

NEW YORK STATE  
PUBLIC SERVICE COMMISSION

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

**SUPPLEMENT TO  
PETITION FOR REHEARING AND/OR CLARIFICATION  
ON BEHALF OF THE  
MUNICIPAL CONSORTIUM**

October 10, 2014

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Recently there appeared reports in the local press regarding the sudden departure of long-time Vice President and General Manager Michael Pointing along with two other United Water employees who apparently were in the accounting department. Here is the most troubling report:

## Rockland County Times Sources: Pointing under investigation for misappropriation of funds

*Posted September 17th, 2014*

A source connected to United Water has told the Rockland County Times that an internal investigation into alleged misappropriation of funds/misstatement of revenue by former-General Manager Michael Pointing is underway.

Pointing was escorted from United Water headquarters recently along with two accountants, the source told the Rockland County Times.

United Water refused to address the rumors circulating about Pointing's departure, stating, "It is our policy not to discuss personnel matters." They did not issue any denial of the allegations.

David Stanton, president of the United Water Regulated Division, has been named interim GM of the company's Rockland County operations.

The Rockland County Times first received an anonymous tip about the situation on Monday and a reliable tip on Wednesday.

It is unknown whether United Water has contacted law enforcement about the case.

It appears the Mr. Pointing was dismissed sometime on Friday, September 12, 2014. In the relatively close knit Rockland County community, word of his dismissal spread rapidly. It has now been four weeks since Mr. Pointing's departure and United Water has not made any statement explaining the circumstances behind this most unusual situation and the steps the Company is taking to ascertain the possible impacts of the alleged conduct on United Water's testimony and exhibits supporting the rate requirement sought in its last rate case.

The Municipal Consortium ("MC") is supplementing its Petition for Rehearing, filed on July 28, 2014, because of the implications that this dismissal of Mr. Pointing and two accountants could have on the rate case accounting information and data on which the current rates of UWNYS have been set. Indeed, given the controversy over the desalination project and United Water New York's numerous

erroneous statements and filings regarding the immediate need for a long-term water supply, which the MC believes contain knowingly incorrect and unsupported information, the MC is deeply concerned that the rate case data may have been tainted by whatever impropriety led to the dismissal of Mr. Pointing and two accounting colleagues.

Accordingly, the MC calls on the Commission to direct UWNY to show cause why the Commission should not institute a prudence proceeding and to make 20% of UWNY current revenues temporary and subject to refund while an independent auditor, unaffiliated with UWNY, undertakes a complete review of the company's books. Only then will the residents of Rockland County be assured of the reliability of UWNY's books. If improprieties are found, then by making the rates temporary and subject to refund, the ratepayers can be protected. There is ample and recent Commission precedent for this.

In Case 10-E-0050, the Commission made \$50 million of Niagara Mohawk Power Corporation's rates subject to refund while it investigated various allocation errors that came to light during a rate case investigation. Here the Commission has already ordered the Company to conduct an audit of the Management and Service ("M&S") Company charges passed on to UWNY, but did not provide the necessary ratepayer protection. It is now doubly important for the Commission to protect the ratepayers from what could flow from the

internal investigation that has not been denied according to the press report by making a 20% portion of the overall rate award temporary, subject to refund, pending the outcome of thorough audit of all aspects of the Company's operations.

Case 09-M-0114, Proceeding on Motion of the Commission to Examine the Prudence of Certain Capital Program and Operation and Maintenance Expenditures by Consolidated Edison Company of New York, Inc., Order Commencing Prudence Proceeding and Requiring Report (Issued February 12, 2009) ("Prudence Order"), was started as a result of the arrest of 10 Con Ed supervisors and one retired supervisor. The US Attorney for the Eastern District of New York charged that these individuals arranged "for Con Edison to pay inflated claims by a contractor and with receiving over \$1 million in bribes or kickbacks." Prudence Order at page 1. The Commission stated:

This investigation and the investigative materials publicly available from it raise the specter of imprudence concerning the Company's expenditures associated with certain identified contracts. In the proceeding initiated by this order, we will examine the Company's justification for these expenditures, and, if we find the expenditures unjustified, we will fashion an appropriate remedy.

The facts described in the publicly available investigative materials also justify a further investigation of the Company's conduct and behavior with respect to other contract expenditures incurred with respect to its capital projects and its

operation and maintenance programs. As an initial step in this investigation, we will require the Company to prepare and submit a report which will include, at a minimum, the information described in the body of this Order. This proceeding may develop recommendations for changes in Con Edison's practices or procedures to reduce the risk of improper expenditures or administration of capital projects in the future. Further, the investigation will assist in developing recommendations concerning to what extent, if any, the scope of the prudence aspect of this case should be expanded beyond the payments made under the contracts identified in the US Attorney's investigation.

Prudence Order at 1-2; emphasis supplied.

While it is unknown whether there was any criminality on the part of Mr. Pointing or the two other dismissed employees, alleged criminality should not be the triggering condition for instituting a prudence investigation and directing temporary rates subject to refund. The only issue is how best to protect the ratepayers. The MC previously asserted it was error for the Commission not to make rates subject to refund for the more routine M&S audit. Now, however, the press has reported serious allegations of fiscal and regulatory impropriety at the highest level of UWNY.

Presumably Staff is looking into this matter as well. Nevertheless, while the company and Staff are investigating, the ratepayers are left unprotected. If the information before the Commission has been tainted by the actions of Mr. Pointing and/or others then the Commission will be without a remedy unless it makes 20% or more of the rates temporary and subject to refund. This is a

simple administrative procedure. If there is nothing wrong with the books or the already ordered audit of the M&S charges turn out to be without issue, then there is no harm done. The company keeps all of its revenues. If, however, the M&S audit uncovers further improprieties of the type discovered by trial Staff in the rate case, and the new investigation into the effects of the alleged behavior on rates in other expense categories reveals harm to ratepayers, then that must be disclosed and the ratepayers protected. Although the MC is unaware of the extent and specific nature of the alleged improprieties, 20% of the overall rate award is a fair number that the MC believes will fully protect ratepayers. If the Commission is in possession of confidential information that the percentage should be higher then it must act on that information to protect ratepayers.

Furthermore, institution of prudence investigation would not only provide a level of transparency that is an aspiration of New York State government but would also encourage Staff to "follow the money" not only to M&S Company charges but to all aspects of the Company's rate case presentation. This is the approach taken by the Commission in the Prudence Order cited above. It would also be appropriate for Staff to investigate whether the conduct of any employees improperly inflated the costs of developing the desalination facility. In another words, the allegations of misappropriation of funds and misstatement of revenues might be part of a pattern of behavior that affected aspects of the Company's

administration of the development of desalination facility, and the alleged conduct may be part of a corporate culture that extends beyond the three employees mentioned in the article.

Respectfully submitted,

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Municipal Consortium

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