

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on November 14, 2013

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Garry A. Brown  
Gregg C. Sayre  
Diane X. Burman

CASE 13-W-0194 - Petition for Emergency Approval of Easement by  
and Between New York American Water Company,  
Inc. and United States Navy under Public  
Service Law §89-h.

ORDER APPROVING EASEMENT

(Issued and Effective November 15, 2013)

BY THE COMMISSION:

INTRODUCTION

New York American Water Company, Inc. (NYAW or the Company) filed a petition requesting approval of a NYAW transfer of a property easement (Easement) to the United States Department of the Navy (Navy). The Easement allows the Navy to construct a permanent water treatment plant (Permanent Treatment Facility) at NYAW's Seaman's Neck Road Facility. The Permanent Treatment Facility is required to remediate actual and potential groundwater contamination associated specifically with the presence of trichloroethene (TCE). The contamination emanates from sites used in the past by the Naval Weapons Industrial Reserve Plant (NWIRP) and Northrop-Grumman Corporation (NGC) to manufacture military aircraft and to store and dispose of wastewater resulting from the manufacturing process. The Navy is responsible for construction of the Permanent Treatment

Facility at an estimated \$5,428,000 cost, which includes capital costs for the temporary interim treatment system, and annual operation and maintenance costs estimated at approximately \$200,000. A water-works corporation requires Commission approval for the transfer of all or any part of its franchise, works, or system (Public Service Law (PSL) §89-h).

In this Order, we grant the request for approval of the transfer of an Easement for use of a parcel located at NYAW's Seaman's Neck Road Facility. The Easement is required for the purpose of constructing a water treatment facility essential for protection against contamination of a portion of the Company's water supply and provision of safe and adequate water service to a segment of NYAW's customers. NYAW's customers benefit from the construction of a \$5,480,000 water treatment facility and approximately \$200,000 of annual operation and maintenance expenses, without the burdens and costs of assuming responsibility for the Permanent Treatment Facility's construction and operation. The real property subject to the Easement is located in an area contiguous to land occupied by NYAW's wells and water treatment facilities, subject to use restrictions due to proximity to NYAW's water supply, and unlikely to offer investment opportunities to other buyers that would result in sale of the property at a higher value. Because the Navy will own and operate its Permanent Treatment Facility on the Easement, the plant is not included in NYAW's rate base, ratepayers are not responsible for operation and maintenance costs associated with the Permanent Treatment Facility, and no need exists to establish any accounting and ratemaking treatment for NYAW's ratepayers.

PUBLIC NOTICE

In accordance with State Administrative Procedure Act (SAPA) §202(1), notice of the petition was published in the State Register on May 7, 2013. The Secretary to the Commission received no comments by the expiration of the comment period, which occurred on August 17, 2013.

On June 13, 2013, the Commission issued an Order approving the easement through an emergency adoption to allow for completion of construction before the onset of winter weather. Notice of the emergency adoption was published in the State Register on July 3, 2013. Pursuant to SAPA §202(6), the emergency adoption expired 90 days after its effective date, or September 10, 2013, because the Commission did not take final action on the emergency measure.

PETITION

The petition provides a description of the parties to the Easement, overview of the historical background, review of NWIRP waste-handling practices, description of the Seaman's Neck Road Facility and the proposed Permanent Treatment Facility, and outline of the terms of the Easement. NYAW requests waiver of inapplicable and irrelevant requirements in Commission rules relating to provision of financial information for Commission consideration of petitions for approval of property transfers (16 NYCRR §31.1).

Parties to the Transfer

NYAW, a wholly-owned subsidiary of American Water Works Company, Inc., is a public utility engaged in the distribution and supply of water for public use in Nassau, Westchester, Ulster, and Washington Counties. NYAW is the corporate entity formed from the merger of Aqua NY of Sea Cliff, Aqua NY, Inc., and New York Water Service Corporation with and

into Long Island Water Corporation New York, Inc.<sup>1</sup> The Seaman's Neck Road Facility is part of the former New York Water Service Corporation infrastructure.

The Navy is conducting remediation activities overseen by the Department of Environmental Conservation (DEC) at the Seaman's Neck Road Facility, located near the NWIRP and NGC facilities. In 1983, the NWIRP and NGC facilities were listed on the Registry of Inactive Hazardous Waste Disposal Sites in New York State.

#### Historical Overview

From 1941 to 1998, the NGC operated the NWIRP and NGC facilities as government-owned and contractor-operated facilities on behalf of the Navy. Work at the facilities primarily involved assembly of military aircraft; and the NWIRP Facility included water recharge basins, an industrial wastewater treatment plant, and containers for storage of industrial waste.

