

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

**In The Matter Of Staff's Investigation Into
United Water's Accounting Irregularities.**

**Matter Master: 14-02068
Matter Number: 14-02068**

Proceeding on Verified Petition of United Water
New York Inc. for Implementation of a Long-Term
Water Supply Surcharge, And Related Tariff
Amendment.

Case 13-W-0246
(*Matter #13-01259*)
Honorable Kevin Jaye Casutto,
Administrative Law Judge
(the "Surcharge Case")

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
(*Matter #13-01437*)
Honorable Rafael A. Epstein
and Honorable David R. Van Ort,
Administrative Law Judges
(the "Rate Case")

Proceeding on Motion of the Commission to Examine
United Water New York[] Inc.'s Development of a New
Long-Term Water Supply Source.

Case 13-W-0303
(*Matter #13-01489*)
Honorable Kevin Jaye Casutto,
Administrative Law Judge
(the "Need Case")

**A. SUPPLEMENTARY MOTION REQUESTING THAT THE COMMISSION IN THIS
MATTER, AND THAT THE ASSIGNED ADMINISTRATIVE LAW JUDGES IN THE THREE
RELATED CASES, FORTHWITH ISSUE AND SERVE SUBPOENAS COMPELLING THE
SWORN TESTIMONY OF MR. MICHAEL BLAKE AND MR. MICHAEL ROLING.**

B. ONE CITIZEN'S RESPONSE TO "UW WRITTEN RESPONSE TO IR TC-2 (PUBLIC)".

Dated: November 6, 2014

Filed By:
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To:
Honorable Audrey Zibelman, Chair
Honorable Patricia L. Acampora, Commissioner
Honorable Garry A. Brown, Commissioner
Honorable Gregg C. Sayre, Commissioner
Honorable Diane X. Burman, Commissioner
Kimberly A. Harriman, General Counsel
Kathleen H. Burgess, Secretary

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A. SUPPLEMENTARY MOTION REQUESTING THAT THE COMMISSION IN THIS MATTER, AND THAT THE ASSIGNED ADMINISTRATIVE LAW JUDGES IN THE THREE RELATED CASES, FORTHWITH ISSUE AND SERVE SUBPOENAS COMPELLING THE SWORN TESTIMONY OF MR. MICHAEL BLAKE AND MR. MICHAEL ROLING.

B. ONE CITIZEN'S RESPONSE TO "UW WRITTEN RESPONSE TO IR TC-2 (PUBLIC)".

By And From **John J. Tormey III, Esq.**
A Private Citizen And Resident Of The Hamlet Of Pearl River,
Town Of Orangetown, County Of Rockland, State Of New York;
And An Intervenor-Party To This Matter.

Addressed To: The Secretary Of The Commission, The Commissioners, and General Counsel.
Nature Of Relief Requested: (As Listed And Itemized Above, And Hereinbelow).
Basis For Relief Requested: As Follows, Hereinbelow.

INTRODUCTION

1. **The Movant.** As I indicated a number of days ago in my Omnibus Motion in this matter, I am Attorney John J. Tormey III, Esq., a private citizen and resident of the Hamlet of Pearl River, Town of Orangetown, County of Rockland, State of New York. I am an Intervenor-Party in this matter which appears to have been commenced *circa* October 17, 2014 (hereafter, "Irregularities Matter"; or simply, "Matter"). I am also an Intervenor-Party in the Surcharge Case, Rate Case, and Need Case relating to

United Water as further identified hereinabove (collectively, the "Prior United Water Cases"). I am filing this Supplementary Motion in this Matter, and I also intend to file this Supplementary Motion in all three Prior United Water Cases. The reason I am also filing this Supplementary Motion in the three Prior United Water Cases, is because I have made a motion to consolidate the three cases with this Matter, and because the "financial irregularities" now admitted by United Water, establish United Water's disingenuousness and should be deemed to infect United Water's testimony and submissions in the Prior United Water Cases.

