NEW YORK STATE

PUBLIC SERVICE COMMISSION

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

BRIEF ON EXCEPTIONS

ON BEHALF OF THE

MUNICIPAL CONSORTIUM

April 28, 2014

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Introduction

United Water New York Inc. ("UWNY") has received over the last six years a 72 % increase in revenues.[1] The Recommended Decision ("RD") indicates that a 15% increase in water rates should be granted in this case. That would mean that UWNY revenues would increase 87% over seven years. The average inflation rate has been 2% on an annual basis since rates went into effect from the 2006 case. What accounts for UWNY's increase in revenues that was six times the rate of inflation? Why does the RD recommend an additional 15%, especially in view of the mismanagement that is evident on the record in this case?

This Brief on Exceptions on behalf of the Municipal Consortium[2] excepts to a number of positions taken by the Administrative Law Judges in the RD. While in

[1] MC Initial Brief at 4. UWNY has not disputed these figures.

[2] The MC consists of Rockland County; Rockland County Waste Management Authority; Rockland County Sewer District No. 1; Rockland County Fire Chiefs

isolation, looking at a particular issue, for example, the number of employees required, the ALJs may have developed a reasonable conclusion, or at least a conclusion about which reasonable men and women could differ. But what the RD fails to do is to look at the total picture. The RD does not examine whether the sum of the individual decisions on each element of expense or capital investment produces just and reasonable rates as is required by the Public Service Law and Supreme Court precedent. The RD does not reflect the fact that UWNY witnesses could not answer basic questions that go to the heart of determining whether expenses are just and reasonable. It is not whether the individual rate making adjustment in isolation are reasonable. It is the end result that counts.

Of even greater importance is the RD's total failure to consider how the extraordinary mismanagement of UWNY should be reflected in rates. The record is replete with example after example of UWNY's shortcomings in the running of this business that has cost Rockland County ratepayers millions of dollars a year. For a utility to be entitled to a rate increase not only must it show that it actually needs an increase in revenues, i.e., that its costs have increased and there is no alternative[3],

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Association; theTowns of Clarkstown, Haverstraw, Orangetown, Ramapo and Stony Point; the Villages of Grandview-on-Hudson, Haverstraw,Sloatsburg and West Haverstraw; Nyack Union Free School District, Ramapo Central School District and the Rockland County Fire Chiefs Association.

[3] As the RD states: " It [UWNY] is well aware of regulatory requirements and the fact that it bears the burden of proof in any case examining a rate request to show that any requested increase is necessary and reasonable.[73] 16 NYCRR Part 61. RD at 79.

but that it is managing the business in an “efficient and economical”[4] manner. Even a casual observer, as noted by many speakers at the recent Public Statement Hearings in West Nyack and Ramapo, realized that UWNY is not doing its job in an “efficient and economical” manner.

The specific exceptions will be noted in the order presented in the RD. These include:

1. Management & Service Company Fees –the MC excepts to the RD’s failure to recommend temporary rates subject to refund to protect ratepayers.
2. The MC excepts to the RD’s failure to utilize the Staff’s EO Adjustment.
3. The MC excepts to the RD’s failure to understand the fact that UWNY did not do a cost/benefit analysis on a $2 million capital project.
4. The MC excepts to the RD’s failure to adopt the MC recommended return on equity and to disallow the expense of ROE testimony.
5. The MC excepts to the RD’s delay in implementing the Customer Service Performance Incentive mechanism.
6. The MC excepts to the RD’s failure to provide a revenue adjustment for UWNY historically high non-revenue water.
7. The MC excepts to the RD’s failure to hold off any rate increase until fire service issues are corrected.

[4] Order Approving Electric, Gas and Steam Rate Plans in accord with Joint Proposal (Issued and Effective February 21, 2014), Cases 13-E-0030.

