

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE NO. 20-W-0102

PROCEEDING ON JOINT PETITION OF AMERICAN WATER WORKS
COMPANY, INC., NEW YORK AMERICAN WATER COMPANY, INC.
AND LIBERTY UTILITIES (EASTERN WATER HOLDINGS) CORP. FOR
THE ACQUISITION BY LIBERTY UTILITIES OF 100% OF NEW YORK
AMERICAN WATER COMPANY, INC.'S ISSUED AND OUTSTANDING
CAPITAL STOCK

Direct Testimony of

DAVE DENENBERG

October 26, 2020

LI CLEAN AIR WATER AND SOIL, LTD.

1 **Background**

2 **Q-1. Please state your name, organization, title and your background.**

3 A-1. My name is Dave Denenberg. I am a founder and co-director of LI Clean Air Water
4 and Soil, Ltd. (“CAWS”), a not-for-profit organization formed on Earth Day 2016 to act as
5 stewards of our environment, protecting and preserving Long Island’s natural resources. I am
6 President of Cobra Consulting Group, LLC, consulting on environmental engineering,
7 intellectual property, real estate development, tax certiorari, and land-use matters.

8 I served 15 years on the Nassau County Legislature, representing Bellmore, Merrick,
9 Seaford and Wantagh, areas in which NYAW’s Merrick District provides water. I chaired, and
10 was the ranking member of, the Legislature’s planning, development and environment, finance
11 and public works committees. During that time, I was the main sponsor of more laws than any
12 other legislator, including a law creating a five year capital plan requirement, Nassau County’s
13 only environmental bond acts as well as several laws designed to protect our water resources
14 and open spaces.

15 I am an environmental engineer with a degree in Chemical Engineering from the
16 Cooper Union and a law degree from Brooklyn Law School. I worked as an engineer and/or
17 attorney in the environmental services and intellectual property fields for 30 years and am
18 currently President of Cobra Consulting Group, LLC, a Long Island based consulting firm
19 specializing in these fields, as well as other fields, as noted above.

20 **Q-2. What is the purpose of your testimony in this case?**

1 A-2. The purpose of my testimony is to oppose the sale of New York American Water
2 Company, Inc.'s ("NYAW") sale to Liberty Utilities ("LU"), hereinafter referred to as the
3 "Sale" and urge the Public Service Commission ("PSC") to consider public acquisition of
4 NYAW instead.

5 **Q.3. What is the basis for your opposition?**

6 A-3. Obviously, there are numerous reasons why I oppose this Sale or any sale of NYAW to
7 another investor-owned corporation. My opposition is based upon my 15 years of public
8 service as a Nassau Legislator representing a district which was predominantly served by
9 NYAW, but which also had residents on public water such as Freeport Water and Hempstead
10 Water; 34 years experience in environmental services as an engineer and attorney with
11 particular expertise in water contamination and remediation; four years and currently party to
12 NYAW's rate and tax refund cases; petitioner of an Article 78 proceeding against its current
13 rate case; 34 years of paying taxes on Long Island and over 29 years of paying for water from
14 NYAW and its predecessors. Therefore, I am experienced as a taxpayer, ratepayer, lawmaker,
15 environmental engineer/attorney/consultant and have specific knowledge and experience in
16 water protection, supply, remediation and contamination.

17 **Q-4. What are the grounds for your opposition?**

18 A-4. Simple. First, the Sale is not in the best interest of the public. The Sale of one investor-
19 owned water utility to another investor-owned water utility is not in the public interest. NYAW
20 charges one of the highest rates in the country, rates which are 10x greater than neighboring
21 residents with municipal water. Please see Exhibit A, showing a NYAW bill for \$58,200
22 gallons of water for \$372.01 (See Exhibit A). A resident supplied water by the Town of

1 Hempstead would be charged \$.002 per gallon for a total bill of \$116 for the same water
2 coming from the same water source – the Magothy Acquifer.

3 Second, it is unconstitutional for a municipality to provide one resident with water and
4 not another; impose taxes on corporate water utility property and then pass those taxes onto its
5 ratepayers -while public water district’s properties are tax exempt; provide its shareholders with
6 an additional 25% profit; require ratepayers to pay to clean up contaminated water, while
7 municipal water districts receive state and federal grants; and impose rate policies based on
8 irrelevant data that penalize large families – all of which are not in the public’s interest.

9 .Third, the acquisition price of \$608 million is inflated and based on current and
10 projected profits that shareholders expect to attain off the backs of ratepayers, who are the
11 rightful owners of the water system that is currently being operated by NYAW. In truth, the
12 transfer of real property is not even part of this deal. That is because NYAW does not own its
13 water utility property. The ratepayers do. And the ratepayers don’t want to sell to Liberty. It’s
14 time for the ratepayers to take full ownership of the water that runs freely under our feet and the
15 land, structures and appurtenances that rightfully belong to the public.

