

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

IN THE MATTER OF A PROCEEDING ON MOTION
OF THE COMMISSION AS TO THE RATES, CHARGES,
RULES AND REGULATIONS OF

UNITED WATER NEW YORK INC.

FOR WATER SERVICE

P.S.C. Case No.

TESTIMONY OF MARK S. TULIS

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1 **Q. Please state your name and affiliation.**

2 A. Mark S. Tulis. I am a partner in the law firm of Oxman Tulis Kirkpatrick Whyatt &
3 Geiger LLP. I have provided various Real Estate Tax services to United Water
4 New York (“UWNY” or the “Company”) over the past 35 years. I have helped
5 reduce its real property tax burden for its ordinary and special franchise property
6 through litigation and negotiation.

7
8 **Q. What is the purpose of your testimony?**

9 A. The purpose of my testimony is to describe the Company’s annual Real Estate
10 Tax review and challenge process, discuss why New York State’s 2% tax cap
11 has not applied to taxing jurisdictions historically, nor should it apply
12 prospectively and to support witness Lippai’s Real Estate Tax projections on
13 Exhibit TGL – 8 and supporting work papers for the Rate Year.

14
15 **Q. Please describe your experience in Property Tax litigation:**

16 A. Since 1978 I have represented numerous property owners in real estate tax
17 disputes including, for the better part of the last 35 years, Consolidated Edison
18 Company of New York Inc. (“Con Edison”), United Water, Town of Rye,
19 American Express, Helmsley Properties, various properties owned by Lawrence
20 A. Wien Partnerships and others. Specifically over the last 35 years I have
21 developed an expertise in utility tax certiorari matters. For Con Edison, I tried the
22 largest tax certiorari case ever brought in New York to that date involving Con

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1 Edison's special franchise property located in the City of New York and
2 Westchester County. Settlement of that matter resulted in hundreds of millions of
3 dollars of reduced taxes paid by Con Edison's customers, as well as changes to
4 the state methodology used in valuing special franchise property owned by
5 utilities.

6
7 I have continued to represent Con Edison through the years bringing various
8 actions to reduce its assessments throughout Westchester, Rockland, Putnam
9 and Dutchess Counties involving non-special franchise properties such as poles,
10 wires, fixtures, transformers, and even Indian Point II prior to its sale by Con
11 Edison in 2001. Most recently I settled a series of cases for Con Edison in
12 Dutchess, Putnam, Rockland, and Westchester Counties involving the valuation
13 of special use properties utilizing the reproduction cost new less depreciation
14 methodology of valuation.

15
16 For UWNYS, and during the period it was known as the Spring Valley Water
17 Company, I have brought actions since 1978 to reduce and/or equalize
18 assessments. I have employed the reproduction cost less depreciation
19 methodology in obtaining reductions in the valuation of United Water's facilities
20 located on private property as well as obtaining for the company functional
21 obsolescence reductions from the Office of Real Property Services of the State of
22 New York.

23

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1 **Q. What actions have you taken in the last three years to assure that UWN**
2 **Y has not paid an inappropriate amount of Real Estate Taxes?**

3 A. Following a series of litigations and settlements the Company obtained
4 reductions for major portions of its property located throughout Rockland and
5 Orange Counties. This established a fair baseline for UWNY's taxes which were
6 not disturbed by assessors. During the last three years I have monitored on a
7 yearly basis the assessments to assure that the assessments of UWNY's
8 property remained at the lower levels. To the extent that there was an increase
9 either in off-street or special franchise property I verified with the Assessor the
10 reason for the change and made an independent determination after consultation
11 with the Company as to the appropriateness of the new assessments. For the
12 most part over the last three years due to the weakened real estate market I was
13 unable to obtain further lowered assessments for the Company's property.
14 However commencing with 2013, due to the recovery of the real estate market
15 and adjustments in the equalization rate utilized in valuing non-homestead
16 property such as utility property, UWNY has filed new requests for reductions
17 throughout Rockland and Orange Counties assisted by changes in the
18 equalization rate.

