STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 23-W-0235 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Liberty Utilities (New York Water) Corp. for Water Service

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STATEMENT OF LIBERTY UTILITIES (NEW YORK WATER) CORP. IN SUPPORT OF THE JOINT PROPOSAL

June 26, 2024

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STATEMENT OF LIBERTY UTILITIES (NEW YORK WATER) CORP. IN SUPPORT OF THE JOINT PROPOSAL

I. INTRODUCTION

Liberty Utilities (New York Water) Corp. (Liberty NYW or the Company) hereby submits this Statement in Support (the Statement) of the Joint Proposal filed in this docket with the New York State Public Service Commission (the NYPSC) on May 31, 2024 (Joint Proposal or Proposal) by and between the Company and the New York State Department of Public Service Staff (DPS Staff) (collectively, the Signatory Parties). The Joint Proposal is the culmination of a lengthy and intensive process wherein the Signatory Parties and other settlement parties invested immense time and effort examining the complex issues in this proceeding.

A. Procedural History

On May 4, 2023, for the first time in over seven years, the Company commenced this major rate proceeding by filing revised tariff leaves, testimony, and exhibits with the NYPSC intended to increase revenues by $39,745,567 (or 34.24%) to recover the revenue deficiency forecasted for the rate year commencing on April 1, 2024 and ending on March 31, 2025 (Rate Year 1 or RY1). On June 9, 2023, the Company made a supplemental filing to reflect certain corrections and updates, resulting in a revised revenue increase of $39,544,043 (or 34.07%). These filings included

requests to consolidate the Company's service areas into a single area with a consolidated revenue requirement.[1]

On September 7, 2023, DPS Staff, the Public Utility Law Project of New York, Inc. (PULP), and LI Clean Air Water and Soil (CAWS) filed direct testimony (together with the Company, the Settlement Parties). An additional DPS Staff exhibit supporting its testimony was filed on September 11, 2023. In response, the Company filed rebuttal testimony on October 5, 2023. Throughout this time, the Settlement Parties engaged in extensive discovery activities, exchanging an excess of 370 multi-part discovery requests.

On October 10, 2023, CAWS filed a motion to stay this proceeding pending negotiations for the potential municipalization of portions of the Company's service territory.[2] On October 18, 2023, both the Company and DPS Staff filed letters opposing CAWS's motion.[3] In denying CAWS's motion, the NYPSC explained that the New York Public Service Law (PSL) sets forth a "statutory time frame for determination of a rate proceeding" of 11 months from the time a water-works corporation files tariffs initiating a major rate proceeding.[4] As a result of this timeline, "no legal authority exist[ed] upon which to grant CAWS's motion seeking a stay of the rate case process."[5] In addition, the NYPSC observed that any municipalization negotiations are "separate

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1 The Company is currently comprised of two service areas. The first service area includes the following water supply districts: Beaver Dam Lake, Cambridge, Dykeer, Hoey-DeGraw, Kingsvale, Long Island, Mt. Ebo, Waccubuc, West Branch Ares, and Wild Oaks Districts (Service Area 1 or SA1). The second service area includes the following water supply districts: Merrick and Sea Cliff Districts (Service Area 2 or SA2).

2 Case 23-W-0235, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Liberty Utilities (New York Water) Corp. for Water Service*, Motion by LI Clean Air Water and Soil, Ltd. to Stay This Rate Case (filed Oct. 10, 2023).

3 Case 23-W-0235, *supra*, DPS Staff Letter in Opposition to CAWS Motion (filed Oct. 18, 2023); Case 23-W-0235, *supra*, Liberty NYW – Opposition to Motion for Stay (filed Oct. 18, 2023).

4 Case 23-W-0235, *supra*, Order on Motion to Stay, at 7 (issued Dec. 19, 2023).

5 *Id.*

and distinct from the instant rate proceeding[,]" and "it would be inappropriate for the Commission to suspend its obligation to maintain safe and reliable service in lieu of those negotiations."[6]

B. Settlement History And The Joint Proposal

On October 11, 2023, Liberty NYW filed with the NYPSC and served on all parties to this proceeding a Notice of Impending Settlement Negotiations pursuant to Title 16 of the New York Codes, Rules, and Regulations (NYCRR) § 3.9 (a).[7] Settlement negotiations commenced on October 25, 2023. Liberty NYW and DPS Staff participated in every settlement meeting, PULP participated in nearly all settlement meetings, and CAWS attended some settlement meetings in 2023 but none in 2024.

Primary negotiations concluded on February 16, 2024, when an agreement in principle was reached, with smaller sessions still open to all Settlement Parties, held through the month of May to allow the Signatory Parties to resolve certain elements of the Joint Proposal, including the supporting appendices thereto. During this period, the Settlement Parties exchanged numerous settlement proposals in the context of more than a dozen settlement conferences and small-scale topic-specific sessions, which culminated in the agreement upon and filing of the Joint Proposal. Ultimately, PULP elected not to sign the Joint Proposal, but it also indicated that it will not oppose. CAWS did not indicate its position on the Joint Proposal to Liberty NYW prior to, or after, its filing.

The Joint Proposal establishes a three-year rate plan for water service in the Company's service territory (the Rate Plan), which would commence on April 1, 2024 and continue through March 31, 2027. More specifically, Rate Year 1 will commence on April 1, 2024 and continue

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[6] *Id.* at 8-9.

[7] Case 23-W-0235, *supra*, Liberty – Notice of Settlement (filed Oct. 11, 2023).

through March 31, 2025 (Rate Year 1 or RY1). Rate Year 2 will commence on April 1, 2025 and continue through March 31, 2026 (Rate Year 2 or RY2). The third and final rate year will commence on April 1, 2026 and continue through March 31, 2027 (Rate Year 3 or RY3).

As set forth in more detail below, the Joint Proposal, if approved, would allow Liberty NYW to provide safe and adequate service at just and reasonable rates pursuant to PSL § 89 (b). The Joint Proposal carefully balances the interests of customers, the Company, and DPS Staff to satisfy the NYPSC's public interest standard for adopting settlement agreements. The Joint Proposal benefits customers in numerous ways that could not have been achieved in a traditional one-year litigated rate plan, including multi-year rate certainty with levelized increases across the rate plan, the implementation of numerous customer benefit programs, an opportunity for customer sharing through an earnings sharing mechanism (ESM), and conservation efforts. Simultaneously, the Joint Proposal supports the long-term viability of the Company through needed rate relief to support continued investment in its water system to maintain safe and adequate water service. Moreover, the terms of the Joint Proposal compare favorably with the likely result of litigation, are within the range of reasonable litigated outcomes, and are supported by parties who traditionally maintain adversarial interests.

In sum, the Joint Proposal, which was developed in compliance with all applicable procedures, is supported by adequate record evidence. It is presented as an integrated proposal reflecting the balancing of competing interests to produce a comprehensive agreement. The carefully achieved consensus described in the Joint Proposal would be jeopardized if individual provisions therein were selectively modified. Thus, the Company respectfully requests that the NYPSC approve the Joint Proposal in its entirety, without modification.

II. CRITERIA FOR REVIEWING SETTLEMENTS

As discussed in subsequent sections of this Statement, the Joint Proposal is "just, reasonable, and in the public interest" as required by the NYPSC's order adopting settlement guidelines.[8] Specifically, the Joint Proposal satisfies each of the criteria that the NYPSC has enumerated for determining whether settlements are in the public interest.

In determining whether a proposed settlement is in the public interest, the NYPSC has consistently held that "[a] desirable settlement should strive for a balance among (1) protection of the ratepayers, (2) fairness to investors, and (3) the long term viability of the utility[.]"[9] In addition, the settlement "should be consistent with sound environmental, social, and economic policies of the Agency and the State; and should produce results that were within the range of reasonable results that would likely have arisen from a NYPSC decision in a litigated proceeding."[10] "In judging a settlement, the NYPSC shall give weight to the fact that a settlement reflects the agreement by normally adversarial parties."[11]

Building upon these foundational principles, the Order Adopting Settlement Guidelines enumerates the following six factors to be considered during the NYPSC's substantive review of settlements:

> (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; (4)

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[8] *See* Case 90-M-0255, *Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in C 11175*, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, at 30 (issued Mar. 24, 1992) (the Order Adopting Settlement Guidelines).

[9] Order Adopting Settlement Guidelines at Appendix B.

[10] Order Adopting Settlement Guidelines at Appendix B at 8.

[11] Order Adopting Settlement Guidelines at Appendix B at 8.

> the existence of a rational basis for decision; (5) the completeness of the record; and (6) whether the settlement is contested.[12]

As described above, the first four factors "are themselves elements of the public interest standard."[13] However, the fifth and sixth factors "simply guide" the NYPSC in its assessment of the settlement.[14]

As set forth in more detail below, the Company and DPS Staff, who often maintain adversarial interests, both support the Joint Proposal in its entirety, indicating that the Joint Proposal is not only reasonable but is also well within the range of reasonable litigated outcomes for this proceeding. Moreover, the Joint Proposal reflects cooperation across divergent viewpoints, of all Settlement Parties, not just the Signatory Parties. For example, the Joint Proposal includes meaningful and new affordability and other customer benefit programs to resolve certain of PULP's specific concerns in this proceeding. The Joint Proposal also addresses a testimonial concern of CAWS's by committing the Company to conduct an analysis to determine whether residential conservation block 4 rates impact any households with indoor-only water usage. Thus, the Joint Proposal appropriately balances the interests of the Company, the Company's customers, DPS Staff, and the other parties and it should be approved in its entirety.

III. THE JOINT PROPOSAL SATISFIES THE NYPSC'S STANDARD FOR REVIEW AND APPROVAL OF SETTLEMENTS, AND IT SHOULD BE ADOPTED WITHOUT MODIFICATION

The Joint Proposal is just, reasonable, and in the public interest, satisfying the NYPSC's standard utilized when evaluating and approving settlements. Further, the terms of the Joint Proposal are each well within the range of reasonable outcomes that would likely have arisen from

[12] Order Adopting Settlement Guidelines at 30.

[13] Order Adopting Settlement Guidelines at 30.

[14] Order Adopting Settlement Guidelines at 30.

a NYPSC decision in a litigated proceeding. As a result, the Company requests that the Joint Proposal be adopted in its entirety without modification as selective approval of various provisions would undermine the comprehensive settlement developed between the Signatory Parties.

A. Term Governing the Rate Plan (Section V)[15]

The Joint Proposal establishes a three-year Rate Plan (the Rate Plan) for the Company's water rates. The Rate Plan commences on April 1, 2024 and continues through March 31, 2027. Thus, the Company's customers will have long-term rate certainty throughout the duration of the Rate Plan, demonstrating that the Rate Plan is in the public interest. In addition, the Company will benefit from the Rate Plan, for this rate certainty provides greater long-term financial stability than would have been possible in a one-year litigated rate case. Rather than expending Company and intervenor time and resources into developing consecutive one-year litigated rate plans, the Rate Plan provides the Company, DPS Staff, and other intervenor parties an opportunity to capture efficiencies by engaging in the lengthy rate case process only once for the duration of the Rate Plan.

