

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION
CASE NO. 16-W-0259

PROCEEDING ON THE MOTION OF THE COMMISSION AS
TO THE
RATES, CHARGES, RULES AND REGULATIONS OF
NEW YORK AMERICAN WATER COMPANY, INC. FOR
WATER SERVICES

**Direct Testimony of
Claudia Borecky**

September 1, 2016

1 **Background**

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

3 A-1. My name is Claudia Borecky. I am currently and have held the position of President of
4 the North and Central Merrick Civic Association (“NCMCA”) since 2009.

5 The NCMCA is a not-for-profit civic association, covering Merrick, north of Sunrise Highway
6 to its border with East Meadow to the north and from the Meadowbrook Parkway to the
7 Bellmore border to the east, excluding territories covered by the Merrick Park Homeowners
8 Association and the Wenshaw Park Civic Association. North Merrick has a population of over
9 12,000 and has approximately 4,000 households. Approximately $\frac{3}{4}$ of North Merrick residents
10 are served by NYAW with the remaining quarter to the north receiving public water from the
11 Hempstead Water Department.

12 I am a community activist, fighting to protect our water, environment and quality of life of our
13 south shore communities. I am co-director of LI Clean Air Water and Soil, Ltd. (“CAWS”), a
14 not-for-profit organization formed on Earth Day 2016 to act as stewards of our environment,
15 protecting and preserving Long Island’s natural resources.

16 When Nassau County was seeking to privatize its sewage treatment plants in 2011, I co-
17 founded the Coalition of Nassau Civic Associations (“CONCA”), a coalition of civic
18 associations formed to address issues that concern county residents.

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

20 A-2. The purpose of my testimony is to provide an overview of our fight for clean and
21 affordable water and show that the rate hike is unfair, conflicts with state law, is unwarranted

NORTH AND CENTRAL MERRICK CIVIC ASSOCIATION

1 and unsustainable and that NYAW has poor customer relations, closed door policies and acts
2 deceptively. Further, I am concerned with the migration of the Northrop Grumman/US Navy
3 plume, superfund sites, lead and other contaminants in our water and the sustainability of our
4 sole source of drinking water - our aquifers.

5 **Q-3. In your fight in 2009 against New York Water Service, which was then owned by**
6 **Aqua New York (“Aqua”) and now NYAW’s Service Area 2 or the Merrick District,**
7 **explain why you claim ratepayers were unfairly paying school taxes and its relevance to**
8 **the NYAW’s 2016 proceedings.**

9 A-3. In 2009, Aqua paid taxes to 33 school districts in the Towns of Hempstead and North
10 Hempstead. (See Exhibit NCMCA CB-1). Out of those school districts, Aqua only served
11 North Bellmore, Levittown, Seaford, Bellmore, Wantagh, Merrick and North Merrick. Since
12 Aqua was requesting that 100% of its property tax burden be paid by the ratepayers, we argued
13 that it was unfair that we, as residents being served by a private corporation, were paying
14 \$304,01 for children to go to school in East Meadow, whose residents were getting their water
15 from the Town of Hempstead. In comparison, Aqua paid \$64,446 to the North Merrick School
16 District where two-thirds of its residents were being served by Aqua, a private corporation. We
17 objected to paying for children to go to school in districts that Aqua didn’t serve.

18 **Q-4. Please state how those inequities were resolved.**

19 A-4. To the best of my knowledge, they have not been resolved. The ever-increasing
20 disparity between the water bills of North Merrick residents whose water is supplied by a
21 private corporation and North Merrick residents whose water is supplied by a public
22 municipality had already grown to a point that made it difficult for residents to stay in their

NORTH AND CENTRAL MERRICK CIVIC ASSOCIATION

1 homes. We make the same argument now. Please compare the testimonies from John John,
2 Meta Merenday, Sue Mundy and Janet Poretsky with testimony from CAWS Co-Director
3 Donald Davidson to understand the disparity between private and public water.

4 **Q-5. Please give a little history as to what transpired since Aqua's rate proposal of**
5 **2009.**

6 A-5. Dave Denenberg, as the Nassau County Legislator representing residents being served by
7 Aqua Water, and I, as president of a civic association whose members were unfairly being
8 overcharged, urged the Towns of Hempstead and Oyster Bay to reconstitute the Water
9 Authority of Southeast Nassau County ("WASENC") to study the feasibility of a public
10 acquisition of Aqua.

11 WASENC was reconstituted in January of 2010 and disbanded in January of this year. A
12 feasibility study was conducted, but it never compared apples to apples. It assumed that
13 residents would have to pay taxes to their schools, whether in their water bills or otherwise.
14 However, it didn't take into account that we were paying taxes to school districts that NYAW
15 didn't serve or that the gap in the town and county budgets would have been filled by ALL
16 residents and not levied only on those whose water was being supplied by NYAW.