19
20 The equalization rate as determined by the New York Office of Real Property
21 Services ("ORPS") is meant to demonstrate the ratio of value at which property is
22 assessed in a particular jurisdiction. To the extent that the equalization rate is
23 reduced by ORPS, the assessed value of United Water's New York property

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1 would rise. Now that the rate is decreasing United Water has the basis to protest
2 its assessments.

3 I should note that prior to the last three years the large reductions I was able to
4 obtain throughout the Company's system were based on my interpretation of
5 reproduction cost new, less depreciation.

6

7 **Q. Why shouldn't the 2% cap on increases in Real Property Taxes be applied**
8 **to the increases in taxes to be paid by UWNY over the next several years?**

9 A. The 2% cap is not relevant to the Company's actual tax cost for several reasons.

10

11 First, the 2% cap is not based on increases for particular taxpayers. Rather it is
12 meant to be a limitation on overall taxes paid by a municipality or a school
13 district. Therefore, it is very possible that a 2% increase in spending might result
14 in a larger tax increase to an individual taxpayer such as UWNY for a host of
15 reasons.

16

17 The first reason is that due to reductions in assessments of other properties, the
18 value of which are more sensitive than utility property because of the downturns
19 in the economy, United Water's property, which tends to be more level in its
20 value, will assume a higher share of the overall tax bills. For example, if all
21 residential and non-utility property in a particular town decreased in value and
22 had their assessments reduced by 10% and UWNY could not justify a reduction

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1 for that year, the Company's taxes would go up in order to pay for the 10%
2 reduction to non-utility property.

3
4 The second reason for the 2% cap not being relevant is that there are numerous
5 exceptions to the cap which would allow a municipality to increase taxes for
6 expenses not part of the cap. Please reference Exhibit MST-1 which is a
7 summary of 2011 and 2012 actual School, Town, County and Village tax rates by
8 town. The Exhibit clearly shows that in most cases, the tax rates have increased
9 beyond the State tax cap of 2%. Please also reference the examples provided in
10 the Exhibit of the combined impact on tax rates in the Town of Clarkstown,
11 Village of Spring Valley and Town of Stony Point showing increases of 5.0%,
12 4.7% and 7.2% respectively, all well above the 2% cap.

13
14 Most importantly, the cap may be exceeded based upon a super-majority vote of
15 a County Legislature, Town or Village Board, or School District voters.

16
17 Additionally, any new additions put into place by United Water over the next three
18 years will result in an additional tax burden based upon the reduction cost new
19 less depreciation value of that property i.e. the construction cost. Any property
20 built in the public way i.e. special franchise property, will also have its value
21 increased by an additional 5% based on State law. The 5% is meant to reflect
22 the benefits to the utility in using the public way for its pipes, poles, and fixtures.

23

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1 **Q. What other steps is the Company taking to reduce its taxes?**

2 A. There is no doubt that taxes in Rockland County have gone up with or without
3 the cap and UWNY, through its efforts, is doing the best it can to limit the tax
4 burden paid for by its ratepayers. However, the methodology for valuing the
5 property; reproduction cost new less depreciation, is a State mandated
6 methodology set forth in 22 NYCRR and has been approved by the New York
7 State Court of Appeals. The methodology provides for the determination of the
8 original costs of a particular asset i.e. \$100 pipe installed in 1965. That cost is
9 then trended using the Handy-Whitman Index of construction costs to update the
10 costs of reproducing that pipe in the current tax year. This reproduces the cost of
11 the original pipe and does not calculate a replacement pipe with a more modern
12 and perhaps more efficient technology.

13
14 Assuming that it would now cost four times as much to build that same pipe
15 today, the reproduction cost new of our pipe would be \$400. That cost is then
16 depreciated to current value. There are three primary forms of depreciation –
17 straight-line depreciation based on physical changes, functional obsolescence,
18 and economic obsolescence.

