



**COUNTY OF ROCKLAND
OFFICE OF THE COUNTY EXECUTIVE**

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Edwin J. Day
County Executive
April 14, 2014

New York State Department of Public Service
Attn: Kathleen H. Burgess, Secretary
Three Empire State Plaza
Albany, New York 12223

RE: Lake DeForest Reservoir Cost Allocation Amendment
DMM 14-00290

Dear Secretary Burgess:

The County of Rockland (the "County") appreciates the opportunity to review and examine the contract terms and submit recommendations to the Public Service Commission ("PSC") on the proposed Lake DeForest Cost Allocation Amendment (the "Agreement").

Preliminary Statement

This Agreement is critically important to support UWNY's ability to use the Lake DeForest reservoir as a fully-integrated component of their water supply system for the benefit of Rockland ratepayers. As a Party to this matter, the County respectfully requests that the PSC consider these recommendations to ensure that the new Agreement includes no financial disincentive to use by UWNY of additional surface water when it is plentiful (e.g., via spill skimming), and further that it results in a more equitable allocation of the Annual Operating Charge (the "AOC") between UWNY and UWNJ. The County also asks that the PSC review the existing definition of the AOC to ensure that it properly captures all costs incurred by UWNY for owning, operating and maintaining the Lake DeForest reservoir for the benefit of both companies, and properly accounts for the value of raw water that is used by UWNJ.

Though the County strongly recommends that the PSC take this opportunity to require fundamental changes to achieve equitable AOC allocation for general reservoir operations, we also offer recommendations regarding the Spill Skimming Procedure as it

is currently written, i.e., as a conditional exclusion of skimmed water from the calculation of UWNJ's previously-defined Allocated Average Annual Diversion (AAAD). This procedure includes a clear bias in favor of UWNJ that should not be approved by the PSC.

Accordingly, these recommendations address the need for changes to the fundamental basis for apportioning the AOC. The changes proposed by the County would obviate the need for the Spill Skimming Procedure to be detailed within the Agreement, since allocation of the AOC would reflect the proportion of the actual annual yield of the Lake DeForest Reservoir used by each company, including any spillage skimmed by UWNJ.

General Recommendations to the Proposed Agreement

Fundamental Basis for Cost Sharing

The proposed Agreement adds a provision to allow spill skimming under certain conditions without additional fiscal penalty to UWNJ. However, as in the expired Agreement, allocation of the AOC is still based fundamentally upon the relative allocation of the reservoir's 19.75 mgd safe yield; 10 mgd for UWNJ, 7.75 mgd for UWNJ, and 2 mgd for the Village of Nyack. On this basis, UWNJ pays a minimum of 56% of the AOC, and UWNJ pays a maximum of 44%. If UWNJ uses more than 10 mgd on an annual average basis (other than during the limited definition of spill skimming), their share of the AOC increases. There is no mechanism that obligates UWNJ to pay more than 44%, regardless how much of the actual annual yield they use.

Safe yield calculations are based in part upon the drought of record. The actual yield of the reservoir is higher in most years (in fact, any year other than during a severe drought). Stream flow data compiled by the USGS reveals that the long-term historical average yield of Lake DeForest has been approximately 39 mgd, with approximately 27 mgd unused by UWNJ or the Village of Nyack, and passing downstream into UWNJ's Lake Tappan reservoir. Allocation of costs on the basis of safe yield as in the proposed Agreement would only be equitable for a year of extreme drought, when the actual annual average yield is only 19.75 mgd. For all other years, such a cost allocation strongly favors UWNJ, effectively allowing them to use all of the "extra" yield, i.e., the yield that exceeds the defined safe yield, free of charge but at the expense of Rockland ratepayers.

The proposed Agreement has the potential to *reduce* the cost inequity, if UWNJ takes advantage of the cost-neutral allowance for spill skimming under certain conditions. However the fundamental "safe yield" basis still strongly favors UWNJ and can result in an unfair financial burden for Rockland ratepayers. Furthermore, the proposed Spill Skimming Procedure is also biased in favor of UWNJ, as set forth in more detail below.

Historically, UWNJ has used only their guaranteed 10 mgd allocation of the safe yield on an annual average basis, significantly less than 56% of the actual long-term average yield. Although the NYSDEC water allocation permit, WSA 2189, does not set an upper

diversion limit, UWNJ was limited to an annual average taking of 10 mgd from May 2003 to March 2013 by a condition (now rescinded) included in the NYSDOH approval of its dissolved air flotation system. In contrast, UWNJ has historically made use of a large proportion of the actual yield from Lake DeForest, more than their 7.75 mgd allocation of the safe yield, to provide water service to New Jersey ratepayers. Yet, under the terms of the Agreement, even with the proposed amendment, UWNJ pays a maximum of only 44% of the AOC.