#### Waste-Handling Procedures

The petition states that various liquid wastes, solvents and industrial wastewaters were stored and disposed at the site over several decades. Based upon NWIRP studies, several categories of contaminants in the wastewater exceeded environmental standards and resulted in groundwater contamination by various chlorinated VOCs.<sup>2</sup>

From 1989 to 1995, the Navy performed a remediation investigation/feasibility study of the sites, dividing the

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<sup>1</sup> Case 12-W-0217, Aqua New York of Sea Cliff, Inc., et al. - Merger, Order Approving Merger (issued August 17, 2012).

<sup>2</sup> Perchloroethene (PCE), Trichloroethene (TCE), Dichloroethenes (DCEs), Vinyl chloride, and 1,1,1-trichloroethane (1,1,1-TCA).

remediation work into two operable units (OU),<sup>3</sup> specifically soil contamination (OU1) and groundwater contamination (OU2). In 1995, the Navy issued a Record of Decision (ROD)<sup>4</sup> for OU1 relating to removal and decontamination of soil. In 2003, it issued a ROD for OU2, which estimated that groundwater plumes emanating for the NWIRP and NGC sites affect more than 2,000 acres, with a depth of 700 feet at some locations. In the OU2 ROD, the Navy committed to treatment of groundwater at well fields outside the NWIRP and NGC Facility affected by the spread of the plume. It is undertaking these responsibilities under federal law,<sup>5</sup> the 2003 ROD, and New York State Environmental Conservation Law, Health Law, and associated rules.

#### Seaman's Neck Road Facility and the Permanent Treatment Facility

The Seaman's Neck Road Facility provides water service mainly to 7,000 NYAW customers located in the northeastern part of the former New York Water Service Corporation service territory. According to the petition, TCE was first detected in 2006 in the water supply wells at the Seaman's Neck Road Facility in concentrations up to 2.1 micrograms per liter;<sup>6</sup> and, concentrations have trended upward since then, especially during times of summer peak usage. Detections of higher TCE

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<sup>3</sup> An operable unit is an aspect of the remediation process that for technical or administrative reasons is treated separately to eliminate or mitigate the threat of contamination.

<sup>4</sup> A ROD is a public document that explains the cleanup alternatives proposed for remediation of a Superfund site.

<sup>5</sup> Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq.

<sup>6</sup> New York Department of Health standard for TCE is 5 micrograms per liter in potable water supply systems; it requires notice, additional monitoring, and treatment at lower concentrations. The goal of the remediation process is to lower the concentration to 0.5 micrograms per liter or less.

concentrations occurred in groundwater samples from depths greater than the Company's wells and in monitoring wells to the east of the Seaman's Neck Road Facility.

As part of the 2003 ROD procedure, in December 2010, the Navy developed a Basis of Design Report (BODR)<sup>7</sup> for the proposed wells at the Seaman's Neck Road Facility. In 2011, the Navy constructed temporary treatment facilities that did not require an easement, pending receipt of approvals for the Permanent Treatment Facility. In early 2012, the Navy applied for permits to develop the Permanent Treatment Facility.

The BODR provides that the Navy will fund implementation of a well-head treatment remedy for affected wells located at the Seaman's Neck Road Facility, involving liquid phase granular activated carbon applied after the iron-removal process to remediate TCE in the water supply wells. In addition to construction of the Permanent Treatment Facility, the Navy will operate, maintain, and pay operation and maintenance (O&M) costs for the Permanent Treatment Facility. The Navy estimates the construction costs at \$5,480,000 and annual O&M costs at \$200,000.

The BODR calls for additional monitoring wells installed in the area to evaluate any future entry of VOCs into the well field. The Navy will reserve space at the Seaman's Neck Road Facility for any future installation of an air-stripping pre-treatment system that may be necessary for any potential future remediation.

NYAW states that the affected Nassau County communities are aware of the planned remediation. Discussions of the remediation plans took place at several Town and other public meetings, with opportunities for public comment.

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<sup>7</sup> A BODR provides the technical plans and key assumptions for preparation of a design for site remediation.

Proposed Easement

The Navy is required to obtain an interest in land sufficient for the purposes of the project before it is allowed to expend federal funds to build the Permanent Treatment Facility. In order to protect the investment of taxpayer environmental restoration funds in the Permanent Treatment Facility, the Navy is required to obtain from NYAW a non-revocable property interest to assure sufficient long-term access to complete the project and to provide NYAW's authority to construct the well head treatment facility on its property.