8. The MC excepts to the RD's failure to recommend a management audit.

1. Management & Service Company Fees

The MC excepts to the RD's failure to make ½ of the M&S fees temporary and subject to refund. This is more than a reasonable and responsible recommendation. While recognizing that charges made by service companies "… is an area of heightened Commission sensitivity since they are not the product of 'arms length' bargaining and potentially limit the Commission's ability to directly and fully audit the foundation and reasonableness of those charges," the RD gives UWNY a pass – until the next rate case. What is so unjust about this recommendation, is that it places the burden of potentially unreasonable charges on the ratepayers with no opportunity to obtain refunds, after an audit, where charges like the sample are shown to be inappropriate.[5] The RD after acknowledging the high percentage of inappropriate charges in a tiny sample, goes on to state "The nature and number of errors calls into question whether they are symptomatic of more prevalent and costly improper charges to the Company." RD at 17.

The RD acknowledges potential allocation problems. RD at 11-12.

The RD also recognizes the "drastic increase in M&S fees between the $2.919 million allowance in the last year of the most recent rate plan and the actual charges

[5] "Such lack of transparency is particularly problematic given the improper charges to UWNY -– which included individual affiliate costs charged to all affiliates, double counted costs that were not normalized out, charges for alcoholic drinks and non-employee family member meals -- that were uncovered in the random sample of only 17 transactions out of over 6,000 charges to UWNY by M&S in the test year." RD at 16 – 17.

in the test year (footnote omitted).” Id. While rejecting the “drastic increase” for ratemaking purposes, the RD does nothing to address what could be, and probably is, a very serious problem other than to recommend that UWNY conduct a comprehensive audit and report the findings in the next rate case, along with a cost/benefit to ensure that the services from the M&S company are the most cost effective.

This is like asking the fox how many chickens he ate. UWNY has demonstrated that it cannot be trusted. So a self-audit is not the answer. The answer is a full-scale independent forensic audit of UWNY’s books and operations. A number of elected officials have called for a forensic audit at the Public Statement Hearings.

The RD does not explain why it is not recommending temporary rates to protect the ratepayers. All the RD says is:

> The audit of the M&S charges should disclose whether the erroneous charges are limited to those found by Staff or are more pervasive and symptomatic of M&S operations, thus warranting further Commission action. Staff is not precluded from bringing the matter to the Commission in advance of the Company's next rate filing if the preliminary audit information indicates that additional measures are needed to protect ratepayers.

RD at 19. The problem is that this recommendation is too little, too late. If the ratepayers have been harmed by improper charges reflected in rates that harm can not be undone under the approach taken by the RD. Just like UWNY’s gross negligence in failing to file for Economic Obsolescence Adjustments, to be discussed later, the doctrine against retroactive ratemaking precludes refunds. That is why temporary rate are necessary, in concert with an independent forensic audit.

It is as if the RD has reversed the burden of proof. What should be UWNY’s burden to prove that the proposed rates are just and reasonable has now been turned into a grotesque parody of the process where the ratepayers with no resources have to show that the rates are not just and reasonable or give UWNY time to concoct a story as to why double digit increases in M&S fees are reasonable.

Furthermore, UWNY's witness revealed no real effort to contain costs. For example, regarding the double digit increase in UW Management and Service fees, Staff counsel asked UWNY witness Michaelson:

> Q. If an unaffiliated vendor increased its fees by double digits every year for two years, would the Company look in -- investigate the possibility of using other vendors or would it just continue to use that vendor?
>
> A. It depends on the circumstances, but generally I believe that we would look to -- I believe United Water New York bids out a lot of its services. And if we saw double digits, we would probably look into it, yes.
>
> Q. Have you considered trying to bid out any of the services the M and S Company performs for United Water New York?
>
> A. Not to my knowledge.

Tr. 590 – 591.

Mr. Michaelson was unaware of many issues associated with the company he works for since 1994 as is shown by this exchange with counsel for UIU.

> Q. Some of the fees that are charges that Staff mentioned in their direct testimony concern charges for -- for, let's say, social events for employees. Are you familiar with Ms. Esposito's testimony?
>
> A. I am.
>
> Q. Okay. And these charges are -- are paid for by ratepayers. Is that correct?
>
> MR. FITZGERALD: Which specific charges are you --?
>
> BY MR. RIGBERG: (Cont'g.) Q. These charges identified by Staff, you know, for instance, for parties and gifts for employees?

