely in light of the economic impacts resulting from Covid-19. Most importantly, they can provide much-needed relief to low-income customers. Although programs like this have been proposed in the past, issues related to identifying low-income customers presented an obstacle to successful program implementation. Given the recent developments at the Federal level, however, the Office of Temporary and Disability Assistance (OTDA) is able to identify low-income customers for water utilities seeking to implement low-income assistance programs in the same way that OTDA identifies such customers for New York's electric and gas utilities.[160] We also note that NY American Water has sufficient time to develop a comprehensive low-income program prior to the next rate case.

9. Demonstrated Regulatory Compliance

As DPS Staff points out, Liberty Eastern's ownership and operation of St. Lawrence Gas has demonstrated its financial, technical, and operational ability to operate as a regulated utility in New York.[161] Its ability to work with DPS Staff has been demonstrated as well in its St. Lawrence Gas regulatory interactions and in its settlement negotiations resulting in the Joint Proposal considered here.

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[160] See https://otda.ny.gov/programs/water-assistance/; American Rescue Plan Act of 2021, 135 Stat. 4, P.L. 117-2 §2912, 117th Congress (March 11, 2021); Consolidated Appropriations Act, P.L 116-260, §553 (eff. March 11, 2021).

[161] DPS Staff Statement in Support, p. 3; Case 18-G-0140, Liberty Utilities Co. and St. Lawrence Gas Company, Inc. – Acquisition.

B. Benefits of Issuance of Long-Term Indebtedness.

Under the Joint Proposal, LUCo, rather than Liberty Eastern, will replace NY American Water's long-term inter-company debt under more favorable terms, including a lower interest rate.[162] As of January 2020, the amount of indebtedness was $196 million, but is now approximately $198.63 million, which the Joint Proposal seeks approval to refinance.[163]

Replacing NY American Water's debt with debt that has better terms is in the public interest because ratepayers should realize the savings in rates by mitigating future rate impacts over the long-term.[164] The balance on NY American Water's long-term inter-company debt as of November 2021 is $198.63 million and the interest rate to be charged is approximately 3.2 percent.[165]

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[162] Joint Proposal, p. 19.

[163] Joint Proposal, p. 19 ("to issue indebtedness up to $196 million or the current amount at the time of the closing, if higher, of intercompany long-term debt, less any adjustments"); Hearing Exhibit 38-4 (Supplemental Response to ALJ-5(a)).

[164] Hearing Exhibit 38-4 (Response to ALJ-5(b)). Liberty Eastern asserted that LUCo was refinancing NY American Water's debt with better terms, citing the rebuttal testimony of its Management Panel (Hearing Exhibit 32, p. 42).

[165] Hearing Exhibit 38-4, Attachment 1 (Response to ALJ-5(d) and Attachment 1). Liberty Eastern explains that the 3.2 percent interest rate assumes a 20-year issuance and is based on a U.S. Treasury rate of 1.952 percent plus 125 basis point credit spread indicated for LUCo, which represents the "all-in" rate of 3.202 percent. The final interest amount will be determined on the Transaction closing date and will be subject to specific adjustments of an indeterminate amount that can only be identified following the closing.

C. The Section 338 Election.

The Joint Proposal recites that Liberty Eastern and NY American Water's affiliate, American Water, will pursue an Internal Revenue Code Section 338(h)(10) election (338 Election) after the close of the Transaction.[166] A 338 Election allows the purchaser of stock within a consolidated corporate group to treat the transaction as an acquisition of the assets of the acquired subsidiary entity for federal income tax purposes.[167] The 338 Election is jointly made by the purchaser and the seller's parent corporation (here, Liberty Eastern and American Water).

A 338 Election results in a tax benefit to both the seller and the purchaser. The seller's consolidated taxable income would not report a taxable gain or loss computed with reference to the tax basis in shares of stock, as of the time of the transaction. For the purchaser, tax-deductible depreciation and/or amortization increase, as compared to the available tax deductions in the absence of the 338 Election, with future incremental tax benefits.[168]

In testimony, Liberty Eastern explains that without mitigation, the 338 Election will increase rate base and therefore have an impact on the revenue requirement.[169] Liberty Eastern proposed mitigation in the form of a rate base reduction

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166 Joint Proposal, pp. 10-11.

167 Liberty Eastern Direct Testimony, pp. 36-37; Companies' Statement in Support, pp. 10-11.

168 Hearing Exhibit 30 (Liberty Eastern Tax Panel), pp. 6-9. Hearing Exhibit 38-4 (Response to ALJ-1(c)). The Companies indicate that the amount or value of the increased tax-deductible depreciation/amortization realized by the 338 Election will not be known until after the Transaction closes.

169 Hearing Exhibit 30 (Liberty Eastern Tax Panel), pp. 7-9.

amortized over 20 years and expressed the intent "[t]o ensure that there is no impact to the revenue requirement" as a result of the 338 Election.[170]

As a result of the 338 Election, DPS Staff cautiously explains in its testimony that the tax basis of the acquired assets is "stepped-up" in an amount equal to the purchase price of the acquisition and results in a "reset" to zero of the accumulated deferred income tax (ADIT) balances once the transaction closes.[171]

In support of the Joint Proposal, DPS asserts that in order to make ratepayers whole for the lost ADIT balance and associated loss in rate base, Liberty Eastern will provide a rate base offset. This offset is the result of a two-step calculation: (1) first, determining the difference between the forecasted ADIT balances without the 338 Election and the

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[170] Hearing Exhibit 30 (Liberty Eastern Tax Panel), p. 15. Liberty Eastern described this mitigation as "a fair allocation of the tax benefits" between customers and investors resulting from the 338 Election.

[171] Hearing Exhibit 93 (DPS Staff Policy Panel), p. 24; DPS Staff Statement in Support, p. 8. The ADIT deferral balances are regulatory liabilities payable to customers as a result of the federal Tax Cut and Jobs Act of 2017 (2017 Federal Tax Act) that lowered the federal income tax rate for corporations, including New York utilities, from 35 percent to 21 percent. In response to the 2017 Federal Tax Act, the Commission initiated a generic proceeding to address the rate impact associated with the utility tax savings because New York utilities were recovering from ratepayers federal income taxes at a rate that was no longer was applicable. Case 17-M-0815, Proceeding on Motion of the Commission on Changes in Law that May Affect Rates, Order Instituting Proceeding (issued December 29, 2017) (2017 Tax Proceeding). The Commission thereafter issued an order that required utilities to pass back to customers the tax benefits and savings realized, starting in January 2018. Case 17-M-0815, Proceeding on Motion of the Commission on Changes in Law that May Affect Rates, Order Determining Rate Treatment of Tax Changes (issued August 9, 2018) (2017 Tax Order).

forecasted ADIT balances with the 338 Election for the remaining book lives of assets over a 40-year period; and (2) calculating the rate base offset and amortizing that amount over a 20-year period so that the net present value of the future revenue requirement impact (i.e., pre-tax return on the rate base impact) over 20 years is the same as the net present value of the future revenue requirement impact over 40 years.[172] DPS Staff indicated in its testimony that the "over-arching goal" must be to hold customers harmless from the 338 Election.[173]

The Joint Proposal attaches a Schedule of Rate Base Offsets (Exhibit 1, Offsets Schedule) and includes an initial offset for 2023 of $74.27 million, which is reduced in each subsequent year until it reaches zero in 2043.[174] Liberty Eastern and DPS Staff both recognize that the 338 Election will result in the loss of the ADIT balance to rate base, but nevertheless assert that this loss is addressed in the Joint Proposal's Offsets Schedule, which is intended to assure that customers are no worse off than they would have been in the absence of the 338 Election.

DPS Staff asserts that, as reflected in the Offsets Schedule, the Joint Proposal seeks to make ratepayers whole for the lost ADIT balance by providing a rate base offset in each rate year over a 20-year period so that the net present value of the ADIT deferral amount is equal to the annual offset amount over 20 years.[175] The 338 Election under the Joint Proposal presents a novel issue of first impression for the Commission's

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[172] DPS Staff Statement in Support, p. 8; Hearing Exhibit 38-4 (Liberty Eastern Response to ALJ-1f and Excel Attachment), Rate Base Offset Calculation.

[173] Hearing Exhibit 93 (DPS Policy Panel Testimony), pp. 30-31.

[174] Joint Proposal, Exhibit 1 (Offsets Schedule).

[175] DPS Staff Statement in Support, p. 8.

consideration. To date, no acquisition of a New York utility under PSL §89-h has been approved by the Commission with a 338 Election like the one advanced here.

At the close of the hearing, the ALJs requested that Liberty Eastern provide cases in which an acquisition transaction and associated 338 Election was approved by utility regulators in other States. Liberty Eastern submitted several cases in response to the ALJs' request. Some of the cases provided inform our analysis regarding how other utility regulators addressed the potential effect of the 338 Election on ratepayers.

The Maine Public Utilities Commission (PUC) in the Unitil Services and Maine Water cases approved settlement stipulations involving corporate reorganizations that contained a protective provision holding ratepayers harmless from the elimination of ADIT liabilities that resulted from a 338 Election.[176] The Maine PUC in Bangor Natural Gas also approved a stipulation that included protective language assuring that there would be no negative rate impact or increase to the revenue requirement from the 338 Election and that any costs related to it would not be allocated to ratepayers.[177]

The New Hampshire Public Utilities Commission in National Grid USA similarly approved a settlement agreement that held ratepayers harmless from the elimination of the ADIT

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[176] Unitil Services Corporation and Northern Utilities, Inc, Joint Petition for Approval of Reorganization, Order Approving Stipulation with Conditions; 2008 ME. PUC (October 22, 2008), p. 6; The Maine Water Company; Request for Approval of Reorganization, Docket No. 2019-00096, Order Approving Stipulation, p. 4.

