

The Legislature of Rockland County



ALDEN H. WOLFE
Chairman

July 6, 2015

Hon. Kathleen H. Burgess
Secretary, Public Service Commission
Three Empire State Plaza
Albany, NY 12223-13550
secretary@dps.ny.gov

Re: Petition for a Rehearing and/or Clarification of the Commission's Order,
Issued in Case 13-W-0246
I.D. No. PSC-20-15-00008-P

Dear Secretary Burgess:

In the interest of fairness to United Water New York's (UWNY) customers in Rockland County, I fully support the Petition for a Rehearing and/or Clarification (Petition). I urge you to support the entire petition; this case provides an opportunity for the Public Service Commission (the Commission/PSC) to encourage and enforce prudence, best industry practices, high professional standards, and fairness—breathing life into the Commission's mission to “stimulate innovation, strategic infrastructure investment, consumer awareness, competitive markets where feasible, and the use of resources in an efficient and environmentally sound manner.” I welcome the Commission to exercise its dual role, both to set rates and to act in a supervisory capacity in its ruling on the Petition.

With the Commission's decision regarding Rockland's water supply (13-W-0303) it showed its willingness to create a model of collaboration with communities in order to “use resources in the most efficient and environmentally sound manner.” This model includes the Commission's recognition of the Rockland County Task Force for Water Management, (Task Force). As one who helped create the Task Force, it was especially encouraging to see the Commission recognize that body and solicit its contributions (13-W-0303) "We direct UWNY to provide reports on conservation and supply alternatives within six months of the issuance of this order and will require UWNY to submit quarterly reports providing data on actual usage to monitor the gap between supply and demand. We also call upon the Rockland County Task Force on Water Resource Management to report on its plans for adopting feasible conservation options and the demand reductions associated with these measures."

It's important for the Commission to note the exigent circumstances, which gave rise to the Task Force, including what many have termed a history of UWNY's mismanagement, exemplified in several cases including 13-W-0246, that all were related to the proposed large scale long-term water supply source

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(LTWSS) project. In fact this has been called a David and Goliath battle because of Rockland's fairly unique situation in New York State. Rockland comprises less than 1/16 of the State's water consumers because we get our water from a private company; in that group we're again a minority as we're among the few who get water from a large corporation. As the Commission looks at ways to consolidate smaller companies, this case can serve as a template for fair oversight in large scale projects, where a big corporation might have an unfair advantage over the public it serves. As an elected official I view this process as a way to protect ratepayers from picking up the tab for a company with unlimited funds to promote an unpopular, large scale LTWSS, as this case, 13-W-0246 demonstrates.

I believe 13-W-0246 tells a story of callousness toward ratepayers. Briefly, in this case UWNYS expected its customers to pay bills that were inappropriately vague and opaque for a pilot project whose purpose contradicted the United States Geological Survey (USGS) Report, which once released should have been a clarion call to halt the project. This case reveals a pattern of opacity, contradictory numbers, disregard of scientific findings, dismissal of reports by well-respected experts, and the failure to accept and address ratepayer mistrust. These are some of the examples the Petition addresses:

1. *Accrual of AFUDC (allowance for funds used during construction)*

I fully agree that this allowance, as stated in the Petition should not be permitted, in accordance with Uniform System of Accounts disallowing accrual of costs for development before construction begins. Therefore ratepayers should not bear any of the resulting cost of \$12.7 million.

2. *Selection of desalination technology for an LTWSS for Rockland County was imprudent.*

Though the Commission found against imprudence in its 2014 ruling, additional evidence backing up imprudence has surfaced since then. Please consider that UWNYS itself suddenly found in the last week or so, supply-side sources it had previously rejected. In addition it stated it could recover more non revenue water than it had previously stated it could. A prudent decision would have been to begin with those steps. UWNYS's so-called new solutions came on the heels of the release of a preliminary report by expert Amy Vickers in her feasibility study to look at conservation measures, and as it turns out, systemic repairs that could recover over 2 MGDs of nonrevenue water. Vickers's findings corroborate those of every other noted expert who has found fault with UWNYS's data. It goes to the heart of the case: transparent data shows no need for the LTWSS. UWNYS should have come to this conclusion.

As early as April 2012, ECONorthwest found an "almost complete lack of transparency and documentation regarding the data, assumptions, and analytical methods used to generate cost results." Others found repeatedly that UWNYS inflated demand, underestimated and even ignored viable alternative sources. Non-transparent data is separate category the Petition covers, but it's difficult to separate from imprudence. How can a company make a prudent business decision absent reliable, transparent data? It's troubling that UWNYS's faulty data nearly resulted in a facility, which would have led to enormous rate hikes with virtually no solid proof of need. Once the stakeholders--with their own funds--hired well-respected experts who provided evidence that showed UWNYS's LTWSS was unnecessary, the Commission rightfully and laudably put the project on hold. Isn't it appropriate to rule at this time that UWNYS's faulty data prevented a prudent decision for Rockland's ratepayers?