This multi-year Rate Plan is consistent with the NYPSC's practice of encouraging multi-year rate plans, which the NYPSC reiterated during the Company's last rate case.[16] In approving a multi-year rate plan, the NYPSC determined that multi-year rate plans "provide[] various benefits to customers and the Company that are not otherwise available[,]" including: (1) avoiding costs to the Company and customers associated with rate filings; (2) allowing customers to plan for water costs given the inherent rate stability present in a multi-year rate plan; (3) incentivizing

[15] Section references in section titles throughout the remainder of this Statement correspond to the section of the Joint Proposal being discussed.

[16] *See* 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 (issued Mar. 18, 2017) (the 2016 Rate Order).

efficiency gains, which benefits customers in the long-term; and (4) "the levelization of rates, significantly mitigating the economic impact of the rate increase on customers" in the first rate year.[17] Moreover, "a long-term plan allows utility management to focus on effectively running their business, making capital investments and developing programs with the best overall long-term benefits rather than focusing on annual rate case filings."[18]

B. Revenue Requirement (Section VI)

The Joint Proposal's revenue requirement represents a reasonable compromise between the Company and DPS Staff, as evidenced by the fact that the proposed increases are significantly lower than the increases that the Company originally sought yet higher than the increases DPS Staff originally proposed.[19] Therefore, the Joint Proposal's base rate increase provisions compare favorably with the Signatory Parties' litigation positions and represent a result within the range of reasonable outcomes of a litigated case.

In its initial testimony, the Company proposed to increase total revenues by $39,745,567 (or 34.24%),[20] which the Company shortly thereafter amended to $39,544,043 (or 34.07%).[21] As proposed, the Company consolidated the Company's separate service areas into one revenue requirement but utilized rate design to maintain separate rate structures over a period of time to prevent certain customers from experiencing any rate shock that could be associated with immediately consolidated rate structures.[22] The Company's effort to immediately consolidate its

[17] 2016 Rate Order at 28-29.

[18] 2016 Rate Order at 29.

[19] No other party to this proceeding submitted revenue modeling or suggested an appropriate revenue requirement for the Company.

[20] Case 23-W-0235, *supra*, Direct Testimony of the Revenue Requirement Panel, at 5 (filed May 4, 2023).

[21] Case 23-W-0235, *supra*, Supplemental Testimony of the Revenue Requirements Panel (filed June 9, 2023).

[22] Case 23-W-0235, *supra*, Direct Testimony of William R. Davis, at 5-6 (filed May 4, 2023).

revenue requirement to allow for the full consolidation rates over time through this Rate Plan was aligned with the NYPSC's stated "preference for future consolidation of rates amongst the operating subsidiaries for the same rate classifications for customers of all its service territories."[23] In contrast, DPS Staff did not support a consolidated revenue requirement or any of the proposed associated incremental movement towards consolidated rates. Rather, DPS Staff proposed: (1) increasing the revenue requirement for SA1 by $14,100,000, and (2) decreasing the revenue requirement for SA2 by $1,700,000.[24] Despite DPS Staff's position regarding consolidation, the Company continued to support a consolidated revenue requirement in its rebuttal testimony.[25]

Although the Company maintains that its full increase as originally requested, including the plan to consolidate rates over a multi-year period, is still justified, the revenue requirement identified in the Joint Proposal represents the resolution of numerous revenue requirement issues that was ultimately reached in the interest of settling a multi-year rate plan for the reasons outlined above. The Company's departure from a consolidated revenue requirement was a signficant concession made in this proceeding, in addition to adopting several DPS Staff-proposed adjustments to the revenue requirement, in an effort to reach a mutally agreeable settlement. Accordingly, the NYPSC should adopt the Joint Proposal's revenue requirement without modification.

The unlevelized total base rate increases set forth in the Joint Proposal stated in terms of percentages and absolute dollars are shown in the following tables:

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[23] *Id.* at 5 (citing 2016 Rate Order at 3).

[24] Case 23-W-0235, *supra*, Prepared Testimony of the Staff Accounting Panel, at 15 (filed Oct. 5, 2023).

[25] Case 23-W-0235, *supra*, Rebuttal Testimony of the Revenue Requirements Panel, at 2-3 (filed Oct. 5, 2023) (the "Company continues to support a consolidated revenue requirement for the Company's customer base…that makes significant yet measured movement toward a single set of base rates").

Service Area 1			
	Base Revenue Increase	**Percentage Increase**	**Total Revenue with Base Revenue Increase**
RY1	$21,895,626	27%	$102,951,125
RY2	$5,184,954	5%	$108,169,460
RY3	$5,185,879	5%	$113,388,726

Service Area 2			
	Base Revenue Increase	**Percentage Increase**	**Total Revenue with Base Revenue Increase**
RY1	$4,394,489	11%	$43,088,109
RY2	$886,592	2%	$43,978,705
RY3	$1,051,512	2%	$45,034,966

However, the Joint Proposal recommends that the NYPSC adopt the proposed levelized approach to the rate increases throughout the Company's service territory. Under this proposal, the necessary revenue increases are dispersed over the full term of the Rate Plan, which reduces the rate increase that would otherwise be necessary in Rate Year 1. The Joint Proposal's base rate increases under this levelized approach are as follows:

Service Area 1 - Levelized			
	Base Revenue Increase	**Percentage Increase**	**Total Revenue with Base Revenue Increase**
RY1	$13,704,197	17%	$94,759,696
RY2	$13,704,197	15%	$108,497,274
RY3	$13,704,197	13%	$122,234,858

Service Area 2 - Levelized			
	Base Revenue Increase	**Percentage Increase**	**Total Revenue with Base Revenue Increase**
RY1	$3,536,025	9.2%	$42,229,644
RY2	$1,833,278	4.5%	$44,066,927
RY3	$1,833,278	4.5%	$45,904,881

Under this levelized approach, the Joint Proposal avoids the larger rate increase during Rate Year 1 that would otherwise result under a non-levelized approach, which directly benefits customers by reducing immediate rate impacts. This levelization will be achieved via a surcharge

that will expire at the end of the Rate Plan. Even under the levelized approach, bill impacts are still measurable, but this can be attributed, in part, to the passage of time since the Company's last major rate case. The Company had not commenced a major rate proceeding in more than seven years when this proceeding was opened, and the proposed Rate Plan will reset rates in a manner that allows the Company to safely maintain and operate its system going forward.

In addition, the Joint Proposal authorizes the Company to continue charging a reconnection fee at the adjusted amount of $55 per reconnection, with the exception that participants in the Company's Customer Affordability Program (CAP) will be granted one annual waiver of this fee provided that such participants were disconnected due to non-payment. The Company's existing tariff provides for a tiered reconnection fee applied to customers who required a reconnection after being disconnected for non-payment, which varied in amount based on whether the service restoration was during business hours ($50), outside of business hours ($75), or on weekends or holidays ($100).[26] In its testimony, DPS Staff recommended that the Company provide a "one-time per year waiver of the reconnection charge" for customers participating in the Company's CAP.[27] The Company agreed with this suggestion in its rebuttal testimony,[28] which will benefit the Company's most financially vulnerable customers by avoiding the imposition of additional fees when service was previously disconnected for non-payment. Thus, this provision of the Joint Proposal is in the public interest.

[26] Case 23-W-0235, *supra*, Testimony of the Staff Consumer Services Panel, at 38 (filed Sept. 7, 2023).

[27] *Id.*

[28] Case 23-W-0235, *supra*, Rebuttal Testimony of Lauren A. Preston, at 14-15 (filed Oct. 5, 2023).

C. Return on Equity, Earnings Sharing, And Overall Rate of Return (Section VII)

Initially, the Company proposed a Return on Equity (ROE) of 10.0% while DPS Staff proposed an ROE of 8.90%.[29] The Joint Proposal's base rates reflect a mutually agreeable compromise, with an ROE of 9.10%, inclusive of a stay-out premium. Given that stay-out premiums are generally valued at approximately 10 basis points per rate year, the proposed ROE is substantially lower than than the 10.0% ROE supported by the Company's cost of capital expert witness.

The Company's willingness to accept an ROE lower than its initial litigation position reflects one of the Company's significant concessions made during the course of settlement. Further, this proposed ROE is identical to a four-year rate plan for water service that the NYPSC recently approved for Veolia Water New York, Inc.[30] and less than multiple recent rate plans that the NYPSC has adopted for other utilities.[31]

The Joint Proposal's common equity ratio similarly exemplifies a compromise between the Company and DPS Staff's original litigated positions. The Company initially proposed a stand-alone capital structure with a common equity ratio of 50%, which would provide the Company

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[29] *Compare* Case 23-W-0235, *supra*, Direct Testimony of the Revenue Requirements Panel, at 5 (filed May 5, 2023) *with* Case 23-W-0235, *supra*, Prepared Testimony of the Staff Finance Panel, at 6 (filed Sept. 7, 2023).

[30] Case 23-W-0111, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Veolia Water New York, Inc. for Water Service*, Order Adopting Joint Proposal as Modified and Establishing Rate Plan (issued May 16, 2024).

[31] *See e.g.* Case 22-E-0064, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements, at 17 (issued July 20, 2023) (authorizing an ROE of 9.25% for a three-year rate plan); Case 22-E-0317, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service*, Order Adopting Joint Proposal, at 31 (issued Oct. 12, 2023) (authorizing an ROE of 9.20% for a three-year rate plan).

with the ability to attract capital on reasonable terms on a stand-alone basis rather than upon the qualifications of its parent, Algonquin Power & Utilities Corp. (APUC).[32] DPS Staff rejected a stand-alone capital structure and instead proposed a hypothetical capital structure with a common equity ratio of 44%.[33] During its rebuttal testimony, the Company maintained that its stand-alone capital structure with a 50% common equity ratio was reasonable for several reasons, two of which were: (1) Liberty NYW has adequate ring fencing measures in place to insulate it from APUC; and (2) the proposed 50% common equity ratio was already lower than APUC's and Liberty Utilities Co.'s common equity ratios (an intermediate parent company of Liberty NYW), so the Company would maintain rational financing policies with its 50% proposed common equity ratio.[34]

As set forth in the Joint Proposal, the Settlement Parties agreed to a common equity ratio of 48%, which is consistent with multiple recent rate plans adopted by the NYPSC in recent years for utilities treated on a standalone basis and represents a compromise on the part of both the Company and DPS Staff in the interest of reaching a settlement in this proceeding.[35] The Company's willingness to reduce its requested common equity ratio resulted in part from DPS Staff's acceptance of other Company testimonial positions.