19
20 Although appraisal literature suggests a number of different ways of determining
21 physical depreciation using various assumptions as to the rate at which property
22 depreciates, New York State Law requires that straight-line depreciation of utility
23 property be utilized. In order to determine the depreciation there are several

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1 factors. First, the appraiser must determine the useful life of the property and
2 whether there is negative or positive salvage value. Negative salvage value
3 would occur in properties such as a generating plant which would cost more to
4 dismember than the inherent value of the property. Additionally, under New York
5 State Law there is an 80% cap on depreciation for property with a positive
6 salvage value and 95% on property with a negative salvage value.

7
8 Therefore in the example above assuming that the reproduction cost new of our
9 pipe is \$400 and further assuming that the salvage value is \$100 (i.e. what would
10 it be worth at the end of its use life), the depreciation the appraiser would
11 calculate would be \$300 over the time that the property loses. Since there is an
12 80% cap on the actual depreciation of \$300, depreciation would be limited to only
13 \$240 over the full life of the property, thereby overvaluing the property. Assuming
14 the property has a useful life of 48 years the depreciation would be \$50 per year.
15 Since the pipe in question is now 48 years old there would be no further
16 depreciation and the value for tax purposes would be set at \$240.

17
18 Functional obsolescence, which arises from changes in technology and makes
19 property outmoded, is not relevant to United Water's property. Although I have
20 been successful in having ORPS apply a deduction to other, older United Water
21 systems, none is available to the newer Rockland facilities.

22

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1 Economic obsolescence is also not relevant to UWNY's property because the
2 Company would have to show that existing pipe is no longer economically
3 feasible to operate or that it is not earning a fair return on its value. To the extent
4 that the Public Service Commission determines the economic return on the pipe
5 it would be difficult to argue that the pipe was economically obsolete.

6
7 Therefore there is little leeway to attack valuation except to seek additional
8 depreciation for functional or economic obsolescence. The Company has sought
9 reductions for its facilities in the past and has not been successful in Rockland
10 County due to the newness and economic feasibility of the system.

11
12 The second aspect of valuing the property is the appropriate equalization rate i.e.
13 the ratio set forth above determined by ORPS as an appropriate indicator of the
14 level of assessment. For the Company's special franchise property this
15 equalization rate is multiplied by the reproduction cost new less depreciation to
16 determine the assessment. Again, the Company has no input into the
17 determination of the equalization rate and in fact the Courts have held that
18 private parties have no right to challenge the equalization rate.

19
20 The final aspect in determining the taxes that are paid by United Water are the
21 appropriate tax rates within each municipality. Obviously that is a political
22 function with or without the 2% cap.

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1 **Q. Did you assist in preparing Exhibit TGL-8 and the Company's work papers**
2 **forecasting Real Estate Taxes?**

3 A. Yes. I reviewed and analyzed the historic and projected figures with witness
4 Lippai and other Company representatives to insure that projections were
5 reasonable and in line with historic results.

6

7 **Q. In your expert opinion, are the Company's forecasts reasonable?**

8 A. Yes. However, I should note that projections of increases are at best estimates
9 based on history. The extraordinary financial difficulties of the County of
10 Rockland, East Ramapo School District and other taxing authorities make any
11 projections problematic.

12

13 **Q. Should the Company be allowed to recover all of its projected Real Estate**
14 **Tax amounts?**

15 A. Yes. United Water has a limited ability to affect the valuation of its property in
16 Rockland other than to protest excessive changes for new construction or to
17 monitor changes in the equalization rate that would justify a reduction in the
18 assessment. The Company has been doing this. However, since a large portion
19 of the methodology is set by statute and rules the Company has limited ability to
20 affect its tax payments.

21

22 **Q. Does this conclude your testimony?**

23 A. Yes, it does.