16 Fourth, the PSC, NYAW and LU must consider New York State representatives’,
17 public water districts’, municipalities’ and citizen organizations’ efforts to acquire NYAW’s
18 Long Island and upstate operations

19 Fifth, CAWS opposes claims that this Sale will not have an environmental impact. This
20 Sale to another investor-owned water utility will burden NYAW ratepayers with paying for the
21 expensive clean-up of contaminants in its wells, which would otherwise be paid for with federal
22 and state grants were it to become a public water district.

23 Last, CAWS asserts that the proposed Sale violates NYPSL Section 89(b) in that the
24 water NYAW supplies is not safe; Section 89(c) by its discriminatory practices; and Section
25 89(f) for its unreasonable rates and lack of public hearings.

26 NYAW, as a private corporation, imposes one of the highest rates in the nation in
27 complete comparison to neighboring water districts and taxes that neighboring water districts

1 do not pay. The Joint Petition (“JP”) for the Sale proposes to freeze these unsustainable rates
2 for three years. Second, investor-owned water corporations profit from rates, capital
3 improvements and property tax refunds while municipal water districts do not profit.

4 **Q-5. Please explain if the Sale of NYAW to Liberty is in the best interest of the public.**

5 A. The Sale to another investor-owned utility corporation is not in the public’s best
6 interest.

7 NYPSL Section 89(h) clearly states that “No consent shall be given by the commission
8 to the acquisition of any stock in accordance with this section unless it shall have been shown
9 that such acquisition is in the public interest.” Although the PSC cannot reject petitions for sale
10 of water corporations’ stocks in good faith, it can, nevertheless, determine that a public
11 acquisition would be in the public’s interest.

12 Similarly, in Missoula, Montana, LU petitioned to purchase Mountain Water Company.
13 However, the City of Missoula wanted to acquire the privately-owned water corporation. In a
14 68-page ruling, Missoula District Court Judge Karen Townsend said that the city’s
15 “contemplated use of the water system as a municipally owned water system is more necessary
16 than the current use as a privately owned for-profit enterprise.” (Exhibit C)

17 Further the Montana Public Service Commission sued Liberty Utility, calling its
18 deceitful transactions “a frontal assault on the body’s regulatory power... In the current
19 settlement, commissioners failed to assert their power to examine whether Liberty and
20 parent Algonquin are "fit to serve" Montana customers, von Lossberg said. "What's
21 missing from the settlement agreement is arguably the most important thing that
22 needs to be in it, which is completing the PSC's work in assessing fitness to serve," von
23 Lossberg said. (Exhibit D)

24 Should the PSC trust Liberty’s proposal when that corporation has been found
25 unfit to serve? Similarly, since NYAW has repeatedly shown, can the PSC trust either

1 of these investor-owned utilities to supply clean and affordable water to its customers,
2 when they both have been found guilty of deceit?

3 NYAW ratepayers are still paying the price for falling victim to NYAW deceitful
4 efforts to falsify records so that it would reap record profits for its shareholders. In
5 fact, recent reports show that NYAW gifted an astounding 204% rate of return to its
6 shareholders on the backs of its ratepayers. (Exhibit E)

7 In Monterey, California, a 113-page report issued by the Monterey Peninsula Water
8 Management District found that a public takeover of California American Water’s local water
9 system “to be economically feasible” and would probably save customers money. (Exhibit F)

10 Three feasibility studies of public acquisitions of NYAW’s Long Island operations
11 were recently conducted by Walden Environmental Engineering, LLC (“Walden”) – one by the
12 Massapequa Water District, another by the Village of Sea Cliff and a third by the Town of
13 Hempstead. The Massapequa Water District’s study found it would be feasible to acquire
14 NYAW’s southeasternmost territory and it has submitted its plans to the PSC. The Village of
15 Sea Cliff and the Town of Hempstead are reviewing their studies and will submit their findings
16 with the PSC before the “Notice to Solicit Comments” deadline of December 31, 2020.

17 **Q-6. Please explain why it is unconstitutional for a municipality to provide some of its**
18 **residents with water and not others and how this impacts ratepayers.**

19 A. Section 89(c) of the NYPSL, calls attention to rates, charges or classifications
20 or the acts or regulations of any such corporation that are unjust, unreasonable, unjustly
21 discriminatory or unduly preferential. It is not only unjust, unreasonable and unjustly
22 discriminatory, but unconstitutional and illegal for New York State, through its PSC, to allow
23 taxing jurisdictions to levy taxes on certain water utility properties that serve about 25% of
24 Nassau County residents and then pass its entire property tax obligation onto its ratepayers,

1 while 75% of Nassau County residents, who are served by public water districts, do not pay
2 taxes on their public water district's property. The result is 25% of Nassau County residents
3 pay property taxes for water utility property, which taxes benefit all county, town and district
4 residents, while 75% do not.

5 Both the substantive components of the due process and equal protection clauses of the
6 US Constitution protect against arbitrary and unreasonable state action. Where taxpayers within
7 the same class are charged at different rates, both the equal protection clause and due process
8 clauses are implicated. Uniformity and Equality Required in Taxation by the Federal Equal
9 Protection and Due Process Clause, University of Michigan, pp. 601-608.

