

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 20, 2017

COMMISSIONERS PRESENT:

Gregg C. Sayre, Interim Chairman
Diane X. Burman

CASE 16-W-0284 - Joint Petition of New York American Water
Company, Inc. and Beaver Dam Lake Water
Corporation for an Agreement of Sale.

ORDER APPROVING SALE OF ASSETS

(Issued and Effective April 21, 2017)

BY THE COMMISSION:

INTRODUCTION

On May 11, 2016, Beaver Dam Lake Water Corp. (Beaver Dam or the Company) and New York American Water Company, Inc. (NYAW) (collectively, Petitioners), filed a Joint Petition for the sale of all assets of Beaver Dam to NYAW. Under Public Service Law (PSL) §89-h(1), a water-works corporation may not transfer or lease its franchise, works, or system without Commission authorization, and PSL §89-h(5) requires that the Commission determine that the transfer is in the public interest. Beaver Dam is a lightly regulated water utility owned by all its customers, and, according to Beaver Dam, is operated on a "break even basis". Given the small service area and customer base, attracting capital necessary for infrastructure investment can be difficult, and, according to Beaver Dam, there is a need for extensive repairs and upgrades throughout the system. According to the Company, the continued cost and

difficulty in properly operating its system and meeting all regulatory standards is the primary motivation for it to sell the system to NYAW.

By this Order, the Commission finds that the transfer is in the public interest as NYAW possesses the necessary financial, managerial, and technical resources to operate the Beaver Dam system at just and reasonable rates. Therefore, the petition is granted, as discussed below.

BACKGROUND

NYAW is a New York Corporation which is a wholly owned subsidiary of American Water Company, Inc. NYAW serves approximately 124,300 customers in Nassau, Putnam, Sullivan, Ulster, Washington, and Westchester counties. Beaver Dam is a small, lightly regulated water utility owned by all its users. Metered water service is provided to 155 homes in the Towns of New Windsor and Cornwall, Orange County. Beaver Dam draws its water from three wells located at 43 Willow Ave., 9 Beech Dr., and 557 Shore Dr. in New Windsor. The water is filtered via membranes, treated using sodium hypochlorite for disinfection, and is then conveyed to a storage tank for distribution.

Beaver Dam was granted an exception from the rate setting provisions of PSL §89-c(10)¹ and generally operates as a homeowners association. The Commission did, however, establish a Drinking Water State Revolving Fund Surcharge in 2007² and later modified the surcharge in 2015.³ The surcharge was

¹ Case 07-W-0324, Beaver Dam Lake Water Corp., Order Allowing Annual Revenue Increase (issued June 26, 2007).

² Case 06-W-1561, Beaver Dam Lake Water Corp., Order Authorizing Financing and Surcharge (issued July 26, 2007).

³ Case 14-W-0459, Beaver Dam Lake Water Corp., Order Authorizing the Modification and Extension of the Current EFC Surcharge (issued January 9, 2015).

established to allow Beaver Dam to repay a New York State (NYS) Environmental Facilities Corporation (EFC) loan with an initial principal amount of \$1,842,900. Beaver Dam requested the loan to fund a new well, replace meters, install a generator, install new pumps, and replace a portion of the distribution system.

The Petitioners state that the EFC will not authorize the transfer of the loan from Beaver Dam to NYAW, and so, upon close of the proposed sale, NYAW would pay the remaining principal on the EFC loan and NYAW has proposed implementing a new surcharge to allow it to recoup the EFC loan balance. NYAW would, therefore, cancel Beaver Dam's existing surcharge statement and file a new surcharge statement. As NYAW will not assume control of the EFC loan, NYAW will use its capital funds to pay for the necessary infrastructure, repairs, and maintenance. These capital investments include updates to existing meters and repairs to and relocation of sections of Beaver Dam's distribution system. The projected cost of these projects is \$1,035,000.