[177] Maine Public Utilities Commission, Bangor Natural Gas Company; Application for Approval of Reorganization Sale, Docket No. 2021-00019, Order Approving Stipulation and Reorganization; 2021 ME. PUC Lexis 108, *20 (July 28, 2021).

liabilities resulting from a 338 Election while continuing to provide ratepayer benefits through a pro forma accounting of ADIT balances until the balance of acquired utility plant assets equaled or exceeded the levels that the ADIT balances would have had in the absence of the Election.[178]

Although the Joint Proposal does not contain the kind of express hold harmless provision evident in those cases, we find that the Offset Schedule and the Joint Proposal as a whole are intended achieve the same result and leave ratepayers unaffected by the 338 Election. Thus, ratepayers are protected from any adverse consequences resulting from the 338 Election.

In addition, should the Internal Revenue Service disallow for any reason the 338 Election, NY American Water ratepayers should not bear any associated costs. Liberty Eastern and American Water have chosen to pursue the tax benefits of a 338 Election. Consequently, ratepayers should not be burdened with the costs or other negative impacts resulting from that decision in future rates.

D. LI CAWS Opposition to the Joint Proposal

LI CAWS is the only party to this proceeding that is not a signatory to the Joint Proposal, with one exception.[179] We note that the municipal parties, Sea Cliff and the Massapequa WD, and two groups representing ratepayers, GHGCC, and NSCC, executed the Joint Proposal and therefore support its terms.

In its Statement in Support, Sea Cliff asserted that the Joint Proposal supports its municipalization efforts and now

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[178] National Grid USA; Transfer of Ownership to Liberty Energy NH, Order Approving Settlement; 2012 NH PUC Lexis 55, *52 (May 30, 2012).

[179] Although the Town of Ulster was a party, it did not actively participate in this proceeding.

it can now begin the acquisition process through the North Shore Water Authority created by the State Legislature.[180] Sea Cliff also expressed its full endorsement of the Joint Proposal's rate freeze and $23.5 million PBA because both will benefit Village residents. In its Statement in Support, NSCC asserts that the Joint Proposal will result in customer benefits in numerous ways due to the rate freeze, the $23.5 million PBA payment, and the creation of a "path forward" to municipalization of part of the system.[181] NSCC also points to local community economic benefits from the Joint Proposal's provisions requiring the retention of NY American Water personnel and the added job creation.

For its part, LI CAWS objects to the Joint Proposal because it claims that the Commission's approval will undermine efforts to municipalize the system by increasing the costs associated with public acquisition.[182] In making this argument, LI CAWS relies on the purchase price reflected in the underlying stock purchase agreement. This assertion fails to create a legitimate public interest critique. As an initial matter, LI CAWS' position apparently assumes that the *entire* NY American Water system will be municipalized as the group represents that the total monetary figure of the sale artificially inflates the entire system's value. The record reflects the potential for the municipal acquisition of only parts of NY American Water's system.

LI CAWS also fails to address the fundamental nature of the transaction at issue. This is an arm's length stock

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[180] Village of Sea Cliff Statement in Support of Joint Proposal.

[181] NSCC Statement in Support of Joint Proposal. Although they are signatories, the Massapequa WD and the GHGCC did not file formal Statements in Support of the Joint Proposal.

[182] LI CAWS Statement in Opposition, p. 2; LI CAWS Reply Statement, pp. 1-3.

acquisition transaction between a willing seller and a willing buyer at agreed upon terms, including the value and price paid for the capital stock. The Commission has little control over the terms of a transaction to which commercial participants may agree. It does not approve or endorse the valuation of assets that may be agreed upon nor bind others to such valuation. The Commission's task here is to evaluate whether the Joint Proposal is in the public interest and to assure that the resulting transaction outlined in the Joint Proposal will continue the provision of safe and reliable service at just and reasonable rates and will result in public benefits that outweigh any potential risks.

Nevertheless, LI CAWS does not draw a nexus between the cost of the Transaction and the potential for increased municipal acquisition costs. Pointing to the net book values of different parts of the system that are included in the Joint Proposal,[183] LI CAWS asserts that the signatory parties have agreed to those values and argues that this will increase municipal acquisition costs. Nothing in the Joint Proposal dictates the cost a municipality may pay to acquire a particular part of the system, whether through negotiation or eminent domain efforts, including the Joint Proposal's identified net book values. Indeed, the right for a municipality to seek to acquire part of the system by eminent domain is expressly recognized in the Joint Proposal. The eminent domain process allows for a de novo adjudication of the value of the part of the system to be acquired and the Joint Proposal does not change that adjudication of value.

Similarly, in negotiation, any acquiring municipality retains the right to present expert valuation estimates. LI

[183] Joint Proposal, Exhibit 3.

CAWS' objection to the Joint Proposal in this regard, is not only speculative, but has no factual basis in the record. We specifically note that our action in adopting the Joint Proposal does not include any finding that the net book values recited in the Joint Proposal represent the Commission's opinion or approval of those values of NY American Water's system and is not intended to bind any municipality, including the North Shore and South Nassau Water Authorities, to such values when seeking to acquire any part of the system.

LI CAWS goes to great lengths to outline the public benefits of municipalization, citing the studies by Sea Cliff, the Massapequa WD,[184] the Town of Hempstead, and DPS Staff.[185] The Joint Proposal does not dispute such asserted benefits, however. In fact, the Joint Proposal fosters municipalization by establishing a framework for good faith negotiations, while at the same time recognizing the potential for the exercise of eminent domain authority.[186] LI CAWS fails to understand that the Joint Proposal allows for municipalization of parts of the system and, at the same time, provides for NY American Water's continued operation of those parts of the system that are not currently under consideration for municipalization.

LI CAWS claims that despite the rate freeze and $23.5 million PBA, ratepayers "will see their rates skyrocket in the next rate case."[187] This claim is speculative at best and ignores the Commission's statutory role in the context of a rate case to evaluate financial impacts on customers and to assure

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[184] Although LI CAWS cites to a Massapequa WD study, it was not filed in this proceeding nor provided by LI CAWS. It therefore is not a part of the record in this proceeding.

[185] LI CAWS Statement in Opposition, pp. 3-4.

[186] Joint Proposal, pp. 16-18.

[187] LI CAWS Reply Statement in Opposition, p. 4.

the reasonableness of rates.[188] Moreover, any future rate increases are, by the express terms of the Joint Proposal, insulated from the acquisition and goodwill costs of the Transaction.

LI CAWS also challenges the Joint Proposal's provision allowing rate recovery for the costs associated with the issuance of new long-term indebtedness. This position misses the point that ratepayers already fund the costs associated with NY American Water's existing long-term indebtedness and that the Joint Proposal's replacement of this debt at more favorable terms will result in ratepayer benefits by lowering the current costs on existing debt. LI CAWS also argues that "it must be assumed" that Liberty Eastern will profit from the interest charged to ratepayers,[189] but cites nothing in the record to support this assumption.

LI CAWS takes the position that ratepayers own NY American Water's assets. As DPS Staff point out, Commission precedent does not support this theory.[190] DPS Staff also cites PSL §§70, 83, 89-h, and 100, which govern the transfer of utility property, as evidence of the Legislature's understanding of a utility's property ownership rights and its obligations related to such property. In addition, Liberty Eastern

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188 PSL §§66(5), 89-b(1), 89-j.

189 LI CAWS Reply Statement in Opposition, p. 4.

190 DPS Staff Reply Statement, pp. 4-5 (citing Case 14-W-0072, NY American Water Company, Inc. – Transfer, Order Authorizing Sale (issued June 12, 2014); Case 19-W-0648, NY American Water Company, Inc. – Transfer, Order Approving Transfer of Property (issued February 6, 2020)).

correctly points out that the United States Supreme Court refutes LI CAWS' ratepayer ownership theory.[191]

LI CAWS complains that the Joint Proposal's timeline and task schedule for municipalization negotiations improperly limits those efforts and allows Liberty Eastern to abandon good faith negotiations if the schedule is not met. This issue should no longer be in dispute because both DPS Staff and Liberty Eastern separately expressed their shared position at the evidentiary hearing that the Joint Proposal's schedule and timeline were designed as a flexible framework to foster municipalization and was not intended as a strict mandate.[192]

Finally, LI CAWS raises numerous rate-related issues including complaints related to excessive rates, improper shareholder profits, and customers paying corporate taxes on profits.[193] This is not a rate case. Consequently, these issues are not properly raised in the context of this proceeding and in any event, LI CAWS did not develop a record on any of these issues. Consequently, we will not consider them. LI CAWS is free to raise and develop such issues in the next rate proceeding. LI CAWS' remaining objections similarly lack merit.

In sum, the Commission rejects LI CAWS' objections to the Joint Proposal and reiterate our finding, based on the record as a whole, that the Joint Proposal is in the public interest, as required by PSL §89-h.

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[191] Liberty Eastern Reply Statement in Further Support, p. 8, n. 17; Board of Public Utility Commission v. New York Telephone Co., 271 U.S. 23, 31-32 (1926).

[192] Tr. 102-109.

[193] LI CAWS Statement in Opposition, pp. 3-5; LI CAWS Reply Statement, pp. 3-4.

E. Planned Water Treatment Systems

As noted above, the Glen Head Well, the Dykeer System, the Seaman's Neck Plant, and Plant 16 have PFOA, PFOS, and 1,4-dioxane levels in excess of allowable maximum contaminant levels (MCLs) and NY American Water plans to install treatment systems on three of them and has rendered inactive Plant 16. DPS Staff inquired about the plans, budgets and status of the treatment systems during the discovery phase of this proceeding.[194] The ALJs followed up with additional questions related to the timing of construction of the treatment systems and the expected capital costs.[195]

In response to ALJ 3(a), Liberty Eastern indicates that the Glen Head Well serves approximately 4,340 customers in Sea Cliff, but its operation has been limited to use as a "backup supply" during peak summer demand.[196] Liberty Eastern further indicates that the Dykeer System serves approximately 120 customers, but is currently being supplemented with trucked in water "to provide dilution" for PFOA and chloride.[197] In response to ALJ-3(c), Liberty Eastern indicates that the construction of a treatment systems for the Glen Head Well and the Dykeer System are scheduled to be completed by December 2021 and May 2022, respectively.

