

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 Services.

Case 13-W-0295

**BRIEF ON EXCEPTIONS OF THE  
UTILITY INTERVENTION UNIT**

Saul A. Rigberg  
Intervenor Attorney  
518-408-3746  
[saul.rigberg@dos.ny.gov](mailto:saul.rigberg@dos.ny.gov)

Dated: April 28, 2014  
Albany, New York

UTILITY INTERVENTION UNIT  
DIVISION OF CONSUMER PROTECTION  
NYS DEPARTMENT OF STATE  
99 WASHINGTON AVENUE  
SUITE 1020  
ALBANY, NY 12231-0001  
[www.dos.ny.gov](http://www.dos.ny.gov)

**TABLE OF CONTENTS**

**INTRODUCTION ..... 1**

**DISCUSSION ..... 3**

**I. THE RD ERRED IN NOT RECOMMENDING THAT THE COMMISSION SET A PORTION OF THE RATE AWARD AS TEMPORARY RATES SUBJECT TO REFUND. .... 3**

**II. THE RD ERRED IN NOT RECOMMENDING THAT THE COMMISSION INSTITUTE A PRUDENCE PROCEEDING TO INVESTIGATE THE FAILUE OF THE COMPANIES TO APPLY FOR ECONOMIC OBSOLESCENCE AWARDS..... 7**

**III. THE RD ERRED IN NOT RECOMMENDING THAT THE COMMISSION INSTITUTE A COMPREHENSIVE MANAGEMENT AUDIT PURSUANT TO SECTION 89-C(15) OF THE PUBLIC SERVICE LAW TO IDENTIFY DEFICIENCIES AND TO PREPARE THE COMPANIES TO MANAGE THEIR LONG-TERM WATER SUPPLY OPTION EFFECTIVELY AND EFFICIENTLY IN THE RATEPAYERS' INTEREST..... 8**

**CONCLUSION ..... 14**

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 Services.

Case 13-W-0295

## **BRIEF ON EXCEPTIONS OF THE UTILITY INTERVENTION UNIT**

### **INTRODUCTION**

During the course of its investigation in this proceeding, the New York Department of Public Service Staff (“DPS Staff”) discovered numerous instances of fiscally imprudent and inappropriate managerial conduct of United Water New York (“UWNY”) and of its affiliated Management and Services Company (“M&S Company”) (collectively, “the Companies”).<sup>1</sup> Evidence in the record compellingly demonstrates management’s inability to provide a standard level of service when compared to other New York utilities and raises questions regarding the impact of its years-long quest to obtain permits for its new long-term water supply on its decision-making processes and its ability to manage construction and operation of the facility.

In their Recommended Decision (“RD”) the Administrative Law Judges (“ALJs”) largely disregarded the pervasive and well-documented problems of the Companies revealed by DPS Staff. The RD rebuffed the requests of the New York Department of State’s Utility Intervention Unit (“UIU”) to have the ALJs scrutinize the categories of evidence uncovered by DPS Staff from a broad, interrelated perspective by refusing to recommend to the Public Service Commission (“PSC” or “Commission”) that it institute a prudence proceeding, set a portion of the rate award temporary subject to refund, and institute a comprehensive management and operations audit of the Companies.

---

<sup>1</sup> The M&S Company provides a wide range of services to UWNY including administrative, customer service, finance, human resources, information systems and legal procurement as well as preparation and administration of this rate filing. Where appropriate, we address UWNY and the M&S Company individually and collectively, depending on the context.

When UWNY's 28.8% rate increase request is considered in conjunction with its decision to increase the dividend to its parent by 50% and its concurrent request to impose an 8.8% surcharge to recover the costs associated with its more than seven-year quest to obtain permits to construct its Long-Term Water Supply Project, the number and common thread of the failures is overwhelming, demanding extraordinary responsive measures on the part of the Commission. Instead, the RD follows the well-trod path of considering issues narrowly and separately in a "business-as-usual" fashion by recommending a 15% rate increase without also recommending meaningful use of the PSC's oversight responsibilities.