10 A 'fee' charged by a municipality must have a reasonable relationship to the benefit
11 provided or the burden imposed. Where a fee benefits many people but the burden is only
12 imposed upon a few people, both substantive due process and equal protection are implicated.
13 *A Tax By Any Other Name: Constitutional Challenges to Revenue Raising Schemes, Battaglia*
14 *and Scolnick*, The Daily Journal (Los Angeles), Aug. 10, 2010, pp. 1-2. The constitutional issue
15 ultimately is whether the tax or fee burden and benefit are applied to equally to all persons
16 affected and whether a fee is related to the service provided. *Drawing the Line Between*
17 *Takings and Taxation: The Continuous Burdens Principle, and Its Broader Application*, Eric

1 Kades† Professor, William & Mary Law School, pp. 1-75. The taking of money from some
2 residents without an adequate basis and when applied inequitably is unconstitutional under the
3 ‘Takings Clause’ as well. Webb’s Fabulous Pharmacies v. Beckwith, 449 US 155 (1980).

4 The property tax, although included in NYAW rates, is not a fee for water usage. It is a
5 tax. So residents served by NYAW pay a tax that no other Nassau County resident pays. The
6 result of this inequitable property tax levy is that 25% of Nassau County residents pay taxes
7 that benefit ALL of Nassau County and Town of Hempstead or Town of Oyster Bay residents.
8 In addition to tax rates set by the county or towns and special districts, NYAW ratepayers pay
9 an added rate to NYAW for property taxes. And that burden makes up 39.75% of NYAW
10 revenue. Yet, it is illegal and unconstitutional that 25% of Nassau County’s residents pay a
11 higher property tax rate than the other 75% of the residents. Moreover, this added property tax
12 on NYAW ratepayers inure to the benefit of ALL county, town and district taxpayers, even
13 though no other resident has this tax burden.

14 Further, as property taxes are charged as fees in ratepayer’s bills, it is unconstitutional
15 under the substantive due process clause as set forth in Sinclair Paint Co. v. State Board of
16 Equalization, 15 Cal.4th 866, 876 (1977). Sinclair evaluated fees and found that hiding taxes as
17 fees violate the due process clause, finding that fees should only be charged if “they do not
18 exceed the reasonable cost of providing services necessary to the activity for which the fee is
19 charged...and are not levied for unrelated revenue services.” Obviously, property taxes are
20 “unrelated revenue services” as property taxes have nothing to do with supplying water. New
21 York State and the PSC are violating this provision by including property taxes in its fees for

1 supplying water to ratepayers. Therefore, not only is it unconstitutional to tax residents of the
2 same municipality at different rates, but it also violates the constitution to charge fees for
3 property taxes, as such fees are “unrelated revenue services.” Id.

4 The State of New York, whether through its designation of authority to the PSC or
5 through the basic oaths taken by its elected and appointed officials, must uphold the federal and
6 state constitutions. But, the State of New York has failed to do so. A basic tenet of the equal
7 protection clauses of each constitution is that people within a jurisdiction are entitled to equal
8 rights, which includes equal services at equal rates and at equal costs. So, where the State
9 delegates a service to be provided at the local level, the local government (i.e., town or village)
10 must ensure that the service is provided equally in terms of cost and access. At the most basic
11 level, the PSC and the State fail miserably when it comes to NYAW and its rates.

12 If the PSC and State recognize this clear violation of equal protection, the sale of
13 NYAW to another investor-owned water utility would exacerbate and perpetuate a violation of
14 equal protection laws guaranteed in both the New York State and United States constitution.

15 **Q-7. Please explain how property taxes imposed on NYAW customers differ from those**
16 **imposed upon customers supplied water by a municipality, water district or authority.**

17 A. The transaction proposed must show that it will provide “safe and adequate service
18 at just and reasonable rates.” The PSC must ensure that the interests of the customer are
19 protected and a proposed transfer can be approved as in the public interest pursuant to PSL §
20 89- h.8 “It is therefore the Commission’s responsibility to ensure that the new owner will be
21 able to provide safe and adequate service at just and reasonable rates.”

1 Approximately 50% of NYAW customers' water bills pay for the investor-owned
2 utility's property taxes. Yet, neighboring municipal water utility properties are tax-exempt and
3 can supply water to its constituents at a much lower rate. It is the PSC's responsibility to
4 ensure that the new owner will be able to provide safe and adequate service at just and
5 reasonable rates." Such determination must be made in comparison to rates charged by water
6 suppliers in that region and not in comparison to the rates that NYAW customers are currently
7 paying.

8 The inequities between public and private water are most prevalent with the imposition
9 of taxes paid by NYAW customers for its properties. To determine whether rates are just and
10 reasonable, the PSC must determine if it is just and reasonable to allow customers of corporate
11 water suppliers to pay taxes that are not paid by any other water customer in its region.

12 Residents of Nassau County on public water pay a nominal water district tax that goes
13 to the water district for maintenance and supply, including capital and administrative costs. The
14 tax does not go to Nassau County, the towns of Hempstead and Oyster Bay, any school or other
15 district.