The proposed Easement describes the Seaman's Neck Road Facility as an approximately 44,000 square foot parcel, adjacent to an area containing three wells, above ground storage tanks for backwash water and filter waste, an iron filtration building, a building containing electrical equipment, and a concrete pad and tank used for temporary treatment facilities. The Navy proposes to construct a 3,200 square foot water treatment facility (40 feet by 80 feet), approximately 25 feet from the property line, that encompasses one of the NYAW wells in the northeast corner of the property.

NYAW proposes to grant an Easement to the Navy for the access, construction, installation, maintenance, operation, repair, and replacement of permanent treatment facilities and related appurtenances, subject to several conditions. These conditions include a commitment to: remediate water supply contamination in accordance with applicable laws and the technical specifications submitted by the Navy and approved by the Nassau County Department of Health; obtain or provide for attainment of insurance coverage; restore any property disturbed by the construction of the Permanent Treatment Facility to its prior condition; prevent any unreasonable interference with NYAW's use of the property; and, provide NYAW with a list of the

individuals working at the property consistent with NYAW security procedures.

The Navy estimates, on the basis of its studies, that the need for remediation may continue for 50 to 100 years. Therefore, the term of the Easement will run until the Navy and state regulatory authorities determine that a complete closeout of the facilities is feasible. At that time, the Navy will completely remove all equipment and structures used for groundwater remediation and restore the property to its prior condition. Until then, the Navy shall retain all title to the Permanent Treatment Facility; and, the Navy may, with advance notice, remove all or a portion of the facilities at any time.

#### Request for Waiver of Certain Rules

The petition sets forth a general description of the property subject to the Easement and a copy of the proposed Easement, as required by 16 NYCRR §31.1 (b) and (c). NYAW requests a waiver for submission of the information required in the remaining 10 subdivisions of 16 NYCRR §31.1. NYAW explains that no purchase of property is involved; and, it will retain ownership and use of the property at the Seaman's Neck Road Facility. NYAW asserts that, because the remaining information required in our rules is related to property sales, it is inapplicable or irrelevant to the Easement under consideration.

#### ENVIRONMENTAL QUALITY REVIEW

Under the State Environmental Quality Review Act (SEQRA), Environmental Conservation Law Article 8 and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7), all state agencies must determine whether the actions they are requested to approve may have a significant impact on the environment. Other than our approval of the action proposed here, no additional state or local permits or approvals are

required; and, thus, a coordinated review under SEQRA is not needed. We assume lead agency status under SEQRA and conduct an environmental assessment.

SEQRA (6 NYCRR §617.6(a)(3)) requires applicants to submit a completed environmental assessment form (EAF) describing and disclosing the likely impacts of the proposed actions. Petitioners submitted a Short EAF Part I.

The proposed action is the Commission's approval to authorize NYAW and the Navy to enter into an easement agreement to provide to the Navy an Easement for 44,000 square feet of vacant land located at the NYAW's Seaman's Neck Road Facility. The Easement is granted for the purpose of the Navy's construction of the Permanent Treatment Facility to remediate actual and potential groundwater contamination. The proposed action does not meet the definition of a Type I or Type II action, contained in 6 NYCRR §617.4 and 617.5 and 6 NYCRR §7.2; and, therefore, we classify it as an unlisted action under SEQRA. Based upon the criteria for determining significance listed in 6 NYCRR §617.7(c), we conclude that approval of the Easement for construction and operation of the Permanent Treatment Facility will not result in any significant adverse environmental impacts. The facilities are required to mitigate groundwater contamination emanating from a site used to manufacture military aircraft; and, an improvement in water quality will result. The Department of Public Service Staff completed the Short EAF Part 2.

As lead agency, we determine that the action proposed in the petition will not have a significant impact on the environment and adopt a negative declaration pursuant to SEQRA. Because no adverse environmental impacts were found, no Public Notice Requesting Comments is required or issued. A Notice of Determination of Non-Significance Negative Declaration for this

unlisted action is attached. We will retain the completed EAF in our files.

#### DISCUSSION

The proposed Easement would transfer to the Navy a limited property interest in vacant property at NYAW's Seaman's Neck Road Facility, sufficient to allow the Navy to construct and maintain the Permanent Treatment Facility and remove it upon a determination that treatment of the water supply is no longer necessary. The Navy's construction of the Permanent Treatment Facility and its operation and maintenance afford considerable benefits to NYAW and its ratepayers. The Permanent Treatment Facility will remediate increasing TCE levels to improve the safety and quality of the NYAW water supply available from the two Seaman's Neck Road Facility active wells. The construction of the Permanent Treatment Facility is essential for the protection against contamination of a portion of NYAW's water supply. Because the Navy assumes full responsibility for remediation of actual and future contamination, NYAW and its ratepayers avoid the costs necessary for treatment of the well water to remove contaminants.

