

**BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF NEW YORK**

Proceeding on Motion of the)	
Commission as to the Rates,)	
Charges, Rules and Regulations of)	Case No. 13-W-0295
United Water New York Inc.)	
for Water Service.)	

**MOTION OF DEPARTMENT OF PUBLIC SERVICE STAFF TO EXCLUDE FROM
CONSIDERATION TWO PROPOSED EXHIBITS, UNSUPPORTED FACTUAL
ASSERTIONS AND A NEW CHARACTERIZATION OF A PROPOSED TARIFF
CHANGE**

Joseph Dowling
Assistant Counsel
Department of Public Service
3 Empire State Plaza
Albany, NY 12223
(518) 474-0071
joseph.dowling@dps.ny.gov

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INTRODUCTION

On July 2, 2013, United Water New York, Inc. (UWNY or the Company) filed for a major rate increase as defined by Public Service Law (PSL) §89-c. Pursuant to the established case schedule, the parties (UWNY, Department of Public Service Staff (Staff), the Municipal Consortium and the Department of State Utility Intervention Unit) filed reply briefs on March 14, 2014.

In its reply brief, UWNY requested that two documents, not previously introduced in the case, be marked as exhibits, made factual assertions not based on the established record, and improperly requested a waiver of Commission regulations.

Pursuant to 16 NYCRR §3.5, Staff respectfully submits this motion to exclude the proposed exhibits and unsupported factual assertions from consideration and deny the Company's request for a waiver because of the untimely submission that denies the other parties' an opportunity to address the issues raised. In the alternative, Staff requests an opportunity to

address the Company's new exhibits and factual assertions in a subsequent filing.

ANALYSIS

I. THE DOCUMENTS SUBMITTED BY UWNY SHOULD NOT BE MARKED AS EXHIBITS

In defending its position regarding the recent increases in the United Water Management and Service Company's (M&S Company) fees, UWNY references two Company responses to Staff information requests (IR), Staff-33 AAE-9 and Staff-36 AAE-12, which concern M&S allocation issues, and requests that they be marked as exhibits (UWNY RP, p 10).

The Company's request should be denied because introducing new exhibits at this point in the proceeding would prejudice the other parties, which will have no opportunity to respond to the information contained in the documents. Marking the IRs as exhibits would be an empty exercise in form over substance because there are no additional party filings scheduled and no opportunity for any party to reference the documents.

The Company offers no basis for allowing such a late reopening of the record. The documents are not an updating of a prior exhibit of which the parties were aware, or newly discovered evidence. Rather they are responses to Staff IRs, which were always in the Company's possession and could have been timely introduced by UWNY had it chosen to do so. Having apparently failed to foresee the need for the documents, the Company now attempts to undo its mistake by requesting they be marked as exhibits in a footnote in its final filing in the case.

The Company's request should be denied because the company offers no justification for the new exhibits that can overcome the patent prejudice to the other parties. In the

alternative, the other parties should have an opportunity to respond to the new evidence in a subsequent filing.

II. UWNY'S ARGUMENTS REGARDING OVERTIME CHARGES BY THE M&S COMPANY SHOULD BE EXCLUDED FROM CONSIDERATION BECAUSE THEY ARE UNSUPPORTED BY THE RECORD

While addressing the question of the M&S Company fees, the Company states that the M&S Company "is experiencing an increase in the costs due to external market factors. Those increases are not specific to [the M&S Company] and would apply to other for-profit third-party vendors (UWNY RB, pp 8-9)." UWNY further states that "[a] further benefit of [the M&S Company] over third-party vendors is that a [M&S Company] 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 RB, p 9)."

These allegedly factual statements are made without reference to the record and cannot be supported by either the transcript or the marked exhibits. As with the proposed exhibits above, the Company is attempting to expand the record without allowing the other parties an opportunity to probe the veracity of the additional material. UWNY has been aware of Staff's position regarding the M&S fees since the filing of Staff testimony on November 8, 2013, if not earlier. Yet, the Company did not choose to introduce its vaguely defined "market factors" or the M&S Company's overtime practices in its rebuttal testimony, nor at the evidentiary hearing. Only now, at the final hour, does UWNY raise these issues when they cannot be challenged.

Since the Company cannot support these statements with the established record, the Company's arguments regarding external market factors and the M&S Company's overtime factors

should be excluded from consideration and excised from the record. In the alternative, the Company should be compelled to provide documentary proof of its statements and the other parties allowed an opportunity to respond.

III. THE COMPANY'S REQUEST OF A WAIVER OF 16 NYCRR PART 14 SHOULD BE DENIED AS UNTIMELY

In its filing the Company requested authorization to amend its tariff to allow for the termination of service when a ratepayer denies the Company access to its meters (Tr. 182-184). Staff opposed the request, arguing that Commission regulations did not allow for termination of service on these grounds (Staff IB, pp 71-72). In its reply brief, the Company now characterizes its proposed tariff change as a request for a waiver of the Commission's regulations (UWNY RB, p 60).

This request should be denied because it is untimely. The proposed tariff change was not presented as a waiver request by the Company prior to the reply brief. The Company did not previously acknowledge that the proposal was contrary to Commission regulations or required a waiver. Instead it was presented as a routine change to service terms that was consistent with the relevant regulations. As such, Staff's testimony was restricted to the observation that the proposal violated the current regulations and did not explore the merits of the proposed changes.

To now characterize the tariff change as a request for a waiver of those regulations would evade the substantive exploration of the proposed change and prejudice ratepayers. For this reason, the Company's newly minted waiver request should be denied and the Company directed to file a petition for waiver of the Commission's regulations and have the question decided on the merits outside this proceeding.

Respectfully submitted,

_____/s/_____

Joseph Dowling
Assistant Counsel