17 WASENC informed us that Aqua and later NYAW were fighting the assessment on the 25
18 school districts that it didn't serve. We were told that residents would receive refunds in their
19 water bills for the overpayment of taxes to school districts that Aqua did not serve. To the best
20 of my knowledge, and by the testimony given in these proceedings, no lawsuits or tax
21 grievances were made by Aqua or NYAW for the taxes it paid to school districts it did not
22 serve.

NORTH AND CENTRAL MERRICK CIVIC ASSOCIATION

1 On behalf of the Merrick District’s ratepayers, we ask that ratepayers be awarded the refund
2 justly due us for the property taxes paid to school districts through our water bills.

3 **Q-6. Explain your claim that NYAW is still paying taxes to school districts that it does**
4 **not supply water to.**

5 A-6. NYAW pays taxes to the Uniondale, Hempstead and Amityville School Districts and,
6 to the best of my knowledge, does not serve those communities.

7 **Q-7. Please explain your claims that NYAW’s rate hike conflicts with state law.**

8 A-7. NYAW, as a private corporation, is not subject to the same restrictions as our local
9 public water suppliers. All New York State taxing jurisdictions, including public sewer and
10 water districts, are subject to the New York State Tax Cap Law. Specifically, The Tax Cap
11 Law establishes a limit on the annual growth of property taxes levied by local governments and
12 school districts to two percent or the rate of inflation, whichever is less.

13 In 2016, the rate of inflation is .012%, which means that the Hempstead Water Department, as
14 a taxing authority, cannot raise its water tax by more than .012%.

15 The same cap is set for our school districts. If our school districts can provide our children with
16 quality education under the restraints of a tax cap, why can’t our water supplier?

17 To raise residents’ water bills by 9.90% flies in the face of the spirit of the New York State Tax
18 Cap Law and essentially gives a private corporation an exemption from a law that public water
19 providers must struggle with. As that private corporation passes its property tax burden onto its
20 ratepayers, residents served by NYAW are not protected under the New York State Tax Cap
21 Law. Our neighbors with public water are.

NORTH AND CENTRAL MERRICK CIVIC ASSOCIATION

1 Further, as NYAW's rate increase also applies to water used by our county and town facilities,
2 parks, schools, fire departments and libraries, our county, town, school, fire and library
3 expenses will increase and they will not be able to recoup the increase by raising their taxes
4 more than .012%.

5 Please see Oceanside Fire Chief John T. Madden's testimony given at the Oceanside Library at
6 6 p.m. on June 13, 2016 (pages 11-16 of the transcript). Mr. Madden expresses great concern as
7 to how the Oceanside Fire District will be able to keep their tax rate under .012%, when their
8 water and hydrant rates are increasing. NYAW's charges the Oceanside Fire District \$875 per
9 hydrant, while fire districts within the Hempstead Fire Department pay \$75. If that doesn't
10 epitomize the disparity in the costs to taxpayers being served by private water as compared with
11 public water, I don't know what does.

12 Residents now fear that to cut expenses, fire departments may not flush out their hydrants on a
13 regular basis, putting our safety in jeopardy; schools may cut vital services and allow their
14 playgrounds and ballfields to turn brown, impacting the education of our children; and county
15 and town parks and facilities may have to raise their entry fees to pay for the rate hike.

16 Further, these ever-increasing water rates puts communities on corporate water at a grave
17 disadvantage to our neighboring communities who are under the protection of the New York
18 State Property Tax Cap Law and have affordable water.

19 People looking to buy a home in our community may choose the house on the block that has
20 public water. The cost of our water negatively impacts the value of our homes.

21 **Q-8. Give a reason why residents claim their water bills are too high.**

22 A-8. NYAW continues to say that our water bills are the smallest of a homeowner's bills.

23 Not true – at least not for NYAW ratepayers. According to NYAW, its average Merrick

NORTH AND CENTRAL MERRICK CIVIC ASSOCIATION

1 District customer pays \$520 per year, although in my experience, most customers purportedly
2 pay closer to \$800 per year.

3 As a NYAW customer with an average home valued at approximately \$330,000, whose water
4 bill averages approximately \$800 per year, I pay much less for several vital necessities than I
5 pay for my water. For example, I pay close to that amount for my electricity, nearly as much for
6 fire protection, sanitation or highway repairs, and more than twice as much than what I pay for
7 sewage. (See Exhibit NCMCA-CB-2).

8 Yet, my neighbors being served by the Hempstead Water Department can claim that their water
9 bill actually is their smallest bill. The average Hempstead Water Department customer pays
10 approximately \$187 per year for their water, which includes water usage and water district
11 taxes – but no property tax.

12 **Q-9. Explain why the NYAW 2016 rate hike is unwarranted.**

13 A-9. The NCMCA does not object to NYAW’s plans to replace and repair main lines or
14 improve water pressure, quality or purity. However, it does believe this NYAW rate hike is
15 unwarranted on several grounds.