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[32] Case 23-W-0235, *supra*, Direct Testimony of Ann E. Bulkley and Christopher M. Wall, at 14-15 (filed May 4, 2023).

[33] Case 23-W-0235, *supra*, Testimony of the Staff Finance Panel, at 6, 33 (filed Sept. 7, 2023).

[34] Case 23-W-0235, *supra*, Rebuttal Testimony of Ann E. Bulkley and Christopher M. Wall, at 45-50 (filed Oct. 5, 2023).

[35] *See e.g.* Case 22-E-0317, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service,* Order Adopting Joint Proposal, at 28-30 (issued Oct. 12, 2023) (the Commission approved a three-year rate plan with a common equity ratio of 48%); Case 22-E-0064, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements, at 80 (issued July 20, 2023) (the Commission approved a three-year rate plan with a common equity ratio of 48%).

Under the Joint Proposal, the Company has committed to continue its ESM consistent with the now-standard practice of including ESMs in rate plans derived fom joint proposals and approved by the NYPSC.[36] The ESM is more favorable to customers than the Company's most-recently approved ESM and more closely aligns the ESM with other utilities that have four-tiers of sharing, consistent with DPS Staff's recommendation. The Joint Propsal's ESM allows the Company to retain 100% of earnings attributable to an achieved Rate of Return (ROR) on a 12-month basis on common equity up to and including 65 basis poinsts above the authorized ROE (or up to 9.75%). From there, earnings attributable to an achieved ROE between 65 and 100 basis points (or 9.75% through 10.1%, respectively) will be shared 50%/50% between customers and shareholders. Earnings attributable to an achieved ROE between 100 and 150 basis points above the authorized ROE (or 10.1% through 10.6%, respectively) will be shared 75%/25% between customers and shareholders. Earnings attributable to an achieved ROE beyond 150 basis points above the authorized ROE (or above 10.6%) will be shared 90%/10% between customers and shareholders, respectively. The customers' portion of shared earnings will be deferred for the benefit of customers and reflected in the revenue requirement(s) established in the Company's next rate case or as otherwise directed by the NYPSC. The Joint Proposal also sets forth specific items to be included and excluded from the ESM. This enumeration creates additional certainty in the

[36] *See e.g.* Case 22-E-0319, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Electric Service*, Order Adopting Joint Proposal, at 31-32 (issued Oct. 12, 2023) (the Commission approved an ESM as part of the rate plan); Case 21-G-0394, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Corning Natural Gas Corporation for Gas Service*, Order Adopting Terms of Joint Proposal, Establishing Rate Plan and Approving Merger, at 30-31 (issued June 16, 2022) (in approving the ESM as part of the rate plan, the Commission stated that the "ESM benefits customers by giving the Company a financial incentive to control costs and allow[s] customers to share in any efficiency gains that Corning experiences which have the corresponding benefit of carrying over to future rate filings.").

computation of the ESM, reducing the likelihood of future disputes related to any amounts due at the conclusion of the Rate Plan.

The ESM benefits the Company's customers, for it provides customers with financial benefits in the event that any potential extraordinary gains create earnings above an ROE of 9.75%. Indeed, the shared earnings, if applicable, increasingly benefit customers as the achieved ROE increases. Simultaneously, the ESM incentivizes the Company to control costs and improve its financial performance by providing a financial benefit for investors in the case that the threshold ROE is exceeded. The final tier of earnings sharing (90%/10% between the customers and shareholders, respectively) provides a significant safeguard against any Company overearning while still incentivizing the Company to achieve cost efficiencies in light of the 65 basis point range above the ROE in which the Company will maintain all overearnings.

In light of the above, the Joint Proposal sets forth an ESM that strikes a fair balance between the interests of the Company's long-term financial soundness and customers. Accordingly, the NYPSC should adopt the ESM in its entirety.

D. Revenue, Production Cost And Property Tax Cost Reconciliation (RAC/PTR) Mechanism (Section VIII)

The Joint Proposal continues the Company's RAC/PTR mechanism as adopted by the NYPSC in its last major rate case – with clarifications discussed herein. The RAC/PTR is designed to reconcile revenue, production costs, and property taxes. The Company will maintain two separate sets of targets: one for SA1 and one for SA2, consistent with the Joint Proposal's provisions maintaining separate service areas rather than consolidating into one single service area. For each Rate Year, the effects of any variances between actual metered revenues (metered customers' bills-rendered base revenues) versus target metered revenues, any variances between actual versus target level of production costs (purchased water, fuel, power, and chemicals), and

any variances between actual versus target level of property taxes,[37] will be deferred by the Company to be recovered or refunded through the RAC/PTR mechanism as set forth in Appendix E to the Joint Proposal.

More specifically, the current Rate Year's net variance, plus any remaining prior period variance, will be recovered or refunded over a 12-month reconciliation period. The Company is permitted to annually reconcile the over- or under-collection from the RAC/PTR surcharges to lessen any residual amounts that would need to be addressed in the Company's next rate filing. The reconciliations and an associated report will be submitted annually to the NYPSC as a reconciliation filing within 60 days after the end of each Rate Year. These reconciliations will continue beyond the end of the Rate Plan and all other administrative provisions relating to the RAC/PTR will remain in effect. The reconciliation targets will remain at the RY3 levels until changed by the NYPSC.

The continuation of the RAC/PTR mechanism as part of the Joint Proposal is a benefit to both the Company and customers that would not be present in a one-year litigated rate case. The RAC/PTR is in the public interest because it allows the Company to efficiently recover its prudently incurred actual costs. Simultaneously, the RAC/PTR is in the public interest because it protects customers from variations in estimated costs over which the Company does not have direct control or that would otherwise be difficult to project. In essence, the additional savings achieved on the RAC/PTR-eligible expenses will flow through to customers. As a result, the RAC/PTR mechanism is consistent with the NYPSC's regulatory and economic policies and rationally based

[37] Property taxes are fully discussed in Section III (G) of this Statement.

on the record of this proceeding.[38] Accordingly, the Company's RAC/PTR mechanism, as clarified in the Joint Proposal, should be adopted without modification.

E. Rate Base (Section IX)

1. Capital Projects And Capital Expenditure Reporting (Section IX [A])

Appendix G of the Joint Proposal contains a list of anticipated capital construction projects that the Company plans to undertake in each of the three Rate Years along with the planned expenditures for each project. Each of these anticipated projects are accordingly reflected in base rates. The projects include, among other things, meter replacement, investment projects in the Hewlett and Hudson Valley districts, certain infrastructure replacement projects, and recurring projects such as the installation of new water mains. The Joint Proposal's long-term capital provisions address the need for ongoing funding to ensure the Company's continued provision of safe and adequate water service.

The Joint Proposal provides that the Company's existing net plant true-up reconciliation will continue during this Rate Plan, with the Company reconciling the actual net plant balances to the target net plant balances for each SA at the conclusion of the Rate Plan. In the event that the cumulative actual average net plant balance for each SA over the term of the Rate Plan is less than the cumulative target amount for that SA, the Company will defer the revenue requirement impact of any shortfall for each SA—including a return and depreciation on the Net Plant amount—below the target level. In contrast, no automatic deferral will occur if the cumulative actual average net

[38] *See e.g.* Case 19-W-0168, *Proceeding on Motion of the Commission as to the Rates, Charges, rules and Regulations of SUEZ Water New York, Inc., SUEZ Water Westchester Inc. and SUEZ Water Owego-Nichols Inc. for Water Service*, Order Denying Rehearing and Providing Clarification, at 9 (issued Oct. 20, 2020) (the Commission noted that "all production costs, including purchased power, chemicals, purchased water, and sludge removal should be subject to the RACPTR reconciliation mechanism[,]" and "the shortfall or excess of the RACPRT [sic] components should be refunded to or collected from customers on an annual basis within the subsequent rate year and not deferred until the next rate case").

plant balance for each SA is greater than the cumulative target net plant balance for that SA. This approach ensures that the Company will not retain the economic benefit of revenues to support net plant balances that are less than the balances forecasted in the development of rates. Rather, under the terms of the Joint Proposal, the Company will bear the risk of increases in net plant above the target net plant balances.

Because the Joint Proposal's reconciliation mechanism protects customers by assuring that the Company will not benefit from spending less capital than forecasted during the development of rates, the NYPSC should adopt the Joint Proposal's net plant reconciliation mechanism.

2. System Improvement Charge (SIC) (Section IX [B])

In its initial testimony, the Company proposed to continue its SIC mechanism without any specifically approved or delineated projects to "enable[] the Company to make timely capital upgrades necessary for the safe and reliable operation of the Company's facilities."[39] Under its proposal, the SIC would not be eliminated but rather maintained in the Company's tariff for future recovery of eligible investments as appropriate.[40] The Company explained that keeping the SIC mechanism open would be beneficial in the event currently unknown capital projects arise—such as projects that could stem from then-pending revised water quality standards—since resulting capital costs could then be recovered through the SIC mechanism.[41]

DPS Staff took a contrary position, asserting that any such projects should not be eligible for cost recovery through the SIC mechanism because there was not sufficient detail provided

[39] Case 23-W-0235, *supra*, Direct Testimony of John T. Kilpatrick, at 25 (filed May 5, 2023).

[40] Case 23-W-0235, *supra*, Direct Testimony of the Revenue Requirements Panel, at 9 (filed May 5, 2023).

[41] *Id.*

regarding the specific cost and scope of these projects.[42] In rebutting this contention, the Company clarified that it was not requesting approval for any specific projects to be recovered through the SIC mechanism; instead, the Company sought only to maintain the SIC mechanism in the event that a SIC-eligible project arose during the course of the Rate Plan that could not have been reasonably known or forseen during the rate case.[43] Were such an instance come to pass, the Company committed to separately petition the NYPSC for approval to modify its SIC tariff to include the specific project or projects at issue.[44] Through this procedure, DPS Staff and the NYPSC would retain a full opportunity to review each proposed SIC project.

As ultimately agreed, the Joint Proposal continues the Company's SIC mechanism, allowing the Company to recover carrying costs for capital improvement projects eligible for recovery through the SIC surcharge, consistent with the Company's intitial testimonial position. While the Company will not have any SIC-approved projects eligible for such recovery during Rate Year 1 – and accordingly revised its SIC Statement to reflect a SIC charge of $0.00 – the Company may separately petition the NYPSC for authorization to recover the costs of new projects that may arise during the Rate Plan through the SIC mechanism. If the Company files such a petition for a project necessitated by water system contaminants, the Company will include an explanation as to its pursuit of alternative sources of funding, including damages secured in litigation.

