

Hon. Jaclyn A. Brillling, Secretary,
New York State Public Service Commission
Three Empire State Plaza,
Albany, NY 12223

Re: Public Comment on Case 09-W-0731 United Water New York Rates

Submitted for electronic filing via email to secretary@dps.state.ny.us on May 7, 2010

Dear Ms. Brillling and members of the New York State Public Service Commission:

Food & Water Watch (FWW) is a national nonprofit consumer advocacy group that works with grassroots organizations for safe food and clean water operated and managed in the public interest. FWW has an office in Brooklyn, New York, and has been a member of the Rockland Coalition for Sustainable Water since January 2009.

FWW submits this letter to comment on United Water New York's (United Water) proposal to charge ratepayers for its Haverstraw Water Supply Project (HWSP), even though the project has not yet been approved or constructed. This permission would encourage the company to continue pursuing this unnecessary and potentially dangerous desalination plant that will interfere with reliable, low-cost utility service for Rockland County.

We urge the Commission to represent ratepayers and the public interest by denying any increase in charges due to United Water's proposed HWSP. FWW also respectfully requests that the Joint Proposal, filed on April 26, 2010 (the 2010 JP), not be approved unless the parties and the public have the opportunity, prior to the HWSP's construction, to review and revise the provisions of the 2006 Joint Proposal (the 2006 JP) that indicated that a long-term water supply project, such as the HWSP, is necessary. Such public review will be needed to evaluate the final cost-estimates and environmental impacts of the HWSP and other alternatives such as conservation, which should all be thoroughly evaluated in the project's Final Environmental Impact Statement (FEIS).

Moreover, we urge the Commission to clarify in its final order that any rate increase sought by United Water prior to construction of a long-term water supply project is discretionary, as it was under the 2006 JP. As such, the Commission and parties retain the discretion not to approve such charges based on the final forecasted costs and the impacts on the ratepayer.

Background

This case stems from a 2006 merger and rate case (06-W-0131), in which two United Water affiliates requested permission to merge, along with a rate increase. Active parties to that

case, including Rockland County, the Town of Ramapo, and United Water, among others, settled the case, reaching agreement under a Joint Proposal, dated September 29, 2006 (JP).¹ The JP was adopted, subject to caveat, by the Commission on December 14, 2006.² Under the JP, by December 2007, United Water was to propose a long-term major water supply project that would add, in stages, 7.5 million gallons per day to the peak water supply for Rockland County.³ At the time of the JP and its adoption by the Commission, the parties had not agreed on the type of project. Indeed, Rockland County specifically made this point in its testimony:

Rockland County also emphasizes that the Joint Proposal's terms for a long-term additional supply are neutral as to what project will be selected. Rather, such terms memorialize increased volume commitments that must be met and specific interim milestones that will better ensure the specified in-service date for the new long-term supply will be met as compared to the mere Master Plan.⁴

In its subsequent January 2007 filing, United Water proposed a desalination project as the option it would pursue.⁵ The company did discuss other alternatives it had considered, mentioning the creation of a new surface water supply reservoir, additional groundwater supplies, the reuse of wastewater, increased use of Lake DeForest, and the use of the Suffern Quarry.⁶ The proposal document only considered the Ambrey Pond reservoir and the desalination facility as viable options, however, giving cursory mention of the other alternatives and no mention of measures such as increased conservation efforts.⁷

The company ultimately decided that the desalination facility was the best option, but the company also clearly said in its conceptual design document, dated September 28, 2007, that this was "a preliminary analysis of numerous options." It also said that it "continues to evaluate such options as required by the State Environmental Quality Review Act (SEQRA) and other processes. As such, the information contained herein is subject to change based upon such processes."⁸

Notwithstanding the company's seeming willingness to consider a host of other options in this original proposal document, United Water has been moving forward with desalination project proposal, now the HWSP, as if it was the only possible option under the 2006 JP. As mentioned below, in part this reflects how the company considers the project to be a run-of-the-mill water project, misunderstanding the size and complexity of the capital-intensive desalination proposal and its potentially negative impacts on ratepayers. For example, its earliest proposal