To say, as was stated in 13-W-0303 that UWNYS was not imprudent because the Commission ordered it to come up with a supply project seems illogical and raises questions. Isn't it unfair to blame an imprudent decision on an order from the Commission? Why should an order be an excuse for failure to find the best alternative? Can every utility use that as an excuse to present non-transparent data to justify exorbitant projects? Should ratepayers pick up the tab for ill-conceived, poorly researched projects? What other business in the private sector could get away with that kind of reasoning?

As an elected official I want to know what we've learned from this experience in order to prevent a similar scenario from occurring. It must begin with the selection process that results in the best option.

In their paper *Desalination in Northeastern U.S.: Lessons from Four Case Studies*, authors Sridhar Vedachalam and Susan J. Riha (NYS Water Resources Institute, Department of Earth and Atmospheric Sciences, Cornell University 2012) state: UWNY's DEIS nail what can go wrong in the selection process--and result in inferior choices and needlessly exorbitant rates.

As Vedachalam and Riha observe, "In addition to estimating the costs and benefits of implementing of the capital project, the EIA (environmental impact assessment) report also requires the project executor to identify alternative options and comment on the viability of those options. Depending on the location, alternatives to desalination could include reuse of treated waste water, exploring additional surface and groundwater sources, capturing storm water runoff, and implementing conservation through water-efficient fixtures, leak detection and full cost pricing of water. However the inherent conflict of interest in a private or public entity working to identify alternative sources that could undermine the time and financial commitment made toward the principle option being considered lends itself to often poorly evaluated alternative options."

A denial of the surcharge as requested would affirm our common goal of protecting the public against "poorly evaluated alternative options." In this case, UWNY imprudently ignored evidence that did not justify their preferred long-term water supply source in Rockland, beginning with the United States Geological Survey study in 2009 that stated the aquifer was recharging at a faster rate than presumed. Indications of flat demand were abundant as well.

The public deserves better than "poorly evaluated alternative options." I appreciate UWNY's corporate responsibility to its shareholders, but its provision of a public service obligates it to be both prudent and transparent. Government and its agencies must require the best, most cost-effective alternative options, a goal which is in keeping with the PSC's mission.

Rockland County came dangerously close to "a poorly evaluated alternative," that was the essence of imprudence. Fortunately several outside experts presented a convincing case against the large LTWSS. I applaud the Commission for considering the new data these experts offered. But the public needs more protection. It can't compete with the funds a corporation such as UWNY. I hope the Commission would consider a requirement that builds in the cost of independent outside experts into the costs any large scale LTWSS project. I defer to the Commission to set a threshold amount.

To repeat: without outside independent experts Rockland would be on its way to a project that would have raised the bill of every ratepayer by roughly \$500 in the first year alone. The negative fallout on our local economy--extra costs for business, less disposable consumer income--has never been analyzed. To have gone through with the proposed LTWSS would have gone beyond imprudence. This lack of adherence to best practices approached utter disregard for the hard-working ratepayers in Rockland, where the cost of living has become untenable for too many families. A requirement for independent outside experts to vet large scale proposals would protect New York's residential ratepayers and businesses and would promote healthy local economies.

The question remains: why should the ratepayers pay one penny for UWNY's failure to consider hard scientific data from the likes of the USGS? Why should they pay for UWNY's imprudent business decisions?

3. Lack of transparent data

UWNY was so eager to foist this project upon the rate-paying public, it proceeded headlong, ringing up enormous bills, without ever offering a transparent analysis of Rockland's water needs using best industry practices. Lack of transparency in invoices serves as yet another example of imprudence and reflects a company culture that puts ratepayers at the bottom of the heap. In the face of what we've seen, UWNY persists in offering opaque, contradictory data in hopes of convincing state agencies to buy into their projects.

Again: why should Rockland ratepayers pay one penny for bills with no data? We are savvy consumers who expect itemization from people we hire to work in our homes and at our businesses. Why should we pay UWNY's bills with no explanation?

Conclusion:

A ruling in favor of the Petition would encourage prudence. Allowing UWNY to recoup their costs for a project that did not address the real needs in Rockland would be nothing less than a worst case scenario of what can happen when out-dated, imprudent business practices that don't serve the ratepayers are allowed to proceed unchecked. Indeed that result would be nothing short of undermining the laudable mission of "innovation, strategic infrastructure investment, consumer awareness, competitive markets and the use of resources in an environmentally sound manner."

Given the Commission's record of leadership in this process, I am hopeful to see a ruling in favor of the Petition. I look forward to extended conversation about measures we as government officials can take to protect the public from imprudence and lack of transparency and to raise the bar, so that companies such as UWNY are required to come up with the best possible alternatives, not to force ratepayers to live with the results of "poorly evaluated alternative options."

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Alden H. Wolfe', with a stylized, flowing script.

ALDEN H. WOLFE