



August 19, 2014

VIA ELECTRONIC FILING

Honorable Kathleen Burgess, Secretary
New York State Public Service Commission
3 Empire State Plaza, 19th Floor
Albany, New York 12223

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

Dear Secretary Burgess:

United Water New York Inc. submits this letter in support of New York State Department of Public Service Staff's ("Staff") Motion to Deny filed on August 14, 2014 in the above-captioned proceeding ("Staff Motion"). The Staff Motion requests that the New York State Public Service Commission ("Commission") dismiss the New York State Department of State's Utility Intervention Unit's ("UIU") response to the Municipal Consortium's Petition for Rehearing and/or Clarification filed on July 28, 2014 in this proceeding.¹ The Company fully supports the Staff Motion and respectfully requests that the motion be granted in its entirety because the UIU Response improperly introduces new grounds for rehearing and requests forms of relief not asserted in the MC Petition.

The Commission's regulations permit any interested party to request rehearing within 30 days of service of a Commission order on the following grounds: an error of law; an error of fact; and/or new circumstances warranting a different determination. 16 NYCRR §3.7(a) – (b). Parties may respond to a petition for rehearing within 15 days upon the petition's filing, but must limit their response to arguments asserted by the petitioner.² By proposing new grounds for rehearing and new forms of relief, UIU exceeds the scope of a response to a rehearing petition under the Commission's regulations. Accordingly, these new arguments constitute clearly untimely petitions for rehearing and must be dismissed.

¹ See Case 13-W-0295 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of United Water New York Inc. for Water Service, Response of the Utility Intervention Unit to the Municipal [sic] Consortium's Petition for Rehearing and/or Clarification (Aug. 12, 2014) ("UIU Response"); see also Case 13-W-0295, Petition for Rehearing and/or Clarification on Behalf of the Municipal Consortium (June 28, 2014) ("MC Petition"). The MC Petition asserts that in the Order Establishing Rates issued on June 26, 2014 in this proceeding ("Rate Order"), the Commission committed four errors and violated the Municipal Consortium's right to due process.

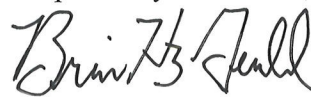
² See Case 98-C-1357 - Proceeding on Motion of the Commission to Examine New York Telephone Rates for Unbundled Network Elements, Order Denying Rehearing Petitions at 21 (Feb. 6, 2003).

Specifically, as Staff noted, the UIU Response asserts two new improper arguments not raised in the MC Petition. First, UIU contends that the Commission committed a “factual error” with respect to M&S Fees because it assumed “*a priori* that the historic levels of M&S Charges were appropriate.”³ In contrast, the MC Petition asserted, incorrectly that the Commission committed a legal error regarding M&S Fees because it departed from the approach used in an earlier Niagara Mohawk proceeding in which the Commission set a portion of the utility’s rates temporary subject to the result of an audit.⁴ By asserting that the Rate Order’s treatment of M&S Fees constitutes a factual rather than a legal error, UIU introduces an entirely different basis for rehearing, thus exceeding the scope of a response to a rehearing petition. As such, UIU’s argument is tantamount to a time-barred petition for rehearing and therefore must be rejected.

Second, UIU improperly requests relief not sought in the MC Petition regarding the Lake DeForest Reservoir Cost Allocation Agreement (the “Amendment Agreement”). The MC Petition argues that the Rate Order’s treatment of the Amendment Agreement lacked record support and violated the Municipal Consortium’s right to procedural and substantive due process. The Municipal Consortium requested that the Commission allow parties to submit comments on the Amendment Agreement before rendering a final decision.⁵ UIU, however, goes even further by requesting not only that both the parties and the public be permitted to file comments on the Amendment Agreement, but demanding a hearing on whether the Amendment Agreement is in the public interest.⁶ The UIU Response exceeds the scope of the MC Petition by requesting relief greater than that requested by the Municipal Consortium. As such, UIU’s argument regarding the Amendment Agreement constitutes an untimely petition for rehearing and must be denied.

Should you have any questions about this filing, please contact me.

Respectfully submitted,



Brian T. FitzGerald

cc: DMM Party List (via e-mail)
Honorable David Van Ort (via e-mail)

³ UIU Response at 4 (emphasis added).

⁴ MC Petition at 2. The Municipal Consortium later argued that the Commission committed a legal error because it assumed “*a priori* that the historic level of M&S charges [was] appropriate.” MC Petition at 15-16.

⁵ MC Petition at 23.

⁶ UIU Response at 8-9.