¹ See Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of United Water New York Incorporated for Water Service Joint Petition of United Water New York Incorporated and United Water South County for Approval of a Certificate of Merger with United Water New York Inc. being the Surviving Corporation 2-28-06, CASE 06-W-0131; CASE 06-W-0244, New York Public Service Commission (December 14, 2006) (hereinafter, 2006 JP)

² *Id.*

³ United Water New York, "Long Term Water Supply Project" at 2 (January 15, 2007).

⁴ 2006 Order and JP at 25.

⁵ United Water New York, "Long Term Water Supply Project" at 3 (January 15, 2007).

⁶ *Id.* at 2.

⁷ *Id.* at 6.

⁸ United Water New York, "Long Term Water Supply Project" at 4 (September 28, 2007).

document estimated that the capital costs for the plant would be approximately \$98 million, compared to the other “viable” Ambrey Pond proposal, which was estimated to cost \$169 million.⁹ It turns out that this was a gross underestimate of the desalination plant’s costs, as the capital costs have now ballooned to be \$140 million,¹⁰ far more than the original estimate, which comes out to \$105 million when adjusted for inflation. Moreover, as also discussed below, the company has continuously downplayed the potential environmental and impacts of the proposal, while failing to adequately consider conservation alternatives.

To date, the company has already spent \$16 million on the HWSP and plans to spend \$24 million before construction of the full-scale facility begins.¹¹ It originally proposed that the Commission allow it to recover the \$12 million in capital expenditures spent as of June 30, 2009 immediately through a surcharge, and recover all other additional costs so far within six months.¹² The newest Joint Proposal modifies this request, allowing the Commission to review a new request for a surcharge for the project prior to construction. While this proposal does not seemingly allow a surcharge for the HWSP at this point, it would allow the approval of such charges for the project prior to its construction.¹³

A. Rockland residents should not have to pay for a potentially dangerous and unnecessary plant that has not yet been approved.

Asking Rockland residents to pay for this plant is premature. Its environmental impacts have yet to be fully analyzed, and, consequently, United Water has not been able to obtain the environmental permits it needs from the New York State Department of Environmental Conservation (NYSDEC) to move forward with this project.¹⁴

In fact, the HWSP comes along with a host of social and environmental risks, including carbon emissions from the high energy use, harm to fish populations and habitat from the construction and intake, damage to water quality and the water treatment system from the liquid waste product, contributions to flooding, water shortages from contributing to further development and human health risks due to the technology’s inability to fully remove radioactive chemicals from the Hudson River water.¹⁵

These impacts must be fully analyzed by NYSDEC before the project moves forward. Under the JP, the parties had agreed to a set of milestones for the long-term water supply project including the company’s submittal of a Draft Environmental Impact Statement (DEIS) and all

⁹ United Water New York, “Long Term Water Supply Project” at 8, 9 (January 15, 2007).

¹⁰ State of New York Public Service Commission. Case No. 09-W-0731 “Exhibits to Accompany Rebuttal Testimony of Michael J. Pointing,” Exhibit MJP-1 at 70.

¹¹ State of New York Public Service Commission. Case No. 09-W-0731. “Rebuttal Testimony of Michael J. Pointing” at 46.

¹² State of New York Public Service Commission. Case No. 09-W-0731. “Testimony of Michael J. Pointing,” at 46.

¹³ State of New York Public Service Commission. Case No. 09-W-0731. “Joint Proposal,” (April 20, 2010).

¹⁴ State of New York Public Service Commission. Case No. 09-W-0731, “County of Rockland Direct Testimony of Dr. Daniel M. Miller,” at 16-17.

