

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of the Continued Operation of the Battisti Water
Supply Corporation

Case 19-W-0546

**VERIFIED PETITION OF LIBERTY UTILITIES (NEW YORK WATER) CORP.
TO TERMINATE APPOINTMENT AS TEMPORARY OPERATOR
OF THE BATTISTI WATER SUPPLY CORPORATION**

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Dated: January 25, 2024

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I. INTRODUCTION

Liberty Utilities (New York Water) Corp. (Liberty NYW) respectfully submits this verified petition (the Petition) to the New York State Public Service Commission (the Commission) for an order (1) terminating Liberty NYW’s prior appointment as temporary operator of the Battisti Water Supply Corporation (Battisti) pursuant to New York State Public Service Law (PSL) § 112-a, and (2) authorizing Liberty NYW to recover the necessary and reasonable costs it incurred to operate and maintain the Battisti system over the past four years and related expenses.

Battisti is a small water-works corporation that provided water service to approximately 53 customers in the Town of Schodack (Town) in Rensselaer County, New York. In September 2019, the Commission appointed Liberty NYW as temporary operator of Battisti on an emergency basis pursuant to PSL § 112-a because Battisti’s owner was no longer capable of operating the system due to his age and failing health.¹ At that time, the Commission noted “the Town was intent on completing the process of forming a water district” to serve Battisti’s customers but “due to the

¹ Case 19-W-0546, *In the Matter of the Continued Operation of the Battisti Water Supply Corp.*, Order Appointing Temporary Operator on an Emergency Basis (issued Sept. 19, 2019) (Temporary Operator Order). At the time of the Temporary Operator Order, Liberty NYW was known as “New York American Water Company, Inc.” (NYAW). On January 4, 2022, NYAW changed its name to Liberty NYW. To avoid confusion, the company is referred to throughout this Petition as “Liberty NYW” (including when describing events that occurred when the company was known as NYAW).

funding cycle for possible grants, and the need for the Battisti ratepayers to vote for the formation of the water district, it could take up to two years before [the Town] could begin providing water to Battisti's customers."²

Liberty NYW has been serving as the temporary operator of Battisti since late 2019, including performing necessary repairs and maintenance on Battisti's severely deteriorated water distribution system. Consistent with the Temporary Operator Order, Liberty NYW tracked and deferred on its books, in a separate profit center, the difference between Battisti's revenues and what Liberty NYW spent on operation and maintenance of Battisti's system.³

The Town has now completed expansion of its municipal water system by establishing Battisti Water District No. 10 (Water District No. 10) to serve all Battisti's former customers, including construction of all necessary distribution infrastructure. Water District No. 10, whose infrastructure was installed in parallel to Battisti's infrastructure, has been providing service to all Battisti's former customers since November 2023. As a result, Battisti now has no customers.

Consequently, Liberty NYW respectfully requests that the Commission issue an order (1) terminating Liberty NYW's appointment as temporary operator of Battisti, and (2) authorizing Liberty NYW to recover the deferred costs with carrying charges that it incurred in operating Battisti for the past four years in a manner as directed by the Commission (*e.g.*, a one-time or re-occurring surcharge, or continued deferral as a regulatory asset with additive carrying charges until Liberty NYW's next general rate case).

² Temporary Operator Order at 5.

³ *See id.* at 9, 11.

II. COMMUNICATIONS

The following persons should be included on the official service list in this proceeding, and all communications concerning this filing should be addressed to them:

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III. PETITIONER LIBERTY UTILITIES (NEW YORK WATER) CORP.

Liberty NYW is a water-works corporation that owns or operates 21 separate water systems and one waste-water system in eight counties throughout New York State. Liberty NYW serves approximately 375,000 people, comprised of approximately 127,155 customer connections in more than 55 municipalities. Although most of Liberty NYW's customers are in Nassau County, it also serves customers in Westchester, Putnam, Orange, Dutchess, Ulster, Sullivan, Washington, and, until Battisti's last customer was moved to Water District No. 10, Rensselaer Counties.