A. No, because we don't know what portion of the M and S costs will be

Q. I'm not talking about what would be disallowed, but what -- what the Company has put in their revenue requirement.

A. Yes, then they would be included.

Q. Okay. Now is there a target budget that either United Water New York has -- well, does United Water New York have a budget for how much money it will spend on social events for employees?

A. I'm not -- I can't comment on United Water New York's budget. I'm -- I'm not certain.

Q. Okay. Does the M and S entity have any budget on how much it spends on social events for employees?

A. Again, I can't comment on the individual department budgets on the M and S Company.

Q. Okay. So you have no knowledge about -- are there Company procedures on what costs are considered to be appropriately charged to ratepayers that involve, you know, gifts to employees or expenses for alcohol?

A. To my knowledge, there's --there's -- I can't comment on whether policy or not. I'm not aware of one.

Q. Now you were in the -- this morning, when we talked about severe impact of the recession on the there's a room when the service territory. Did you hear that, the cross examine regarding that?

A. Yes, I did.

Q. Okay. Now, do you have any knowledge about whether any of the entities associated with United Water took stock of the economic recession and curtailed its practices regarding charging ratepayers for social events on behalf of the employees?

A. Again, I wouldn't characterize United Water charging customers for social events.

Q. Okay. Do you think a nine-hundred-dollar bill for alcohol is a social event?

A. It depends on what context.

Q. Okay. And do you think it's appropriate for ratepayers to pay for that?

A. That particular transaction should not have been charged there, so, yes, I would agree that that's not appropriate for customers to pay for that that charge?

Q. Okay. Now who -- who made that charge?

A. I don't know who made that charge.

Q. And -- and who approved the charge?

A. I don't know that, either.

Q. Do you know if the person who approved the charge was reprimanded for approving the charge?

A. I don't.

Tr. 624 - 627 Here is an individual who runs this rate case, who is a 20 year veteran, and does not know who makes expense charges and who approves expense charges. More disturbing is the fact that there does not seem to be any policy in place the separates expenses between those that are appropriately included in rates and those that should be excluded like alcohol.

A full management audit and forensic accounting audit of UWNY are well past due.

2. Property Tax Expense

Staff, in its post hearing brief updated the Economic Obsolescence award to 15.19% and argues that amount should be imputed against the rate increase. The RD rejects that updated calculation and picks 10% without any record support other than it is a percentage between the actual and first EO allowance UWNY obtained or 7% and the Staff recommendation. The RD correctly dismisses UWNY's contention that Staff was aware in prior cases that it did not file for an EO award. This approach is typical of UWNY to blame others for their errors.

> Staff is not responsible for managing the day-to-day operations of the Company. Moreover, UWNY utilizes the services of tax professionals. UWNY's failure, at the very least to conduct a basic inquiry of ORPTS to see if it might be eligible for the EO award until questioned by Staff during discovery in this case, is inexcusable.

RD at 26. Inexcusable is too polite a word for UWNY's gross negligence. There is no support for the RD's 10%. There is support for Staff's corrected calculation producing a 15.19 % EO award and that should be used.

3. Capital Expenditures

The RD claims that MC's reliance on the transcript for the proposition that UWNY does not do cost/benefit analyses "grossly misreads the testimony." RD at 56. When counsel for UIU asked Ms. McEvoy whether UWNY did a cost/benefit analysis on the A.M.I. project, the answer was "We did not." Tr. 420. The A.M.I. project is projected to cost $2.1 million. Exhibit 16 (PM-1, page 4 of 4).

When asked by counsel for UIU whether UWNY had done a cost/benefit analysis of implementing A.M.I. and D.M.A at a "quicker pace than – than you're proposing?" The answer was "I don't believe we have." Tr. 422.

Because of those unexpected responses, counsel for the MC asked:

> Q. Do you do cost benefit analysis on all of your capital projects?
>
> A. No, we do not.

Tr. 424. There was no redirect and the chief engineer for UWNY was excused.

There was no qualification in the answer. Obviously, UWNY would not do a cost benefit analysis if there is a main break and the main has to be replaced. Nor would it be likely that the replacement or upgrades of old mains would require a cost benefit analysis. However, UWNY has the burden of proof in this rate case and the record contains not one cost/benefit analysis for any of the capital projects. This is another reason why the MC recommends a management audit for UWNY.

