STATE OF NEW YORK
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 OF UNITED WATER NEW YORK INC.

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STATE OF NEW YORK
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 OF UNITED WATER NEW YORK INC.

I. INTRODUCTION

Pursuant to the Notice of Schedule for Filing Exceptions issued April 8, 2014 in the above-referenced proceeding, United Water New York, Inc. ("UWNY" or the "Company") hereby submits its Brief on Exceptions to the Recommended Decision ("RD") by Administrative Law Judges ("ALJs") Rafael A. Epstein and David R. Van Ort in this proceeding. The Brief on Exceptions does not repeat the arguments presented by the Company in its Initial and Reply Briefs, except to the extent necessary to respond to the RD.[1]

II. EXCEPTIONS

1. EXPENSES

A. Management and Service Company Fees

Exception 1 – The RD's Methodology for Calculating Management and Service Company Fees Is Contrary to the Current Precedent and Lacks Record Support

The RD notes that United Water Management & Services Company Inc. ("UWM&S") provides various services to UWNY and other United Water Inc. regulated and non-regulated affiliates in North America, charging for services pursuant to intercompany agreements. RD at 8. This type of management company service arrangement is not new or unusual, as it has been

[1] For convenience, this Brief on Exceptions follows the order of issue presentation in the RD. In light of the page limitation, the Company has not sought to except to the positions advocated by Staff or other Parties, but has focused its brief on the RD's conclusions. The Company's silence on the other Parties' arguments or positions does not represent acquiescence by UWNY to any such argument or position.

utilized by UWNY in the past and is utilized by many major New York utilities. Company IB at 5.[2]

The Company calculated a Rate Year UWM&S fee expense of $4.272 million by inflating the Test Year (the 12 months ending March 31, 2013) actual expense by the average salary increases in the Bridge Period (a 14 month-period ending May 31, 2014) of 2.39% and then applying the expected average salary increase in the Rate Year (the 12 months ending May 31, 2015) of 3.00%. Company IB at 6; Tr. 579. The Company's calculation was fully supported by record evidence and comports with Company rate case precedent regarding the appropriate allocation of UWM&S fees among affiliates. Company IB at 8.

The RD errs in failing to take into account the ample record evidence that the UWM&S fee allocations were consistent with the UWM&S agreement that has long been on file with the New York State Public Service Commission ("the Commission") and that has been utilized in all recent Company rate cases. Company IB at 8. The RD's sole logic for changing the UWM&S fees appears to be based on a belief that a change is necessary to the Company's long-standing three-factor equal weighting allocation methodology, even though the RD itself acknowledges that the evidence presented does not support such a conclusion. RD at 18.[3] This lack of evidentiary support notwithstanding, the RD proposes an entirely new UWM&S fee calculation methodology. The RD posits that the UWM&S allowance in this case should be set at $3.027 million, based on taking the $2.919 allowance in the final year of UWNY's most recent rate plan

2 The Company's initial brief is referred to as "Company IB;" its reply brief as "Company RB." Staff's Initial Brief is referred to as "Staff IB"; and its reply brief as "Staff RB." The Municipal Consortium's Initial Brief is referred to as "MC IB;" its reply brief as "MC RB."

3 The RD calls for the development of a detailed cost-accounting manual, although it correctly recognizes that the Commission may lack authority to direct the creation of such a manual. RD at 19. The RD takes apparent comfort in the fact that the Company did not "offer any M&S accounting or policy manuals or other information that details the allocation process among affiliates." RD at 18. The Company, however, was under no obligation to produce such manuals given that the allocation methodology it followed was unchanged from methodology utilized in approved past rate plans.

and escalating it by a 3.7% inflation rate. RD at 18. With all due respect, the RD appears to have ignored the record and established an incorrect and entirely new UWM&S fee calculation methodology, one that differs from historical precedent and that understates the Company's UWM&S costs. In seeking to lower UWM&S fee recovery, the RD acknowledges but appears to disregard the fact that UWM&S provides valuable services to the Company: UWM&S provides high-quality professional services at an exceptional value to UWNY (and its customers) because it only charges the expense it incurs, i.e., it is a zero-profit goal entity. Company IB at 5; Tr. 579. Moreover, the RD's overarching "concern" that "charges made by service companies, pursuant to contracts with the regulated New York affiliates is an area of heightened Commission sensitivity since they are not the product of 'arm's length' bargaining" (RD at 16) is merely a general observation that lacks any record support and therefore fails to support the RD's proposed new calculation method.

Finally, the RD recommends that the Company be required to: 1) conduct a comprehensive audit of UWM&S charges to UWNY in the test year (and report the audit findings as part of its next rate filing); and 2) provide a cost/benefit analysis as part of its next rate case which assesses whether the services received from UWM&S are the most cost-effective alternative for UWNY and ensures no cross subsidization of other affiliates. RD at 18. UWNY has no theoretical objection to the RD's recommendation that the Company conduct a comprehensive audit of UWM&S charges to UWNY and perform a cost/benefit study. However, completion of such an audit and study will take time and the Company is legally entitled to file its next rate case (subject to the many requirements of the Public Service Law ("PSL")), before such an audit could be completed. Consequently, such an audit and study may not be mandated as part of the next rate filing.

B. Economic Obsolescence Adjustment

Exception 2 - The RD Improperly Selected an Arbitrary Economic Obsolescence Award that Has No Record Support

The RD recommends that the Commission establish the Company's property tax allowance by factoring in an economic obsolescence ("EO") level of 10%,[4] which is arbitrarily above the actual 7% award but below Staff's proposed 12.88% (increased to 15.19% in Staff's Reply Brief).

The RD correctly notes that "EO is a New York State Office of Real Property Tax Services (ORPTS) property tax provision that offers water and other regulated utilities a means to lower the assessed value of their special franchise taxes." RD at 21. The RD acknowledges that ORPTS established UWNY's EO at 7%. Despite the fact that ORPTS, the very agency designated by the Legislature to make such determinations, set UWNY's EO award at 7%, the RD "recommend[s] that the Commission establish the Company's property tax allowance by factoring in an economic obsolescence level of 10%." RD at 26.

The RD is mistaken on several grounds. First, there is no factual support for the 10% EO award in the RD, which is neither the 12.88% result originally advocated by Staff in the proceeding,[5] nor the actual 7% EO allowance awarded to UWNY by ORPTS. As the Court of Appeals observed, "substantial evidence" is "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact, and is less than a preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt. The standard demands only that a given inference is reasonable and plausible, not necessarily the most

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[4] The Company does not take exception to the RD's recommendation that the Company submit to the Director of Accounting, Audits and Finance a copy of its EO filing within 10 days after submission to ORPTS and include an analysis comparing the results that UWNY reached using both actual and rate-case capital structures.

[5] There is equally no factual support for any of Staff's several hypothetical EO award calculations. Company RB at 17-22; Company IB at 9-12.

probable."[6] The 10% EO is worse than mere conjecture because it is an oversimplified compromise result that sits almost equally between Staff's conjecture that the EO award from ORPTS would be 12.88 % and the 7% award that ORPTS actually determined. As the First Department observed of a similar approach: "[w]ithout questioning the Solomonic simplicity of this resolution, it is no more permissible than splitting the baby would have been conscionable."[7]

Second, the RD's "compromise" approach of 10% cannot be reconciled with the fact that the actual EO award from ORPTS was neither 12.88% nor 10% - it was 7%. As the Court of Appeals noted in rejecting a similar attempt to rely on forecast over reality:

> The law is well-settled that the Commission may not rely on a reckoning when actual experience is available and establishes that the predictions have been substantially incorrect. In Lindheimer v. Illinois Bell Tel. Co. (292 U.S. 151, 164) the court said, "Elaborate calculations which are at war with realities are of no avail." This principle applies not only in cases where the rate proceeding fixes the rate but especially where the Commission directs refunds. There the court said: "To prefer the forecast to the survey is an arbitrary judgment."[8]

The Court further observed that: "If the opinion or prophecy of the expert… was proven wrong by events occurring during the interval, the Commission could, of course, not base any finding upon the discredited opinion. If the Commission was bound to take judicial notice of such events, its decision must be based upon them rather than upon the discredited prophecy."[9]

It is undisputed that the Company was granted a final 7% EO award from ORPTS for the 2014 assessment rolls. Despite this unassailable fact, the RD seeks to utilize a hypothetical EO award that lacks record support. As explained in the Company's briefs, arguments regarding

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6 In Re Ridge Rd. Fire Dist. V. Schiano, 16 N.Y.3d 494, 499 (2011) (internal citations omitted); see also 300 Gramatan Avenue Assoc. v. State Div. of Human Rights, 45 N.Y.2d 176, 181 (1978).

7 Conlon v. McCoy, 27 A.D.2d 280, 282 (1st Dep't 1967).

8 N.Y Tel. Co. v. Pub, Serv. Comm'n., 29 N.Y.2d 164, 169-170 (1971).

9 Id. at 170 (quoting People ex rel. Consol. Water Co. v. Maltbie, 275 N. Y. 357, 367-368 (1937)).

Staff's opinion as to what the EO award percentage granted by ORPTS should have been are inapposite. The actual EO award granted by ORPTS is 7%. That is the amount by which the Company's special franchise taxes will be reduced and no more. Nothing supports using anything other than the actual ORPTS award.

The RD raises two arguments in an effort to evade the reality of the 7% ORPTS award. First, the RD claims that "[r]atepayers very likely have been funding an excess level of property taxes as a result of the Company's failure to seek and obtain the EO awards from ORPTS." RD at 26. Next, the RD asserts that "just as ORPTS is not bound by a Commission determination setting an EO level, the Commission is similarly not bound in setting the property tax rate allowance by an ORPTS EO decision, if the Commission believes there is a reasonable basis to conclude that the ORPTS decision does not capture the full benefit of the economic obsolescence available." RD at 27.

Imputing a 10% EO award because, as the RD contends, the Company failed to seek EO awards in the past, is not permissible. The RD seeks to adjust prospective rates to account for what it perceives as excessive property taxes in the past. Such retroactive rate-making is not permissible.[10] The first stated rationale for the RD's 10% EO imputation, therefore, is unlawful and must be rejected.

The RD's claim that the Commission is not bound by ORPTS's decision is equally insupportable. At its core on this topic, the RD asserts the right to second-guess ORPTS "if the Commission believes there is a reasonable basis to conclude that the ORPTS decision does not capture the full benefit of the economic obsolescence available." RD at 27. While the

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[10] See In re Niagara Mohawk Power Corp. v. Pub. Serv. Comm'n, 388 N.Y.S.2d 157, 159 (1976) (stating that New York courts "have held that the [C]ommission does not have the general power to order a utility to make reparation or refunds to its customers") see also Mtr. of National Fuel Gas Distribution Corporation v. Pub. Serv. Comm'n, 97 A.D.2d 674 (3d Dep't 1983).

Commission has plenary jurisdiction over utilities and their rates and practices under the PSL, it only "possesses those powers expressly delegated to it by the Legislature, or those incidental to its expressed powers, together with those required by necessary implication to enable the Commission to fulfill its statutory mandate."[11] The Commission's expertise lies in utility rates and regulation, not in the valuation of real property for the purposes of levying property taxes. In this regard, the Legislature has "created in the department of taxation and finance a separate and independent state board of real property tax services" (N.Y. Real Prop. Tax Law § 200), the purpose of which is, inter alia, to determine valuation of property for property tax purposes. Id. § 200-a. It is well-established that "[a]dministrative agencies can only promulgate rules to further the implementation of the law as it exists; they have no authority to create a rule out of harmony with the statute."[12] Consequently, the Commission's use of an EO award other than the actual 7% award granted by ORPTS, as the RD recommends, would be an impermissible usurpation of that state board's exclusive jurisdiction over real property valuation, in contravention of the express will of the Legislature.

Until last year, the Company reasonably believed that it was ineligible for an EO award based upon the plain language of the relevant regulations and law. Tr. at 585-86; Hearing Exh. 95A at 9. When the Company learned that it might be eligible for such an award, UWNY diligently filed the appropriate forms with ORPTS to receive an EO award. Tr. at 586. UWNY is not the only utility in the State that has not historically applied for an EO award and it is not unreasonable for UWNY to have abided by the text of ORPTS' published regulations, which on their face appear to make UWNY ineligible for EO relief.

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[11] Crescent Estates Water Co. v. Pub. Serv. Comm'n, 77 N.Y.2d 611, 616-617 (1991); In re Niagara Mohawk Power Corp. v Pub. Serv. Comm'n, 69 N.Y.2d 365, 368-369 (1987).

[12] Finger Lakes Racing Assoc. v. N. Y. State Racing & Wagering Bd., 45 N.Y.2d 471, 480 (1978).

ORPTS accepted the Company's filing and ORPTS determined that the Company's EO award would be 7%. Tr. at 1019. The 10% EO award in the RD is a mere compromise that is based on conjecture instead of evidence, and improperly second-guesses the actual ORPTS EO award of 7%, which is the percentage that determines the special franchise property tax expense the Company will incur during the Rate Year and which the Company is obligated to pay.

C. Labor Expense

1. Employee Level/New Hires

Exception 3 - The RD's Recommended Employee Level Ignores the Reality that the Company Has Already Filled Vacant Positions and Has a Need for Additional Hires Due to the Conversion to Monthly Billing

The RD's recommendation to adopt Staff's proposed headcount of 114, rather than the 124 total headcount requested by the Company reduces labor expense by $251,167. RD at 29. The RD therefore accepts only a single new hire. RD at 31. The RD's reasoning suffers from the same weakness as Staff's testimony in that it underestimates the labor required under the new monthly billing system and ignores the workforce challenges unique to smaller utilities like UWNY set forth in the record.

