

**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**

**OMNIBUS MOTION
INTENDED FOR THE PROTECTION
OF ROCKLAND COUNTY, NEW YORK CITIZENS
AND UNITED WATER CUSTOMERS AND RATE-PAYERS**

Dated: October 28, 2014

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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. Motion Requesting Assignment Of A Case Number To This Matter.
B. Motion Requesting Consideration Of This Matter By The Public Service Commission.
C. Motion Requesting Judicial Assignment, And Judicial Intervention By One Or More ALJ's.
D. Motion Requesting That The PSC Order Transparency In This Proceeding.
E. Motion Objecting To Endeavors Of United Water To Conceal Information In This Matter.
F. Motion Requesting That The PSC Consolidate This Matter With The "Rate", "Need", And "Surcharge" Cases.
G. Motion Requesting The Re-Assessment Of Rates In The "Rate Case".
H. Motion Requesting Reduction Or Elimination Of Any Rate-Increase Adjudicated In The "Rate Case".
I. Motion Requesting That Michael J. Pointing Be Compelled To Join This Matter As A Party.
J. Motion Requesting That Michael J. Pointing Be Subpoenaed To Testify In This Matter.
K. Motion Requesting That Michael J. Pointing's Prior Testimony Be Stricken From Prior PSC Cases.
L. Motion Requesting That Michael J. Pointing Be Required To Re-Affirm Under Oath All His Prior Testimony And Other Statements.
M. Motion Requesting A Public Comment Period In This "Financial Irregularities" Matter.
N. Motion Requesting Rockland County Public Hearings In This "Financial Irregularities" Matter.
O. Motion Requesting That The PSC Notify All Relevant New York, New Jersey, And Federal Law-Enforcement Agencies Of This Matter.
P. Motion Requesting That The PSC Notify All Public Service Authorities In Other States Wherein United Water Conducts Business, Of This Matter.
Q. Motion Requesting A Plenary Forensic Audit Of All United Water Books And Records.
R. Motion Requesting A Prudence Hearing And Proceeding.
S. Motion Requesting That The PSC Expand The Scope And Time-Frame Of The Investigation Herein.
T. Motion Requesting That The PSC Expand The Scope Of This Matter To Other United Water Management, Personnel, Former Management And Personnel, And Affiliates.
U. Motion Requesting That The PSC Compel The Appearance, As Parties In This Matter, Of All Five Towns In Rockland County, New York.
V. Motion Requesting That The PSC Freeze Or Stay All United Water Rates, Surcharge Requests, And Other Economic Requests, Pending The PSC Investigation Outcome.
W. Motion Requesting That The PSC Disclose And Post All Prior Documents In This Matter, To The Full Extent Not Already Posted And Disclosed.

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.** 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 new matter which appears to have been commenced *circa* October 17, 2014 (hereafter, "Financial Irregularities Of United Water Matter"; "Financial Irregularities Matter"; "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 below (collectively, the "Prior United Water Cases").

2. **The Prior United Water Cases.** As this Honorable Commission is aware, the Prior United Water Cases are:

Case 13-W-0246 (*Matter #13-01259*) (Proceeding on Verified Petition of United Water New York Inc. for Implementation of a Long-Term Water Supply Surcharge, And Related Tariff Amendment) (the "Surcharge Case");

Case 13-W-0295 (*Matter #13-01437*) (Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of United Water New York Inc. for Water Service) (the "Major Rate Case"; or, simply, "Rate Case"); and

Case 13-W-0303 (*Matter #13-01489*) (Proceeding on Motion of the Commission to Examine United Water New York, Inc.'s Development of a New Long-Term Water Supply Source) (the "Need Case").

3. **Addressees.** My understanding from an examination of the electronic docket sheet ("Electronic Docket Sheet") in this Financial Irregularities Matter, is that no administrative law judge ("ALJ") has yet been assigned to this Irregularities Matter. Accordingly, this Omnibus Motion is addressed to the Secretary of the Commission, as well as to the Commissioners and General Counsel - as these persons were indicated on Madame Chair Zibelman's October 17, 2014 letter to United Water President David Stanton which thusfar appears to be the PSC document initiating this Matter.