UWNY does not conduct any tests to see whether an improvement fixes the problem as the following testimony from Mr. Pointing reveals.

> Q. Now after the Company makes improvements to its infrastructure, for example it replaces a main, do you go back out and test the effectiveness of that improvement?
>
> A. Not necessarily, no.
>
> Q. So for example, let's -- let's say you replaced a -- a very old water main that had a fair amount of tuberculation and you replaced it with a new larger one, you would not go out -- go back out and do hydrant flows and test the pressure to see what impact that replacement had on your system?
>
> A. We, over a period of time, would do some pressure at a hydraulic model. necessarily go out and testing from hydrants checking to recalibrate. But we wouldn't do fire flows or flow testing from hydrants.

Tr. 270 to 271.

4. Rate of Return

It seems in every rate case, the rate of return on equity is one of the more hotly debated issues. And this is odd in the sense that this Commission has basically standardized the methodology for over twenty years. This Commission uses the Discounted Cash Flow and Capital Asset Pricing Models, weighing the results two-thirds and one-third, respectively. Staff's expert witness followed this methodology. UWNY's witness did not. UWNY's consultant used nine cost of equity analyses. In addition to DCF and CAPM, UWNY's witness introduce a Risk Premium Model.

UIU and the MC rely on the expert testimony of Basil Paterson in the recently concluded Con Edison case arguing that 7.93% ROE should be the upper range in this case since it is manifest that the provision of water service in suburban Rockland County is far less risky from a business perspective than is the provision of electric, gas and steam by Con Edison in its predominantly urban service territory. The Company's consultant makes a 0.25% upward business risk adjustment due to UWNY's small size, but does not make any adjustment for the inherently less risky business of providing water service in suburban Rockland County. In fact, UWNY's witness has never even visited Rockland County, although she admitted "I've been though it." Tr. 570.

UWNY's consultant also indicates that because of the greater amount of capital investment by water utilities relative to electric companies in terms of revenue, water utilities are more risky. That conclusion is flat our incorrect. Electric utilities have to spend significant amounts of cash flow on commodity costs to provide electric service for its customers who do not elect to use Energy Service Companies for the commodity. The cost of water is essentially free. So there are higher revenues in the electric business due to the high cost of the commodity – particularly this past winter. Yet, while freely stating that water utilities were as risky, if not more risky, than electric utilities (Tr. 568), UWNY's consultant did not know whether the percentage of O&M to revenues was lower in water utilities than in electric, gas or steam (Tr. 572).

Furthermore, the more logical argument in terms of the so-called higher relative investment in revenues is that it actually reduces risk since this Commission consistently provides a return on invested capital. So along with the key reconciliation mechanisms[6], a water utility like UWNY is far less risky from both a financial and a business risk perspective. When asked by UIU counsel "what's more risky?" UWNY consultant responded that "Well, they [water utilities] need to raise more capital and invest more capital in their plant or their rate base in order to generate a dollar of revenue." Tr. 564. While it may be somewhat more costly per million dollars raised to do a relatively small financing than a larger one, once the capital is raised it is recovered in rates with a high degree of predictability at least with respect to long-term debt. Furthermore, large capital investments generate larger tax deduction though depreciation that enhances cash flow. Higher cash flows all else equal translates into lower financial risk. This may be one of the considerations that led the RD to state: "…we generally consider [electric utilities] to be more risky than the large water companies." RD at 76.

The major failing of the RD in this area is that it does not explain how the recommended 9.0% return on equity was developed. After reviewing and rejecting UWNY's rate of return analyses, the RD references the recent Con Ed rate cases that put in place a two and three year rate plans, and then just states 9% is the recommendation. Something more needs to be said to support such a finding that is arbitrary and capricious. The only ROE testimony in this case was provided by Staff and UWNY. Neither UIU nor the MC have the resources to engage such expertise. But that is why both UIU and the MC based their recommendations on the expert

[6] UWNY enjoys financial risk reduction since it has revenue reconciliation mechanism and has had other reconciliation mechanisms in its rate plans.

testimony of Basil Paterson in the Con Ed case[7]. Since it is fairly well understood that Con Ed faces greater business risk, then Mr. Patterson's recommendation of 7.93% should be the top end for UWNY. In any event, as will be discussed, UWNY's mismanagement should not be rewarded with the generous ROE set forth in the RD.