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[194] Hearing Exhibit 86 (DPS Staff Infrastructure Panel, Exhibit 1, NY American Water/American Water Responses to DPS 171.1 and 171.2, pp. 5-6).

[195] Hearing Exhibit 38-4 (Supplemental Response to ALJ-3).

[196] Hearing Exhibit 38-4 (Supplemental Response to ALJ-3). It is not known how often NY American Water has used the Glen Head Well as a backup system since PFOA and PFOS were detected, or what communications have been made to customers about the presence of PFOA, PFOS, and 1,4-dioxane.

[197] The level of PFOA, PFOS, and 1,4-dioxane in the drinking water supply, if any, before and after the dilution efforts is unclear.

With respect to the Seaman's Neck Plant, Liberty Eastern indicates in response to ALJ-3(a) that levels of 1-4-dioxane in excess of the MCL have been found, that this system "primarily serves" 3,712 customers within the Seaman's Neck Pressure Zone, and that "[s]mall volumes of water can pass to the remainder of the Merrick District customers," which serves approximately 44,800 customers.[198] In response to ALJ-3, Liberty Eastern indicates that construction of the treatment system for Seaman's Neck will not be completed until the fourth quarter of 2023.

Initially, NY American Water indicated in response to DPS-171 that the range of total costs for the three treatment systems is between $10.6 million and $12.6 million. In response to ALJ-3(b), Liberty Eastern provides an updated total cost estimate for the three systems of $21.5 million, explaining that the previous costs provided in DPS-171 "were planning costs at an early stage of project development."[199] Liberty Eastern indicates that customers will be funding the capital investments for the three treatment systems, which will be included in the revenue requirement of the next rate case.[200]

We make no determination here regarding the prudence or reasonableness of the estimated expenditures for the

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[198] Hearing Exhibit 38-4 (Supplemental Response to ALJ-4). Seaman's Neck has several wells that have contaminant levels in excess of the MCLs, including Wells 3A, 4, and 11 (Jefferson Street).

[199] Compare Hearing Exhibit 86 (DPS 171.1 and DPS 171.2), pp. 5-6 with Hearing Exhibit 38-4 (Supplemental Response to ALJ-3(b)).

[200] Hearing Exhibit 38-4 (Supplemental Response to ALJ-3(d)). NY American Water also indicates that it is pursuing legal options against parties potentially responsible for the adverse impacts to its water supply system from PFOA, PFOS, and 1,4-dioxane.

treatment systems. Nevertheless, in light of the documented MCL exceedances, we express the Commission's firm expectation that the treatment systems will be fully constructed and operational within the timeframes specified by NY American Water in this proceeding, specifically, completion of the Glen Head Well treatment system in December 2021; completion of the Dykeer treatment system in May 2022; and completion of the Seaman's Neck treatment by December 2023.

We are therefore requiring NY American Water, under its current ownership and under Liberty Eastern's ownership following the close of the Transaction, to report in writing to the Secretary on a semi-annual basis beginning on January 31, 2022, regarding the completion and/or progress toward completion of these treatment systems. The Company must explain in detail the reason for any delay to completion of the treatment systems within these timeframes noted and propose a new expedited timeframe for completion. At its own expense, the Company must timely advise customers of any delay to completion of a treatment system and of the proposed new timeframe for completion.

In response to ALJ-3(a), NY American Water indicates that Plant 16 is "inactive and will remain inactive." No treatment system is planned for Plant 16. It is not clear whether Plant 16 will remain permanently inactive or whether NY American Water retains the discretion to reactivate Plant 16 at any time, including after the Transaction closing. Consequently, we are requiring NY American Water to provide 60-days' notice to the Secretary of any plans to reactivate Plant 16.

Under the 2017 Rate Order, tariff leaf 50 provides in part:

> 8. The Company will discontinue service to a customer's premises immediately in the event of an

> actual or imminent contamination, pending its abatement, where such contamination threatens the health or safety of persons or the Company's water supply.
>
> 9. If the Company is aware of a hazardous condition that may affect the health and safety of consumers of its water, it will immediately make all reasonable efforts to contact affected parties.

It is clear that the presence of PFOA, PFOS, and 1,4-dioxane has impacted parts of NY American Water's water supply and that the Company has initiated measures to implement appropriate treatment systems. But delays to prompt completion of the treatment systems will result in the continuation of an unacceptable situation, particularly given the number of customers that are potentially affected.

F. Independent Monitor's Final Report: Sea Cliff Taxes

In October 2021, the Independent Monitor filed a Final Report related to the Sea Cliff property tax errors, noting that, although its work was completed, "some issues remain unaddressed in part or in full" related to property tax issues in the context of NY American Water's acquisition and future rate cases.[201] The Independent Monitor outlined risks and identified issues associated with NY American Water's operations, noting that if the sale to Liberty Eastern was approved, "there will likely be additional risks related to the transfer of property records and property tax data."[202] Notably, although the Independent Monitor indicated in the Final Report that NY American Water had been "responsive" and that implementation of many recommendations had been completed, the Final Report nevertheless indicated that several recommendations

[201] Case 16-W-0259, NY American Water – Rates, Independent Monitor's Final Report, p. 3.

[202] Id.

remained either "open" or subject to confirmatory "testing" depending on the timing of the Liberty Eastern acquisition.[203]

We find that the Independent Monitor's caution in this regard is important to the effective transition of NY American Water's operations to Liberty Eastern's new ownership and to assure that prior identified real property tax errors are not repeated in the next rate case. The progress NY American Water has made in implementing the recommendations of the Independent Monitor and in improving its process for accurately reporting real property taxes should not be lost as a result of Liberty Eastern's acquisition.[204] Similarly, the findings and recommendations identified in DPS Staff's June 29, 2018 Second Tax Report should not be forgotten.[205]

Consistent with the Commission's Orders initiating the investigation into NY American Water's real property tax errors and approving the Independent Monitor role,[206] we are requiring

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[203] Id., Independent Monitor's Final Report, pp. 17-22.

[204] For example, the Independent Monitor's recommendations, included, but were not limited to, NY American Water establishing of internal tax reporting and data verification processes; creating automated and standardized processes for data importation; accurately identifying and classifying assets as Personal/Non-Taxable versus Private/Taxable; conducting internal training for appropriate employees involved in tax data to explain new procedures, processes and controls; and establishing a Steering Committee to enhance management oversight of rate cases and other regulatory matters, to review Rates Team status updates, and to provide direction to the Rates Team.

[205] Case 16-W-0259, NY American Water – Rates, Staff Investigation into Causes Of New York American Water's Property Tax Expense Error, and Reasons for Untimely Reporting to the Department of Public Service and the Commission (June 29, 2018), pp. 38-39, Appendices A-C.

[206] Case 16-W-0259, NY American Water – Rates, Order Initiating Investigation (issued January 18, 2018); Order Authorizing Contract for Independent Monitor (issued October 18, 2018).

NY American Water to continue implementation of the Independent Monitor's recommendations now and in the future under Liberty Eastern's ownership after the Transaction closing. NY American Water shall report to the Secretary annually commencing on or before January 31, 2023, with respect to the status and results of the implementation efforts.

G. Compliance with Commission Settlement Guidelines

The Joint Proposal meets the Commission's criteria under the Settlement Guidelines because the result is within the litigated outcomes between adversarial parties that may reasonably be expected in this proceeding, particularly when viewed in light of the Companies' and DPS Staff's testimony and other evidence in the record.

Liberty Eastern initially proposed, among other things, a one-year rate freeze from the end of its current rate plan under the 2017 Rate Order, lower-cost recapitalization, enhanced local management and customer service, retention of employees for two years, ready access to capital, and a promise to implement a code of conduct for interactions with affiliates.[207]

In its testimony, DPS Staff countered with, among other things, a PBA of $23.5 million to offset scheduled rate increases and surcharges, the development of a method of identifying low-income customers, a one-year rate freeze from the date the Transaction closes, adding a board member from NY American Water's service territory, and improvements to the Company's customer service performance incentive mechanism.[208]

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[207] Hearing Exhibit 2 (Liberty Eastern Direct Testimony, pp. 30-33).

[208] Hearing Exhibit 93 (DPS Staff Policy Panel), pp. 49-52.

The municipal and interest group parties advanced their interests in the municipalization of parts of NY American Water's system in an effort to lower rates.

This complex proceeding has been pending for nearly two years and a complicated negotiated settlement was accomplished over a one-year timeframe during Covid-19. Given the record of this proceeding, the Joint Proposal is consistent with the result that may have been reached in a fully litigated case.

VIII. CONCLUSION

The Joint Proposal contains several provisions that further important State and Commission objectives. By adopting the Joint Proposal's terms, we require NY American Water, under Liberty Eastern's ownership, to pursue important policy goals, including customer service improvements, while mitigating the potential economic impact of the rates on ratepayers through a one-year rate freeze and payment of a significant PBA. The evidence in the record forms a rational basis for our adoption of the terms of the Joint Proposal and our finding that the Joint Proposal meets the criteria in PSL §89-h and PSL §89-f and is in the public interest.

The Commission Orders:

1. The terms of the Joint Proposal dated, November 3, 2021, and Exhibits 1, 2 and 3, which are appended to this Order as Attachment A, are adopted and incorporated as part of this Order, subject to the discussion in the body of this order.

2. Pursuant to Public Service Law (PSL) §§89-h and 108, Liberty Utilities (Eastern Water Holdings) Corporation is authorized to acquire 100 percent of the issued and outstanding

capital stock of New York American Water Company, Inc., thereby maintaining the corporate structure of New York American Water as the surviving entity.