¹⁵ See Food & Water Watch. “Not Worth Its Salt: How Rockland County Could End Up Paying for an Unnecessary Desalination Plant.” January 2010.

permit applications by September 30, 2008. The parties agreed that by September 30, 2010 the project would obtain its environmental permits.¹⁶

But these milestones have turned out to be unrealistic given the potential impacts of the proposal and United Water and other proponents' constant attempts to underestimate such impacts and thwart a thorough analysis of the project have contributed to this delay.

For example, the company submitted a woefully inadequate DEIS on September 26, 2008.¹⁷ NYSDEC initially refused to accept the document as written, instead treating it as the draft scoping document, noting a number of topics that needed to be added to or expanded upon in developing the DEIS.¹⁸ After taking notice and comment, the agency's final scoping document, complete in June 2009, indicated that there were more than 68 significant issues that needed to be provided or expanded upon or in the DEIS, including:

- A discussion of need for the proposed action and anticipated demand for water beyond 2015;
- The relative costs to users for the proposed water supply project and other feasible and reasonable long-term supply alternatives if potential additional fees for water withdrawals are imposed;
- An entrainment study to determine the impacts of the facility's water intake mechanism;
- The impacts of global warming on existing applicable regional, state and national designations, land use plans, and other relevant natural resource or energy plans;
- Potential measures for enhanced water conservation and implementation of green infrastructure in the United's service area as an alternative to the Proposed Action.¹⁹

In addition to the delays caused by United Water's submittal of an inadequate DEIS, on September 30, 2009, the company indicated that it might not be able to obtain all necessary environmental permits for its project, due to the delay in getting its pilot plant online.²⁰ United Water argued that this is due to "events beyond United Water's control."²¹

But, as it turns out, the delay in the construction of pilot plant, the studies from which were to be complete by December 31, 2009, was also due to serious possible environmental impacts and the company's attempts to prevent the thorough vetting and analysis of such impacts.

¹⁶ 2006 JP at Exhibit 11.

¹⁷ United Water, Draft Environmental Impact Statement for the Haverstraw Water Supply Project, September 26, 2008, available at <http://haverstrawwatersupplyproject.com/index.php/draft-environmental-impact-study-deis.html>.

¹⁸ NYSDEC, Scoping Meeting, May 7, 2009.

¹⁹ NYSDEC, Final Scoping Document For A Draft Environmental Impact Statement (DEIS) United Water New York, Haverstraw Water Supply Project, Town Of Haverstraw, Rockland, NY, available at http://www.dec.ny.gov/docs/permits_ej_operations_pdf/uwnyfnlscope.pdf.

²⁰ State of New York Public Service Commission. Case No. 09-W-0731. Exhibit DMM-6.

²¹ *Id.* at 6.

United Water states that the delay in the construction of the Pilot Plant was due to NYSDEC requiring the company to subject the permit for the Pilot Plant to public notice and comment in September 2009.²² It complains that this was a surprise, as such minor projects do not usually require public notice and comment.²³ But this should not have been that much of a surprise, as the NYSDEC's decision to exercise its discretion and take notice and comment on the Pilot Plant permit was likely in no small part due to the fact that in the July 2008, United water had sought to exempt the Pilot Project from SEQRA over the objections of numerous members of the public.²⁴ Members of the public had complained that it was illegal for the project to be deemed exempt from SEQRA because Haverstraw Bay is a "significant coastal fish and wildlife habitat,"²⁵ and that the consideration of the Pilot Plant as exempt would be illegal segmentation under SEQRA because it would eventually be tied into the larger facility.²⁶

Thus, in no way should United Water have been surprised when the state rightly required notice and comment for the permit for its Pilot Plant. By this time in 2009, the agency had already found HWSP's DEIS to be deficient and that members of the public had rightly pointed out that the pilot project also required substantial environmental review.

Given that there has been significant delay in evaluating the environmental impacts of the HWSP, in no small part due to United Water, which has sought to prevent adequate analysis and thorough public vetting of the project, it would be inappropriately premature to allow the company to collect a surcharge from the ratepayers for the project.