The MC also excepts to the RD forcing the ratepayers to pay for the over-the-top ROE testimony. One can make a good argument that the $1 million of rate case expense should be shared equally between the shareholders and ratepayers. But testimony that is total inconsistent with the Commission well-established practices should be wholly borne by the shareholders.

Like the unsupported ROE recommendation, the RD provides an equally unsupported equity ratio of 46% compared to Staff's recommendation of 44%. The only rational is that:

> We believe that our recommendation herein is comparable to the ROE levels adopted by the Commission in the Con Edison and National Grid cases given that our recommendation is not adjusted upward to account for the additional risk that a utility may be subject to in a multi-year rate plan. Multi-year rate plans traditionally incorporate stay-out premiums that may or may not be specifically identified in the Commission's order.

RD at 77. The problem is that after agreeing with the MC and UIU, the RD then ignores the lower risk of this water utility and relies on the Con Ed case for its rational for a one-year case.

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7 The use of testimony in another case is not unusual. As the RD recognized at page 77:

> The ROE level established by the Commission in other cases is frequently offered to support an ROE level in a pending proceeding. This case is no different as indicated by the Company's reference to the ROE levels set by the Commission in the recent Con Edison and National Grid rate cases.

5. <u>Customer Service Performance Incentive</u>

The MC excepts to the RD's recommended postponement of the CSPI for one year. Staff recommended that it be put into effect as of calendar year 2014 and this is appropriate. If the CSPI imposes a penalty, then UWNY can always petition the Commission for a waiver if it can show that the CSPI was triggered by the change to monthly billing.

With respect to Appendix 1 to UWNY's Reply Brief, the MC does not object to that response to have UIU transcript request being marked as an exhibit and taken into evidence in this case. However, the 2013 customer survey should also be marked as an exhibit and taken into evidence in this case. Likewise, the MC does not object to taking Appendix 4 of UWNY's Reply Brief into the record of this case.

The RD refers to PSL §25-a. That recent statute appears to apply to combination gas and electric utilities. However, Section 25 would apply to water utilities. Perhaps Staff should determine whether UWNY has run afoul of that statute since it has failed to observe Commission's regulation at least with respect to failing to report non-revenue water above 18%.

6. <u>Non-Revenue Water</u>

The RD finds "the Company's non-revenue water levels to be unacceptably high." RD at 108. It fails to adopt "an incentive mechanism or revenue adjustment at this time" <u>Id</u>. The MC excepts. UWNY needs a Commission Order with a specific incentive mechanism as the following exchange reveals.

> Q. Are you [Mr. Pointing] satisfied with the current level of non-revenue water the Company's experiencing?
>
> A. Yes, I am.

Tr. 274. If the Vice President and General Manager is satisfied with 21% non-revenue water, then he will not do anything different than what has been done in the past. This is precisely why the MC recommended a performance mechanism to focus UWNY's attention and to force action.

On re-direct, UWNY's counsel provided Mr. Pointing an opportunity to further explain his answer. A review of that explanation reveals the basis for his satisfaction. See Tr. 312 - 317. Included in the explanation is a reference to the consulting company, Halcrow, that had performed an analysis of United Water New Rochelle and found that the goal should be 15% for non-revenue water. UWNY states that UWNY's service territory is similar UWNR and is implementing the Halcrow recommendations. So MC recommends that UWNY's revenues be reduced on a percentage basis consistent with 18% non-revenue water for the rate year and 1% more for each subsequent year until the Halcrow recommended goal of 15% is reached. UWNY has had plenty of time to begin implementation, but it appears not to have done so.