3. New York American Water Company, Inc. shall submit a compliance filing to the Secretary to the Commission, within 180 days of the closing, that includes journal entries recording Transaction costs and the goodwill calculation in accordance with generally accepted accounting principles. If goodwill is impaired, New York American Water Company, Inc. will submit a report to the Secretary to the Commission analyzing the impairment, within five days of the impairment.

4. New York American Water Company, Inc. shall report to Department of Public Service Staff on a monthly basis concerning the progress of the municipalization negotiations.

5. Within 60 days of the date of this Order, New York American Water, Inc. shall file with the Secretary to the Commission an Affiliate Code of Conduct to govern New York American Water Company, Inc.'s interactions with its new affiliates.

6. New York American Water Company, Inc., is directed to file, on not less than three days' notice, to become effective on January 1, 2022, tariff changes as are necessary to effectuate the cancellation of the make-whole surcharge as discussed in the body of this Order.

7. The requirements of Public Service Law Section 89-c(10) and Title 16 of the New York Codes, Rules and Regulations §720-8.1 for newspaper publication of the tariff amendments directed in Clause No. 6 are waived.

8. New York American Water Company, Inc. is directed to file with the Secretary to the Commission, on a semi-annual basis, a report regarding the completion and/or progress toward completion of the water treatment systems, as described in the

body of this Order. The first report shall be filed no later than January 31, 2022.

9. New York American Water Company, Inc. is directed to file with the Secretary to the Commission, on an annual basis, a report regarding the continued implementation of the Independent Monitor's recommendations, as described in the body of this Order. The first report shall be filed no later than January 31, 2023.

10. New York American Water Company, Inc. is authorized to issue long-term debt in one or more transactions in connection with the acquisition by Liberty Utilities (Eastern Water Holdings) Corp. in an amount equal to its currently outstanding debts with American Water Capital Corp.

11. The proceeds from the issuance of the securities authorized by this Order may be used only for the discharge or lawful refunding of the New York American Water Company, Inc.'s currently outstanding debts with American Water Capital Corp.

12. Within 60 days after the execution of any debt security authorized under this Order, New York American Water Company, Inc. shall submit a compliance filing to the Secretary to the Commission. Each filing shall include, at a minimum, the following elements: (i) a complete term sheet on the transaction and copies of the executed documents, including a schedule of all costs associated with the issuance; (ii) a comparative analysis of the terms and conditions of the issuance, including call provisions, relative to financings by similarly rated utilities; (iii) the proposed deferral and amortization of all costs associated with the issuance; (iv) a letter by the Chief Financial Officer certifying that the terms were the best that could be obtained and are no more restrictive than the terms of any existing securities issued by the Company; (v) either a net present value analysis demonstrating that the

Company will obtain reasonable savings because of the refunding or, if the Company predicated the refunding upon some other criteria, a letter by the Company's Chief Financial Officer which certifies and explains the reasonableness of its refunding strategy; and (vi) a proposed amortization schedule for any redemption premiums and unamortized debt discount and expense balances, which shall reflect an amortization period that is the shorter of the remaining life of the refunded debt or the life of the new debt.

13. New York American Water Company, Inc. shall, within 60 days after the execution of any debt security authorized under this Order, file with the Secretary to the Commission a verified report in the form prescribed by 16 NYCRR Section 520.1.

14. New York American Water Company, Inc. may defer its costs associated with the issuance of securities authorized under this Order in Account 181, Unamortized Debt Expense. The amounts so deferred shall be amortized to Account 428, Amortization of Debt Discount and Expense. New York American Water Company, Inc. shall recover the costs associated with issuing the securities over the shorter of the remaining life of the refunded securities or the life of the new securities.

15. The authority granted and the conditions imposed by this Order shall not be construed as passing upon or otherwise approving the accuracy of the books, records, and accounts of New York American Water Company, Inc., nor does the authority to issue securities bind this Commission to any specific ratemaking treatment or regulatory regime.

16. The securities authorized by this Order shall not be issued unless and until there has been filed with the Secretary to the Commission an unconditional acceptance by New York American Water Company, Inc. to obey all the terms,

conditions, and requirements of this Order. If such acceptance is not so filed within a period of 30 days from the effective date of this Order, this Order may be revoked by the Commission without further notice.

17. New York American Water Company, Inc. is directed to provide the Secretary to the Commission notice in writing of plans to reactivate Plant 16, as described in the body of this Order, at least 60 days before such planned reactivation.

18. 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 three days prior to the affected deadline.

19. This proceeding is continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 20-W-0102 – Joint Petition of American Water Works Company, Inc.; New York American Water Company, Inc.; and Liberty Utilities (Eastern Water Holdings) Corp. for Approval, Pursuant to Section 89-h of the New York Public Service Law, for the Acquisition by Liberty Utilities (Eastern Water Holdings) Corp. of 100 Percent of New York American Water Company, Inc. Issued and Outstanding Capital Stock and for Approval, Pursuant to Section 89-f of the New York Public Service Law, and for the Issuance of Long-Term Indebtedness.

NOTICE OF DETERMINATION OF SIGNIFICANCE
(NEGATIVE DECLARATION)

NOTICE is hereby given that an Environmental Impact Statement is not required to be prepared in this proceeding in connection with the Public Service Commission's approval, pursuant to Public Service Law §§89-h and 89-f, of the acquisition by Liberty Utilities (Eastern Water Holding) (Liberty Eastern) of 100 percent of the outstanding capital stock of New York American Water Company, Inc. (NY American Water) and the issuance of long-term debt. The Commission's approval of this transaction is an Unlisted Action, as that term is defined in 6 NYCRR Section §617.2(al).

Based upon the Commission's review of the record of the proposed action, specifically, the Joint Proposal providing for Liberty Eastern's acquisition of 100 percent of NY American Water's outstanding capital stock and the issuance of long-term debt not to exceed $198 million, the Commission finds that the proposed action will not have a significant adverse environmental impact and that there will be no significant changes to the operation of the existing utilities and

infrastructure that will result in significant adverse environmental impacts.

The address of the Public Service Commission, the Lead Agency for purposes of the State Environmental Quality Review of this action and the underlying transaction, is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Jeremy D. Flaum at (518) 486-2219 or by email to Jeremy.Flaum@dps.ny.gov or by mail to the address set forth above.

MICHELLE L. PHILLIPS
Secretary

Exhibit A

November 3, 2021 Joint Proposal; Exhibits 1-3

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Petition of American Water Works Company, Inc.; New York American Water Company, Inc.; and Liberty Utilities (Eastern Water Holdings) Corp. for Approval, Pursuant to Section 89-h of the New York Public Service Law, of the Acquisition by Liberty Utilities (Eastern Water Holdings) Corp. of 100% of New York American Water Company, Inc.'s Issued and Outstanding Capital Stock and for Approval, Pursuant to Section 89-f of the New York Public Service Law, of the Issuance of Long-Term Indebtedness	Case 20-W-0102

JOINT PROPOSAL

October 22, 2021

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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JOINT PROPOSAL

I. INTRODUCTION

This Joint Proposal ("Joint Proposal") is made as of the 22nd day of October 2021, by and among American Water Works Company, Inc. ("AWWC"); New York American Water Company, Inc. ("NYAW"); Liberty Utilities (Eastern Water Holdings) Corp. ("Liberty Eastern" and together with AWWC and NYAW, the "Joint Petitioners"); the New York State Department of Public Service Staff ("Staff"); Massapequa Water District ("MWD"); Village of Sea Cliff ("SC"); North Shore Concerned Citizens ("NSCC"); Glen Head-Glenwood Landing Civic Council and other parties whose signature pages are or will be attached to this Joint Proposal (collectively referred to herein as the "Signatories" or the "Signatory Parties"). This Joint Proposal settles all the contested issues among the Signatory Parties in the above-captioned case.

II. PROCEDURAL HISTORY

On February 28, 2020, the Joint Petitioners filed a petition (the "Petition") requesting that the New York State Public Service Commission ("PSC" or the "Commission") issue an order authorizing: (1) NYAW to transfer 100% of its issued and outstanding capital stock to Liberty

Eastern[1] pursuant to New York State Public Service Law ("PSL") § 89-h and 16 NYCRR §§ 17.2 and 39.1 (the "Transaction"); and (2) at the time of closing, the issuance of long-term indebtedness payable at periods of more than 12 months to replace NYAW's previously-existing long-term debt and preserve NYAW's currently-approved capital structure pursuant to PSL § 89-f and 16 NYCRR § 37.1 (the "Financing Request"). The Joint Petitioners also filed direct testimony and exhibits in support of the Petition.[2]

Consistent with Commission practice, administrative law judges ("ALJs") were appointed to conduct the proceeding and to review the Petition. Parties to this proceeding engaged in discovery and the Joint Petitioners responded to nearly 230 multi-part discovery requests.

On March 18, 2020, a Ruling Establishing Schedule was issued. On June 4, 2020, a procedural conference was held via telephone. On June 9, 2020, a Ruling Granting Party Status and Establishing Procedural Schedule was issued which, among other things, established the deadlines for the submission of direct and rebuttal testimony and the start date for evidentiary hearings.

On June 22, 2020, the PSC's Secretary issued a Notice Soliciting Comments directed to any municipality or authority in NYAW's service areas that sought to provide plans or proposals for acquiring all or part of NYAW's infrastructure and required such comments to be submitted by August 3, 2020. The Notice Soliciting Comments also asked the Joint Petitioners to submit their plans to reduce the property and income tax burden on customers absent municipalization.

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1 Liberty Eastern is a subsidiary of Liberty Utilities Co. ("Liberty") which, in turn, is a subsidiary of Liberty Utilities (Canada) Corp. ("Liberty Canada"). Liberty Canada is a subsidiary of Algonquin Power & Utilities Corp. ("APUC"), a publicly traded company on the Toronto and New York stock exchanges.