Included in the transfer of assets to NYAW are five parcels of land located in New Windsor, housing different system components.⁴ Additionally, three parcels of land previously owned by Beaver Dam have since been deeded to Orange County and easements were acquired by Beaver Dam for Parcel 4, located at 557 Shore Dr., providing for the perpetual right to enter the property and maintain Well No. 3. These parcels and easements would be transferred to NYAW upon close of sale.

NYAW proposes to serve the customers of Beaver Dam under its P.S.C. No. 1 - Water (Lynbrook District) tariff; the

⁴ Parcel 1 (Reserve 3) at 525 Shore Dr., vacant; Parcel 2 at 329 Maple Ave, houses Water Filtration Plant; Parcel 3 at 9 Beech Dr. (Reserve 5), houses Pump House No. 2; Parcel 7 at 187 Sycamore Dr., vacant; and Parcel 8 at 43 Willow Ave, houses Pump House No. 1.

transfer would result in a rate decrease for the Company's customers while minimizing NYAW's operational expense through technical efficiencies. NYAW also proposes to cancel Beaver Dam's escrow account and to use any remaining funds in the account as a payment toward the remaining balance of the EFC Loan.

Additionally, NYAW requests waiver of 16 NYCRR §§543 and 561.2 and requests that the Commission authorize it to transfer Beaver Dam's books and records out of New York State to American Water Service Company's Shared Services Center, located in Cherry Hill, New Jersey.

Finally, NYAW has, in performing its due diligence before entering into the proposed transaction, incurred expenses related to environmental assessments and property title reviews. The current estimate of these expenses is \$18,084, although final costs will not be known until after acquisition. NYAW requests to defer and recover these expenses in future rates.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on June 8, 2016 [SAPA No. 16-W-0284SP1]. In addition, in response to requests made by the Town of Cornwall and State Assemblyman James Skoufis, a notice soliciting comments until September 8, 2016 was issued by the Secretary.⁵ Comments were received from a number of local residents (customers of the Company, those living in the service area but on private wells, and one living outside the service area) and Assemblyman Skoufis.

⁵ Case 16-W-0284, Beaver Dam Lake Water Corp., Notice Regarding Submission of Comments (issued June 27, 2016).

Comments

Assemblyman Skoufis submitted comments raising some concerns about the transfer and requesting an extension of the period for public comment; the request for extension was granted as discussed above. The other concerns raised by the Assemblyman included the fate of parcels of land owned by Beaver Dam which are public property and grant access to Beaver Dam Lake; the fate of the EFC loan, its surcharge, and the impact to bills; and finally a concern that homeowners using private wells would be forced to take water service from NYAW.

County Attorney Joseph Maloney and the District Board of Orange County - Beaver Dam Lake Protection and Rehabilitation District both submitted comments which further detailed the parcels of land that are owned by Beaver Dam but are open for public access. These comments also requested the Commission protect the rights and interests of all the Beaver Dam Lake residents, not just those served by the water system, by not taking away access to these properties and the lake.

Nine comments were received from residents surrounding Beaver Dam Lake, eight of them customers of Beaver Dam. All but one customer commented that the transfer would provide benefits to the system and improve the quality of service and the technical and financial resources of NYAW were referenced as being beneficial to the system and its customers. Several customers voiced concerns regarding the work required on the water system and the potential impacts on their water bills.

The greatest concern raised by both customers of Beaver Dam and non-customer residents was the fate of the public access to the lake itself and the vacant and partially developed parcels of lakefront property, located in New Windsor, which are included in the proposed sale.

SEQRA REVIEW

Under the State Environmental Quality Review Act (SEQRA), article 8 of the Environmental Conservation Law, and its implementing regulations, (6 NYCRR §617 and 16 NYCRR §7), all state agencies must determine whether the actions they are requested to approve may have a significant impact on the environment. Other than the Commission's approval of the action proposed here (the approval of transfer of water assets of a private water company known as Beaver Dam Lake Water Corp.), no additional state or local permits are required, so a coordinated review under SEQRA is not needed. The Commission, therefore, assumed Lead Agency Status under SEQRA to conduct the Environmental Assessment.

