

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 13-W-0295 - Proceeding on Motion of the Commission as to
the Rates, Charges, Rules and Regulations of
United Water New York Inc. for Water
Service.

MOTION TO DENY

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I. INTRODUCTION

On June 26, 2014, the Commission issued an Order¹ resolving the current United Water New York, Inc. (UWNY) rate proceeding. On July 28, 2014, the Municipal Consortium (MC), a party to the rate proceeding comprising municipalities and schools served by UWNY, filed for rehearing² pursuant to 16 NYCRR §3.7(a) alleging four errors, a violation of due process and four requests for clarification. On August 12, 2014, pursuant to 16 NYCRR §3.7(c), Department of Public Service Staff (Staff), UWNY, Rockland County and the Department of State Utilities Intervention Unit (UIU) filed responses to the MC Petition.

¹ Case 13-W-0295, United Water New York, Inc. - Rates, Order Establishing Rates (issued June 26, 2014) (Order).

² Case 13-W-0295, supra, Petition for Rehearing and/or Clarification on Behalf of the Municipal Consortium (filed July 28, 2014) (MC Petition).

In its response supporting the MC Petition,³ the UIU proposes grounds for rehearing not present in the Petition and requests relief not sought by the MC. These new elements constitute an untimely petition for rehearing of the Order and should be struck from the record.

II. ARGUMENT

Under 16 NYCRR §3.7(a), "Any person interested in an order of the Commission may request rehearing within 30 days of service of the order." According to 16 NYCRR §3.7(b), rehearing may be sought on only three grounds: an error of law, an error of fact, or new circumstances warranting a different determination. Upon the filing of a petition for rehearing, other parties have 15 days to respond. Parties responding to a petition are limited to the arguments presented by the petitioner and may not seek to introduce new arguments in their filings.⁴

As explained below, the UIU Response introduces two new improper arguments: that the Commission's treatment of Management and Service Company Fees (M&S Fees) constitute a factual error, and that the Commission should allow for the filing of testimony and a hearing regarding the intercompany agreement the allocation of costs related to the Lake DeForest

³ Case 13-W-0295, supra, Response of the Utility Intervention Unit to the Muncipal [sic] Consortium's Petition for Rehearing and/or Clarification (filed August 12, 2014) (UIU Response).

⁴ See Case 98-C-1357, Telephone Rates - Unbundled Network Elements, Order Denying Rehearing Petitions (issued February 6, 2003) (stating, "Introduction of new arguments that are not addressed in AT&T/WorldCom's petition is not authorized by §3.7(c) of the Commission rules").

Reservoir (DeForest Agreement). Since these arguments are beyond the scope of the MC Petition, they should be deemed untimely petitions for rehearing and denied.

A. M&S Fees

In its support of the MC Petition, the UIU attempts to provide an alternative basis for rehearing not proposed by the MC. In challenging the Commission's treatment of the M&S Fees issue, the MC Petition states in its introduction, "the Commission committed an error of law in not making the revenue requirement associated with 50% of the authorized Management & Service Fees temporary and subject to refund to protect the ratepayers while the M&S audit is underway.⁵" The MC Petition later states that "[the Commission's] statement is in error since it assumes *a priori* that the historic level of M&S charges is appropriate."

While Staff argues the MC argument is not valid,⁶ the MC Petition clearly claims that the Order's treatment of M&S Fees is a legal error. The UIU Response states, "The UIU submits that this reasoning is a **factual** error because it assumes *a priori* that the historic levels of M&S Charges were appropriate (emphasis added)⁷." By alleging factual error rather than legal error, the UIU has improperly introduced a new argument beyond the scope of the MC Petition. Accordingly, this argument should be dismissed and not considered by the Commission.

⁵ MC Petition at 2.

⁶ Case 13-W-0295, supra, Staff Response to the Petition for Rehearing and/or Clarification on Behalf of the Municipal Consortium (filed August 12, 2014) (Staff Response), p 4-5.

⁷ UIU Response at 4.

B. DeForest Agreement

The MC Petition alleges that the Commission's acceptance of the DeForest Agreement⁸ lacked a basis in the record and violated the due process rights of UWNY's customers.⁹ As a remedy, the MC argues the Commission "should provide the parties with 30 days to submit comments on the revised DeForest Agreement, before rendering a final decision."¹⁰

The UIU Response, in addressing the DeForest Agreement, argues that "the public should be given a reasonable opportunity to file comments and testimony on the Cost Allocation Amendment. After a hearing, a PSC decision on whether the Cost Allocation Amendment is in the public interest can be incorporated into its decision in the Need and Prudence Proceeding, which is expected to address related supply-side issues."¹¹

By advocating for relief in excess of that sought by the MC, the UIU has gone beyond the scope of the MC Petition. Its argument is an untimely petition for rehearing and should be denied.

III. CONCLUSION

The UIU's attempt to introduce new grounds for rehearing and expand the relief sought in the MC Petition is not authorized by the Commission's rules. The UIU had the opportunity to raise these issues in a timely petition for

⁸ Order at 43-46.

⁹ MC Petition at 18-23.

¹⁰ Ibid. at 23

¹¹ UIU Response at 8.

rehearing, but did not avail itself of the opportunity. Allowing new arguments to be introduced into the proceeding at this late date would prejudice the other parties by denying them opportunity to challenge the UIU's position. Given this harm, the UIU's new arguments should be disregarded by the Commission while considering the MC Petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JD', with a stylized flourish at the end.

Joseph Dowling
Assistant Counsel

Dated: August 14, 2014
Albany, New York