4. **This New Matter.** The commencement of this Financial Irregularities Matter was apparently triggered by United Water's September 2014 termination of the employment of the company's now-former Vice President and General Manager (New York Division), Michael J. Pointing, as well two other now-former employees. Mr. Pointing's termination is believed to have occurred *circa* Friday, September 12, 2014 (*see* the document posted to the Electronic Docket Sheet titled "Page 2, United Water's Response to TC-1

[10/14/14]"). On September 17, 2014, The *Rockland County Times* publicly reported Pointing's termination.

5. **Michael Pointing**. As this Honorable Commission is also already aware, Michael J. Pointing was a central figure in each of the Prior United Water Cases. He rendered testimony and statements in, and in connection with, the Prior United Water Cases. Michael J. Pointing was a leading proponent, if not the leading proponent, of the proposed water desalination plant intended to extract water from the Hudson River, sourced but a few miles directly downstream from the Indian Point nuclear power plant - such that Rockland County United Water customers like myself could then drink that water.

6. **Newly-Discovered Facts**. My understanding is that, specifically, the Surcharge Case and Need Case relating to that proposed desalination plant have yet to be adjudicated by this Commission. The newly-discovered facts referenced herein and contained in the documents already posted to date on the Electronic Docket Sheet of this Irregularities Matter, need to be factored-in to the decisions of the Need Case and Surcharge Case, as well as the Rate Case. Though I am mindful of the disinclination in PSC practice to seek retroactive rate-making, that tenet should not apply to the Rate Case in this instance - given the newly-discovered Pointing-related facts, and given the very real extant possibility that the United Water-supplied misinformation used by United Water to seek rates was fraudulent in its inception as discussed hereinbelow.

7. **The October 17 Letter**. As Chair Zibelman's October 17, 2014 letter to United Water President David Stanton indicates ("Letter from Chair Zibelman to the President of United Water", or "Chair's October 17 Letter"), the Commission has, apparently *sua sponte*, initiated an investigation ("Investigation") of United Water[]'s termination of Michael J. Pointing and two other now-former United Water employees.

8. **The Two Other Terminated United Water Employees**. The two other terminated United Water employees are apparently named Michael Blake (former "Director of Finance, United Water New Jersey Inc.") and Michael Rol[l]ing (former "Manager, Utility Accounting"). Incidentally, Mr. Rol[l]ing's last name is spelled as both "Rolling" (two "L's"), and also as "Roling" (one "L"), in two different United Water documents filed with this Commission. *Compare* Page 2, "United Water's Response to TC-1 (10/14/14)" (apparently spelled by between one and four United Water "Witnesses", as "Ro[li]ng", one "L"), with "Filing Letter to Interrogatory/Document Request No. TC-1", Page 3 - Robert J. Alessi's October 14 letter to PSC's Records Access Officer Donna Gilberto (spelled therein by Mr. Alessi as

"Rolling", with two "L's"). Indeed, a more apt malapropism or Freudian Slip acknowledging "rolling" could not be imagined, considering the **US\$2,500,000 to US\$2,900,000** in overstated revenue that United Water kept "rolling" year after year and quarter-by-quarter on its books! - utterly contrary to GAAP - until recognized as and admitted by United Water to be a "stranded asset". Query whether Pointing, Blake, and "Rol[l]ing" were themselves paid any bonuses, perquisites, or other compensation increases based upon this fictitious overstatement of almost three million dollars of revenue - because then perhaps they would be truly "rolling" in some unwarranted dough.

9. The Purpose Of The PSC's Investigation, And This Matter. The Chair's October 17 Letter indicates that this Honorable Commission intends to ascertain if events appearing to give rise to the three employee terminations have any [e]ffect on rates charged by United Water New York. Many Rockland County residents such as myself are, unfortunately, customers of United Water New York. The Chair's October 17 Letter indicates that the Investigation seeks to determine if action is required to protect the interest[s] of United Water New York ratepayers. Conceptually, artificially-inflated bonuses and salaries, if occurring, would by definition fictitiously-inflate United Water's overall claimed costs of operation. We know that United Water sought "recoupment" of at least many of its claimed costs in the context of the "Need", "Surcharge", and "Rate" Cases. It is therefore entirely appropriate to investigate whether, in the context of rate-making or in the context of any construction project like the proposed desalination plant, United Water may have therein sought to impose the cost of artificially-inflated bonuses or salaries on the backs of previously-unsuspecting rate-payers. If the answer is "Yes", then the next question should be whether any *scienter* or indeed criminality was involved.