Consistent with SEQRA (6 NYCRR §617.6(a) (3)), the Petitioners submitted a completed Part 1 of the Short Form Environmental Assessment Form (EAF) (6 NYCRR §617.20) describing the likely impacts of the proposed action. The proposed transfer of assets does not satisfy the definition of either Type 1 or Type 2 actions contained in 6 NYCRR §§617.4 and 617.5 or 16 NYCRR §7.2, so it is classified as an Unlisted Action for SEQRA review. After review of the EAF and Petition, it was found, based on criteria listed in 6 NYCRR §617.7 (c) that there are no plans to change the physical operations of the system and the infrastructure improvements are largely constrained to existing structures and developments. As a result, there will be no changes to the operation of the existing facilities or infrastructure that will result in significant adverse environmental impacts. Therefore, the Commission adopted a negative declaration pursuant to SEQRA; a Notice of Determination of Significance for this unlisted action is attached. The short-form EAF Parts 2 and 3 have been completed and will be retained in the Commission's files.

DISCUSSION

In considering a petition under PSL §89-h, the Commission's first priority is to protect the interests of the customers. It is therefore the Commission's responsibility to ensure that the new owner will be able to provide safe and adequate service at just and reasonable rates. NYAW has demonstrated its technical and managerial experience through successful operation of numerous water systems throughout New York State, providing service to over 124,000 customers. In addition, NYAW has the resources and financial stability to properly and safely support these operations. This capability and dedication to the public interest is demonstrated by NYAW's investment of nearly \$95 million over the previous three years into its various water systems. The financial and managerial resources at NYAW's disposal, when applied to the Beaver Dam system, will enable safe, reliable service to the customers of Beaver Dam, at reasonable rates.

Consideration was also given to both the reasonableness of the purchase price and the impacts on rates. NYAW has offered to pay \$10,000 to acquire Beaver Dam, which reflects the seller's costs of closing and other associated fees. NYAW will list this purchase price as a miscellaneous expense in its records. As a consequence, there will be no premium within the purchase price, and thus no goodwill will be generated by the transaction.

NYAW's proposal to transfer Beaver Dam's customers to its P.S.C. No. 1 - Water (Lynbrook District) will have positive impacts on the bills of Beaver Dam's customers. Using an assumption of 3,000 gallons of water consumption per month (a liberal estimate based on sample bills provided in response to Department of Public Service Staff (Staff) Interrogatory BD DPS-1), a current bill for a Beaver Dam customer would be

approximately \$73 per month in base rates, plus an EFC surcharge of approximately \$36 per month. Under NYAW's Lynbrook District rates, a Beaver Dam customer's monthly bill (with 3,000 gallons of consumption) would be approximately \$22. As the EFC Loan will be paid off in full by NYAW, and the escrow account balance would be used to reduce the total remaining principal, NYAW would apply a new surcharge, which will be determined after the actual repayment of the remaining EFC loan balance by NYAW. The new surcharge is estimated by NYAW to be approximately \$60 per month per customer. The \$60 monthly surcharge is based on Beaver Dam's remaining EFC loan of approximately \$900,000 amortized over a 10-year period at a 4.39% interest rate. The shortened term, while increasing monthly payments, will result in significant total savings through nearly a 50 percent reduction in interest expense. Although the monthly surcharge increased from \$36 to \$60, under NYAW's Lynbrook District rates, a Beaver Dam customer's monthly total bill would decrease from \$109 to \$83. This results in monthly savings of \$26 per customer or a 24% reduction in monthly bills. The calculation of the surcharge and the proposed bill impacts are shown below in Figure 1 - Current and Proposed Bills.

