

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 23-W-0111 - Proceeding on Motion of the Commission as to
the Rates, Charges, Rules and Regulations of
Veolia Water New York, Inc. for Water Service.

RULING ON MOTION TO REFORMAT COMMENTS AS TESTIMONY

(Issued July 10, 2023)

MICHAEL CLARKE and ASHLEY MORENO, Administrative Law Judges:

As set forth in a procedural ruling dated April 24, 2023, the deadline for direct testimony from Department of Public Service (DPS) Staff and intervening parties in this proceeding was June 23, 2023. On that date, testimony was timely filed by DPS Staff, the Rockland and Westchester Municipalities,¹ the Public Utility Law Project (PULP), and Bruce Levine. Submissions were also made on or before June 23, 2023, by the Sierra Club Atlantic Chapter (Sierra Club), LEAF of the Hudson Valley, ROSA 4 Rockland (ROSA), and Dorice Madronero; as these submissions did not comply with applicable rules regarding testimony,² we informed the parties that they would be considered public comments. Shortly thereafter, we granted Robert Tompkins's requests for party status and that his testimony be accepted.³

Here, by motion submitted June 30, 2023, ROSA requests that its amended submission, attached to the motion and

¹ The Rockland and Westchester Municipalities are the City of Rye, County of Rockland, Town of Clarkstown, Town of Haverstraw, Town of Orangetown, Town of Ramapo, Town of Stony Point, Village of Port Chester, and the Village of Rye Brook.

² 16 NYCRR §4.5.

³ Mr. Tompkins's testimony was attached to the June 23, 2023, submissions of the Sierra Club and LEAF of the Hudson Valley.

purportedly reformatted to comply with the applicable rules, be accepted as testimony. The motion is supported by the Sierra Club, the Rockland and Westchester Municipalities, PULP, the West Branch Conservation Association, Bruce Levine, Robert Tompkins, and Dorice Madronero, most of whom emphasize the value of public input in this proceeding. Veolia Water New York, Inc. (Veolia or the Company) opposes the motion, claiming that, should the motion be granted, it will have unfairly lost over a week of time to prepare rebuttal testimony, which is due July 21, 2023.

Inasmuch as ROSA's amended submission is substantively identical to its filing dated June 23, 2023, we conclude that its admission as testimony will not prejudice the Company or any party, and we accordingly grant ROSA's motion. In doing so, we remind the parties that sworn testimony subject to cross examination is afforded greater weight than public comments; it thus contributes to the development of a more comprehensive evidentiary record on which the Public Service Commission (Commission) may rely during the decision-making process.

Notwithstanding the instant determination, we would be remiss if we did not reiterate our expectation that all parties familiarize themselves with and adhere to the procedural rules and that this circumstance is not repeated. Several parties to this proceeding, on several occasions, have lamented their purported inexperience in or unfamiliarity with administrative proceedings. Yet many of those same parties have participated in Commission proceedings for this and predecessor companies for many years.

In that regard, we note that this same issue - the reformatting of a submission to comply with applicable testimony rules - was the subject of multiple rulings in the 2016 rate case. While we acknowledge that not every party to this

proceeding was a party in that case, several were, including a number of those claiming a current affiliation with the Rockland County Water Task Force, which was granted permission to convert its comments into pre-filed testimony.⁴ As articulated by the ALJ in that case, while parties are afforded privileges and abilities that non-parties lack, such as conducting discovery and filing testimony and briefs, they also have certain responsibilities, including familiarizing themselves with procedural rules, adhering to deadlines, and conforming to the standards of conduct required by attorneys appearing before courts in New York State.⁵ We have also clarified for parties the requirements of participation and advised where the rules could be accessed.⁶

In that vein, we note that ROSA's amended submission, notwithstanding its assertion here, does not comply with subdivision iii of 16 NYCRR §4.5. ROSA is accordingly directed to make necessary corrections and refile its testimony by 4:30 P.M. on Thursday, July 13, 2023. Likewise, as indicated above, rebuttal testimony and exhibits are due on July 21, 2023. To be considered timely and properly filed, rebuttal testimony must be in the proper form, respond to the positions of other parties in their direct testimony and exhibits, and filed with the Secretary and served on all parties and the ALJs by 4:30 p.m. Veolia was the only party to contend it would be prejudiced by

⁴ Case 16-W-0130, Suez Water New York, Inc. - Rates, Ruling Confirming Emails Allowing Late Testimony, Modifying Schedule, and Denying Request to Replace Testimony (issued July 13, 2016). A review of these rulings also reveals the involvement of the Rockland Water Coalition, many of whose members have expressed support for ROSA's motion here.

⁵ See Case 16-W-0130, supra, Letter Ruling 16-W-0130 from Judge Phillips 7.6.16 (DMM No. 66).

⁶ See also April 20, 2023 Procedural Conference Transcript, pp. 12-13; June 9, 2023 Discovery Conference Transcript, pp. 7-13.

granting ROSA's request to reformat its comments as testimony. Veolia is granted leave to file rebuttal testimony, limited to responding to ROSA's testimony, no later than 4:30 p.m. on July 28, 2023.

(Signed)

MICHAEL CLARKE

(Signed)

ASHLEY MORENO