

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

**UNITED WATER NEW YORK INC.'S RESPONSE TO NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE STAFF'S MOTION TO EXCLUDE**

Brian T. FitzGerald
Gregory G. Nickson
Cullen and Dykman LLP
99 Washington Avenue, Suite 2020
Albany, New York 12210
Tel: (518) 788-9440
bfitzgerald@cullenanddykman.com
gnickson@cullenanddykman.com

John T. Dillon
Senior Corporate Attorney – Regulated Operations
United Water
360 West Nyack Road
West Nyack, New York 10994
Tel: (845) 623-1500
john.dillon@unitedwater.com

Robert J. Alessi
Jeffrey D. Kuhn
DLA Piper LLP (US)
677 Broadway, Suite 1205
Albany, New York 12207-2996
Tel: (518) 788-9710
Robert.Alessi@dlapiper.com
Jeffrey.Kuhn@dlapiper.com

Attorneys For United Water New York Inc.

Dated: March 20, 2014

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On behalf of United Water New York Inc. (“UWNY” or the “Company”), the undersigned counsel respectfully submits this response to New York State Department of Public Service Staff’s (“Staff”) Motion to Exclude (the “Motion”) filed on March 18, 2014 in the above-referenced proceeding.¹ Staff’s Motion requests that the New York State Public Service Commission (the “Commission”) exclude from consideration: 1) certain proposed exhibits; 2) certain factual assertions; and 3) the Company’s request for a limited waiver from the Commission’s regulations regarding termination of service. For the reasons discussed below, Staff’s Motion should be rejected in its entirety.

I. DISCUSSION

A. UWNY’s Request to Mark Certain Responses to Staff Information Requests as Exhibits

In support of the Company’s position regarding its United Water Management Services (“UWM&S”) expense, UWNY’s reply brief referenced two of the Company’s responses to Staff information requests (“IRs”), Staff-33 AAE-9 and Staff-36 AAE-12. At the evidentiary hearing in this matter, the Company did not anticipate needing to refer to these IR responses in its briefs

¹ As a preliminary matter, the Company notes that pursuant to 16 NYCRR § 3.6(b), the Motion should have been addressed to the Administrative Law Judges Epstein and Van Ort (the “ALJs”), as the presiding officers in this proceeding. Accordingly, the Company respectfully requests that the Secretary refer Staff’s Motion and this response to the ALJs for a ruling.

and thus they were not identified and marked as exhibits at that time. Since the Company referenced the IR responses in its reply brief, in an attempt to provide the Commission with as complete a record as possible, the Company included the responses in Appendix 2 to its reply brief and requested that they be marked as an exhibit.²

The responses to IR Staff-33 AAE-9 and IR Staff-36 AAE-12 are factual in nature. Specifically, Attachment 3 to the Company's response to IR Staff-33 AAE-9 consists of an internal audit report regarding UWM&S cost allocation and the relevant portion of the response to IR Staff-36 AAE-12 simply references that report. This is the same internal audit report that was discussed during the cross-examination of Company Witness Michaelson. Tr. 622-23. Importantly, these responses and the internal audit report have been in Staff's possession since August 2013 and the facts set forth therein were never disputed. Given the factual nature of the documents, the Company believes it would be proper to mark them as exhibits.

Staff doesn't dispute the accuracy of the documents, which were presented in the normal course of discovery. To that end, and to the extent necessary, the Company hereby makes an offer of proof with respect to the responses to IR Staff-33 AAE-9 and IR Staff-36 AAE-12. The Company, of course, has no problem with Staff responding to the Company's claim if Staff thinks it is irrelevant or inaccurate. Clearly Staff was aware of the responses since it was served with them in August 2013. Thus, any prejudice Staff might suffer is eliminated by the right to reply. The salient point, however, is that the Company submitted factually correct information that was elicited by Staff's own discovery effort, which Staff chose to ignore. Accordingly, the IR responses should be marked as exhibits.

² The Company only included Attachment 3 to its response to IR Staff-33 AAE-9, but included the response to IR Staff-36 AAE-12 in its entirety.