16 In contrast, NYAW charges for maintenance and supply, as well as its profits, in its
17 rates and must pay for property taxes separate and apart from any of these costs. The recipient
18 jurisdictions of NYAW's property tax payments utilize the receipt to benefit all its residents,
19 while the burden falls upon the few who are NYAW customers.

20 Moreover, a water district tax is fully deductible on federal and state income tax
21 returns. While NYAW may be able to deduct its property taxes, the NYAW customer who is
22 actually paying for that tax cannot deduct their water bills.

1 The State and the PSC allow Nassau County, the towns of Hempstead and Oyster Bay
2 and schools and other districts to levy property taxes on NYAW and then allows NYAW to
3 pass that tax burden onto its Merrick, Lynbrook and Sea Cliff ratepayers. At the same time,
4 water districts are exempt from property taxes so town and county residents served by those
5 districts do not pay for a property tax levy on their water supplier. The result is that all Nassau
6 County and Towns of Oyster Bay and Hempstead residents benefit from the property tax levied
7 upon NYAW, while the burden of that tax falls wholly upon those residents of the county and
8 towns served by NYAW. The same is true with respect to the school tax burden where all
9 residents of a school district benefit from NYAW's property tax levy, which is ultimately paid
10 by NYAW ratepayers who don't even live in that school district and do not get any benefit in
11 terms of school taxes from public water districts.

12 **Q. 8 Do investor-owned utilities profit from the property taxes that its**
13 **customers pay?**

14 A. Yes. NYAW shareholders receive 12-20% profit from property tax refunds
15 for taxes the ratepayers paid.

16 At the rate hearings of Case 16-W-0259, CAWS argued that the PSC imposing
17 the burden of NYAW property taxes upon NYAW ratepayers is illegal and
18 unconstitutional. Naturally, the PSC ignored this argument as irrelevant. **(Exhibit G)**
19 This unjust burden is rendered even more egregious when ratepayers are at the mercy
20 of NYAW to commence tax grievance actions to correct incorrect assessment, illegal
21 tax levies and over-assessment of property taxes. To provide an incentive to NYAW,
22 the PSC allows NYAW shareholders to receive millions of dollars in profits from
23 property taxes the shareholders and NYAW never paid. That shareholders profit from
24 ratepayers being over-taxed is unconscionable. But the PSC says it's an incentive.

1 For example, by Order dated December 13, 2018 Allocating Property Tax
2 Refunds (“Sanitation Order”), NYAW had reportedly received a refund of \$8,393,923
3 for taxes it was wrongly charged by the Town of Hempstead for garbage collection
4 (Case No. 18-W-0554). NYAW simply delayed resolution of this overpayment for 20
5 years. However, neither NYAW nor its shareholders wrongly paid those taxes. The
6 ratepayers did. Yet, the PSC allowed NYAW to retain \$312,215 to cover legal fees and
7 other costs and an additional \$1,010,088 profit for NYAW’s shareholders. While the
8 Department of Public Service (“DPS”) Staff (“Staff”) and the PSC believe allowing
9 NYAW and its attorneys to so profit is an incentive to file such lawsuits, it is also an
10 incentive for NYAW to drag out such proceedings for several years and to be overtaxed
11 – in this case, since April 1999 – almost 20 years ago. And normal taxpayers would
12 have resolved this issue administratively.

13 As per the 2017 Order, NYAW, a private corporate monopoly, profits at a
14 rate of 9.75%. Rather than assuring just and reasonable rates, the PSC acts in the
15 Company’s best interest by allowing NYAW to realize even greater profits by awarding
16 NYAW a percentage of any tax refunds it receives as a result of these 20-year old
17 lawsuits. If the PSC were to do its duty, which is to ensure reasonable rates and protect
18 the public from a private water monopoly, it would order NYAW to give ratepayers the
19 entire refund from the Town of Hempstead for taxes that were 100% paid by the
20 ratepayers. However, the PSC continues to allow NYAW to realize profits that greatly
21 exceed the 9.75% profit already allowable in the 2017 Order and will, undoubtedly,
22 continue this policy were NYAW to sell its assets to Liberty.

23 **Q-9. If NYAW ratepayers no longer pay property taxes in their water bills, will school**
24 **districts and local municipalities need to raise taxes to recoup the lost revenue?**

25 A. The savings to the NYAW customer will more than offset any district tax
26 increase to that customer were it to acquire NYAW’s operations. In its water bill, each
27 ratepayer pays taxes to numerous school districts in which it does not reside. Thus, the average

1 NYAW ratepayer pays more school taxes in its water bill than it would if instead, the revenue
2 were recovered through the homeowner's property taxes. (See Exhibit H).

3 For example, NYAW paid \$5,966,881 in 2019 for school taxes for properties in its
4 Merrick District. Since the PSC allows NYAW to pass 100% of its property tax obligation
5 onto its customers, the 44,500 ratepayers in its Merrick District paid an average of \$133 for
6 school taxes in 2019, which goes to the Amityville, Bellmore, Farmingdale, Island Trees,
7 Levittown, Massapequa, Merrick, North Bellmore, North Merrick, Seaford and Wantagh
8 School Districts. These ratepayers also paid \$90 to Nassau County and the Town of
9 Hempstead through their water bills, totaling \$223 for school and local taxes (excluding village
10 taxes).