In its investigation of UWNY, DPS Staff discovered numerous significant instances of fiscal mismanagement, including failure to apply for Economic Obsolescence ("EO") awards, improper charges, cost shifting to ratepayers, absence of knowledge about corporate policies and practices regarding gifts and purchases of alcohol, failure to respond on a timely basis to customers and DPS Staff regarding complaints, failure to resolve a strained relationship with the county's fire fighters, tolerating a consistently high level (21%) of non-revenue water, consistently underspending its outreach budgets and using the excess revenue for unrelated purposes, and assigning blame to others for its own behavior. The RD also acknowledges the possibility "that mains expenditures have been deferred to mitigate the financial burdens of the desalination plant."<sup>2</sup> The UIU is not confident that management can be expected to provide basic water service at just and reasonable rates. Neither should the PSC.

Given the amount of evidence in the record about troubling management practices, the UIU takes exception to the RD's failure to recommend for PSC action that (1) the Commission set a portion of the M&S charges to UWNY as temporary rates subject to refund pending the results of a forensic accounting audit of those charges, (2) institute a prudence proceeding to investigate the propriety of the Companies' conduct pertaining to

---

<sup>2</sup> RD, p. 57. In its pre-filed Direct Testimony in Case 13-W-0246 (at 19, ), UWNY confirmed the RD's observation that pursuit of the Long-Term Water Supply Project has diverted UWNY's resources from necessary infrastructure repairs. The testimony states: "The unrecovered expenses associated with development of the Project have also diminished United Water's capacity to undertake other important projects."

EO awards and (3) institute a comprehensive management and operations audit of the Companies.

## DISCUSSION

### I. THE RD ERRED IN NOT RECOMMENDING THAT THE COMMISSION SET A PORTION OF THE RATE AWARD AS TEMPORARY RATES SUBJECT TO REFUND.

At pages 16-18, the RD agreed with DPS Staff that serious and pervasive problems exist regarding charges that the Companies seek to recover from ratepayers, and that, consequently, as recommended by the UIU and the Municipal Consortium, the Commission should direct UWNY to conduct a comprehensive accounting audit of M&S charges in the test year. Yet, despite the RD's acknowledgment of the prospect that the audit might uncover additional erroneous charges, the RD would allow UWNY's ratepayers to be saddled with unjust and unreasonable rates by rejecting the recommendation of the UIU and the Municipal Consortium that the Commission set a portion of the rate award as temporary subject to refund.

The RD introduced its analysis of this matter with the following important observations:

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 "arms length" bargaining and potentially limit the Commission's ability to directly and fully audit the foundation and reasonableness of those charges. Conversely, the Commission has the ability to review the operating expenses of its regulated utilities and ensure that unreasonable charges for materials and services are not passed on to ratepayers. [Footnote omitted.] Rate recognition of overpriced service company costs will result in excessive rates. These concerns are highlighted in the M&S charges to UWNY.<sup>3</sup>

The RD did not equivocate in describing the uncovered improprieties as well as the potential extent of the harm to ratepayers. The RD stated:

---

<sup>3</sup> RD, page 16; emphasis added.

....Such lack of transparency is particularly problematic given the improper charges to UWNY -- which included individual affiliate costs charged to all affiliates, double counted costs that were not normalized out, charges for alcoholic drinks and non-employee family member meals -- that were uncovered in the random sample of only 17 transactions out of over 6,000 charges to UWNY by M&S in the test year. The nature and number of errors calls into question whether they are symptomatic of more prevalent and costly improper charges to the Company.<sup>4</sup>

Despite this significant observation the RD rejected the PSC's common remedy under similar circumstances of setting a portion of the rate award as temporary and subject to refund pending the outcome of a comprehensive audit of the charges. In explaining why it is not recommending such a remedy, the RD states:

The audit of the M&S charges should disclose whether the erroneous charges are limited to those found by Staff or are more pervasive and symptomatic of M&S operations, thus warranting further Commission action. Staff is not precluded from bringing the matter to the Commission in advance of the Company's next rate filing if the preliminary audit information indicates that additional measures are needed to protect ratepayers.<sup>5</sup>

While this inchoate approach may benefit future ratepayers years from now, it would not protect current ratepayers from paying unjust and unreasonable rates beginning on June 1, 2014. Instead, the RD would establish a process without definition that would not protect ratepayers from paying in the upcoming rate year any improper charges later uncovered by the forensic accounting audit.