Indeed, the history of the project suggests that it might not be the run-of-the-mill water supply project that some parties originally contemplated that the company would propose after the 2006 JP. Rockland County, for example, currently opposes the rate increase:

Given (1) the significant delay in the pilot plant studies, which will provide the basis for the full scale treatment processes and regulatory approvals; (2) the fact that an engineering services firm wasn't engaged until November 2009 to complete the Draft Environmental Impact Statement, Exhibit DMM-3, Response to STAFF 131; (3) the revised DEIS must be prepared, reviewed by several government agencies, subjected to public comment and followed by preparation of a Final Environmental Impact Statement (FEIS); and (4) the State Environmental Quality Review Act (SEQRA) process (including preparation and approval of the DEIS and FEIS) must be completed before any permits can be issued, it is highly unlikely that the environmental permits necessary to build the Long Term Major Water Supply project will be obtained by September 30, 2010, as required by the Joint Proposal.

With the pilot plant studies 33 months behind schedule and acquisition of the

²² *Id.* at 4.

²³ *Id.* at 3.

²⁴ *See e.g.*, Letter from Rebecca Troutman to Mr. William C. Janeway, Regional Director, NYSDEC, Region 3 on July 9, 2008.

²⁵ *Id.* at 5.

²⁶ Letter from Rebecca Troutman to Mr. William C. Janeway, Regional Director, NYSDEC, Region 3 on July 11, 2008.

environmental permits very likely to compound the delay, I have serious concern over UWNYS's ability to make good on its volume commitments for 2015 and to provide safe and adequate water service as that date approaches.²⁷

The county's direct testimony called on the Commission to revise the JP because of this delay.²⁸ FWW also thinks that the JP should be revised, although in a different manner. While the HWSP is not contemplated by the 2006 JP, United Water has argued that it is the only possible water project that is feasible. Given this, the parties and the public should have the opportunity to revise the 2006 JP to reconsider whether a big water project like the HWSP is needed, when the risks are not worth the costs.

Although Rockland County's water resources have been strained by increased development, the naturally water rich county has many ways to address this problem without building an expensive, potentially dangerous desalination plant. Water supply can be addressed by implementing sustainable water management practices that address the county's long-term water needs. These practices include fixing leaks in existing infrastructure, implementing conservation measures, and taking a watershed approach that includes better land use planning, groundwater protection, green infrastructure and other comprehensive, low-impact water management methods.²⁹ For example, in 2007, the company could have recovered 2 million gallons per day, almost as much as the HWSP was estimated to produce in its first phase, just by improving infrastructure.³⁰ A researcher at Columbia University's Lamont-Doherty Observatory calculated that Rockland County could reduce per-capita demand by 15%.³¹

The recently proposed 2010 JP does not call for the parties to revise the JP, instead indicating that approval for the surcharge will be sought prior to construction. We support not granting the rate increase at this time because it is premature before a full environmental impact analysis has been done.

This 2010 JP suffers from the same defect as the 2006 JP. It presupposes the need for a long-term water supply project to meet Rockland County's water needs before a full analysis of costs, alternatives, and impacts has been complete.

Therefore, we ask the Commission not approve this JP unless the parties, the public, and the Commission will have the opportunity to reevaluate and potentially revise the original JP provisions supporting a new water supply project, after United Water has submitted a final forecast of the HWSP's costs in light of the Final EIS's evaluation of the project's impacts and alternatives, including conservation.

²⁷ State of New York Public Service Commission. Case No. 09-W-0731, "County of Rockland Direct Testimony of Dr. Daniel M. Miller," at 16-17.

²⁸ *Id.* at 20.

²⁹ See Food & Water Watch. "Not Worth Its Salt: How Rockland County Could End Up Paying for an Unnecessary Desalination Plant." January 2010.

³⁰ United Water, Draft Environmental Impact Statement for the Haverstraw Water Supply Project, at 18-5.

³¹ Stewart Braman, Rockland County Coalition for Sustainable Water, comments of United Water-New York Proposed Desalination Plant on the Hudson River at Haverstraw Bay, submitted to NYSDEC on June 25, 2009.