Under the SIC mechanism, the Company maintains the financial flexibility to undertake new construction projects while recovering carrying costs on eligible projects placed in service

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[42] Case 23-W-0235, *supra*, Testimony of the Staff Infrastructure and Operations Panel, at 77-78 (filed Sept. 7, 2023).

[43] Case 23-W-0235, *supra*, Rebuttal Testimony of John T. Kilpatrick, at 12-13 (filed Oct. 4, 2023).

[44] *Id.* at 13.

during and beyond the Rate Plan. Contemporaneously, the SIC mechanism insulates the Company's customers against project delays because customers will not be required to pay for the project until the NYPSC approves the project with detailed cost estimates and all work is completed. This strikes an equitable balance between permitting the Company to recover costs associated with necessary capital construction projects while delaying recovery of such costs from customers until the projects are completed. Thus, the continuation of the SIC is in the public interest and should be adopted.

3. Customer-Owned Lead Service Lines (LSLs) (Section IX [C])

The Joint Proposal expands upon the Company's 2016 pilot program authorized during its most recent rate case,[45] enabling the Company to implement a program to replace customer-owned lead service lines (LSLs) in conjunction with scheduled replacement of mains and municipal paving projects. As part of this program, the Company will recover actual costs of all replacements through a volumetric surcharge.

As initially proposed, the Company sought to include costs associated with the replacement of customer-owned LSLs in rate base.[46] DPS Staff was supportive of the Company's efforts to continue replacing customer-owned LSLs.[47] However, DPS Staff proposed that associated costs should be recovered from customers through a surcharge.[48] Ultimately, the parties compromised,

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[45] 2016 Rate Order at 94-95 (the Commission expressed its appreciation for the Company's predecessor's "pursuit of this issue throughout the proceeding and its willingness to utilize shareholder funds to assist in the replacement of a customer's lead service line, although it is ordinarily the responsibility of the customer to do so").

[46] Case 23-W-0235, *supra*, Direct Testimony of John T. Kilpatrick, at 24 (filed May 4, 2023).

[47] Case 23-W-0235, *supra*, Testimony of the Staff Infrastructure and Operations Panel, at 35 (filed Sept. 7, 2023) ("The Company should continue to prioritize the replacement of LSLs").

[48] Case 23-W-0235, *supra*, Testimony of the Staff Infrastructure and Operations Panel, at 37 (filed Sept. 7, 2023).

with the Company agreeing to DPS Staff's recommendation of recovering costs through a surcharge, which will be capped annually at $200,000 for SA1 and $8,000 for SA2. In recognition of potential additional costs, any costs in excess of these thresholds will be deferred for review during the Company's next rate proceeding.

Under the terms of the Joint Proposal, the Company will make an annual compliance filing detailing: (1) actual expenses incurred to replace customers' LSLs, and (2) the associated surcharge for SA1 and SA2. Further, the Company will file total spending to date and the total number of service lines replaced by December 1st each year.

This Customer-Owned LSL replacement program will directly benefit customers as it continues the Company's practice of replacing LSLs, which customers may not have been able to accomplish without the Company's involvement. In addition, this approach is similar to another water utility's recently approved Customer Side Lead Service Line Replacement Program, which provides similar benefits.[49] Further and most importantly, the replacement of LSLs will decrease customer exposure to lead, providing a public health benefit. Accordingly, this Joint Proposal term represents a compromise between the Company and DPS Staff's litigated positions, and it should be approved as in the public interest.

4. Depreciation Rates (Section IX [E])

Depreciation matters and regulatory deferrals were the subject of debate and compromise throughout this proceeding. As it relates to depreciation, the Company's initial testimony furnished DPS Staff with a consultant-conducted depreciation study (the Depreciation Study), which was

[49] Case 23-W-0111, *supra*, Order Adopting Joint Proposal as Modified and Establishing Rate Plan (issued May 16, 2024).

performed for each of the Company's service areas.[50] As the Company explained during its initial testimony, the Depreciation Study's resulting accrual rates utilized the straight line method, broad group average service life procedure, and a whole life depreciation technique for each plant account, resulting in the following calculation methodology:

Whole Life Accural Rate = 100% - Net Salvage/Average Service Life[51]

In addition, the Depreciation Study utilitized specific actuarial analyses in assisting with the life estimation process.[52] In total, the Depreciation Study proposed a composite annual accrual rate for 2.84% in SA1 and 3.18% for SA2.[53]

DPS Staff's direct testimony recommended a reduction of approximately $1.2 million resulting from adjustments to depreciation expense.[54] More specifically, DPS Staff recommended specific changes to the Company's existing depreciation factors, including survivor curves, average service life (ASL), and net salvage.[55]

Following detailed discussion and underlying methodological reviews and data surveys completed during the settlement process, the Signatory Parties reached a point of agreement on all depreciation matters that were in dispute following the submission of testimony in this case. Final depreciation rates applicable to depreciable plant are reflected in Appendix H of the Joint Proposal.

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[50] Case 23-W-0235, *supra*, Direct Testimony of Paul M. Normand, at 1 (filed May 4, 2023); *see* Case 23-W-0235, *supra*, Exhibit PMN-2 (filed May 4, 2023).

[51] Case 23-W-0235, *supra*, Direct Testimony of Paul M. Normand, at 5 (filed May 4, 2023).

[52] *Id.* at 5-6.

[53] *Id.* at 9.

[54] Case 23-W-0235, *supra*, Testimony of the Staff Accounting Panel, at 16 (filed Sept. 7, 2023).

[55] Case 23-W-0235, *supra*, Testimony of the Staff Infrastructure and Operations Panel (filed Sept. 7, 2023).

5.Regulatory Deferrals (Section IX [H])

Regulatory deferrals were the subject of significant debate and compromise throughout testimony and settlement in this proceeding. The initial testimonial difference between the Company's position and DPS Staff's position on authorized regulatory deferrals amounted to approximately $4.6 million.[56] Following extensive discussions between the Signatory Parties, the Joint Proposal and its supporting appendices describe the carefully crafted consensus, which provides a mutally agreeable set of terms on this issue.

More specifically, the testimonial positions of the Company and DPS Staff differed on the amount of money the Company could recover on several regulatory assets, most notably: rate case expense, a COVID deferral, an allowance for funds used during construction (AFUDC) deferral, a RAC/PTR prior year deferral, and a DPS Staff-proposed regulatory liability for excess accumulated deferred income taxes (EADIT) carrying charges. The basis for the Signatory Parties' varying positions on the recoverable amount of various regulatory assets and the proposed regulatory liability ranged from NYPSC precedent to regulatory compliance points and complex tax accounting treatments at the State and federal levels.

The numerous points of contention between the Signatory Parties on these issues necessitated the significant investment of time and resources from the Company and DPS Staff throughout settlement. Following extensive discussion, the Company and DPS Staff developed a list of agreed-upon regulatory deferrals that the Company should be allowed to recover from customers. The specific agreed-upon balances and amortization periods of those regulatory deferrals are set forth in Appendices L.1 and L.2 to the Joint Proposal. This consensus was the result of diligent consideration and cooperation, and the ultimate agreement was possible in light

[56] Case 23-W-0235, *supra*, Testimony of the Staff Accounting Panel, at 16 (filed Sept. 7, 2023).

of other issues resolved throughout the settlement process. Given that this provision of the Joint Proposal reflects significant compromise between the Company and DPS Staff, this provision should be approved in its entirety as within the public interest.

6.Advanced Metering Infrastructure (AMI) (Section IX [F])

In its initial testimony, the Company proposed to re-launch its AMI deployment plan following its unforseen delay during the onset of the COVID-19 pandemic.[57] DPS Staff stated in its direct testimony that the Company's proposed budget to complete its AMI implementation plan of approximately $49.4 million was reasonable so long as it was a firm cap,[58] which the Company's rebuttal testimony accepted with one slight modification. More specifically, the Company sought to deferr any costs incurred above approximately $49.4 million for review and potential recovery in the Company's next rate case.[59] Further, the Company's rebuttal testimony posited that it should be authorized to utilize any approved meter testing facility regardless of whether such testing facility is located in New York State, contrary to the 2020 authorization of the AMI Implementation Plan, to provide the Company increased flexibilty to timely implement AMI.[60]

Under the Joint Proposal, the Company may recover up to approximately $49.4 million for the costs of AMI implementation, consistent with the Company's testimonial position and as agreed upon by DPS Staff.[61] Consistent with DPS Staff's testimonial position, the Company has no pre-approved mechanism stemming from the Joint Proposal to defer expenses above that

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[57] *See* Case 23-W-0235, *supra*, Direct Testimony of John T. Kilpatrick, at 17-18 (filed May 4, 2023).

[58] Case 23-W-0235, *supra*, Prepared Testimony of the Staff Infrastructure and Operations Panel, at 16-17 (filed Sept. 7, 2023).

[59] *See* Case 23-W-0235, *supra*, Rebuttal Testimony of John T. Kilpatrick, at 2-3 (filed Oct. 5, 2023).

[60] *Id.* at 3.

[61] Case 23-W-0235, *supra*, Testimony of the Staff Infrastructure and Operations Panel, at 16-17 (filed Sept. 7, 2023).

amount associated with AMI implementation. DPS Staff was amenable to the Company's preference that it be free to test its AMI meter population at any DPS Staff-certified testing facility regardless of whether such facility is physically located in New York State, which is similarly reflected in the Joint Proposal. These provisisons benefit customers as they will enable a timely transition to AMI metering throughout the Company's service territory, which will provide customers with real-time water usage data. Further, AMI implementation will eliminate certain meter reading costs from the Company's operating expenses, which constitutes a benefit that will be passed onto customers. Therefore, the Joint Proposal's AMI provision should be adopted in its entirety.

7. Seaman's Neck (Section IX [G])

The Joint Proposal provides for the inclusion of approximately $16.9 million in rate base for the Seaman's Neck facility project, which is necessary in light of the treatment needed to address the levels of 1,4-Dioxane at the facility exceeding New York State Department of Health limits.[62] These increased 1,4-Dioxane levels led the Company to construct a new Advanced Oxidation Process (AOP) Treatment System, which constituted a major investment project for which the Company sought recovery.[63] While DPS Staff agreed that there would be "additional power costs" associated with the AOP treatment process, DPS Staff disagreed with the Company's forecasted capital costs and operations and maintenance (O&M) expenses.[64] Specifically, DPS

[62] *See* Case 23-W-0235, *supra*, Direct Testimony of John T. Kilpatrick, at 12-14 (filed May 4, 2023).

[63] *Id.*

[64] Case 23-W-0235, *supra*, Testimony of the Staff Infrastructure and Operations Panel, at 45-47 (filed Sept. 7, 2023).