2 On March 24, 2020, Liberty Eastern filed updated direct testimony in support of the Petition.

By notices issued on July 15, 2020 and October 14, 2020, the deadline for comments was extended to December 31, 2020. In response, LI Clean Air Water and Soil, Ltd. ("LICAWS"); SC; NSCC; Suffolk County Water Authority; and the Joint Petitioners filed comments.[3]

On October 26, 2020, Staff and other parties, including Glen Head-Glenwood Landing Civic Council, NSCC, and LICAWS filed testimony in response to the Petition. In accordance with the Commission's Settlement Guidelines[4] and 16 NYCRR § 3.9, the Joint Petitioners filed with the Commission and served on all parties a Notice of Impending Settlement Negotiations on November 10, 2020. Settlement negotiations commenced on November 17, 2020, and continued during settlement meetings held on December 1, 2020, April 16, 2021, September 17, 22, 27 and 29, 2021, and October 8, 2021.

On November 24, 2020, the Joint Petitioners filed rebuttal testimony. On the same date, the Joint Petitioners filed a letter motion requesting that the governing litigation schedule be postponed to allow the parties additional time to pursue settlement. On November 25, 2020, Staff filed a letter in support of postponing the litigation schedule. On December 3, 2020, the ALJs issued a ruling granting the request to postpone the litigation hearing and to delay the evidentiary hearing.[5] As noted above, multiple settlement meetings have occurred since the litigation schedule was revised.

Settlement negotiations were successful and this Joint Proposal is presented to the Commission for its consideration. The Signatory Parties have developed a comprehensive set of

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[3] In addition, comments have been filed on the "Public Comments" tab of the Commission's Document Matter and Management system.

[4] 32 NYPSC 71, Cases 90-M-0255 et al. - Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in C11175, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion 92-2 (Mar. 24, 1991) ("Settlement Guidelines").

[5] Additional rulings revising the procedural schedule were subsequently issued on February 10, 2021, March 15, 2021, June 7, 2021, and August 17, 2021.

terms and conditions to ensure that Liberty Eastern's acquisition of NYAW is in the public interest. The terms of this Proposal, as set forth below and in the attached Appendices, balance the varied interests of the Signatory Parties including, but not limited to, providing customers with rate stability and mitigating rate impacts to customers.

III. APPROVAL OF JOINT PROPOSAL IS IN THE PUBLIC INTEREST

The Signatory Parties recommend that the Commission approve the terms of this Joint Proposal without modification. As demonstrated below, the Joint Proposal gives fair and reasonable consideration to the interests of all Signatory Parties, resolves all issues raised in this case in a manner that provides for the acquisition of NYAW by Liberty Eastern and the issuance of indebtedness secured by NYAW in accordance with the standards outlined in PSL §§ 89-h and 89-f, and its approval by the Commission is in the public interest.

IV. TERMS GOVERNING ACQUISITION OF NYAW

A. Corporate Structure and Operational Provisions

1. Membership of the Liberty Utilities Board of Directors

The Signatory Parties agree that Liberty Eastern will appoint an independent director to the NYAW Board of Directors ("Board") who is a resident of NYAW's Long Island service area when the next Board seat becomes available. Consistent with the joint proposal adopted by the Commission in the acquisition proceeding for Liberty Utilities (St. Lawrence Gas) Corp. (formerly named St. Lawrence Gas Company, Inc.) ("SLG") and Liberty (the "SLG Joint Proposal"),[6] "resident of NYAW's service area" may include a director residing within one of the counties in which NYAW provides service, but not necessarily within the relevant service

[6] Cases 18-G-0140 et al. - Joint Petition of Liberty Utilities Co. and St. Lawrence Gas Company, Inc. for Approval, Pursuant to Section 70 of the PSL, of the Acquisition of St. Lawrence Gas Company, Inc. by Liberty Utilities Co. and for Approval, Pursuant to Section 69 of the PSL, of the Issuance of Long-Term Indebtedness, Joint Proposal (May 31, 2019).

area itself; provided that the director's principal place of business or employment is within such service area. Except for this residency provision, an independent director selected in compliance with such provision will be subject to the Liberty requirements for Board membership that apply generally to other Board members. In the event of retirement or removal of a director that is a resident of NYAW's service area, a replacement director meeting the residency requirement will be selected as soon as practicable, consistent with the requirements generally applicable to the selection of directors.

2. Operation of NYAW as a Separate Legal Entity

Under Liberty Eastern ownership, NYAW will be part of Liberty's holding company structure. NYAW, however, will continue to operate as a separate legal entity subject to regulation by the Commission. The name of NYAW may change under Liberty Eastern's ownership, but NYAW will continue to exist as a separate legal entity, with a separate Board of Directors.[7]

NYAW will continue to have its own local management, headquarters, and operations in New York. In addition, NYAW will continue to be operated and managed locally, but with support from APUC's, Liberty Canada's, and Liberty's corporate services. NYAW will receive capitalization and financing from APUC and Liberty necessary for NYAW to provide safe and reliable utility service.

The Transaction, if approved, will not impact the Commission's authority over public utility service by NYAW. All assets of NYAW will continue to be owned by NYAW as a separate legal entity. NYAW will not encumber, sell, or transfer any utility assets necessary, used, or useful in providing utility service without prior approval of the Commission. NYAW

[7] In the event of a name change, Liberty Eastern will duly provide notice to the Commission and coordinate with Staff to adequately inform customers of such change.

will not issue any long-term debt or guarantee any debt of any of its affiliates without prior approval of the Commission.

Under Liberty Eastern ownership, NYAW will continue to maintain its own books and records in accordance with applicable laws, rules, and regulations. A copy of NYAW's books and records will continue to be maintained and be available in New York.

3. Employee Retention and Local Management

Liberty Eastern commits to maintain current NYAW employees who wish to remain employed for a period of two years, thereby allowing for a seamless transition for NYAW customers. Additionally, Liberty Eastern commits to continue the current NYAW union contract for its stated duration.

In addition, Liberty Eastern commits to provide more NYAW employee functions locally. For example, 12 new customer service positions will be based in NYAW's service territory following the close of the Transaction. Additionally, three or four new positions will be created for accounting and IT services, two new positions for business and community development, and an additional three to four positions for local regulatory and legal services.

4. Cost Allocation

Following the Transaction closing, NYAW will be subject to Algonquin Power & Utilities Corp.'s (APUC) current cost allocation methodology. Liberty Eastern and NYAW commit to discuss the use of the APUC cost allocation methodology as part of NYAW's next base rate case filing.

5. Affiliate Code of Conduct

Liberty Eastern is committed to ensuring that the interactions among its regulated and non-regulated affiliates are proper and do not jeopardize the safe and adequate provision of

service. Accordingly, Liberty Eastern commits to work with Staff and other stakeholders on developing, drafting, and implementing an appropriate Affiliate Code of Conduct to govern NYAW's interactions with its new affiliates under Liberty and APUC. Within 60 days of the Commission's issuance of a final order in this proceeding, Liberty Eastern will file with the Secretary to the Commission an Affiliate Code of Conduct to govern NYAW's interactions with its new affiliates.[8]

B. Rate Freeze

NYAW is currently operating under the Order Establishing Rates for Water Service issued on May 18, 2017,[9] which established the terms of a four-year water rate plan for the period from April 1, 2017 through March 31, 2021.[10] Pursuant to a series of petitions by NYAW, the Commission postponed a number of rate increases until May 1, 2021, including but not limited to the base rate increases for Rate Year 4.[11]

In the event this Joint Proposal is adopted by the Commission, NYAW commits to not file a base rate increase application, except as provided herein, for rates to go into effect before April 1, 2023, after being suspended for the maximum period under the PSL.[12] In addition, the

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8 NYAW is not currently subject to an Affiliate Code of Conduct.

9 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, Order Establishing Rates for Water Service (May 18, 2017) ("2017 Rate Order").

10 On February 6, 2020, the Commission extended NYAW's rate plan by an additional year. Case 16-W-0259, Order Postponing the Levelization Surcharge and Authorizing Amended System Improvement Charge Projects (Feb. 6, 2020).

11 See Case 16-W-0259, Order Postponing Approved Delivery Rate Increases and System Improvement Charge (Mar. 25, 2020); Case 16-W-0259, Order Adopting Action on a Permanent Basis (Jun. 18, 2020); Case 16-W-0259, Confirming Order (Jul. 17, 2020); Case 16-W-0259, Order Postponing Rate Changes (Sept. 1, 2020); Case 16-W-0259, Confirming Order (Sept. 22, 2020); Case 16-W-0259, Order Adopting Emergency Rule on a Permanent Basis (Nov. 20, 2020); Case 16-W-0259, Order Postponing Rate Changes (Dec. 30, 2020); Case 16-W-0259, Confirming Order (Jan. 25, 2021); Case 16-W-0259, Order Adopting Emergency Rule on a Permanent Basis (Mar. 25, 2021); Case 16-W-0259, Confirming Order (Apr. 21, 2021).

12 This commitment is for a base rate freeze and will not preclude modification, for example, to NYAW's System Improvement Charge ("SIC") or Levelization Surcharge, before April 1, 2023, as approved by the Commission.

Signatory Parties agree that the end of the historic test year for the first base rate case following close of the Transaction shall reflect at least a full year of operation of NYAW post-acquisition by Liberty Eastern.

However, this commitment will not prohibit NYAW from seeking temporary rate relief pursuant to PSL §§ 89-j and 114, as the same may be amended from time to time, if such temporary rate relief is on account of external changes such as changes in local, State, or federal taxes, or if they are needed to preserve the financial integrity of the NYAW. This also will not prevent the NYAW from filing tariffs or tariff amendments reflecting new or revised service offerings that are revenue neutral.

C. Financial Protections

1. Goodwill and Transaction Costs

NYAW and Liberty Eastern shall not pass along to customers of NYAW the premium above book value paid by Liberty Eastern to acquire NYAW (i.e., goodwill) or the Transaction costs attributable to the Transaction. For purposes of this Joint Proposal, Transaction costs shall mean: (1) consultant, investment banker, legal, and regulatory support fees (internal as well as external) associated with the Transaction; and (2) change in control payments, i.e., property transfer tax.