IV. RELEVANT PROCEDURAL AND FACTUAL BACKGROUND

A. The Commission Appoints Liberty NYW as Temporary Operator of Battisti in September 2019

Battisti is a water-works corporation that formerly served 51 residential customers (in the Villa Estates subdivision) and 2 commercial customers in the Town.⁴ Battisti never provided fire protection service.⁵

⁴ *Id.* at 2.

⁵ *Id.*

In January 2017, Battisti’s owner, Robert L. Keller, informed the New York State Department of Health of his desire to abandon the Battisti system.⁶ Later that month, staff of the Department of Public Service (Staff) sent a letter to Battisti’s attorney that (1) stated the system could not be abandoned without Commission authorization, and (2) outlined alternatives to Mr. Keller’s operation of the system.⁷

In August 2017, Mr. Keller sent a letter to Battisti’s customers stating that he had operated the company for more than 40 years but could no longer do so because of his age and failing health.⁸ In September 2017, the Town held an information meeting with Battisti’s customers to discuss several options, including “the legal process for the Town to extend its water district and upgrade the [Battisti] system to current standards in order to better serve the customers.”⁹

Thereafter, in late 2017 and throughout 2018, Staff had discussions with Mr. Keller regarding his desire to transfer Battisti to another owner, and with the Town regarding the process it would need to follow under the New York State Town Law before it could begin providing service via a new municipal water district.¹⁰ It was during this time that Staff first raised to Liberty NYW the possibility of Liberty NYW becoming temporary operator of Battisti if necessary.¹¹

In June 2019, Mr. Keller sent a letter to Battisti’s customers stating that his operator’s license would expire soon, and that he would soon step down as operator of the system due to deteriorating health.”¹² The next month, Staff met with the Town and representatives of Rensselaer

⁶ *Id.* at 3.

⁷ *Id.* at 3-4.

⁸ *Id.* at 4.

⁹ *Id.* at 4-5.

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² *Id.* at 1.

County about the situation.¹³ While the Town stated that it was “intent on completing the process of forming a water district,” the Town also stated that it was unable at that time to “assume operation of the system through either a water district or being appointed temporary operator.”¹⁴ “The Town stated that due to the funding cycle for possible grants, and the need for the Battisti ratepayers to vote for the formation of the water district, it could take up to two years before it could begin providing water to Battisti’s customers.”¹⁵

In August 2019, during a meeting with Staff, the Town, and Rensselaer County, “Mr. Keller stated that his age and failing health made it impossible for him to continue operating the [Battisti] system.”¹⁶ On September 19, 2019, the Commission issued the Temporary Operator Order pursuant to PSL § 112-a. The Commission stated that “while it appears that a municipal water district would provide a long-term solution to the Battisti ratepayers’ long-term water needs, the Commission must ensure that they continue to be provided with safe and adequate drinking water until that time.”¹⁷ The Commission thus appointed Liberty NYW as temporary operator of Battisti on an emergency basis. Liberty NYW had, “through talks with Staff, indicated its willingness to operate the [Battisti] system to ensure that ratepayers continue to receive service.”¹⁸ The Commission also noted that Liberty NYW had “demonstrated its technical and managerial experience through successful operation of numerous water systems throughout New York State,” including several small water utilities, and was thus “familiar with the needs of such systems.”¹⁹

¹³ *Id.* at 5.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 8.

¹⁹ *Id.*

In appointing Liberty NYW as temporary operator of Battisti, the Commission recognized that Liberty NYW may need to make expenditures to repair or maintain the Battisti system that “exceed [Battisti’s] current annual revenues.”²⁰ The Commission thus authorized Liberty NYW “to track and defer the difference between Battisti’s revenues and what Liberty NYW “spends on necessary and reasonable operation and maintenance expenses to maintain [Battisti’s] water system.”²¹ The Commission held that Liberty NYW’s “deferred costs, subject to Staff review, will be recovered from ratepayers in a manner to be determined by the Commission.”²²

B. The Town Establishes Water District No. 10 and Begins Providing Service to All Battisti’s Former Customers

In March 2020, Laberge Group Ltd. issued a map and engineering plan/report to the town board of the Town (Town Board) regarding establishment of Water District No. 10.

On November 17, 2021, the Town Board received approval from the New York State Comptroller to create Water District No. 10. On December 9, 2021, the Town Board resolved and determined to establish Water District No. 10.