Figure 1 - Current and Proposed Bills

Current Lynbrook District	Comment		
\$10.44	Meter Charge	Principal	\$900,000.00
\$11.69	3 TG @ \$3.8974/TG	Term	10
\$60.26	Proposed EFC Surcharge	Interest Rate	4.39%
\$82.39	Avg. Monthly Bill	Payments/Yr	12
		Payment	\$9,279.81
Beaver Dam Current Rates		Per Cust/Month	\$60.26
\$6.67	Meter Charge		
\$66.00	3 TG @ \$22.00/TG		
\$36.44	EFC Surcharge		
\$109.11	Avg. Monthly Bill		

Also considered in review of the petition was the response of NYAW to public comments regarding the parcels of land being transferred and public lake access. To address these concerns, NYAW, in conjunction with the Orange County Department of Public Works (DPW), has proposed an agreement in which the DPW would assume ownership of the property adjacent to the lake at Reserve 3 and Reserve 5 and NYAW would retain the necessary easements on the parcels for operation of water utility property. The contract is pending, as NYAW and the DPW cannot finalize the agreement until the parcels are deeded to NYAW by Beaver Dam. This would allow NYAW access to maintain and operate system components currently located on these parcels, which includes retaining the right to: stage equipment and material on the properties, along with storage on a temporary basis; erect permanent, locked buildings and fencing around the system components as recommended by the NYS Department of Health and NYS Office of Homeland Security; and, finally, survey the parcels for a potential additional well location along with the right to install, operate, and maintain this well should such a site be identified. The agreement will give NYAW the easement rights and access necessary to properly operate the system while maintaining the current rights and interests of the Beaver Dam Lake residents. In addition, in response to customers' concerns, NYAW does not possess authority to "force" or require residents with private wells located in its service territory to take service from the water system.

A further consideration is the present and future needs of the water system. Currently, Beaver Dam is in need of updates and repairs throughout its system. NYAW plans to utilize the main replacement program devised by Beaver Dam which would replace and relocate problem mains and lines within its service area. NYAW also proposed a plan to update the water

system's outdated meters to be compatible with the Automatic Meter Reading equipment used by NYAW. These repairs, combined with other system upgrades, would improve the quality of service and streamline the provision of service for all Beaver Dam customers. These capital investments have an estimated cost of \$1,035,000, which NYAW has proposed funding through its own capital budget. Once completed, these projects would be considered plant additions of NYAW and would be placed into NYAW's rate base in its next filing for revenue requirement relief.

The Commission commends NYAW for its acquisition of the Beaver Dam system and its efforts to provide safe and reliable service at just and reasonable rates while protecting the interests of the greater public. In recognition of this effort, and to protect NYAW from financial harm which could dissuade NYAW from future acquisitions, the Commission authorizes NYAW to defer the acquisition costs, specifically those for property title review and environmental assessment costs, for future recovery in NYAW's next rate case.⁶ Furthermore, the Commission directs NYAW to annually file, with the Secretary to the Commission, a report detailing the capital improvements made to the Beaver Dam water system, and authorizes NYAW to defer the carrying charges on the capital investments it makes on this system for future recovery.

Access to Records

The Joint Petition seeks waiver of 16 NYCRR §§543 and 561.2 to allow the records of Beaver Dam to be stored outside of New York State. Such a waiver was granted in American Water's

⁶ Case 93-W-0962, Incentives for the Acquisition and Merger of Small Water Utilities, Statement of Policy on Acquisition Incentive Mechanisms for Small Water Companies (issued August 8, 1994), at 5.

acquisition of the Aqua Utilities⁷ and the Commission finds no reason why NYAW's request should not be granted. However, the requirements imposed on NYAW in the prior order are imposed here to ensure continued access by Staff. NYAW is required to provide the books and records and any supporting documentation (including, but not limited to: board of directors' minute books; stock books; reports; correspondence; memoranda; etc.), whether electronic or hard copy format, within two business days of Staff's request at a mutually convenient location within New York State or pay all costs reasonably incurred by Staff in examining records at NYAW's out of state location. NYAW shall also designate company personnel to assist Staff in interpreting and understanding its books and records.