This will ensure that the company's attempts to finance the project – the costs and potential environmental impacts of which the company has thus far grossly underestimated – have no part in predisposing the answer to the more important decision being answered by permit writers and the public: how best to meet the water needs of the people of Rockland County in a sustainable manner.

B. Allowing United Water to charge ratepayers for the desalination plant would likely interfere with future low cost and reliable utility service.

United Water already wants to raise rates even before it has proven that this project is a good idea for Rockland's water. It even argued that the 2006 JP compelled such a rate charge,³² even though the plain language states that for long term projects, such a surcharge remains discretionary as "... the Company *may* be authorized to amend this surcharge no more than twice per year to include costs incurred for the long-term major supply project as the project is being developed."³³

If the Commission allows United Water to recover the costs of its proposed project by charging ratepayers, it will give the company financial incentive to continue pursuing the project. This would likely result not just in environmental damage and less sustainable water management, but also further rate hikes down the road.

If United Water comes up with another proposal to cover its capital costs, the request will likely be to cover an even larger amount than originally expected. According to the National Research Council, many cost estimates of desalinated water "do not account fully for all costs."³⁴ This means that desalination plants generally cost more than original estimates—a trend that is clearly illustrated by the country's first large scale seawater desalination plant in Tampa Bay, Florida, which cost nearly 44 percent more than originally promised.³⁵ Already, United Water's present total cost estimate of \$140 million dwarfs its original estimate of \$98 million, or this estimate adjusted for inflation, \$105 million.³⁶ And, if the plant were built, the high operating costs of the energy-intensive machinery would likely encourage the company to continue asking to charge even more for water.

The recently announced 2010 JP seems to agree that the rate increase for the HSWP is premature at this time. The new JP proposes that the company resubmit its approval for the rate increase immediately prior to construction. While FWW is happy that the parties have agreed not to institute this rate increase at this time, the Commission should clarify that any future request for a rate increase will still be subject to the Commission and parties approving it prior to construction.

³² State of New York Public Service Commission. Case No. 09-W-0731. "Rebuttal Testimony of Michael J. Pointing," at 31-33.

³³ 2006 JP at 11.

³⁴ National Research Council. Committee on Advancing Desalination Technology. "Desalination: A National Perspective." 2008 at 153.

³⁵ Ehrlich, David. "Tampa Bay desalination plant rises again." *Clean Tech Group*. January 28, 2008.

³⁶ United Water New York. "Long Term Water Supply Project." Prepared in compliance with Commission order in Case No. 06-W-0131 Issued and Effective December 14, 2006 by the New York State Department of Public Service. January 2007 at exhibit 3 and exhibit 5.

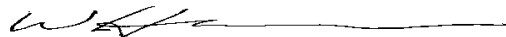
Rockland County is not alone.

All over the country, communities facing water shortages are looking for new solutions. As long as companies such as United Water can recover the costs of their capital “investment” in a new plant by charging ratepayers, they will have financial incentive to pursue capital-intensive desalination plants, such as the HWSP, rather than address the root causes of water problems and seek more sustainable solutions.

Like many proposed desalination projects, United Water’s HWSP is an expensive, unnecessary and potentially dangerous source of water that is being promoted by a private company at the expense of low-cost, low-impact water supply alternatives that better serve the public interest. The Commission should not encourage this project by allowing the company to charge ratepayers for it. It should not approve the 2010 JP unless the parties and the public will have the opportunity to reevaluate the 2006 JP’s provisions related to a long-term water supply project such as the HWSP in light of its environmental impacts and other alternatives, including conservation measures. Moreover, the Commission should clarify that any rate increases that the company seeks prior to construction for long-term water supply project remains discretionary, and the parties and the commission retain the right to evaluate the charge after reviewing the company’s submitted documentation, including all final forecasted estimates of costs.

Thank you for your consideration.

Sincerely,



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