11 Residents in those same school districts that are supplied water by a public utility do
12 not pay school taxes in their water bill. If the PSC rejects NYAW's sale to Liberty in favor of
13 public acquisition, these same ratepayers in the Merrick District would only need to recoup the
14 money paid to their own school district. Taxes paid to the town and county would be spread
15 over a population of 759,700 and 1.3 million respectively. The increase in taxes for those who
16 do not have NYAW is negligible, while the savings to the NYAW ratepayers is substantial.
17 For example, the average NYAW ratepayer in the Merrick District would have saved 54% on
18 their property tax burden for 2019. And those savings do not reflect the payment of taxes it
19 pays to villages it may not live in, nor savings realized by being able to deduct those taxes from
20 their income taxes.

21 The saving is even greater for NYAW's Sea Cliff District ratepayers. The average Sea
22 Cliff NYAW ratepayer pays \$447 annually to the Brookville, Glen Head, Glenwood Landing,

1 Roslyn and Sea Cliff school districts. Were a public acquisition to occur in the Sea Cliff
2 District, the average NYAW ratepayer would save 80% on their school taxes alone or a savings
3 of \$360 per year.

4 NYAW's Lynbrook District ratepayers pay an average of \$287 to the Lawrence, Long
5 Beach, Lynbrook, Malverne, Oceanside, Rockville Centre, Roosevelt, Uniondale, Valley
6 Stream 13, Valley Stream 24, Valley Stream 30 and West Hempstead school districts. Were
7 those residents' water tax exempt, NYAW's Lynbrook ratepayers would realize a savings of
8 24% or a savings of \$68 per year.

9 The fact that communities adjoining NYAW's territories benefit from tax revenue
10 unfairly levied upon residents supplied water by investor-owned utility is precisely our
11 constitutionality argument. There is no justification for NYAW customers to be paying
12 property taxes for their private water company while other residents get the benefit of those
13 taxes, but do not pay property taxes for their public water district.

14 Therefore, the findings shown in Exhibit 1 clearly show that a sale of NYAW to
15 another investor-owned water utility is not in the best interest of the public and should be
16 rejected pursuant to Section 89-f of the New York Public Service Law

17 **Q-10. Do investor-owned water utilities charge different amounts to special districts for**
18 **its services than were it a public utility?**

19 A. For a fire district, the problem, unequal treatment and unconstitutionality argument is
20 exacerbated. Fire districts within NYAW territory pay over \$1000 per year for a single fire
21 hydrant. The Town of Hempstead maintains 3,317 fire hydrants and charges less than \$80
22 per hydrant within a public water district. "Transcript of July 13, 2016 Public Comment

1 Hearing”, pp 11-14. (Exhibit I) It is beyond me that such a cost discrepancy is acceptable to
2 the PSC and the State.

3 Furthermore, NYS officials proudly implemented a tax cap on all taxing jurisdictions
4 within the state. State officials, starting with the Governor, proudly and repeatedly say they
5 implemented the tax cap to protect NYS residents. So a fire district, water district, school
6 district, village, town and county can only raise their main source of revenue by 2%, or the cost
7 of inflation, whichever is less. Customers of NYAW, including fire and school districts, have
8 no such protection. How is that equal protection under the law?

9 With respect to school districts, historically, most school districts within NYAW’s
10 testimony receive far less, if any, tax revenue from NYAW than districts served by public
11 water. If this clearly unconstitutional and perhaps, illegal, property tax allocation is no longer in
12 effect, CAWS requests proof and demands an accounting of the historic and current tax
13 allocations and refunds to NYAW and its customers for past improper payments. If refunds
14 were paid, the PSC must ensure the benefit goes to the NYAW customers who actually paid the
15 tax.

16 **Q-11 – Is the sale of real property part of this transaction?**

17 In response to several of CAWS’ interrogatories regarding ownership of real property
18 purportedly owned by NYAW, its standard response has been “There is no requirement under
19 Part 39 that title, deed or transfer documentation be provided and none is necessary because
20 no such transfers will occur as a result of this case.... All property and assets currently held by
21 NYAW will remain with NYAW following the close of the transaction.” It purports that this

1 Sale is a transfer of stock and should not be treated as a sale of its assets. However, LU will be
2 the new water utility corporation supplying water to its customers.

3 **Q-12 – Who owns NYAW’s real property?**

4 CAWS believes that the ratepayers own the real property, structures and infrastructure
5 that has been purchased and developed by NYAW “for the use of producing, treating, and
6 delivering water.” NYAW’s purchases of land, water treatment facilities and infrastructure are
7 paid for by the ratepayers either through its rates or as an added surcharge to its customers’
8 water bills. Maintenance and operation of these assets are also paid for by directly billing its
9 customers. Taxes are levied on these properties and paid with funds billed directly to its
10 customers. In other words, NYAW’s customers not only pay to purchase the land, but to build
11 and maintain its infrastructure.