Given the findings of DPS Staff, as confirmed by the RD, the responsible regulatory approach is for the Commission to do exactly what it did in the 2010 National Grid-Upstate electric case.<sup>6</sup> In that case, the Commission set a portion of the rate award as temporary and subject to refund.

---

<sup>4</sup> Id., pp. 16-17; emphasis added.

<sup>5</sup> Id., p. 19.

<sup>6</sup> Case 10-E-0050, Niagara Mohawk Power Corporation-Electric Rates, Order Establishing Rates for Electric Service (January 24, 2011), pp. 4-5.

In the National Grid-Upstate case, DPS Staff found that the management services company had shifted an excessive proportion of its expenses to the utility.<sup>7</sup> It is noteworthy that, in that case, DPS Staff described the problem regarding inappropriate service company costs as “insidious.”<sup>8</sup> According to DPS Staff, the deficiencies included:

- Apparent cross-subsidization of National Grid-Upstate’s unregulated affiliates by National Grid’s regulated affiliates.
- Apparent overcharging of National Grid-Upstate for its share of some service company costs.
- Inconsistent methodologies among service companies for allocating some of the same costs.
- Unexplained, and much larger, increases in historic test year service company charges to National Grid-Upstate of 32.58%, compared to all other affiliates receiving increases in historic test year service company charges averaging 17.00%, and compared to an inflation increase of 6%.
- Service companies not having their own operating budgets resulting in a lack of direct control over or scrutiny of the actual costs incurred.
- A 20.28% increase in overall service company charges to all affiliates in the historic test year over the previous year.
- National Grid-Upstate apparently does not investigate whether it could receive services cheaper from outside contractors than from the service companies.
- Lack of oversight on the part of National Grid-Upstate to ensure that the Service Company charges it receives are accurate or reasonable or properly allocated compared to the charges allocated to other affiliates.

Following a full management audit of that utility’s operations and management in 2008, the Commission directed that a Service Company Audit be conducted to examine the

---

<sup>7</sup> The RD (at 18) in this UWNY case rejected the M&S Company’s attempt to do so here.

<sup>8</sup> Case 10-E-0050, DPS Staff Initial Brief, at 10.

cost allocations and expenses between Grid's upstate and downstate companies. Importantly, the Commission explained that "[t]o ensure that the delivery rates we are establishing for 2011 are not overstated or excessive due to any incorrect service company allocations, \$50 million of the rates set here will remain temporary through an adjustment clause, and they will only become permanent if and when they are supported by the final results of the service company proceeding."<sup>9</sup>

The RD's discussion of DPS Staff's findings (at 10-14) and presentation of its own analysis (at 16-18) demonstrate a similarity between the 2010 National Grid-Upstate and the current UWNY/M&S Company situations in regard to questionable charges. In this case, similar problems have emerged. DPS Staff witness Allison Esposito testified that the M&S Company substantially increased the fees charged to UWNY in the last two years.<sup>10</sup> Ms. Esposito stated that "M&S fees charged to UWNY increased 13% from 2011-2012 and 15% from 2012-2013, while inflation during these years was 2.1% and 1.7%, respectively."<sup>11</sup> The fee charged in the historic test year is about \$1 million, or 35%, more than was allowed in the last rate case for the rate year ending August 31, 2013.<sup>12</sup> Ms. Esposito testified that the Companies failed to provide a credible explanation for the dramatic rise in M&S charges.<sup>13</sup>

The RD recommends setting the M&S allowance at \$3.027 million, which is the current allowance plus an inflation rate of 3.7%. The UIU disagrees; UWNY should not be permitted to recover improper charges from customers. The UIU recommends setting one-half of that allowance as temporary, subject to refund based on the outcome of the audit. This amount is warranted because the random review of just 17 invoices out of more than 6,000 invoices revealed serious problems. While setting rates as temporary is no doubt an uncomfortable inconvenience to a utility, if the audit does not reveal any improprieties, then no tangible, long-lasting harm is experienced by the utility. This

---

<sup>9</sup> Emphasis added. The UIU recommends that the Commission review for additional guidance in this matter its Order Directing Submission of Implementation Plan and Establishing Proceeding, issued on January 18, 2013, in Cases 10-M-0451 and 13-M-0026.

<sup>10</sup> Tr. 1085-87

<sup>11</sup> Tr. 1087.