Staff recommended an annual increase in power expense of $445,873, which was $329,127 less than the Company's original proposal for the AOP treatment process.[65]

Ultimately, following further discussion during regularly scheduled settlement meetings and topic-specific break out sessions, the Signatory Parties agreed upon providing for incremental O&M expenses of $476,290 in power expenses and $355,968 in treatment expenses in rates to manage the Company's RAC/PTR, discussed above. Additionally, the Company committed to continue to pursue funding opportunities from responsible parties to offset the cost of installing and operating this project. Any funds so garnered will be deferred on the Company's books for the benefit of customers to be disposed of in a manner determined by the NYPSC. To aid in tracking this effort, the Company will file updates every six months on the status of its claim(s). Allowing the Company to recover for costs associated with a project that was necessitated by public health concerns properly balances the interests of customers and public health against the Company's financial health as it continues to invest in its water system. Accordingly, this provision is reasonable and should be adopted as in the public interest.

F. Operations And Maintenance (O&M) Expenses (Section X)

Appendices A.1 and A.2 of the Joint Proposal set forth the O&M expenses that are reflected in the proposed revenue requirement, which are reasonable because these expenses will ensure the Company's continued provision of safe, adequate, and reliable service.[66] The Joint Proposal also imposes a productivity adjustment of 1.0%, which is consistent with DPS Staff's testimonial

[65] *Id.* at 47.

[66] The Joint Proposal proposes utilizing a general inflation factor of: (1) 6.822% for all non-labor related expenses for the Bridge Period through the end of RY1, (2) 2.14% for non-labor related expenses for RY2, and (3) 2.20 for RY3.

position and is reflected in Appendices A.1 and A.2.[67] Although a productivity adjustment was not supported by the Company in its testimony, the Company acknowledged during settlement that such mechanism is consistent with the NYPSC's practice to impute productivity adjustments in multi-year rate plan situations. The productivity adjustment will be applied to payroll, payroll taxes, pensions and OPEBs, employee health insurance, 401k, workers compensation, and other employee benefits, net of fringe benefits transferred.[68] The productivity adjustment will benefit customers, for it requires the Company to achieve efficiencies in these areas or risk not earning its allowed ROE. This represents an additional Company concession as it ultimately accepted DPS Staff's requested productivity adjustment, albiet within the context of a multi-year settled rate plan versus the Company's single-year rate plan that Staff's testimonial position was based off of.

1. Incentive Compensation (Section X [B])

The Company initially sought to recover its entire incentive compensation plan during the Rate Plan while DPS Staff recommended disallowing recovery for incentive compensation in full.[69] The terms of the Joint Proposal allow for limited recovery of the Company's incentive compensation plan in rates with an option for additional recovery if an additional approval is secured. This agreement marked a considerable point of compromise for both Signatory Parties in light of the testimonial positions and relevant NYPSC precedent.

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[67] Case 23-W-0235, *supra*, Prepared Testimony of the Staff Accounting Panel, at 76-77 (filed Sept. 7, 2023).

[68] *Id.* at 76 (the Staff Accounting Panel further explained that the practice of imputing productivity adjustments is "intended to capture unquantifiable and unidentified efficiencies and cost savings that could be realized in the Rate Year").

[69] *Compare* Case 23-W-0235, *supra*, Prepared Testimony of the Staff Accounting Panel, at 33-34 (filed Sept. 7, 2023) *with* Case 23-W-0235, *supra*, Rebuttal Testimony of the Revenue Requirements Panel (filed Oct. 5, 2023).

As outlined in the Joint Proposal, unique circumstances surrounding the Company's incentive compensation structure and recent aquisition warrant NYPSC approval of the Joint Proposal's thoughtful resolution of the Signatory Parties' testimonial disagreement on incentive compensation recovery, which includes recovery of incentive compensation for the Company's union employees during the Rate Plan, no recovery of non-union employee incentive compensation for Rate Year 1, and the potential for the Company to recover incentive compensation in Rate Years 2 and 3 if separately approved by the NYPSC.[70] This resolution is appropriate given that the Company was able to provide detailed study data assessing its parent company's incentive compensation program, which covered more than 75% of the Company's employees, and the fact that, under the terms of the NYPSC's order approving the Company's acquisition of New York American Water Company, Inc. (NYAW), the Company was required to maintain compensation levels at the same level provided by NYAW for at least two years following the closing of the transaction, which included both base and incentive compensation.[71]

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[70] In order to recover incentive compensation for non-union employees for Rate Years 2 and 3, the Joint Proposal first requires the Company to must fund, with shareholder dollars, a utility-specific study of its compensation plan, which must include: (1) compensation comparisons to market including utility and general industry companies and in consideration of regional pay differences, (2) participant list(s) for all organizations used in the review and the methodology used to identify the peer group, and (3) the competitive positioning of all titles underlying the study, to demonstrate reasonableness of total compensation, including base pay, incentive pay, equity grants, and benefits (the Study). Second, following completion of the Study, the Company may file a petition for cost recovery of its incentive compensation program. Such petition must include the complete Study, the results of the Study with all underlying data, and information and documentation regarding the Company's incentive compensation program, which must include: (1) actual award to employees detailing how the award was calculated, (2) the performance metrics used in the calculation, (3) the relative weightings of those metrics, and (4) the Company's characterization of whether those metrics are financial or non-financial. Further, this petition must be filed no later than six months prior to the start of RY2. In the event that the Company files such a petition and it is approved by the Commission, the Company may recover up to $1,917,160 (or $1,296,000 for SA1 and $621,160 for SA2) for RY2 and $1,966,747 (or $1,329,521 for SA1 and $637,226 for SA2) for RY3.

[71] 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*

Accordingly, the resulting term described in the Joint Proposal is the product of extensive time, effort, and collaboration by and between the Settlement Parties to reach a mutally agreeable solution.

2.Pension And OPEBs (Section X [C])

Under the Joint Proposal, the Company will continue to be subject to the NYPSC's Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pension and Postretirement Benefits Other Than Pensions.[72] The Pension Policy Statement requires the Company to, among other things: (1) defer the difference between the authorized rate allowance and actual expense for pensions and OPEBs; and (2) maintain pension and OPEB internal reserve accounts to track the timing and funding of differences between the rate allowances for pension/OPEB and the actual pension/OPEB funding. Under these mandates, any difference between actual and authorized amounts will be included in the Company's next rate case for recovery by the Company or to be passed back to customers. Compliance with the Pension Policy Statement is consistent with other NYPSC-approved Joint Propoals, demonstrating the reasonableness of this provision.[73]

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, Joint Petition, at 5 (filed Feb. 28, 2020) ("Liberty Eastern has committed to maintaining all NYAW employees under terms that are substantially similar in the aggregate to their current employment for at least two years from the close of the Transaction"); Case 20-W-0102, *supra*, Joint Petition, Attachment 6, at 33 (filed Feb. 28, 2020).

[72] Case 91-M-0890, *In the Matter of the Development of a Statement of Policy concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other than Pensions*, Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits other than Pensions (issued Sept. 7, 1993) (the Pension Policy Statement).

[73] Case 22-E-0064, *supra*, Joint Proposal, at 32-33 (filed Feb. 16, 2023); Case 22-E-0317, *supra*, Joint Proposal, at 61 (filed June 14, 2023).

G. Property Taxes (Section XI)

The Joint Proposal allows the Company to continue reconciling property taxes through the RAC/PTR mechanism, as set forth above. More specifically, the Company will absorb 10% of any variance of actual property taxes exceeding the Joint Proposal's target level. The remaining 90% of any variance shall be reconciled through the RAC/PTR mechanism. Conversely, in the event that actual property taxes are lower than the rate allowance, 100% of any over-collection will be returned to customers. Where the Company can demonstrate that the reduction in property tax expense is a direct result of the Company's intervention and action, the Company will be allowed to retain the same percentage of the savings established for overages. However, the sale of property would not be an action that would trigger potential sharing. This provision will benefit customers by ensuring that customers pay no more than actual property taxes below the designated threshold. Further, customers will avoid bearing the full burden of property tax increases above the threshold levels. The Joint Proposal's property tax terms are consistent with those of other recent NYPSC-approved Joint Proposals, and this result is well within the range of likely outcomes that would have resulted from a fully litigated proceeding.[74] Finally, this term is consistent with another recently-approved Joint Proposal for another water utility in the State.[75]

H. Small Systems (Section XIII)

The Joint Proposal continues the Company's practice of maintaining its "Distressed Systems" and "Distressed Systems Carrying Charges" regulatory assets as separate profit centers. For the small systems that the Company is still temporarily operating, these regualtory assets will

[74] *See e.g.* Case 22-E-0064, *supra*, Joint Proposal, at 31 (filed Feb. 16, 2023); Case 22-E-0317, *supra*, Joint Proposal, at 61-62 (filed June 14, 2023).

[75] *See e.g.* Case 23-W-0111, *supra*, Order Adopting Joint Proposal as Modified and Establishing Rate Plan, at 20 (issued May 16, 2024).

not roll into base rates, consistent with DPS Staff's testimonial position. The Company will continue to accrue carrying charges on the monthly outstanding and additive balance of the "Distressed Systems" regulatory asset in separate profit centers by the specific system where costs are incurred, including on any shortfall (or surplus) of expenses incurred net of revenues collected. The Company will request recovery of such deferred costs in separate NYPSC proceedings that are specific to these small systems when appropriate. Accordingly, these provisions are reasonable and should be adopted.

I. Customer First (Section XIV)

The Joint Proposal authorizes recovery of the Company's allocated share of costs and/or capital expenditures related to the Company's implementation and ongoing operation of Customer First, which is a corporate-wide initiative that transforms how the Company's upstream parent and its affiliates manage data and conduct business.[76] The Company explained in its initial testimony that Customer First was "a series of major improvements to business processes and computer systems to put [Company] customers first in how [the Company] delivers services."[77] Implementing Customer First at Liberty NYW was essential because the Company's prior data processing systems were owned by NYAW, and those systems were not included when the Company acquired NYAW, leaving the Company without a data processing system.

As a result, by adopting Customer First, the Company avoided the need to assemble or purchase an independent set of replacement systems because the Company simply adopted its parent company's enterprise-wide technology, investments, system upgrades, infrastructure

[76] *See* Case 23-W-0235, *supra*, Direct Testimony of Lauren A. Preston, at 4-5 (filed May 4, 2023).