It is important to note that although the original permit allowing the construction of Lake DeForest, WSA 2189, made it clear that the Lake DeForest Reservoir was to be operated "...solely for the benefit of the citizens of Rockland County," it is pointed out in RECITALS, B. of the proposed Agreement, that this reservoir "has served and will continue to serve to conserve and utilize the waters of the Hackensack River **for the benefit of the customers of both UWNJ and UWNJ.**" For this reason, it is appropriate for allocation of the AOC between UWNJ and UWNJ to reflect the proportion of the actual annual Lake DeForest yield used by each company.

Spill Skimming Stakeholders

Even though the proposed Agreement relates only to cost sharing between UWNJ and UWNJ and has no direct bearing on water resource allocation, the designation of NJDEP and NYSDEC as stakeholders clarifies that direct regulatory jurisdiction over the Agreement is not a factor in determining stakeholder status. The County of Rockland, on behalf of its residents, who are ratepayers, is directly impacted by this Agreement. This clearly demonstrates that the County is a stakeholder, and should be identified as such in the proposed Agreement.

Recommendations regarding the proposed Spill Skimming Procedure

As discussed in the introductory paragraph of the proposed Spill Skimming Procedure, it is important to understand that spill skimming, i.e., the use by UWNJ of additional water from Lake DeForest when the dam is overflowing, will not change the safe yield of Lake DeForest. Neither will it change the safe yield of UWNJ's Oradell Reservoir, since the 9.75 mgd downstream passing flow in the Hackensack River must be maintained pursuant to WSA 2189. Each company will thus retain their permit-defined allocation of the safe yield.

There is no longer any regulatory obstacle preventing UWNJ from employing spill skimming to improve their system-wide water resource management. UWNJ may now share in the use of the "extra" yield, i.e., the amount that exceeds the defined safe yield in most years. Such expanded use of surface water when it is plentiful could allow UWNJ to rest supply wells, potentially increasing ground water storage and thus improving the reliability of ground water sources, particularly during times of drought.

Unfortunately, as discussed in a previous section, the proposed Agreement does not amend the fundamental allocation of the AOC between UWNJ and UWNJ to reflect the proportion of the actual annual Lake DeForest yield used by each company. The Spill

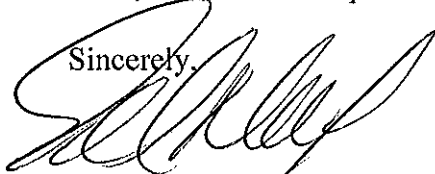
Skimming Procedure instead addresses the potential cost implications of spill skimming by defining an exception to the accounting methodology for UWNJ's annual diversion, excluding water taken by spill skimming under certain dam overflow conditions when calculating the AAAD. However, the proposed condition that only water taken when the remaining dam overflow is at least 25 mgd can be excluded from the AAAD represents a clear bias in favor of UWNJ. This bias is further intensified by not counting water released through the Howell Bunger valves as spillage. Since flow through the Howell Bunger valves can be as high as 60-80 mgd, this could effectively mean that only water taken by UWNJ when discharge from the dam exceeds 85-105 mgd escapes the financial penalty.

There is no support in the water allocation permit, WSA 2189, for such a minimum spill requirement. For this reason, there is no justification for a 25 mgd (or greater) limitation on spill skimming, other than to maintain a financial disincentive for UWNJ to use a larger share of the water resource, and thereby ensure more downstream flow for the benefit of UWNJ. As discussed in a previous section, pursuant to the expired and proposed Agreements, UWNJ's use of all downstream flow greater than its 7.75 allocation of the safe yield occurs at no cost to UWNJ, and at the expense of UWNJ ratepayers.

Consequently, the County respectfully asks the PSC to consider the foregoing recommendations in its decision whether to approve the proposed Lake DeForest Reservoir Cost Allocation Agreement.

In addition, the County of Rockland respectfully reserves a further opportunity to furnish additional recommendations upon a review of any comments by United Water New York, Inc, and the Department of Public Service.

Sincerely,



EDWIN J. DAY
County Executive

cc: Hon. Andrew Cuomo
Hon. David Carlucci
Hon. William Larkin, Jr.
Hon. Ken Zebrowski
Hon. Ellen Jaffee
Hon. James Skoufis
All Rockland County Legislators
Larry Toole
Dr. Patricia Ruppert
Tom Humback