2. **Addressees**. As was the case with my Omnibus Motion filed in this Matter a number of days ago, this Supplementary Motion is addressed to the Secretary of the Commission, as well as to the Commissioners and General Counsel. It is also intended to be read by the three Administrative Law Judges assigned to the Prior United Water Cases, as well as all Parties in this Matter and the Prior United Water Cases.

3. **The New United Water Filings**. On November 4, 2014 - at a time when United Water knew that media attention would be pre-occupied with the state-wide and nationwide elections, and conveniently for United Water a day before the PSC's DMM electronic docketing system would be down for most of the day - I discovered that United Water filed three new documents in this matter ("New United Water Filings"). These New United Water's filings are dated "11/3/2014".

4. **No Service By United Water**. I was never served to date by United Water with these New United Water Filings, even though I served notice of my Party Status in this Matter upon United Water on October 23, 2014, and even though PSC included me on the Party list on the PSC's Electronic Docket in this Matter a few days thereafter. Additionally, I should mention that I never received any e-mail from PSC indicating that these New United Water Filings had been filed, either. I only happened to find the New United Water Filings when reviewing the PSC website on November 4, 2014 of my own initiative.

5. **United Water Now Admits In Writing That Michael Pointing, Michael Blake, And Michael Roling Took Ill-Gotten Bonuses Based Upon Fictitious Revenue Numbers**. Buried by United Water on Page 10 of the company's 11-page ".pdf" document, an Interrogatory Response titled "UW Written Response to IR TC-2 (PUBLIC)" (hereafter the "11-Page United Water Admission", or simply "11-Page Admission"), United Water now admits that Michael J. Pointing, Michael Blake, and Michael Roling (hereafter sometimes referred to as "The Three Mikes") all economically-benefited from the multi-million-dollar overstatements of revenues caused by some or all of them for three-and-a-half years

running, every quarter. United Water tells us that Michael Pointing was paid for both of the "2010 and 2011 plan years" a bonus "approximately US\$1,715.00 higher than it would have been if the misstatements had not occurred". (11-Page Admission, page 10).

6. United Water Cannot Help But Obfuscate Its Own Numbers. In this context it is beyond stark and remarkable that United Water purposefully textually obfuscates whether Michael Pointing's US\$1,715 in ill-gotten bonus gain is an "all-in" figure covering both years, or (more likely) if it is instead a per-year figure thereby indicating that Pointing copped US\$3,430 in wrongfully-obtained bonus money for 2010 and 2011. Given that United Water so deliberately clouded these waters for the PSC and other readers, the larger number should be presumed against the company, simply for wasting all of our time. There is also deafening silence from United Water in answer to the obvious question of how much ill-gotten bonus gain, if any, Pointing may have grabbed for 2012, 2013, and 2014 - since we know that the balance-sheet chicanery of revenue-overstatement occurred by United Water's own admission for "[t]hree and a half years" (11-Page Admission, page 9), from 2010 through 2014. Perhaps United Water intends to get back to us about that. (11-Page Admission, page 11).

7. United Water Essentially Asks The Commission "What's A Few Thousand Dollars Of Ill-Gotten Gain Between Friends, Anyway?". In its most recently-filed papers, United Water appears to adopt the defense of, "It was so little money snatched, so why bother looking at it?". In United Water's own words:

"The [i]nvestigation concluded that the impetus for the misstatement appeared to be so that [United Water's] New York Division would meet its budget targets, not so the employees could receive bonuses, **especially given the amount of the bonuses**". (11-Page Admission, page 10). [Emphasis added].

"Especially given the amount of the bonuses"?! This type of arrogance is right out of a blame-the-victim playbook. United Water is essentially suggesting that it lifted so little money from the victim, that no one should be complaining about it. "[G]iven the amount of the bonuses"?! Michael Pointing picked-up an extra US\$1,715 "for both years" (11-Page Admission, page 10), which suggests that Pointing may have taken as much as double that, US\$3,430 in ill-gotten bonus money, due to the multi-million-dollar United Water "accounting irregularities" for which he, Blake and Roling were responsible. "[T]he aggregate increased bonus pay outs **for both years** for all three employees [Pointing, Blake, and Roling] was approximately US\$2,139.00". (11-Page Admission, page 10; Emphasis added). This quote suggests a

total of US\$4,278.00, double the US\$2,139.00, in ill-gotten bonus gain. Whether US\$4,278.00 or even US\$2,139.00, that's still a ton of money for most rate-payers in Rockland County, New York - and that's a ton of money that most Rockland County rate-payers living check-to-check don't have. If someone steals that same sum of money from a bank, it's still a felony, and it's still grand larceny. *See* New York State Penal Code, Article 155.30:

