

Filed Session of February 17, 2011
Approved as Recommended
and so Ordered
by the Commission

JACLYN A. BRILLING
Secretary

Issued and Effective February 23, 2011

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

February 1, 2011

TO: THE COMMISSION

FROM: OFFICE OF ELECTRIC, GAS & WATER - WATER RATES SECTION

SUBJECT: CASE 09-W-0731 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations for United Water New York, Inc.

SUMMARY OF
RECOMMENDATION:

Staff recommends that United Water New York, Inc. be authorized to reduce by \$58,021, the \$3,599,080 Methyl Tertiary Butyl Ether (MTBE) proceeds due its customers.

INTRODUCTION & SUMMARY

United Water New York Inc. (UWNY or the company) provides water service to approximately 70,240 customers in the Towns of Ramapo, Clarkstown, Orangetown, Stony Point, and Haverstraw and an additional 486 customers in portions of the Towns of Tuxedo, Warwick, and Monroe, in Orange County.

On September 24, 2008, the company petitioned the Commission for approval of its proposed accounting treatment for litigation settlement proceeds.¹

¹ Case 08-W-1139, United Water New York, Inc. - Settlement, Petition of United Water New York Inc. (filed September 24, 2008). The proceeds were the result of a class action suit against the petroleum industry for ground water contamination by the gasoline additive MTBE.

The Commission allowed the company to retain 20% of the proceeds, while the remaining 80% was to be retained for the ratepayers' benefit for disposition in the company's next rate filing.² In the subsequent rate case, the Commission ordered the company to return to the ratepayers \$3,599,080 in MTBE settlement proceeds.³

On December 3, 2010, the company filed a petition requesting modification of the Water Bill Credit Statement currently in effect. The Water Bill Credit Statement was filed on December 16, 2010, with an effective date of March 1, 2011, and reflects a reduction of the \$3,599,080 due to customers, by the net revenue under-collection of \$59,887. According to the company, the \$59,887 net under-collection results from netting the \$73,757 under-collection from the Underground Infrastructure Replacement (UIRP) Surcharge authorized in the company's prior rate case⁴ for the period January 1, 2010 through August 31, 2010, and the \$15,594, which represents 80% of additional MTBE proceeds of \$19,492 the company received in late October 2010, plus accrued interest. Details of the company's filing are shown in Appendix A.

Staff reviewed the company's calculations and found an error in the interest calculation. Based on this correction, Staff recommends that the company be allowed to reduce the MTBE proceeds by \$58,021. The company agrees with Staff's correction.

² Case 08-W-1139, supra, Order Allocating Settlement Proceeds (issued September 24, 2009) (Settlement Order). In accordance with this Order the disposition of the MTBE proceeds was to be handled in the company's next rate proceeding.

³ Case 09-W-0731, United Water New York, Inc. - Rates, Order Adopting Joint Proposal as Modified and Establishing a Three-Year Rate Plan (issued July 20, 2010).

⁴ Case 06-W-0131, et al., United Water New York, Inc. - Rates, Order Approving Merger and Adopting Three-Year Rate Plan (issued December 14, 2006) (Rate Order).

BACKGROUND & DISCUSSION

UIRP Reconciliation

Pursuant to the terms adopted in the Rate Order, the company is authorized to implement an UIRP Surcharge to recover the prudently-incurred costs of capital improvement projects relating to aged infrastructure, transmission, distribution, valves, fire flow and replacement of hydrants.⁵ The UIRP Surcharge is subject to an annual reconciliation between authorized and actual collections. Any over-collections or under-collections accrue interest at the other customer capital interest rate established by the Commission each year. The company proposes to handle the final reconciliation resulting from the UIRP Surcharge approved in Case 06-W-0131, by reducing the amount of MTBE proceeds it owes to its customers, by \$73,757. Staff reviewed the company's calculation of the under-collected revenues and finds it to be proper.

MTBE Settlement Proceeding

In 2003, UWNY and approximately 160 public and private water utilities sued several large oil companies for damages due to the contamination of water supplies from a gasoline additive, MTBE. In July 2008, the litigation was settled and UWNY obtained approximately \$4 million in compensation for potential water pollution caused by the MTBE. On September 24, 2008, the company petitioned the Commission concerning the disposition of these proceeds and it was determined that 80%, or \$3,599,080, of the settlement be refunded by the company to its customers.⁶ The Order also states that the disposition of these proceeds would be determined in the company's next rate proceeding.