B. Arguments Regarding Overtime Charges by UWM&S Employees

In its reply brief, the Company stated that UWM&S “has experienced an increase in its costs due to external market factors. Those increases are not specific to UWM&S and would apply to other for-profit third-party vendors.” UWNY Reply Brief at 8-9. The Company further stated that “[a] further benefit of UWM&S over third-party vendors is that a UWM&S employee may only charge up to 8 hours of their time per day to UWNY, even when the employee, in fact, worked more than 8 hours for UWNY.” UWNY Reply Brief at 9. Staff takes issue with both of these statements, because, according to Staff, they cannot be supported by either the transcript or the marked exhibits.

Staff is wrong with respect to statements regarding the cost increases due to external market factors. As explained in response to IR Staff-35 AAE-11 (Hearing Exh. 64 at 92), UWM&S has “seen increases in payroll related costs and especially benefits costs such as Pension, PEBOP and Employee Medical...” The Company considers such costs to be beyond its control (Tr. 148) or, in other words due to external market factors. The fact that other third-party vendors are affected by the same external market factors is common sense.

With respect to the statements regarding overtime charges by UWM&S employees, the Company concedes that there is no factual direct support for its arguments expressly identified in the record.³ However, the statements remain accurate and should not be excluded from consideration and excised from the record. As is the case with the arguments in Staff’s initial

³ UWNY notes that the vast majority of UWM&S employees are considered exempt employees and as stated in response to IR Staff-51 SEK-8 (Hearing Exh. 31), exempt employees are not entitled to overtime.

brief that lack express record support,⁴ the ALJs and the Commission are entitled to give the Company's arguments and statements on brief whatever weight they feel is justified.

C. The Company's Request to Amend its Tariff to Allow for Additional Reasons to Terminate Service

As part of its initial filing, the Company requested authorization to amend its tariff to allow for termination of service for two additional reasons. In its initial brief, Staff opposed the request, arguing that Commission regulations did not allow for termination of service on the requested grounds. Staff IB at 71-72. In its reply brief, the Company simply noted that, despite the fact that the Commission's regulations do not allow for termination of service under the grounds requested by the Company, the Commission was nonetheless authorized to grant UWNY a waiver from the relevant regulations and allow for UWNY to terminate service for the additional reasons it requested.

Staff now complains that the Company's so-called "request" is something new since it involves a waiver and is therefore in some fashion untimely. Staff's argument is misguided. The requested tariff changes were part of the Company's initial filing. To the extent that the requested changes are inconsistent with the Commission's regulations, the only logical conclusion is that the Company was requesting a waiver of the Commission's regulations. That the Company failed to call its proposed tariff changes a "waiver request" is irrelevant. Notwithstanding Staff's argument to the contrary, Staff was not restricted from exploring the merits of the proposed change simply because UWNY had not previously identified the proposed tariff changes as a waiver request. Likewise, neither Staff nor the Company's customers are

⁴ See e.g., Staff IB at 19-20 (concluding without record support that staffing necessary to comply with regulatory requirements is already imbedded in the Company's workforce); Staff IB at 23 (concluding without record support that the benefits and efficiencies of the Company's new Customer Care and Billing System could provide the Company with rate year savings and negate the need for the Company to hire any additional employees); Staff IB at 83 (regarding Staff's groundless contention that UWNY "lacks empathy for customers").

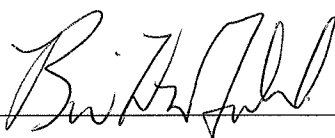
prejudiced by UWNY failing to call its proposed tariff changes a waiver request. This is amply demonstrated by the fact that the issue has been completely joined as both Staff and the Company fully briefed the Company's proposed tariff changes regarding termination of service. Since the record is complete on this issue and the issue has been joined, it is well within the Commission's discretion to make a determination on this tariff issue.

II. CONCLUSION

For the reasons set forth above, the Company respectfully requests that Staff's Motion be denied in its entirety.

Dated: March 20, 2014

Respectfully submitted,



John T. Dillon
Senior Corporate Attorney – Regulated
Operations
United Water
360 West Nyack Road
West Nyack, New York 10994
Tel: (845) 623-1500
john.dillon@unitedwater.com

Brian T. FitzGerald
Gregory G. Nickson
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99 Washington Avenue, Suite 2020
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Jeffrey.Kuhn@dlapiper.com

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