<http://ypdcrime.com/penal.law/article155.htm>

Yet United Water suggests it would have this Commission somehow disregard the cute little United Water accounting shenanigans causing the ill-gotten bonuses because - what? - it's simply chump-change relative to the imperious masterwork of any self-respecting multi-million-dollar-moving scam-artist? That's nonsense.

8. By United Water's Own Written Admission, Pointing's, Blake's, And Roling's Entire Salaries Are Ill-Gotten Gain. Moreover, the notion that Pointing, Blake, and/or Roling caused or perpetuated the *faux* millions in revenue-overstatement out of some sort of fear that they wouldn't hit their "budget targets" for 2010, 2011, 2012, 2013, and 2014, means that these three employees might well have been terminated by the company if the New York Division had at the time reported its failure to hit those same budget targets. Instead of truthfully hitting the budget targets, as we know, the numbers hitting the targets were instead made-up through accounting *fourberies*. Fabricated numbers. Therefore, the entirety of the salaries of Pointing, Blake, and Roling from at least 2011 forward can in fact also be deemed to be ill-gotten gain to direct economic shareholder detriment. This was not a simple hustle for a few thousand dollars alone.

9. United Water Feigns To Tell This Commission What Was In The Minds Of The Three Mikes. Beyond galling, United Water now seeks to purposefully downplay the outrageousness of the collection of these ill-gotten bonus gains by these "executives", whom United Water then fired per "recommendation to" the CEO Bertrand Camus. (11-Page Admission, page 1). For example, United Water's Ethics Committee, itself comprised of Pointing's former New Jersey colleagues and neighbors, audaciously and peremptorily "determines" for this Albany-situate Commission that Pointing, Blake, and Roling "did not intend to deceive the Company by recording revenues in a manner which did not comply with [GAAP] or by overstating revenues". (11-Page Admission, page 8). Yet the Commission should be the judge of Pointing's intent, not United Water.

10. **United Water Suggests To This Commission That The Three Mikes Made An Innocent Little Mistake.** United Water would have this Honorable Commission believe that Pointing, Blake, and Roling made an innocent little mistake in belief that:

"the only pertinent question was whether their ["manner"] of ["recognizing"] revenues was consistent with [PSC] requirements instead of also understanding that the GAAP rules applied..." (11-Page Admission, page 8).

In apparent contradiction thereto, a page later, United Water tells us that the Three Mikes "did not consider GAAP requirements". (11-Page Admission, page 9). Pointing was Vice President and General Manager. Blake was Director of Finance. Roling was Manager of Accounting. To suggest their collective or even individual unawareness of GAAP, is akin to suggesting that Mario Andretti doesn't know how to read a gas gauge.

11. **These Three Men Need To Be Subpoenaed Now.** One reason that this Commission needs to subpoena Pointing, Blake, and Roling immediately, is to establish that these three senior executives all knew what GAAP was. In that respect, Pointing, Blake, and Roling saying "we'll do this without GAAP", would be like Bernard Madoff saying "we'll do this without 10b-5 and those other pesky securities laws", or like Joseph Hazelwood saying "we'll drive this ship without using the drinking and driving laws". The Three Mikes were not new. Additionally, it is now apparent from United Water's most recent filings that if ever heard from again, Pointing likely will seek to scapegoat Blake, Roling, and possibly other of his former colleagues as well. Indeed, United Water has already commenced the process of doing that for him. (See Paragraph 15 hereinbelow). Blake and Roling need to be heard from separately - without Pointing in the hearing-room at the time.