Liberty Eastern will track the costs associated with the Transaction in designated accounts and, post-approval of the Transaction, NYAW will file a report with the Commission that includes the journal entries recording the Transaction costs. Such report will be filed as soon as it is available, subject to the time frame determined in accordance with U.S. Generally Accepted Accounting Principles ("GAAP"), which allow for post-closing adjustments to occur within 180 days of closing of the Transaction.

The goodwill associated with the Transaction shall not be shown in NYAW's PSC annual report or included in the equity component of NYAW's capitalization for purposes of calculating NYAW's return, future revenue requirements, or any other component of NYAW's rates. Following closing of the Transaction, NYAW shall file the goodwill calculation as soon as it is available, subject to the time frame determined in accordance with GAAP.

If at any time after the closing of the Transaction any analysis determines that goodwill on Liberty Eastern's books, either due to the Transaction or acquired prior to the Transaction, is impaired to any extent, NYAW will submit to the Commission a report with a relevant analysis within five days of the goodwill impairment.

2. Minimum Common Equity Ratio ("MER")

At each month end, Liberty Eastern and NYAW agree to maintain a MER (measured using a trailing 13-month average) in relation to the common equity ratio used to set rates. The MER is defined as 300 basis points less than the approved common equity ratio used to set rates i.e., 43% during the base rate freeze period.[13] If the approved common equity ratio is adjusted in any future NYAW rate proceedings, then the MER shall also be adjusted accordingly. In the event that the MER is not met, no dividends are payable until such time as the MER is restored.

3. Minimum Credit Quality

In the event that Liberty's Standard & Poor's ("S&P") debt rating is downgraded below BBB within three years of the closing of the Transaction, and if Liberty subsequently issues debt during the three-year period, then the cost of such debt issuances will be adjusted in future rate cases as if the debt had been issued at an S&P credit rating of BBB or a Moody's Investor Service ("Moody's") credit rating of Baa2. The Signatory Parties agree that Liberty and NYAW

[13] NYAW's approved common equity ratio during the base rate freeze period is 46%, which was adopted by the Commission during NYAW's last rate proceeding, Case 16-W-0259.

will not be subject to the BBB rating requirement in the event of an Industry-Wide Event that causes a credit downgrade through no fault of Liberty or NYAW such as a pandemic or other such event. For purposes of this provision, an "Industry-Wide Event" is defined as any act, circumstances, or event that negatively impacts, downgrades, and/or hinders the financial metrics and/or creditworthiness of the utility industry as a whole or New York utilities specifically, including water, electric and gas utilities, and is beyond the reasonable control of Liberty and/or NYAW including, without limitation, acts of God; severe weather; major storm events; changes in Federal tax laws; epidemics; pandemics; or governmental action.

4. Money Pool Restrictions

NYAW may participate in a money pool as a borrower or lender only if the other participants are regulated utilities, with the exception that Liberty may participate, but only as a guarantor of loans made by that money pool and to provide funding to the money pool in the event that other participant-supplied funds on any given day are insufficient to meet the need for funds by the borrowing participants. NYAW shall not participate in a money pool as a lender if any of the other participants are not regulated utilities. This does not preclude the unregulated affiliates of NYAW in participating in a separate money pool that does not include NYAW.

D. Section 338(h)(10) Election and Accumulated Deferred Income Tax

Section 338(h)(10) of the Internal Revenue Code allows a buyer of stock of a corporation within a consolidated group to treat the transaction as an acquisition of all of the assets of the acquired subsidiary for federal income tax purposes. The Signatory Parties acknowledge that Liberty Eastern and AWWC intend to make a joint Section 338(h)(10) election to treat NYAW as selling its assets and Liberty Eastern as acquiring such assets.

To ensure that benefits of the Transaction inure to customers, NYAW agrees to apply a rate base offset corresponding with Exhibit 1 attached hereto for the period of 2023-2043. For clarity, the rate base offset incorporated in any rate year shall align with the corresponding offset set forth in Exhibit 1. NYAW shall update this schedule to reflect offsets based on December 31, 2021 Accumulated Deferred Income Tax data by no later than April 1, 2022.

E. Positive Benefit Adjustment

Liberty Eastern will provide NYAW customers with a monetary Positive Benefit Adjustment ("PBA") of $23.5 million that will be used first to write-off the Make-Whole surcharge[14] previously effective for recovery from May 1, 2021 through March 31, 2022. The remaining PBA should be allocated to each of Service Area 1 ("SA1"), separately for Mill Neck and upstate systems, and the remaining SA1 system; Service Area 2 ("SA2") – Sea Cliff, SA2 – East Massapequa, and the remaining SA2 system; based on Rate Year 4 authorized revenues for each of these systems under NYAW's current rate plan. The PBA allocated to SA1 will be used to offset a portion of the yet to be collected Rate Year 3 and Rate Year 4 Levelization Surcharge for SA1.[15] The PBA allocated to SA2 should be kept on NYAW's books as a regulatory liability to net against current and future regulatory assets, if any. Any balance of such net regulatory asset or liability will be disposed of at NYAW's next rate case. In case a portion of the NYAW system is transferred to a municipality pursuant to the process set forth in Section IV(J) of this

[14] See Case 16-W-0259, Order Postponing Approved Delivery Rate Increases and System Improvement Charge (Mar. 25, 2020); Case 16-W-0259, Order Adopting Action on a Permanent Basis (Jun. 18, 2020); Case 16-W-0259, Confirming Order (Jul. 17, 2020); Case 16-W-0259, Order Postponing Rate Changes (Sept. 1, 2020); Case 16-W-0259, Confirming Order (Sept. 22, 2020); Case 16-W-0259, Order Adopting Emergency Rule on a Permanent Basis (Nov. 20, 2020); Case 16-W-0259, Order Postponing Rate Changes (Dec. 30, 2020); Case 16-W-0259, Confirming Order (Jan. 25, 2021); Case 16-W-0259, Order Adopting Emergency Rule on a Permanent Basis (Mar. 25, 2021); Case 16-W-0259, Confirming Order (Apr. 21, 2021).

[15] The 2017 Rate Plan defines Rate Year 3 as the twelve months ending March 31, 2020 and Rate Year 4 as the twelve months ending March 31, 2021.

Joint Proposal prior to the next rate case, any remaining net regulatory asset or liability attributed to this portion of the NYAW system should be netted against the purchase price of the municipality.

F. Treatment of Certain Surcharges Authorized by the Rate Order

1. Rate Year 3 and Rate Year 4 Levelization Surcharge for SA1

In order to mitigate Rate Year One bill impacts, the Rate Order levelized NYAW's base rate increases over the term of the rate plan. Under the levelized revenue increases for SA1, a portion of the levelized revenue increase for Rate Year 3 (ending March 31, 2020) and Rate Year 4 (ending March 31, 2021) are to be collected through the levelization surcharge.[16] On February 25, 2019, NYAW filed a petition requesting authorization to, among other things, postpone the Rate Year 3 levelization surcharge for SA1 customers set to go into effect April 1, 2019 and recommence a modified levelization surcharge on April 1, 2020. On February 27, 2019, the Commission approved the postponement of the Rate Year 3 levelization surcharge for SA1 until April 1, 2020.[17] The Commission, however, then rejected NYAW's proposal to recommence the levelization surcharge on April 1, 2020 and stated that it would address recovery of the deferred Rate Year 3 and Rate Year 4 levelization surcharges for SA1 in the instant proceeding.[18] To date, NYAW has not implemented the Rate Year 3 or Rate Year 4 levelization surcharge for SA1.

In the event this Joint Proposal is adopted by the Commission, as noted above, part of the PBA will be used to offset a portion of the yet to be collected Rate Year 3 and Rate Year 4

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[16] At the end of the rate plan, the surcharge will end so that base rates are not higher than they would have been if the revenue increases had not been levelized.

[17] Case 16-W-0259, Order Postponing Levelization Charge (Feb. 17, 2019).

[18] Case 16-W-0259, Order Postponing the Levelization Surcharge and Authorizing Amended System Improvement Charge Projects (Feb. 6, 2020) (the "Levelization and SIC Order").

Levelization Surcharge for SA1. NYAW will continue to defer any remaining Levelization Surcharge for SA1 for future recovery in a manner determined by the Commission.

G. Treatment of Tax Law Changes

The signatory parties agree that the balance of regulatory liability for excess accumulated deferred income tax resulting from the 2017 Tax Cut and Jobs Act ("TCJA") is $50.053 million as of December 31, 2017;[19] the balance of the regulatory asset for deficient accumulated deferred income tax resulting from state tax law change which disqualified NYAW as a Qualified New York Manufacturer ("QNYM") is $16.670 million as of December 31, 2017.[20] NYAW will continue to accrue QNYM regulatory asset until rates are reset in the next rate case. The disposal of the TCJA regulatory liability and QNYM regulatory asset will be addressed in NYAW's next rate case. In case a portion of NYAW's system is transferred to a municipality pursuant to the process set forth in Section IV(J) of this Joint Proposal prior to the next rate case, the TCJA regulatory liability and QNYM regulatory asset will be allocated to the portion of the system being transferred and netted against the purchase price by the municipality.

H. Customer Service and Low-Income Provisions

1. Customer Service Performance Incentive

Subject to discussions between the parties, following closing of the Transaction, NYAW will modify its Customer Service Performance Incentives ("CSPI") to convert the fixed negative revenue adjustment ("NRA") dollar amount to basis points with certain multipliers as shown in Exhibit 2.

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[19] Case 17-M-0815, Order Determining Rate Treatment of Tax Changes (August 9, 2018).

[20] Case 17-W-0232, Proceeding on Motion of the Commission Regarding the Ratemaking Impacts on Suez New York Inc. and New York American Water Inc. of Changes in the Definition of a Qualified New York Manufacturer under New York State Law.