16 First, we object to NYAW having sold its Lynbrook facility and built a huge office building in
17 Merrick. Spending \$4.5 million on a new facility at a time when the residents whom NYAW
18 serves are struggling to pay their bills is egregious. And now it has the audacity to ask for
19 another \$8.45 million in this rate hike. All the while, we are seeing more and more main pipe
20 breaks. In May, within a two-week period, Oceanside saw two major main lines break, flooding
21 our communities and causing residents to sustain hundreds of thousands of dollars in damage.
22 Had that \$4.5 million been spent on pipe repairs rather than to luxuriously house their corporate
23 offices, perhaps the damage could have been prevented.

NORTH AND CENTRAL MERRICK CIVIC ASSOCIATION

1 NYAW may claim that corporate dollars paid for the new building, justifying expenditures by
2 selling its facilities in Lynbrook and combining services. However, NYAW customers did not
3 see the profits from that sale. As described in the testimony of Dave Denenberg, it is unjust that
4 we are paying taxes on property that we do not own and cannot realize the profits from its sale.
5 If a public water district sells its property, the economic benefits is shared by all the residents –
6 but if a private corporation sells its property, its profits are shared amongst its shareholders.
7 Second, NYAW plans to improve water pressure in the northeastern corner of its Merrick
8 district – namely, the Seaford/Wantagh area. Aqua’s 2009 rate hike proposal included a water
9 tower at the DeMott Street facility. Aqua worked with residents who did not want a tower and
10 booster pumps were installed instead. Please see the testimony of Sue Mundy who lives in the
11 area being considered for improvements. Why is NYAW asking that we again pay for this
12 improvement when it was included in the 2009 rate hike request and implemented in 2011-
13 2012?
14 Third, NYAW customers should not pay for a pilot geothermal installation in an elementary
15 school in Valley Stream. Residents that don’t live in that Valley Stream School District won’t
16 realize any social, economic or environmental benefit. Please see both Janet Poretsky and Dave
17 Denenberg’s testimony on this subject.
18 Fourth, residents who live in a private corporation’s water district should not be taxed
19 differently from residents who live in the same municipality, but are served by a public water
20 district. Residents living in the Hempstead Water Department do not pay property taxes on the
21 Towns’ water facilities. So, we shouldn’t either. Please see Co-Director Donald Davidson’s
22 testimony.

NORTH AND CENTRAL MERRICK CIVIC ASSOCIATION

1 **Q-10. Please explain your claim that NYAW is deceptive, has poor relations customer**
2 **relations and shuts the public out.**

3 A-10. As a civic leader, I've received hundreds of complaints about our water supplier.
4 Virtually all complain about the cost, but others complain about water pressure, color, taste,
5 smell and customer service. See testimony from John John, Meta Mereday, Sue Mundy and
6 Janet Poretsky to name a few. Residents don't believe they are getting the water quality, nor
7 the service in which they are paying for.
8 Not only are residents speaking to out-of-state customer service personnel who are unfamiliar
9 with our region, but they are shunned from the new \$4.5 million building in Merrick. That's
10 right. The parking lot is for EMPLOYEES ONLY. (See Exhibit NCMCA – CB-3) Residents
11 are not only discouraged from contacting their water supplier, they are actually forbidden to
12 park in the lot of its new \$4.5 million office building.

13 And lastly, the very act of quietly holding its first hearing in the early summer when people are
14 on vacation with legal notices hidden in the newspaper depicts deception almost by definition.
15 The NCMCA strongly urges the Public Service Commission to deny NYAW's request to raise
16 its rates and seriously consider the constitutionality of private v. public water.

17 **Q-11. Elaborate on your concerns regarding the Northrop Grumman/U.S. Navy plume,**
18 **superfund sites, lead and other contaminants in our water and over-pumping our aquifer.**

19 A-11. In 2011, Aqua Water closed one of its wells at the Seaman's Neck Road water plant in
20 Seaford because contaminants from the Northrop Grumman manufacturing plant in Bethpage
21 had migrated 2.5 miles, closing down wells in its path. The US Navy installed a filtration
22 system at Aqua's site. In testimony provided in these proceedings, NYAW stated that it

NORTH AND CENTRAL MERRICK CIVIC ASSOCIATION

1 reopened its well in Seaford. We are concerned remnants of contaminants from the plume at
2 that site and at or near all the superfund sites in NYAW's system.

3 Further, we are very concerned about lead in our water. Schools throughout Long Island found
4 lead in their water. If there is lead in our schools, there is lead in our homes. Tens of thousands
5 of people in NYAW's service area have their water supplied to their homes with lead pipes. We
6 don't believe NYAW has taken adequate steps to identify and replace both company and
7 customer lead pipes, has not performed its testing with due diligence and is acting too slowly to
8 resolve this health risk that affects tens of thousands of people. Please see Dave Denenberg's
9 testimony in this regard.

10 Further, NYAW continues to over-pump our aquifers without replenishment, depleting our
11 aquifers and fails to protect and sustain our sole source of drinking water for future generations.