10. Documents Already Exchanged. The Chair's October 17 Letter further indicates that United Water already provided several responses to PSC staff inquiries prior to the October 17, 2014 date of the Chair's October 17 Letter. It is not clear whether all of these documents have yet been uploaded to the Electronic Docket Sheet in this Financial Irregularities Matter. To the extent that these prior responses are not yet fully posted to the Electronic Docket Sheet, this Omnibus Motion seeks the immediate and full disclosure of those prior responses, and the posting of those prior responses in full to the Electronic Docket Sheet. I ask that this be done without the need of any cumbersome procedure through FOIL, which would be an unfair and inappropriate requirement to impose on rate-payers under these particular circumstances. After all, the rate-payers did nothing wrong. United Water, however, did serious wrong to the tune of millions of dollars.

11. **United Water's Response.** Mr. Stanton's October 17, 2014 response to the Chair's October 17 Letter did not at all deny that the actions of Pointing, Blake, and Rol[li]ng had an effect on rates charged ["to", or by] United Water's New York utilities. Quite the contrary. Mr. Stanton's October 17, 2014 response, presumably vetted by counsel prior to issuance, studiously allowed for the self-same possibility of an effect on rates. Stanton's letter effectively says, "Madame Chair, we here at United Water don't know if Pointing's actions and the actions of Blake and Rol[li]ng, affected rates, so we hired PriceewaterhouseCoopers to tell us". As a rate-payer it is maddening to the extreme to hear that United Water does not already know the answer, especially considering that this tragi-comedy of massive economic errors started in 2010, and because United Water already deployed its "outside auditor" and first accounting firm WeiserMazars to examine what appear to be the same set of issues. ("United Water's Response to TC-1", Page 7). Query if United Water intends to then hire the remainder of the Big Four accounting firms before offering up an answer. It should be noted that WeiserMazars's October 3, 2014 "no action necessary" letter is specifically acknowledged by United Water to be "directed at this [Financial Irregularities and presumably Rate Case] matter only"; which, as I read it, still leaves open the possibility of an effect by admitted omission *vis-à-vis* the Need Case and the Surcharge Case and the desalination plant. ("United Water's Response to TC-1", Page 7).

12. **A US\$7,122,000 Discrepancy.** On Page 2 of "United Water's Response to TC-1", United Water states:

"In executing this detective control related to the nine month short rate year, 9/1/13-5/31/14, a difference of US\$7,122,000 was noted between the deferred balance and the proposed surcharge filing. This difference is what gave rise to [United Water's claimed] investigation to determine the root cause".

[Emphasis added - and, it should be noted that all dollar references strategically abbreviated as "M" and *sans* "US\$" designation in United Water's papers, are instead extrapolated to their full numerical values herein, so that there can be no question in any reader's mind of the impact of United Water's economic malfeasance].

13. **Robert Gerber.** On Page 3 of "United Water's Response to TC-1", United Water tells us that United Water's General Counsel and Ethics Committee Member, Robert [A.] Gerber, is one of the individuals under whose direction the United Water investigation is performed. That's hardly a comfort. The name Robert Gerber is well-known to me and should be well-known to this Honorable Commission, too.

Robert Gerber also appeared as "General Counsel, United Water" (*see* Exhibit "A") on behalf of at least one United Water defendant in 2011 in the Indiana federal criminal case of United States Of America v. United Water Environmental Services, Inc., Dwain L. Bowie, And Gregory A. Ciaccio, Cause No. 2:10-CR-00217-PPS, in which the United Water defendant and former employees Bowie and Ciaccio were indicted. As described in the Justice Department's press release:

"United Water Services Inc., the former contract operator of the Gary Sanitary District wastewater treatment works in Gary, Ind., and two of its employees, were charged today with conspiracy and felony violations of the Clean Water Act in a 26-count indictment returned by a federal grand jury, the Justice Department announced today. United Water Services Inc., and employees Dwain L. Bowie, and Gregory A. Ciaccio, have been charged with manipulating daily wastewater sampling methods by turning up disinfectant treatment levels shortly before sampling, then turning them down shortly after sampling".

<http://www.justice.gov/opa/pr/gary-indiana-wastewater-treatment-operator-and-managers-charged-conspiracy-and-violating>

This Commission should not limit its Investigation to Michael Pointing alone. Rather, this Commission should investigate the pattern of malfeasance that characterizes United Water's New York and nationwide operations.

