

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.

RULING ON PARTY STATUS AND SCHEDULE

(Issued June 30, 2023)

LINDSEY N. OVERTON and DAKIN D. LEACAKES,
Administrative Law Judges:

A procedural conference was held in this proceeding on June 20, 2023, to address a variety of matters, including requests for party status and the litigation schedule. The conference was attended by representatives of Liberty Utilities (New York Water) Corp. (Liberty or the Company), the Department of Public Service trial staff (DPS Staff) and LI Clean Air Water and Soil, the only entity to request party status in advance of the conference.¹

At the conference, no participant raised any opposition to the pending party status request by LI Clean Air Water and Soil. By this ruling, we are granting LI Clean Air Water and Soil party status because we find that its intervention as a party is likely to contribute to the development of a complete record in this case. Any future requests for party status will be treated as motions.² All parties seeking party status will be provisionally added to the party list. If no objection is raised by a party or by us

¹ Liberty and DPS Staff are entitled to party status in this case pursuant to 16 NYCRR §4.3(b)(1).

² This includes the party status request made by the Public Utility Law Project on June 28, 2023.

within the requisite time, party status is deemed to be conferred on that person/entity.

At the conference, counsel for Liberty offered the following proposed litigation schedule, consistent with a typical 11-month review period in a rate proceeding: DPS Staff and Intervenor Pre-filed Testimony/Exhibits due on September 7, 2023; Rebuttal Testimony/Exhibits due on October 5, 2023; and Commencement of Evidentiary Hearing on October 23, 2023. In response, counsel for DPS Staff explained that it had been in discussions with Liberty in an attempt to secure a one-month extension of the 11-month suspension period with no corresponding "make-whole" provision³ due to perceived deficiencies in the Company's initial filing and the resulting delay in obtaining necessary information for DPS Staff's analysis of the rate filing, but that Liberty had not agreed to such a non-compensatory extension. Staff requested that we take its concerns regarding deficiencies in the filing into account when making our schedule. Counsel for Liberty noted that the Company was willing to provide Staff with additional time to review the filing and offered an alternative extended schedule as follows: DPS Staff and Intervenor Pre-filed Testimony/Exhibits due on September 28, 2023; Rebuttal Testimony/Exhibits due on October 26, 2023; and Commencement of Evidentiary Hearing on November 13, 2023.

With respect to the alleged deficiencies, counsel for DPS Staff stated that the Company filed its operating and maintenance expenses on a multiple category basis as opposed to further subdividing the expenses by element of cost, as required in the Commission's Statement of Policy on Test Periods in Major

³ Pursuant to a "make whole" provision, the Company would be permitted to recover or refund any under-collections or over-collections in sales revenue resulting from the extended suspension period.

Rate Proceedings.⁴ DPS Staff ultimately obtained this information through discovery approximately one month after the initial filing, which, explained its counsel, delayed DPS Staff's analysis of these expenses. Additionally, counsel for DPS Staff stated that the initial filing lacked the requisite normalizing adjustment to the historic test year period and a verifiable link between the historic test year and forecasted rate year. Counsel for Liberty denied any deficiencies with respect to the initial filing but acknowledged that the Company provided DPS Staff with the operating and maintenance expenses by element of cost in a timely discovery response approximately one month after its initial filing.

During the conference, counsel for DPS Staff indicated that Liberty's initial proposed schedule based on an 11-month suspension period was acceptable should we decline to grant the requested one-month extension of the suspension period. Based on the record before us and absent any formal motion by DPS Staff to extend the suspension period in this proceeding, or alternatively any consent of the Company, we adopt Liberty's proposed schedule based on an 11-month suspension period to meet the Public Service Law's requirements that the matter be concluded within the suspension time period applicable to major rate filings. To do otherwise creates an untenable schedule for our review and a risk to ratepayers. The following schedule is hereby adopted:

⁴ Case 26821, Statement of Policy on Test Periods in Major Rate Proceedings (issued December 12, 1979).

Milestone	Date
Filing of DPS Staff and Intervenor Direct Testimony and Exhibits	September 7, 2023
Filing of Rebuttal Testimony and Exhibits	October 5, 2023
Commencement of Evidentiary Hearing ⁵	October 23, 2023

(Signed)

LINDSEY N. OVERTON

(Signed)

DAKIN D. LECAKES

⁵ The evidentiary hearing will be separately noticed.