Tariff Modifications

As a lightly regulated water system owned by a homeowner's association, Beaver Dam is authorized to set its own rates. Additionally, Beaver Dam applies a surcharge associated with the EFC loan as provided for in Drinking Water State Revolving Fund Surcharge Statement No. 2, which was set by the Commission, at \$109.33 per quarter. In 2014, the Commission authorized Beaver Dam to borrow funds from its escrow account to fund emergency repairs;⁸ these funds have since been returned to the account, though the escrow surcharge has been discontinued due to the financial burden on the customers. The \$23,271 remaining escrow account balance as of December 2016 shall be disbursed to NYAW for reducing the remaining balance of the EFC loan.

⁷ Case 14-W-0472, New York American Water Company Inc., Order Approving Stock Acquisition (issued April 20, 2012), at 17.

⁸ Case 14-W-0266, Beaver Dam Lake Water Corp., Order Authorizing Emergency transfer of Funds (issued July 24, 2014).

The Commission grants NYAW's request for authority to transfer Beaver Dam customers to its P.S.C. No. 1 - Water (Lynbrook District) tariff. NYAW is directed, therefore, to file revisions to P.S.C. No. 1 - Water, which shall reflect the addition of Beaver Dam customers to this tariff.

NYAW is also directed to file Drinking Water Surcharge Statement - No. 1 (SURC) containing the surcharge for recovery of the EFC loan balance. NYAW shall then cancel Beaver Dam's tariff schedule P.S.C. No. 4 - Water, Surcharge Statement - No. 2 (WSUR), and Escrow Account Statement No. 2 (ESCW). After the EFC Loan has been paid in full, as described above, NYAW shall file with Staff an update containing the final principal balance, proposed term, and updated, proposed surcharge calculation. Staff will then have 30 days to analyze and verify such data.

Customer Notice

The Commission directs NYAW to provide individual notice to the customers of Beaver Dam of its determination in this Order. In addition, NYAW shall file a copy of the customer notification letter with the Secretary to the Commission no later than six weeks after the effective date of the directed tariff revisions and amendments. The Commission, therefore, waives the statutory and regulatory requirements for newspaper publication as required by PSL §89-c(10) and 16 NYCRR §720-8.1.

CONCLUSION

Given Beaver Dam's limited financial resources and the repairs and investments needed throughout its system, the Joint Petition to transfer all water supply assets of Beaver Dam to NYAW is granted. The level of capital which NYAW is prepared to invest in the Beaver Dam system demonstrates that it has the financial strength and technical expertise needed to address the

Beaver Dam system's needs. The Commission, therefore, finds the transfer to be in the public interest and the joint petition, therefore, is approved as described in the body of this Order.

The Commission orders:

1. New York American Water Company, Inc. and Beaver Dam Lake Water Corp.'s joint petition for New York American Water Company, Inc. to purchase the assets of Beaver Dam Lake Water Corp. is approved.

2. Within 30 days of the date of closing, New York American Water Company, Inc. shall file with the Secretary to the Commission, documents showing the transfer of assets has occurred and all the corresponding journal entries related to recording the transaction on its books.

3. Within 30 days of the date of closing, New York American Water Company, Inc. is directed to file a cancellation supplement cancelling Beaver Dam Lake Water Corp.'s tariff schedule P.S.C. No. 4 - Water, Drinking Water State Revolving Fund Surcharge Statement No. 2, and Escrow Account Statement No. 2, effective on not less than one day's notice.

4. The requested waiver of 16 NYCRR §§543 and 561.2 is granted, consistent with the conditions listed in the body of this order.

5. Within 30 days of closing, New York American Water Company, Inc. is directed to file tariff revisions to P.S.C. No. 1 - Water to reflect the addition of Beaver Dam Lake Water Corp.'s customers, to become effective on not less than one day's.