As an initial matter, the record supports the Company's headcount of 124, comprising the actual employee level of 114 at the end of the historic test year (March 31, 2013) plus: a) four positions that were coincidentally vacant at that time; and b) six employees UWNY intends to add at the start of the rate year. RD at 28. The RD's recommendation to disallow the four formerly vacant positions is misguided because the four positions in question were temporarily vacant on March 31, 2013 merely because the Company was unable to fill them immediately. Company IB at 13. UWNY had every intention at the end of the historic test year to fill these positions, and the Company has already filled three of the so-called "vacant" positions.

Company IB at 13. The RD's disallowance of the four positions unrealistically reduces the historic employee complement level and should be reversed.

The RD's contention that the four vacancies should be attributed to normal "employee churn" is inaccurate and unfair given the Company's size. Because UWNY is a small company, it lacks the capacity to absorb what would be considered small changes or normal churn in employee headcount for a larger utility. The Company operates very efficiently and with a relatively small labor force. Company IB at 13. As a result, a reduction of four employees is a significant percentage in variation for the Company and cannot be dismissed as a "normal" fluctuation in workforce size.

The RD also fails to recognize that the conversion to monthly billing (the Customer Care and Billing or "CC&B") system will require not only additional customer service representatives ("CSRs") but additional meter readers as well. The Company requested the addition of four positions to support monthly billing: two meter readers/field representatives and two CSRs. Tr. at 149. The RD erroneously reasons that the Company's forecasted decrease in call volume obviated the need for the CSRs.[13] RD at 30. The RD's contention is internally inconsistent with the RD's own acknowledgement that call volumes and workload will not vary "in perfect correlation." RD at 31. Not only will they not vary in "perfect correlation" in this case, the actual correlation is low, given that the CSRs' workload consists of far more than responding to calls. Tr. at 222. The RD also fails to account for the need for additional meter readers to implement monthly billing. Under the new system, meter reads will increase from 4 per customer to 12, leading to a commensurate increase in associated work. Hearing Exh. 87 at 17. For example, all work related to uploading and downloading meter routes and reads will be

[13] The Company anticipates that the average annual call volume per year under monthly billing will be 75,000 calls per year. For the 2008-11 period, UWNY received an annual average total call volume of 66,000 calls per year. In 2012, the Company received 78,000 calls. Hearing Exh. 87 at 17.

conducted more frequently at 12 times per year. Hearing Exh. 87 at 17. The new CC&B system will require the Company to review every meter reading download exception report with meter exception field orders to ensure that the Company is collecting a current read. Hearing Exh. 87 at 17. This exponential increase in work supports and necessitates the additional meter reader/field representatives. The RD's conclusion that the Company should be able to account for any increase in workload due to monthly billing with "offsetting efficiencies of scale" (RD at 30) has no record basis or evidentiary support. The RD notably fails to specify where these "offsetting efficiencies of scale" are to be derived or point to any record basis that such efficiencies can be achieved.

The RD erroneously contends that the Company failed to provide quantitative evidence that monthly billing or the Customer Service Performance Incentive ("CSPI") would cause a net increase in staffing requirements. That contention is both incorrect and illogical. UWNY's witnesses testified that the increase to 12 monthly bills from 4 quarterly bills will increase workload threefold. Tr. at 220. And even if there were not such record evidence, simple logic dictates a conclusion that increasing the frequency of meter reads from 4 to 12 times per year would require the devotion of additional field personnel to accomplish this task.

2. <u>Non-Union Payroll Expense</u>

The Company supports the RD's recommendation that the Commission adopt the Company's proposed allowance for a 3% increase in non-union employee salary expense.[14] RD at 31.

The ALJs appropriately rejected Staff's proposal for a 2.75% increase, asserting that Staff's presumption that the negotiated cost of hourly labor subject to collective bargaining is a

[14] In accordance with the direction in the Notice of Schedule for Filing Exceptions that parties should "address arguments anticipated to be made by other parties in their briefs on exceptions" the Company submits this limited discussion of the issue.

reasonable proxy for that of non-union labor is "arbitrary and unsupported by the evidence." RD at 32.

Market data determined that a 3% increase is required to attract and retain non-union employees. Tr. 217; Company IB at 17. Given that UWNY competes for quality employees with other private investor-owned utilities in the metro region, it is imperative that the Company remain current with compensation so that it can attract new employees and retain its experienced employees. The 3% increase is also supported by compensation surveys and is based on a composite of a general inflationary increase and another factor that recognizes a progression through a salary range, thus accounting for the fact that experience and knowledge renders employees more effective in their positions over time. Tr. at 217.

3. Employee Health and Welfare Expense

Exception 4 - The RD Should Have Adopted the Company's Health and Welfare Expense Forecast in Its Entirety

While the RD properly noted the challenges faced by UWNY regarding medical and employee benefit expenses (RD at 36), its compromise recommendation to adopt half ($76,491) of the disallowance sought by Staff and the Municipal Consortium ("MC") is still inadequate.

The evidence in this case unambiguously shows that UWNY's actual medical costs from 2011 to 2013 have risen almost 25%, amounting to an average of 12.5% per year. Hearing Exh. 104B at 8-9. No party in this proceeding has, or can, dispute this increase. As the Commission is well-aware, high medical premiums are of national concern, and the recommended disallowance of half ignores the realities of the myriad changes in health care and employee benefits.

The only basis cited by Staff and the MC for their proposed disallowance is that the Commission found this type of cost "amenable to inclusion in the inflation pool" in a 2008 Con

Edison rate case order.[15] RD at 36. The RD correctly rejected this argument because medical and benefit expenses are in a class of their own, and thus are not amenable to comparison due to changes in the pricing of medical procedures and the evolving regulatory environment regarding medical insurance. RD at 37-38. The RD also recognized that, unlike Con Edison, small companies such as UWNY have a lesser ability to absorb costs which are increasing at a qualitatively higher rate than other items in the inflation pool. RD at 37.

The Company would be remiss if it did not recognize that the RD has taken an important step in the correct direction by recognizing that applying the generic inflation rate of 2.26% to skyrocketing health and welfare expenses is untenable. In that regard, the RD's conclusion comports with the well-recognized policy of "gradualism consistent with appreciable improvement."[16]

4. Productivity Adjustment

Exception 5 - The RD's Recommended 1% Productivity Adjustment Results Is an Impermissible Double Count and Should be Rejected

The Commission should reject the RD's recommendation of a 1% productivity adjustment because, under the current facts and circumstances, the generic productivity adjustment is inapplicable. Imposition of a generic productivity adjustment here amounts to a tacit double-count against the Company given the RD's recommendation to significantly reduce the number of authorized employees available to the Company to complete necessary work. As described above, the RD disallowed nine employee positions in the Rate Year (RD at 31), four of which were authorized positions that were only temporarily vacant at the end of the historic test

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15 Case 07-E-0523 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order Establishing Rates at 42-43 (Mar. 25, 2008).

16 In re N.Y. State Council of Retail Merchs. v. Pub. Serv. Comm'n, 45 N.Y.2d 661, 666 (1978).

year and are thus not even new positions. Company IB at 13. This disallowance from existing levels, especially given the increase in workload anticipated from CC&B, is a de facto productivity adjustment. The Company will be forced to try to do more work with fewer employees. The RD provides no further rationale for imposing of this duplicative productivity adjustment other than asserting that a 1% projected labor expense disallowance is the "Commission's usual practice." RD at 37. If the four employees were restored as they should be, it might be permissible to apply the standard 1% productivity imputation. Where four authorized employees are summarily disallowed, the additional 1% imputation recommended in the RD is completely untenable.[17]

An automatic "productivity adjustment," imposed solely because it has in the past been a "routine Commission practice" for large utilities, disproportionately impacts a company the size of UNWY, which must make up such productivity gains from a much smaller resource base of employees and operations. While the Company always strives to achieve productivity gains, productivity cannot be so easily achieved given the small size of its workforce. Accordingly, given the factual circumstances, the 1% productivity adjustment should not be imposed on the Company.

[17] Additionally, the Company's performance during the five recent major storm events, including Hurricanes Irene and Sandy, demonstrates that the Company has already achieved productivity savings and a further productivity adjustment is therefore unwarranted. These extreme weather events imposed heavy labor demands. Tr. at 1033. Nevertheless, the Company was able to deliver high-quality water service despite loss of power, significant property damage, flooding, restricted access and other safety issues imposing significant challenges to UWNY employees. Tr. at 214. Many of the Company's non-bargaining management staff worked extreme hours over multiple days to ensure that customers had water service. Tr. at 214. As such extreme weather events are contemplated to continue in the future, UWNY will continue to be called upon to seek such productivity from its workforce. UWNY has also increased productivity in other areas. For example, crew sizes have been reduced, thereby reducing outside contractor expenses and creating additional work for UWNY employees. Tr. at 222.

5. <u>Incentive Pay</u>

Exception 6 - The RD Improperly Rejected Recovery of the Company's Incentive Pay Because the Company Has Met Both Prongs of the Incentive Pay Test

As the RD properly notes, the Company has incentive pay programs for both union and non-union employees. RD at 40. Neither the RD nor Staff contest the approximately $100,000 union incentive program. RD at 41. The RD rejects, however, the Company's request for non-union incentive pay recovery. RD at 44. The RD incorrectly finds that the Company's incentive compensation programs fail to meet the two prongs of the Commission's decision in Case 10-E-0362. RD at 44. Regarding the first prong, the RD notes that "[t]he primary goals of the programs are geared toward enhancing corporate business practices" as opposed to producing quantifiable or demonstrable benefits. RD at 45.

The RD is mistaken on this point. Customer service is at the heart of the first prong of the Commission's test, which requires the provision of benefits to ratepayers in a financial sense or in terms of reliability environmental impact or customer service. Having highly qualified and motivated employees that are fairly compensated via a total compensation package is at the core of customer service. There can be no better example of the customer service benefits of providing incentive compensation for quality employee resources than the Company's exemplary performance during five recent storm events. Company IB at 26.

The RD also finds no "clear nexus" between the long-term incentive pay and/or short term incentive pay program objectives (RD at 45) and the award received and resulting benefits from the Company's ISO accreditation for the Environmental Standard 14001 and the Quality Standard 9001 at the Lake Deforest treatment plant. The RD's argument overlooks, however, the fact that some elements of compensation are directly tied to attaining ISO 14001

(Environmental Standard) and ISO 9001 (Quality Standard) certifications. Company RB at 30. Thus, the RD errs in finding no "clear nexus."

Having erred in determining the first prong, the RD next overlooks the Company's compliance with the second prong of the Commission's incentive compensation paradigm, which requires a showing that the incentives are reasonable relative to similarly situated companies. The RD contends that UWNY offered no studies to show the reasonableness of the UWNY compensation plan and that the Company's Compensation Advisory Committee Meeting notes "fall[] woefully short of meeting the Company's burden under the Incentive Pay Test." RD at 45-46.

The RD overlooks the fact that the Compensation Advisory Committee Meeting notes contain compensation tables summarizing the results of market compensation surveys. Company RB at 31; Hearing Exh. 34. These materials demonstrate that the Company's incentive pay plans are part of an overall compensation package, which as a whole is reasonable, thus satisfying the Commission's second requirement for recovery of incentive compensation.

The RD's off-hand dismissal of the compensation tables ignores the size of UWNY. As a small company, it is not reasonable to conclude, as the RD apparently does, that the Company must first retain an outside consultant to complete an expensive separate total compensation study prior to any incentive compensation being allowed. Rather, the Company should be entitled to utilize the compensation survey materials in the record as a basis for meeting the Company's burden under the Commission's second prong. Just because the Company is small does not mean that the Company and its customers have less need for competitively compensated, highly qualified and incentivized employees.

D. Federal Income Tax Rate

Exception 7 - The RD Should Have Adopted the Company's Use of a Consolidated Federal Income Tax Rate

The RD rejects the Company's argument that the actual consolidated 35% Federal Income Tax Rate ("FIT") should be utilized for rate making purposes. RD at 47. The RD's only analysis is an assertion that the Company's position "disregards the Commission's well established principle that the actual FIT rate is inappropriate because its use would not accurately allocate, among the regulated company and its affiliates the financial costs and benefits of the intercompany affiliations." RD at 47. Whether longstanding or not, such a position flies in the face of the reality that the actual FIT rate of 35% must be recorded on the books of the Company to comply with Generally Accepted Accounting Principles. Company IB at 28. Thus, the Commission should reject the hypothetical 34% FIT rate and should adopt the actual 35% FIT rate the Company will face.

Notwithstanding the foregoing, the Company supports the RD's finding that if adoption of the 34% FIT rate were to be accepted, it necessitates countervailing rate base rate making adjustments. RD at 48.

E. R&I Alliance Costs

Exception 8 – The RD Correctly Grants Full Recovery for R&I Alliance Costs, but Underestimates the Difficulty in Producing Certain Reports

The ALJs correctly recognized the value of the R&I Alliance and their recommendation for full recovery of R&I Alliance costs (RD at 3, 49) is sound and should be adopted. Based on the record evidence, the RD properly concludes that: 1) UWNY receives significant benefits from its annual contribution in the R&I Alliance; 2) long-term research projects generally do not provide immediate results; and 3) the R&I Alliance projects may have no comparable alternatives. RD at 51.

The RD properly acknowledges the tremendous value R&I Alliance provides relative to the Company's contribution. In particular, UWNY's investment in the R&I Alliance resulted in $4.07 million in savings from just one of R&I Alliance's many research projects. Company RB at 32; Company IB at 31.