12 The PSC recognizes the water customers’ ownership of these properties. Two recent
13 sales of NYAW properties evidenced this recognition by returning the revenue realized in the
14 sale of real property to the rightful owners – NYAW ratepayers. When NYAW sold its office
15 property in Lynbrook, it returned the proceeds of that sale to ratepayers in the Lynbrook
16 District. Similarly and more recently, NYAW sold 325 Prospect Avenue in Sea Cliff to the
17 Village of Sea Cliff for \$600,000, discounting it by \$1 million. Ratepayers in NYAW’s Sea
18 Cliff District received a \$1.6 million credit on their future water bills.

19 Does anyone believe that NYAW returned the proceeds of these sales to its ratepayers
20 out of the goodness of its heart? Of course not. The money was returned to NYAW ratepayers
21 because the ratepayers were the rightful owners of those properties. The properties were

1 purchased and maintained with funds obtained from NYAW ratepayers so, of course, the
2 ratepayers should benefit from its sale.

3 With that in mind, CAWS asserts that in consideration of this Sale with the sale
4 of NYAW's operations to the public, the PSC should recognize that NYAW ratepayers
5 are the owners of NYAW's assets and as such, should have the right to determine, not
6 only who should operate, treat and supply our water that runs freely under our homes,
7 but also should not have to pay for what we already own.

8 **Q. 11 – What action has been taken to pursue public acquisition of NYAW?**

9 The proposed Sale presents a roadblock and fails to recognize New York State
10 representatives, water districts, water authorities, municipalities, citizen advocacy groups and
11 organizations, fire districts and ratepayers numerous efforts to acquire NYAW.

12 CAWS collected over 2,500 signatures from NYAW ratepayers and have written and
13 collected hundreds of letters in support of a public takeover of NYAW (**Exhibit J**) Over 1500
14 ratepayers demanded public water and so commented on Case 16-W-0259. Fire districts
15 presented oral and written testimony about the price differential between public and private water
16 suppliers. Hundreds of ratepayers attended the public hearings that were held on Long Island
17 regarding the 2016 rate case. (**Exhibit K**)

18 Yet, the PSC, NYAW and LU ignore efforts by New York State representatives, water
19 districts, water authorities, municipalities, citizen advocacy groups and organizations to acquire
20 NYAW.

21 1. **Massapequa Water District** - The Massapequa Water District ("MWD")
22 conducted hired Walden to conduct a feasibility study of acquiring NYAW's easternmost
23 section of its Merrick District within the Town of Oyster Bay. After conducting a study of the
24 feasibility of MWD acquiring that portion of NYAW's operations in Massapequa, it filed its

1 comments on July 23, 2020 with the PSC, stating “MWD firmly believes that the
2 municipalization of NYAW would be in the best interest of the public...MWD has already
3 contacted its consultants and have been assured that adding the additional consumer base to its
4 billing and mapping systems would not be an overly difficult undertaking... MWD is prepared
5 to negotiate with NYAW immediately, close on a sale, and begin operation by January 1, 2021.
6 If negotiations fail, the District may utilize its eminent domain authority... Bond funds can be
7 obtained quite quickly once a deal is approved.”

8 The MWD clearly expressed its intent to acquire NYAW’s Massapequa territory, either
9 by negotiations or eminent domain. MWD has taken initial steps to acquire the territory. The
10 acquisition is not “hypothetical” as NYAW would like the PSC to believe. By ignoring MWD’s
11 plea to negotiate an equitable arrangement to acquire NYAW’s Massapequa operations,
12 NYAW is clearly acting in bad faith and not in the public’s best interest. At this juncture, the
13 PSC should intervene and demand that NYAW meet with MWD to see if they could come to a
14 mutual agreement for the acquisition of the Massapequa section of NYAW’s territories before
15 it is sold to another profit-driven corporate water supplier. NYAW is not acting in the public’s
16 best interest. Although the PSC cannot determine eminent domain in this proceeding, it must
17 consider municipality’s and water districts’ intent to acquire all or part of NYAW’s territories
18 when deciding to approve or reject the Sale being proposed in this proceeding. And by law,
19 must consider if such Sale is in the best interest of the public.

20 **2. North Shore Water Authority** – The New York State Senate passed, establishing the North
21 Shore Water Authority to acquire NYAW’s Sea Cliff District. The Legislature found that the
22 “groundwater supply system presently operated by a private utility in the northwest portion of

1 Nassau County servicing the residents of the Village of Sea Cliff and portions of the Village of
2 Old Brookville, Village of Roslyn Harbor, and residents in the unincorporated hamlets of
3 Glenwood Landing, Glen Head and the city of Glen Cove, is fragile and subject to episodic
4 deficiencies of varying magnitude including service disruptions and drastic price variations to
5 residents serviced by the existing private water company. The groundwater supply requires
6 better management of its entire reserve both within and outside the water utility supply area as
7 well as long range planning to provide protection of important watershed areas, water
8 conservation, and prevention from contamination and salt water intrusion. Since the potable
9 water for the northern portion of the North Shore peninsula is derived from an aquifer which is
10 the sole source of water for all of Long Island, the issues of contamination and conservation are
11 of statewide concern. The problems of salt water intrusion facing the North Shore peninsula,
12 face many other peninsulas on Long Island and many of the barrier islands. It is hoped
13 that the authority created by this act will not only protect, preserve and enhance the quality and
14 quantity of the water within its supply area, but that it will also serve as a model and as a leader
15 in fostering cooperation with other water suppliers to better manage, conserve and protect the
16 groundwater within and outside its supply area.”(Exhibit L)