On February 8, 2023, the Town filed a letter in Case 19-W-0546 that updated the Commission and Staff on the Town’s progress in establishing Water District No. 10:

The Town of Schodack has been planning a new water district in the service area of the Battisti, given the antiquated and sub-standard condition of the water distribution system. Laberge Group of Albany, NY, has been engaged to develop the plans and specifications, as well as administer the construction contract. The Town Board had resolved to create and fund Water District No. 10 (the “District”), and has recently authorized the bidding of the work to build the District’s water distribution system. Bids are due on Thursday March 2, 2023. The District’s Construction Documents are also going through permit review by involved agencies. At such time as the reviewing agencies are satisfied, it is the Town’s intention to proceed toward construction.²³

²⁰ *Id.* at 9.

²¹ *Id.*

²² *Id.*

²³ Case 19-W-0546, *supra*, Update on System and Operation (filed Feb. 8, 2023).

In or about September 2023, the Town completed construction of the distribution infrastructure for Water District No. 10 (*i.e.*, new mains, service lines, and meters), which runs in parallel to Battisti’s system.

Water District No. 10 has been providing service to all Battisti’s former customers since November 2023. As a result, Battisti is no longer providing water to anyone and has no customers, rendering its infrastructure inactive.²⁴

V. THE COMMISSION SHOULD TERMINATE LIBERTY NYW’S APPOINTMENT AS TEMPORARY OPERATOR OF BATTISTI BECAUSE BATTISTI NO LONGER HAS ANY CUSTOMERS

“PSL § 112-a authorizes the Commission to appoint a temporary operator for a small water company” such as Battisti “when the Commission determines that the water company exhibits either a failure to provide safe, adequate, or reliable service; a lack of technical, financial, or managerial capacity or ability to provide the service; or actual or effective abandonment of any service or portion thereof.”²⁵ Ultimately, the purpose of appointing a temporary operator is to ensure continued provision of safe and adequate service to a water company’s customers.²⁶

²⁴ Mr. Keller died in October 2022. Battisti is now owned by his estate.

²⁵ Temporary Operator Order at 7.

²⁶ Case 18-W-0128, *Petition of Willsboro Bay Water Co. to Abandon its Seasonal Water System*, Order Denying Abandonment Without Prejudice and Appointing a Temporary Operator (issued April 26, 2018), at 2 (“The Town’s appointment as the temporary operator of the Willsboro Bay system serves the public interest because it will assist in the continuation of water service to the Company’s customers.”); Case 16-W-0415, *In the Matter to Authorize Arbor Hills Waterworks, Inc. to Use Escrow Funds for Emergency Repairs*, Order Appointing Temporary Operator (issued March 9, 2017), at 2 (“Accordingly, in order to protect Arbor Hills customers the Commission is exercising authority pursuant to [PSL] § 112-a to appoint [NYAW] to act as temporary operator of Arbor Hills.”); Case 14-W-0007, *Petition of Scott Acres Water Users Association, Inc. for Temporary Operator of the Scott Acres Water Co., Inc.*, Order Appointing a Temporary Operator and Approving a Rate Increase (issued Aug. 15, 2014), at 2 (“The Association’s appointment as the temporary operator of the Scott Acres system serves the public interest because it will assist in the provision of safe and adequate water service to Scott Acres customers.”).

The Commission appointed Liberty NYW as temporary operator of Battisti in September 2019 because Mr. Keller was unable to continue operating the company, and the Town was unable at that time to either operate Battisti or provide water service to Battisti's customers.²⁷ As temporary operator for the past four years, Liberty NYW has ensured that Battisti's customers continued to receive safe and adequate service. However, the Town's Water District No. 10 has been providing service to all Battisti's former customers since November 2023. It is thus no longer necessary for Liberty NYW to temporarily operate Battisti to ensure safe and adequate water service to Battisti's customers because Battisti no longer has any customers.²⁸ Consequently, the Commission should terminate Liberty NYW's appointment as temporary operator of Battisti.