The Company also has no issue with the RD's recommendation that the Company submit annual reports identifying the ongoing and completed R&I Alliance projects. The Company excepts, however, to the RD's request that the Company file annual reports identifying the "quantifiable and qualitative savings and other benefits produced for UWNY and its customers, and how the savings and benefits were calculated." RD at 51. Many R&I Alliance projects involve important basic research for which immediate costs and benefits cannot be assigned directly to the Company as they benefit the water industry as a whole. Such projects, while important and useful, have benefits that cannot be quantified in the short term. For such projects, the Company will be unable to fulfill the report content sought by the RD. Other projects, such as the membranes at issue in this proceeding, do provide clear, quantifiable benefits and the Company is both able and willing to report those costs and benefits. The Company's exception is limited to a modification of the RD's recommendation for reporting such that the required content of the report reflects the nature of the R&I Alliance work.

F. <u>Uncollectible Expense</u>

Exception 9 - The RD Disregards the Fact that the Company's Uncollectible Expense Forecast Is More Representative of Actual Uncollectible Expense

The RD recommends adopting Staff's uncollectible expense forecast based on the average rate for the three years ending July 31, 2011, instead of UWNY's forecast based on the average uncollectible rate for three years ending December 31, 2012. RD at 52. In adopting the Staff forecast period, the RD overlooks the fact that the Company's period is more current and,

as a result, is more representative of existing economic conditions and future rate increases. The RD also ignores the fact that the Company's proposed use of an average based on the most recent three-year period is consistent with well-established practice for the Company. Company IB 34; Company RB at 33.

Instead of relying on an average using the most current three years of data unmodified, the RD asserts that Staff's historic period is superior as it was "designed to exclude the identifiable distortion" in the immediate aftermath of CC&B implementation and the "seemingly abnormal high levels after that." RD at 53. The RD's reference to "designed" is a polite way of indicating that the period was "cherry-picked" by Staff to reach a specific result, one where uncollectible expenses were lower. The Commission should reject that approach and utilize - for both transparency and accuracy - the Company's non-manipulated, non-"designed" most current three-year average for uncollectible forecasting purposes.

2. RATE BASE - CONSTRUCTION BUDGET

As the RD noted, the Company and Staff reached agreement on the majority of issues relating to construction budget. RD at 55. The only outstanding rate base controversy stemmed from MC's outlandish assertion that the Company's capital investment program required a complete overhaul. RD at 56. The RD summarily dismissed MC's baseless charge that UWNY neglected mains repair and replacements to pursue the Haverstraw Water Supply Project and correctly noted that MC's criticisms of the Company's capital planning decisions were "unsupported by the evidence," (RD at 56) a gross misreading of the testimony (RD at 56) and based on a "faulty premise." RD at 57. As such, the Commission should reject MC's unfounded accusations and approve UWNY's capital investment program.

3. RATE OF RETURN / COST OF CAPITAL

A. Return on Equity

Exception 10 - The RD Should Have Adopted UWNY's Return on Equity Methodology

1. The So-called "Generic Finance Method" Is a Fluid Concept

The Recommended Decision issued in the Generic Finance Case[18] is now two decades old. There were no hearings held in that "case." There was an agreement among the parties to that proceeding as to how the cost of equity should be determined and that agreement was summarily ignored by the identified "co-facilitators" in their Recommended Decision. Tr. at 530. The GFC Recommended Decision ("GFC RD"), therefore, was not based on any evidence; it was merely an adaptation of an agreement – actually an abnegation of the parties' wishes – that was never adopted by the Commission. To term the GFC RD as "precedent" is to afford it a status which is wholly undeserved. The Commission might have adopted variants of the formulae presented in that case, but the Commission did not issue an order in the GFC and it certainly did not issue an order adopting the GFC RD.

2. Staff's Two-Stage DCF Is Not Well-Supported

The Commission is well-aware that changes have been made to elements of the GFC RD over the years. The RD appears to accept that the GFC method mandates the two-stage DCF methodology. RD at 68-69. The two-stage DCF, however, is not a concept that is well-supported, either in the financial literature or in regulatory practice. Staff had claimed that "the two-stage DCF model accounts for divergences in near-term and long-term growth rates." Staff IB at 49. In contrast, Company Witness Ahern used a single-stage growth rate for the DCF model because, "in [her] experience, it is the most widely utilized version of the DCF used in

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[18] Case 91-M-0509 – Proceeding on Motion of the Commission to Consider Financial and Regulatory Policies for New York State Utilities ("GFC").

public utility rate regulation." Tr. at 452. Ms. Ahern's analysis is correct because multi-stage DCFs are used when the near or short term growth rates differ from the long-term – say for a venture capital firm. On the other hand, stable and mature utilities typically have stable dividend growth rates (and relatively stable earnings growth rates as well). Tr. 452-53.

Staff's multi-stage DCF, apparently adopted by implication by the RD (RD at 68-69), does not take account of this fact. Staff used Value Line's forecasted dividends per share for the first stage and then sustainable growth (based upon Value Line's five-year projections) for the 6th – 200th year. Tr. at 701. Both sets of cash flows, however, are based upon near-term growth rates. Tr. at 751. Just because Staff used a sustainable growth rate based upon Value Line 5-year projections as the growth rate for the 6th – 200th year in its multi-stage DCF does not make such a growth rate a "long-term growth rate." The RD should not have implicitly adopted such a growth rate because no one projects growth rates that far into the future.[19]

The RD also improperly failed to address the Company's claim that Staff's DCF growth rate is circular. RD at 69, n 64. Staff's sustainable growth methodology is inherently circular because it relies upon an expected ROE on book common equity which is then used in a DCF analysis to establish a common equity cost rate related to the market value of the common stock which, if authorized as the allowed ROE in this proceeding, will become the expected ROE on book common equity. Tr. at 539. As Professor Morin noted: "[i]t is not reasonable to assume that this regulatory utility company is expected to earn 11% forever, but recommend a 9% return on equity. The only way this utility can earn 11% is that rates be set by the regulator so that the utility will, in fact, earn 11% . . ." Hearing Exh. 19 - Roger A. Morin, New Regulatory Finance (Public Utility Reports, Inc., 2006), p. 307.

[19] In fact, the assumption of a constant debt to equity ratio inherent in Staff's long-term growth rate claim is completely unreasonable and unsupported by the record.

For all of these reasons, the RD should have adopted the Company's version of the DCF model. At the very least, the RD is flawed because it failed to provide a reasoned analysis for rejecting the Company's DCF approach.

3. Staff's CAPM Method is Also of Questionable Validity

Both UWNY and Staff also employ the CAPM (with the DCF) to determine the Company's cost of equity. Tr. at 540. Because rate making is prospective, it is appropriate to utilize a forecasted risk-free rate in a CAPM analysis, as Company Witness Ahern did in her analysis and Staff did not. Tr. at 540.

Staff's CAPM method erroneously averages the yields on 10-year and 30-year U. S. Treasury bonds to develop its risk-free rate. Tr. at 540. Ms. Ahern explained it is inappropriate to utilize the yields on 10-year U.S. Treasury Bonds for cost of capital purposes because their term is not consistent with the long-term cost of capital to public utilities as measured by the yields on A-rated public utility bonds. Tr. at 540-42. Furthermore, the use of historical data is a valid proxy for investors' expectations concerning future Treasury yields. Because the Federal Reserve is "artificially and indefinitely keeping interest rates low," the current interest rate environment is typical of neither historical rates nor expected interest rate levels in the future. Tr. at 475-476. Staff's CAPM, accordingly, is not credible because it unrealistically expects that current interest rates will remain near historical and unprecedented lows, especially given the determination of the Federal Reserve to begin the tapering process. In contrast, the data used by the Company is not stale and reflects current market trends. See Staff IB at 58-59. Numerous studies support Ms. Ahern's use of the long-term historical arithmetic mean equity risk premium published by Ibbotson, which is neither difficult to replicate nor lacking in transparency. Tr. at 551-52.

Exception 11 - The RD Should Have Weighted the DCF and CAPM Methodologies Equally

There are several significant reasons for the Commission to re-evaluate giving the DCF twice the weight it affords the CAPM. Tr. at 560. The RD rejected this recommendation without providing a reasoned analysis for continuing to hew to a weighting formula that has become increasingly unrealistic and insupportable.

The only reason for not giving the CAPM and DCF methods equal weight two decades ago was the observation in the GFC RD that: "the proponents of the proposals have simply not shown that the CAPM should be raised all at once to parity with the DCF analysis in the setting of returns on equity."[20] If two decades ago the concern was that the CAPM should not be "raised all at once to parity with the DCF" (emphasis supplied) because the CAPM at that time was used mostly as a check on the DCF, then surely the passage of more than 20 years should be sufficient time to finally elevate the CAPM to parity. This is all the more true because the GFC RD itself was contrary to the Consensus Document agreed to by Staff and numerous utilities (Tr. at 529-530) which did give the CAPM equal weight to the DCF (and to the comparable earnings method, as well).

The GFC RD signaled that the CAPM would eventually be raised to parity with the DCF. Surely, with the passage of time, the burden should now be on the Commission and Staff to explain what flaws are inherent in the CAPM –and which do not exist in the DCF – that would keep it from achieving that parity. The irony is, however, that the DCF has a well-recognized, and greater flaw that makes it less reliable than the CAPM and hence less deserving of parity with the CAPM.

[20] Case 91-M-0509 – Proceeding on Motion of the Commission to Consider Financial and Regulatory Policies for New York State Utilities, Recommended Decision at 60 (July 19, 1994). The Generic Finance RD was never adopted by the Commission. Tr. 529.

Even the GFC RD recognized that the DCF had an inherent flaw not common to the CAPM.[21] Financial experts, other regulatory commissions[22] and the GFC Consensus Document all recognize that when a company's MBRs exceed one, as they do today, the DCF understates the true cost of equity.[23] In fact, no greater evidence of this exists than in the fact that Staff's DCF-derived cost of equity was just 8.35%. Staff IB at 49. Such a return is almost 100 basis points below ROEs currently being awarded by this Commission and still further below returns being awarded by other regulatory commissions. The appropriate remedy is to provide at least an equal weighting to the DCF and CAPM to temper the systematic under-estimation that the DCF produces when the MBRs are above one – as they are today and as they will continue to be for the foreseeable future. Therefore, regardless of which CAPM and DCF methods are adopted, CAPM and DCF results should be afforded equal weight.[24]

Exception 12 - The RD Incorrectly Concluded that Water Companies Are Less Risky than Electric and Gas Companies and the RD Should Have Adopted the Company's Proxy Group

One would assume that a proceeding convened to determine the rates for a water utility would employ cost of capital information for the group most comparable; i.e., other water

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21 GFC RD at 25.

22 Ms. Ahern's testimony provides several instances where other regulatory commissions explicitly recognized that the DCF produces inferior results when MBRs exceed one. Tr. 459-462.

23 Staff Witness Capers's claim that the "ROE is not understated" is contradicted by her own testimony in National Fuel's 2007 rate case where she conceded that the DCF understates the cost of equity when stocks are selling above book value. See Case 07-G-0141 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Fuel Gas Distribution Corporation for Gas Service, Hearing Transcript at 1126.

24 It is no answer to say, as the RD does, that "similar claims of Generic Finance Case methodology drawbacks have been put forth and been consistently rejected by the Commission [and that t]he case that UWNY put in here is no more compelling." RD at 69. The objections raised to equal weighting in other cases have seemingly evaporated. For example, in the 2007 National Fuel case, parity was rejected on the ground that "the betas of many of the companies have increased, perhaps the result of diversification into non-regulated businesses, adding an element of bias to the CAPM Method." Case 07-G-0141, National Fuel Gas Distribution Corporation, Order Establishing Rates for Gas Service at 40 (Dec. 21, 2007). Certainly, any question raised in 2007 concerning betas having increased as a result of diversification should have long since been resolved. In any event, Staff, the primary proponent of continuing the 2/3 – 1/3 weighting scheme did not raise that as a concern in this case, demonstrating it is not a concern now.

utilities. In this case, however, Staff derived its ROE recommendations based on a proxy group composed of 34 electric companies and only a single water company. Tr. at 672-73. The RD erroneously adopted Staff's patently unrepresentative proxy group.

UWNY's proxy group of nine companies comprises the entire investor-owned water industry. They are similar in risk to UWNY, sharing the same industry risk, and are also closer in size to UWNY than the large electric and combination companies that comprise Staff's proxy group. Tr. at 508. Smaller companies are less capable of coping with significant events which affect sales revenues and earnings (e.g., the loss of a few large customers or extreme weather conditions). Tr. at 508-09. Investors also demand greater returns to compensate them for a lack of marketability and liquidity for the securities of smaller firms. Tr. at 509.

Despite this, the RD rejected the Company's water company proxy group, choosing instead Staff's group composed almost exclusively of large electric utilities. RD at70. There are significant errors underlying the RD's determination.

First, the use of an electric utility group to set the fair rate of return for a water utility is of questionable constitutional validity. A utility's fair rate of return must be "commensurate with returns on investments in other enterprises having corresponding risks."[25] Ms. Ahern's proxy group, which is composed entirely of water utilities, manifestly satisfies this constitutional requirement as she has amply demonstrated that all the companies in her group are comparable to UWNY. In clear contrast, Staff's proxy group is devoid of evidentiary support demonstrating comparable risk. Not only is the choice of the electric group inappropriate, but it is also patently inconsistent with the RD's rejection of a 48% hypothetical equity ratio in favor of a lower 46% equity ratio on the ground that "although this equity ratio may be slightly below the median

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[25] Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944).

threshold for Staff's proxy group, the proxy group is almost exclusively composed of electric companies which we generally consider to be more risky than the large water companies." RD at 76 (emphasis supplied).[26] If electric companies have a different risk profile than water companies, then the electric company proxy group does not "have corresponding risks" and is not appropriate for determining a constitutionally mandated rate of return.

