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August 26, 2016

Hon. Kathleen H. Burgess, Secretary
New York State Public Service Commission
3 Empire State Plaza, 20th Floor
Albany, NY 12223-1350

RE: Proceeding on Motion of the Commission as to the Rates, Charges, Rules
and Regulations of New York Water Service Corporation
Case 09-W-0237

Dear Secretary Burgess:

Pursuant to Ordering Clause 1 of Case 09-W-0237, attached please find a quarterly report reflecting the status of property tax disputes at June 30, 2016 of New York American Water Company, Inc., f/k/a New York Water Service Corporation.

Respectfully submitted,

/s/ Suzana Duby

Suzana Duby

cc: Timothy Canty
Bruce Alch
Joseph Lochner
Frank X. Simpson

NEW YORK AMERICAN WATER COMPANY, INC.
f/k/a NEW YORK WATER SERVICE CORPORATION
QUARTERLY REPORT CONCERNING STATUS OF PROPERTY TAX DISPUTES
FOR QUARTER ENDED JUNE 30, 2016

**NEW YORK AMERICAN WATER COMPANY, INC. f/k/a
NEW YORK WATER SERVICE CORPORATION
STATUS OF PROPERTY TAX DISPUTES AS OF JUNE 30, 2016**

BACKGROUND AND CURRENT STATUS BY CASE

Pursuant to Order Clause 1, in Case 09-W-0237, the New York Water Service Corporation¹ (NYW or the Company) has been directed by the Commission to file quarterly status reports on its pending property tax disputes.

The Company has a long history of success in challenging property tax assessments and continues to pursue that course of action, as exemplified by the pending matters that are currently in litigation as discussed below.

Case 1: This case was commenced in 1997 by the Company and other parties (Verizon, Long Island Water, and KeySpan) challenging Nassau County's illegal methodology used in calculating levies imposed upon the Company's property in certain special districts. It has been ruled on by a lower court judge, who agreed with the petitioners that the County's methodology used to impose levies upon the Company's property was illegal. An appellate court agreed with the lower court judge, but ruled that Nassau County did not have to pay refunds to the petitioners because of the County's financial condition, which the court characterized as "fiscal chaos." The Company, along with the other parties to the proceeding, challenged this ruling in an appeal decided by the Court of Appeals on March 30, 2004. In that decision, the Court of Appeals

¹ On April 19, 2012, in Case 11-W-0472, the Public Service Commission of the State of New York ("the Commission") approved the purchase by American Water Works Company, Inc. ("AWW") of the outstanding shares of Aqua New York, Inc. ("Aqua NY"). Aqua NY, in turn, owned all the outstanding shares of New York Water Service Corporation ("NYW"), Aqua New York of Sea Cliff, Inc. ("Sea Cliff") and the 5 small upstate companies (Cambridge, Dykeer, Kingsvale, Waccabuc and Wild Oaks water systems). On August 16, 2012, in Case 12-W-0472, the Commission approved the joint petition of the AWW subsidiaries for the following: 1) the merger of Aqua NY's subsidiaries, NYW and Sea Cliff with and into Aqua NY; and then 2) the merger of Aqua NY with and into Long Island Water Corporation (LIWC), with LIWC as the surviving corporation and to rename LIWC as "New York American Water Company".

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reversed the appellate court and remanded the case back to the Supreme Court in Nassau County for a hearing on the amount of the refunds and its impact on the County's finances.

Current Status: In June 2014, the Appellate Division issued a decision and order on KeySpan's special district case affirming the Supreme Court's decision that the County's methodology used to impose levies upon KeySpan's property in certain special districts was illegal. In addition, the Appellate Division also affirmed the Supreme Court's order, rejecting the County's defense of "fiscal chaos". The County sought leave to appeal from the Appellate Division's decision in the KeySpan special district case. On September 23, 2014, the Court of Appeals dismissed the County's motion on the ground that the Appellate Division order did not finally determine the actions. In other words, once there is a final determination in the KeySpan matter (including a decision on the amount of damages), it may be possible for the County to obtain leave to appeal to the Court of Appeals. In the meantime, our attorneys have begun preparing for a trial on damages and are developing a strategy in light of the decision in the KeySpan case.

Case 2: This challenge relates to tax certiorari proceedings for the tax years 2005/06 through the present. In these proceedings, NYW is claiming that Nassau County has overvalued the Company's real property, which includes the Company's buildings, structures, equipment, etc. In April, 2016, an Article 7 petition was filed for the 2016/2017 tax year. The Company currently has petitions on file for the 2005/2006-2016/2017 tax years. In addition, protests were filed with Nassau County for the 2017/2018 tax year in February 2016.