6. New York American Water Company, Inc. is directed to file, within 30 days of closing of the asset transfer, Drinking Water Surcharge Statement No. 1 (SURC), in the form shown in Appendix A, to become effective on not less than one

day's notice. New York American Water Company Inc. is further directed to file, within 30 days of paying the Environmental Facilities Corporation loan, an update containing the final balance paid, proposed term of the updated surcharge, and a recalculated surcharge, as described in the body of this order.

7. The requirements of Public Service Law §89-c(10) and 16 NYCRR §720-8.1 for newspaper publication of the supplement directed in Clause No. 3, the Revisions directed in Clause No. 5, and the statement directed in Clause No. 6 are waived.

8. New York American Water Company, Inc. is directed to file with the Secretary to the Commission no later than six weeks following the effective date of these tariff amendments, a copy of the direct notification provided to the customers of Beaver Dam Lake Water Corp. notifying them of the Commission's decision and these tariff amendments.

9. New York American Water Company, Inc. is authorized to defer for future recovery the carrying charges associated with the capital investments made to the Beaver Dam Lake Water Corp. system.

10. New York American Water Company, Inc. is authorized to defer for future recovery the expenses associated with performing due diligence in regards to the acquisition of Beaver Dam Lake Water Corp, related to environmental assessments and property title reviews.

11. New York American Water Company, Inc. is directed to file, annually, with the Secretary to the Commission, reports on capital expenditures for the Beaver Dam Lake Water Corp. system.

12. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for

the extension, and must be filed at least one day prior to the affected deadline.

13. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 16-W-0284 - Joint Petition of New York American Water Company, Inc. and Beaver Dam Lake Water Corporation for an Agreement of Sale.

NOTICE OF DETERMINATION OF SIGNIFICANCE
(NEGATIVE DECLARATION)

This is a negative declaration of environmental significance for an unlisted action, in compliance with the State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law Article 8). New York American Water Company, Inc. requests Commission approval for the acquisition of all the assets of Beaver Dam Lake Water Corp. The Commission assumed the role of Lead Agency for the environmental review of the proposed action and determined it to be an Unlisted Action, as defined under 6 NYCRR §617.2 (ak). Review of the EAF Part 1 shows the presence of wetlands or other protected bodies of water as well as threatened or endangered species or an associated habitat. The Commission has determined, however, that approval of the acquisition would not result in any significant impact on the environment as structural and system improvements will be constrained to existing, residential developments and shall generate no significant change in use or other adverse environmental impact. As a result, an Environmental Impact statement will not be prepared in connection with the proposed transfer of the assets of Beaver Dam Lake Water Corp. to New York American Water Company, Inc.

The address of the Public Service Commission, the lead agency for purpose of the Environmental Quality Review of this project is Three Empire State Plaza, Albany, New York 12223-

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1350. Questions may directed to Joshua Gonyea at 518-408-1061,
Joshua.Gonyea@dps.ny.gov, or the address above.

KATHLEEN H. BURGESS
Secretary

PSC No. 1 - WATER

STATEMENT TYPE: SURC

COMPANY: NEW YORK AMERICAN WATER COMPANY, INC.

STATEMENT NO: 1

INITIAL EFFECTIVE DATE:

(Issued in compliance with Order in Case 16-W-0284 dated April 21, 2017)

DRINKING WATER SURCHARGE STATEMENT

New York American Water Company, Inc. is authorized to surcharge the bills of its Beaver Dam Lake water system customers in order to pay in full Beaver Dam Lake Water Corp.'s prior loan with the Environmental Facilities Corporation (EFC) in the amount \$2,020,503.

There are currently 154 active service taps in the Beaver Dam Lake water system, and the initial, monthly surcharge is estimated to be \$36.44 per service tap.

The calculation of the surcharge is shown below:

Annual funding required	\$67,350
Monthly surcharge per service tap	\$36.44

If New York American Water Company, Inc. experiences any under-collections/over-collections or changes in the required annual payments and associated charges, it will file a new surcharge statement, to become effective on not less than 30 days' notice.

Note: Any new statements the Company files with the Commission will be audited by Staff of the Office of Electric, Gas & Water.