The Commission's alleged "long-standing practice of using large proxy groups composed primarily of electric utilities" (RD at 70) relied on by the RD is of equally dubious validity. Staff's sole precedent for an electric utility proxy group to set the rate of return for a water utility is a statement in one Commission order from 1989. See Tr. at 814.[27] Staff acknowledged that it had not performed any analysis or conducted any study to determine whether the relative risks of water and electric companies have changed since that time, which in fact they have. Tr. at 815. Therefore, even if the precedent relied on is "long-standing," it has since been eclipsed by fundamental changes between the two industries that render it no longer apposite. The claim in the RD "[t]hat practice, coupled with its past decisions based on the consistent use of proxy group selection criteria, provides investors with a level of transparency to compare regulated utilities [while t]he Company's proxy group proposal does not" (RD at 70), is simply insupportable. The so-called "transparency" – apparently in the view of the RD a consistency – is non-existent, especially given, as pointed out immediately above, that Staff's proxy group size has ranged from 9 to 34. Tr. at 793-795. Whether termed "transparency" or "consistency," there has been neither.

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[26] The record contains no support for the RD's findings in this regard. Staff was unable to discuss with particularity or quantify in any way the relative risks faced by gas and electric companies on one hand and water companies on the other, save to fall back on the claim that "the Commission has determined that the risks are the same." Tr. at 811-814. Yet, Staff inconsistently claims in other parts of its testimony that the risks for electric and gas utilities are greater than for water. Tr. at 778.

[27] Case 88-W-113, New Rochelle Water Company, Opinion and Order Determining Revenue Requirement (Apr. 19, 1989), p. 28.

Staff claims it was unwilling to use additional publicly traded water companies in its proxy group because no other water company met its proxy group criterion; i.e., the restrictive, self-selected "requirement" that all proxy group members have an investment grade credit rating from both Moody's and S&P. Tr. at 675. Staff acknowledged, however, that being rated by both agencies is redundant. Tr. at 797-798.

Staff's criterion was overly restrictive and the RD should not have adopted it. Whether by design or happenstance, it ensures that Staff's proxy group will not include any publicly traded water companies other than the multistate holding company, American Water (Tr. at 502-03), thereby rendering Staff's proxy group – the group adopted by the RD – almost wholly unrepresentative of the water industry. Because S&P's and Moody's bond ratings are generally similar (Tr. at 797), to require that a company have credit bond ratings assigned by both ratings agencies, particularly when it serves to eliminate virtually every water company from the proxy group in a water rate case, elevates form over substance. Tr. at 503.[28]

The electric company proxy group adopted in the RD lacks a rational basis as it is inconsistent with the evidence and the elementary requirement that a proxy group be comparable in risk to the utility for which rates are being set. Only the Company's proxy group of water companies reflects a group having comparable risk to UWNY and the RD erred in rejecting it.

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[28] The RD noted Staff's claim (in its Reply Brief at p. 9) that "UWNY is incorrect in asserting that all nine companies in UWNY's proxy group would meet Staff's criteria if Staff accepted ratings by either Moody's or S&P; rather, Staff states, only five of the companies in UWNY's proxy group would qualify." RD at 63. Staff raises a distinction without a difference. Although it is correct that, in three instances, the bond ratings were for the subsidiaries' debt, for purposes of the cost of capital, it is the regulated subsidiary bond rating which is relevant and the long-term debt of those companies is related to regulated water operations. Moreover, because the companies were selected based upon having greater than 70% of operations being regulated, it is irrelevant that the holding company does not have a bond rating because all of the proxy holding companies are overwhelmingly regulated. Based upon S&P's consolidated approach to the bond rating process, it can be presumed that if S&P rated these companies, the bond ratings would be the same as the subsidiaries. Most importantly, the RD (and Staff) chose the proxy group in order to be consistent with the methodology adopted in the GFC. Nowhere has it been demonstrated that the water company proxy group selected by Ms. Ahern violated, in any way, the proxy group's selection criteria for water utilities adopted in that case.

B. Capital Structure

Exception 13 – The RD's Adoption of a 46% Equity Ratio Is Irrational and Internally Inconsistent with Commission Policies

The RD correctly recognizes (RD at 72) that, based on the Capital Structure of its immediate parent, United Water of New Jersey ("UWNJ"), the Company proposed the following Capital Structure having 52.13% of Common Equity. The RD, however, recommends that the Commission set a 46% equity ratio for the Company. RD at 76.

The RD concedes that there is no evidentiary reason to reject the UWNJ Capital Structure, finding that although:

> Staff raises legitimate concerns about whether using a corporate parent's capital structure reflect the parent's actual common equity level, due to circumstances such as the double leveraging… there was no evidence presented in this case to indicate such practices are taking place and involve UWNY or UWNJ. RD at 77.

The RD, however, rejects the use of the UWNJ Capital Structure based on illusory evidence, reasoning:

> We are concerned about UWNY's claim that the UWNJ capital structure has been consistently used to set UWNY's rates in previous cases. If true, the Company did not adequately explain what caused the drastic increase in UWNJ's equity level, from 45% to 52.13%, since UWNY's last case. RD at 76.

The claim that UWNJ's Capital Structure was 45% in the Company's last case is easily debunked. Case 09-W-0731 culminated in a Three Year Rate Plan by reason of a Joint Proposal. The Joint Proposal used a compromise 45% equity ratio that was not the equity ratio of UWNJ.[29] The record of Case 09-W-0731 demonstrates that the equity ratio of UWNJ at June 30, 2009 was 48.46 %.[30] Therefore, the RD's claim that UWNJ's equity ratio could not be used because it had

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[29] Case 09-W-0731 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations for United Water New York Inc., Order Adopting Joint Proposal as Modified and Establishing a Three-Year Rate Plan, JP at 4 (July 20, 2010).

[30] Case 09-W-0731, Prepared Direct Testimony of Pauline M. Ahern at 3 (Sept. 25, 2009).

increased from 45% in the 2009 case was mistaken. Consequently, there was no reason for the RD to reject the use of the UWNJ Capital Structure.

The RD's adoption of a hypothetical 46% equity ratio is no more adequately supported than the reasons for its rejecting the UWNJ Capital Structure. The RD recognized that "the Commission has expressed an interest in having utilities carry less debt in appropriate circumstances." RD at 76. The RD further recognized that the Commission has routinely adopted equity ratios of 48% for gas and gas and electric combination companies. RD at 75. The RD, however, refused to impute the same 48% equity ratio to UWNY, imputing a lower 46% equity ratio instead. In doing so, the RD claims:

> Although this equity ratio may be slightly below the median threshold for Staff's proxy group, the proxy group is almost exclusively composed of electric companies which we generally consider to be more risky than the large water companies. Thus, the electric proxy group companies would tend to warrant having higher equity ratios. RD at 76.

The RD engages in speculation and conjecture about the relative riskiness of the water and electric industries without a shred of evidentiary support because the record shows that water companies are riskier than electric utilities. Company RB at 38-39; Tr. at 439.

Company Witness Ahern testified, in detail, why the equity ratio for a water company such as UWNY would logically be higher than that of a group of electric or combination gas and electric companies – i.e., because its risk is greater. Tr. at 439, 504; Company RB at 50.[31] The

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[31] In addition to greater investment risk, water companies such as UWNY also have greater business risk than the companies in Staff's proxy group. Ms. Ahern pointed out that "for example, the loss of revenues from a few larger customers, for example, would have a greater effect on a small company such as UWNY than on much larger companies with larger customer bases such as the companies in the Panel's proxy group of electric utility holding companies." Tr. at 508. She further explained that: "[i]n addition, the effect of extreme weather conditions, i.e., prolonged droughts or extremely wet weather, will have a greater effect upon a small operating water utility than upon the much larger, more geographically diverse companies, including the one water company in [Staff's] proxy group." Tr. at 509. Furthermore, in most cases, electric utilities no longer own the means of production. In contrast, water companies own the means of production and their product – which is the only product of utilities consumed by the public – is drawn from wells and surface water supplies that are at risk for pollution and even a potential loss of supply. Tr. at 439. Moreover, water companies face ever tightening water quality standards. In contrast, gas and electric companies face no such regulatory obstacles.

RD presents no sound basis to reject the Capital Structure of UWNJ. If, however, a hypothetical equity ratio were to be employed, it should be based on the 50.88% equity ratio of the water company proxy. Ms. Ahern's nine water company proxy group satisfies every one of Staff's screening criteria save one – that an appropriate proxy company have "investment grade credit ratings of at least BBB-/Baa3 by Standard & Poors [sic] Financial Services (S&P) and Moody's Investor Service (Moody's), respectively." Tr. at 502. As previously noted, however, Ms. Ahern explained that the requirement that a proxy group member be rated by both S&P and Moody's is overly restrictive and redundant. Tr. at 502-503.

Whether the UWNJ equity ratio of 52.13% is employed or the 50.88% equity ratio of the nine water company proxy group is used, both such equity ratios reflect the unassailable reality that water company equity ratios are higher than electric company equity ratios because water companies are riskier. The 46% equity ratio adopted in the RD is contrary to that fact; it is contrary to the Commission's recognition that higher equity ratios are required and it is contrary to the evidence in this record.

4. REVENUE ALLOCATION / RATE DESIGN[32]

A. Cost of Service

Exception 14 – A New Cost of Service Study Will Take Time to Complete and Should Not Impede Filing of the Company's Next Rate Case

The RD states that "the Commission should feel free to impose the requirement that the Company perform a new Cost of Service Study as a condition for the next rate filing by the Company." RD at 79. The RD's conclusion lacks any legal or record support. The RD's only stated rationale for its incorrect conclusion is that UWNY is a "sophisticated utility" that is part

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For all of these reasons, water companies are riskier than gas and electric companies – and they are clearly not less risky as the RD theorizes without evidentiary basis. Tr. at 439.

[32] As required by the Notice of Schedule for Filing Exceptions, attached hereto as Appendix 1 are tables showing the bill impact, for each service classification, of the rate changes proposed by the RD.

of a “large international conglomerate” that has “operated under Commission regulation for decades.” RD at 79. The size of the Company, the identity of its parent corporation, and how long it has operated in New York fail to justify the RD’s unsupported conclusion regarding a “pre-condition” for a rate filing and mandatory timing of a new cost of service (“COS”) study.

As the RD correctly notes, the Company does not take issue with performing a new COS study and will do so. Company IB at 54. However, the RD ignores the practical implications of mandating that a new COS be completed prior to the Company’s next rate filing. Such a new COS will take significant time to complete.[33]

The RD has not, and cannot cite to any record evidence that the Company was on notice in its last rate case to update its COS study. The RD also has not demonstrated any significant failure in the current COS study other than its age. Nevertheless, the Company has committed to performing a new COS, but COS studies are not simple and therefore the Company will require some time to complete a new study. Should the Company exercise its statutory right to file for new rates prior to the completion of the new COS study, the 1991 COS study should remain the operative document for rate design purposes. To the extent that a new COS study is completed during the course of such a rate case, the Company would update its rate design to incorporate the latest COS study results. However, a “requirement” that a new COS study be available prior to the Company filing its next rate case has no record basis and would impermissibly interfere

[33] The Company’s current COS study was utilized successfully in the Company’s prior rate case and in the pending proceeding. Staff acknowledged it was reasonable to draw on the results of that 1991 study as a guide for designing water rates in this current case in the absence of a more recent study. Staff IB at 72. Clearly, the Company was not on notice of any issues with its existing COS study prior to this case and undertaking the expense to complete a study just to have a study where little has changed would be inefficient at best. As Staff testified, it is likely that “given the lack of significant changes to the UWNY infrastructure and relatively uniform increases in rates across service classes since 1991 it is reasonable to rely on the 1991 COSS as guidance in current rate design absent a newer study.” Staff IB at 73; Company RB at 54.

with the Company's exercise of its statutory right to file a new rate case after its current rates are effective.

B. Revenue Allocation

The RD recommended adopting Staff's revenue allocation methodology in which revenues are not fully realigned to correspond with the 1991 cost of service study, but rather moves some of the revenue shifts partially to avoid any one service classification from experiencing a drastic change. RD at 79; Staff IB at 73-74. The Company takes no exception to the ALJs' recommendation that the Commission use this revenue allocation.

C. Rate Design

1. Meter Charges

As the RD noted, both the Company and Staff propose to move from a customer charge to a meter charge based on the size of the customer's meter although the Company's suggested methodology differed from Staff's. RD at 80; Staff IB at 75-76; Company IB at 59. The RD recommended adopting Staff's methodology, which results in a shift of 15% of revenue from fixed charges including, according to Staff, 19% of revenue from fixed charges attributable to the residential class (RD at 80) asserting that the methodology is consistent with classic rate setting principles of matching rates to costs and providing the Company with an "appropriate level of revenue stability." RD at 81.

UWNY contends that its method, based upon American Water Works Association ("AWWA") meter ratios and meter flow capacity, is superior to Staff's because: a) AWWA ratios provide greater revenue stability and address Staff's suggestion from the Company's last rate case (09-W-0731) that the Company reduce the volumetric charge and increase the fixed charge to mitigate high weather-sensitive fluctuations caused by the bulk of UWNY revenue

coming from usage rates (Company IB at 59); and b) the Company's method provides slightly more revenue stability in that it compensates for the wide variations in revenues and surcharges caused by the heavily volumetric nature of UWNY's summer/winter rate structure. Company IB at 49.