<sup>12</sup> Id.

<sup>13</sup> Tr. 1087-92.



approach is a “win-win” for all concerned: the Commission, DPS Staff, the utility, and most importantly, the ratepayers.

**II. THE RD ERRED IN NOT RECOMMENDING THAT THE COMMISSION INSTITUTE A PRUDENCE PROCEEDING TO INVESTIGATE THE FAILURE OF THE COMPANIES TO APPLY FOR ECONOMIC OBSOLESCENCE AWARDS.**

DPS Staff’s Tax & Compensation Panel testified that the Companies’ failure over a period of several years to file with the New York State Department of Taxation and Finance’s Office of Real Property Tax Services (“ORPTS”) for a reduced special franchise property tax expense based on EO suggests an absence of “due diligence, and in fact may be negligent.”<sup>14</sup> The RD appears to agree, noting that “UWNY’s failure, at the very least to conduct a basic inquiry of ORPTS to see if it might be eligible for the EO award...is inexcusable,” 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,” and that, contrary to UWNY’s stated belief, “Staff is not responsible for managing the day-to-day operations of the Company.”<sup>15</sup> Yet, despite these conclusions, the RD merely recommended that the Commission direct UWNY “to submit to the Director of Accounting, Audits and Finance (or her designee) 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.”<sup>16</sup>

Based on the investigation and analysis conducted by DPS Staff, which found that EO applications are routine among New York utilities and are easily accomplished by any competent person without sophisticated knowledge<sup>17</sup> and given the relatively large amount of ratepayer dollars at stake and the specter of management negligence, the UIU recommended that the Commission institute a prudence investigation of the Companies’ conduct pertaining to EO. The RD appears to have rejected that recommendation, stating:

---

<sup>14</sup> Tr. 992. The RD (at 25) attributes the characterization of the Companies’ behavior as “negligent” to the UIU and the Municipal Consortium; however, it was DPS Staff that first used the term.

<sup>15</sup> RD, p. 26.

<sup>16</sup> *Id.*, p. 28.

<sup>17</sup> Tr. 998; Tr. 1038-40.

Whether the Company's actions and omissions, in delaying its filing for an economic obsolescence determination and in using incorrect or alternative inputs in its EO calculation, rises to the level of mismanagement would require a more in-depth investigation than available in the course of this proceeding. We believe that our recommendation provides ratepayers with adequate protection in this one year rate plan.<sup>18</sup>

Perhaps the RD misunderstood the UIU's recommendation. We did not recommend that the prudence investigation begin and end prior to the Commission's decision in this case. Nor did we narrowly tailor our request to this year's EO filing prompted by DPS Staff's inquiry.

Instead, because, as the RD noted, ratepayers likely paid higher rates for many years because of the Company's "inexcusable" conduct, which, incidentally, contrasts markedly with the conduct of other New York utilities in regard to EO, it is important that, to sustain regulatory credibility, the Commission hold UWNY accountable. The prudence investigation should address how and why the Companies failed to follow reasonable and routine utility practice regarding EO over a multi-year period and determine whether this failure warrants a penalty or other relief that would directly benefit UWNY's ratepayers.

**III. THE RD ERRED IN NOT RECOMMENDING THAT THE COMMISSION INSTITUTE A COMPREHENSIVE MANAGEMENT AUDIT PURSUANT TO SECTION 89-C(15) OF THE PUBLIC SERVICE LAW TO IDENTIFY DEFICIENCIES AND TO PREPARE THE COMPANIES TO MANAGE THEIR LONG-TERM WATER SUPPLY OPTION EFFECTIVELY AND EFFICIENTLY IN THE RATEPAYERS' INTEREST.**

The RD rejected the support of the UIU and the Municipal Consortium for institution of a management and operations audit based on our view of pervasive, serious management and operational deficiencies, stating:

For reasons discussed elsewhere herein, either we have found the allegations of mismanagement unconvincing or (as in the case of M&S Co. expenses) we have recommended other remedies which we deem sufficient. Consequently, if the launch of a management audit is contingent on a prima facie showing that a company's management is failing or deficient,

---

<sup>18</sup> *Id.*, p. 27

we do not recommend the institution of an audit on those grounds at this time.<sup>19</sup>