14. **The "Stranded" US\$2,900,000.** In the instant Matter, Page 4 of "United Water's Response to TC-1" tells us that "Starting in September 2010 and proceeding through December 2010, revenues were overstated by approximately **US\$2,500,000**, growing to approximately **US\$2,900,000**" - as a "stranded asset". "Stranded", indeed! Just as the stranded castaways in "Gilligan's Island" encountered from 1964 to 1967, this was no mere brief "three-hour tour" of an accounting error - this was more like a three-year to four-year run!:

"[R]evenues were shifted from 2011 into 2010 by recognizing revenues in a pattern inconsistent with both the design rate of recovery implicit in the [2009] PSC [Rate] Order and the pattern of actual sales as required under GAAP. This shifting of revenue resulted in an overstatement of revenue in 2010 totaling **US\$2,500,000**... In 2014 with the new Rate Order resulting from the 2013 rate case, the deferred Regulatory Asset has a balance of **US\$2,900,000** resulting from the initial 2010 shifting **and the impact of the subsequent years**... As a result of the overstatement

of revenues in UWNY, **every quarter since September 2010 has been materially misstated and requires restatement**". [Emphasis Added].

"United Water's Response to TC-1 (10/14/14)", containing "United Water - Accounting Services Memo", October 6, 2014, Page 11.

"Starting in September 2010 and proceeding through December 2010, revenues were overstated by approximately **US\$2,500,000**, growing to approximately **US\$2,900,000**. **This incorrect accounting continued each succeeding year, through June 2014...** each quarter was materially incorrect, which resulted in the restated quarterly financial statements". [Emphasis Added].

"United Water's Response to TC-1", Page 4.

"The quarterly financial statements for UWNY have been materially misstated since September 2010". [Emphasis Added].

"United Water's Response to TC-1 (10/14/14)", containing "United Water - Accounting Services Memo", October 6, 2014, Page 12.

15. **No Better Than A Low-Life Ponzi Scheme**. Alternatively phrased, this was no more sophisticated a game than the most common of Ponzi schemes or check-kiting scams - and it took United Water three or four years either to figure it out, or else to come clean about it. Even assuming that these were just dumb accounting errors by dumb accountants, they apparently happened between twelve to sixteen times, in methodical regular series, quarter-to-quarter, over three to four years, year-to-year. The overstated revenue numbers did not just stay static but actually climbed over time with the "impact of the subsequent years", from **US\$2,500,000** to **US\$2,900,000**. That vector suggests purposefulness and not accident. But even assuming negligence, gross negligence, or recklessness alone, United Water is clearly not a company that can be trusted with our water, our rates, our money, our health, or our water future - nor can this Honorable Commission be expected to trust United Water or the accuracy of its provided information, either. United Water's testimony and other offerings in the Rate Case, Surcharge Case, and Need Case should be deemed, at minimum, suspect, and in fact, likely-infected - and that includes any past offerings from the now-terminated Mr. Pointing.

16. **United Water Also Misallocated Expenses**. The Company didn't just play "balance-sheet magic" with overstated revenue. United Water also understated and misallocated expenses, now admitting at least some impact of same on "NY Franchise Taxes" and "Regulatory Assessment Fees":

"Furthermore, there is evidence that **US\$202,000** of expenses that are reconciled (Energy and Chemicals) were shifted out of 2010 (**September-December**) into 2011 (**May-August**)". "United Water's Response to TC-1 (10/14/14)", containing "United Water - Accounting Services Memo", October 6, 2014, Page 11. [Emphasis Added].

An independent prong of the Commission's Investigation should examine whether these "shift[y]" expenses wrongfully carried forward into 2011, were shifted so as to be attributed to the desalination plant project or other surcharge or rate requests - in addition to the possibility of making the company and its management artificially appear more profitable than it actually was in 2010.

17. **United Water Admits That It Fed Incorrect Information To This Commission.** On Page 6 of "United Water's Response to TC-1", United Water admits that it provided incorrect information - "which included the impact of the error" - in multiple PSC proceedings, including the Rate Case relating to Rockland County. Presumably, this "impact of the error" textual reference was itself simply a typo and yet another error on the part of United Water - since, if the incorrect accounting in fact "continued each succeeding year" from 2010 to 2014, then that should read "errors", plural - and not "error[sic]", singular. As many as twelve to sixteen errors. In a row. Every quarter.