2. Customer Satisfaction Survey

The Signatory Parties acknowledge that Liberty Eastern's affiliates currently conduct independent customer satisfaction surveys that allow them to accurately assess their level of service and make any necessary improvements. The Signatory Parties agree that NYAW will also implement such survey for a one-year benchmarking period. Following the one-year benchmarking period, NYAW will submit the results of the initial survey to Staff no later than the end of the one-year period.

3. Customer Outreach and Education

To inform customers of the transaction, NYAW will file an updated outreach and education plan with the Secretary to the Commission within 30 days after the Commission's issuance of a final order approving the Transaction. The plan will include, at a minimum, how customers will be informed of the acquisition approval and the impact the acquisition will have on customers.

NYAW will submit an updated Outreach and Education plan annually on April 1st, starting April 1, 2022.

4. Low Income

NYAW will develop a process for identifying low-income customers and introduce a financial assistance program for those customers. This program shall be introduced in NYAW's next base rate case filing following the closing of the Transaction. Costs from reduced revenues and related items from low-income customers for such program will be included in NYAW's cost of service, but NYAW's administrative costs in qualifying and assessing customer eligibility for the low-income program will not be included in NYAW's cost of service.

5. Customer Service Improvement Plan

NYAW will file a Customer Service Improvement Plan within 90 days of the issuing of the Commission Order approving the acquisition. The program should be filed with the Secretary to the Commission citing Case Number 20-W-0102. The plan shall include at a minimum, a detailed description of the 14 new positions in customer service operation, operations budget, and how these new positions will improve customer service for NYAW customers.

6. Financial Assistance and Arrearage Management Program

As a result of the COVID- 19 emergency, NYAW as a good faith effort should establish a Financial Assistance and Arrearage Management Program that will help to reduce customer arrears within 90 days of the issuing of the Commission Order approving the acquisition. The program should be filed to the Secretary to the Commission citing Case Number 20-W-0102.

I. Reporting Requirements

1. Annual Reports

Following closing of the Transaction, NYAW will continue to file separate annual reports for SA1[21] and SA2[22] until such time that SA1 and SA2 are merged together in a future NYAW rate case or as part of another Commission proceeding.

2. Capital Expenditures and Reporting

Following closing of the Transaction, NYAW will annually file a: (1) five-year capital investment forecast, broken down by business unit, of NYAW's planned water system upgrades,

[21] Pursuant to the 2017 Rate Plan, SA1 is comprised of the Lynbrook District, the five smaller upstate water districts from the former Aqua New York (Cambridge, Dykeer, Kingsvale, Waccabuc and Wild Oaks), and the recently acquired Mt. Ebo Water Company, Lucas Estates, Mill Neck Estates, and Spring Glen Lake.

[22] Pursuant to the 2017 Rate Plan, SA2 is comprised of the Merrick and Sea Cliff Districts.

including the expected scope and cost of each project or program; and (2) report on capital expenditures in a form generated in consultation with Staff.

3. Emerging Contaminants Reporting

NYAW will annually file a report on the status of projects to develop cost-effective treatment technologies and to recoup costs from parties responsible for 1,4-Dioxane, Perfluorooctane Sulfonate ("PFOS"), and Perfluorooctanoic Acid ("PFOA") contamination. These reports will include, but will not be limited to, changes to anticipated completion dates with the associated reasoning; project scope; and water quality testing results upon completion. NYAW will also provide customers annually, a simple-to-understand flyer or abbreviated report designed to educate customers about water quality, contaminants, and NYAW's ongoing efforts to ensure its customers continue to receive safe, clean water.

4. Communication with Staff

As may be required by applicable statutes, regulations, and Commission orders, NYAW shall continue to promptly inform Staff whenever it has knowledge of material facts and circumstances which significantly impair NYAW's ability to provide reliable service, emergency preparedness and response capabilities, protections against cybersecurity risks, financial health and creditworthiness, compliance with applicable laws, and any other circumstances which may endanger the public health, safety, and welfare.

J. Municipalization

Liberty Eastern and NYAW acknowledge that the MWD; SC (or North Shore Water Authority ["NSWA"], should S.6707 / A.7654 be signed into law); and the South Nassau County Water Authority ["SNCWA"], should S.5527 / A.6393 be signed into law; (together, MWD, SC, and NSWA and/or SNCWA, are referred to as the "Municipalities;" and individually, as a

"Municipality") each are interested in potentially acquiring portions of NYAW's system. Under this Joint Proposal and conditioned upon Commission approval of Liberty Eastern's acquisition of NYAW in this proceeding, Liberty Eastern and NYAW hereby agree to the following schedule, which shall commence immediately[23] following the closing of Liberty Eastern's purchase of NYAW.[24]

	Timeline from Close of Liberty Eastern/NYAW Transaction
Step 1 – Exchange of Information (Day 1-90)	*For the first 90 days post-closing, any Municipality may submit information requests to Liberty Eastern and NYAW relating to those portions of the NYAW system that the Municipality is interested in acquiring. *Conditioned upon execution of confidentiality and non-disclosure agreements by each Municipality, Liberty Eastern and NYAW shall make commercially reasonable efforts to provide such information within 15 days.
Step 2 – Offer Letter and Start of Negotiation Process (Day 91-120)	*Within the period 91-120 days post-closing, each Municipality shall provide an offer letter to NYAW to start the negotiation process, including (1) a detailed description of exactly what portions of NYAW's system the Municipality intends to acquire, (2) a list of any and all assets to be acquired by the Municipality, and (3) a proposed monetary offer to be paid by the Municipality for such assets.
Step 3 – Municipal Expert Valuations and Appraisals (Day 121-301)	*During the period 121-301 days post-closing, the Municipality shall obtain and provide to NYAW an expert appraisal and valuation supporting the Municipality's offer. *Such valuation analysis and/or appraisal shall evaluate any and all assets attributable to the portions of NYAW's system to be acquired by the Municipality, including, but not limited to, property rights, construction work in progress, water rights, and/or severance damages.

[23] In the cases of the two proposed water authorities, the time periods listed in this document will begin from the date each board is fully established. For the avoidance of doubt, for MWD the time periods listed in this document will commence immediately following the closing of Liberty Eastern's purchase of NYAW.

[24] Upon mutual agreement, NYAW, Liberty Eastern, and the Municipalities may modify this schedule as necessary and agreed.

Step 4 – NYAW Expert Valuation and Appraisal (Day 301-360)	*During the period 301-360 days post-closing, NYAW may obtain and provide its own expert appraisal and valuation for the assets to be acquired by the Municipality. *Such valuation analysis and/or appraisal shall evaluate any and all assets attributable to the portions of NYAW's system to be acquired by the Municipality, including, but not limited to, property rights, construction work in progress, water rights, and/or severance damages.
Step 5 – Negotiation of Commercial Terms (Day 360-420)	*During the period 360-420 days post-closing, the Municipality and NYAW/Liberty Eastern and each of their respective attorneys and representatives shall negotiate terms for acquisition of the relevant portion of NYAW's system by the Municipality. *The parties agree to meet in person in the NYAW service territory, and each party shall conduct such negotiations in good faith.
Step 6 – Purchase Agreement (Day 420-465)	*In the event that the relevant parties reach agreement on acceptable terms for acquisition by the Municipality or Municipalities, such parties shall draft, negotiate, and execute a purchase agreement with customary terms and conditions within 45 days.
Step 7 – Commission Approval	*In the event that the relevant parties reach agreement on acceptable terms for acquisition by the Municipality or Municipalities and execute a final purchase agreement(s), such parties shall file an application(s) for expedited approval with Commission within 30 days.
Step 8 – Closing of Transaction	*The relevant parties shall close any Commission-approved acquisition at an agreed-upon date after issuance of the Commission decision(s) approving such transaction.

The Signatory Parties to the Joint Proposal acknowledge that all entities shall preserve full rights and remedies in the event that any municipality or water authority commences eminent domain proceedings against NYAW/Liberty. The schedule above contemplates a commercial negotiation in good faith by all relevant parties and assumes that expedited approval by the Commission will be granted. The entities wishing to purchase portions of NYAW's system will carry out refreshed or renewed valuation analyses to capture information shared during the above steps in the schedule.

The Signatory Parties acknowledge that the estimated Net Book Value ("NBV") of NYAW's assets as of December 31, 2020, are as set forth in Exhibit 3. The Signatory Parties recognize that additional capital investments and depreciation have occurred over the past year and will continue to occur, and that property located at 325 Prospect Avenue in Sea Cliff has been sold.

During the pendency of any negotiations under the above schedule, Liberty Eastern and NYAW shall provide a report to the New York Department of Public Service Staff on a monthly basis to keep Staff apprised of progress.[25] To the extent any commercially sensitive and/or confidential information is provided, such information shall be treated and maintained as confidential by all relevant parties.

V. TERMS GOVERNING ISSUANCE OF LONG-TERM INDEBTEDNESS

At the time the Transaction closes, NYAW's existing debt, which consists entirely of long-term inter-company debt, totaling approximately $196 million as of January 1, 2020, will be eliminated. As a result, after the closing of the Transaction, NYAW will need to replace that debt with funding from Liberty in order to preserve NYAW's currently approved capital structure. Liberty's costs of replacing NYAW's existing debt may be recoverable in NYAW's rates.

Pursuant to Public Service Law § 89-h, in connection with the Transaction, the Signatory Parties recommend that the Commission authorize NYAW to issue indebtedness up to $196 million or the current amount at the time of the closing, if higher, of intercompany long-term debt, less any adjustments, following the Transaction's closing.

[25] For clarity, in the event of a name change for NYAW, the newly named entity and Liberty Eastern will provide such reports.

VI. GENERAL AND MISCELLANEOUS PROVISIONS

A. Confidentiality of Settlement Process

The discussions that produced this Joint Proposal have been conducted with the explicit understanding, pursuant to 16 NYCRR § 3.9 (d), that any discussions among the Signatory Parties with respect to this Joint Proposal prior to its execution and filing shall not be subject to discovery or admissible as evidence.