NYAW's access to and use of the Seaman's Neck Road Facility will not change if the Easement is authorized. NYAW will continue to operate its wells for the benefit of its ratepayers.

The real property subject to the Easement is located in an area contiguous to land occupied by NYAW's wells and water treatment facilities; the property is subject to use restrictions due to its proximity to NYAW's water supply. Thus, the Easement parcel is not likely useful for a commercial or industrial purpose and does not provide opportunities for the Company to offer the property for sale at a higher value than the monetary benefits associated with the Navy's assumption of

the costs of construction and O&M costs for the Permanent Treatment Facility. Due to the unique nature of this transaction, the Company incurs no loss associated with the transfer; and, the transfer provides benefits to ratepayers that are likely greater than any monetary profits resulting from the sale of the property to a potential buyer, if such sale is possible.

We are satisfied that authorizing the Easement will provide no unjust advantage or benefit to the Navy. The Navy has no interest in the property for its own purposes and only seeks the Easement so it can legally expend federal funds on the Permanent Treatment Facility. By its own terms, the Easement will expire when the need for the Permanent Treatment Facility ends, with restoration of NYAW's full ownership rights.

The proposed Easement will provide long term benefits for NYAW and its ratepayers at no discernable costs. The Easement will endure no longer than necessary and includes provisions that protect the interests of NYAW and its customers. Accordingly, we determine that the NYAW transfer of the Easement to the Navy serves the public interest.

#### Waiver of Certain 16 NYCRR §31.1 Information Requirements

Commission rules require petitions requesting approval for transfers or leases of works or system under PSL §89-h to set forth certain information (16 NYCRR §31.1 (a) through (l)). The petition requests a waiver of most of these information requirements because, as NYAW states, no purchase of property is involved and NYAW retains ownership and use of the property at the Seaman's Neck Road Facility. We grant NYAW's waiver request because, except for 16 NYCRR §31.1 (b) and (e), the other requirements are inapplicable or irrelevant to our approval of the proposed transaction. Some of the requirements relate to financial information necessary for establishing accounting and

ratemaking treatment for property sales, including original cost of the property, classification in the uniform system of accounts, estimate of accrued depreciation, cost of the property on the balance sheet, depreciation and amortization reserves, contributions toward construction on the property, and statement of operating revenues expenses and taxes. Other requirements are not relevant to the proposed Easement transfer, including list of franchises transferred and municipal approvals.

CONCLUSION

We find that transfer of the Easement from NYAW to the Navy serves the public interest. This Order waives certain requirements in our rules relating to information required for PSL §89-h petitions (16 NYCRR §31.1(a), (c), (d), and (f) through (l)).

The Commission orders:

1. The petition of New York American Water Company, Inc. for approval of the transfer of a proposed easement to the United States Department of the Navy is approved, in accordance with the discussion in this Order.

2. The request of the New York American Water Company, Inc. to waive the requirements for submission of information in 16 NYCRR §31.1 (a), (c), (d), and (f) through (l) is granted.

3. This proceeding is closed.

By the Commission,

KATHLEEN H. BURGESS  
Secretary

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 13-W-0194 - Petition for Emergency Approval of Easement by and Between New York American Water Company, Inc. and United States Navy under Public Service Law §89-h.

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE  
NEGATIVE DECLARATION

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission of the real property easement between New York American Water Company, Inc. and the United States Department of the Navy. This action is based upon our determination in accordance with Environmental Conservation Law Article 8 that such action will not have a significant adverse effect on the environment. This Commission's approval is an unlisted action, as defined in 6 NYCRR §17.7(c).

The Commission action taken in this proceeding is the approval of the New York American Water Company, Inc. and United States Department of the Navy request for approval of an easement to allow the Navy's construction of permanent water treatment facilities on New York Water Company, Inc.'s property. The facilities are required to mitigate groundwater contamination emanating from a site used to manufacture military aircraft; and, an improvement in water quality will result. Based upon our review of the record, approval of the real property easement under Public Service Law §89-h will result in no significant adverse environmental impacts.

The address of the Public Service Commission, the lead agency for the purpose of the environmental review of this action is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Richard H. Powell at (518) 486-2885, Richard.Powell@dps.ny.gov, or the address above.