[77] *Id.*

improvements, and changes to business processes.[78] The Company's request to recover costs associated with Customer First followed the NYPSC's approval of recovery for these costs at Liberty Utilities (St. Lawrence Gas) Corp. (Liberty SLG), the Company's sister-utility.[79]

While supportive of cost recovery for Customer First, DPS Staff's testimony recommended that the Company be required to report on certain metrics, including: (1) the number of customers using the MyAccount portal feature, and (2) savings generated through implementing Customer First.[80] The Company's rebuttal testimony agreed with these recommendations.[81] Accordingly, the Joint Proposal provides that the Company will file quarterly reports during Rate Year 1 and semi-annual reports for Rate Years 2 and 3 that will detail: (1) the billing success rate of the Customer First migration; (2) the number of customers using the Company's new My Account portal; (3) the final implementation cost of Customer First, including accounts of expenses related to Customer First rollout compared to the budgeted amounts; and (4) the operational savings resulting from Customer First. Moreover, also consistent with the recovery approved for Liberty SLG, the Company may not recover costs associated with any "material mistakes" in the migration to Customer First.

Overall, the Company's transition to Customer First allowed the Company to leverage the capabilities and experience of its larger parent organization to upgrade and replace key systems that had otherwise become obselete, costly, and not well integrated with other Company systems.

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[78] *Id.*

[79] *See* Case 21-G-0577, *supra*, Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plan, at 12 (issued June 22, 2023) (the Commission authorized recovery of Liberty SLG's requested approximate $7.2 million with the caveat that Liberty SLG could not recover costs associated with any material mistake such as any reported and verifiable failure of the system to substantially perform).

[80] Case 23-W-0235, *supra*, Testimony of the Staff Consumer Services Panel, at 48 (filed Sept. 7, 2023).

[81] Case 23-W-0235, *supra*, Rebuttal Testimony of Lauren A. Preston, at 19 (filed Oct. 5, 2023).

These advantages will benefit customers in addition to the Company, and recovery of associated implementation costs is accordingly in the public interest in addition to being consistent with recent NYPSC practice. Therefore, the Joint Proposal's Customer First provisions should be adopted in their entirety.

J. Customer Service Peformance Incentive Mechanisms (Section XV)

The Joint Proposal continues and enhances the Company's Customer Service Performance Incentive (CSPI) mechanisms, which were the first of their kind when originally adopted in the Company's most recent rate case.[82] The CSPI mechanisms consist of: (1) a Customer Satisfaction Survey metric, and (2) a NYPSC Complaint Rate metric, both of which will apply throughout the Company's service territory and continue until modified by the NYPSC. In the event that the Company experiences a CSPI metric within thresholds set forth in the Joint Proposal, the Company must record any applicable negative revenue adjustment (NRA) on its books as a deferred regulatory liability, which will ultimaely be returned to customers as determined by the NYPSC. Under the Joint Proposal, the Company will also file an annual report with the NYPSC that details the results of the CSPI mechanisms. Further, the Company must file a report by the 21st day of each month following the perforamnce month setting forth specific customer-service related information, including the speed in which customer calls are answered, the number of estimated bills and/or delayed bills issued during a specified period, and a reconnection report containing information related to service shut-offs and subsequent reconnections. Thus, the Joint Proposal's CSPI mechanisms incentivize the Company to maintain specific customer satisfaction levels, providing a direct benefit to customers. Accordingly, the CSPI provisions detailed below should be adopted as in the public interest.

[82] 2016 Rate Order at 81.

1. Customer Satisfaction Survey (Section XV [A])

Prior to this proceeding, the Company conducted a Customer Satisfaction Survey for benchmarking purposes.[83] In its direct testimony in this proceeding, DPS Staff recommended that the Company implement a monthly Customer Satisfaction Survey metric, building upon this initial benchmarking survey.[84] The Company explained in its rebuttal testimony that it has conducted annual customer satisfaction surveys with a company known as Luth Research (the Luth Survey), and the Company would commit to continuing this annual survey in October of Rate Year 1.[85] Further, the Company's rebuttal testimony explained that the Company would voluntarily plan to implement post-call satisfaction surveys, which would be transaction-specific as the survey would specifically target customers with recent Company interactions.[86]

As settlement discussions on this issue progressed, the Settlement Parties ultimately agreed in the Joint Proposal that the Company will implement a pilot transaction-based email survey (the Pilot Survey) for customers with recent interactions with the Company. More specifically, following a customer call to the Company, the Company will email the Pilot Survey to all such customers in an effort to gauge overall customer satisfaction on a monthly basis. During Rate Year 1, this Pilot Survey will be for benchmarking purposes only, for the Company will still be separately subject to the target metrics and associated NRAs of the Luth Survey. The Company and DPS Staff will meet in September and February of Rate Year 1 to discuss the monthly results of the Pilot Survey. If the Company, in consultation with DPS Staff, decides to fully transition to

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[83] Case 23-W-0235, *supra*, Testimony of the Staff Consumer Services Panel, at 16-17 (filed Sept. 7, 2023) (citing Case 20-W-0102, *supra*, Order Adopting Joint Proposal [issued Dec. 16, 2021]).

[84] Case 23-W-0235, *supra*, Testimony of the Staff Consumer Services Panel, at 18-19 (filed Sept. 7, 2023).

[85] Case 23-W-0235, *supra*, Rebuttal Testimony of Lauran A. Preston, at 5-6 (filed Oct. 5, 2023).

[86] *Id.* at 6-7.

this transaction-based survey in Rate Year 2, the Company will be subject to the Pilot Survey target metrics and NRAs listed in the Joint Proposal as opposed to the Luth Survey target metrics and NRAs. The Joint Proposal also provides that in the event that abnormal operating conditions affect activities measured by these customer satisfaction surveys, the Company may petition the NYPSC for exclusion of the performance data associated with such an event. This provision provides the Company the security it needs to move forward with multiple simultaneous survey efforts while knowing that events beyond the Company's control (*i.e.*, natural disasters, major storms, or other unprecedented events like the COVID-19 pandemic) will not result in the imposition of NRAs.

The decision to pilot and potentially implement a transaction-based monthly survey effort will enable the Company to obtain more real-time feedback from customers who interact with the Company. This effort is also more consistently aligned with other utility efforts in this space.[87] As a result, this provision directly benefits customers and is within the range of likely litigated outcomes in this proceeding as it blends recommendations from the Company and DPS Staff. Thus, this provisison should be adopted in its entirety.

2. NYPSC Complaint Rate (Section XV [B])

The Joint Proposal also continues and enhances the Company's NYPSC Complaint Rate metric (the Complaint Rate), which imposes certain NRAs based on the number of complaints that DPS Staff determines involve situations where the Company has not provided a reasonable level of customer service or its actions are deemed to be not in compliance with Department of Public Service regulations, or the Company's tariff. The Company and DPS Staff were aligned in the continuation of the Complaint Rate, with the only variances surrounding the minimum target

[87] Case 23-W-0111, *supra*, Order Adopting Joint Proposal as Modified and Establishing Rate Plan, at 52-53 (issued May 16, 2024).

levels.[88] Following discussion during settlement, the Signatory Parties reached mutually agreeable Complaint Rate thresholds and associated NRAs, as set forth in the Joint Proposal, which are more beneficial to customers than the prior thresholds approved by the NYPSC. The Complaint Rate, like the survey metrics described above, incentivizes the Company to continue providing high-quality service, including prompt and thorough response to customer complaints. Accordingly, this provision is in the public interest and should be adopted.

K. Customer Benefit Programs (Section XVI)

1. Customer Assistance Program (Section XVI [A])

The Company is very pleased to support the Joint Proposal's authorization of the Company's first low-income program, known as the Customer Assistance Program (CAP), under which eligible customers will benefit from fixed monthly discounts. The Company elected to propose the CAP in this proceeding in light of: (1) its commitment to developing such a program during its acquisition of NYAW,[89] and (2) the economic impacts of the COVID-19 pandemic on many of its customers. As initially proposed, the Company sought to provide qualifying customers with a credit equal to the monthly meter charge, which would result in discounts ranging from $17.50 a month to $24.75 a month.[90] The Company proposed minimal eligibilty criteria, requiring only that the customer identify themselves to the Company as: (1) enrolled in an eligible New York State governmental assistance program or registered as a low-income customer of another

[88] *See* Case 23-W-0235, *supra*, Direct Testimony of Lauren A. Preston, at 16 (filed May 4, 2023); Case 23-W-0235, *supra*, Testimony of the Staff Consumer Services Panel, at 15-16 (filed Sept. 7, 2023).

[89] Case 20-W-0102, *supra*, Order Adopting Joint Proposal (issued Dec. 16, 2021).

[90] Case 23-W-0235, *supra*, Direct Testimony of Lauren A. Preston, at 18 (filed May 4, 2023).

State utility, and (2) be a Company residential customer of record.[91] The Company sought to recover CAP costs through base rates.

In its direct testimony, DPS Staff supported the development of the CAP, describing it as "an initial step in the right direction for customers[,]" but proposed that the Company continue working with the Office of Temporary and Disability Assistance (OTDA) as it relates to data sharing and customer identification, as this could enable the Company to implement a tiered discount structure based on customer income levels rather than a flat-rate discount.[92] DPS Staff posited that this strcuture would create a program that was based upon customer need and would achieve a two percent water burden goal.[93]

PULP's direct testimony sought to revise the CAP to include automatic enrollment of customers who have received Low-Income Household Water Assistance Program (LIHWAP) benefits.[94] Further, PULP also requested that the CAP match "the idenficiation and enrollment process already in existence through the EAP programs run by each of the investor owned electric and natural gas utility companies[,]" including customer eligibility based on receipt of HEAP benefits.[95]

In response to these recommendations, the Company's rebuttal testimony agreed that the Company "supports the goal of providing bill assistance to low-income customers."[96] Further, the Company stated that it was open to working toward a multi-tiered discount methodology in its next

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91 *Id.* at 19.

92 Case 23-W-0235, *supra*, Testimony of the Staff Consumer Services Panel, at 29-31 (filed Sept. 7, 2023).

93 *Id.* at 31.

94 Case 23-W-0235, *supra*, Direct Testimony of Laurie Wheelock, at 9 (filed Sept. 7, 2023).

95 *Id.*

96 Case 23-W-0235, *supra*, Rebuttal Testimony of Lauren A. Preston, at 12 (filed Oct. 5, 2023).

rate case. In the interim, however, the Company addressed DPS Staff's recommendations regarding OTDA, explained that unless and until OTDA is able to engage in data sharing with the Company – which would enable the Company to propose discounts based on customer income and affordability metrics – the Company could not yet propose a tiered-discount structure.[97]

Ultimately, the Settlement Parties compromised, agreeing to a flat-rate CAP discount structure as originally proposed throughout the Rate Plan but committing the Company to working to secure data sharing with OTDA in order to consider a more targeted discount structure in the Company's next rate case. Moreover, even if the Company does not file for an increase in base rates at the end of this Rate Plan, the Company may nonetheless petition the NYPSC for a modification to its CAP in the event that a more targeted discount program becomes feasible through data sharing or otherwise.