18. **United Water "Adjusts" US\$1,759,000.** Page 6 of "United Water's Response to TC-1", accordingly, refers to financial statements requiring restatement - "an adjustment to opening equity at January 1, 2013, in the amount of **US\$1,759,000**" - as applicable to United Water New York.

19. **United Water 'Fesses Up To The Financial Institutions.** On Page 7 of "United Water's Response to TC-1", we learn that United Water recently apparently admitted in writing to approximately twenty financial institutions, that:

"United Water New York Inc. uncovered an error in their calculation of the Revenue Recognition that was issued as part of a 2010 Rate Order. This Order requires United Water New York Inc. to recognize the authorized level of revenues in each year covered by the Rate Order. The revenues recognized were not properly ["**calendarized**"] and consequently caused incorrect revenue levels in certain periods. The Company has adjusted its financial statements for all periods presented and has also disclosed an opening equity adjustment at January 1, 2013 in the amount

of US\$1,759,000 which represents the impact of the correction through December 31, 2012".
[Emphasis Added].

While it is yet unclear whether all authoritative dictionaries and digital spell-checkers actually recognize "calendarized" as a word, suffice it to say for now that "not properly calendarized" is one of the funniest defenses to possible multi-million-dollar criminality that I have ever seen asserted in any papers of a legal nature.

20. **Relief Sought.** To the ordinary Rockland County, New York observer thusfar, what United Water has already admitted in writing to this Commission, is thusfar indistinguishable from a massive fraud and pattern and series of financial crimes involving US\$202,000, US\$1,759,000, US\$2,500,000, US\$2,900,000, and/or US\$7,122,000. What is noticeable in United Water's documents is the absence of the answer to the question "Why?" What did Pointing, Blake, Rol[li]ng, and/or United Water possibly stand to gain from the overstatement of fictional revenue and concoction of an ultimately-"stranded" asset quarter-to-quarter and year-after-year? Were these actions intended to augment Pointing's, Blake's, and/or Rol[li]ng's bonuses - (or even compensation increases of any kind, since we know that companies are more inclined to give raises to successes rather than failures)? Were they intended to fool the Commission and the rate-payers? Intended to affect rates? Intended to make the utility look more solvent and stable, or make the New York division look more productive? We simply do not yet know, though we can surmise. Naturally the first question to ask is whether a bonus calculation formula appeared in Pointing's employment agreement, and whether Pointing was bonused or otherwise compensated on this fake set of revenue numbers in any way. Rockland County is entitled to know these answers, by the way. After all, if any United Water employee bonused himself on fiction, then that employee artificially inflated company costs and presumptively stole our rate-payer money in the process. In the meantime, however, this Omnibus Motion requests that this Honorable Commission order the following relief on an immediate basis:

A. **Motion Requesting Assignment Of A Case Number To This Matter.** I request that this Matter be assigned its own Case Number, and then be consolidated with the Rate Case, Need Case, and Surcharge Case as requested at Item F. hereinbelow.

B. **Motion Requesting Consideration Of This Matter By The Public Service Commission.** My understanding is that Matters which are assigned no Case Number, are not intended to be brought before and heard and addressed by the Commission. Yet this Matter relates to possible fraud and pattern of criminality by United Water involving a massive amount of money. By United Water's own admission, the "financial irregularities" led to incorrect information supplied to this very

Commission in the Rate Case, which could have in turn affected rates. Even David Stanton's own letter to the Commission acknowledges the possibility that the actions of Pointing, Blake, and Rol[ing] could have affected rates. This needs to be a Case brought before, and heard and addressed by, the Public Service Commission.

C. Motion Requesting Judicial Assignment, And Judicial Intervention By One Or More ALJ's. This is a request for judicial intervention, and for the assignment of one or more administrative law judges (ALJ's) to the Matter and Case. The interests of justice require the handling of this matter by at least one judge, to ensure the protection of the rate-payers and public in New York State.

D. Motion Requesting That The PSC Order Transparency In This Proceeding. It is beyond troubling that United Water already lodged a request to conceal information in this Matter from the rate-payers and Rockland County customers, particularly prior to such rate-payers and customers having any meaningful opportunity to join this Matter as Intervenor-Parties. This Matter relates to possible fraud and pattern of criminality by United Water involving a massive amount of money. This Commission should order the transparency of this proceeding, in the interests of justice.