While complaining that MC members have engaged in theft of service, there was no evidence put into the record. In order to quantify the magnitude of the theft of service problem, Mr. Pointing was asked:

> Q. Let's use a round number, five percent, and let's assume that the average daily demand in Rockland County is twenty-eight M.G.D., roughly. So, are you telling me that there is approximately one point five million gallons a day that's being stolen?
>
> A. Correct.

Tr. 320 – 321. However, UWNY does nothing about it, as the following confirms.

> Q. In connection with some of the instances, where you have observed or that the Company personnel has observed theft of service, have you taken any measures to prosecute those individuals that were found to be stealing water?
>
> A. We have, but not in the United Water New York service territory. In a-- in a sister company, United Water Westchester.

Tr. 321 – 322. Also there are locking devices that are used on the hydrants in the New Square area. There are no reports indicating that the fire department serving New Square has a problem accessing the hydrants with the locking device. This is yet another example of poor management, that should completely undercut any justification for a rate increase.

7. Fire Service Issues

Like the non-revenue water issue, the poor response to the Fire Chiefs in connection with correcting low flow issues in the Hamlet of Ramapo and the Village of Sloatsburg will not be corrected unless there is an incentive mechanism. Therefore, the MC has recommended that no increase be granted until those two problems are fixed. The RD declined to adopt this recommendation and the MC excepts.

It is clear on the record that UWNY left to its own devices, will not make the required improvements – improvements that the Fire Chiefs have been seeking since the summer of 2010. If the rate increase were conditioned on making those improvements, the MC suspects that they would be made in 3 and ½ weeks instead of 3 and ½ years with still no solution. Low flow is an obvious health and safety issue, yet this does not seem to count in whatever priority system UWNY uses for its capital projects. Again, this is more evidence of the need for a comprehensive management audit. Indeed, the fact that the low flow situation continues provides grounds for a prudence investigation.

8. Management Audit

The RD declines to recommend that a management audit be conducted of UWNY either because the ALJs were unconvinced that a *prima facie* case of management failures and deficiencies had been made or because the RD recommendations are deemed sufficient. The MC excepts.

Interestingly, the RD cites PSL §89-c(15). According to the RD

> That section provides, in pertinent part, that the Commission "shall provide for management and operations audits of water-works corporations" and "shall have discretion to have such audits performed by its staff, or by independent auditors." Where an independent auditor is selected, the statute gives the Commission authority to select the auditors, to require the Company to pay them, and to provide that the auditors shall work for and under the direction of the Commission. Moreover, the Commission "shall have authority to direct the corporation to implement any recommendations resulting from such audits that it finds to be necessary and reasonable," and shall review the company's compliance as part of the next major rate case.

RD at 118. The ALJs, apparently in view of the above provision in the Public Service Law, did not consider that a recommendation for a management audit was within the scope of their duties and "…we decline to make any recommendation here." The MC excepts. The statute cited is mandatory. The Commission "shall provide for a management audit." The only difference between the provisions governing electric and gas management audits is that those audits must be performed every five years. While the MC and UIU obviously believe that a management audit of UWNY should be performed based on the recorded mismanagement in this case, the MC urges the Commission in the alternative to exercise its discretion and institute a management audit under PSL §89-c(15). The MC agrees with UIU that management audits generate useful results. RD at 119.

Other examples of management deficiencies abound. UWNY has united the citizens of Rockland County in Case 13-W-0303, the so-called "need" proceeding in a way that appears unprecedented. The public statement hearings in that case started on October 1, 2013 at 6 PM and did not end until October 2 at 1:45 AM. Later that day the hearing again began at 6 PM and did not end until past 11 PM. What is it about UWNY that stirs such strong passions? Isn't that sufficient justification for the Commission to make a detailed inquiry into UWNY's management?

UWNY, according to Mr. Pointing, decides to file for a rate increase when its historic data shows a deficiency in returns.

> Q. Is there an executive committee within United Water New York that collaborates on such questions and makes that decision?
>
> A. I don't believe so. We annually file returns that show our actual rate of return compared to authorized. And then, obviously, you know we're looking to try and manage the business as close to the authorized rate of returns as possible. So when the margin gets larger, we obviously look to – to bridge the gap.
>
> Q. Is that done on a historic basis or is it done on a forecast basis?
>
> A. It's done on a historic basis.
>
> Q. So in other words, you would be looking at data from 2012 to try to make a decision whether you should file a case in 2013?
>
> A. Pretty much, yes.