12. **United Water Even Has The Chutzpah to Insinuate That The PSC Is Somehow To Blame.** Moreover, and unbelievably, United Water also seems to even intimate that "PSC[] requirements" themselves somehow misled Pointing, Blake, and Roling by being incomplete and not incorporating GAAP:

"The [United Water internal] [i]nvestigation also concluded that the accounting error was based on the mistaken belief of the employees that **the only pertinent question was whether their ["manner"] of ["recognizing"] revenues was consistent with New York State Public**

Service Commission ("PSC") requirements instead of also understanding that the GAAP rules applied..." (11-Page Admission, page 8). [Emphasis added].

Aside from a thinly-veiled and *gauche* attempt by United Water to somehow blame PSC thereby for United Water's own multi-million-dollar transgressions, it is implausible that any adult interpreting PSC's requirements would somehow conclude that they were magically GAAP-exempt.

13. **The United Water Suggestion That "No One Was Harmed", Is Specious.** United Water would have this Honorable Commission believe that the harm done by United Water's bogus accounting was minimal, because while "[t]he employees did benefit from this misstatement of revenues in the form of bonuses", these bonuses were "funded by the shareholder, not funded by ratepayers". (11-Page Admission, page 10). Yet that's still at least one admitted victim - at least a shareholder - in addition to the twenty (20) presumably innocent and reliant financial institution debt-holders to whom United Water also confessed in writing this same malfeasance. (See "United Water's Response to TC-1", page 7, filed previously in this Matter). The shareholder, the debt-holders, and the PSC all made decisions based at least in part upon United Water's spurious revenue numbers.

14. **United Water Specifically Soft-Pedals Michael Pointing's "Accountability".** United Water's new filing tells us that Michael Pointing, head of United Water's New York Division, "should have exercised greater care to assure[sic] that the revenue was recognized according to GAAP". (11-Page Admission, page 9). "Greater care"? On the same page of the same document United Water says he "did not consider GAAP requirements". So, instead of "greater care" - how about "ANY care"?!

15. **United Water Helps Pointing Throw Other Employees Under The Proverbial Bus.** United Water, apparently seeking to defend Pointing, and itself thereby, informs us that Pointing "relied on others (including former employees [note: unnamed])", and that "there may have been a belief that this practice was permissible, based on reliance on [note, again: unnamed] accounting personnel". (11-Page Admission, page 9). Are those "former employees" Blake and Roling, or did United Water also or previously fire other and additional employees for these same financial shenanigans? If United Water meant Blake and Roling, then why not just say "including Blake and Roling", or simply "Blake and Roling"? Moreover, why does United Water think Pointing is allowed to throw other people under the proverbial bus, regarding an apparent plan to regularly overstate revenue to the tune of US\$2,500,000 to US\$3,000,000 every single quarter from 2010 to 2014? As for a "belief" that the practice was

"permissible", self-serving ignorance is no excuse, and such explanation in this context would strain credulity anyway. Moreover, this was Pointing's operation, so why would he even be entitled to "rely" on others for such a career-determinative outcome as hitting his budget targets and getting the multi-million revenue numbers right? To ask that question is to answer it.

16. **United Water's Version Of Pointing's Unsworn Testimony Is Worthless.** Moreover, why should this Honorable Commission accept United Water's *ipse dixit* and hearsay speculation about what Pointing would or might say if challenged on these items? This Commission should not suffer to be asked by United Water to "take United Water's word for it" on Pointing's possible testimony. This Commission should not make and conclude its Investigation in this matter, based upon unsworn statements that Pointing may have been instructed by his French paymasters to adopt. Rather, this Commission should haul Pointing in, to testify now, before he might leave the jurisdiction for England as threatened:
<http://www.lohud.com/story/news/local/rockland/2014/09/18/united-water-exec-michael-pointing-leaves-company/15831849/>

17. **United Water So Generously Admits "We Should Have Tried Harder".** United Water continues:

"[With respect to Michael Blake and Michael Roling] "...both bear responsibility for failing to exercise proper care to insure[sic] that revenue was recognized in a pattern consistent with actual sales as required under GAAP revenue recognition principles" (11-Page Admission, pages 8-9); and

"...there was a failure to assure[sic] the practice was GAAP compliant or to assess the possible consequence to the Company upon expiration of the 2010 Rate Order. This consequence includes a write-off of US\$3,700,000 on the books of United Water Inc. Those considerations led to the finding that greater care should have been exercised by all involved". (11-Page Admission, page 9).