However the Company has no general objection to Staff's method and thus takes no exception to its adoption.

2. Inclining Block Rate and the Non-Residential Discount Block

Exception 15 - The RD Improperly Eliminates the SC-7 Discount Block

The Company opposes the RD's recommendation, which is unsupported by the record and overlooks key arguments made by the Company, to eliminate the SC-7 discount block. See RD at 82. Currently, the Company's rate structure includes a discount tail block for large non-residential customers in SC-7. Tr. at 373.

The RD's conclusion that the SC-7 discount block discourages conservation and should be discontinued is myopic and ignores the Company's large business "constant use" customers who have little ability to reduce their water usage. Company IB at 60. To support the continuation of the SC-7 discount block, the Company referenced a brewery as an example of an SC-7 customer which cannot modify its usage because it requires a certain quantity of water for its operations. Company RB at 55. While the RD mentioned the Company's brewery example (RD at 82), it failed to actually analyze the Company's argument that the SC-7 discount block does not create a disincentive for conservation from such "constant use" customers. In fact, the ALJs ignored the Company's testimony on this issue completely.

The RD's recommendation should be rejected because it ignores the needs of business customers and economic reality. As discussed above, the water needs of certain large industrial customers are inflexible and non-discretionary at their established production levels – in other

words, other than leaving the service territory, they cannot significantly alter their water usage to further conservation. Furthermore, the RD's recommendation has the unforeseen consequence of creating an inhospitable business climate which may chill economic development, leaving the remaining ratepayers to shoulder a disproportionate share of the costs of the system. See Company RB at 55.

5. CUSTOMER SERVICE ISSUES

A. Outreach and Education

Exception 16 - The RD's Position on Outreach and Education is Inconsistent and Should Be Rejected

The Company proposed to increase its base year outreach and education ("O&E") budget by $43,600 to $314,850 for the rate year. TR at 854. Staff would allow only a $28,750 increase to $300,000. RD at 86. The RD accepts Staff's reduction of $14,850 from the Company's proposed budget. RD at 85. The RD states in a conclusory manner that Staff has sustained its burden of persuasion by showing that UWNY's outreach budgets systematically overstate the Company's actual needs. RD at 86. The fact that UWNY may or may not have utilized past budgets does not provide a rationale to support a reduction in the necessary budget forecast for the Rate Year. The RD seeks to have it both ways, first criticizing the Company for not fully spending budgeted amounts in the past (and using that as a rationale for reducing the Company's proposed budget) and then speculating about the potential for a "spend it or lose it" attitude on the part of UWNY. RD at 86. The RD also calls for new O&E to curb the unauthorized use of water (RD at 110) while inconsistently seeking to cut the funds available for such an effort.

Most importantly, the RD does not consider the other needs identified by the Company for more, rather than less, O&E. Company IB at 62. The Company identified with specificity areas where expansion in O&E are needed, including water education, school partnerships,

community involvement and education of consumers via presentations and public events. Company IB at 62; Tr. at 854. Reducing the resources available to UWNY for O&E is tantamount to stating that the Company should deemphasize such activities, which would be contrary to the Commission's repeatedly stated desire for more public participation. Active informed public participation depends first upon utility O&E, which is included in the Company's proposed budget.

B. Customer Service Performance Incentive Mechanism

Despite the numerous legal and factual infirmities in Staff's proposed CSPI, including some so significant that the RD concluded that it be delayed for a year, the RD nevertheless counsels its adoption. The proposed CSPI is neither lawful, well-constructed, nor necessary.

The CSPI mechanism adopted by the RD consists of two, completely subjective components: a PSC Complaint Rate measure and a Customer Satisfaction Survey index. Each measure comes with onerous penalties should the Company fail to meet the identified target. Copmany IB at 64; Tr. at 847, 850. Although styled as an "incentive," the CSPI mechanism does not provide any incentive in the event that the Company exceeds the CSPI targets. Tr. at 894. The CSPI is thus merely a penalty mechanism, having no incentive component at all. As discussed below, the CSPI is illegal, otherwise deeply flawed, and must be rejected.

1. Legality and Necessity

Exception 17 - The RD Incorrectly Concludes that the CSPI Is Legal and Necessary

a) The CSPI is Illegal

i) *The CSPI Is Ultra Vires*

The CSPI violates the PSL and clearly exceeds the Commission's statutory authority. It is telling that the RD does not assert a statutory basis for the CSPI. Rather, the RD paradoxically

states that UWNY's argument that the CSPI is ultra vires "fails to address the jurisdictional implications of the penalty authority recently conferred on the Commission by PSL § 25-a" and then invites "a discussion of this statute" on exceptions. RD at 91. The RD does not state that PSL § 25-a provides the requisite authority and the Company did not address this section because it is inapt. It is clear from the plain language of PSL § 25-a that the statute cannot possibly authorize imposition of the CSPI mechanism on a water company such as UWNY.

"The Commission possesses only those powers expressly delegated to it by the Legislature, or incidental to its expressed powers, together with those required by necessary implication to enable the Commission to fulfill its statutory mandate."[34] Nowhere in the PSL has the Commission been given the power to levy and collect fines or penalties on water companies, which is exactly what the CSPI will do if UWNY falls short of the performance metrics. Staff has been unable to cite to any provision of the PSL providing a clear statutory basis for the penalties/fines imposed under the proposed CSPI, which is tantamount to an admission that the program is ultra vires.

The penalty power recently conferred on the Commission by the Legislature under PSL § 25-a applies only to "combination gas and electric corporations" and has nothing to do with water companies like UWNY (the Company is not a "combination gas and electric corporation"). As a result, PSL § 25-a is inapposite and provides no statutory authority for the CSPI.

PSL § 25-a has no applicability to this matter because the Legislature nowhere evidenced in this statute an intention to confer a penalty power on the Commission with respect to water companies. As the Third Department asserted,

> The power to investigate violations of a statute and to punish violators is a significant power and is penal in nature. The Legislature has granted such

[34] Niagara Mohawk Power Corp., 69 N.Y.2d at 368-369.

> authority to many agencies in various contexts. When it has granted such authority, it has done so in express terms and has provided for procedural safeguards to assure, at minimum, an adequate notice and opportunity to be heard.[35]

Here, there is no such express delegation to the Commission for water companies like UWNY and the CSPI provides no adequate notice and opportunity to be heard.[36]

Contrary to the RD's suggestion, PSL § 25-a provides no statutory authority for the CSPI. Because there is no statutory authority or any legal basis for the CSPI, imposition of the CSPI on United Water is clearly ultra vires, and it must be rejected on this basis alone.

ii) *Imposition of the CSPI Violates SAPA*

Beyond this absence of statutory authority, imposition of the CSPI as recommended by the RD is illegal under the State Administrative Procedures Act ("SAPA"). The RD implicitly contends that the CSPI is reasonable because "the Commission has found similar measures necessary for all New York's major gas and electric utilities, the former New York Water Service Company, Corning Natural Gas Corp., and St. Lawrence Gas Company." RD at 89-90. That does not establish the legality of such mechanisms; rather, it demonstrates their illegality under SAPA because "[w]here a fixed general principle is applied by an administrative agency without

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[35] Callanan Indus., Inc. v. White, 118 A.D.2d 167, 171 (3d Dep't 1986).

[36] Indeed, long-standing rules of statutory construction demonstrate that the powers granted to the Commission by PSL § 25-a do not extend to the ability to impose fines administratively on a water company. The canon of casus omissus gives courts guidance for omitted words or phrases. This rule prevents the judiciary from legislating under the guise of interpretation. See generally Bright Homes, Inc. v. Wright, 8 N.Y.2d 157, 162 (1960). Under this canon, courts may not fill in gaps in legislation; such action must be left to the Legislature. See McKuskie v. Hendrickson, 128 N.Y. 555, 558 (1891). Here, the Commission's ability to impose penalties administratively on combination gas and electric corporations that violate the PSL, regulations or orders of the Commission was clearly stated, but the law is silent on the Commission's power to impose such penalties on water companies. Moreover, assuming arguendo that Section 25-a allowed for the imposition of penalties on water companies, such penalties must be related to violations of the law, orders and regulations and that is not the case here, either. That omission cannot be deemed an accident of drafting. Mtr. of Raynor v. Landmark Chrysler, 18 N.Y.3d 48, 56 (2011) ("As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof. Additionally, '[w]here a statute describes the particular situations in which it is to apply and no qualifying exception is added, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded.'"). Water companies are simply not covered by this new law.

regard to other facts and circumstances relevant to the underlying regulatory scheme, the agency can be said to have invoked its quasi-legislative, rule-making authority and becomes obligated to file the rule or regulation with the Secretary of State."[37] To the best of UWNY's knowledge, no such regulation adopting the CSPI as a general policy has been adopted or filed with the Secretary of State as SAPA requires. SAPA § 202. Given that the RD finds that the Commission has adopted a generic rule that such mechanisms are required (RD at 90), the RD has determined the factual predicate for a SAPA violation.

iii) *The Burden in the CSPI Mechanism is Improperly Placed on UWNY*

The RD's treatment of the CSPI is also illegal because it improperly reverses the applicable burden by asserting that "UWNY [is obligated] to show that the other utilities' performance or circumstances differ materially from UWNY's own." RD at 90. UWNY is not the proponent of the CSPI; Staff is. As such, it is incumbent upon Staff to demonstrate, in the first instance, that the Company is violating some objective standard of customer service. Staff has not demonstrated that UWNY is violating some, objective state-wide standard or regulation and Staff has not shown that the Company is providing customer service at a lower level than its peers. Consequently, on both scores, Staff has not met its burden of proof and UWNY must not be required to prove a negative.[38]

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[37] Callanan Indus., Inc. at 171.

[38] The RD's recommended CSPI provision should also be rejected because it violates the Equal Protection Clause of the New York State Constitution. The proposed UWNY CSPI imposes a higher burden on UWNY than New York Water Service Company ("NYWS"), the only other water company to which such a mechanism has been heretofore applied. The disparity in treatment between the two (i.e., the unequal CSPI mechanisms) bears no rational relationship to any legitimate State interest and thus is an Equal Protection violation. See Abrams v. Bronstein, 33 N.Y.2d 488, 492 (1974) (citations omitted). There is simply no reason why UWNY should be subject to a more stringent CSPI than NYWS. And, assuming arguendo that Staff's proposal could clear the equal protection hurdle, the proposed CSPI would still run afoul of the fact that treating similarly situated utilities differently is inherently irrational and arbitrary. See Buffalo Civic Auto Ramps. Inc. v. Serio, 21 A.D.3d 722, 725 (4th Dep't (2005)).

b) The CPSI is Unnecessary Because UWNY Provides Excellent Customer Service

UWNY provides high levels of customer service and annually conducts a Customer Satisfaction Survey to solicit customer feedback. Eighty-three percent of UWNY's customers surveyed were satisfied with the Company's overall customer service and field performance (Tr. at 161) and in 2012, 84% of the customers surveyed would recommend UWNY as their water company of choice. Tr. at 167-68. From January 2009 to August 2011, there were on average only 0.056 complaints per 1,000 customers per month. Tr. at 161. Moreover, the Company implemented a new Customer Information System, which improves all aspects of Customer Relationship Management, including: billing, account management, revenue management, credit and collections management, field device management, and field service work management. Tr. at 975.

Despite the Company's excellent customer service track record, the RD recommends imposing Staff's CSPI mechanism. Nowhere, however, has Staff demonstrated that UWNY provides inadequate customer service, or even customer service that is demonstrably poorer than its utility peers. Nowhere has Staff or any other party shown that UWNY has fallen short of any objective level or measurement of customer service.

c) The Company Does Not Require an Incentive to Provide High Quality Customer Service

The CSPI is also unnecessary because the Company, without such a mechanism, is already undertaking several initiatives and reviewing key performance indicators that UWNY uses to help improve customer service, including: a) implementation of a new customer contact and billing system which will help the Company identify billing errors sooner; b) call center

statistics that are tracked daily; c) self service functions have been added to the website and telephony system which customers can access 24 hours a day, 7 days a week to check their balance, pay bills, enter meter reads, and schedule meter change appointments; d) Western Union fees are waived for customers in good standing; and e) customers in need may receive assistance from the Company's United Water Cares program. Tr. at 230. Unlike outside factors such as rate increases that fuel customer complaints without having any relevance to the actual quality of service the Company offers, these types of initiatives and programs improve the customer experience and are better, objective indicators of the actual service enjoyed by UWNY customers. Tr. at 230. Because this is a one-year rate case, any significant decrease in customer service quality may be identified and addressed in the Company's next rate case.[39]

Based on the foregoing, and for the additional reasons discussed below, neither the PSC Complaint Rate measure nor the Customer Satisfaction Survey Index measure is justified or appropriate in this rate case.

2. PSC Complaint Rate Measure

Exception 18 – In Addition, the RD Should Not Have Adopted the PSC Complaint Rate Measure

The Complaint Rate Measure endorsed in the RD is inappropriate and lacks a rational basis for a number of reasons. First, the measure includes complaints that are wholly outside the Company's control. Penalizing the Company for actions beyond its control lacks any rational basis. In UWNY's experience, complaints fall within two main categories, those that are outside of the Company's control (e.g., complaints related to UWNY billing and acting in compliance with its tariffs) and those which could be seen as a deterioration of service by the Company. Tr.