Current Status: Additional protests were filed with Nassau County for the 2017/18 tax year in February 2016 and an Article 7 petition was filed for the 2016/17 tax year in April 2016.

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Case 3: Two cases have been filed by NYW annually since 2007 against the Towns of Hempstead and Oyster Bay and the local sanitary districts in each of these towns. These cases challenge the imposition of special ad valorem levies for garbage services upon the Company's "mass property" (i.e., the Company's transmission and distribution facilities, including its mains, services, hydrants and related structures located upon and under public and private property owned by others). The Company's position is that its mass property does not generate garbage and, therefore, should not be subject to these levies.

As previously reported, the Company received a favorable decision from the Nassau County Supreme Court in its case against the Town of Hempstead (TOH) and the sanitary districts in that town. The Company agreed to a settlement with the TOH in 2011 covering the tax years 2001 – 2007. On December 7, 2011, the Company received a refund check for \$3.1 million and filed a petition with the Commission on December 22, 2011 and a subsequent order was issued on October 19, 2012 (Case 11-W-0695).

The Company's agreement with the TOH included two additional payments of approximately \$1.3 million on October 15, 2012 and October 15, 2013. On November 28, 2012, the Company received a refund check in the amount of \$1,359,952. The check was received after the due date because the TOH was mistakenly under the impression that it could delay payment due to another case before the Court. The Company absorbed the additional legal costs in obtaining the payment. The third and final installment payment of \$1.3 million was received on October 15, 2013 from the TOH.

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A motion for summary judgment was filed on April 5, 2013 by the Company's attorney against the TOH for refunds for open tax years (2008-2012).

Current Status: With regard to the motion against the Town of Hempstead, on March 17, 2014, Justice Marano (Nassau County Supreme Court) issued an order staying the motion, pending a decision from the Appellate Division on a related issue. That issue was whether Nassau County, as a third party defendant, could be held directly liable to the utility plaintiff. On March 19, 2014, the Appellate Division issued a decision in the related cases, holding that the TOH was liable to the utility plaintiff and that Nassau County was liable to indemnify the TOH. On September 23, 2014, the Court of Appeals denied the County and Town motions for leave to appeal from the Appellate Division garbage case decision rendered on March 19, 2014. Justice Marano has still not decided the Company's motion against the TOH. Justice Marano is now conducting a hearing on the appropriate rate of interest to be awarded in an analogous joined action (Verizon v. Town of Hempstead, et al.) and has stayed all related actions in the interim. In May, 2016, Justice Marano directed the County to interpose whatever remaining motions it intended to make on or before May 20, 2016. In response, the County moved for summary judgment or, in the alternative, partial summary judgment, seeking dismissal of the complaint on the following grounds: (i) failure to state a cause of action and statute of limitations; (ii) refunds by the County would violate the Gift and Loan Clause of the New York State Constitution; and (iii) interest is not appropriate or should be awarded at less than 9% per annum. In addition to moving for summary judgment, the County served discovery demands regarding the interest issue. Faced with the prospect of motion practice surrounding the County's discovery demands,

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Justice Marano reverted back to his original plan to stay this matter until he makes a determination in the Verizon case.

With regard to the TOB case, a motion for summary judgment for the tax years 2007 – 2012 was fully submitted on August 10, 2015 in response to the County’s motion for summary judgment in the third party action. On August 26, 2015, Justice Galasso (Nassau County Supreme Court) granted that portion of NYW’s motion seeking consolidation of the 2007-2012 actions, declaring the imposition of special ad valorem levies for garbage services on NYW’s mass property illegal, inequitable, unconstitutional and void, and enjoining the continued imposition of such levies on NYW’s mass property. By that same Order, the Court also rejected several of the County’s arguments, namely that: (1) NYW’s actions were not timely commenced or were subject to mandatory procedures set forth in Article 7 of the Real Property Tax Law; and (2) the Gift and Loan Clause of the New York State Constitution prohibited the County from indemnifying the Town for the refund of these illegal levies. The Court directed a hearing on December 1, 2015 on the issue of interest and damages and provided for discovery on these issues. The hearing has been adjourned while the Town, the County, the independent garbage districts and NYW discuss a potential settlement.

Current Status: The parties agreed to settle this matter and a judgment was signed by Justice Galasso on April 21, 2016. As a result, on April 22, 2016, the Company received refund checks in the amount of \$963,017.63 from the Town and \$11,682.10 from the Syosset Sanitation District. In addition, on July 1, 2016, the Company received a refund check in the amount of \$9,358.98 from

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the Glenwood-Glen Head Garbage District. The Company filed a Notice of Tax Refund and Proposed Disposition Petition with the Commission on June 24, 2016.