17 Specifically, the New York State Legislature found that public acquisition of
18 NYAW’s Sea Cliff District by NSWA is in the public’s best interest. Further and more notably,
19 the Legislature found that private corporations have had a detrimental impact on the health of
20 its customers and our environment. There is no indication that the new owner will be able to
21 provide “safe and adequate service” to its customers.

22 **3. Town of Hempstead** – The Town of Hempstead (“TOH”) is renewing its interest in
23 acquiring NYAW’s Lynbrook and Merrick Districts situated within the Town of Hempstead.

1 Upon information and belief, it has completed a feasibility study of acquiring said territories.
2 CAWS, through the Freedom of Information Act, requested to review the report, but has yet to
3 receive it and cannot comment on it in this testimony at this time. (Exhibit M)

4 However, in determining if a transaction is in the best interest of the public, the PSC
5 must determine whether the “acquiring entity has the technical, managerial and financial
6 capability to properly operate the water system.” The TOH clearly does.

7 The TOH supplies water to six separate water districts: **Bowling Green Estates, East**
8 **Meadow, Levittown, Uniondale, Roosevelt Field and Lido-Point Lookout.** Water
9 supply for the districts is drawn from 32 wells that produce 6,520,784,000 gallons of water.
10 To deliver water to the department's 37,763 customers, there are 377 miles of water mains,
11 ranging in size from 6" to 24" in diameter. The department has seven elevated and two
12 ground storage tanks with a storage capacity of nine million gallons. In addition, the
13 department maintains 3,317 fire hydrants.

14 NYAW supplies water to approximately 120,000 residents and businesses in two
15 districts in the TOH:

16 **Lynbrook District:**

17 Atlantic Beach, Baldwin, Baldwin Harbor, Barnum Island, Bay Park, Cedarhurst, East Atlantic
18 Beach, East Rockaway, Harbor Isle, Hewlett, Hewlett Bay Park, Hewlett Harbor, Hewlett
19 Neck, Inwood, Island Park, Lakeview, Lawrence Lynbrook, Malverne, Malverne Park-Oaks,
20 Meadowmere, North Lawrence, North Lynbrook, North Woodmere, Oceanside, Roosevelt,
21 South Hempstead, Valley Stream, West Hempstead, Woodmere and Woodsburgh

22 **Merrick District:**

1 Bellmore, Merrick, Levittown, North Bellmore, North Merrick, Seaford, South Farmingdale
2 and Wantagh

3 NYAW's pipelines are connected to TOH pipelines at various intervals.

4 The average customer used 153,266 gallons of water in 2019, which cost \$268.98. The
5 average daily consumption per customer was 420 gallons at a cost of \$0.74 per day.

6 All of the departments water meters are equipped to be read via a remote reading terminal, thus
7 eliminating the need to enter a customer's home. (Exhibit N)

8 Water is a basic human right, one that should have local and public control with local
9 accountability. It should not be taxed or provided by a corporate monopoly. Yet, while
10 Hempstead through its six water districts provides tax-free public water service to 37,763
11 households, and village water authorities and districts provide tax-free public water service
12 to tens of thousands of households in Hempstead, the Town does not provide tax-free public
13 water to over 100,000 households that are served by NYAW. These constituents do not
14 receive public water service and are forced to pay taxes to the very town that is not
15 providing them with the basic public service.

16 NYAW customers realize that the public takeover would require bonding and that
17 they would have to pay the bonds. However, such costs will be more than offset by reduced
18 rates due to (1) NYAW's record profits being removed and (2) corporate, sales, property and
19 franchise tax savings because public water districts are tax exempt.

20
21 **4. Town of Ulster** – The Town of Ulster, in filing for party status in this case,
22 expressed interest in acquiring Kingsvale Water Company, which is owned by NYAW in
23 Ulster County in upstate New York.

1 **Q-12. If municipalities, schools and fire districts are tax exempt, how can NYAW**
2 **incorporate property, franchise, sales and corporation taxes in its water rates?**

3 Municipalities, schools and fire districts that are supplied water by NYAW are charged
4 property, franchise, sales and corporation taxes in its water rates as if it were an operational
5 cost. Municipalities, schools and fire districts are exempt from taxes. For the PSC to allow
6 tax-exempt municipalities, schools and fire districts to be taxed solely because they are
7 provided water by an investor-owned utility is arbitrary and capricious. In the Matter of Health
8 Insurance Plan of Greater New York v Board of Assessors of Town of Babylon, **44 AD3d 1044**
9 **(2d Dept 2007)**, the Court found the actions of the respondent to be arbitrary and
10 capricious and held in favor of the petitioner, annulling the respondent's determination
11 and ordering the reinstatement of the petitioner's tax exempt status.