VI. THE COMMISSION SHOULD AUTHORIZE LIBERTY NYW TO RECOVER THE DEFERRED COSTS THAT LIBERTY NYW INCURRED IN OPERATING BATTISTI FOR THE PAST FOUR YEARS

The Commission authorized Liberty NYW to track and defer "the difference between [Battisti's] revenues and what [Liberty NYW] spends on necessary and reasonable operation and maintenance expenses to maintain [Battisti's] water system."²⁹ The Commission held that Liberty NYW would recover those "deferred costs, subject to Staff review ... in a manner to be determined by the Commission."³⁰

Since being appointed as the temporary operator of Battisti, Liberty NYW tracked and deferred on its books, in a separate profit center, the difference between Battisti's revenues and

²⁷ Temporary Operator Order at 5, 7-10.

²⁸ Liberty NYW has taken necessary steps to render Battisti's infrastructure dormant, including removing all water treatment chemicals from Battisti's storage tanks, shutting down the water pumps and wells, and terminating electrical service. As a result, no water is flowing through Battisti's infrastructure/distribution system. Any further disposition or decommissioning of Battisti's dormant infrastructure is the responsibility of Mr. Keller's estate.

²⁹ Temporary Operator Order at 9.

³⁰ *Id.*

what Liberty NYW spent on operation and maintenance of Battisti’s system. As detailed in Table 1, below, from September 2019 through January 15, 2024, Battisti collected \$34,583 in revenue, and Liberty NYW spent \$358,045 on necessary and reasonable expenses to operate and maintain the Battisti system. Liberty NYW tracked and deferred the \$323,462 cost difference in Account 186 (Miscellaneous Deferred Debits).

Table 1: Battisti – Revenues, Expenses, Net Deferred Balance (2019-2024)							
	2019	2020	2021	2022	2023	2024	<u>TOTAL</u>
Revenues Collected	-	\$6,002	\$8,502	\$10,146	\$9,916	-	\$34,583
Expenses							
Labor	-	-	-	\$3,676	\$31,380	-	\$35,056
Materials & Supplies	-	\$818	-	-	-	-	\$818
Outside Services (Contract Services)	\$4,450	\$68,913	\$64,745	\$35,141	\$11,290	\$9,180	\$193,719
Outside Services (Engineering)	-	\$48,245	(-\$161)	\$2,800	\$3,293	-	\$54,177
Outside Services (Leak Detection and Repair)	-	-	\$1,759	\$22,391	\$18,460	-	\$42,611
Other Operating Expenses	-	-	(-\$536)	\$6,450	\$9,585	-	\$15,499
Property Taxes	-	-	-	-	\$615	-	\$615
Utilities	-	-	\$3,025	\$7,560	\$4,915	\$50	\$15,550
<u>Total Expenses</u>	\$4,450	\$117,976	\$68,833	\$78,019	\$79,538	\$9,230	\$358,045
<u>Net Deferred Balance</u>	\$4,450	\$111,974	\$60,314	\$67,873	\$69,622	\$9,230	\$323,462

In addition to the operations and maintenance expenses detailed in Table 1, Liberty NYW has incurred (and will continue to incur) legal costs associated with the filing of this Petition. After consulting with Staff regarding any possible additional filing or discovery requirements, Liberty

NYW will file a supplement to this Petition quantifying its legal costs and requesting their recovery.

Based on the foregoing, the Commission should authorize Liberty NYW to recover (1) the \$323,462 difference between Battisti's revenues over the past four year and what Liberty NYW spent during that time on necessary and reasonable costs to operate and maintain the Battisti system, (2) carrying charges on those costs of \$43,229 (calculated using the Commission's 2024 Other Customer Capital Rate of 5.95%),³¹ and (3) Liberty NYW's legal costs associated with this Petition.³² As noted, the Commission previously stated that it would determine the manner in which Liberty NYW would recover those deferred costs – which could be via, for example, a one-time or re-occurring surcharge, or continued deferral as a regulatory asset with carrying charges until Liberty NYW's next general rate case.³³

VII. ENVIRONMENTAL REVIEW

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7), the Commission must determine whether its action in this proceeding may have a significant impact on the environment.³⁴ The termination of Liberty NYW's appointment as temporary operator of Battisti does not meet the definition of either Type I or Type II actions

³¹ See Case 23-M-0461, *Customer Deposits Interest Rates Effective January 1, 2024*, Customer Deposits Interest Rates Letter (issued Nov. 16, 2023).