The RD did point out, however, that section 89-c (15) of the Public Service Law allows the institution of “a management audit of UWNY without any allegation or inference to be drawn of mismanagement on UWNY’s part. Indeed, UIU seems to argue for such a neutral basis on which to audit the Company through its assertion that the Commission’s management audits typically generate worthwhile results.”<sup>20</sup>

Placing aside for a moment the merits of the assertions regarding poor management, it is incontrovertible that electric and gas utilities emerge stronger and better managed from a comprehensive management and operations audit. The PSC has conducted comprehensive management and operations audits of several New York utilities in the last six years including Consolidated Edison, National Grid, New York State Electric and Gas, Rochester Gas & Electric and Long Island Power Authority (“LIPA”). Without exception, Commissioners stated at sessions that DPS Staff and the consultants produced reports that identified critical deficiencies and meaningful ways to remedy those deficiencies. Ratepayers are well served by these audits. Savings in rates and improvements in customer service and utility practices more than outweigh the cost of the audit.

This excerpt from the audit report on LIPA is an example of the thoughtful analysis that takes place during the audit process:

A traditional utility functions with an organizational hierarchy where decisions made at the top of the structure are communicated down the chain of command and implemented in a direct line. Communication and discussion occurs across the organization and up and down the hierarchy so that decisions based on analysis, current information, and past experience are all focused on the mission of one entity. In contrast, LIPA exists as a nucleus, separated from the realities of daily operations, information and experience by a commercial contract barrier. For a utility operating within this business model, the need for strong management skills and a deep understanding of the nuances of utility operations is of critical importance. Fundamentally it is not possible to

---

<sup>19</sup> Id., p. 118.

<sup>20</sup> Id., pp. 118-19.

outsource leadership for an enterprise. Thus, LIPA must possess the management skills to identify trends in performance with limited information, must know what information to seek and then evaluate that information, and must be able to relay guidance and expectations across the contract barrier to affect change in the contractor's employees. The smaller the management team, the more critical "utility management IQ" becomes, as fewer people are available to manage and direct the OSA. A fully-contracted utility must be expert in establishing and communicating expectations and effectively intervening when necessary, so expectations can become a reality.<sup>21</sup>

The RD noted that the Public Service Law requires a management and operations audit of each gas and electric company at least every five years whereas no time period is prescribed for water companies. This disparate treatment may have been a result of the fact that water companies are of a smaller size<sup>22</sup> than gas and electric companies and the belief that the provision of water is less risky and less complicated than the provision of either gas or electricity.

In any event, Section 89-c (15) identifies a purpose of such an audit that is of special relevance here: "Such audits shall include, but not be limited to, an investigation of the corporation's construction program planning in relation to the needs of its customers for reliable service and an evaluation of the efficiency of the company's operations." According to UWNY's pre-filed testimony in the Surcharge Proceeding, for more than seven years the Company has "spent a 'premium in human and financial resources" to develop the Long-Term Major Water Supply Project,"<sup>23</sup> which "when complete, would represent an approximate 50% increase in UWNY's current total rate base."<sup>24</sup> A management and operations audit would assess the impact of this intense, highly focused and draining effort to obtain permits, which has already consumed approximately 40% of the projected cost of the Long-Term Water Supply Project (leading

---

<sup>21</sup> Comprehensive Management and Operations Audit of Long Island Power Authority, Final Report, September 13, 2013, page 1-4.

<sup>22</sup> The threshold annual gross revenues for a management audit of a water company is quite low, only \$10 million.

<sup>23</sup> Case 13-W-0246, Direct Testimony of United Water New York Inc. Panel, p. 27.

<sup>24</sup> Case 13-W-0246, Direct Testimony of John D. Stewart, p. 4.

to a potential increase in rates of more than eight percent in the form of a surcharge); the audit would also help the Companies manage nimbly and efficiently the potential 50% increase in the size of the rate base.