[39] It is also worth noting that, in an additional effort to improve the customer experience, the Company already hired one additional CSR to allow for further customer contact and resources. Tr. at 218. Ironically, however, Staff has objected to the Company's proposal to hire additional CSRs. Tr. at 976-77. Expecting the Company to provide better customer service, while denying the Company the new resources to do so, is inconsistent.

at 223. Since 2010, approximately 80% of the complaints have fallen in the former category, having been related to high bills, increased facility charges, added charges for deposits, late payment fees, denial of access charges, customers shut off for non-payment, customers with broken payment agreements, and leak adjustment amounts that customers deem to be insufficient. Tr. at 223. Despite the fact that these complaints are wholly outside the Company's control, and are variable depending on other outside factors, they are one of the two key metrics in the CSPI. Therefore, the PSC Complaint Rate measure does not portray a true indication of the actual service being provided by the Company.

For example, according to the Company's records, approximately 30% of the complaints were related to high bills where customers used excessive amounts of water during the summer (with higher summer rates) or had leaks in their lines for an entire billing period. Tr. at 225. An additional 40% of complaints were related to customers being shut off for non-payment or customers receiving a final termination notice.[40] Tr. at 225. Incredibly, the CSPI does not extract the 80% of cases where the Company's actions were in compliance with the Commission's regulations, and the Company's Tariff. Tr. at 886. When a utility is acting within the terms of its tariff and the law and regulations, a customer may complain but the utility is hardly to be blamed for its actions. Consequently, assigning any value to such "complaints" is unsupportable and irrational.

The RD itself found evidentiary problems in the way Staff tracks such complaint records. RD at 94. ("[A] systematically truncated record keeping system seems ill-suited to a regulatory regime in which the Commission supervises the utilities' service quality by reference to long-term trends."). The RD, moreover, was forced to concede the fact that "[i]n other words, in the

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[40] The majority of those customers had already been provided with several payment agreements and offered the ability to contact United Water Cares for financial assistance. Tr. at 225.

future just as in the historic base period, customers will continue to present both true complaints, and mere opinions prompted by dissatisfaction with the tariffs…" RD at 96. In fact, the RD counsels against waiting to make the CSPI effective until 2015 in part because of concerns over the subjectivity of complaints. RD at 96. Although delaying implementation of the CSPI for a year due to data problems has a ring of reasonableness, another year of experience will not cure the deficiencies in the use of the CSPI's Complaint Rate. It will remain subjective and malleable by whim and caprice.

Also, as described above, the CSPI also does not exclude complaints involving factors outside the Company's control. Only one other water company, New York Water Service Company ("NYWS"), has a PSC Complaint Measure in place. NYWS's measure, however, excludes these types of complaints as they are beyond the Company's control. Consequently, UWNY is being denied the same protection afforded NYWS without a rational basis in violation of equal protection.

3. <u>Customer Satisfaction Survey</u>

Exception 19 – The RD Should Not Have Adopted the Customer Satisfaction Survey Measure

Unlike the Complaint provision which was imposed – albeit in a different form – on NYWS, the Customer Satisfaction Survey Index measure has not been imposed on any other water utility in the state. As a consequence, UWNY is not being afforded equal protection and is being discriminated against in an irrational manner.

Moreover, as with the Complaint Rate, this metric also is a highly subjective. Historical data shows that scores from these surveys are significantly affected by proposed rate cases, rate increases, and proposed projects such as the Long Term Major Water Supply Project -- matters that have nothing to do with the Company's provision of quality water service. UWNY should

not be penalized because its customers are dissatisfied with a project mandated by governmental processes, with rate or other regulatory filings or with other regulatory or political issues irrelevant to the quality of service provided.

4. Missed Appointments

Exception 20 – The Missed Appointments Penalty Should Be Reciprocal

While the RD recommended imposing an "Appointments Kept" mechanism whereby the Company would issue a $25 bill credit to a customer if the Company misses a service appointment, the RD rejected the Company's proposal that the penalty mechanism be adopted in tandem with a reciprocal provision where UWNY would bill a customer $25 for failing to be present for a scheduled appointment.[41] RD at 99-100.

The RD's conclusion is misguided and disregards the fact that missed appointments caused by customers cost the Company, and by extension its customers, money in lost time and effort. The RD's recommendation unfairly forces these costs to be absorbed by all customers. A $25 charge is a modest fee which provides customers with an incentive to keep appointments. Furthermore, if UWNY is to be held responsible for missing an appointment, customers should also be held responsible for wasting the Company's time and costs. A reciprocal missed appointments penalty promotes accountability and efficiency and should be adopted.

[41] The RD's reference to the MC's erroneous contention that the Company's proposal is "another manifestation of UWNY's disdain for its customers" (RD at 100), should not be viewed as providing any credence to this rhetoric and baseless accusation. UWNY takes justified pride in providing its customers with safe, clean and reliable drinking water and the Company's commitment to its customers is amply supported by the evidence in this proceeding.

5. <u>Termination of Service</u>

Exception 21 - The Company Should Be Permitted to Terminate Service of Customers Who Fail to Permit Access for Meter Reads

The RD's opposition to the Company's proposed tariff revisions regarding termination of service should be dismissed. The proposed tariff provisions allow for termination if a "customer has more than three consecutive estimates and has not responded to the [Company's] no-access notifications," or if a "customer has not provided the Company with access to its equipment for [radio frequency meter] change outs due to testing regulations, faulty equipment or expected tampering after receiving adequate notification from the Company in the form of a letter or series of letters." Tr. at 182-83.

Customers who fail to permit meter reads impose costs on all customers and the Commission has no obligation to, and in the interest of protecting compliant ratepayers should not, protect a subset of customers that block access to the meter. Furthermore, denying the proposed tariff revisions leaves the Company with no avenue to enforce meter reads. The RD's recommendation would effectively force the Company to continue issuing estimated bills to these non-compliant customers indefinitely, leaving the Company with less ability to identify theft of service.

6. <u>NON-REVENUE WATER</u>

Exception 22 – The RD Wrongly Concluded that NRW Is Unacceptably High

Non-Revenue Water ("NRW") has numerous components, as the RD properly acknowledges. The Company breaks such NRW down into two major groups: physical losses and actual losses. RD at 105. Staff and several parties take issue with the Company's level of NRW, with Staff recommending that the Company implement the findings from a NRW study conducted at UWNY's sister company, United Water New Rochelle Inc. RD at 106. As the RD

correctly noted, the Company is currently applying that study's findings to UWNY. Company IB at 78; RD at 106. MC, utilizing a simplistic analysis, seeks to impose some type of incentive mechanism on the Company. RD at 107.

The RD concludes that the Company's NRW is "unacceptably high." RD at 108. The RD's analysis is flawed in a number of respects. Nonetheless, it is correct that NRW continues to be a concern for the Company. Company IB at 75.

The RD fails to distinguish between unbilled authorized consumption (e.g., fire-fighting) and apparent losses, consisting to a large degree of theft of service including un-metered hydrant use, meter inaccuracies and billing errors. Company IB at 76. Physical losses, such as leaks on mains and customer services, represent a minimal component of NRW that can be reduced as evidenced by UWNY's Infrastructure Leakage Index ("ILI") calculated by AWWA methodology.[42] Tr. at 315-316. Under the AWWA standards, the Company's real leakage within the system is considered excellent. Company IB at 78. Despite this fact, the Company continues to work on its actual leaks via ongoing programs to reduce water losses, including the Underground Infrastructure Replacement Program. Company IB at 76.[43]

The RD also states, with no record support or analysis, that that the Company's NRW study results from its sister company are in some fashion insufficient because "while informative, [the study] lack[s] UWNY specific analysis and findings." RD at 109. Such a conclusion is directly contrary to the actual record, which demonstrates that the sister company's

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[42] ILI is a universal measure that considers the operational environment, age of infrastructure, length of pipes, materials etc. The ILI is a superior measure of NRW, because, unlike measuring NRW as a percentage of volume, the ILI will not increase due solely to a decrease in the volume of water.

[43] The RD's logic that the NRW is too high is inconsistent with the RD's proposal that NRW expenditures be limited by a cost/benefit analysis to be provided for each NRW program element that compares the NRW reduction to the ratepayers' costs to achieve the reduction and the projected revenue requirement savings going forward. RD at 109.

systems are representative.[44] Company IB at 77; Tr. 315. Moreover, what those studies reveal, and what the RD fails to address, is that the high NRW figure results from, to a large degree, unauthorized unmetered use of hydrants, and theft of service. While additional O&E may be undertaken (RD at 110) it is unlikely to significantly deter those individuals and entities who are engaging in the deliberate theft of services.

The RD also speculates about the possibility of wide-spread deployment of locking collars for hydrants. RD at 109. This speculation is insupportable given the Company's concern that such devices are not generally advisable because they make fire-fighting more difficult. RD at 109. It is not surprising that the record lacks evidence on the economics of wide-spread use of such collars (RD at 109) given the Company's stated desire to minimize concerns regarding fire-fighting impacts. While the Company is not opposed to continuing discussions with the Fire Chiefs' Association regarding locking fire hydrants, it understands fire fighters to be strongly opposed to any widespread use of locking collars. Company RB at 62.

The Company continues to take steps to address theft of service. The Company's proposed conversion to monthly billing will assist in reducing both theft and NRW. Company RB at 61. To make greater inroads on the theft component, the Company needs Commission support. As noted in Exception 21 above, the RD recommends against adoption of a tool that could have real practical impact in reducing theft– the ability to terminate service for customers who refuse to allow the Company access for meter reads. Only working together with the Commission, law enforcement and public opinion, will the Company be able to reduce theft of service and its NRW percentage. The RD's recommendation that the Company provide

[44] To the extent that the Commission wishes to include the cost of additional studies specifically for UWNY, the Company is not opposed to conducting such studies, although the Company would expect the results to be very similar.

additional public notice of the unauthorized use problem and its rate impact on customers is inconsistent with its recommendation to cut O&E expenses.

7. RECONCILITATIONS

A. Property Tax Reconciliation

Exception 23 - Property Taxes Continue to Be a Large Increase Expense

The RD's rejection of a property tax reconciliation mechanism, which would allow UWNY to recover 100% of the property tax expenses incurred over the taret, overlooks the fact that property taxes continue to escalate dramatically beyond the Company's control and make up a significant portion of the Company's expenses. Additionally, permitting the Company to recover the total cost of its property taxes comports with the general Commission principle that utility rates should be set to allow recovery of expense.[45] Therefore, the Commission should reject the RD's recommendation and instead adopt the Company's proposed proposed property tax reconciliation mechanism.

8. FIRE PANEL ISSUES

Exception 24 - The Company Has Always Provided Adequate Water Supply for Fire Protection Services.

The Company takes strong exception to the RD's conclusion that the Company's water supply is deficient and that the Company delayed in its efforts to determine the root cause of the water supply problem during the October 2010 fire in the Hamlet of Ramapo. RD at 115. UWNY has always provided adequate water supply for fire protection service. Representatives of UWNY attend bi-monthly meetings with the Rockland County Fire Chiefs' Association

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[45] The Company aggrees with the RD's recommendation to continue its revenue reconciliation mechanism, including implementing language proposed by the Company and Staff regarding how to address disagreements over the proper net surcharge or surcredit and deciding disputes through a Dispute Resolution Process. RD at 111-12. In making this recommendation, the ALJs correctly recognized that the proposed language ensures that the surcharge or surcredit is accurate and that any delay in calculating the final amount will not harm the Company or its customers. RD at 112. This language, unanimously supported by the Company, Staff and the ALJs, reflects the best interests of both UWNY and ratepayers and should be adopted by the Commission.

Utility Committee, and the Fire Panel testified that the Fire Chiefs' Association has a "good working relationship" with the Company. Tr. at 1118, 1121. In fact, UWNY was the recipient of the first Fire Training Center Award from the Rockland County Fire Training Center in 2012, underscoring the Company's strong performance in this area.

The RD's assertion that the Company provided a deficient response to the allegations that it provided inadequate water supply during the October 2010 fire has been fully refuted. The Company provided a detailed response after a thorough investigation and the Fire Panel agrees with the Company's conclusion regarding the root cause of the water supply problem that day.[46] Company IB at 83. The minutes from the March 20, 2014 meeting of the Utility Committee of the Fire Chiefs' Association (which will be subject to a formal motion of approval at the committee's May 8 meeting and are attached hereto as Appendix 2) state that testing done in 2013 and 2014 as part of the Company's investigation "determined the availability of adequate residential fire flow" for the relevant portion of the Hamlet of Ramapo and that "all parties agree this issue has been satisfactorily resolved."[47]

UWNY has also taken considerable efforts to address the Fire Panel's concerns regarding low pressure in the Sloatsburg Low System and determined that such concerns are misguided due to the Association's use of outdated maps which incorrectly marked ground elevations as eight feet lower than actual surveyed elevations. Tr. at 240. Recently completed field surveys

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46 Furthermore, the Rockland County Fire Chiefs' Association (the "Association") initially claimed that the fire occurred on October 12th, not October 10th. Tr. at 237. Any delay by the Company in responding to the Association's concerns was the result of being provided with the wrong date of the fire. Tr. at 1131. The ALJs' determination that the Company should bear the blame for any miscommunication between UWNY and the Association (RD at 115) is simply unfair and without basis. In fact, the Company is pleased to attach what it believes will be the minutes of the last Fire Chiefs meeting, demonstrating that the Fire Chiefs have accepted the Company's response to the October 2010 water pressure issues.