⁵ Rate Order, pp 8-10.

⁶ Case 08-W-1139, supra, Order Allocating Settlement Proceeds (issued September 24, 2009).

In the company's subsequent rate case,⁷ the Commission authorized the company to refund to its customers \$3,599,080 MTBE proceeds commencing on August 31, 2010 and continuing until the entire amount is refunded, which is expected to occur by July 31, 2012. In late October 2010, UWNY received an additional settlement payment from Getty Properties Corp. in the amount of \$19,492. Pursuant to the Settlement Order, 80% of the MTBE proceeds were to be passed back to customers and 20% to shareholders. This results in an additional \$15,594 to be refunded to the customers.

In the current filing the company requests that the \$3,599,080 of MTBE proceeds be reduced by the \$59,887 net under-collection (which includes a component for interest), for a total of \$3,539,193 MTBE proceeds to be refunded to the customers.

Staff determined that there were errors in the company's interest calculation. Correction of these errors results in a net under-collection of \$58,021 or \$1,866 less than the company had requested. The company agrees with Staff's correction.

PUBLIC NOTICE AND COMMENTS

Pursuant to State Administrative Procedure Act (SAPA) §202(1), a notice of the proposed rulemaking was published in the State Register on December 29, 2010. No comments were received in response to the SAPA notice.

CONCLUSION

Staff recommends that the company be authorized to file a revised water bill credit statement to reflect a total of \$3,541,059 MTBE proceeds to be passed back to the customers. The bill credits will continue until the entire amount is completely refunded, which is expected to occur by July 31, 2012.

⁷ Case 09-W-0731, supra, Order Adopting Joint Proposal as Modified and Establishing a Three-Year Rate Plan (issued July 20, 2010).

RECOMMENDATION

It is recommended that:

1. United Water New York, Inc. be directed to file on not less than one day's notice, Water Bill Credit Statement No. 3 to its Electronic Tariff Schedule P.S.C. No. 1 - Water in the form shown on appendix B, to become effective March 1, 2011.
2. This proceeding be closed, without further action by the Commission, after compliance filing has been made in response to the ordering clause #1, unless the Secretary to the Commission finds good cause to continue the proceeding further.

Respectfully Submitted,

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Utility Engineer II
Office of Electric, Gas and Water

REVIEWED BY:

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Office of General Counsel

APPROVED BY:

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Filing by: United Water New York, Inc.

Tariff Schedule P.S.C. No. 1 – Water

Water Bill Credit Statement No. 2

Issued: December 16, 2010 Effective: March 1, 2011

STATE ADMINISTRATIVE PROCEDURE ACT: 09-W-0731SP2

PUBLISHED IN STATE REGISTER: December 29, 2010

NUMBER OF CUSTOMERS: 70,726

Case 09-W-0731

APPENDIX B

PSC No. 1 – Water
United Water New York, Inc.
Initial Effective Date: March 1, 2011

Statement Type: WBC
Statement No. 3

WATER BILL CREDIT
MTBE PROCEEDS REFUND

Pursuant to the Commission Order in Case No. 08-W-1139 issued and effective September 24, 2009 the net proceeds received as settlement in litigation to recover damages for water pollution caused by Methyl Tertiary Butyl Ether (MTBE) were to be deferred and to be considered in the company's next general rate proceeding. In accordance with the Order issued in Case No. 09-W-0731, the proceeds of the MTBE settlement of \$3,541,059 shall be utilized as a rate moderator in Rate Years One and Two as defined below for the benefit of the customers:

	Effective <u>08/31/10</u>	Effective <u>08/31/11</u>	Effective <u>08/31/12</u>
MTBE Proceeds	(1.90%)	(3.40%)	0.00%

The credit on the customers' bills will continue on a bills rendered basis until such time as the entire MTBE amount is completely refunded, which is expected to occur by July 31, 2012.

Filed in compliance with Commission Order in Case 09-W-0731, issued