E. Motion Objecting To Endeavors Of United Water To Conceal Information In This Matter. Similarly, this Omnibus Motion should be deemed to be my objection to United Water's endeavors - already posted to the Electronic Docket Sheet - to conceal information in this matter - just as United Water has sought to conceal information in the Prior United Water Cases as well. That's reprehensible and should not be tolerated by this Commission.

F. Motion Requesting That The PSC Consolidate This Matter With The "Rate", "Need", And "Surcharge" Cases. I move to consolidate this Matter with the Rate Case, Need Case, and Surcharge Case - for the reasons comparable to those already set forth in my prior March 7, 2014 Motion To Consolidate filed in the Rate Case, Need Case, and Surcharge Case. I intend to file this Omnibus Motion in the Rate Case, Need Case, and Surcharge Case to same effect.

G. Motion Requesting The Re-Assessment Of Rates In The "Rate Case". I request a re-opening of the Rate Case towards a reduction of any rate-increase previously therein accorded by this Commission. There is a suggestion raised in this Matter that incorrect United Water-supplied information may have had an effect on rates. We the rate-payers and United Water customers deserve a plenary re-examination of any rate-increase accorded to United Water in the Rate Case, and any United Water rate-increase at all since the earlier of: (i) 2010, or (ii) Michael Pointing's first day of work at United Water.

H. Motion Requesting Reduction Or Elimination Of Any Rate-Increase Adjudicated In The "Rate Case". To similar effect, I move for a reduction of any rate-increase previously accorded in the Rate Case by this Commission. Again, there is a suggestion raised in this Matter that incorrect United Water-supplied information may have had an effect on rates. The results of the Commission's Investigation should effect that reduction.

I. Motion Requesting That Michael J. Pointing Be Compelled To Join This Matter As A Party. Although it is not yet clear if he is still located in the jurisdiction of the United States of America, and at least one recent press account discussed Mr. Pointing's apparent intention to return to England:

<http://www.lohud.com/story/news/local/rockland/2014/09/18/united-water-exec-michael-pointing-leaves-company/15831849/>

I move that this Commission order Mr. Michael J. Pointing to join this Matter as a Party, serve him with appropriate process accordingly, and compel his joinder as Party - in the event that Mr. Pointing fails to do so voluntarily within ten (10) calendar days of the date of this Omnibus Motion. In fact, I challenge Mr. Pointing, here, to join this Matter as Party voluntarily. I make the same request for and with respect to Mr. Blake, as well as Mr. Rol[1]ing just as soon as United Water's outside counsel Mr. Alessi confirms for us which United Water variant of the spelling of the man's name is actually correct.

J. Motion Requesting That Michael J. Pointing 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 J. Pointing to testify in this Matter.

K. Motion Requesting That Michael J. Pointing's Prior Testimony Be Stricken From Prior PSC Cases. Additionally, there is already ample evidence in this Matter to indicate that Mr. Pointing may have participated in a year-to-year and quarter-to-quarter series and pattern of actions overstating United Water revenue as an asset from 2010 to 2014 - which resulted as a "stranded asset" on the United Water books. Though no evidence has apparently yet been adduced or made public to explain Mr. Pointing's motivations *vel non* in doing so, Pointing's past testimony and other statements made for and to this Commission in the Rate Case, Need Case, and Surcharge Case must be, at minimum, now called into question. I move that Mr. Pointing's testimony and statements be deemed impeached, discredited, expunged, and stricken from the record in the Rate Case, Need Case, and Surcharge Case. Let him come forward and try to rehabilitate himself.

L. Motion Requesting That Michael J. Pointing Be Required To Re-Affirm Under Oath All His Prior Testimony And Other Statements. Alternatively, to the extent that Mr. Pointing's past testimony and statements are not deemed impeached and discredited, and expunged and stricken from the record in the Rate Case, Need Case, and Surcharge Case, then to that extent I move that this Commission compel Mr. Pointing to re-state and re-affirm all of his specific testimony under oath, in the physical presence of all Parties and the full Commission, with an opportunity provided for cross-examination. Clearly, all prior cross-examination of Pointing in the Prior United Water Cases was handicapped by United Water's concealment of its actual accurate financials, at minimum - as well as handicapped by the cross-examiners' lack of full knowledge at the time of what Pointing and/or his colleagues had really been doing since 2010.