47 The minutes of March 20, 2014 meeting of the Utility Committee of the Association resolved the issue of water flow during the October 2010 fire, see Mosher v. Town of Southport Zoning Bd. of Appeals, 5 A.D.3d 840, 841 (3d Dep't 2004), and the RD itself concluded that water pressure was not an issue during that event. RD at 115.

have established that there is no low pressure problem in the Sloatsburg area. And the Fire Panel admitted as much in acknowledging that the system pressure in the area complies with all applicable regulations. Tr. 1146-47.[48]

9. MANAGEMENT AUDIT

The RD appropriately rejected MC's and UIU's call for a management audit and their allegations of Company mismanagement. RD at 4. Lacking any evidentiary support, UIU and MC asserted that a management audit was warranted for a variety of flawed reasons, including because: 1) the results of Staff's accounting investigation of UWNY's rate filing were "uncomfortably similar to the results of Staff's accounting investigation in the 2010 National Grid electric rate case filing;"[49] 2) the Company did not make EO filings with ORPTS until last year; 3) the Company did not perform a Customer Satisfaction Survey in 2012; and 4) the Company did not perform cost-benefit analyses on all capital projects. MC IB at 15.

The ALJs saw through these weak and over-reaching arguments and correctly noted that MC and UIU, and in fact no party in this proceeding, made a prima facie showing that the Company's management is failing or deficient. RD at 118. The RD properly concluded that "allegations of mismanagement were unconvincing" (id.) and thus there is no basis for the Commission to commence a management audit. Moreover, Staff did not support or call for an audit in this proceeding. The evidence clearly shows that the Company is well-managed and operationally sound.

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[48] The Company, however, agrees with the RD's recommendation not to postpone rates or issue an order requiring UWNY to prepare a design plan with construction and in-service date milestones and providing for penalties as the record does not support such a postponement or order.

[49] Case 10-E-0050 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric Service, Order Establishing Rates for Electric Service (Jan. 24, 2011).

As described more fully above, both the amount and allocation of UWM&S fees to UWNY were appropriate and in accordance with the prior Company rate case and the filed UWM&S Agreement. Furthermore, the National Grid case is hardly a suitable comparison to UWNY. For example, in the National Grid case Staff argued that Niagara Mohawk, as the largest affiliate in the National Grid system, created more economies of scale and the formula used to allocate UWM&S fees among affiliates failed to account for this.[50] Here, however, UWNY is not the largest affiliate in the United Water Resources system and thus does not create economies of scale analogous to those created by Niagara Mohawk. In addition, UWNY's UWM&S fees are periodically audited to ensure that the allocation of fees among the affiliates comports with the UWM&S Agreement. Tr. at 622.

The Company's decision not to file for EO awards until last year also does not provide support for a management audit because until last year the Company reasonably believed that it was not eligible for an EO award based upon the plain language of the relevant regulations and law.[51] Company RB at 17. In addition, the Company's lack of a Customer Satisfaction Survey in 2012 does not support a management audit, because a survey was not performed for good reason. Namely, because UWNY's customer service system was replaced in late 2011 and it was determined that surveying at the beginning of 2013 would provide more indicative results. Thus, the lack of a customer satisfaction survey in 2012 was fully justified. Company RB at 7. Finally, as the RD properly found, the fact that the Company does not perform cost-benefit analyses on <u>all</u> of its capital projects clearly does not mean that the Company does not perform such analyses for <u>any</u> capital project. RD at 56-57.

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[50] <u>Case 10-E-0050</u>, Recommended Decision at 19 (Nov. 17, 2010).

[51] The grant of an EO award reduces the Company's tax liability, but does not decrease a municipality's tax revenue requirement. Therefore, to the extent the Company had applied for and received EO awards in the past, such awards would likely have led to concomitant increases for ratepayers in local property taxes.

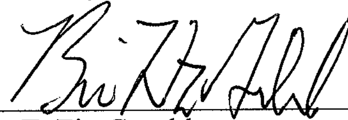
Unquestionably, there is nothing in the record that supports MC's empty allegation that UWNY's management is "incompetent." MC IB at 6. To the contrary, the evidence in this case establishes the extraordinary dedication of management to work days on end without a break during extreme weather events to ensure the continued provision of safe and adequate water. Company RB at 16. As a result, a management audit is entirely unjustified and is not supported by any evidence in this proceeding.

III. CONCLUSION

For the foregoing reasons, the Commission should grant the exceptions described in this Brief on Exceptions and should approve the Company's positions on the matters discussed in this Brief.

Dated: April 28, 2014

Respectfully submitted,



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UNITED WATER NEW YORK
Rate Years at Proposed Rates

		Rate Year 1 For the Period ended 6/30/15 At Current Rates Staff Determinants			Rate Year 1 For the Period ended 6/30/15 At Rates by Meter Size Proposed Rates		
FIXED CHARGES		(1)	(2)	(3)	(4)	(5)	(6)
SC - 1 Single Family Residential							
		Bills	Rate	Revenue	Bills	Rate	Revenue
SF	58	796,568	9.1300	7,272,669	796,568	10.99	8,752,125
	75	4,561	9.1300	41,644	4,561	12.09	55,127
	100	20,045	9.1300	183,009	20,045	13.18	264,286
	150	709	9.1300	6,475	709	18.68	13,247
	200	275	9.1300	2,509	275	21.97	6,039
	300	-	9.1300	-	-	71.42	-
	400	28	9.1300	256	28	107.68	3,015
		822,186		7,506,562	822,186		9,093,837
SC-6 Multi-Family Residential							
MF	58	11,352	9.1300	103,644	11,352	10.99	124,728
	75	265	9.1300	2,421	265	12.09	3,205
	100	3,223	9.1300	29,428	3,223	13.18	42,497
	150	3,984	9.1300	36,374	3,984	18.68	74,415
	200	2,008	9.1300	18,329	2,008	21.97	44,116
	300	563	9.1300	5,138	563	71.42	40,194
	400	141	9.1300	1,287	141	107.68	15,182
	600	92	9.1300	840	92	180.19	16,577
		21,628		197,462	21,628		360,914
SC-7 Non-Residential							
NR	58	34,079	9.1300	311,139	34,079	10.99	374,434
	75	1,755	9.1300	16,023	1,755	12.09	21,211
	100	7,620	9.1300	69,571	7,620	13.18	100,468
	150	4,492	9.1300	41,008	4,492	18.68	83,896
	200	5,610	9.1300	51,219	5,610	21.97	123,277
	300	1,508	9.1300	13,768	1,508	71.42	107,697
	400	960	9.1300	8,765	960	107.68	103,368
	600	600	9.1300	5,478	600	180.19	108,114
	800	12	9.1300	110	12	277.98	3,336
		56,635		517,081	56,635		1,025,801
Contracts							
Resale							
NJI	600	12	9.1300	110	12	180.19	2,162
Other							
NYS Thruway	600	12	9.1300	110	12	180.19	2,162
Tuxedo Gardens	200	24	9.1300	219	24	21.97	527
SC-3 Private Fire							
	Sv/Mtr	Units Billed	Rate	Revenue	Units Billed	Rate	Revenue
	Less than 1"	8	4.67	437	8	5.24	490
	100	7	6.23	516	7	6.99	579
	150	333	12.46	49,832	333	13.98	55,911
	200	268	18.24	58,672	268	20.47	65,845
	300	25	45.55	13,727	25	51.11	15,402
	400	603	91.01	658,990	603	102.12	739,436
	600	414	182.18	904,421	414	204.42	1,014,830
	800	156	364.22	680,987	156	408.67	764,096
	1000	12	728.60	103,432	12	817.53	116,057
		1,826		2,471,013	1,826		2,772,645
SC-4 Public Fire							
	Hydrants	6,313	83.26	6,307,345	6,313	93.42	7,077,013
Total Fixed Charges:				16,999,901			20,335,063

CONSUMPTION CHARGES					(4)	(5)	(6)
SC - 1 Single Family Residential							
SF		CCF	Rate	Revenue	CCF	Rate	Revenue
winter	First	1,476,297	3.7900	5,595,166	1,476,297	4.2526	6,278,101
	All Over	2,649,356	4.4410	11,766,024	2,649,356	4.9830	13,201,742
summer	First	750,900	5.7170	4,292,896	750,900	6.4148	4,816,874
	All Over	1,904,272	6.6590	12,680,547	1,904,272	7.4717	14,228,149
		6,780,825		34,334,633	6,780,825		38,524,866

UNITED WATER NEW YORK
Rate Years at Proposed Rates

		Rate Year 1 For the Period ended 6/30/15 At Current Rates Staff Determinants			Rate Year 1 For the Period ended 6/30/15 At Rates by Meter Size Proposed Rates		
							#DIV/0!
SC-6 Multi-Family Residential MF		CCF	Rate	Revenue	CCF	Rate	Revenue
winter	First	37,532	3.0250	113,534	37,965	3.3942	128,860
	All Over	926,841	3.5420	3,282,869	927,771	3.9743	3,687,239
summer	First	19,524	4.5480	88,793	19,957	5.1031	101,841
	All Over	520,228	5.3220	2,768,653	521,158	5.9716	3,112,146
		1,504,124		6,253,849	1,506,850		7,030,086
							#DIV/0!
SC-7 Non-Residential NR		CCF	Rate	Revenue	CCF	Rate	Revenue
winter	First	83,999	3.3770	283,665	84,608	3.7892	320,597
	Next	1,160,213	3.9800	4,617,648	1,168,630	4.4658	5,218,868
	All Over	497,853	2.9520	1,469,662	501,465	4.4658	2,239,442
summer	First	43,188	5.0630	218,661	43,501	5.6809	247,125
	Next	727,514	5.9670	4,341,076	732,792	6.6953	4,906,262
	All Over	330,221	4.4250	1,461,228	332,617	6.6953	2,226,971
		2,842,988		12,391,939	2,863,613		15,159,265
Contracts							
Resale		CCF	Rate	Revenue	CCF	Rate	Revenue
Hillburn		53,029	1.6700	88,558	53,029	1.8738	99,365
NJI		CCF	Rate	Revenue	CCF	Rate	Revenue
winter	First	27	3.3770	91	27	3.7892	102
	Next	8,024	3.9800	31,936	8,024	4.4658	35,834
	All Over	19,506	2.9520	57,582	19,506	4.4658	87,111
summer	First	13	5.0630	68	13	5.6809	77
	Next	4,091	5.9670	24,412	4,091	6.6953	27,392
	All Over	24,458	4.4250	108,228	24,458	6.6953	163,756
		56,120		222,317	56,120		314,271
Total Resale		109,149		310,875	109,149		413,636
Other		CCF	Rate	Revenue	CCF	Rate	Revenue
NYS Thruway	First	10,182	6.210	63,231	-	6.210	-
	All Over	10,443	7.944	82,959	-	7.944	-
		20,626		146,190	-		-
		CCF	Rate	Revenue	CCF	Rate	Revenue
Tuxedo Gardens	First	866	12.225	10,587	-	12.225	-
	All Over	1,860	14.473	26,918	-	14.473	-
		2,726		37,505	-		-
Single Family	Consumption	6,780,825		34,334,633	6,780,825		38,524,866
	Fixed			7,506,562			9,093,837
Multi Family	Consumption	1,506,850		6,291,354	1,506,850		7,030,086
	Fixed			197,681			361,442
Non Res	Consumption	2,863,614		12,538,129	2,863,613		15,159,265
	Fixed	0		517,191	0		1,027,963
Resale	Consumption	109,149		310,875	109,149		413,636
	Fixed	0		110	0		2,162
		11,260,438		61,696,535	11,260,437		71,613,257
	Private Fire			2,471,013			2,772,645
	Public Fire			6,307,345			7,077,013
				70,474,893			81,462,915
	Target			70,456,804			81,463,499
	Increase			18,089			(584)

UNITED WATER NEW YORK
Statement of Revenues at Proposed Rates
for the Rate Year ended June 30, 2015

Line No.		Rate Year 7/14 - 6/15 *@ current rates*	Rate Year 1 7/14 - 6/15 *@ proposed rates*	% Increase
1		*(1)*	*(2)*	*(3)*
2		*Ex Cdj 1, p1, C3*	*Ex Cdj 1, p1, C6*	*(C1-C2)/C1*
3				
4	**Metered Sales**			
5	Residential			
6	Multi-Family	6,489,035	7,391,527	13.91%
7	Single-Family	41,841,195	47,618,703	13.81%
8	Non-Residential	13,055,320	16,187,228	23.99%
9	Total Metered Sales	61,385,550	71,197,459	15.98%
10				
11	**Sales for Resale**	310,985	415,798	33.70%
12		61,696,535	71,613,257	16.07%
13				
14	**Fire Protection**			
15	Private Fire	2,471,013	2,772,645	12.21%
16	Public Fire	6,307,345	7,077,013	12.20%
17	Total Fire Protection	8,778,358	9,849,659	12.20%
18				
19	Subtotal:	70,474,893	81,462,915	15.59%
20				
21	Revenue Taxes	254,066	254,067	
22				
23	SubTotal:	70,728,958	81,716,982	15.54%
24				
25	**Interdepartmental (De Forrest)**	1,701,809	1,701,809	
26				
27	SubTotal:	72,430,767	83,418,791	15.17%
28				
29	**Miscellaneous Revenues:**			
30	Miscellaneous Service Revenue	17,136	20,682	
31	Turn on Fees	25,155	46,180	
32	Rents from Water Property	244,758	244,758	
33	Other Water Revenue (Mtr Est. Fee)	82,100	82,100	
34	Other Water Revenue - Late Charges	722,364	811,034	
35	Revenue Deferrals (Rev Rec)	-	-	
36	Revenue Deferrals (Levelized)	-	-	
37	Total Miscellaneous Revenues	1,091,513	1,204,755	
38				
39	Non-Revenue Water Adjustment	330,245	330,245	
40				
41				
42				
43				
44	**Total Revenue**	73,852,526	84,953,791	15.03%
	Target		84,954,375	
	Variance		(584)	