Under the Joint Proposal, any residential water customers of record who are also recipients of LIHWAP recipients or other public assistance programs (*e.g.*, Supplemental Security Income; Temporary Assistance to Needy Persons/Families; Safety Net Assistance; Medicaid; the Supplemental Nutrition Assistance Program; Federal Public Housing Assistance; or have received a HEAP benefit in the preceding 12 months) are eligible for the CAP, which is inclusive of PULP's testimonial and settlement requests. Further, the Company incorporated PULP's request that if any member of a customer's household particpates in any such program, that will also allow the customer to enroll in the CAP. Additionally, the Company will conduct outreach twice per quarter to any customers who have received LIHWAP benefits to inform them of the CAP. Relatedly, the Company will automatically enroll anyone who has received LIHWAP benefits in the preceding

[97] *Id.*

12 months into the Company's CAP, consistent with PULP's testimonial request. The Joint Proposal also provides for the recovery of costs associated with the CAP in base rates.

The CAP's broad eligibility parameters will enable program participation for customers of several different public assistance programs, directly benefitting those customers. Further, the Company's inclusion of household members in addition to the customer of record in such eligibility criteria further expands the basis for participation in the CAP. The Company's commitment to further engagement with OTDA and others to secure data sharing that will eventually allow for a tiered discount structure in the Company's next Rate Plan will build upon the Company's current CAP to create a robust affordability program. Each of these provisions will directly benefit the Company's most vulnerable customers, and the Joint Proposal's CAP provisions incorporate recommendations from the Company, DPS Staff, and PULP. Accordingly, these provisions are within the likely result of a litigated outcome in this proceeding and are within the public interest. As a result, the Company's CAP should be adopted in its entirety.

2. Arrearage Management Program (Section XVI [B])

In tandem with the CAP, the Joint Proposal also sets forth an Arrearage Management Program (AMP) whereby low-income customers with arrears may enroll in budget billing in satisfaction of the Company's commitment to develop a financial assistance program for customers with accrued arrears resulting from the COVID-19 pandemic.[98] Under the AMP, for every timely budget payment made, the Company will issue the customer $100 in arrearage forgiveness, with no limit on potential forgiveness. Eligibility will be based upon the same broad parameters as the CAP, set forth in detail above, and the Company will recover the costs associated

[98] Case 20-W-0102, *supra*, Order Adopting Terms of Joint Proposal, Approving Stock Purchase Agreement and Long-Term Indebtedness, with Additional Requirements, at 58-59 (issued Dec. 16, 2021).

with the forgiven arrears as part of its regulatory deferrals. Accordingly, the deferred amounts will be subject to a reconciliation following a six-year amortization period to prevent the Company from over- or under-recovering the actual program costs above the levels reflected in rates.

As initially proposed, the Company sought to limit arrearage forgiveness at $1,600 per year.[99] Further, eligible customers, in addition to the eligibility criteria outlined in the CAP, would have needed: (1) at least $300 in arrears, and (2) have been in arrears for at least 45 days.[100] PULP's testimony did not contain any specific comments related to the AMP.[101] In DPS Staff's testimony, it agreed with the "general program design" but recommended removing the limit on potential forgiveness "so that any eligible customer be allowed the opportunity to resolve all eligible arrears with timely payments."[102] DPS Staff also recommended that the recovery of AMP costs be subject to a downward-only reconciliation upon completion of the six-year amortization period. The Company clarified in its rebuttal testimony that for each budget payment that a customer makes, that payment is applied to the current charges to keep the customer from falling further into arrears; through these program mechanics, a customer could continue making timely payments while simultaneously reducing their arrearages, avoiding a situation whereby a customer would pay off old arrearages while falling into new arrearages from newly accruing bills.[103] Regarding DPS Staff's recommendation as to the downward-only reconciliation, the Company agreed that such a

[99] Case 23-W-0235, *supra*, Direct Testimony of Lauren A. Preston, at 23 (filed May 4, 2023).

[100] *Id.*

[101] Case 23-W-0235, *supra*, Direct Testimony of Laurie Wheelock, at 8 (filed Sept. 7, 2023).

[102] Case 23-W-0234, *supra*, Testimony of the Staff Consumer Services Panel, at 41 (filed Sept. 4, 2023).

[103] Case 23-W-0235, *supra*, Rebuttal Testimony of Lauren A. Preston, at 13-14 (filed Oct. 5, 2023).

mechanism would be "prudent if accompanied by a reciprocal reconciliation, so such a mechanism equitably moves in both directions."[104]

As explained above, the agreed-upon AMP provisions provided in the Joint Proposal allow for unlimited potential arrears forgiveness provided that customers make timely budget billed payments. This could allow an eligible customer to earn complete arrears forgiveness overtime while staying current with presently accruing charges, directly benefitting customers who were most negatively affected by the COVID-19 pandemic and the arrears resulting therefrom. The AMP reconciliation also addresses the potential for over- or under-collection at the end of the six-year period, accomodating the concerns of both DPS Staff and the Company. Taken as a whole, this provision is well within the public interest, and the influence of DPS Staff's and the Company's requests shows that this term is within the likely range of outcomes had this issue been fully litigated. Accordingly, this provisison should be adopted.

3. Low-Income Reporting Requirement (Section XVI [C]

The Joint Proposal commits the Company to filing: (1) an annual report on its CAP; (2) a quarterly report on its AMP; and (3) a comprehensive annual report each year, inclusive of all CSPI mechanisms, the CAP, and the AMP. As part of this comprehensive annual report, the Company will subsequently meet with DPS Staff and other interested stakeholders to solicit feedback. The opportunity for collaboration and lessons learned from the cumulative impacts of these customer programs will allow the Company to continue developing these programs where proven effective, capture any realized synergies, and revise future proposals to account for lessons learned. Accordingly, this provision is in the public interest and should be adopted.

[104] *Id.* at 14.

4. Debit/Credit Card Transaction Fees (Section XVI [D])

The Joint Proposal continues the Company's payment service provider's practice of imposing a fee on Liberty NYW customers when they pay bills via a credit or debit card each time a transaction is processed. Specifically, residential customers are charged an individual processing fee of $1.75 for transactions up to $600, and non-residential customers are charged an individual processing fee of $7.75 for transactions up to $5,000.

Initially, the Company proposed to cease this practice as part of a "Fee Free Program," which would "eliminate a point of frustration for customers and allow all costs associated with payment options to be treated equally."[105] The Company believed that this approach would be more convenient for customers and align with an increasingly cashless system of commerce.[106] In its testimony, Staff took a contrary position, asserting that too few customers – 7% of residential customers and 5% of non-residential customers – make payments with a debit or credit card to justify implementation of the Fee Free Program, which would have allocated the recovery of these transactional fees across the Company's rate base.[107]

Although the Company still maintains that eliminating transactional credit and debit card fees is in the best interest of its customers, the Company has agreed to continue the practice of holding individual customers responsible for the payment of their respective individual transaction fees for remitting payment with a debit or credit card in the interest of settlement. Therefore, the Joint Proposal does not provide for the recovery of transaction fees in base rates.

[105] Case 23-W-0235, *supra*, Direct Testimony of Lauren A. Preston, at 26-28 (filed May 4, 2023).

[106] *Id.* at 26-27.

[107] Case 23-W-0235, *supra*, Testimony of the Staff Consumer Services Panel, at 57-59 (filed Sept. 7, 2023).

5. Conservation (Section XVI [E])

i. Conservation Program (Section XVI [E] [1])

Under the Joint Proposal, the Company will implement its enhanced water conservation program (the Water Conservation Program) in addition to the conservation programs already in place throughout the Company's service territory. In total, the Water Conservation Program will consist of eight different component programs in addition to a public outreach effort on the part of the Company. The Company will implement a downward-only reconciliation at the end of the Rate Plan for program funds, the disposition of which will be determined in the Company's next rate proceeding. This Water Conservation Program is the outcome of discussions between the Settlement Parties in an effort to incentivize water conservation at the customer level, and it demonstrates the collaborative nature of the settlement process throughout this proceeding.

In its initial testimony, the Company explained that it intended to implement two additional water conservation programs in addition to the Company's existing water conservation programs across its service territory.[108] DPS Staff supported these conservation program expansion efforts, with modifications.[109] Among these modifications was a recommendation that the Company implement an annual reporting requirement that would include all water conservation program activity, which the Joint Proposal ultimately adopted.[110] Specifically, the Company will report annually on April 1st of each Rate Year on the Water Conservation Program; such report will include incentive and rebate levels for each program measure, water savings in gallons per day, program spending, outreach and education activities, measurements of customer water audit

[108] Case 23-W-0235, *supra*, Direct Testimony of Kimberly Dragoo, at 2 (filed May 4, 2023).

[109] Case 23-W-0235, *supra*, Testimony of the Staff Policy Panel, at 19-20 (filed Sept. 7, 2023).

[110] *Id.* at 20.

follow-through, major finds and lessons learned, customer feedback, total project costs and savings, and any significant program adjustments. This annual report encourages transparency and accountability on the Company's part, demonstrating the reasonableness of the Water Conservation Program.

The Water Conservation Program carefully balances the interests of the Company, its customers, and other stakeholders to produce cost-beneficial conservation at the customer level. Taken together with the implementation of DPS Staff's recommended annual report and the disposition of any unspent Water Conservation Program funds during the Company's next rate proceeding, the Water Conservation Program is within the public interest, reasonable, and within the range of likely litigated outcomes.

ii. Conservation Rate Study (Section XVI [E] [2])

In addition to the implementation of the Water Conservation Program, the Joint Proposal commits the Company to conducting a Threshold Analysis to determine whether conservation rates at the residential rate block 4 (Tier 4) rates impact any households with indoor-only water usage. The Company, in consultation with DPS Staff, developed this proposal to mitigate CAWS's concern that the Company's existing conservation rates improperly and negatively effect larger households that utilize more water than smaller households.[111]

The Threshold Analysis will evaluate: (1) the number of accounts that would fall into Tier 4 during the non-peak period, and (2) the household size of any accounts that are identified as falling into Tier 4 during that non-peak period, if any. The Company will provide DPS Staff with the results of this Threshold Analysis, at which time the Company and DPS Staff will determine whether a further study is required to evaluate households with indoor water use at Tier 4 rates and

[111] Case 23-W-0235, *supra*, Direct Testimony of Dave Denenberg, at 13-15 (filed Sept. 5, 2023).

also attempt to identify exact household size to determine the extent to which household size is a factor in usage. If a study is required, the Company will complete the study in a manner that enables it to include the results and any proposed modifications stemming therefrom in its next rate filing. The purpose of the Threshold Analysis and potential subsequent study is to determine whether steps should be taken to address scenarios in which the Tier 4 rates impact households with indoor-only water usage. In the event that such scenarios exist, undertaking these study efforts will benefit those customers. This term addresses a concern raised by CAWS in its testimony filed in this proceeding and advances the Signatory Parties' desire to ensure that the Company's conservation rate structure is properly structured. Therefore, this provisison represents a fair resolution of an issue raised by a non-Signatory Party and should be adopted.