M. Motion Requesting A Public Comment Period In This "Financial Irregularities" Matter. As has been accorded in the Prior United Water cases, I request that a Public Comment Period be scheduled and set in connection with this Matter. The potential victims of United Water's possible economic fraud and pattern and series of crimes - that is, the rate-payers and United Water customers - should be heard in this Matter. You shouldn't just hear it from me, either.

N. Motion Requesting Rockland County Public Hearings In This "Financial Irregularities" Matter. Similarly, as has been accorded in the Prior United Water cases, I request that Public Hearings be scheduled and set, to occur in multiple locations in Rockland County, New York, in connection with this Matter. Again, the potential victims of United Water's possible economic fraud and pattern and series of crimes - that is, the rate-payers and United Water customers - should be heard in this Matter.

O. Motion Requesting That The PSC Notify All Relevant New York, New Jersey, And Federal Law-Enforcement Agencies Of This Matter. Given United Water's possible economic fraud and pattern and series of crimes based on the information already adduced and posted to the Electronic Docket Sheet, I respectfully request that this Commission refer this matter to all relevant law-enforcement authorities which may have or share jurisdiction over this matter, including without limitation the U.S. Department of Justice, the Federal Bureau of Investigation, the New York State Attorney General's Office, the Rockland County District Attorney's Office, and all appropriate and comparable New Jersey state authorities.

P. Motion Requesting That The PSC Notify All Public Service Authorities In Other States Wherein United Water Conducts Business, Of This Matter. Similarly, I respectfully request that this Commission alert this Matter to all other communities, counties, municipalities, and other public authorities in the United States in which United Water transacts business. There is at least a reasonable likelihood that what has been uncovered may have been a systemic practice of United Water, its management, its employees, and/or its affiliates over a period of years.

Q. Motion Requesting A Plenary Forensic Audit Of All United Water Books And Records. Additionally, I reiterate and incorporate all prior motions and other requests made in the Rate Case, Need Case, and the Surcharge case, for a plenary forensic audit of United Water and its business practices.

R. Motion Requesting A Prudence Hearing And Proceeding. I reiterate and incorporate all prior motions and other requests made in the Rate Case, Need Case, and the Surcharge case, for a prudence hearing and proceeding relating to United Water and its business practices.

S. Motion Requesting That The PSC Expand The Scope And Time-Frame Of The Investigation Herein. I request that this Commission expand the scope of its Investigation and this Matter back to, at minimum, the date upon which Michael J. Pointing first assumed any responsibility with respect to any aspect of the water system in Rockland County, New York, presumably his start-date at United Water. I further request that this Commission carefully examine the totality of Pointing's actions, not just the financial ones in which he may have participated. Of particular concern are any water quality testing and reporting, particularly as relating to the arsenic reported in Rockland County's water supply from 2007 forward, as well as other contaminants such as copper sulfate, and turbidity, affecting Rockland County's water.

T. Motion Requesting That The PSC Expand The Scope Of This Matter To Other United Water Management, Personnel, Former Management And Personnel, And Affiliates. Similarly, I move that this Commission expand the scope of its Investigation and this Matter beyond simply Messrs. Pointing, Blake, and Rol[l]ing. It is unlikely that a series of actions involving the misdirection of so many millions of dollars over three to four years and twelve to sixteen quarters, would have only involved and affected three ex-employees.

U. Motion Requesting That The PSC Compel The Appearance, As Parties In This Matter, Of All Five Towns In Rockland County, New York. I request that this Commission issue an order compelling the appearance of all five (5) towns in Rockland County as Parties to this proceeding - Orangetown, Clarkstown, Stony Point, Haverstraw, and Ramapo. Of particular concern are Haverstraw and Clarkstown, since certain leaders of Haverstraw and Clarkstown have been known to receive or be promised consideration and value by United Water. The interests of justice require the participation of all five (5) towns as Parties, so as to protect the interests of all individual rate-payers and United Water customers therein.

V. Motion Requesting That The PSC Freeze Or Stay All United Water Rates, Surcharge Requests, And Other Economic Requests, Pending The PSC Investigation Outcome. I move that this Commission freeze or stay all United Water rates, surcharge requests, and other economic requests, pending the outcome of the Commission's investigation - to the extent that such rates and requests are not already frozen or stayed.