The Company criticizes government and others in its assessment of the situation, suggesting, for instance, that it believes itself under siege (for instance, accusing several of the parties that signed the 2006 Joint Proposal of “breaking faith” with the Company).<sup>25</sup> According to UWNY:

Because the Project will furnish a public drinking water supply, United Water has employed conservative and best possible methodologies/analyses and the most highly-skilled professionals in developing the Project while always ensuring that the Company’s expenditures were reasonable and prudent. However, at nearly every possible stage, the regulatory review of the Long-Term Major Water Supply Project has been delayed or rendered exponentially more complex, time-consuming, and expensive than normally required or reasonably anticipated by United Water. This was generally due to the efforts of Project detractors and the resulting direction of federal, state, and local agencies over the professional objections of United Water and some agency staff. These expensive and time-consuming tactics routinely raised legal and technical issues requiring responsive analyses and documents.<sup>26</sup>

\*\*\*\*\*

Since May 2013, however, DEC inexplicably has not yet completed the SEQRA process for the Project – including filing and noticing as complete the FEIS – even though the Company has been advised by DEC staff that it has all the information to do so. No substantive or legitimate environmental, scientific, or technical reasons have been provided for the DEC’s lack of action, which is completely outside of United Water’s control. The status of the administrative review process for the Project appears to be the result of political machinations by special interest groups, certain elected officials, nearby municipalities, and others who are opposed to the Project.<sup>27</sup>

---

<sup>25</sup> Case 13-W-0246, Direct Testimony of United Water New York Inc. Panel, p. 18

<sup>26</sup> Page 27; emphasis added.

<sup>27</sup> Pages 40-41.

A management and operations audit may discern whether, and how, this effort has affected management and may enable the Companies to overcome these feelings of isolation, defensiveness and antipathy towards some of its customers. The audit may also reveal deficiencies in decision-making processes that caused the Companies to continue to pursue, at great human and resource expense, a controversial project for so many years.

Moreover, a management and operations audit of the Companies, with an initial focus on the deficiencies observed by DPS Staff, would thoroughly explore the efficiency and effectiveness of the current management structure and management's interactions with customers and make recommendations for improvements. Implementation of the audit's recommendations would likely position the Companies to manage its day-to-day operations as well as the development and construction of the proposed long-term water supply option in ways that benefit ratepayers.

In addition to the examples of inadequate conduct not in conformity with reasonable utility practice discussed above in the context of M&S charges and of EO, the conduct of the Companies suggests an indifference to their primary constituency, namely, the ratepayers. For example, the 2013 dividend paid to UWNY's parent increased 50% - the same time period during which the Companies provided below average customer service and did not resolve persistent issues that strained its relationship with the county's firefighters.<sup>28</sup> At the hearing, the Companies did not demonstrate any concern about asking ratepayers to subsidize management's consumption of alcohol or meals for the spouses of management employees during the economic recession. Indeed, Mr. Michaelson's responses in cross-examination suggested that these practices were simply business as usual.<sup>29</sup> The Companies would rather blame the ratepayers, the Commission and the economy for any shortcomings instead of taking any responsibility themselves.<sup>30</sup>

---

<sup>28</sup> Tr. 1121. Another example of deficient attention to details is the inability of the Companies to explain why a customer survey was conducted is some years but not 2012. Tr. 285-86.

<sup>29</sup> Tr. 625-26. In cross-examination, Mr. Michaelson, who should have intimate knowledge of this matter, admitted he had no idea about corporate policies or practices regarding expenses for employees' spouses or for alcohol, about who approved charging those expenses to ratepayers, or whether anyone was disciplined for having done so. Mr. Michaelson gave the impression during cross-examination that the Company loaded up costs on ratepayers and would just wait and see which costs the Commission would disallow. Tr. 625.

<sup>30</sup> For instance, Mr. Pointing suggested that the PSC, rather than UWNY, is responsible for the increasing number of complaints against UWNY. Tr. 223-24. Mr. Pointing also blamed higher UWNY rates and the

In addition, management responsibilities appear fragmented; as Mr. Pointing stated, for instance, customer service processes are handled not by UWNY, but rather by the corporate customer service group located in New Jersey.<sup>31</sup>

DPS Staff witness Leonard Silverstein testified that UWNY's consumer "complaint rates have been steadily increasing over the last four years." Mr. Silverstein stated in cross-examination that, of the complaints that DPS Staff escalated over the previous three years for further administrative action, 70% were so designated due to the Companies' failure to provide responses on a timely basis to either the complaining consumer or to DPS Staff.<sup>32</sup> This percentage far exceeds the experience of the other New York utilities with which Mr. Silverstein is familiar.<sup>33</sup> Drawing a contrast with UWNY, Mr. Silverstein testified: "In my experience the other utility companies are very good at responding to customers and the Office of Consumer Services so that complaints do not get escalated."<sup>34</sup>