Tr. 274. That is an interesting perspective. The statement is even more interesting when one views UWNY's Annual Report to the Commission for 2012. It shows a 10.2% Return on Common Equity. That can be found on the fifth page from the end of the Report and two pages before the Verification. The 2012 UWNY Annual Report can be found on the Commission's website under Matter 10-01678.

The 2011 UWNY Annual Report can also be found under that Matter number and shows that UWNY earned a 13.0% Return on Common Equity in that year.

Here is another interesting exchange, this time between Mr. Pointing and counsel for UIU.

> Q. Okay. Okay. I wanted to just turn your attention to the issue of dividends that United Water New York pays its parent company. Are you aware of that situation?
>
> A. It's not something that I generally deal with on intimate level.
>
> Q. Okay. Do you have any knowledge of who decides how -- what the level of dividends that are paid from the United Water New York to the parent is?
>
> A. I don't.
>
> Q. Okay. Are you aware that United Water New York increased its dividend to the parent by fifty percent in 2013?
>
> A. I was not.

T. 300 – 301. That is a surprising answer for the Vice President and General Manager not to be intimately familiar with the cash flows of the company he manages, particularly when the dividend paid was $6 million a 50% increase over the dividend paid in 2011. Mr. Pointing signed the Verification for UWNY's 2012 Annual Report.

Further support for a management audit is demonstrated by the following exchange with Mr. Pointing.

> Q. And as you move to district metering along with the second phase of the upgraded automated metering system, will that not provide additional opportunities to identify problem customers, if you will?
>
> A. It's very much complementary. But without the personnel to analyze the information and the data, we will obviously not be getting to the -- to the

heart of the issue as quickly as we possibly could.

Q. How is that function handled today?

A. So at the moment, we are not having anybody track and monitor the consumption cycle by cycle and customer by customer. So, last year, we put a temp in place, which we, you know, then replaced with a -- with a full-time person, to set up some systems that would help us to actually track and monitor. But at the moment, we're not actually tracking and monitoring.

Tr. 259 - 260. UWNY does not have anyone tracking and monitoring the consumption of customers and yet complains about theft of service.

Finally, UWNY does not reflect price elasticity of demand in their rate design.

Q. Ms. Jersey, are you familiar with the concept price elasticity of demand?

A. Somewhat, yes.

Q. When you designed the rates that you are -- are shown in this case, on C.D.J. dash One and -- does -- does -- do these rates reflect result of the could not -- a lowering of the sales as a increase in the price?

A. No, I don't believe so. I could not

Q. Okay.

A. -- quantify that.

Tr. 378. If UWNY analyzed the effect that increasing prices have on the demand for its service, it would not come as a surprise that the demand for water has declined in Rockland County as UWNY rates have increased. This is a planning failure and further demonstrates the need for a comprehensive management audit.

Conclusion

UWNY has demonstrated quite clearly on the record of this case that it is not being run economically and efficiently – the condition precedent to a rate increase. The numerous failures cited in this case reveal that UWNY has been consistently overcharging customers, has no policy with respect to what expenses should be charged to customers; has presented no cost/benefit analyses in support of any of its CAPEX program; has no plan to control runaway double digit M&S fees; does not test to see if a system improvement fixes the problem; does not care about low fire flow conditions in two areas of its service territory – despite being on notice since the summer of 2010; does not use forecast financial modeling for rate case planning; does nothing about theft of water service of which it complains bitterly; and has been grossly negligent in filing for EO awards – and when finally does so, fumbles, producing an award that is less than half of what it should be.

While being considered in two other cases, the management of the desalination project from its inception constitutes imprudence *per se.*

If the record in this case and other cases pending before the Commission does not support a management audit and the lower end of the range of reasonableness for the return on equity, then nothing will. UWNY should not be rewarded for a rate increase that has not been justified.

Respectfully submitted

on behalf of the Municipal Consortium

Daniel P. Duthie

Daniel P. Duthie