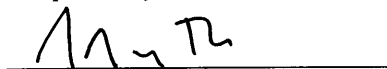
W. Motion Requesting That The PSC Disclose And Post All Prior Documents In This Matter, To The Full Extent Not Already Posted And Disclosed. As indicated hereinabove, I respectfully request that the Commission post and make public, in the interests of transparency, all documents in or relating to this Matter which may not have yet posted to the Electronic Docket Sheet - in unredacted and otherwise unexpurgated form.

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: October 28, 2014
Hamlet of Pearl River, Town of Orangetown
County of Rockland. State of New York

Respectfully submitted,



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cc:

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**

Exhibit "A"

Pages 1 through 5 of "Transcript Of Motion To Dismiss" (from PACER).

United States Of America v. United Water Environmental Services, Inc., Dwain L. Bowie, And Gregory A. Ciaccio, Cause No. 2:10-CR-00217-PPS.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,

vs.

2:10-CR-217

UNITED WATER SERVICES, INC.,

DWAIN L. BOWIE and

GREGORY A. CIACCIO,

Defendants.

TRANSCRIPT OF MOTION TO DISMISS INDICTMENT HEARING

BEFORE THE HONORABLE RUDY LOZANO

UNITED STATES DISTRICT JUDGE

HAMMOND, INDIANA

July 12, 2011

Court Reporter: Kelly M. Fitzgerald, RMR, CRR

Official Court Reporter

United States District Court

5400 Federal Plaza, Suite 4082

Hammond, IN 46320

219-852-3616

Proceedings recorded via stenotype. Transcript produced by
computer-aided transcription.



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ROBERT A. GERBER, General Counsel, United Water;
DWAINE L. BOWIE, Defendant, present in person;
GREGORY A. CIACCIO, Defendant, present in person.

1 THE COURT: Government, who is your lead counsel again?

2 MR. DIGHE: Your Honor, good morning again. It's Kris,
3 K-r-i-s, Dighe, D-i-g-h-e.

4 THE COURT: My law clerk put it down phonetically, too,
5 so hopefully I can pronounce it correctly.

6 Defense, who is your lead counsel?

7 MR. SOLOW: Your Honor, good morning again. Steve
8 Solow.

9 THE COURT: Okay.

10 MR. SOLOW: Thank you.

11 THE COURT: This is the case of the United States of
12 America versus United Water Services, Inc., et al., Hammond
13 Criminal No. 2:10-CR-21. Present today for the defendant are
14 attorneys Larry Mackey, Robert Gerber and Steven Solow. For
15 defendant No. 2, Dwain Bowie and Jackie Bennett, Jr. And for
16 defendant No. 3, Gregory Ciaccio --

17 MR. HANLON: Ciaccio, Your Honor.

18 THE COURT: -- and James Hanlon. For the government,
19 attorney David Mucha, attorney Krishna Dighe, I got the Dighe
20 right at least, and Toi Houston.

21 Counsel, we're here today on a motion to dismiss.

22 Defendant, do you wish to be heard?

23 MR. SOLOW: Your Honor, thank you. May I approach the
24 lectern?

25 THE COURT: You may.

1 MR. SOLOW: Good morning, Your Honor. Thank you for
2 the time this morning and for scheduling this matter for a
3 hearing. On behalf of all the defendants, we very much
4 appreciate the Court's attention to this motion.

5 We're here today to ask the Court to dismiss this
6 indictment in its entirety because the indictment fails to
7 state a claim of tampering with a monitoring method in
8 violation of the Clean Water Act. The standard we view here,
9 of course, is that the sufficiency of a criminal indictment
10 must be determined on its face.

11 Just so we're all in the same space, we're -- you know,
12 in discussing this issue, there have been various issues
13 raised about it. But one thing I just wanted to point out at
14 the outset is what we're talking about here is a treatment
15 plant that has a NPDES permit, right? That plant can only
16 discharge water that they have treated if they have such a
17 permit. The NPDES permit system is ostensibly managed by the
18 EPA but, in fact, here in Indiana and in about 46 of the 50
19 states, it's managed by the individual states themselves.

20 The State of Indiana issued a permit to the City of Gary
21 for discharges from the Gary wastewater treatment plant. And
22 among the many other obligations in that permit, one thing the
23 permit required was that once a day, during the disinfection
24 season, which ran from April to October, the Gary plant had to
25 take a grab sample and test it for the number of E. coli