12 **Q.13 How do municipalities fund capital improvements and compare that to NYAW?**

13 A-9. In my experience, municipalities bond or borrow for projects that have a benefit that
14 will last for several years or more. Infrastructure improvement projects such as roads, bridges,
15 sewage treatment, park facilities, etc. are examples of projects with a long-term benefit and are
16 paid through capital borrowing. The municipality bonds for the projects and pays off the bonds
17 of term of years by budgeting for the financing in its annual budget. The municipality must
18 stay within the tax cap so any large expense in any one year for a capital improvement is
19 extremely difficult unless the municipality utilizes a one-shot revenue source or a rainy-day
20 fund. Most finance professionals view capital bonding for such projects as proper and
21 appropriate.

1 NYAW is seeking reimbursement for its infrastructure projects and funding for future
2 projects directly from ratepayers over a very short period of time. Given that the infrastructure
3 improvements will last decades, this practice is inappropriate and extremely costly to
4 ratepayers. If NYAW had to pay itself, it would spread out the cost and carefully limit future
5 borrowing. Instead, by forcing ratepayers to pay for the infrastructure improvement over three
6 years, NYAW gets a long term benefit without any financing requirement and will be free to
7 add additional such projects in the near future without any long-term planning considerations.
8 In contrast, a public water district must carefully plan its capital improvements to fit within its
9 long-term debt financing projections and the tax cap.

10

11 **Q-14 Please explain the environmental impact of NYAW remaining under**
12 **corporate ownership, particularly as it pertains to contaminants such as 1,4 Dioxane.**

13 A. High levels of 1,4 dioxane has been found in four of NYAW's wells. As is typical for
14 NYAW, it keeps this information from the public for months until it is forced to notify its
15 customers and then just kicks the can down the road so that LU will have to deal with it after
16 the sale. As stated in the JP, Liberty has no experience in treating and/or removing 1,4 dioxane
17 from its water supply. Treatment for removal of 1,4 dioxane from the water supply is estimated
18 to cost \$2.8-\$4 million per well. (Exhibit O) Payment for said treatment will be borne solely by
19 NYAW/LU ratepayers.

20 Yet in Hempstead, in anticipation of the New York State Department of Health
21 establishing an official standard for 1,4-Dioxane, the Town of Hempstead Water Department
22 has taken the initiative of starting design work at seven sites for treatment of this emerging
23 contaminant. Design at these sites should be completed in 2020.

1 The New York State Department of Health’s Environmental Facilities Corporation has
2 provided the TOH with grants for construction of these treatment sites. As a private
3 corporation, neither NYAW nor LU are eligible for such grants. NYAW or LU’s customers
4 will have to bear the full brunt of the remediation costs. Were NYAW to be acquired by a
5 municipality, water authority or district, it, too, would be eligible for grants.

6 Allowing the sale of NYAW to another investor-owned utility will result in its
7 ratepayers being charged a surcharge to pay for treatment of 1,4 dioxane on top of their “frozen
8 rates” that will be unsustainable, especially in this economy. In light of the environmental
9 impact of allowing for this transaction or public acquisition, the PSC must find that the
10 anticipated increase in NYAW/LU’s customers’ bills is both “unreasonable and unjust.”

11

12 **Q. 15. Please explain your concerns regarding both customer and company-owned lead**
13 **pipes in NYAW’s system.**

14 A Children who are lead poisoned are 7 times more likely to drop out of school and 6
15 times more likely to become involved in the juvenile justice system.

16 Learning disabilities that can affect children who have been lead poisoned include: violent,
17 aggressive behavior; speech delays; Attention Deficit Disorder; hyperactivity; diminished
18 IQ; hearing and memory problems; and reduced motor control and balance.

19 Lead poisoning effects on adults include: 46 percent increased rate of early
20 mortality; 16 to 19 percent increased risk of cardiovascular disease; hypertension;
21 depression; reproductive problems; and complications related to osteoporosis.

22 Studies have shown that even trace amounts of lead consumed by children have devastating
23 affects.

1 Governor Cuomo recognized the problems of lead in our water and asked school
2 districts to test for lead. Lead was found in schools throughout Long Island. CAWS claims
3 that if lead was found in schools, it must also be in our homes.

4 There are strict laws regarding lead paint in our homes, but ironically, tens of thousands of
5 NYAW customers are getting their water from lead pipes and no one even knows about it.

6 CAWS is concerned with the number of homes in NYAW's Long Island districts
7 that not only have company-owned lead pipes, but customer-owned lead pipes as well. We
8 are concerned with the manner in which NYAW tests homes for lead and the small number

9 **Q. 16 Is this the end of your testimony?**

10

11 A. Yes, except to oppose the timeline for submission of direct testimony since I
12 have not yet had a chance to review the comments from municipalities, water authorities
13 and districts that will be submitted by December 31, 2020.

14

15

16