Wait a minute. "Greater care should have been exercised by all involved"? That's it?

This was a regular pattern of senior corporate executives inventing multi-million dollar sums that didn't exist. And then grabbing bonuses for themselves on those concocted numbers. For YEARS. "Greater care should have been exercised by all involved"?! That's like a Hindenburg technician observing the dirigible

from afar and saying, "Yeah, I should really have tried harder to keep that thing unlit and in the air, huh?".

18. **And United Water Even Intends To Pay Them Severance.** Compounding the outrage is the notion that Messrs. Pointing, Blake, and Roling might somehow collect a "severance" payment under "severance agreements" from United Water, after being fired for financial misdoings. (11-Page Admission, page 2). Of course, later, United Water thinks better of that terminology and refers to Pointing's "separation agreement", instead. (11-Page Admission, page 8). This PSC Investigation must determine whether United Water seeks to charge the severance sums back to the rate-payers, too. Taking United Water's "word for it" in this regard would be clearly insufficient, also.

19. **This PSC Investigation Should Determine How Pervasive These "Financial Irregularities" Are, In the Corporate "Culture" Of United Water And Suez Environnement.** Finally, it is a fair question in the context of this PSC Investigation to now ask if these acts of financial misconduct are regularly replicated throughout the entire United Water and *Suez Environnement* hydra. After all, United Water tells us that:

"[s]tarting on January 1, 2013, United Water Inc. began the centralization of [its] [accounting services] function in its [c]orporate [h]eadquarters in Harrington Park, New Jersey offices. The purpose of the centralization was to establish an accounting center which could service all of Suez Environnement North America ('SENA')". (11-Page Admission, page 4).

We are also told that certain accounting procedures, at least, are posted to the company's "intranet", "for easy access by the accounting staff". (11-Page Admission, page 6).

"Easy", indeed.

This Investigation should be expanded, at minimum, to all other instances of revenue statements and bonus payouts to all United Water and *Suez Environnement* executives and other employees - as far back in time as any such records are kept. From whom did Pointing, Blake, and Roling learn these techniques? And, did they first need to be translated from the French to the English?

20. **Relief Sought.** This Supplementary Motion requests that this Honorable Commission order the following relief on an immediate basis:

I. Motion Requesting That Michael Blake And Michael Roling Be Compelled To Join This Matter, Each As Parties. I move that this Commission order both Mr. Michael Blake and Mr. Michael Roling to join this Matter, each as a Party, and serve them with appropriate process accordingly. I further ask that this Commission compel their joinder, respectively, each as a Party to this Matter, in the event that either Mr. Blake or Mr. Roling fail to join this Matter as a Party voluntarily within ten (10) calendar days of the date of this Supplementary Motion. In point of fact, I challenge Mr. Blake and Mr. Roling, here, to each join this Matter as Party voluntarily.

II. Motion Requesting That Michael Blake And Michael Roling Be Subpoenaed To Testify In This Matter. To the extent that the foregoing Item I. does not adequately state a basis for Commission action, then and therefore I move that the Commission use all lawful means to subpoena, or cause the subpoenaing of, Michael Blake and Michael Roling to testify in this Matter.

CONCLUSION

For the foregoing reasons, I, Attorney John J. Tormey III, Esq., request that the foregoing requested relief be accorded by this Commission in full, and that this Commission so order the requested relief in full.

Dated: November 6, 2014
Hamlet of Pearl River, Town of Orangetown
County of Rockland. State of New York

Respectfully submitted,

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Parties in **Matter Master: 14-02068/Matter Number: 14-02068**
Parties in **Case 13-W-0246**
Parties in **Case 13-W-0295**
Parties in **Case 13-W-0303**