Michael J. Pointing, UWNY's General Manager and Vice President, touted the performance of management in providing "quantifiably reliable outstanding service" during five recent major storms as the result of hard work and "exceptionally prescient planning and awareness."<sup>35</sup> Mr. Pointing testified that, since 2010, 80% of the complaints against UWNY are due to factors wholly outside UWNY's control.<sup>36</sup> These factors relate to complaints about high bills and charges, according to Mr. Pointing, which are set in PSC tariffs.<sup>37</sup> His response suggests that the PSC, rather than UWNY, is responsible for the increasing number of complaints against UWNY. In cross-examination, Mr. Pointing conceded that the Companies have a great deal of influence about what is contained in the tariffs since UWNY proposes tariff amendments when it files for new rates and the terms and conditions for the provision of utility service have been negotiated between it

---

long-lasting economic recession as well as the unpopularity of the proposed desalination facility for the increased number of complaints. Tr. 219, 224, 228. Mr. Pointing took issue with the way the PSC resolved some of the complaints against UWNY. Tr. 280.

<sup>31</sup> Tr. 285-286.

<sup>32</sup> Tr. 850, 928-29.

<sup>33</sup> Tr. 920.

<sup>34</sup> Id.

<sup>35</sup> Tr. 214.

<sup>36</sup> Tr. 223-24.

<sup>37</sup> Id.

and DPS Staff for many years.<sup>38</sup> Mr. Pointing also blamed higher UWNY rates and the long-lasting economic recession as well as the unpopularity of the proposed desalination facility for the increased number of complaints.<sup>39</sup> Mr. Pointing took issue with the way the PSC resolved some of the complaints against UWNY.<sup>40</sup>

The many areas of concern—failure to apply for EO awards, improper charges, cost shifting to ratepayers, absence of knowledge about corporate policies and practices regarding gifts and alcohol, failure to respond on a timely basis to customers and DPS Staff regarding complaints, failure to develop and sustain a good working relationship with some of the county’s firefighting officials., an “unacceptably high” non-revenue water level,<sup>41</sup> and assigning all blame to others—call into question management’s ability to provide a level of service that is standard among New York utilities, let alone superior service, at just and reasonable rates. These circumstances provide compelling reasons for the Commission to institute a comprehensive management and operations audit of the Companies that assesses the impact of the protracted effort to obtain permits for the Long-Term Water Supply Project and that addresses the skill levels, knowledge base, practices and policies of the Companies as well as the corporate culture. Only such an audit can make more likely that UWNY’s rates are just and reasonable and that its practices are in the best interests of its ratepayers for the future.

## CONCLUSION

For the reasons discussed above, the UIU urges the PSC to adopt the recommendations presented in this brief, and to take a hard look at the conduct and abilities of the Companies’ management. Given the amount of evidence in the record about troubling management practices, the UIU makes three recommendations for action. These are:

- Make temporary, subject to refund, 50% of the RD’s recommended M&S Company fees charged to UWNY, pending the results of a comprehensive forensic audit.

---

<sup>38</sup> Tr. 227-28.

<sup>39</sup> Tr. 219, 224, 228.

<sup>40</sup> Tr. 280.

<sup>41</sup> RD, p. 108.



- Institute a prudence investigation into the failure of the Companies to file for EO awards over a period of several years with ORPTS.
- Institute a proceeding to conduct a comprehensive management and operations audit of the Companies.

The UIU believes these actions are warranted under these extraordinary circumstances. These actions will ensure that future rates are just and reasonable and will delay a decision in this proceeding. They will also provide the Companies' management with the skills and knowledge to implement effectively and efficiently its proposed long-term water supply option. Implementation of these recommendations would help align the interests of shareholders and management with UWNY's obligation to provide superior service at just and reasonable rates.

Respectively submitted,

*Saul A. Rigberg*

Saul A. Rigberg  
Intervenor Attorney  
518-408-3746  
[saul.rigberg@dos.ny.gov](mailto:saul.rigberg@dos.ny.gov)

Dated: April 28, 2014  
Albany, New York