6. Outreach And Eduction (O&E) (Section XVI [F])

As initially proposed, the Company sought to expand its O&E offerings through: (1) increased text messaging alert options, and (2) adding a Spanish Language translation feature to the Company website to support the 18% of Company customers who are Spanish speaking.[112] DPS Staff largely agreed with these proposed modifications, but it noted a concern that customers were not familiar with all of the Company's offerings.[113] Specifically, DPS Staff recommended that the Company engage in additional outreach efforts, including "more frequent messaging to keep current customers informed of its offerings…and educate individuals on the expanded text messaging alert offering."[114] In response, the Company noted in its rebuttal testimony that it "included a request for funding to expand [the Company's] text messaging programs and will use

[112] Case 23-W-0235, *supra*, Direct Testimony of Lauren A. Preston, at 29-30 (filed May 4, 2023).

[113] Case 23-W-0235, *supra*, Testimony of the Staff Consumer Services Panel, at 56-57 (filed Sept. 7, 2023).

[114] *Id.*

that service to expand outreach and education. The Company also will continue to use [its] website, emails, social media posts, community events and bill messages to inform customers."[115]

The Joint Proposal adopts these modifications to the Company's existing O&E efforts. Specifically, the Joint Proposal commits the Company to expanding its text messaging program to enhance outreach efforts. The Company will continue to utilize other outreach methods as well, including website updates, bill inserts, customer emails, and social media posts. The Company will also provide a Spanish translation of its website by January 2025, which will include translation of the Company's: (1) consumer rights and protections, (2) billing materials, (3) payment plan offers, and (4) conservation materials. These efforts will have the effect of making the Company's offerings and billing materials more well known and accessible to all Company customers, which is clearly a benefit to customers. The incorporation of feedback from DPS Staff, which supported these efforts, demonstrates the reasonableness of these provisions as well. Accordingly, they should be adopted as in the public interest.

L. Cyber Security (Section XVII)

In response to the evolving landscape of new technologies and corresponding vulnerabilities of all systems to cyber threats, the Company presented a comprehensive cyber security program in its initial testimony in this proceeding.[116] At the time of direct testimony, the Company was still finalizing the program. The Company did, however, propose to recover its incurred costs, which the Company then estimated to total approximately $8 million in capital expenditures for the Rate Year with costs decreasing in subsequent years (totaling approximately

[115] Case 23-W-0235, *supra*, Rebuttal Testimony of Lauren A. Preston, at 21 (filed Oct. 5, 2023).

[116] *See* Case 23-W-0235, *supra*, Direct Testimony of the Cybersecurity Panel, at 8 and 21 (filed May 4, 2023).

$12.7 million in capital expenditures).[117] As proposed, the Company would recover these costs through a charge set annually, which would be applied to customer bills based on expected spending and program assets in-service that year, with subsequent reconciliation of over- or under-collections or under-spending.[118]

The cyber security program was the subject of many discovery requests and much discussion throughout settlement due in part to the inherently evolving nature of the cyber security landscape. In its direct testimony, DPS Staff recommended a reduction in capital expenditures for the Rate Year.[119] Further, DPS Staff disagreed with the implementation of a surcharge to recover costs and instead recommended that the Company finalize an actual capital spending plan, with capital expenditures reflected in net plant when the projects are put into service.[120] In addressing these points during rebuttal testimony, the Company still sought approval of its full proposal.

Following extensive discussion by and between the Settlement Parties, the Joint Proposal establishes mutually agreeable proposal. Under the terms of the Joint Proposal, the Company will recover the costs of its cyber security program on a per-Rate Year budget basis, which will be subject to an overall cap of investment program costs of approximately $13.3 million. More specifically, the Company is allowed to defer the return on and return of cybersecurity capital investments (with carrying charges at the Company's weighted average cost of capital authorized in this case) that exceed the budget for each Rate Year, up to the amounts listed as eligible for deferral for that Rate Year in the Joint Proposal. Any deferred capital costs will be subject to review and recovery in the Company's next general rate case.

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[117] *Id.* at 21-22.

[118] *Id.* at 23-24.

[119] Case 23-W-0235, *supra*, Testimony of the Staff Cybersecurity Panel, at 10-11 (filed Sept. 7, 2023).

[120] *Id.* at 13.

Further, the cybersecurity costs will be subject to an individual downward only net plant true up. If the cumulative actual average net plant balances over the term of the Rate Plan are less than the cumulative target amounts, the Company will defer the revenue requirement impact of any shortfall (including a return and depreciation on the Net Plant amount) below the target level. If the cumulative actual average net plant balances are greater than the cumulative target net plant balances, then there will be no automatic deferral. The Company will file an accounting of the actual average net plant by June 1st after the end of each Rate Year and its reconciliation by June 1st after the end of Rate Year 3. Finally, the Company will report to and meet with DPS Staff on a biannual basis to address spending to date, provide scheduling updates, and highlight any changes.

The implementation of this cyber security program will directly benefit both the Company and its customers by protecting the Company's systems and infrastructure against cyber-attacks, which could disrupt water service and cause serious public health risks. Further, investing in the Company's cyber security provides additional protection to the customer data that the Company maintains in the course of its business while also directly benefitting customers. On the Company side, permitting deferral of these costs allows the Company to justify the expenditures inherent in such a vital area without compromising the safety and security of its system. For these reasons, the Company's cyber security provision should be adopted in full.

M. Climate Change And The Environment (Section XVIII)

The Climate Leadership and Community Protection Act (CLCPA) establishes State policy goals regarding the impacts of climate change, requiring certain reductions in statewide greenhouse gas emissions. As relevant here, the CLCPA "requires the Commission to consider the

impact of its decisions on the state's ability to achieve these goals[.]"[121] To accommodate for this requirement, the Joint Proposal establishes steps that the Company will undertake to mitigate the effects of climate change.

Under the terms of the Joint Proposal, the Company commits to investigate certain opportunities to assess and mitigate the impacts of climate change on the provision of water service. Specifically, the Company will assess the vulnerability of its water supply, water quality, and infrastructure to the effects of climate change, in addition to developing a plan to mitigate any identified vulnerabilies. This will include: (1) investigating the feasibility of transitioning to electric vehicles; (2) investigating opportunities for renewable power; and (3) working with peers and stakeholders to encourage conservation through offering tools, information, outreach, and education regarding the same. Moreover, the Company will track projects that reduce electric usage (*i.e.*, projects that improve upon pump efficiency). Finally, the Company's next rate filing will include a discussion of the Company's greenhouse gas emissions and corresponding plans to decarbonize.

Such efforts are consistent with a recently-approved Joint Proposal for another water utility in the State[122] in addition to the mandates of the CLCPA itself. These climate change provisions may result in a reduction in the Company's greenhouse gas emissions, which furthers State policy goals embodied in the CLCPA because the Company, DPS Staff, and interested parties will be

[121] Case 23-W-0111, *supra*, Order Adopting Joint Proposal as Modified and Establishing Rate Plan, at 39-40 (issued May 16, 2024).

[122] *See e.g.* Case 23-W-0111, *supra*, Order Adopting Joint Proposal as Modified and Establishing Rate Plan, at 42 (issued May 16, 2024) (the Commission found similar "climate- and environmental-related provisions" to be "consistent with New York's climate goals[,]" which were "accordingly in the public interest").

informed of the Company's efforts related to climate change. For these reasons, these provisions are well within the public interest and should be adopted as such.

N. Affiliate Code of Conduct (Section XIX)

Consistent with the order governing the Company's acquisition of NYAW, the most recent version of the Company's Affiliate Code of Conduct is provided in Appendix K to the Joint Proposal.

O. General and Miscellaneous Provisions (Section XX)

Section XX of the Joint Proposal contains numerous provisions that have become standard in Joint Proposals establishing rate plans for utility service in New York State. Specifically, terms explaining that the provisions of the Joint Proposal are not separable and do not establish precedential value are reasonable, as demonstrated by their consistency with other utility rate plans. In a similar vein, the Joint Proposal provides that it in no way inhibits the Company's ability to seek trade protection for any document or report filed in compliance with the Joint Proposal, which is a reasonable protection to which the Company is entitled. Moreover, the provisions governing the submission of the Joint Proposal, further assurances, execution of the Joint Proposal, and the provision establishing that the Joint Proposal is an integrated document are also standard in rate cases, demonstrating their reasonableness.

Section XX (A) of the Joint Proposal establishes that the Company will not file for new rates until on or after April 30, 2026 for rates to take effect on or after April 1, 2027. However, the NYPSC retains its authority to act on the level of rates in the event of unforseen circumstances that render the Company's return on common equity inadequate for the provision of safe and adequate service. Similarly, the Company is permitted, under the terms of the Joint Proposal, to file for an increase in rates when circumstances so threaten the Company's economic viability or

ability to maintain safe, reliable, and adequate service. These provisions are consistent with the terms of a recently adopted Joint Proposal for another water utility in the State, demonstrating that these terms are reasonable and properly balance the interests of the Company's long term financial stability along with the interest of the Company's customers.[123]

Finally, the Joint Proposal establishes that if any law, rule, regulation, order, or other requirement (or any repeal or amendment of an existing rule, regulation, order, or other requirement) of the federal, State, or local government or courts, including a requirement that Liberty NYW refund its tax exempt debt, results in a change Liberty NYW's annual revenues, costs, or expenses (excluding local property taxes) not anticipated in the forecasts and assumptions on which the rates in this Joint Proposal are based, the Company is authorized to defer the full effect of any such event provided that the event results in a change in the Company's annual pre-tax utility income in an amount greater than $555,000 for SA1 and $200,000 for SA2, respectively. Any such deferral will be held for the benefit of customers (in the event of an increase in earnings) or the Company (in the event of a reduction in earnings). This provision is also consistent with another recently adopted Joint Proposal for another water utility in the State,[124] and it is in the public interest because it fully protects both customers and the Company from legislative and regulatory actions beyond their control.

IV. CONCLUSION

The Joint Proposal represents a comprehensive, integrated multi-year Rate Plan. For the reasons discussed above, the Joint Proposal meets the public interest standard of the NYPSC's

[123] *See* Case 23-W-0111, *supra*, Order Adopting Joint Proposal as Modified and Establishing Rate Plan (issued May 16, 2024).

[124] *See* Case 23-W-0111, *supra*, Order Adopting Joint Proposal as Modified and Establishing Rate Plan (issued May 16, 2024).

Settlement Guidelines and produces an overall reasonable balance of often-competing interests advocated by the Signatory Parties. The Joint Proposal should therefore be adopted in its entirety, without modification.

Respectfully Submitted,

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