³² In light of the unique circumstances involved in this matter, Liberty NYW is not seeking a return on the investments it made in Battisti's system since 2019. Nevertheless, given the well-recognized constitutional principle that utilities must be afforded an opportunity to earn a return on the investment of capital assets employed to provide safe and adequate service (*see Abrams v Public Serv. Commn.*, 67 NY2d 205 [1986]), Liberty NYW may seek a return on its investments in other small systems in other Commission dockets.

³³ See Temporary Operator Order at 9.

³⁴ See 6 NYCRR § 617.3; *see also* 16 NYCRR Part 7.

and, therefore, is appropriately classified as an “unlisted” action.³⁵ Accordingly, the Commission, as lead agency, should conduct an environmental assessment and determine the significance of the action proposed.³⁶

To facilitate the Commission’s assessment, and in satisfaction of 6 NYCRR § 617.6 (a) (3), Liberty NYW has completed a Short Environmental Assessment Form (SEAF) disclosing the potential environmental impacts, if any, of terminating Liberty NYW’s appointment as temporary operator of Battisti. The SEAF is attached to this Petition as Exhibit A. As outlined in the SEAF, terminating Liberty NYW’s appointment as temporary operator of Battisti will not result in any potentially significant adverse environmental impacts based on the criteria for determining significance listed in 6 NYCRR § 617.7 (c). Thus, the Commission should adopt a negative declaration pursuant to SEQRA.

VIII. NEW YORK STATE ADMINISTRATIVE PROCEDURE ACT

Pursuant to Section 202 of the State Administrative Procedure Act (SAPA), the Commission’s termination of Liberty NYW’s appointment as temporary operator of Battisti is a rulemaking activity requiring that notice be published in the New York *State Register* allowing 60 days for public comment.³⁷ To that end, a draft form of notification suitable for publication in the New York *State Register* pursuant to SAPA is appended hereto as Exhibit B, as required by 16 NYCRR § 3.5 (i).

³⁵ See 16 NYCRR § 7.2; 6 NYCRR §§ 617.2 (al), 617.4, and 617.5.

³⁶ Since no additional state or local permits or approvals are required to terminate Liberty NYW’s appointment as temporary operator of Battisti, a coordinated review under SEQRA is not needed.

³⁷ See SAPA § 202 (1) (a); Case 19-W-0546, *supra*, Order Adopting Emergency Action on a Permanent Basis (issued Dec. 16, 2019), at 1-2; Temporary Operator Order at 4.

IX. CONCLUSION

For the foregoing reasons, Liberty NYW respectfully requests that the Commission issue an order (1) terminating Liberty NYW's appointment as temporary operator of Battisti pursuant to PSL § 112-a, and (2) authorizing Liberty NYW to recover the deferred costs with carrying charges that it incurred in operating Battisti for the past four years (plus legal costs associated with this Petition) in a manner determined by the Commission.

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*Attorneys for Liberty Utilities (New York
Water) Corp.*

Dated: January 25, 2024
Albany, New York

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VERIFICATION

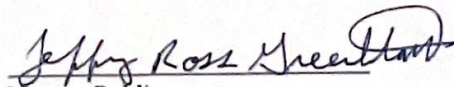
STATE OF NEW YORK)
) ss:
COUNTY OF NASSAU)

DEBORAH FRANCO, being duly sworn, deposes and states as follows:

1. I am the President of Liberty Utilities (New York Water) Corp. (Liberty NYW), which submits the foregoing verified petition to terminate its appointment as temporary operator of Battisti Water Supply Corporation (Petition).
2. I am authorized to sign this verification on behalf of Liberty NYW.
3. I have reviewed the foregoing Petition and the statements of fact contained therein, all of which are true and correct to the best of my knowledge, information, and belief.



Sworn to and subscribed before me
this 25th day of January 2024


Notary Public

JEFFREY ROSS GREENBLATT
NOTARY PUBLIC-STATE OF NEW YORK
No. 02GR6328083
Qualified in Nassau County
My Commission Expires July 27, 2027

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LIST OF EXHIBITS

Exhibit A – Short Environmental Assessment Form

Exhibit B – State Administrative Procedure Act Notice