Revenue Tax % (Local Tax only)	0.36%
Late payment %	1.02%

Base Rate Increase	15.59%
Overall Increase	15.03%

UNITED WATER NEW YORK RATE CASE

SINGLE-FAMILY CLASS - CUSTOMER BILL IMPACT

Residential Customer Usage:	Average Usage 5/8 108 ccf per year			Average usage 3/4 180 ccf per year			High usage 1" 360 ccf per year		
Average Bill at Existing Rates									
Consumption	3 $	4.4323	13.30	3 $	4.4323	13.30	3 $	4.4323	13.30
	6 $	5.1803	31.08	12 $	5.1803	62.16	27 $	5.1803	139.87
Service Charge	$	9.13	9.13	$	9.13	9.13	$	9.13	9.13
SubTotal Monthly Bill			53.51			84.59			162.30
RRC		8.54%	4.57		8.54%	7.22		8.54%	13.86
NWSS		0.00%	-		0.00%	-		0.00%	-
PSL 18a		1.63%	0.95		1.63%	1.50		1.63%	2.87
Total Monthly Bill			59.02			93.31			
	x		12	x		12	x		12
Total Annual Bill			$ 708			$ 1,120			$ 2,148
Average Bill at Rate Year 1 Rates									
Consumption	3 $	4.9733	14.92	3 $	4.9733	14.92	3 $	4.9733	14.92
	6 $	5.8126	34.88	12 $	5.8126	69.75	27 $	5.8126	156.94
Facility Charge	$	10.99	10.99	$	12.09	12.09	$	13.18	13.18
SubTotal Monthly Bill			60.78			96.76			185.04
RRC		8.54%	5.19		8.54%	8.26		8.54%	15.80
NWSS		0.00%	-		0.00%	-		0.00%	-
PSL 18a		1.00%	0.61		1.00%	0.97		1.00%	1.85
Total Monthly Bill			66.58			105.98			202.69
	x		12	x		12	x		12
Total Annual Bill			$ 799			$ 1,272			$ 2,432
Percentage Increase			12.80%			13.58%			13.22%

Composite Volumetric Rate based on 8 months winter/4 months summer.

Based on metered revenue increase of %15.03

Assume continuation of TSA (PSL 18a) through 2017 at 1%

RRC at current surcharge

Does not include Local Surcharge applicable to less than 40% of revenues

UNITED WATER NEW YORK RATE CASE

MULTI-FAMILY CLASS -CUSTOMER BILL IMPACT

Multi-Family Customer Usage:		Low usage 5/8" 720 ccf per year				Average usage 1" 948 ccf per year				High usage1.5" 1284 ccf per year	
Average Bill at Existing Rates											
Consumption	3	$	3.5327	10.60	3	$	3.5327	10.60	3	$ 3.5327	10.60
	57	$	4.1353	235.71	76	$	4.1353	314.29	104	$ 4.1353	430.07
Service Charge		$	9.13	9.13		$	9.13	9.13		$ 9.13	9.13
SubTotal Monthly Bill				255.44				334.01			449.80
RRC			8.54%	21.81			8.54%	28.51		8.54%	38.40
NWSS			0.00%	-			0.00%	-		0.00%	-
PSL 18a			1.63%	4.16			1.63%	5.44		1.63%	7.33
Total Monthly Bill				281.41				367.97			495.53
	x			12	x			12	x		12
Total Annual Bill				$ 3,377				$ 4,416			$ 5,946
Average Bill at Rate Year 1 Rates											
Consumption	3	$	3.9638	11.89	3	$	3.9638	11.89	3	$ 3.9638	11.89
	57	$	4.6401	264.48	76	$	4.6401	352.65	104	$ 4.6401	482.57
Facility Charge		$	10.99	10.99		$	13.18	13.18		$ 18.68	18.68
SubTotal Monthly Bill				287.36				377.72			513.14
RRC			8.54%	24.53			8.54%	32.25		8.54%	43.81
NWSS			0.00%	-			0.00%	-		0.00%	-
PSL 18a			1.00%	2.87			1.00%	3.78		1.00%	5.13
Total Monthly Bill				314.77				413.74			562.07
	x			12	x			12	x		12
Total Annual Bill				$ 3,777				$ 4,965			$ 6,745
Percentage Increase				11.85%				12.44%			13.43%

UNITED WATER NEW YORK RATE CASE

NON-RESIDENTIAL CLASS -CUSTOMER BILL IMPACT

Non-Residential Customer Usage:	Low usage 5/8"				Average usage 1"				Large end user 6"			
	396 ccf per year				720 ccf per year				271,824 ccf per year			
Average Bill at Existing Rates												
Consumption	3	$	3.9390	11.82	3	$	3.9390	11.82	3	$	3.9390	11.82
	30	$	4.6423	139.27	57	$	4.6423	264.61	897	$	4.6423	4,164.17
									21,752	$	3.4430	74,892.14
Service Charge		$	9.13	9.13		$	9.13	9.13		$	9.13	9.13
SubTotal Monthly Bill				160.22				285.56				79,077.26
RRC			8.54%	13.68			8.54%	24.38			8.54%	6,750.83
NWSS			0.00%	-			0.00%	-			0.00%	-
PSL 18a			1.63%	2.61			1.63%	4.65			1.63%	1,288.96
Total Monthly Bill				176.51				314.59				87,117.04
	x			12	x			12	x			12
Total Annual Bill				2,118.08				3,775.11				$ 1,045,404
Average Bill at Rate Year 1 Rates												
Consumption	3	$	4.4198	13.26	3	$	4.4198	13.26	3	$	4.4198	13.26
	30	$	5.2090	156.27	57	$	5.2090	296.91	897	$	5.2090	4,672.44
									21,752	$	5.2090	113,305.44
Facility Charge		$	10.99	10.99		$	13.18	13.18		$	180.19	180.19
SubTotal Monthly Bill				180.52				323.36				118,171.34
RRC			8.54%	15.41			8.54%	27.60			8.54%	10,088.29
NWSS			0.00%	-			0.00%	-			0.00%	-
PSL 18a			1.00%	1.81			1.00%	3.23			1.00%	1,181.71
Total Monthly Bill				197.73				354.19				129,441.34
	x			12	x			12	x			12
Total Annual Bill				$ 2,373				$ 4,250				$ 1,553,296
Percentage Increase				12.03%				12.59%				48.58%

ROCKLAND COUNTY FIRE CHIEFS' ASSOCIATION
UTILITY COMMITTEE

Minutes of Joint Meeting with United Water New York (UWNY)

March 20, 2014 at the Fire Training Center, Pomona

ATTENDANCE

Tom Bierds	RCFCA
Tom Buckley	RCFCA and Town of Ramapo
George Drescher	Deputy Coordinator, Office of Fire Emergency Services
Christopher J. Graziano	UWNY, Director of Operations
Ray Guarnuccio	Fire Inspector, Spring Valley
John G. Hock	RCFCA and Tallman FD
John Moolick	UWNY, Engineering
Doug Sampath	Fire Inspecter, Town of Orangetown

The meeting was opened at 1:36 pm by Chairman Tom Buckley.

OLD BUSINESS

Minutes of Meeting of January 16, 2014 A number of changes were proposed by John Moolick, and after a discussion, some of these changes were incorporated into the Minutes which were then accepted.

Out of Service Hydrant Disks

Moolick advised that in the absence of a hydrant number or a specific location of a hydrant with an old out-of-service disk, UWNY considers this item closed. However, should one of the old out-of-service disks be observed on a hydrant, UWNY would address the issue as long as the hydrant number and location were provided.

Hydrant Issues

Moolick reported the following:

Hydrant 1-3 at the intersection of Routes 45 and 59 in Spring Valley - Ray Guarnuccio apologized that he was unable to contact Ray Montana due to the pressing nature of other Village business. He and Moolick agreed to meet at the site on Tuesday, April 1 at 1:00 pm

New Hydrant – Nottingham Drive, Montebello - Hydrant 28-95 was installed on January 27, 2014.

Hydrant on Route 303 opposite Lowes - UWNY reviewed the orientation of this hydrant with a representative of the Orangeburg Fire Department who advised that it was located and oriented as per the Department's request when Lowes was built. As such, the hydrant will remain in its current location and orientation.

Hamlet of Ramapo – Moolick presented UWNY's understanding, based on the dialog during the November 21, 2013 meeting, the documentation of the explanation in the minutes and the acceptance by the RCFCA of the information provided, was that questions surrounding available flow in this district were resolved and that this is a closed issue. He referred to a discussion during the November 21, 2013 Water Utility meeting regarding the specific information that would be required from the RCFCA for any complete review of any fire-fighting event. His recollection was that this commentary was also referred to during discussions on January 16, 2014. He stated that the minimum information required to perform such a review would be as follows:

1. A description of the operational sequencing of the event including a time log of all water use
2. Documentation of pumping activities including:
    a. A list of pumper trucks used including the pumping capacity of each
    b. A list of hydrants to which each pumper truck was connected
    c. The order in which pumper trucks were connected and operated
        i. Including an indication of whether pumpers were used in series during the event
    d. Logs of flow rates and durations from each pumper
    e. Logs of pressure at each connection
3. Type of hydrant connection used at each hydrant
4. Length and diameter of each hydrant connection used at each hydrant
5. Length of hose from each hydrant or pumper to the fire
6. Diameter of all hose used and the location of its use with respect to hydrants, pumpers and the scene

There was a considerable discussion about the ability to provide such detailed information, since the Chief or other officer in command is primarily devoting his attention to fighting the fire not to preparing a chronologic history of the incident. Moolick and Chris Graziano explained that it is important to understand where and when pumper trucks were connected and the sequence of operations in order to perform a complete review of any fire-fighting event.

Hock and Buckley explained the virtual impossibility of providing the information cited under 2d and 2e because the equipment to make such logs does not exist on fire trucks. Moolick and Graziano accepted that explanation. The RCFCA members indicated that the other requested information may or may not be available in all cases.

As far as the specifics in the Hamlet of Ramapo fire of October 12, 2010 was concerned, John Hock disagreed that this was considered a "closed case" at the January 16 meeting. In fact, the minutes of that meeting stated that "Hock will review the results [of UWNY's October 16, 2013 flow test], so a comparison could be made to the tests conducted jointly by UWNY and the RCFCA in 2010 and 2011."

Hock provided Moolick with a comparison of the 2010 and 2011 tests with UWNY's 2013 test, showing that the latest test indicated that the residual pressure during the flow test was now better maintained than it had previously been. Moolick then advised that additional field testing was done on March 9, 2014. In that test, two 2-1/2" outlets on Hydrant 80-7 just downstream from the pressure regulator were opened for a combined flow of 1,200 gpm, demonstrating that the regulator could supply that much water. It was agreed that the 2013 and 2014 tests determined the availability of adequate residential fire flow for Lake Street in the Hamlet at this time. All parties agreed that this issue had been satisfactorily resolved.

Spring Valley Marketplace Realignment of Pressure Districts

Moolick advised that UWNY and the owners of the Eaves at Avalon have reached agreement in principle on an easement for the water main. A surveyor has been engaged to prepare the legal description.

Realignment of PD 95 and PD 20 in the Secora Road area of Spring Valley

Graziano stated that the realignment of the subject districts as previously discussed is included in the company's Long Term Master Plan, and that a final design for the revised zone boundaries has not been established. He further stated that implementation of the potential changes could be "years away" and that UWNY will keep the RCFCA up-to-date with any information as it progresses. It was also discussed that further examination of the private hydrants and mains in the apartment complex may need to be conducted by the property owner.

Emergency Response

At the January 16, 2014 meeting the suggestion was made that as soon as the Emergency Man responds, that he notify 44-Control that he is on his way, giving an estimated time of arrival, similar to what is done by Orange and Rockland Utilities. Moolick said they would arrange to have SCADA include this in their response protocol.

Testing in Sloatsburg

Moolick reported that UWNY has installed a 12" main crossing Route 17 at Post Road. It still needs to be chlorinated and pressure tested before being placed in service. Once it is tied in, flow tests will be conducted. Buckley requested what UWNY's model indicates as to available fire flow at Route 17 and Park Avenue, and north of that intersection as well. This remains an open item.

NEW BUSINESS

Notification to UWNY of Hydrant Use/Operation

Moolick noted that UWNY is still not getting reports on hydrant use at fires and drills and explained the importance of such notification, so that UWNY can do a follow-up inspection as well as being made aware of such use when discolored water calls are received. If UWNY knows it is hydrant use, their staff won't have to search the area for a possible main break. Tom Buckley stated that he will remind the Chiefs at tonight's RCFCA meeting. It was suggested that these reports could also be used, at least as an initial notification to UWNY, of any problems encountered with water supply at an incident, presumably to be followed with the kind of additional information requested by UWNY in the discussion conducted in conjunction with the Hamlet of Ramapo item.

Willingness to Serve Letters

A discussion regarding Willingness to Serve letters was held. The thrust of the questions concerning the fire service is whether or not fire flow demands are taken into consideration when the Willingness to Serve letters are sent to applicants, or whether only domestic demands are considered. A further question was whether the Town or other applicable jurisdiction was provided with the same information as the applicant. Graziano advised that he would report back on these issues. Graziano also advised that the demand requirements of any applicant are determined by the applicant's licensed professional engineer and not by UWNY. The Willingness to Serve Letter is an indication of UWNY's ability to meet the demand requirements determined by the applicant's licensed professional engineer.

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There being no other business, Chairman Buckley adjourned the meeting at 3:06 pm. The next meeting will be scheduled for Thursday, May 8, 2014 at 1:30 pm at the Fire Training Center.

John G. Hock