B. Provisions Not Separable

It is understood that each provision of this Joint Proposal is in consideration and support of all the other provisions and each provision is expressly conditioned upon acceptance by the Commission of this Joint Proposal in its entirety without change. If the Commission fails to adopt this Joint Proposal according to its terms without change, then the Signatory Parties will be free to pursue their respective litigation positions in this proceeding without prejudice.

C. Provisions Not Precedent

The terms and conditions of this Joint Proposal apply solely to and are binding on each Signatory Party only in the context of the purposes and results of this Joint Proposal. None of the terms and provisions of this Joint Proposal, nor any methodology or principle utilized herein, and none of the positions taken herein by any Signatory Party may be referred to, cited or relied upon by any other Signatory Party in any fashion as precedent or in any other proceedings before the Commission, or any other regulatory agency, or before any court of law for any purpose except in furtherance of the purposes and results of this Joint Proposal, or as may be necessary in explaining derivation of specific costs or accounting treatments as relevant to future ratemaking proceedings**.**

D. Cooperation on Implementation

The Signatory Parties recognize that certain provisions of this Joint Proposal require that actions be taken in the future to effectuate fully this Joint Proposal. Accordingly, the Signatory Parties agree to cooperate with each other in good faith in taking such actions.

E. Continuation of Provisions in Subsequent Years

Except as expressly stated herein, all provisions of this Joint Proposal will continue beyond the end of the last Rate Year during which base rates are frozen pursuant to this Joint Proposal until changed by order of the Commission. For those provisions in this Joint Proposal that establish targets, the targets in effect during such Rate Year will apply to subsequent years.

F. Dispute Resolution

In the event of any disagreement over the interpretation of this Joint Proposal or the implementation of any of the provisions of this Joint Proposal the Signatory Parties will use the following process. First the Signatory Parties will seek to resolve the dispute informally. If any such disagreement cannot be resolved informally, any Signatory Party may petition the Commission for a determination on the disputed matter.

G. Effect of Commission Adoption of Terms of this Joint Proposal

No provision of this Joint Proposal or the Commission's adoption of the terms of this Joint Proposal shall in any way abrogate or limit the Commission's statutory authority under the PSL. The Signatory Parties recognize that any Commission adoption of the terms of this Joint Proposal does not abrogate or limit the Commission's ongoing rights and responsibilities to enforce its orders and effectuate the goals expressed therein, nor the rights and responsibilities of Staff to conduct investigations or take other actions in furtherance of its duties and responsibilities.

H. Entire Agreement

This Joint Proposal, including all attachments, exhibits and appendices, if any, represents the entire agreement of the Signatory Parties with respect to the matters resolved herein.

I. Execution

This Joint Proposal is being executed in counterpart originals and will be binding on each Signatory Party when the counterparts have been executed.

J. Notice

Except for notices or filings with the Secretary, all communications provided for herein or with reference to this Joint Proposal will be deemed to have been sufficiently given or served for all purposes if sent by electronic mail, to the following persons:

IN WITNESS WHEREOF, the Signatory Parties hereto have affixed their signatures below as evidence of their agreement to be bound by the provisions of this Joint Proposal.

WHEREFORE, this JP in Case 20-W-0102 has been agreed to as of the 25th day of October 2021, by and among the following, each of whom, by its signature, represents that he or she is fully authorized to execute this JP and, if executing this JP in a representative capacity, that he or she is fully authorized to execute it on behalf of his or her principal(s).

AMERICAN WATER WORKS COMPANY, INC.

Cheryl Norton
Executive Vice President and Chief Operating Officer
American Water Works Company, Inc.

NEW YORK AMERICAN WATER COMPANY, INC.

John T. Dillon
Vice President & General Counsel
New York American Water Company, Inc.

WHEREFORE, this JP in Case 20-W-0102 has been agreed to as of the 25th day of October 2021, by and among the following, each of whom, by its signature, represents that he or she is fully authorized to execute this JP and, if executing this JP in a representative capacity, that he or she is fully authorized to execute it on behalf of his or her principal(s).

LIBERTY UTILITIES (EASTERN WATER HOLDINGS) CORP.



Peter Eichler
Secretary & Treasurer
Liberty Utilities (Eastern Water Holdings) Corp.

WHEREFORE, this JP in Case 20-W-0102 has been agreed to as of the 3rd day of November 2021, by and among the following, each of whom, by its signature, represents that he or she is fully authorized to execute this JP and, if executing this JP in a representative capacity, that he or she is fully authorized to execute it on behalf of his or her principal(s).

STAFF OF THE DEPARTMENT OF PUBLIC SERVICE

Joseph Dowling

Joseph Dowling, Esq.

WHEREFORE, this JP in Case 20-W-0102 has been agreed to as of the 25th day of October 2021, by and among the following, each of whom, by its signature, represents that he or she is fully authorized to execute this JP and, if executing this JP in a representative capacity, that he or she is fully authorized to execute it on behalf of his or her principal(s).

VILLAGE OF SEA CLIFF

Elena Villafane
Mayor

WHEREFORE, this JP in Case 20-W-0102 has been agreed to as of the 22nd day of October 2021, by and among the following, each of whom, by its signature, represents that he or she is fully authorized to execute this JP and, if executing this JP in a representative capacity, that he or she is fully authorized to execute it on behalf of his or her principal(s).

MASSAPEQUA WATER DISTRICT

Stanley Carey
Superintendent

WHEREFORE, this JP in Case 20-W-0102 has been agreed to as of the 25th day of October 2021, by and among the following, each of whom, by its signature, represents that he or she is fully authorized to execute this JP and, if executing this JP in a representative capacity, that he or she is fully authorized to execute it on behalf of his or her principal(s).

NORTH SHORE CONCERNED CITIZENS

Bruce P. Kennedy
President

WHEREFORE, this JP in Case 20-W-0102 has been agreed to as of the 14th day of October 2021, by and among the following, each of whom, by its signature, represents that he or she is fully authorized to execute this JP and, if executing this JP in a representative capacity, that he or she is fully authorized to execute it on behalf of his or her principal(s).

GLEN HEAD – GLENWOOD CIVIC COUNCIL

George Pombar
President

Case 20-W-0102
Exhibit 1 to Joint Proposal

Schedule of Rate Base Offsets

Year		Rate Base Offset
2023	$	74,270,560.00
2024	$	70,557,032.00
2025	$	66,843,504.00
2026	$	63,129,976.00
2027	$	59,416,448.00
2028	$	55,702,920.00
2029	$	51,989,392.00
2030	$	48,275,864.00
2031	$	44,562,336.00
2032	$	40,848,808.00
2033	$	37,135,280.00
2034	$	33,421,752.00
2035	$	29,708,224.00
2036	$	25,994,696.00
2037	$	22,281,168.00
2038	$	18,567,640.00
2039	$	14,854,112.00
2040	$	11,140,584.00
2041	$	7,427,056.00
2042	$	3,713,528.00
2043	$	-

Case 20-W-0102
Exhibit 2 to Joint Proposal

New York American Water Company, Inc.
Current Customer Service Performance Indicator Mechanism

PSC Complaint Rate (complaints per 100,000 customers)	Negative Revenue Adjustment (NRA)
< 3	$0
≥ 3	$194,946
≥ 3.4	$292,420
≥ 4	$389,893

New York American Water Company, Inc.
Post-Transaction Customer Service Performance Indicator Mechanism

PSC Complaint Rate (complaints per 100,000 customers)	Negative Revenue Adjustment (NRA) Basis Points	Approx. Basis Point Value
< 3	0	$0
≥ 3	10	$237,610
≥ 3.4	12.5	$297,015
≥ 4	15	$356,415

Case 20-W-0102
Exhibit 3 to Joint Proposal

Estimated Net Book Value of NYAW's assets as of December 31, 2020

NYAW Net Book Value – Sea Cliff

	12/31/20
Utility Plant in Service (UPIS)	$21,660,784
Construction Work in Progress (CWIP)	$9,331,124
Accumulated Depreciation	($3,790,806)
Total NBV	$27,201,102

NYAW Net Book Value – Massapequa

	12/31/20
Utility Plant in Service (UPIS)	$18,294,467
Construction Work in Progress (CWIP)	$147,585
Accumulated Depreciation	($6,115,061)
Total NBV	$12,326,992

NYAW Net Book Value – Merrick (excluding Massapequa)

	12/31/20
Utility Plant in Service (UPIS)	$131,451,145
Construction Work in Progress (CWIP)	$4,194,339
Accumulated Depreciation	($44,896,368)
Total NBV	$90,749,115

NYAW Net Book Value – Lynbrook

	12/31/20
Utility Plant in Service (UPIS)	$377,467,490
Construction Work in Progress (CWIP)	$23,189,700
Accumulated Depreciation	($75,899,785)
Total NBV	$324,757,405

NYAW Net Book Value – Mill Neck

	12/31/20
Utility Plant in Service (UPIS)	$1,195,218
Construction Work in Progress (CWIP)	$2,687,682
Accumulated Depreciation	($266,371)
Total NBV	$3,616,529

NYAW Net Book Value – Upstate

	12/31/20
Utility Plant in Service (UPIS)	$30,675,852
Construction Work in Progress (CWIP)	$3,831,051
Accumulated Depreciation	($5,191,532)
Total NBV	$29,315,372

NYAW Net Book Value – Wastewater

	12/31/20
Utility Plant in Service (UPIS)	$5,019,429
Construction Work in Progress (CWIP)	$30,417
Accumulated Depreciation	($4,972,951)
Total NBV	$76,895

NYAW Net Book Value – Corp

	12/31/20
Utility Plant in Service (UPIS)	$13,796,479
Construction Work in Progress (CWIP)	$2,669,605
Accumulated Depreciation	($4,605,226)
Total NBV	$11,860,859